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September 29, 2017

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Editor's Note

How to attract investment in Ukraine

By the time then-U.S. Vice President Joe Biden got up on July 13, 2015, in Washington, D.C. and said Ukraine has “got to put people in jail,” Ukrainians and their friends abroad were already frustrated by the willful lack of progress in the corruption fight. It’s only gotten worse. More than two years after Biden spoke, Ukraine hasn’t convicted anybody of consequence for corruption. The courts, prosecutors and police remain unreformed, ineffective, distrusted and tools of politicians and oligarchs. New anti-corruption institutions are useless without functioning courts.

Here’s what Finance Minister Oleksandr Danyliuk recently had to say: “Law enforcement stayed in the 20th century while the country is in the 21st century. If our court system is not ready, general system, to deal with corruption charges, then we need to, in the very short time, set up the anti-corruption court, to deal with such offenses. Then people will see that the fight with corruption is serious.” Back to Biden at the U.S.-Ukraine Business Forum: “Corruption siphons away resources. It weakens economic growth. It destroys trust in government. It hollows out militaries. And it’s an affront to the dignity of the people of Ukraine.”

For Ukraine to attract foreign direct investment, create good jobs and reverse an exodus of millions of Ukrainians, the nation must establish rule of law, end impunity and create trustworthy institutions. Ukraine’s economy and politics are still dominated by oligarchs and kleptocrats. Top leaders — President Petro Poroshenko, Prosecutor General Yuriy Lutsenko and Interior Minister Arsen Avakov — are imitating the fight against corruption while obstructing meaningful change, such as blocking the creation of independent anti-corruption courts. Many of the “new” Supreme Court justices to be seated soon look very much like the discredited “old” ones.

When Ukraine’s leaders get serious about fighting corruption, investment will come.

All of our contacts are available online at <http://www.kyivpost.com/contacts/>

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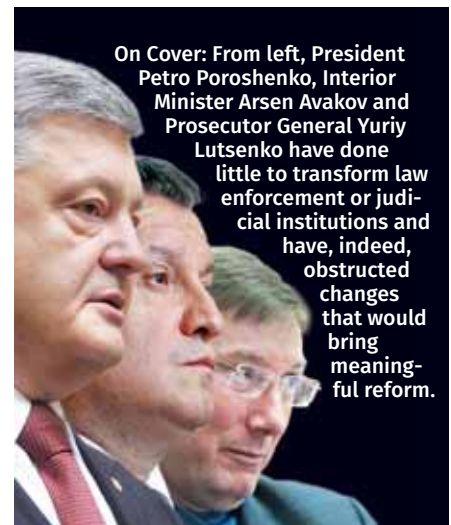
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Anti-corruption activists hold a protest in front of the Verkhovna Rada on May 16 against amendments seeking to restrict the National Anti-Corruption Bureau of Ukraine's independence. (Kostyantyn Chernichkin)

How to finish the revolution in Ukraine



By **Olena Sotnyk**

More than three years after the EuroMaidan Revolution that drove President Viktor Yanukovich from power on Feb. 22, 2014, Ukraine still hasn't successfully prosecuted any high-level crooks, and we've got plenty here.

At Stanford University's Draper Hills Summer Fellowship this summer, we examined how to catch a "big fish" and looked at a case study in Indonesia, where the country's anticorruption commission had just begun.

Despite being poorly staffed and lacking its own office, it had already successfully conducted investigations, including one that involved a high-ranking official and public procurement expenditures. The big fish had powerful connections and support from the president's family, but a new anticorruption court that was independent from the general court system helped reel him in.

As a Ukrainian politician and lawyer, I was shocked by the striking similarities between

Indonesia then and Ukraine now. That similarity makes Ukraine's need for an independent anticorruption court even more obvious and pressing.

Three years ago, people took to the streets because of gross injustice. The friends of the president, prime minister, and attorney general could do anything they wanted as long as they shared their profits. Three years later, the public has the same feeling. For example, only three convictions were handed down against high-level public officials in 2016, and none went to prison.

In Ukraine, the judiciary lacks public trust, and President Petro Poroshenko's much ballyhooed judicial reforms haven't changed that at all. The new Supreme Court was supposed to be completely different from the old one, but this transformation has failed and distrust of the courts has actually increased.

The vast majority of criminal cases conducted by the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office — both outstanding and independent organizations formed after the EuroMaidan — cannot be concluded, because corrupt judges stand in the way. Even with these new bodies, Ukraine's judicial system has proved unable to bring senior public officials and politicians to justice.

The concept of an anticorruption court in Ukraine is one of the hottest debates, although existing legislation already provides for the formation of a Supreme Anti-Corruption Court.

Initially, NABU proved to be an effective and independent investigative body. And despite being subordinate to the prosecutor general, the SAPO showed character, independence and determination. Together with those two institutions, an independently-selected anticorruption court could break Ukraine's great corruption chain.

But Kyiv is awash in myths and arguments against this new court. Here are the top five arguments against it, as well as my counterarguments in its favor:

1. "Ukraine's judicial system is large enough to consider cases of all categories. Anticorruption courts will be redundant."

Specializing the court system would not overburden it; rather, it would make the system more efficient through improved procedures and higher-quality decisions, and would ease the load on the entire system.

2. "Anticorruption courts have not been particularly successful elsewhere. On the contrary, the track record of other countries proves their ineffectiveness."

Anticorruption courts have been quite effective in medium- and highly-corrupt countries in Asia and Africa whose situations resemble Ukraine's.

3. "Establishing a separate anticorruption court is a process that can drag on for several years. Establishing anticorruption chambers in existing courts could be an easier alternative."

False. Parliament only needs to adopt pending legislation to make it happen.

Moreover, there are two main goals to establishing a specialized anti-corruption court: enhancing competence in corruption cases and ensuring the independence of the body considering those cases. Establishing an anticorruption chamber instead of a separate anticorruption court can solve only the first goal, since the second one requires special selection procedures. SAPO and NABU have demonstrated that the reform of any system requires the → **34**



Vitalii Odzhikovskiy
Senior Of Counsel, Attorney at Law

CONSTITUTIONAL COMPLAINT IN TAX MATTERS. A NEW WAY OF PROTECTION AGAINST DEFECTIVE LAWS

On August 3, 2017, the Law of Ukraine "On Constitutional Court of Ukraine" as of July 13, 2017 entered into force. Generally, an adoption of such a Law is the result of the amendments to the Constitution of Ukraine as of June 02, 2016, which are the core of the current judicial reform in Ukraine.

One of the main novelties, set out in the mentioned Law (as well as in the amendments to the Constitution of Ukraine), is the institute of constitutional complaint. Such institute grants the people with the real opportunity to cancel the law, which does not correspond to the Constitution of Ukraine by means of submission of the respective complaint to the Constitutional Court of Ukraine.

In view of the quality of current tax legislation, we believe that the institute of constitutional complaint could provide positive influence upon Ukrainian taxation system and, as a result, upon the whole investment attractiveness.

It is worth mentioning that by this time, access to the Constitutional Court of Ukraine in order to recognize the law as unconstitutional, have been provided to the short list of the state authorities. As a result, ordinary citizens have been cancelled from the process of the judicial "cleaning" of the defective laws.

In view of that, on practice, the Constitutional Court of Ukraine was not very active in the sphere of tax legislation. For example, provisions of the Tax Code of Ukraine have been reviewed by the Constitutional Court of Ukraine only twice since its adoption in 2011. If to compare recent situation in Ukraine in this sphere, it is worth mentioning that, for example, even the Russian Federation tax legislation has been the subject of direct review by their Constitutional Court dozens of times since 2011 (including, via the mechanism of constitutional complaint).

At the same time, there are definitely many more questions with respect to the constitutionality of the Ukrainian tax rules. For example, provisions related to the local "vehicle tax" could be reviewed by the Constitutional Court on their correspondence with Constitution. According to the Tax Code of Ukraine, "vehicle tax" is defined as a local tax, which, according to article 143 of the Constitution of Ukraine, should be established by the local councils. However, on practice, such tax (all of its elements: tax rate, object of taxation, etc.) is fully established directly in the Tax Code by the Ukrainian parliament. And the taxpayers are, technically, obliged to pay it even if there is no special decision of the respective local council.

If to comment on the text of the mentioned Law, then we should note that there are some technical questions regarding its interpretation. For example, the procedure of access to the Constitutional Court, as it is set out in the new law, in some way is similar to the procedure of access to the European Court of Human Rights (ECHR) – both courts may consider the respective case only if all domestic remedies are exhausted by the applicant.

In this regard, there is a question whether the Constitutional Court will use the admissibility approaches, used by ECHR. For instance, criteria of the exhaustion of domestic remedies are interpreted by the ECHR in a rather wide manner, but not only as formal obligation to get the final decision of the national court. According to ECHR, such exhaustion means also the obligation of the applicant to raise the disputable question before the domestic courts and the obligation to provide them with the respective arguments.

From perspective of constitutional complaint in Ukraine, mentioned ECHR's approach could mean that the applicants will get the access to the Constitutional Court of Ukraine only if they raise the question of the unconstitutionality of the law which is still on the level of courts of general jurisdiction.

However, notwithstanding some technical issues related to the new Law, we believe that, at this stage, the main task of the legal community, as well as of the Ukrainian citizens, is to show for the Ukrainian authorities that there is real demand for changes in the legislative sphere. To show that Constitution of Ukraine with its principles is not just a declaration, but the basic law, which everyone should comply with. And, respectively, to raise a question of constitutionality of those law, which seems to be defective.

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Oksana Syroyid, deputy parliamentary speaker discusses with lawmakers during parliament session on April 6 in Kyiv. (UNIAN)

Syroyid sees no big progress in courts, prosecution, police

By **Brian Bonner**
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Oksana Syroyid, a lawyer who is now a deputy speaker of Ukraine's parliament and one of 26 members of the opposition Samopomich Party, takes the long view about judicial reform in Ukraine.

The new 120-judge Supreme Court, set to be seated by October, "is not a success, but it is not a failure also," Syroyid told the Kyiv Post in an interview on Sept. 11. Instead, she said, "it's a development" in Ukraine's long journey from shedding its Soviet legacy and dislodging the "oligarchic kleptocracy" that rules the nation today.

"What we have now is predetermined by a number of factors," she said.

If 25 percent of the judges form a new, competent and moral center on the new high court, despite being disbursed among different specialized courts, the nation can move ahead haltingly, she said.

She expects, however, that only a handful of judges at most will emerge on the new Supreme Court to win public respect for their rulings. Even that represents progress, she said, since she cannot name a single judge of the caliber of America's William O. Douglas or Earl Warren, two of America's most famous Supreme Court judges.

If we have at least one, two, three, four (good judges), we can do something," she said.

An independent Ukrainian judiciary has never been established, Syroyid said. "We inherited Soviet judges and called them Ukrainian judges and that's it." In Ukraine, she said, the judges got "privatized" by "the majority owners of the system" — powerful politicians, oligarchs and even Russians. Judges have been serving those interests ever since, she said.

The urgency for judicial reform came after the EuroMaidan Revolution that drove President Viktor Yanukovich from power on Feb. 22, 2014. At that time, members of parliament realized that none of the 8,000 judges on the nation's bench deserved lifetime appointments.

"You cannot expect that the system that has been corrupted for 25 years can be cleaned in a moment, at least for such a country," Syroyid said. "The biggest success of the process so far is the work of the Public Council of Integrity."

The council is made up of civic activists that helped vet candidates for the new Supreme Court and, while having only advisory powers, was able to call attention to dishonest judges with bad reputations.

The new judges simply can't think differently, she said, because of the poor legal education in Ukraine. While Syroyid, 41, was also educated in Ukraine, she obtained a master's of law degree in Canada as well.

"In Ukraine we have up to 100 law schools and the quality of education in those law schools, or the majority of them, is very poor," Syroyid said. "In all of them, except maybe for individual courses that were changed, the students are trained according to the Soviet doctrine of law. The Soviet legal doctrine was based on the domination of state and the humiliation of a person. But liberal doctrine, and our Constitution by the way as well, is built on the priority of the person, the dignity of the person, the person as the cornerstone of the country. All the state bodies shall be subordinated to the rule of law to protect human rights."

In practice, however, "it's still not enshrined into the legal education, so how can you expect the judge or the prosecutor or a lawyer in the courtroom to stand for the human rights of a person if he or she was trained or trained that the state is the priority?"

Of the more than 1,000 judges she trained, she said, she can recommend only a handful of them. To make matters worse, the Interior Ministry — with law enforcement functions and made up of 150,000 employees — operates many law schools. They should all be run by the Education Ministry, she said.

Poroshenko blocks anti-corruption court

The courts are still run for the benefit of "those six or seven oligarchs running the country," including Poroshenko, and they will not allow the formation of an independent anti-corruption court, according to Syroyid.

"None of them is interested in there being an anti-corruption court. They are interested in the current Ukrainian courts, where they can intervene and finally get the verdict that they are not guilty. The major person who is not interested here is the president himself. He is not even hiding this."

Syroyid has recommended that an independent commission that includes qualified representatives of Ukraine's international

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Oksana Syroyid, deputy parliamentary speaker (R) and speaker of parliament Andriy Parubiy look as Ukrainian President Petro Poroshenko congratulates Yuriy Lutsenko after winning the vote in the Ukrainian Parliament in Kyiv on May 12, 2016. (UNIAN)

partners help choose an independent anti-corruption court. "This is not accepted by the president because he cannot control it," she said. And the majority of her colleagues in parliament "are dependent on the oligarchs," Syroyid said. "A lot of those people gain their money and property because of corruption."

Lutsenko 'even worse'

Syroyid has noticed no lessening of corruption among the nation's 15,000 prosecutors since Prosecutor General Yuriy Lutsenko, Poroshenko's appointee, took over in 2015.

"This is the business. The prosecution considers the opening of a criminal procedure as launching a business. It's like a start-up: You open a criminal proceeding, and collect money to close the proceeding. Then you do it again."

If anything "it's even worse" under Lutsenko. "I don't know who had any illusions."

Lutsenko, she says, "is trying to make his publicity by prosecuting MPs," but it's not likely to work, because the Verkhovna Rada is a "sinners club" that has compromising material on each other.

Lutsenko did not respond to requests for comment.

Avakov 'dangerous'

Moving to the police, Syroyid said Interior Minister Arsen Avakov "doesn't care about any reforms. He cares about improving his political influence; he is gaining this power. He is one of the biggest players in Ukrainian politics. It's not because he's so uniquely smart or talented."

Avakov derives his power as the boss of 150,000 employees, including the National Guard, police, state body-guard service and state emergency services. Moreover, he is aligned with the 81-member People's Front, the second-largest faction in parliament.

At least Hr 50 billion — \$2 billion of the nation's \$40 billion budget — goes to law enforcement.

Avakov is not accountable, Syroyid said, and has established the National Guard as "an alternative army already. It's even better equipped and better paid than the army. It's a point of jealousy for the armed forces. Now he is calling for an increase in its policing functions. So it will be double policing — we have the police and we'll have the alternative police."

Giving the National Guard law enforcement and military duties "is very dangerous," Syroyid said, threatening to turn Ukraine into a police state. "If you have two alternative armies, there is a big risk they could start fighting with each other."

Already, she said, Avakov has used guard members wearing no insignia to break up citizen blockades disrupting trade between Ukraine and Russian-occupied areas. Additionally, she said, peaceful protesters in Poltava earlier this year were "severely beaten" by what she suspects were National Guard officers not wearing identifying insignias.

'I don't talk to them'

Syroyid said that she rarely speaks with Avakov or Poroshenko and she doesn't think they're interested in speaking with her either. "It's mutual," she said.

She last tried to talk to Avakov about transferring law school education from the Interior Ministry to the Education Ministry. Avakov told her that he agreed, but ended up supporting a budget that continues to spend 60 percent of legal education money on Interior Ministry schools. "What is the reason to talk?" she asked. "In public, they say all the good words. When it comes to decisions, they do everything in their private interests."

Avakov did not respond to requests for comment.

No interest in solving crime

Unfortunately, Syroyid said, the state of police investigative agencies is that they don't want to solve big crimes or lack the skills to do so. "Incompetence is a derivative of the first," she said. "This is the intent."

The sooner that prosecutors lose their Soviet-era powers to command the entire judicial system, including police and judges, the better, Syroyid said. "This should be the only function: Make the case and bring it to the court. The crime is investigated by the police, prosecutors make the case and bring it to court and stand for the public interest of society. The judge is the arbiter. On the other side is the defense attorney."

If crimes keep going unsolved, she said, people will seek revenge by taking the law into their own hands. Yet, despite the fact that prosecutors should no longer have over-arching powers, they still do. One reason is Lutsenko.

"The current prosecutor general is not a leader that can change the system, definitely," she said. "It's all interconnected. If we have a good judge but a bad prosecutor, the case fails. If we have a good prosecutor but a bad judge, the case fails." ■

GENTLS is a dispute resolution law firm based on a new concept. Its distinctive feature is that the firm takes up highly complex cases, requiring unique experience in litigation. In the context of judicial reform, we decided to ask for commentary from the managing partner of GENTLS, Oleh Gromovyi, who is actively involved in the process of reforming the judicial system.

J.: At what stage is judicial reform now?

Currently, two key events within the framework of judicial reform are underway: a contest for positions of judges at the Supreme Court of Ukraine, and the adoption of new procedural codes. The contest for positions at the Supreme Court is at the final stage of consideration of candidates for judges by the High Council of Justice, and the procedural codes are expected to be adopted by the Verkhovna Rada as laws.

J.: When, in your opinion, will the judicial system gain the trust of citizens and of the business?

The issue of trust in the judicial system is inextricably linked to public confidence in the Ukrainian authorities and the law enforcement system as a whole. Today, the judicial system in Ukraine is discredited. This is a consequence not only of the problem of corruption, but also of the total information propaganda of



Oleh Gromovyi, attorney, managing partner at GENTLS Law Firm

mistrust in the courts. The authorities were probably interested in completely discrediting the judiciary in order to shift responsibility for failures in the fight against corruption from the investigative bodies to the court system. In addition, the discrediting of the judicial system makes it possible to strengthen the influence of the prosecutor's office and the police, which is inadmissible in a country with the rule of law. Under such conditions, trust in the judicial system will come much later than the recovery of the judicial system itself. That is, the courts will work much better, but society will not perceive the fact immediately, because of a number of prejudices. The determining factor will not only be the quality of the performance of the judicial system, but also the assessment of it by the media, opinion leaders, and other institutions of power.

J.: How can one evaluate the success of judicial reform?

I would suggest evaluating it in figures. Namely, compare how much in public funds and money from international donors was spent on judicial reform, and what economic effect was achieved as a result of the reform. If foreign investors believe in the fairness of Ukrainian courts and

come to the country with investments, then the reform will have been a success.

J.: What is your vision of the Ukrainian court of the future?

This is a court of justice. In addition, I want the courts to become more predictable as a result of the reforms, that is, if there is a dispute it should be completely clear what the likely outcome of the case may be, based on judicial precedents in similar cases, the length of the court proceedings, and expenses to be incurred by the client before the moment of satisfaction – the enforcement of the court ruling. What does fair justice mean? In my opinion, it doesn't just mean the resolution of cases in strict compliance with law. It is very important in a court ruling to inform the party about the reasons for making a specific ruling. After reading the ruling, the losing side should see that the decision is fair and that it does not raise suspicions of bias. The fairness, predictability and transparency of the court system will foster trust.

J.: What is your opinion of the new draft of the procedural codes, and what influence will they have on the judiciary if adopted?

I assess the new codes positively. For example, they provide for the creation of electronic document circulation between the parties and the court, the list of evidence is supplemented by evidence from the Internet, and the judge is given the

powers of reconciliation of the parties. On the other hand, the codes tighten formal requirements for documents, which entails the need to engage only qualified attorneys in the proceedings. Otherwise, the court can dismiss the case for the reason that it does not comply with formal requirements, or for minor errors made by inexperienced lawyers. In the context of these changes, the introduction of a monopoly for attorneys in representing clients in courts seems reasonable.

J.: Why did your law firm choose to specialize in litigation?

Firstly, all key lawyers of our firm have historically practiced in courts, that is, they have a great deal of experience as litigators. Only a few lawyers can effectively work in court proceedings - not only because of lack of necessary experience and qualifications, but also due to the peculiarities of their personality. Litigation lawyers have strong personal qualities, the ability to persuade and achieve victory. Secondly, I'm convinced that it is specialization that allows us to win complex court cases that other lawyers simply don't dare to take on. This is our competitive advantage. We take up cases both at the initial stage and at the stage of appeal or cassation, when the cases have already been lost. Of-

ten, clients ask us to conduct a professional review of ongoing court cases and give our independent assessment of the correctness of the legal position in the case. We recommend how to make cases better, or take responsibility for the case and bring it to a conclusion. It sometimes happens that we have to honestly tell the client that the case is unpromising, and that it would be better to close it rather than waste effort and resources on it. We appreciate honesty in relations, and people appreciate this and trust us for it.

J.: What does your firm do to improve the judicial system?

GENTLS law firm has a mission and social responsibility, which were declared right at the time of its creation. Our mission is to help our clients. Our social responsibility is to contribute to the establishment of fair justice in Ukraine. Such a social responsibility is natural to us, since in under conditions of unfair, biased justice, an intellectual bar is not required, and we would simply lose our profession. Therefore, we are actively involved in the development of new procedural legislation. It is crucial for us that the codes be balanced and equally take into account the interests of the courts and the parties to the dispute. It is very important to make judicial protection accessible and effective. We cooperate with associations of judges, and communicate to judges our expectations about what must be improved in their work, and vice versa. This is a very valuable experience.

J.: You act as a lawyer for key politicians of the country, including Volodymyr Groysman, Arseniy Yatsenyuk, and a number of influential people's deputies. How does politics influence your professional activities?

We are a politically independent law firm. Among our clients are not only politicians, but also large foreign companies. Talking about the protection of the incumbent and former prime ministers, I will be laconic: Our cooperation is in court cases on the protection of honor, dignity, and reputation (defamation cases). We have the best experience in defamation cases and, thus, politicians and businessmen turn to us for help. At the moment, we have not lost a single case in this category.

J.: You say GENTLS is a new type of a firm specializing in litigation. How are you different from the others?

Firstly, we don't bribe judges. We do our work so that the judge could unavoidably make judgment in favor of our client strictly in compliance with law. This goes in line with our mission and social responsibility. Secondly, we provide a full range of services - that is, support not only at the stage of litigation, but also at the stage of enforcement. It is important for us to provide the client with full satisfaction. Thirdly, we handle highly complex cases that many other firms do not want to undertake. Often we save cases that are mistakenly seen as hopeless. The main thing is that we do not deceive our clients, because we believe that trust is the most valuable thing that there can be in the relationship between clients and their lawyers.

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Lawmaker Olena Sotnyk stands by the presidium of the Verkhovna Rada during a parliament session on July 11 in Kyiv. (UNIAN)

Sotnyk, opposition MP and lawyer, says Ukraine's leaders afraid of truly independent judicial system

By **Brian Bonner**
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With President Petro Poroshenko blocking the creation of an anti-corruption court and 80 percent of the new Supreme Court coming from the ranks of corrupt and discredited judges, Olena Sotnyk has scant hope for the justice that Ukrainians crave.

That's why the 34-year-old Kyiv lawyer is focusing her influence, as an opposition member of the 26-member Samopomich Party, on three priorities: Election reform, building a stronger middle class of voters and public TV. All

three initiatives have a common denominator: They are aimed at reducing the influence of Ukraine's oligarchs on the 2019 presidential and parliamentary elections.

But in the short run, she admitted in an interview on Sept. 18 with the Kyiv Post, the situation looks bleak in terms of advancing the nation's judicial or law enforcement systems past their Soviet legacies of corruption and political subservience.

While legislation to create an independent anti-corruption court was adopted a year ago,

Poroshenko and other powerful interests have blocked its creation, she said.

The reason is simple.

'They are afraid'

"Of course, they are afraid it can be independent, qualified and rather transparent," Sotnyk said. "We've been waiting for three years to see a result. If there would be any opportunity and capability of Ukrainian courts to take decisions and issue verdicts, we would see at least one or two or three. There are no results concerning this high-level corruption. It means there is no capacity and there is no will, and we are not going to get any verdicts."

Poroshenko says that he "has no time" to wait for the creation of an anti-corruption court, noting that choosing a new Supreme Court — a process still under way — has taken 18 months. He also said that no other nations, except for a few poor African or Asian ones, have anti-corruption courts. Those were Poroshenko's arguments earlier in September to members of the European Business Association and the American Chamber of Commerce in Ukraine. He repeated them at the opening of Victor Pinchuk's 14th annual Yalta European Strategy conference on Sept. 15 in Kyiv.

But Poroshenko got a quick rebuke from John Kerry, the ex-U.S. senator and ex-secretary of state, who said that "in my nation, every court is an anti-corruption court." The EuroMaidan Revolution that drove President Viktor Yanukovich from power on Feb. 22, 2014, "cannot be betrayed by business as usual which does not move on the issue of corruption," Kerry said. "I think it's vital for Ukraine to grab ahold of the moment. It's not too late, but the decisions made here will help us to be able to defend the future of Ukraine that people have staked their lives for."

Sotnyk agrees.

But with Poroshenko unwilling to tolerate an independent judiciary, the president's re-election in 2019 will bring "no changes" in this area.

"It's the feeling we are not just going into the wrong direction, but that we are going to stay alone," Sotnyk said. "Nobody is going to support Ukraine when the head of the country doesn't want to do anything and is lying. Sorry, but it's a lie to say the anti-corruption court is not going to work if you're not even trying. It's a matter of protecting his power or influence."

Beyond the problems of a new 120-member Supreme Court that is not expected to be much different from the old, and the failure to set up an independent anti-corruption court, Sotnyk is worried that anti-corruption agencies established in recent years will stop working altogether.

She has in mind the National Anti-Corruption Bureau of Ukraine, the Special Anti-Corruption Prosecutor's Office and the National Agency for the Prevention of Corruption. Aside from those three agencies, Sotnyk noted that the State Investigative Bureau — created to take criminal investigative powers away from the General Prosecutor's Office — is not working yet. Already, NABU head Artem Sytnyk has publicly said it's useless to keep bringing corruption cases to court when judges won't accept them or hear them fairly.



Denys Bugay

Attorney-at-law, partner at VB PARTNERS law firm, president of the Ukrainian Bar Association 2013-2017

Competition for the Supreme Court of Ukraine – the Chance for Change.

The legal system of the country has come to a halt in anticipation of a significant event. Within the next few days, the High Council of Justice will announce its conclusions, and the President will sign an order on nominating new judges to the new Supreme Court.

This large-scale competition has three key features. First - the unprecedented transparency of the selection procedures. Second - not only judges, but attorneys-at-law and academics were able to participate in the competition. Thirdly, the public had a direct influence on the selection of the candidates through the institute of the Public Integrity Council (PIC), which is unparalleled anywhere in the world.

625 lawyers were admitted to the examinations, while 320 of them reached the final. From them, the High Judicial Qualifications Commission (HJQC) chose 120 finalists.

Who are these 120 potential judges? Most are professional judges (91 persons), nine attorneys-at-law, 16 academics. 34 candidates have a PhD, and 12 of them an even higher degree. The gender balance is good: 54 women, 66 men.

The competition itself took place over five stages: (1) Admission to the competition, (2) Assessment of professional skills, (3) Assessment of personal moral and psychological qualities and general abilities, (4) PIC examination, (5) Interview and formation of the final candidates rating.

The qualifications of potential judges were checked using two methods. The first was an anonymous knowledge test. The second was a written assignment. All these stages were anonymous, the test results were checked by computer, and when assessing the written work, HJQC members did not know whose work was being assessed.

The assessment of moral and psychological qualities was especially interesting. This examination assessed future judges according to 31 factors, and consisted of four tests and an interview with a psychologist.

All this was checked using four world-known methods of psychodiagnostics: General Skills Test (logical, abstract and verbal thinking), the HCS_Integrity Check (integrity, tendency to improprieties), BFQ-2 (emotional stability, discipline, communicativeness), and MMPI-2 (stress resistance, pathopsychological risks).

Using these test results, profiograms were formed, in which a candidate was compared to a hypothetical perfect profile of a Supreme Court judge.

Checking this enormous amount of information, the PIC drew the negative conclusions about 147 candidates. Twelve of these conclusions were revoked by the PIC.

One hundred and twenty-seven conclusions were submitted for consideration by the HJQC, 50 of which were approved, and accordingly these candidates were withdrawn. Seventyseven candidates with a negative conclusion were allowed to continue in the selection process by the PIC, and 30 of them were included to the list of 120 "finalists."

The interview and rating formation is the last stage. It was the only stage of the competition where a subjective factor - the opinion/influence of a particular HJQC member - was included.

Combining the results of all examinations, a candidate could get a maximum of 1,000 points. The commission assigned a personal rating for each candidate, selecting 30 winners for each of four cassation courts. It is these 120 candidates who will become the Supreme Court judges.

What conclusions can be drawn from the competition results?

A small number of candidates from outside the judicial system will be able to wear the robes of a judge of the highest instance – the lawyers and legal academics. What is the reason? First of all, it was mistrust at the stage when the competition was announced. Some highly qualified and worthy legal professionals just decided not to participate in it. Secondly, the complexity and the volume of required documents reduced the field of candidates.

The competition results are widely trusted in the professional environment. This point is confirmed by the fact that 5,335 candidates applied for another selection competition - for 600 vacancies in the courts of first instance.

For me personally, the best indicator of the competition's success is that more than two dozen of my colleagues, who have unquestioned credibility, have been included in the "List of 120." They would have never had a chance to become Supreme Court judges if there had not been a competition.

I have been practicing for more than two decades. I'm not inclined to idealize either people or the system, but I am convinced that we now have a chance for change in the judicial system.



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Blocking corruption fight

Undermining the corruption fight is the goal of the Presidential Administration and Ukraine's top oligarchs, she said.

"It's one of the main goals of the oligarchic groups and Bankova (Poroshenko's office)," she said. "In this case; there will be nobody who will resist or fight with high-level corruption, so they can feel free."

Sotnyk thinks the minority of clean judges on the new Supreme Court will not be able to resist the pressure of the majority of distrusted judges.

She lost faith in the selection process after results of the written examinations were made secret. "This written test was closed, so you will never know who was good in this test and who failed," she said. "It's totally controlled from very beginning to end."

The best chance for the establishment of a genuine anti-corruption court, she said, rests with pressure from Western backers, a minority of reformers like herself in parliament and public pressure. That combination has helped achieve other reforms stalled by Poroshenko, including e-declarations of public officials' financial assets and a lustration law to remove Yanukovich-era and other corrupt officials from public service.

But to win public pressure from Ukrainians, she said, politicians will have to do a better job of explaining the connection between a successful anti-corruption fight and the financial well-being of people.

She also said she hopes the Western lending institutions, the International Monetary Fund and others, will insist on the anti-corruption court.

If Poroshenko stops obstructing the process, she said, such a court could be up and running in a matter of months. She can think of at least a dozen qualified judges for such a court. "It is possible within eight months, maximum one year," she said. "We can put it in the 2018 budget now."

Lutsenko unqualified

Sotnyk's displeasure with Ukraine's legal system extends to Prosecutor General Yuriy Lutsenko, who commands 15,000 prosecutors, and Interior Minister Arsen Avakov, who oversees 150,000 people in the National Guard and police.

"He needs to focus on the most serious crimes against the state," Sotnyk said of Lutsenko.

Instead, the prosecutor general — who is not a lawyer or a prosecutor by training or education — behaves more like a politician, she said. He was appointed by Poroshenko on May 12, 2016 after international pressure forced the president to finally fire Viktor Shokin, Lutsenko's predecessor, who obstructed the anti-corruption drive.

However, Lutsenko kept most of Shokin's people in place.

"He is trying to focus on well-known figures and well-known surnames and to show results in very famous cases, like the case on Yanukovich," Sotnyk said. "He's posting on Facebook, where he's giving the results before any judges, before any court

procedures, before anything, like he's the court of the last instance."

The prosecutor general "should first of all be a lawyer," she said, one reason why "nothing has changed" in the work of prosecutors since the EuroMaidan Revolution.

Avakov's obstacles

Many people think that the second most powerful person in the nation is Interior Minister Arsen Avakov, who is politically aligned with ex-Prime Minister Arseniy Yatsenyuk and the second largest faction in parliament, the 81-member People's Front.

Avakov is seeking to expand the powers and his oversight over the National Guard, so that they have both military powers and police enforcement powers. Sotnyk opposes such a move.

"We have only one reform — patrol police," Sotnyk said. And even this change, in which salaries of patrol officers were raised to roughly \$500 a month and they were given new cars by foreign donors, is not enough.

The reason, she said, is that criminal investigations are being performed by the old police guard, who are still underpaid and corrupt.

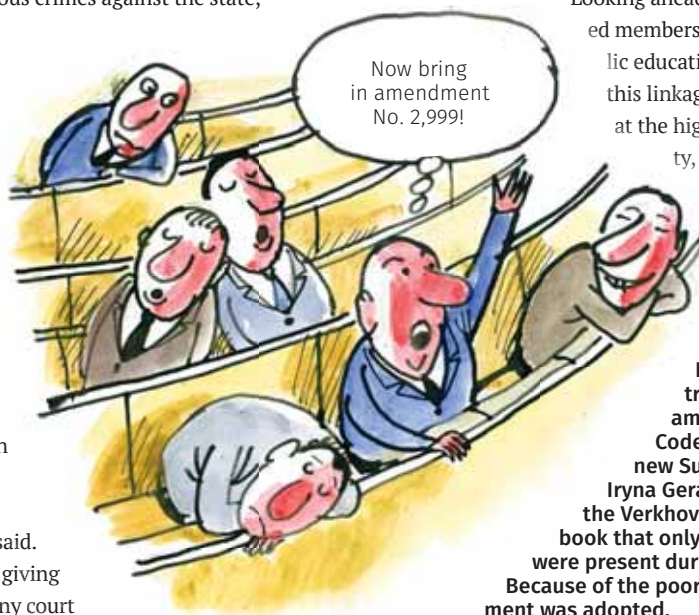
"Talking about all the others, we saw no reforms at all. Nothing. We have a huge problem with the criminal police, which is the main core of the department," Sotnyk said. "Many of them make less than \$200 a month, which is, if not an invitation for corruption, then an excuse not to do their jobs. They are not motivated at all," she said. As a result, no criminal investigations of any consequence are carried out, she said.

Avakov also wants to remain as one of the most powerful people in the nation.

"It's about control, it's about influence," she said of the balance between the forces of Avakov and Poroshenko, whose bloc in the 422-seat parliament is the most numerous with 135 members. The president controls the army, the Security Service of Ukraine, prosecutors, and judges, while Avakov controls the National Guard and police.

She said that she supports Finance Minister Oleksandr Danyliuk's proposal for an elite state Financial Investigative Service to tackle big and complicated white collar crimes, such as bank fraud. But again, Sotnyk said, many ministers are competing over who will control the new agency.

Looking ahead, she said, she and like-minded members of parliament face a big public education campaign. "We need to make this linkage of anti-corruption fighting at the highest level with their prosperity, with their lives each day," Sotnyk said. "Otherwise I am afraid Poroshenko is not going to pay any political price." ■



NEWS ITEM: Ukraine's parliament tried to consider more than 3,000 amendments to the new Judicial Code — a document needed for the new Supreme Court to start working. Iryna Gerashchenko, deputy speaker of the Verkhovna Rada, complained on Facebook that only some 30 out of 422 lawmakers were present during voting for amendments. Because of the poor turnout, not a single amendment was adopted.

International Business Structuring and Disclosure of Ultimate Beneficial Owners: current agenda



Volodymyr Vorobiov

Senior Partner of LEMAN International Law Group, Ph.D. in International Law

The modern business environment is becoming more and more affected by the AML regulatory framework, which is being widely implemented in the international financial system. One of the core sensitive issues is disclosure of ultimate beneficial owners of corporate entities, in particular those based in jurisdictions participating in an OECD initiative to implement the Automatic Exchange of Information (AEOI) standard. It is becoming more challenging for corporate structures that have hidden identities as their ultimate owners of assets to conduct global business activities without being scrutinized for compliance by banks and other financial institutions. So how should a business be structured in order to comply with UBO disclosure requirements, and at the same time preserve legitimate privacy?

The international community's pursuit of transparency in the UBO issue was triggered by concerns that complex corporate structures may be, and are being used for money laundering and tax avoidance, causing a drain on national economies. According to the United Nations office on Drugs and Crime, between \$800 billion and \$2 trillion is laundered each year. The World Bank states that 70 percent of large-scale corruption cases involve the use of anonymous shell companies.

It was agreed that the best possible option to combat such violations is to "de-anonymize" participating entities by identifying UBOs, and thus resolving two key issues: to whom are profits attributed, and who can be held to account for illegal economic activities.

The 2012 Financial Action Task Force (FATF) recommendations and Guidance on transparency and beneficial ownership require that financial institutions conduct customer due diligence and record-keeping for the purposes of beneficial ownership identification and documentation. The United States Foreign Account Tax Compliance Act (FATCA) of 2010 requires that foreign financial organizations and other non-financial foreign entities report to the IRS on the foreign assets held by their U.S. account holders, or be subject to withholding on withholdable payments, thus disclosing the beneficial ownership information.

FATF cooperated with European Union policymakers to ensure transparency of the ownership of corporate structures. This resulted in the EU Fourth Anti-Money Laundering Directive 2015/849 of 20 May 2015 (4AMLD), which requires EU member states to keep central registers of information on the UBOs of companies and trusts. Databases of such UBO registers shall be accessible by the competent authorities, entities conducting customer due diligence and persons demonstrating legitimate interest, such as journalists investigating tax fraud and related crimes, etc. It is anticipated that both these national UBO registers and trust registers will be linked at the EU level through a central European platform.

Although June 26, 2017 was the deadline for member states to implement the 4AMLD into national legislation, only Germany, the United Kingdom and Denmark met it. In other countries, the legislation has already entered into force, but specific rules regarding the introduction of a UBOs register has yet to be issued.

On March 9, 2017 the European Parliament issued a report on the reform of 4AMLD proposing to lower the threshold for an individual to be considered as a beneficial owner to 10 percent of the shares in the entity, as opposed to 25 percent as in the existing 4AMLD. The report calls for the central UBO registers kept by member states to be made publicly accessible either without charge or subject to a limited fee to cover administrative costs. And a proposal for a Fifth Anti-Money Laundering Directive is already being drafted in Brussels.

Popular low-tax jurisdictions are adopting legislation requiring that the companies incorporated therein maintain UBO registers. It was the UK who called for the creation of UBO registers for its Overseas Territories and the Crown Dependencies in early 2015. The majority thereof have implemented the relevant legislation (the British Virgin Islands (BVI), the Cayman Islands, Bermuda, Guernsey, Jersey etc.) supported by other popular low-tax jurisdictions including Belize, Mauritius and the Seychelles. These registers are not publicly accessible and are opened only for competent authorities of the jurisdiction of entity's incorporation. However, in some cases the UBO information may be obtained by foreign state authorities where pertinent arrangements exist,

like the Exchange of Notes and Technical Protocols agreed with the United Kingdom (UK) Government by the BVI.

The UBO disclosure developments are not limited to the EU and low-tax jurisdictions, and are greatly encouraged by Panama Papers scandal of April 2016. The leakage of database of Panama-based intermediary tax firm Mossack Fonseca exposed hundreds of tax avoidance schemes involving entities from reputable jurisdictions other than those notorious as offshores. For instance, Canada clearly manifests its intention to set up a UBO register due to being considered as one of the states where it is easiest to incorporate a shell company, as was revealed in the Panama Papers.

The global trend of disclosure of beneficial owners is promoted not only due to the direct requirements for creating UBO registers and those relating to financial due diligence. It is also dealt with in the OECD/G20 Base Erosion and Profit Shifting Action Plan (BEPS) – a framework of 15 Actions initiated in 2013 providing for worldwide implementation of instruments to counter harmful tax practices. Combatting base erosion and tax avoidance by beneficial ownership registration is not directly addressed by BEPS, but it contains requirements implicitly resulting in UBO disclosure.

Considering the above, the UBO information seems to be not subject even to the slightest privacy. The most cost-efficient way to avoid public access is by going offshore, as the UBO registers to be maintained there are not publicly available. However, such UBO information may be obtained by foreign state authorities by means of pertinent Tax Information Exchange Agreements or in the course of the EOIR/AEOI framework.

Another possible option is establishing more complex corporate structures involving trusts, foundations and funds. The jurisdictions requiring the UBO registers normally claim the UBOs of trusts, foundations and funds must also be listed therein, however in practice investment managers may offer solutions where they show up in banks as UBOs for compliance purposes.

Some countries impose an obligation to document the steps taken to identify the UBO of a trust, while the others exempt trusts from such documentation, e.g. in Germany, thus creating a regulatory loophole. Usually trusts are required to keep a register of UBOs if they generate tax consequences or are resident in particular jurisdiction, or pertain to a definite type of trust, like express trusts in the UK. But if no such criterion is met, the trust may be exempt from the above.

In conclusion, the UBO when choosing a proper strategy for international structuring of its business should take into account risks and challenges related to proving a legitimate source of revenue gained by incorporated entities in future for further successful compliance within financial institutions and authorities, when declaring and protecting financial assets and planning further investments.



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Indonesia's former Constitutional Court chief justice listens during his trial in Jakarta on Feb. 20, 2014, where he faced charges of bribery and money laundering in connection with disputed local elections. Kyiv advocates of a specialized anti-corruption court point to Indonesia as a success story, where a separate court managed to jail numerous top officials for corruption. (AFP)

Anti-corruption courts work well in several nations, especially those – like Ukraine – with weak rule of law

By **Josh Kovensky**
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Raise your hand if your country has an anti-corruption court? There aren't many – only around 20 countries in the world have the specialized institution, which is meant to provide a fast and independent judicial track for corruption cases in nations whose justice systems have been compromised by graft.

And that's what President Petro Poroshenko asked a room of assembled foreign dignitaries and investors at the annual Yalta European Strategy conference in Kyiv on Sept. 15.

He then started to list countries like Kenya and Uganda, implying that the system has been ineffective there.

"Where do anti-corruption courts exist? In

countries that have made great achievements in the fight against corruption?" he asked, sarcastically.

But was Poroshenko right to dismiss the idea?

A closer look at the history of anti-corruption courts around the world suggests that they have provided an effective launch pad for anti-corruption drives; a fact that may give close associates of the president reason for concern.

In fact, according to a report from the Norway-based Anti-Corruption Resource Center, Uganda has done much, much better with an anti-corruption court than Ukraine has without one, securing 288 convictions through the first six years of its operation.

Yegor Soboliev, the opposition Samopomich Party member of parliament sponsoring a bill to create the institution, told the Kyiv Post that "for Petro Poroshenko, the creation of such a court will mean either the need to fully review his relationship to power and to business, or the immediate loss of both his position and his freedom."

Although the institution has met with criticism that it is ineffective against high-level graft, a look at different countries' experience with the policy suggests that it could be an effective tool in Ukraine's fight to establish an independent judiciary.

Historically complicated

Ukraine's court system is swamped as it is — Supreme Court Chief Justice Yaroslav Romanyuk said in August that the Supreme Court faces more than 50,000 cases. He added that while 741 corruption cases are currently under consideration, that's out of a total of 2,237 indictments.

On top of that, cases with politically exposed defendants have stalled. Former State Fiscal Service Chief Roman Nasirov almost walked free in March after no judge was initially willing to preside over a hearing on his pre-trial detention.

"By institutional memory, they are accustomed to acting on the orders of political power," said Roman Maselko, a Kyiv attorney who is working on cases related to the EuroMaidan Revolution, during which police murdered 100 demonstrators before President Viktor Yanukovich was driven from power on Feb. 22, 2014.

Maselko related one instance of a judge who decided a case in favor of a party who bought him a washing machine.

"It's important to create this out of nothing," he said. "Trust in the system is so low that even if it were to work correctly, society would not believe them."

Effective elsewhere?

Since the first specialized anti-corruption court was created in the Philippines in 1970, many countries have adopted them — 19 currently, including Afghanistan, Bangladesh, Botswana, Bulgaria, Burundi, Cameroon, Croatia, Indonesia, Kenya, Malaysia, Mexico, Nepal, Senegal, Slovakia, Tanzania, Thailand, Pakistan and Uganda.

Maksym Kostetskyi, head of Transparency International-Ukraine's initiative for specialized anti-corruption courts, said that "in most countries with a highly developed democratic system, the normal judicial system works better than what exists in Ukraine, so there is no need for a special anti-corruption court."

The worldwide experience of anti-corruption courts is mixed.

A December survey of the institution published by the Norway-based U4 Anti-Corruption Resource Center suggests that → 21



Artem Taranowski
Partner at Golovan and Partners Law Firm

PAVING THE WAY FOR PATENTING OF COMPUTER PROGRAMS IN UKRAINE

There are indeed obstacles to patenting computer programs in Ukraine. Nobody denies this. The only question is what they are, and whether they are manageable or not.

Just for the sake of starting a discussion, I will try to outline those that seem to be the most important, from low-level to high-level, and consider some ways that would make it possible to overcome these barriers.

The Ukrainian Patent Office believes that computer programs are not inventions, so it is impossible to protect computer programs through patents, patents on computer programs are not allowed, and computer programs have no patent protection in Ukraine.

First, the Ukrainian Patent Office does not regard computer programs per se as inventions because they lack a technical nature, are not directed to solving technical problems and accomplishing technical results, and are therefore beyond the technological area.

I'm not in a position now to debate the technical nature of computer programs, but it appears to me bizarre that a computer program implementing asymptotically a better sort algorithm or search algorithm (or both) that was unknown before could not be considered to be solving a technical problem and accomplishing a technical result, and thus be beyond the technological area.

But foremost, the Ukrainian Patent Office has no notion of how computer programs should be examined for adherence to the criteria of novelty, utility and inventiveness. Moreover, it seems to be the genuine reason for the Ukrainian Patent Office denying the patentability of computer programs.

That is indeed a major problem, and what exactly the solution here could be is unclear. It appears to be the central problem of patent protection of computer programs.

The aforementioned problems are reflected in the internal procedures of the Ukrainian Patent Office, having placed computer programs outside the scope of patenting.

Further, the regulations do not recognize computer programs per se as inventions. Just like that. Out of the blue. Interestingly, the articles of the regulations before and after this particular one contain references to the provisions of the statute, whereas this one does not.

Finally, the statute. Let us see... The statute does not exclude computer programs from patent protection.

In summary, there exist barriers at the levels of understanding of computer programs, technical matters in examining applications, internal procedures, and regulations, but there is no barrier at the statutory level.

As for taking down these barriers, we need to take into account some specifics. The Ukrainian Patent Office is not yet a full-cycle patent office. The office is just an expert institution examining applications while conducting formal and patentability expertise. It is the Ministry of Economic Development and Trade that shapes and implements public policy in the area of intellectual property.

With that in mind, the Ukrainian Patent Office should improve the situation at the understanding and technical levels first. That said, it will not be without help. The technical community will readily offer assistance, while the general public will definitely prevent the latter from turning the situation to its own benefit at the expense of public interest. What's important is that the Ukrainian Patent Office should be success-oriented, while finding a solution to how computer programs and applications could be examined, instead of just insisting that the obstacles cannot be overcome and that computer programs are not patentable.

The Ukrainian Patent Office should then amend its internal procedures.

Having that done, the Ministry of Economic Development and Trade could then easily make amendments at the level of regulations, thereby removing the last remaining obstacle.

As we see, the obstacles to patenting computer programs are known, and eliminating them is doable. But it definitely won't be doable until the Ukrainian Patent Office is willing, or forced, to do so.









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38 044 578 2337	Denys Beregovyi, Dmytro Gadomsky, Bogdan Duchak, Nazar Polyvka	Kyiv, Lviv Ukraine	2016	Information technology	BlaBlaCar, Prozorro, Stanfy, TripMyDream, 908.vc, DOU, rabota.ua, Ecoisme, Hosting Ukraine, Invisible, Myhelix, RadarTech, DAO.Casino, Poster, SupportYourApp, Taas Fund, Gravitec, Vitagramma, Grupa Pracuj	Russian, Ukrainian, English
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+380 44 590 0101 +380 44 590 0110	Serhiy Chorny, Serhiy Piontkovsky		1992	Antitrust & Competition; Banking & Finance; Corporate; M&A; Securities; Dispute Resolution; Employment; IP; International Trade; Real Estate and Construction; Tax and Customs; Energy & Infrastructure	Arcelor Mittal, EastOne Group, Horizon Capital, ING Bank Ukraine, Metinvest BV, RaiffeisenBank, MasterCard, UkrSibbank BNP Paribas Group	English, Russian, Ukrainian

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
B.C. Toms & Co 18/1 Prorizna St., Suite 1, Kyiv 01001, Ukraine; kyiv@bctoms.net www.bctoms.net 						
+38 044 490 6000 +38 044 278 1000	Bate C. Toms	Kyiv, Ukraine	1991	Agricultural Investments; Oil, Gas and Electricity; M&A; Banking; Finance and Capital Markets	WND	English, French, Russian, Ukrainian
Belotsky Pukalo 11/11 Serhiya Husovs'kogo St., Kyiv, 01011; hello@belotsky.ua belotsky.ua 						
+38 044 466 9946	Vladislav Belotsky, Rostyslav Pukalo	Kyiv, Ukraine	2014	Corporate and Commercial; Criminal Law; Dispute Resolution; Intellectual Property; Labour and Employment; Trademarks and Patents; Tax and Customs, Private Clients	Aldobabers Barbershop, Citrus Farm, Cooper Family, Danone Nutricia, EcoSnack, Hockey Club "Kryvbass", SS «Dynamo», Science Media Group, Soft-Logic Ukraine, Molodost', Izodrom, Valeriy Gromov Jewellery, SE3, KaTimo	Russian, Ukrainian, English, Arabic
CMS Cameron McKenna LLC 38 Volodymyrska St., 6th floor, Kyiv 01030, Ukraine; KyivOffice@cms-cmno.com cms.law, cms-lawnow.com 						
+38 044 391 3377	Graham Conlon	London, UK	2007	Infrastructure; Corporate and M&A; Banking and Finance; Commercial; Tax&Customs; Competition; Dispute Resolution; Compliance; Employment; Property; Technology Media and Communication; Agribusiness; Lifesciences/Pharmaceuticals; Intellectual Property; Energy; Private Equity	WND	English, French, Ukrainian, Russian
Dentons (LLC Dentons Europe) 49A Volodymyrska St., Kyiv 01034, Ukraine; kyiv@dentons.com www.dentons.com 						
+38 044 494 4774 +38 044 494 1991	Oleg Batyuk	Global law firm	1992	Banking and finance; Corporate/M&A; Dispute resolution; Investments; IP&T; Real estate and Construction; Restructuring; Tax	Multinational corporations, commercial and investment banks, energy companies, developers, hotel chains, investment funds, international organisations	English, Russian, Ukrainian
ECOVIS Bondar & Bondar 3 Rognidynska St., Office 10, Kyiv 01004, Ukraine; kyiv-law@ecovis.ua www.ecovis.com 						
+38 044 537 0910	Oleg Bondar	Kyiv, Ukraine	1998	Corporate & M&A, Antimonopoly & Competition, Dispute Resolution, Air Law and Transportation, PPP, Privatization, Insurance Law, Real Estate & Construction, Taxation, Energy, Banking & Finance	Ukraine International Airlines, Interavia, Aerohandling, RESO Group, Danske Commodities, Europcar Ukraine, Bionorica SE (Germany), OPower Inc (USA), Advent International, construction company GEOS	Russian, Ukrainian, English, German
ENGARDE 18 Pavlivska St., Kyiv 01054, Ukraine; office@engarde-attorneys.com http://www.engarde-attorneys.com 						
+38 044 498 7380	Irina Nazarova	Kyiv, Ukraine	2009	International Arbitration, Litigation, Corporate and M&A, Financial Law, Investment Law, Competition Law, Business Law	Scania Group, Fuji Film (Ukraine), Hazera (Ukraine), Bionade AG, Dalekovod d.d., Smart Holding, GEN-I Group	Russian, Ukrainian, English, German, French
ePravo 28/9 Pushkinska St., 2nd floor, office 24, Kyiv 01004, Ukraine; welcome@epravo.ua www.epravo.ua 						
+38 044 235 0444	Vitalii Vlasniuk, Vlad Vlasniuk	Kyiv, Ukraine	2012	IT: E-commerce, SaaS, Mining; Startups; Intellectual Property; Energy; Corporate and Litigation; International Tax; Criminal	Acronym, Allta, Astrafit, Hedi Group, Khimfarminvest, MMI Group, MyDutyFree, VMC Water Queen	English, Russian, Spanish, Ukrainian, German
Eterna Law Sophia Business Centre, Rylyskiy lane 6, 01001, Kyiv, Ukraine; pr@eterna.law eterna.law 						
+38 044 490 7001	Andrey Astapov, Oleh Malskyy, Oleh Beketov, Eugene Blinov, Oksana Kneychuk, Maksym Uslysty	Kyiv, Ukraine	2002	Dispute resolution, corporate, M&A, tax, international finance, compliance, regulatory enforcement, IP, insolvency, construction, real estate acquisitions, oil and gas, infrastructure, public procurement	Baxter, Bayer, Bioton, Bunge, CDMA, Huawei, China National Oil Corporation, EBRD, Energoatom, FHI 360, EFKO, Mriya, United Grain Company, Nemiroff, MasterCard, Mechel, Metagenics, Nutricia	English, Russian, Ukrainian, German, Polish, Latvian
EQUITY Law Firm 14D Bekhterivsky Lane, Kyiv 04053, Ukraine; info@equity.com.ua equity.com.ua 						
+38 044 238 6420	Viktor Barsuk	Kyiv, Ukraine	2002	Litigation; Restructuring & Bankruptcy; Banking and Finance; Real Estate; White Collar Crimes; Corporate and M&A; Tax; Intellectual property	Azovmash corp., Ferrexpo AG, National Bank of Ukraine, Ukrainian Business Group, Vermum Bank, AIS Group, Concorde Capital, NEST Corp., Arterium Corp., Crystal Bank, AutoKraz, Helen Marlen Group and others	English, Russian, Ukrainian
EXPATPRO Law Firm 18 Vasylia Lypkivskoho St., 3 floor, Kyiv, 03035, Ukraine; office@expatpro.com www.expatpro.com 						
+38 044 339 98 81	Liubomyr Kuziutkin, Vasyl Cherednichenko	Kyiv, Ukraine	2016	Immigration law, Private clients, Launching Business in Ukraine, Corporate law, Real Estate	WND	Russian, Ukrainian, English

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
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EUCON International Legal Center

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+380 44 238 0944 +48 226 581 025	Yaroslav Romanchuk – Managing partner, attorney at law, head of Kyiv office; Ihor Yatsenko – Senior partner, attorney at law, head of Warsaw office	Kyiv, Ukraine	2006	Corporate and M&A, Tax Law, Transfer Pricing, Criminal Law, Accounting and Tax, Labour & Migration Law, Investments and Business Structuring, Dispute Resolution, Agrarian, Compliance, Intellectual Property	Louis Dreyfus Commodities Ukraine; Zepter International Ukraine; Savik Shuster Studio; Ukrichfot PJSC; TNK-BP Commerce, LLC; Plastics-Ukraine, LLC; Kyivstar, JSC; Consulate General of Poland in Lviv	Ukrainian, English, Poland, Russian
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Evris

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+380 44 237 7250	Andriy Dovbenko	Kyiv, Ukraine	2015	Corporate and M&A, Banking & Finance, Dispute Resolution, Tax, FinTech, Investment, Agro & Land, Energy	WOG, FUIB, PIB, Credit Dnepr, East One, SCM, UkrLandFarming, Mriya, Zeppelin Ukraine, Smart Holding	English, Ukrainian, Russian
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GENTLS law firm

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+38 044 339 99 10 +38 050 743 58 60	Oleh Gromovyi	Kyiv, Ukraine	2016	Litigation & Arbitration	British American Tobacco, OschadBank, Alfa Bank, TDM-Electronics, Kreston GCG, high-ranked officials – Prime Minister, parliamentaries	Russian, Ukrainian, English
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Golovan & Partners Law Firm

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+38 044 486 0047	Igor Golovan	Kyiv, Ukraine	1996	Complex Business Protection; Crimea & ATO Zone Issues; White Collar Crimes; Litigation & International Arbitration; Investment Disputes; Copyright & Related Rights	Privileged	English, Russian, Ukrainian
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GOLAW

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+38 044 581 1220	Valentyn Gvozdiy, Sergiy Oberkovych	Kyiv, Ukraine	2003	Taxation; Antitrust and competition; Banking and finance; Government relation; Litigation and dispute resolution; Business security; Environment protection; Intellectual property; Compliance; Corporate governance and risk management; Corporate and M&A; Criminal Law and White Collar; International trade; Maritime Law; Real estate; Private clients; Anti-Corruption and Anti-Bribery; Insolvency and restructuring; Employment	Ceska Exportni Banka, EGAP, Expobank, Enkom, BNP Paribas, Bank Gutmann AG, Noosphere, Marks & Spencer, GAP, Red Bull, Zara, Stradivarius, Bershka, Donegal, Syngenta, Reckitt Benckiser, Azelis, Omya, Printec, Merkator Medical, Oriflame, Ubisoft, ProCredit Bank, Red Head Family Corporation, Evyap Trading, Bogomolets National Medical University, Amic, Atlantic Group, Agro Core, Lacoste, New Balance; Polymed; ADM-Trading; Ukrainian sea and ports service; Hemofarm; Network of Caring; Himagro; Sinapse; Good Look	English, Ukrainian, Russian, German
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Gramatskiy & Partners

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+38 044 581 1551	Ernest Gramatskiy	Kyiv, Ukraine	1998	Business-Advocacy; Foreign Investments; Foreign Trade; Business Protection; Real Estate&Construction; Agribusiness; IT; Litigation; Taxation; Business Restructuring; Due Diligence; Debts&Bankruptcy	City Capital Group, Seven Hills, Danfoss, De-vi, PlayTech, ClickMeln, Keystone Trading Technologies, Skywind Tech UA, ULMA Ukraine, Celentano, Banka, Jeltok, Promkabel, Larsen, Graal, All-Ukrainian Advertising Coalition	English, Italian, Polish, Russian, Ukrainian
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Gryphon Legal

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+38 044 227 9212	Helen Lynnyk, Igor Lynnyk	Kyiv, Ukraine	2011	Corporate Finance & Strategy, Compliance, Banking&Finance, M&A, Tax, Due Diligence, Forensic, Debts Restructuring, Litigation, White Collar Crime	Alfa-Bank Ukraine, Alfa Insurance Ukraine, Privat Bank, Diamant Bank, PKO Bank Polski, Kredobank, Allianz Group, Aesthetic Consilium Clinic, Leogaming Pay, Pernod Ricard, Fushet, Eco-Market, Atoll Holding, Karbon Invest, AIS Group, Astelit, Federation of Trade Unions of Ukraine	English, Russian, Ukrainian
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+380 44 206 0980	Karl Hepp de Sevelinges, Bertrand Barrier	Paris, France	2015	Corporate and M&A, Banking & Finance, Capital Markets, Dispute Resolution, Competition and Antimonopoly issues, Distribution agreements, Real Estate	Multinational corporations, international financial institutions, foreign and Ukrainian banks, European and Ukrainian companies	Russian, Ukrainian, English, French, German
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Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
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Jurimex Law Firm

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+38 044 500 7971	Danylo Getmantsev	Kyiv, Ukraine	2003	Taxation; Banking and Finance; Media Law; Intellectual Property; Administrative Law and Licensing; Land Law and Real Estate; Litigation and Arbitration; International Trade and Investment; Pharmaceutical and Medical Law	MSL, ModnaKasta, Viasat, Bontrup Ukraine, Travel Professional Group, NEFCO, Espresso TV, Watsons, High-Point Rendel LTD, Ukrainian Pay Card, Med Expert, Bokyung International Co., LTD	English, German, French, Russian, Ukrainian
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KM Partners

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+38 044 490 7197	Alexander Minin, Maxim Oleksiyuk, Alexander Shemiattin, Ivan Shynkarenko	Kyiv, Ukraine	1999	Tax; Customs; Transfer pricing; M&A/Restructurings; Contract law; Litigation; Agriculture; Real estate; Competition/Antitrust; Corporate law; Labour law; Currency control; IP; Criminal law	WND	English, Russian, Ukrainian
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Law Firm Kravets and Partners

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+380 44 229 69 50	Rostyslav Kravets, Yuriy Babenko, Anna Martynenko, Pavlo Chernenko	Kyiv, Ukraine	2002	Full-Service Law Firm; Litigation & Arbitration; Tax planning and consulting; Administrative proceedings; Corporate and M&A; Banking and Financial Law; Criminal law and process	WND	Russian, Ukrainian, English, German
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Law Firm GORO legal

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+38 044 383 1857 +38 050 436 0077	Goroshynskiy Oleksandr, Ovsii Dmytro, Kornev Igor	Kyiv, Ukraine	2010	Litigation and legal practice; Land, construction, real estate; Business support; Intellectual property; Asset Management; Investments; Agro; Commercial, corporate and M&A; Art	SOCAR Ukraine, KyivObiEnergo, Kyivgorstroy, Kyivpastrans, MCDonalds, Riverside Development, ATB-Market, Apollo Group, A+S Ukraine, Stolitsa Group, Altis Development, lun.ua, igalaxy.ua, TERRA project, Fitocom	English, Russian, Ukrainian
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Law firm "Suprema Lex"

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+38 044 384 0557	Victor Moroz	Kyiv, Ukraine	2015	Litigation&Arbitration, banking, transport, corporate, tax, M&A, insolvency, intellectual property, sport law, family law, labor&employment, medical&pharmaceutical, criminal	Khoriv-avia, Ukrainian Helicopters, Ukrainian International Airlines, Imperator-avtotrans, The great bear (BM-TRANS), Cordo International, Yunico Logistics Baku, Alba-Plus	Russian, Ukrainian, English, Arabic
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LCF Law Group

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+38 044 455 8887	Anna Ogrenchuk, Artem Stoyanov	Kyiv, Ukraine	2009	Dispute Resolution; Banking & Finance; Corporate & Business; Bankruptcy & Restructuring; Contentious Tax; Employment; Family Law; IP Law; Real Estate & Land Law; Regulatory & Compliance	Allianz Ukraine, AVK Confectionery Company, Alfa Bank, Bank of Cyprus, Bunge Ukraine, Carpatsky petroleum, Kievguma, Oschadbank, OTP Bank, S.I. Group Consort, TAS Group, Ukrenergy Coal Ltd, Ukrsofsbank, Universal Bank, Vikoil, YURIA-PHARM, Fozzy Group, Ovostar Union, Eridon	English, German, French, Russian, Ukrainian
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LEMAN International Law Group

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+38 044 232 2904	Volodymyr Vorobiov, Artem Atepalychkin	Kyiv, Ukraine	2016	Banking and Finance, FinTech, Information technologies, Corporate and M&A, International Business Structuring, Intellectual property, Government Relations	DataRoot, Electrum Payment System, Happy Radio, MOSST Payments, Newxel, PEOPLE IN, POSH, Recruitment Partnership, TM OLIVA, UMBUM	English, German, Spanish, Polish, Russian, Ukrainian
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Lexwell & Partners

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+38 044 228 6080	Andriy Kolupaev	Kyiv, Ukraine	2005	M&A & Corporate; Antitrust & Competition; Litigation & Arbitration; Real Estate & Construction; Tax & Customs; Employment	AET, ArcelorMittal, Bridgestone, Chicago Mercantile Exchange, CRH, DuPont, East Metals, Evraz, Honda Trading, Gas of Ukraine, Interpipe, Intesa Sanpaolo, Lexus, Marubeni, Pfizer, Millhouse, Sojitz, Subaru, Sumitomo, Toyota, Ukrainian Ministry of Justice, VS Energy	English, Russian, Ukrainian
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Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
L.I.GROUP						
36-D Eugene Konovalts St., office 4-G, Kyiv, 01133, Ukraine; lawyer@ligroup.com.ua www.ligroup.com.ua				 L.I.GROUP Law firm		
+38 044 227 0514	Artur Megeria, Mykola Kovalchuk	Kyiv, Ukraine	2008	Banking and Finance, Bankruptcy, Dispute Resolution, International arbitration, Criminal law, Antitrust & Competition, Corporate Disputes	OTP Bank, Alfa Bank, VTB Bank, Sberbank, Ukrsofsbank, UkrSibbank, VS Bank, Piraeus Bank, Credit Dnepr Bank, DCH Investment Management	Ukrainian, Russian, English, German
Marchenko Danevych						
4B Ivana Franka St., office 49, Kyiv 01054, Ukraine; office@marchenkodanevych.com www.marchenkodanevych.com				MARCHENKO DANEVYCH		
+38 044 220 0711	Oleksandr Aleksyeyenko, Borys Danevych, Oleh Marchenko	Kyiv, Ukraine	2013	Antitrust & Competition, Arbitration/ADR, Investor-State Disputes, IP, Life Science, Litigation.	AAK, AbbVie, Shire, Centraviv, Deutsche Trustee Company, EBRD, Ferring, Gilead, H&M, Home Group, Johnson & Johnson, LafargeHolcim, Lilly, Lufthansa, Next, Novo Nordisk, PPD, Sanofi, Verizon.	English, Russian, Ukrainian
Redcliffe Partners						
75 Zhylyanska St., 13th floor, Kyiv 01032, Ukraine; office@redcliffe-partners.com www.redcliffe-partners.com				REDCLIFFE PARTNERS		
+38 044 390 5885	Olexiy Soshenko, Dmytro Fedoruk, Rob Shantz, Sergiy Gryshko	Kyiv, Ukraine	2015	Antitrust; Banking and Finance; Capital Markets; Compliance; Corporate and M&A; Data Protection and Privacy; Debt Restructuring and Insolvency; EU law; Intellectual Property; International Arbitration; Litigation; Real Estate; Tax	Abbott Laboratories, Amadeus IT Group, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, EBRD, IFC, ING, JPMorgan, Monsanto, Morgan Stanley, Raiffeisen Bank, UniCredit, Vitol, Yildirim	English, German, Russian, Ukrainian
Sayenko Kharenko						
10 Muzeyny Provolok, Kyiv 01001, Ukraine; info@sk.ua www.sk.ua				SAYENKO KHARENKO		
+380 44 499 6000	Michael Kharenko, Vladimir Sayenko	Kyiv, Ukraine	2004	Antitrust; Banking&Finance; Debt Restructuring; Capital Markets; Corporate/M&A; GR; IP; International Arbitration; International Trade; Labour; Litigation; PDP; Private Wealth Management; Real Estate;Tax	Citi, Coca-Cola, Commerzbank, Credit Suisse, Dell, DTEK, EBRD, Ferrexpo, Goldman Sachs, HP, IFC, ING, J.P. Morgan, JTI, Kimberly Clark, Oschadbank, Pfizer, Philip Morris, Raiffeisen Bank Aval, Reckitt Benckiser, Solvay, Ukreximbank, VISA, World Bank	Russian, Ukrainian, English
Skliarenko, Sydorenko and Partners, Attorneys At Law						
31 Tarasa Shavchenko Blvd., 3rd floor, office 8, Kyiv 01032, Ukraine; info@s-partners.org www.s-partners.org						
+38 044 235 8575	Oleksandr Skliarenko, Andrii Sydorenko, Yulia Stusenko	Kyiv, Ukraine	2011	Commercial Law; Corporate/M&A; Dispute Resolution; Criminal Law and Procedure; Restructuring and Bankruptcy; Banking and Finance; Tax and Customs; Private Clients; Medical Law; Agricultural Law; Labor Law; Mediation	GRAWE Ukraine, OTP Bank, IDS Group Ukraine, MONBAT Ukraine, Kvazar, Mamamusic, PaySpace Ukraine, lifecell	English, Russian, Ukrainian
Spenser & Kauffmann						
7 Klovisky Uzviz, 14th floor, Kyiv 01021, Ukraine; office@sklaw.com.ua www.sklaw.com.ua						
+380 44 288 8383	Valentyn Zagariya	Kyiv, Ukraine	2006	Litigation & Dispute Resolution; International Arbitration; Real Estate and Land; Insurance and Tax; Corporate; M&A; Banking and Finance; Private Clients; Labor and Employment; IP, IT and Antitrust	UKRAVTO Corporation, FoodMarket (Velika Kishenya TM), Alfa-Bank, Slobozhanska Budivelna Keramik, MERX, Cardif, MetLife	English, Russian, Ukrainian, French, German, Polish, Czech
Vasil Kisil & Partners						
Leonardo Business Center, 17/52A Bohdana Khmelnytskoho St., Kyiv 01030, Ukraine; cs@vkp.ua www.vkp.ua						
+38 044 581 7777	Andriy Stelmashchuk	Kyiv, Ukraine	1992	Agricultural Business; Antitrust & Competition; Capital Markets; Corporate / M&A; Energy & Natural Resources; Finance & Securities; Intellectual Property; International Trade, Project and Trade Finance; Labour & Employment; Litigation & Arbitration; Private Clients; Public Private Partnership; Real Estate & Construction; Taxation; White-Collar Crime	WND	English, German, Swedish, Russian, Ukrainian
VB PARTNERS						
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+38 044 581 16 33	Denys Bugay, Volodymyr Vashchenko	Kyiv, Ukraine	2005	Dispute Resolution, White Collar Crime	British American Tobacco, Indesit, Metro Cash & Carry, Mriya agroholding, Nikolaev Alumina Refinery, Zaporizhzhya Aluminium Plant, Prosperity Capital Management, shareholders of 5 large Ukrainian banks	Russian, Ukrainian, English

→ **15** some countries have fared far better than others. The report cites a study saying that Malaysia managed to conclude 75 percent of the anti-corruption cases on its docket within one year, while the Philippines — the first example of such a court — developed a decades-long backlog.

Kostetskiy said that hearings have only begun in 22 out of 81 cases in which NABU has completed its pre-trial investigation, leaving most cases to rot in court. An efficient anti-corruption court could accelerate the process.

Trickier than speed is the more fundamental issue of integrity.

Soboliev said that he saw Indonesia as the most successful example.

“When you are drowning in a corrupt swamp, it’s necessary to find firm ground or dry out at least a part of the swamp, from where you can continue your work,” he said.

A survey taken a few years after Indonesia’s court got its start showed that 70 percent of Indonesians believed their government was fighting corruption and going from 122 to 88 in Transparency International’s corruption index from 2003 to 2015. But even in that case, the country’s parliament managed to weaken the court after it succeeded in taking down several powerful officials.

In general, the institution appears to be most effective at combating corruption among mid-level officials who lack the top-level political cover that often allows politicians and businesspeople to literally get away with robbery.

But even when such independent courts are established, they remain vulnerable before hostile executive and legislative branches.

Kostetskiy said that the system should be as independent as possible.

“This is a temporary instrument until judicial reform is complete,” he said. “We could pass the cases from NABU to the special anti-corruption judicial institution to make those cases happen and finally serve justice to people guilty of corruption.”

Slovak example

The draft legislation that would create an anti-corruption court was proposed in January by Soboliev, based in part on Slovakia’s example of an anti-corruption court.

In October 2016, the U.S. Agency for International Development sent Ukrainian policy analysts to Bratislava to study the Slovak example.

“We included the Slovak experience in terms of both what worked and what didn’t,” said Mykhailo Zhernakov, head of the De Jure Foundation and an attorney who helped draft the concept for Ukraine.

Zhernakov and others said that a key issue would be where appeals from the anti-corruption court would go. Slovakia’s court was hobbled by an appeal process that led to the country’s politically vulnerable Supreme Court, which meant that any decision could be overturned.

The current draft of the Ukrainian bill has appeals going to an anti-corruption chamber within the Supreme Court.

Pavol Zilincik, a member of Slovakia’s judicial council, the regulatory body for judges, said that even a competent anti-corruption court is vulnerable to ineffective prosecutors and supreme court judges.

“The system is important, but the people within the system are everything,” he said.

But Soboliev said the Ukrainian bill would still be vulnerable to politically influenced Supreme Court judges. He demands that U.S. and European Union representatives be on hand to select judges for the

Supreme Court anti-corruption chamber “to guarantee the honesty of the selection process.”

Chained to chambers

Besides Soboliev’s bill, there is other legislation under consideration. The proposal, submitted by Bloc of Petro Poroshenko parliament member Serhiy Alekseyev, would establish anti-corruption chambers in existing courts. Under the bill, there would be no need to hire new judges. “All courts should be equal,” Alekseyev told the Kyiv Post.

Critics say that the change would be cosmetic, as no new judges would be selected and anti-corruption proceedings would occur in the same courts as before. “Nothing would be achieved,” said Zhernakov.

But Alekseyev accused his critics of not reading the bill.

“There would be another competition to select new judges for the chamber,” he said, adding that it is best to wait until the Venice Commission decides what it favors.

He said he “supports an anti-corruption court,” but that society would have to wait 18 months until the court could start, echoing Poroshenko’s statement at YES. Alekseyev is accused of acting as a tool for the president. Last year, he submitted a bill that removed the requirement for legal education for prosecutor general candidates, paving the way for Yuriy Lutsenko to become the nation’s top prosecutor.

“You probably heard the president say ‘we don’t have time.’ Eff you. We’ve been waiting over a year,” Zhernakov said.

Transparency International’s Kostetskiy said Alekseyev’s bill would be faster, but it’s not effective. “We would take existing judges and put the title of ‘anti-corruption’ on them. That doesn’t mean that they wouldn’t be subject to political influence.”

Unlikely to happen

Poroshenko’s stumbling on the issue has intensified pressure.

“We certainly agree that the creation of an anti-corruption court is an important next step,” IMF Deputy Managing Director David Lipton told *Ukrainska Pravda*. “We encourage the government to do that.”

Poroshenko’s contempt for an anti-corruption court provoked an immediate rebuke by former U.S. Secretary of State John Kerry, who told the same YES conference that, in America, “every court is an anti-corruption court. Even now, you see a special prosecutor investigating the president of the U.S.”

On Sept. 20, five days after Poroshenko’s comment, Transparency International chief Jose Ugaz issued a statement calling on Ukraine to establish an anti-corruption court.

But it remains to be seen if the momentum will translate into action. Public officials close to Poroshenko support Alekseyev’s version.

“All courts in Ukraine must be anti-corruption, here I will agree with both Poroshenko’s and Kerry’s arguments,” said Lutsenko. “But it is unacceptable to waste time by creating a separate anti-corruption court, as certain politicians are demanding.”

Those backing a separate anti-corruption court aren’t optimistic.

“Nothing regarding the judiciary could pass starting May 25, 2014 to this day without Poroshenko’s approval,” said Zhernakov. “Whatever was submitted by him to the Rada on judicial reform has been adopted.”

Soboliev said that convincing Poroshenko to embrace the anti-corruption court would be “the best scenario, better than a new uprising of citizens, enraged by the protection of high-level corruption after EuroMaidan and during our war for independence.” ■

Lutsenko's 'achievements' don't hold up to scrutiny

Editor's Note: The following is a summary of Prosecutor General Yuriy Lutsenko's talking points at the 14th annual Yalta European Strategy forum on Sept. 16. His comments were fact-checked by the Kyiv Post.

By **Oleg Sukhov**
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Yuriy Lutsenko: "We have carried out a thorough overhaul of the prosecution service, cut its staff by a fourth, doubled their wages and opened prosecutors' jobs to those who had never worked there."

Fact Check: A competition for local prosecutors' jobs carried out in 2015 was effectively blocked by then-Prosecutor General Viktor Shokin, with 84 top local prosecutors keeping their jobs as a result. Lutsenko held competitions for about 600 rank-and-file jobs last year but failed to hold competitions for top local, regional and nationwide prosecutorial jobs, as he promised before, with corrupt and discredited prosecutorial establishment still holding sway.

Lutsenko: "As long as I'm prosecutor general, not a single person will hide behind their government position or party if there is sound evidence."

Fact Check: There are many examples of powerful people accused of high corruption who have nothing to fear from Ukrainian prosecutors. Some of the most notable include billionaire oligarch Ihor Kolomoisky, who allegedly stole \$5 billion from the now nationalized PrivatBank, ex-lawmaker Mykola Martynenko, accused of stealing \$17 million in the sale of Kazakh uranium ore to a state-owned firm; Mykola Zlochevsky, a former ecology minister accused of giving state gas extraction licenses to his firms, while \$35 million found in his U.K. bank account; settled on tax evasion charges; and on and on and on, in many sectors.



Ex-President Viktor Yanukovich testifies at Kyiv's Svyatoshinsky Court on Nov. 25, 2016, in the case into the murders of EuroMaidan Revolutin demonstrators. (Volodymyr Petrov)

Lutsenko himself acknowledges \$40 billion was stolen from the state during ex-President Viktor Yanukovich's rule from 2010–2014, but only \$1.5 billion was recovered, and that amount by dubious legal means.

Two more examples: The Interior Ministry's State Secretary Oleksiy Takhtai negotiated a corrupt deal in a video with a person who has already been convicted for the deal. The video footage has been recorded by the Security Service of Ukraine and has been recognized by courts as genuine. However, Takhtai has not been charged in any criminal case.

Meanwhile, lawmaker Sergii Leshchenko on May 16 published the text of what he says is a draft parliament motion to strip Yuriy Boyko, the leader of the Opposition Bloc, of his immunity from criminal prosecution. Leshchenko said the motion was blocked first by Shokin and then by Lutsenko.

In any case, nobody has been convicted of any crime.

Lutsenko: "As prosecutor general, I asked my colleagues in parliament to create chambers in the capital and regional centers where new (anti-corruption) judges will be selected through open competitions with the participation of NGOs," he said. "...The plan of (President Petro) Poroshenko and (ex-U.S. Secretary of State John) Kerry (on anti-corruption courts) is closer to me."

Fact Check: The bill on anti-corruption judges that Lutsenko supports has been sponsored by Serhiy Alexeyev, a lawmaker from the president's bloc. Non-governmental organizations say that competitions envisaged by the bill will not be transparent and open. Until such competitions are held, incumbent judges of Ukraine's discredited and corrupt judiciary will choose anti-corruption judges from among themselves, which may continue for a long period of time, according to the bill. At appeal courts, there will be no competitions at all, with anti-corruption judges chosen by incumbent judges.

Lutsenko also manipulated a statement by Kerry that all courts in the United States are "anti-corruption courts", claiming that he supported Poroshenko. In fact, Kerry's statement was a critique of Poroshenko's refusal to create independent anti-corruption courts.

Lutsenko: "We have created an Inspectorate General that is eliminating corruption within the system."

Fact Check: The Inspectorate General, created in 2016, has the authority to investigate only rank-and-file prosecutors, while the National Anti-Corruption Bureau of Ukraine investigates all mid-level and top prosecutors. The

inspectorate has kept a low profile, and the Kyiv Post has not found evidence of its achievements so far. The Prosecutor General's Office could not immediately comment on the issue.

Lutsenko: "We might get rid of our investigative functions by the end of this year. We have also created prosecutorial self-regulating bodies."

Fact Check: Ukrainian authorities have so far failed to strip the Prosecutor General's Office of its investigative functions and transfer them to a newly-created State Investigation Bureau since a law on the bureau was passed by parliament in November 2015. Andriy Sliusar, an expert at the Reanimation Package of Reforms, said that, given the slow speed at which the bureau is being created, it will be set up by November 2018 "in the best case scenario."

Moreover, controversial loyalists of the government are leading in the competition for the bureau's top jobs, which is rife with allegations of political influence and legal violations.

Lutsenko's critics also argue that prosecutorial self-regulating bodies, which approve appointments and dismissals, are blocking the cleansing of the prosecution service because they are run by old corrupt prosecutorial cadres.

Lutsenko: "This month we will send to trial the case against the organizers of EuroMaidan murders."

Fact Check: Sergii Gorbatak, head of the in absentia trials department at the Prosecutor General's Office, has argued that the cases cannot be sent to trial because Ukrainian authorities have so far failed to bring legislation on in absentia trials in line with international standards.

Lutsenko: "We have returned \$1.5 billion of (ex-President Viktor) Yanukovich's mafia to the budget."

Fact Check. In March the Kramatorsk City Court concluded a plea bargain with Arkady Kashkin, the nominal owner of a firm linked to Yanukovich ally Serhiy Kurchenko. The plea bargain allowed the court to confiscate the funds. But critics have dismissed the confiscation hearings as a political show trial. Both the investigation and the trial were conducted in secret and in just two weeks.

The Prosecutor General's Office and the Kramatorsk City Court have refused to publish the ruling, in what critics believe to be an effort to conceal violations of the law and behind-closed-door deals.

Among others things, the confiscated funds were spent on Poroshenko's ally, the agribusiness tycoon Yuriy Kosyuk, who got 42 percent of all agricultural subsidies allocated by the government from January to June.

Lutsenko: "Over the past year, we have detained 6,931 suspects in bribery cases. Of these, 3,934 are on trial."

Fact Check: The problem is that top officials are usually released on bail and are almost never convicted. During the first six months of 2017, 74 people were convicted to prison terms for corruption, according to the Nashi Hroshi watchdog. Of these, 65 may be re-considered or canceled by appellate courts. Of the nine whose verdict is final, the biggest term, 5.5 years, was given to a minor bank executive.

Lutsenko: "Privatization is the only way to get rid of (state) companies, which are the source of political corruption."

Fact Check: The Poroshenko Bloc faction, which was headed by Lutsenko in 2014 to 2016, and its allies in parliament have blocked privatization since 2014. Ihor Kononenko, a leading member of the faction, faces accusations of profiteering from many state firms, which he denies. ■

Crop Receipts As A New Financial Instrument For Agribusiness



Ihor Kravtsov,
Head of
Dispute
Resolution,
Attorney-at-Law

The Law on Crop Receipts (hereinafter referred to as "the Law") came into force in 2013, but it became really effective only in 2015. By the end of September 2017, crop receipts for a total amount of more than UAH 1 billion were issued in Ukraine, for 2015-2017. In terms of the entire country, of course, this number is not very significant; however, one should remember that, during the first year, the project was effective in only 4 regions (oblasts) – Poltava, Vinnitsa, Kharkiv, Cherkasy, and since October 2016, another four were added: Khmelnytsky, Mykolaiv, Ternopil and Sumy regions. In 2018, the launch of this legal instrument is planned throughout the entire territory of Ukraine.

Crop receipt appeared in our legal field thanks to active support of the International Finance Corporation which operates within the World Bank Group. This mechanism was created to support and develop small and medium-sized agricultural companies; for those, cooperation with banks is challenging due to lack of proper collateral, lack of positive credit history, etc. The core of this problem is absence of collateral. The land can not be used as a mortgage item because of the currently acting moratorium on alienation of agricultural land. This moratorium is part of the country's Soviet past, and the respective legislative reform has been postponed for many years. Also, for the Ukrainian economy, the instrument is relevant as a means of balancing out the share of large agriholdings, on the one hand, and small and medium businesses, on the other hand. The experience of Brazil, where crop receipts have been successfully used for more than 15 years, is an example to follow when introducing crop receipts in Ukraine.

The Law defines a crop receipt as a document that establishes the commitment and the unconditional obligation of the Borrower (secured by the collateral), to supply agricultural products or to pay in cash on certain conditions, pre-specified in the contract. This legal instrument allows the farmer to receive financing or production resources, using the future harvest as a collateral. Crop receipts are cheaper and easier to issue and manage than bank loans, note-backed lending and commodity loans, which, until recently, were the most popular sources of financing in agribusiness.

Key features:

- it is an agreement between the farmer (the Borrower) and the Lender (any other company);
- it must be certified by a notary officer and filed in a special register, available for checking online;
- collateral is the future agricultural product (the crop) grown on these lands.
- a land parcel is not a collateral for a crop receipt;
- the obligation remains valid until it is fully repaid;
- monitoring system for future agricultural product that serves as a collateral;
- disambiguation of the requirements (no need for an official statement that the debt exists) and extra-judicial procedure of enforcement;
- automatic distribution of the crop receipt for the next harvest, in case of loss of crop yield or evasion from fulfillment of obligations by the Borrower.

Key advantages of crop receipts:

- simplified access to financial and technical resources for farmers;
- the possibility of pre-sale of agricultural products;
- increase of collateral amount, reduction of dependence on loans;
- ability to manage currency and price risks;
- additional guarantees of payment to creditors, as compared to other financial instruments;
- a working mechanism for securing liabilities with a collateral of the future agricultural products;
- standardization of the process of issuing and executing the crop receipts;
- national electronic registration system;
- quick enforcement procedure.

Thus, crop receipts are a relatively new and effective tool for raising funds in agriculture. It will soon expand throughout the entire territory of Ukraine, which will help consolidate the agrarian sector as one of the leading ones in the national economy. Even amidst the economic crisis, this sector is consistently demonstrating increase of production volumes.

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Alexey Kot, Antika Law Firm managing partner and the member of the Judicial Reform Council of Ukraine speaks during the interview with the Kyiv Post in his office in Kyiv on Sept.19. (Oleg Petراسиuk)

Alexey Kot, member of Judicial Reform Council, says courts in better shape than critics say

By **Veronika Melkozerova**
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Ukrainian courts are far from perfect, but the criticism they face is more than they deserve.

That unpopular opinion belongs to Ukrainian lawyer Alexey Kot, who has spent three years as a member of the Judicial Reform Council of Ukraine, an advisory body for President Petro Poroshenko.

He and 41 top lawyers, lawmakers and judges on the council are ready with proposals for the ongoing judicial reform aimed at rooting out corruption and rebooting the courts with new and vetted judges.

Kot is satisfied with the progress, but says it is too early to judge. "We won't be able to

judge the reform until the new Supreme Court starts working," he says.

The Kyiv Post met with Kot on Sept. 19, a few days before the results of the competition of judges to the New Supreme Court were officially released. However, the names of the top 120 candidates were already known.

The result is a success, according to Kot, with 120 "interesting candidates."

That's not the way that civil society and Ukraine's Western partners see it. The U.S. Embassy in Ukraine said that concerns remain about the integrity of some of the selected judges. Some 25 percent of the candidates were rejected by the Public Integrity Council, a

civil society body that vetted judges, because they had made controversial rulings or because of evidence of corruption.

Moreover, it's still not clear when the new Supreme Court will be formed. Just as the interview with Kot was taking place, parliament was considering the 3,000 amendments to the Judicial Code needed for the new Supreme Court to function – and then it failed to approve them.

“It is a long-term process that needs a lot of changes in the legislation. But our society is tired of waiting,” Kot says.

Judges discredited

The profession is so discredited by controversial rulings and perceptions of corruption and political subservience that it discourages new people from entering the field, according to Kot.

And Ukrainian judges do indeed have a bad reputation.

The courts are often sympathetic, to put it mildly, to top officials who are prosecuted for corruption, such as ex-State Fiscal Service director Roman Nasirov or ex-lawmaker Mykola Martynenko. Such cases are turned down by judges, fall apart in court or are stalled simply because a judge fails to turn up for work.

The profession took the biggest hit during the EuroMaidan Revolution, before the overthrow of President Viktor Yanukovich on Feb. 22, 2014, when judges convicted dozens of protesters on flimsy evidence.

The judicial reform started after the EuroMaidan Revolution is supposed to bring in a new generation of judges, push out the corrupt ones and simultaneously restructure the system.

Kot praised the country's switching from a four-stage court system into a three-stage one. Before 2016, Ukraine had first instance courts, courts of appeal, high special courts and the Supreme Court. Today, there are only local courts, courts of appeal and the Supreme Court.

The revamping of the Supreme Court has been in the spotlight in the past several months, especially when the Public Integrity Council, 25 percent of the 120 winners had failed a vetting process but were still selected anyway.

When asked about it, Kot says that “one should look at the glass as being half-full, not half-empty.”

“Yes, we indeed have a lot of candidates who already worked in various Ukrainian courts. But we also have a lot of legal academics and lawyers, who, if approved, will play an important part in the new Supreme Court,” Kot says.

While 120 candidates were selected, the High Council of Justice can choose to not approve all of them: Just 65 judges are enough for the court to function.

As for civil society's reaction, Kot thinks that the Public Integrity Council opposed the judges not because they found all of them to be corrupt, but because the activists had a different vision of judicial reform. They didn't want any judges that already worked in Ukrainian courts at all, he says.

Kot says that at first the idea was for radical judicial reform: fire everybody, raze the entire system and then create a new one out of the ashes.

“But this approach isn't acceptable for various reasons. So we decided to change it. Instead of firing everybody we guaranteed that there would be a tough competition, a filter for the people who want to become new Supreme Court judges,” Kot says.



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NEW CODE OF COMMERCIAL PROCEDURE: MOVE TOWARDS EFFICIENCY

It is safe to say that the current Code of Commercial Procedure (“Effective CCP”) does not govern interim measures efficiently. Only three articles of the Effective CCP actually cover interim measures. The draft Code of Commercial Procedure (“Draft CCP”), conversely, devotes the entire chapter to this matter.

Under the Draft CCP, the court cannot grant interim measures other than upon a party's application. Thus, the court will no longer be empowered to grant interim measures based on its own discretion. Such shift of focus from the court towards the litigants (*which is a more general trend of the Draft CCP*) furnishes the commercial procedure with some features inherent to adversarial system. The Effective CCP, in its turn, is more inquisitorial in this regard.

The approach towards available types of interim measures is changing as well. The list of available interim measures set forth by the Draft CCP is not exhaustive, as opposed to the Effective CCP. Among other things, the Draft CCP explicitly provides for possibility to arrest receivables owed to defendant. Such instrument should become rather useful for creditors pursuing their debtors.

At the same time, the Draft CCP is not clear enough as to the grounds for granting interim measures. Both the Effective CCP and the Draft CCP state that the court may grant interim measures “if a failure to do so may frustrate or prevent the enforcement of a prospective court judgment”. However, the courts have so far applied the quoted provision based on the guidance of the Resolution of the Plenum of the High Commercial Court of Ukraine (“HCCU”), which establishes a restrictive approach towards the application of interim measures. The Resolution states that an applicant should demonstrate that the defendant has already resorted to certain actions aimed at avoiding performance of a judgement. An argument that it is reasonably anticipated that the defendant will behave in bad faith, following the HCCU opinion, is not a sufficient ground for the court to order interim measures. We do hope, though, that – once the Draft CCP becomes effective – the courts will tend to deviate from such overly conservative approach. This may well be the case given that the Draft CCP empowers the court to demand counter-security from plaintiffs.

As it follows from the Draft CCP, the most common type of counter-security is likely to be depositing funds on the court's special account. The precise amount of counter-security is to be determined by the court depending on a particular type of interim measures applied and potential losses the defendant might incur. Hopefully, judges will work out a reasonable and balanced approach to determine the amount of counter-security. In absence of the established criteria for measuring counter-security, a clear guidance on this matter would be extremely helpful for litigants.

Although it is usually a matter of urgency for a plaintiff to get interim measures in place, the Effective CCP is silent as to the timing for consideration of the respective application. The Draft CCP, in turn, envisages that the court must consider the application for interim measures within two days on an ex parte basis. This, however, does not prevent the court to summon the parties and to consider the application in the hearing, if it deems so needed in terms of a particular case.

Interim measures, if granted under the Draft CCP, remain effective until the judgment is actually enforced. If, however, the plaintiff fails to commence the enforcement proceedings within 90 days since when the judgment has entered into force, interim measures terminate. Such balanced approach encourages plaintiffs to enforce judgments without undue delay, so that the defendants would no longer be exposed to termless arrests of their assets and funds.

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Prosecutor General Yuriy Lutsenko speaks to journalists after reading a notice of suspicion for ex-President Viktor Yanukovich in a treason case on Nov. 28, 2016. (Volodymyr Petrov)

Too critical

Kot says that the Ukrainian society and officials “have got used to blaming judges for everything.”

“I’m not trying to protect them. But people forget there are several participants in the trial process: the defender, the prosecutor, and the judge,” says Kot.

He says that sometimes prosecutors are lazy in their preparations for the court and commit procedural violations when gathering evidence.

“And what is a judge supposed to do when he or she understands that the defendant is a criminal, but a professional defender points out the prosecutor’s mistakes during the process? The simplest thing to do is to blame the judge,” Kot says.

He is worried that constant criticism could disrupt the work of the new Supreme Court.

Farce instead

Another factor that discredits today’s justice system is the unprofessionalism of state officials, according to Kot.

Typical manifestations are the emotional yet unfounded public accusations that top officials in the justice and law enforcement system make. For example, Interior Minister Arsen Avakov and Prosecutor General Yuriy Lutsenko are careless in their public statements: They often refer to accused parties as being guilty long before their trial, and make “emotional assessments about defendants’ morals.”

Kot says that officials do this because it wins them admiration from the public. “Otherwise they wouldn’t show off,” Kot says. “People get the leadership that they deserve.”

So it is no wonder that when it comes to court proceedings, unprofessionalism is also rife.

“We see people hiding under blankets, and detectives trying to issue notices of suspicion while the suspect pretends to be unconscious,” Kot says, referring to the arrest of Nasirov, the former head of the State Fiscal Service, in March.

“This farce can hardly be called justice.”■

NEWS ITEM: President Petro Poroshenko asked visitors of Yalta European Strategy annual meeting in Kyiv on Sept. 15 to raise their hands if their countries had a special anti-corruption court. His point was that no major Western countries had anti-corruption courts, and thus Ukraine can do without one as well. “The truth is that in our nation, every court is an anti-corruption court,” replied former U.S. Secretary of State John Kerry, who was present at the meeting.



RECOVERY OF OVERPAID WITHHOLDING TAX



Andriy Reun
Head of Tax, Evris Law Firm

According to the Tax Code of Ukraine (TCU), Ukrainian companies paying certain types of income (including, dividends, interest, royalties) to foreign companies are required to withhold Ukrainian withholding tax (WHT) from such income and remit it to the state budget. Contractual tax clauses envisaging grossing-up of income due to foreign recipients for the amount of WHT are explicitly disallowed by the TCU.

The standard WHT rate is 15%. WHT can be eliminated or reduced based on the applicable double tax treaty between Ukraine and the country of tax residence of income recipient.

Importantly, the TCU provides that the reduced WHT rate or WHT exemption can only apply if the recipient is a beneficial owner of income payable by a Ukrainian company. This rule gives rise to tax disputes even in respect of service fees paid by Ukrainian corporate taxpayers to foreign companies that do not own the assets necessary to provide the relevant services.

The Ukrainian tax authorities usually scrutinize the transactions of Ukrainian taxpayers with foreign companies during tax audits. The tax penalties for failure to pay the WHT due may be as high as 75%. Given this, Ukrainian businesses tend to apply a conservative approach towards application of WHT to payments due to foreign companies. In certain cases, Ukrainian businesses overpay the WHT due resulting in receipt of lower income by their foreign business partners or parent companies.

It appears that only a limited number of foreign companies and investors are

aware that they can effectively recover WHT excessively withheld by their business partners or subsidiaries at source.

In this article we will briefly cover the procedure of WHT refund, as well as provide our thoughts on how the Ukrainian companies may use this procedure to strengthen their position in respect of WHT treatment of payments to foreign income recipients.

PROCEDURE TO RECOVER OVERPAID WHT

The TCU provides for a specific procedure to recover overpaid WHT. This procedure implies that the foreign income recipient submits a relevant application to the Ukrainian tax office. Upon receipt of such an application the tax office is to perform the necessary verifications and to confirm or deny the fact that the WHT has been overpaid.

If the tax office confirms the WHT overpayment, they are to provide their decision to the foreign applicant and the Ukrainian company having overpaid WHT.

In addition, the tax office should provide the relevant conclusion to the Ukrainian treasury authorities. In turn, the treasury authorities are to refund the amount of WHT specified in the conclusion of the tax authorities. Importantly, the Ukrainian treasury authorities shall remit the amount of such WHT to the bank account of the Ukrainian company that has excessively withheld such tax.

Interestingly, the Ukrainian company having received the decision of the tax authorities confirming the WHT overpayment may transfer the amount of excessively withheld WHT to the foreign income recipient before or after such a Ukrainian company gets a refund of such WHT from the treasury.

The simplified procedure of WHT refund is illustrated in the chart below.



Based on our experience, the tax authorities may be reluctant to confirm the fact of WHT overpayment and to seek for grounds to refuse granting a refund. If the tax authorities do not confirm that the WHT has been overpaid based on formal or artificial grounds, the foreign income

recipient may challenge the decision of the tax authorities to the court of law.

ALTERNATIVE APPLICATION OF THE PROCEDURE OF WHT REFUND

Apart from the purpose of actually refunding the overpaid WHT to the foreign income recipients, the Ukrainian companies may use the procedure of WHT refund to support their position in respect of WHT exemption or reduced WHT rate applicable to payments due to their foreign business partners or parent companies.

For instance, if the Ukrainian company is unsure whether the WHT should be withheld or whether the lower WHT

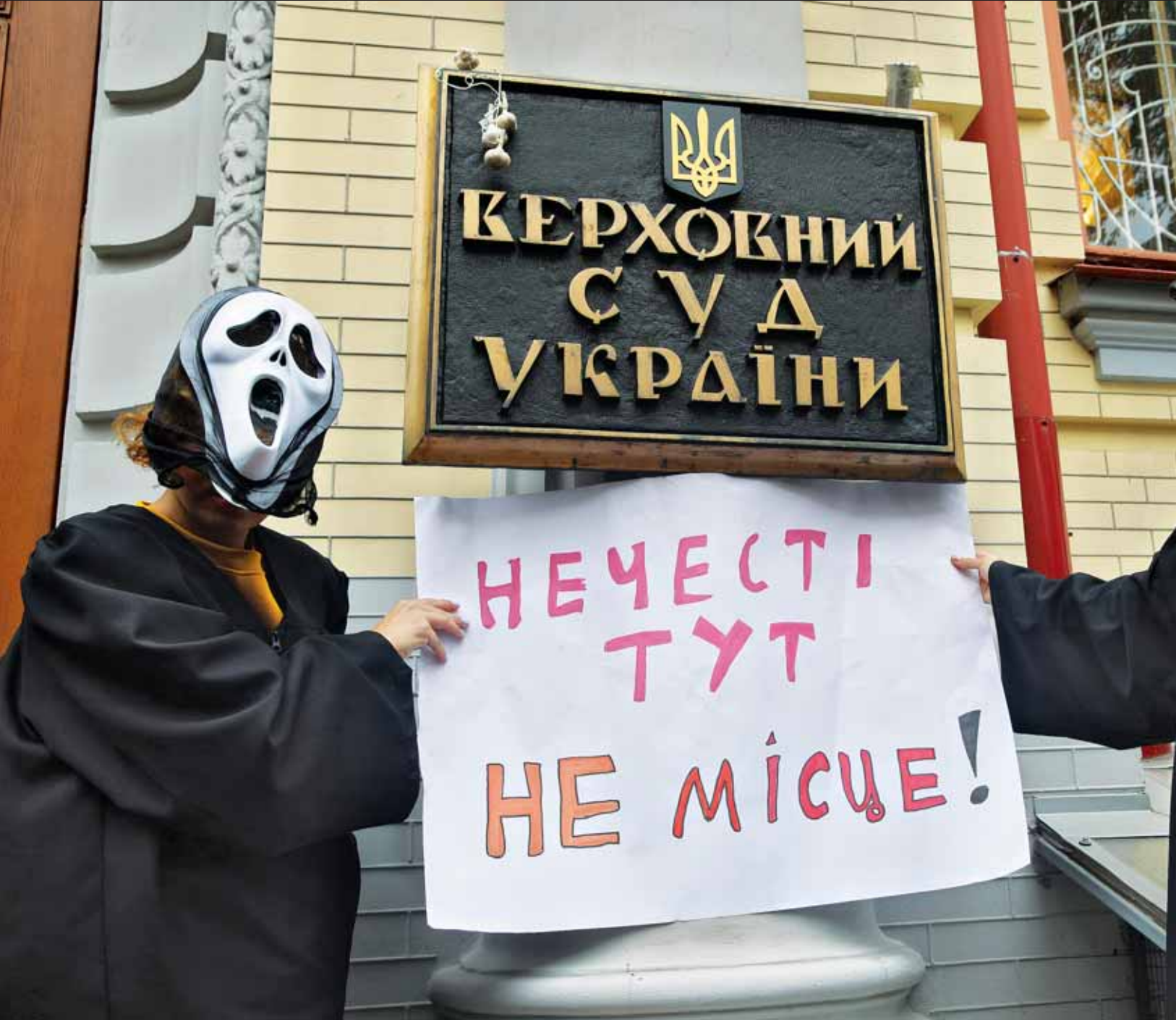
Only a limited number of foreign companies and investors are aware that they can effectively recover Ukrainian withholding tax excessively paid by the Ukrainian companies. The Ukrainian companies can use the procedure of recovery of overpaid WHT to support their position in respect of WHT treatment of specific transactions.

rate is applicable to the material income payable to the foreign company, such a Ukrainian company can make an immaterial payment (e.g. EUR 100) to such a foreign company and withhold WHT at the standard 15% rate from the amount of income paid. Subsequently, the foreign income recipient initiates the procedure of WHT refund. If the tax authorities confirm the WHT overpayment, the Ukrainian company may use the relevant decision of the tax authorities to support WHT exemption or reduced WHT rate applicable to identical future material payments due to such a foreign income recipient. If the tax authorities do not confirm the WHT overpayment, but the foreign income recipient successfully challenges the decision rejecting the WHT refund in the court of law, the relevant court ruling would be even a stronger argument supporting the favorable WHT treatment of the specific transactions.

To conclude, the opportunities for recovery of overpaid WHT appear to be largely underutilized. Apart from the clear benefit of receiving additional cash funds for the foreign companies, the procedure for reclaiming the excessively paid WHT may also provide an advance certainty on WHT treatment of specific transactions without a risk of material penalties.

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Political ties, ethical violations sully Supreme Court nominees

By Oleg Sukhov
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Activists rally in Kyiv on Sept. 13, urging the High Council of Justice not to appoint 30 Supreme Court candidates deemed corrupt or dishonest. They hold a poster that reads “off limits for demons.” (Volodymyr Petrov)

The competition to select new judges for the Supreme Court should have been the watershed in Ukraine’s post-revolutionary transformation from corrupt post-Soviet oligarchy to Western-oriented democracy.

Instead, when the High Council of Justice appoints judges of the new Supreme Court after Sept. 25, many will see it as the culmination of a failed process, sabotaged by the old guard, that leaves the judiciary largely unchanged.

Public discontent with the country’s corrupt judiciary is building, as courts fail to punish top-level crime and continue to cave in to pressure from the authorities in political cases.

Recently, pro-Russian protesters in Odesa, a Berkut riot police officer charged with assaulting EuroMaidan protesters and ex-Sloviansk Mayor Nelya Shtepa, who is on trial for allegedly cooperating with Russian-backed separatists, were released from custody.

And in a surreal situation on Sept. 21, the National Anti-Corruption Bureau of Ukraine charged two judges for trying to bribe a prosecutor who was prosecuting another judge for bribery.

“We’re close to a new revolution... Every day we have news that provoke society to blow up again,” Samopomich Party lawmaker Yehor Soboliev said. “Three years after the EuroMaidan, society can’t see any justice for top-level corruption. Society now receives much more information about corruption. You can see how you’re robbed every day by top officials, but don’t see any consequences of this disclosure.”

The authorities argue that the Supreme Court competition is the most transparent and effective one in Ukrainian history and will bring good and professional judges.

However, the Public Integrity Council, a civil-society watchdog, says that 30 of the 120 Supreme Court candidates nominated by the High Qualification Commission do not meet ethical standards, cannot account for their assets or have participated in political cases in the past.

The 30 candidates were vetoed by the Public Integrity Council, but the High Qualification Commission ignored the council’s objections, and they are still up for appointment.

Moreover, many members of the High Council of Justice and many of the Supreme Court nominees have been accused of having compromising political connections.

Presidential council?

The High Council of Justice is accused of being dominated by President Petro Poroshenko, who denies the accusations. However, links between its members and the president are many and varied.

Ihor Benedysyuk, the chairman of the council, was appointed by Poroshenko and used to work for the military court system, subservient to the military leadership.

Another council member, Tetiana Malashenkova, was also appointed by Poroshenko and used to work for Ukrprominvest group, formerly owned by Poroshenko.

High Council of Justice members Vadym Nezhura and Volodymyr Komkov were delegated by the Conference of Prosecutors, which is effectively controlled by the president.

Oleksiy Malovatsky, a council member nominated by the Poroshenko Bloc and delegated by the Verkhovna Rada, worked as a lawyer for Poroshenko in 2014.

Vadym Belyanevych, another council member, used to work at Vasil Kysel & Partners, a firm co-founded by Poroshenko’s Deputy Chief of Staff Oleksiy Filatov. He has requested to be exempted from voting for judges who used to work at this firm due to a conflict of interest, but the High Council of Justice rejected the request.

At least two members of the council are linked to the People’s Front party. Iryna Mamontova was nominated by the People’s Front party and delegated by the Verkhovna Rada.

Council member Pavlo Grechivsky used to be a lawyer for Mykola Martynenko, an ex-People’s Front lawmaker and a suspect in a graft case, and his brother-in-law.

It has also been alleged that Grechivsky is linked to Poroshenko Bloc parliamentarian Ihor Kononenko, since they were both lawmakers of Kyiv Mayor Leonid Chernovetsky’s party. However, Grechivsky denies having links to Kononenko.

Yaroslav Romanyuk, a member of the High Council of Justice and chairman of the current Supreme Court, is believed to be a protege of ex-President Viktor Yanukovich and his deputy chief of staff Andriy Portnov. Romanyuk supported Yanukovich’s dictatorial laws of Jan. 16, 2014, which severely curtailed civil liberties.

Council member Alla Lesko was delegated by the Congress of Lawyers.

She has been accused of being linked to pro-Russian politician Viktor Medvedchuk and Portnov, who wielded major influence on Ukraine's lawyer community. Medvedchuk used to be the head of the Ukrainian Lawyers' Association, and his protégés have held key positions there. Lesko told the Kyiv Post that the accusations were "a mere assumption that does not require refutation."

Candidates' connections

Some of the 120 candidates nominated for the Supreme Court are accused of compromising links to political leaders.

Bohdan Lvov, chairman of the High Commercial Court, used to work with High Council of Justice Chairman Benedysyuk, a presidential ally, at the High Commercial Court and at military courts. Benedysyuk has requested to be exempted from voting for Lvov due to a conflict of interest.

Lawyer Yevhen Synelnykov is an assistant to Vladyslav Holub, a lawmaker from the Poroshenko Bloc.

Lawyers Ivan Myshchenko, Vyacheslav Peskov and Anna Vronskaya used to work at the Vasyl Kisil and Partners law firm, where Poroshenko's Deputy Chief of Staff Filatov was one of the partners. Vronskaya denied having links to Filatov, saying she worked at the firm at a different time.

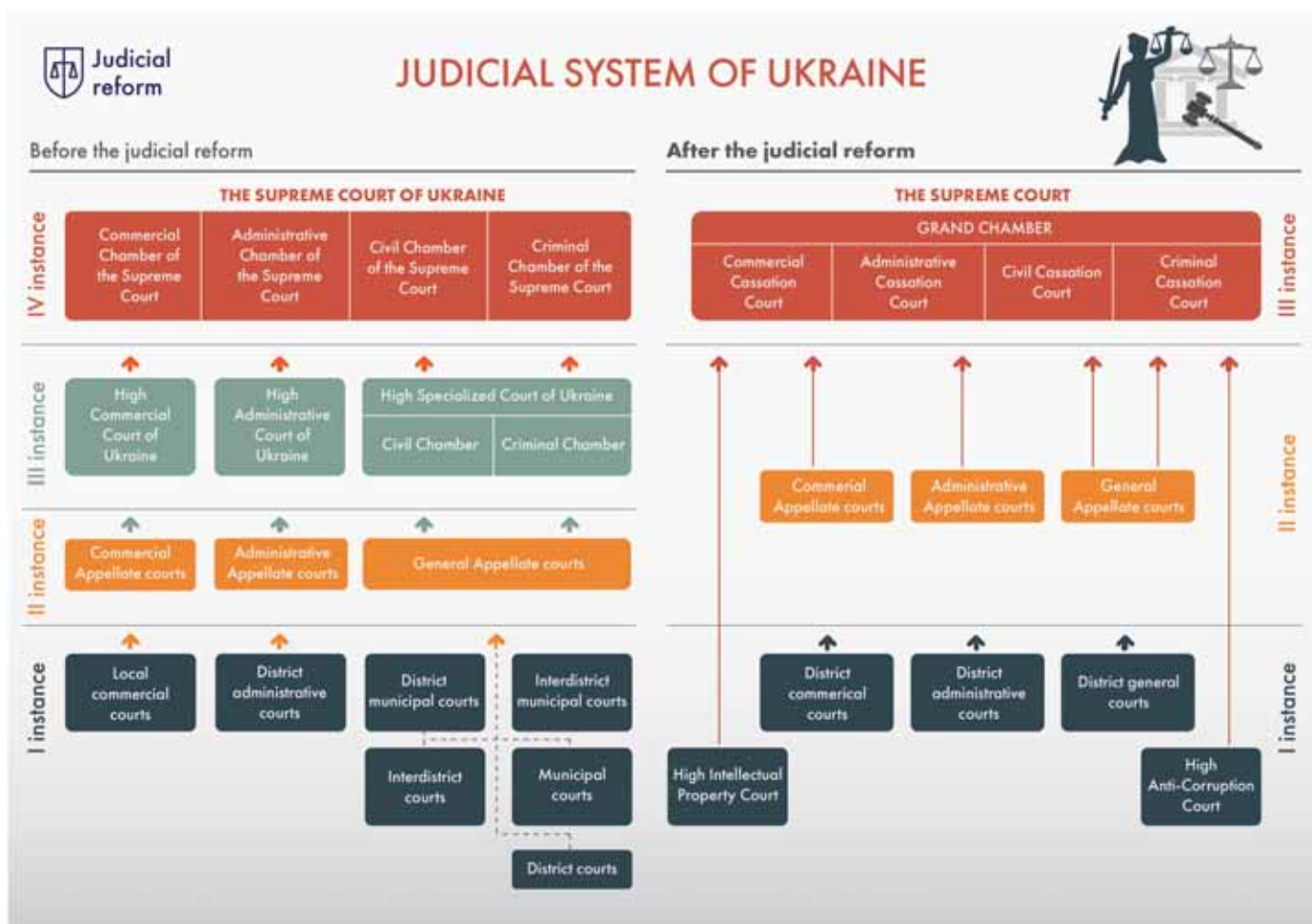
Borys Hulko, the chairman of the High Specialized Court for Civil and Criminal Cases, has also been accused of having political connections. Hulko's wife Tetyana Kryzhanivska works at the BIM law firm, which is co-owned by the Ukrainian Lawyers' Association, founded by Medvedchuk. BIM, the Ukrainian Lawyers' Association and Medvedchuk's pro-Russian Ukrainian Choice party are all registered at the same address. Hulko denied having any ties to Medvedchuk over the past "15 to 20 years."

In January, Hulko was filmed walking out of the Presidential Administration by Radio Liberty, saying that he had discussed procedural codes.

Meanwhile, lawyer Ihor Tkach used to work at Proksen, a firm co-founded and headed by Serhiy Kozyakov, head of the High Qualification Commission. Kostyantyn Krasovsky, head of the Presidential Administration's legal department, also used to work with Tkach and Kozyakov at Proksen.

Another candidate, Yan Bernazyuk, has held several jobs under the leadership of ex-Prime Minister Arseniy Yatsenyuk.

In August, some of the candidates were filmed by Radio Liberty at the birthday party of Valery Heletei, who heads the presidential security guard detachment. They included Lvov, Hulko and Romanyuk.



Ukraine's judicial reform removes a layer of courts – from four to three levels. The three levels are: courts of first instance, three appellate courts and then the Supreme Court's Grand Chamber, subdivided into four specialities – the highest appeals, or so-called third instance, courts.

30 bad apples

Apart from their political connections, a major bone of contention is whether the 30 candidates vetoed by the Public Integrity Council will be appointed. At least 65 judges are to be appointed to the court, while the maximum number of appointments could be 120.

Sobolev said some good judges had been nominated, but that the Supreme Court would still be dominated by the corrupt elite.

“A third that you select are good (judges),” Sobolev said. “And then behind them you put all the old, corrupt and controlled guys and say this is a very decisive reform... All really important cases will go to the bad judges.”

Roman Kuybida, an expert at the Reanimation Package of Reforms, argued that no independent judges had been nominated for the Supreme Court.

“All of the principled judges have dropped out of the competition,” Kuybida said, mentioning Mykhailo Slobodin, Roman Brehei and Serhiy Bondarenko as examples.

One of the Supreme Court nominees — Lvov, the chairman of the High Commercial Court — is being investigated for interfering in the system of automatic distribution of cases by the former leadership of the High Commercial Court under Yanukovich. Judges Artur Yemelyanov and Viktor Tatkov have already been charged in this case.

Lvov is also under investigation in a criminal case against High Council of Justice member Pavlo Grechkivsky, who has been charged with fraud, according to the Slidstvo.info investigative show. According to the investigators, Grechkivsky promised to help in a legal dispute, with Lvov's assistance, for \$500,000.

Lvov has also been investigated for making an unlawful ruling, and the Supreme Court has ruled that one of Lvov's rulings violated human rights and involved interference in the automatic distribution of court cases. He has denied violating any laws.

Meanwhile, candidates Vyacheslav Nastavny and Serhiy Slynko have issued rulings in cases against Yuriy Lutsenko, now prosecutor general, and the Pavlychenko family under Yanukovich. Both cases have been recognized as political persecution, both by the Ukrainian authorities and by the European courts, according to the Public Integrity Council.

“Judges who take orders by phone from the authorities are much worse than corrupt officials, because they have a mandate of impunity and are in high demand by the executive branch,” said Leonid Maslov, an ex-member of the Public Integrity Council.

Nastavny and Slynko deny that the Ukrainian and European courts have recognized the Lutsenko and Pavlychenko cases as political.

Lesko, both a candidate for the Supreme Court and a member of the High Council of Justice that appoints the Supreme Court judges, has failed to take measures to punish judges who persecuted EuroMaidan protesters, according to the Public Integrity Council.

Lesko has violated the principles of the adversarial system and transparency during consideration of their cases by rejecting the plaintiffs' requests for information on their cases, and missing deadlines, the council said.

She denied not having taken measures to punish judges in political cases and cited confidentiality law and ethical standards as the reason for rejecting plaintiffs' requests.

“The courts are the last frontline, the last defenders of our kleptocracy,” Sobolev said. “The kleptocracy can't completely control the investigation process, as it did before, because we have the National Anti-Corruption Bureau. But they do control judges and the court system.” ■



NEWS ITEM: Two of the 120 selected candidates for the Supreme Court participated in the trial of Prosecutor General Yuriy Lutsenko in 2011-2012 that ended in Lutsenko's conviction for embezzlement. In 2014, a Kyiv court canceled the conviction and ruled that the case against Lutsenko was politically motivated.

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Mykhailo Zhernakov, member of the Public Integrity Council, speaks to the Kyiv Post on Sept. 20. (Oleg Petراسиuk)

Civic watchdog says Poroshenko's 'only goal is to retain control' over judiciary

By **Bermet Talant and Oleg Sukhov**

The future of Ukraine's judiciary system is being defined in two simultaneous proceedings. At the moment when the High Council of Justice is reviewing 120 candidates to the new Supreme Court, the Ukrainian parliament is holding votes on a massive package of amendments to the procedural codes.

The High Council of Justice is set to consider appointing 120 Supreme Court nominees after Sept. 25, and then President Petro Poroshenko will have a symbolic right to sign their credentials.

Ukraine's long-stalled reform of its corrupt judiciary system is a brainchild of Poroshenko. He proclaimed that the rebooted Supreme Court would rest upon independence and impartiality.

"Poroshenko is the author of this reform and therefore bears full responsibility for it," said Mykhailo Zhernakov, a member of the Public Integrity Council, a civil society watchdog that oversees judicial reform. "We see that his only goal is to retain control over the judiciary as much as he can."

Civil watchdogs believe reform was designed in a way that left room for political

manipulation. They see a great risk that old judges with dubious pasts who served former President Viktor Yanukovich may get into the new Supreme Court and continue serving political leaders.

Membership in the elite club of judges comes with status, power and immunity, including lifetime service and (legal or illegal) financial rewards. It's no surprise that the old cohort of judges, who matured in Soviet times or under the kleptocratic rule of previous Ukrainian presidents, want to stay.

Nonetheless, the competition to the new Supreme Court allowed attorneys, legal scholars and junior judges to apply for the first time.

Lack of transparency

A major loophole was hidden in the unclear methodology used by the High Qualification Commission.

"The selection only appeared to be transparent. It was broadcast online," Serhiy Verlanov, a Public Integrity Council member and partner at Sayenko Kharenko law firm. "The Public Integrity Council was present at almost any discussion. But the assessment itself and calculation of points was concealed."

Verlanov believes that the High Qualification Commission should have awarded points to candidates immediately and given more value to professional assessments over psychological assessments as well as shortened the time frame for the interviews.

"Let's hear all candidates and then vote for all of them at once' isn't an effective approach because it gives unfair advantage to the candidates at the end of the list," he said. "They are likely to be remembered better by the members of the commission as well as simply know what to be prepared for by the time their turn comes."

The High Qualification Commission initially refused to publish its recommendations on appointing 120 Supreme Court judges. The commission divulged them only recently but they contain no explanations on why candidates were nominated and why the Public Integrity Council's vetoes of 30 of the candidates were overridden, Roman Kuybida, a member of the Public Integrity Council, told the Kyiv Post.

"These recommendations are empty and have no motives," Kuybida said. "We still can't understand why our conclusions have been rejected... And the recommendations are nearly identical."

He said that "an honest competition is one that allows you to verify each stage, and it's impossible to understand for what the scores were given and verify them."



NEWS ITEM: Alexey Kot, a lawyer and member of the Judicial Reform Council, an advisory body for President Petro Poroshenko, told THE Kyiv Post that the harsh and constant criticism against Ukrainian judges is discouraging for the new people that are considering entering the field.

Serhiy Kozyakov, head of the High Qualification Commission, responded in an email to the Kyiv Post that "its decisions contain the necessary structure, meaning and motives."

Kuybida and Roman Maselko, another member of the council, said that the High Qualification Commission had effectively ignored information provided by the Public Integrity Council.

There is no correlation between the Public Integrity Council's assessments and the scores for integrity given by the High Qualification Commission, according to Kuybida.

Moreover, Public Integrity Council members said they had not been allowed to speak during High Council of Justice meetings.

Maselko and Kuybida also said that psychological tests used by the High Qualification Commission were apparently "loyalty tests," favoring the least independent judges. "For a judge, it's important to be disloyal," Kuybida said. "They must be independent."

Voicing another complaint, Roman Brehei, a judge and Supreme Court candidate, criticized the High Qualification Commission for allowing 299 candidates with insufficient scores to compete — a move that appears to promote judges favored by the authorities. Kozyakov argued that the law that Brehei used to justify his position was not applicable to the Supreme Court competition, which is regulated by another law.

Brehei has also accused the commission of violating the law by failing to set a minimum score for the latest stage of the competition — moral and psychological testing.

Conflict of interest

Meanwhile, the High Council of Justice has been criticized for dismissing 48 out of its members' 52 recusals from voting for specific Supreme Court candidates due to a conflict of interest. This prompted accusations that the council was aiming to get the necessary 14 pro-government votes to appoint politically loyal candidates.

The High Council of Justice explained the rejection of recusals by saying that, according to the National Agency for Preventing Corruption, the fact of officials working together at one organization without having friendly relations does not constitute a conflict of interest.

Council members Alla Lesko and Alla Oliynyk have been exempted by the High Council of Justice from voting for any Supreme Court nominees because they took part in the competition as candidates.

However, the council rejected a request by Yaroslav Romanyuk, chairman of the Supreme Court and a member of the High Council of Justice, to recuse himself due to his participation in the competition.

The High Council of Justice said that Romanyuk had withdrawn from the competition and that is why had no personal interest in it.

Dubious candidates

According to the Public Integrity Council, at least 30 of the Supreme Court nominees have breached professional ethics and integrity, although Zhernakov does not rule out that there could be more. Some prohibited peaceful assembly; some lead a lifestyle inconsistent with their income; some lied on their declarations of assets. More serious wrongdoings include judges whose previous verdicts were qualified as politically motivated or arbitrary.

Timeline of judicial reforms in Ukraine

1992 — the judiciary of independent Ukraine is established after the Soviet Union's collapse.

2001 — President Leonid Kuchma's "small judicial reform."

2010 — President Viktor Yanukovich establishes authoritarian control over the judiciary by stripping the Supreme Court of major powers and transferring them to loyal courts and by stacking the Constitutional Court with his proteges.

2014 — The law on the restoration of trust in the judiciary on the dismissal of judges who unlawfully persecuted demonstrators of the EuroMaidan Revolution, which drove Yanukovich from power on Feb. 22, 2014. However, so far only 34 of 351 judges involved in EuroMaidan cases have been fired and 29 have been suspended.

2015 — The law to guarantee the right to a fair trial bans discredited Yanukovich-era court chairpersons from being elected for more than two two-year terms but a bizarre legal interpretation enables them to become chairpersons for a third, fourth and even fifth time.

June-July 2016 — Poroshenko signs legislation on the current judicial reform, including the creation of a new Supreme Court.

February-March 2017 — Anonymous testing of Supreme Court candidates for professional skills and practical tests

April-May 2017 — Interviews with Supreme Court candidates, psychological testing of candidates.

June-July 2017 — The High Qualification Commission overrides 75 percent of vetoes by the Public Integrity Council on judges deemed to be corrupt or dishonest, then nominates a final list of 120 candidates.

July 2017 — Poroshenko signs a law that effectively gives him full control over the Constitutional Court.

Sept 14, 2017 — The High Council of Justice starts considering Supreme Court candidates

Sept. 25, 2017 — The High Council of Justice finishes consideration of Supreme Court candidates. Later, it will make final decisions on appointments.

— Oleg Sukhov

"The main question now is how many of those 30 will be blocked by the High Council of Justice," he says. "This political leadership knows how to circumvent. They are not as brazen as Yanukovich who appointed obvious criminals to courts. They choose judges who are less known and less exposed but still dependent on political influence."

Procedural codes

And finally, one more big caveat is the vote in the Verkhovna Rada on 4,000 amendments to three procedural codes and a number of judiciary laws. The lawyers assume that the vote was deliberately postponed until the last minute. "The Presidential Administration created a situation the parliament has no choice but to pass the amendments, otherwise there will be no functioning Supreme Court," said Andrii Khymchuk, a lawyer at the DeJuRe foundation.

Zhernakov said that this strategy has been used for any major legislation in Ukraine that needs to be passed.

"Postpone it for as long as possible to the point when it's absolutely critical and then push the parliament to vote for it last minute," he said. It's impossible to go through so many amendments in such a short time, he said, creating opportunities to pass dubious changes too. ■

Sotnyk: Anticorruption court essential to nation

→ **5** establishment of a separate body that runs under well-regulated, transparent selection procedures and public scrutiny.

4. "Anticorruption courts can become obsolete in the event of a successful judicial reform and the purge of the judiciary."

Anticorruption courts do play a critical role in the transition stage. However, a real judicial reform should aim to cleanse the judiciary and select new, competent, and impartial judges. Currently, this part of judicial reform is failing. The majority of new Supreme Court justices came from the same system, many with dubious reputations, and their declared assets were not adequately verified. The completion of

judicial reform does not necessarily purify the judiciary or ensure its independence.

5. "The track record of the new anticorruption bodies has proved their ineffectiveness. Therefore, an anticorruption court will also be ineffective."

As of June 30, NABU was pursuing 371 criminal cases, 121 individuals had been indicted, and 78 criminal proceedings had been handed down by the court. But the investigations conducted by NABU are hampered at the trial stage, since most investigations require court authorization to begin. But the courts are the weakest link in the fight against corruption. Forming the new anticorruption court is the

obvious and logical next step.

The establishment of anticorruption courts could help complete the investigation of corruption cases and prosecute those responsible, including those big fish that have eluded prosecutors. A lack of results in the courts, the unprecedented resistance of official Kyiv and the Indonesian experience inspire me to fight for this approach in my country and give the ideals of the EuroMaidan Revolution a chance to finally be realized.

Olena Sotnyk is a member of Ukraine's parliament and an attorney in Kyiv. She tweets @LenaSotnyk. This essay was translated from Ukrainian to English by Vera Zimmerman and is reprinted with the author's permission. ■

Baker McKenzie.

An aerial photograph of a wide river flowing through a city. Several bridges span the river, including a large multi-lane highway bridge in the foreground and a smaller bridge further upstream. The city buildings and greenery are visible on both banks. A dark blue rectangular box is overlaid on the center of the image, containing the text '25 YEARS IN UKRAINE'. To the right of this box, there are several overlapping red and grey squares of varying sizes.

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