

KyivPost

LEGAL
QUARTERLY

March 31, 2017, Vol. 4, Issue 1



Interesting Lawyers

Part 1



reaching the stars for our clients

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Editors' Note

Interesting (and cool) lawyers – Part 1

This is the lucky 13th edition of the Kyiv Post Legal Quarterly and our first devoted to “interesting lawyers.” There are thousands working in Ukraine’s legal profession, but space limits us to only 11 interviews this round. So if you’re an interesting lawyer or want to read about one, please be patient and be ready with your story pitch. This time, we chose a sampling of lawyers who are either engaged in major public missions or doing pro bono or other legal work on social causes important to them and the nation. Nobody paid to get interviewed. The Kyiv Post has never operated that way. We separate paid advertising, which the client controls, from the news, which journalists control. It’s all in our motto of “Independence. Community. Trust.”

We also broke out stories on two interesting lawyers – Deputy Head of the Presidential Administration Oleksiy Filatov and Andriy Stelmashchuk, managing partner of Vasil Kisil & Partners, in our regular print edition also published on March 31.

Filatov is in charge of the nation’s judicial reform, which will take a big step forward by choosing and seating a newly constituted Ukrainian Supreme Court by June.

Stelmashchuk is calling attention to the legal profession’s complicity in bribery and undeclared, or off-the-books and often untaxed income – not only in advising clients on tax shelters but in how legal firms are structured themselves.

Lawyers are some of the keenest barometers of society. When the profession acts ethically, it reflects well on a nation. When they become whistleblowers exposing wrongdoing, they become heroes. When they don’t act ethically, they are enablers of a corrupt nation – helping fuel its bribery, offshore tax avoidance schemes, dodgy business practices and injustice.

So if a person wants to know where Ukraine is headed as a nation, taking a look at the state of the legal profession can provide revealing insights.

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

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On Cover: While the Kyiv Post Legal Quarterly usually covers issues, this edition – our 13th – focuses on people.

Authorities devoted to getting rich as they ignore interests of Ukraine

(Kostyantyn Chernichkin)



Kostyantyn Likarchuk

Position: Private lawyer
Key point: Ukraine needs to cleanse its politics, government

By **Alyona Zhuk**
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It's time for Kostyantyn Likarchuk to say "I told you so."

In 2015, he was the first to blow the whistle on Ukraine's State Fiscal Service Chief Roman Nasirov, accusing him of theft and corrupt customs schemes.

"Now we are where we are, and the head of the State Fiscal Service is in prison, and everything I talked about turned out to be true," he told the Kyiv Post during a recent interview.

After accusing his boss of graft, Likarchuk, at that time deputy head of the State Fiscal Service, was fired. Some 18 months later, he says Nasirov's case is a telling example of how a state service is turned into a corrupt business for insiders.

According to Likarchuk, now a partner at Kinstellar law firm, while the State Fiscal Service brings some \$22 billion to the state budget yearly, another \$9 billion ends up in the pockets of authorities.

Nasirov was arrested by Kyiv's Solomyansky Court on March 7. He is suspected of illegally allowing participants of an alleged corrupt scheme at state gas producer Ukgazvydobuvannya to delay tax payments, costing the state Hr 2 billion (\$74 million).

He was released on Hr 100 million (\$3.7 million) bail on March 16.

"They don't want to build this state up," Likarchuk told the Kyiv Post of many politicians who form the ruling elite. "Instead, they've turned the state into a commercial structure."

Whistleblower

After Likarchuk accused Nasirov of restoring ex-President Viktor Yanukovich's corrupt customs schemes, Nasirov struck back. He slammed Likarchuk for corruption, without providing any details or evidence, and dismissed him in September 2015.

A Kyiv Administrative Court canceled Likarchuk's dismissal and reinstated him on Nov. 2. The Court of Appeals upheld the decision on Dec. 14. The State Fiscal Service

HOW TO SURVIVE NEW NORMATIVE MONETARY VALUATION OF LANDS IN 2017? (means drastically higher or lower land tax or rent)



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Since the beginning of this year, many taxpayers in Ukraine have been surprised by excerpts of normative monetary valuation (hereinafter – "NMV") of their lands indicating significantly new numbers. In some cases the valuation was doubled (!) as to compare with the previous year, however in others – it was reduced by 3.5 (!) times – affecting pro rata land tax and rent. Such alterations appeared without recent approvals of new local technical documents on land valuation, and with relatively small 6% annual inflation rate (which is also included into NMV). This has happened thankfully to new "Regulation on normative monetary valuation of lands within settlements" approved by the order of the Ministry of Agrarian Policy and Food of Ukraine No.489 as of November 25, 2016 ("Regulation No.489").

This article questions the legality of the application of Regulation No.489 during issuance of the excerpts of NMV in the conditions when local technical documents on land valuation were not formally adapted. We will discuss the legal grounds, which may be used to challenge the application of the Regulation No.489 in the mentioned situations as well as to cancel the changed NMV. However, we have also good news for those being satisfied by the new NMV. There are sound arguments in support of filling tax declarations and allocation of relevant taxes on the base of the new excerpts of NMV, which will be revised in the second part below.

1. Illegal "hybrid" application of Regulation No.489

Regulation No.489 changed the approach to definition of the coefficient of "functional use" (Kf) of lands (the key coefficient in the calculation on normative monetary valuation). According to the new rules, Kf should be defined according to information in the State Land Cadaster regarding code of designated purpose of the respective land plot. If there is no information about the land plot itself in the electronic database of the cadaster or no code of

designated purpose is assigned according to the actual classification (2010), Kf of 2.0 shall be applied by default. Here we would set aside deontological issue of de-facto penalizing private entities for omissions in the public cadaster, and focus on the legal defects in widespread practice of application of Regulation No.489 during issuance of new excerpts of NMV.

Both, land tax and lease payment for state and municipal lands, are considered as twofold local land-related tax according to the Tax Code of Ukraine. Under the Tax Code it is the competence of municipal councils to establish all elements of this local tax, including its base (NMV plus inflation rate) and rates.

Laws on land valuation envisage that technical documents of NMV (within settlements) should be drafted by land-management entities and then endorsed for legal effect by the decision of the municipal council. I.e., establishing NMV (apart from further inflation indexing) shall be by respective act of the local self-government body. The legislation provides the frequency of updates of such decisions – once at 5-7 years. Regulation No.489 per se specifies methodology, which should be applied by land-management entities during preparation of new technical documents of NMV. Neither Regulation No.489, nor other legal act ceases effect and application of technical documents of NMV put legally in force before 2017 or requires their immediate substitution/modification.

Excerpt of technical documents of NMV legally (and literally) means an extract concerning the land plot from the whole content of technical documents of NMV of lands approved within city or village. However, this year excerpts of NMV are issued with "hybrid" application of Regulation No.489 without amending current NMV approved by local councils: the new coefficients are applied under Regulation No.489 to the basic indicators provided by the technical documents of NMV, which were developed according to the old regulation on valuation. Consequently, land cadaster authorities disregard competence of municipal councils on approval of local taxes and significantly alternate NMV without its legalization on the local level.

Inconsistency of such "hybrid" application of Regulation No.489 could be demonstrated by the example of the decision of the Kyiv City Council No.23/23 of July 3, 2014 on the approval of technical documents of NMV for the Kyiv's lands. This decision was published together with the table, which includes all approved coefficients of NMV for lands of all types of functional usage located in the different city planning zones. The table was filled based on the old types of "functional usage" which does not correspond to the new approach according Regulation No.489. For example, Kf could not be equal 2.0 according to this table. Even in case similar tables are not published along with decisions of some other municipal councils, it must be in the relevant technical documents of NMV.

The abovementioned provides grounds to challenge "hybrid" application of Regulation No.489 when local technical documents on land valuation were not formally adapted to it. Moreover, decisions taken on new normative valuation continue to be issued with many

errors, including procedural and material ones. Here we established successful practice of challenging and cancellation of both unjust individual excerpts of NMV and illegal local decisions on approval of technical documents of NMV.

2. The right to apply new excerpts of NMV for tax purposes

The position described above does not deprive the taxpayer its right to use obtained excerpt of NMV for filling land tax declarations when it meets or exceeds expectations.

According to the Law "On the State Land Cadaster", information of the cadaster is official; the cadaster is kept with purpose of providing information to state and municipal authorities, legal entities and individuals, for managing land relations, conducting land valuation, collecting the fee for land, etc. The Tax Code (in Art. 286.1) also stipulates that information of the cadaster is the ground for assessing the land tax. That is why land cadaster bodies are authorized to issue excerpt of NMV. In addition, the Tax Code (Art. 286.2) provides that taxpayer should supplement its land tax declaration with certificate (excerpt) of NMV when first time submission or in case new NMV is approved.

Despite legally provided by the law with respective right, as a matter of practice, the taxpayer has no direct access to the data of the cadaster regarding NMV of its land plot yet. The legal requirement that NMV should be posted on online cadaster map, is still not implemented. The technical documents of NMV usually also remain unpublished. Therefore, taxpayer usually does not have all necessary information for independent verification, which makes excerpt of NMV normally the only available official source of information about normative monetary value of the land plot.

Having anticipated the unjustified application of the increased coefficient of functional usage (Kf), the taxpayer can apply in advance to the cadaster for improving code of the designated purpose of the land plot. Please note that the new code must be confirmed by the existing technical documents on allotment or inventory of the land plot. Correction of the information in the cadaster will create grounds allowing issuance of the excerpt of NMV with improved coefficient of functional usage (Kf).

Another way to challenge new higher land-related charges may be to challenge the legality of the above-discussed 'hybrid' application of the new valuation procedure.

Yet, for those facing lower charges under the discussed 'hybrid', the law provides possibility to do so as the taxpayers shall merely rely on the data provided from the cadaster rather than make respective calculations independently. Yet, there is risk that the tax office will come later to collect the difference in case the currently applied erroneous approach will be corrected.



State Fiscal Service Chief Roman Nasirov (L), then-Finance Minister Natalie Jaresko and then-deputy head of the State Fiscal Service Kostiantyn Likarchuk talk during their joint briefing on May 5, 2015. (UNIAN)

later filed another appeal, which is under way, Likarchuk said.

But he said he doesn't plan to come back to the State Fiscal Service. He is waiting for their move.

"To fire me again, they have to first officially reinstate me. But nobody knows what I will do in that case," he said.

Abandoned customs

Likarchuk believes that customs, a part of the State Fiscal Service, has to become a separate agency. So does the tax service, he said.

"Customs doesn't have a centralized management system," he told the Kyiv Post. "No one is developing the customs policy for Ukraine. So it appears that there are separate regional customs offices that are left on their own and do whoever knows what."

Likarchuk said he tried to change the situation while in office. However, nobody listened to him, including the government.

The Finance Ministry, headed by Natalie Jaresko from December 2014 to April 2016,

did not interfere with the State Fiscal Service, Likarchuk recalled. He said Jaresko's team entered the Cabinet of Ministers mainly to restructure Ukraine's public debt.

After Likarchuk was dismissed, Jaresko said it was a good sign because she wanted "a team that works together." She told the Kyiv Post: "I believe that you either come in and work on the team or you stay out and criticize, and that's your choice."

According to Likarchuk, after the EuroMaidan Revolution that drove President Viktor Yanukovich from power on Feb. 22, 2014, many new politicians entered government, but there wasn't a big shift of the political class.

"To see that, it's enough to look at the list of parliament members," he said.

Self-preservation instinct

Likarchuk said a transformation of the ruling elite would not take place until there is a new election law.

"We need a proportional election system

with open lists of candidates, as well as significant restrictions on lawmakers' immunity," he said.

Ukraine's parliament can do it if it wants, he said.

"It takes our parliament a couple of hours to change the legislation on prosecution, and let a person without a law degree become the new prosecutor general," Likarchuk said, referring to the changes that were made to appoint Yuriy Lutsenko, former head of the President Petro Poroshenko faction in parliament.

Kostiantyn Likarchuk got forced out of the State Fiscal Service, but his assessment of the corruption of his former boss, Roman Nasirov, may yet vindicate the lawyer who is now in private practice.

The bill appears to have been tailored for Lutsenko and voting took place at record speed and accompanied by procedural violations.

Poroshenko appointed Lutsenko as prosecutor general on May 12, the same day the bill was changed.

"The political will has to emerge, and it has to be dictated by the self-preservation instinct," Likarchuk said. "A shift in the elites is inevitable. And if they want to keep their capital, enterprises etc., they will prepare a smooth transition for that." ■

Two publications rank Ukraine's top law firms

Yuridicheskaya Praktika's 50 Leading Law Firms of Ukraine (Top 10 here)	Delo.ua's Top 100 Biggest Law Firms of Ukraine (Top 10 here based on revenue)
1 Asters	Alekseev, Boyarchukov & Partners
2 Sayenko Kharenko	Sayenko Kharenko
3 Baker McKenzie	Egorov Puginsky Afanasiev & Partners
4 Ilyashev & Partners	DLA Piper Ukraine
5 Arzinger	CMS Law (CMS Cameron McKenna LLC and CMS Reich-Rohrwig Hainz)
6 Aequo	Redcliffe Partners
7 Integrites	Vasil Kisil & Partners
8 Vasil Kisil & Partners	Arzinger
9 Avellum	Avellum
10 GOLAW	Shkrebits & Partners

Yuridicheskaya Praktika, a legal journal, attempts to rank the best law firms while business website delo.ua ranks by reported revenue.



Volodymyr Igonin
counsel,
Vasil Kisil & Partners

UKRAINE STRIDES TOWARDS BETTER CORPORATE REGULATION

On March 23, Ukrainian Parliament has made great strides at making the corporate legal environment more effective and aligned with the best practice applied in international business practice. After successful voting in the Parliament the two long-awaited laws now await the President's signature to become effective.

The first is the Law "On Introducing Changes to Certain Legal Acts about Corporate Agreements" (draft No. 4470). This law allows participants and shareholders of Ukrainian limited liability companies and joint-stock companies to enjoy instruments of shareholders' agreements commonly used in international business practice.

Among such instruments there are contractual commitment to vote in a pre-agreed way, say, support candidates delegated by another shareholder to managing bodies, support decisions in certain areas of the company activity, etc.

The shareholders will also be allowed to arrange for a call and put options. These arrangements allow to agree on particular conditions and price for mandatory sale or purchase of the shareholder's stake in the company to another shareholder.

Consequences of change of partners in the business may be addressed by so-called drag-along and tag-along provisions. The first one obliges a minor partner to join a major partner who sells its stake. The second one makes a major partner to ensure a minor partner's right to sell its stake if the major partner exits from the company.

Experienced businessmen know how many nerves and money may so-called "dead locks" cost, when the shareholders' disagreement on certain issue blocks the entire company's activity. Now this situation may be effectively addressed in advance. This will also relieve courts of a part of corporate disputes.

Apart from the shareholders, creditors of the company may also act as parties to the shareholders' agreement to secure their rights. For instance, the shareholders and the creditors may agree that in the case of the company's default, the creditors may convert their debt to the shares in the company. The shareholders' agreement allows to set out the procedure for such swap in advance.

Why is a shareholders' agreement important? Firstly, it is a useful and market-proven solution to regulate the relationship between partners of a business which increases its efficiency and decreases conflicts. Secondly, it is an established tool in international business practice used in common law countries since XIX century. Unfortunately, in the absence of direct statutory provisions, courts in Ukraine were reluctant to enforce shareholders' agreements by now. The Law No. 4470 aims to make these legal tools and flexibility available in Ukraine either.

Another long-awaited change is the Law of Ukraine "On Introducing Changes to Certain Legal Acts for Increase of Corporate Governance in Joint-Stock Companies" (draft No. 2302a-d). It opens the squeeze-out and sell-out procedures to solve the issue of powerless minor shareholders in joint-stock companies. In the result of the mass privatization, many companies have thousands of shareholders with a few shares only. Under the statistics, around a thousand joint-stock companies have minor shareholders whose aggregate stake is less than 5%. In most cases, such shareholders cannot effectively enjoy their rights in the company, including the right to dividends. On the other hand, such companies overcrowded with shareholders cannot change into a less-regulated form.

The newly adopted Law No. 2302a-d allows the shareholders with 95% stake to buy out the shares from minor shareholders. The latter, in turn, receive the right to effectively sell their shares which often have no real value for them.

The two above laws, if the President will sign them, will substantially improve Ukrainian corporate legal environment. It will become more flexible, effective, and attractive for investment, including from abroad.



Vasil Kisil & Partners

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Ukrainian Bar Association president: Blame prosecutors for lack of justice

(Anastasia Vlasova)



Denys Bugay

Position: President of Ukrainian Bar Association
Key point: Law enforcement not delivering justice

By **Alyona Zhuk**
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Corrupt officials go unpunished not because of crafty defense lawyers, but because of an unreformed and poorly performing state prosecution service, Ukrainian Bar Association president and VB partners lawyer Denys Bugay says.

“Society wants justice, it wants inevitable punishment for people who have committed a crime, but the state doesn’t provide that,” Bugay told the Kyiv Post. “Our government institutions have a huge problem with professionalism. We won’t see the result unless we fill our prosecution, courts and police with professionals.”

Bugay describes justice as a triangle of courts, prosecution and defense. To ensure justice, all three parts have to work well. However, all three have issues to fix.

“There can’t be proper justice, when the rules inside the advocacy are not completely honest,” he said.

Bugay explained that attorneys delegate representatives to the High Qualification Commission of Judges of Ukraine and High Council of Justice, the bodies that oversee the courts.

However, the procedures through which these representatives are chosen are not always transparent and are open to manipulation. They have to be changed, Bugay says.

Meanwhile, the prosecution part of the triangle has a much longer way to go. In fact, reform of the state prosecution service has failed altogether, Bugay said.

For starters, salaries for prosecutors have to be increased significantly. Another step would be to form ruling bodies in prosecution, with appointments based on merit, he said.

“In the current prosecution, I mean during its last years, the career path of prosecutors and investigators has depended not on their successes, but on whether they are loyal to their superiors, and on how much money they are ready to invest in the job position,” Bugay said.

The press service of the Prosecutor General’s Office of Ukraine said in an emailed note that the agency’s leadership were doing everything

possible to reform it and bring it in line with the European standards, including “open and transparent” competitions for the job positions.

In terms of the courts, Bugay praised the direction of the current court reform, but said it needs to be accelerated. As an example of positive change, Bugay mentioned the reform of Ukraine’s Supreme Court.

“There is an ongoing transparent competition to form the reformed Supreme Court. Not only judges, but also attorneys and scientists of the law can take part in the competition,” Bugay said.

He said this reform will deliver a top-notch, corruption-free Supreme Court. Bugay said the Ukrainian Bar Association that he heads deserves credit for the Supreme Court reform.

Strong community

Bugay joined the association in 2003, one year after it was founded, when there were only 200 members. Since then, it has grown into a public organization with 6,000 members that hosts about 400 events per year, including forums, seminars and discussions.

“We have become an instrument for influencing civil society. We are able to influence the legal processes in the country,” Bugay said.

Many members have gone into government service or in government advisory bodies, he said, while others have become lawmakers. “So we can share our ideas, which will end up in draft laws and become laws,” he said.

Bugay became association president almost four years ago. His second two-year term expires this summer. Since there is a two-term limit, he cannot seek re-election. However, he will stay as a board member.

The Ukrainian Bar Association is a community based on values and principles, Bugay said, not on personalities.

The association also has ethical standards that its members must follow, and even an ethics commission that resolves disputes among attorneys and excludes members who violate standards.

These standards are in line with Ukrainian law: An attorney can’t break the law, abuse rights, lie in court or forge evidence. Those who violate the standards or break the law are expelled.

“A person becomes an outcast” if they violate legal or ethical principles, Bugay said. “In a developed country, exclusion from the professional community is the worst thing that can happen. It’s the end of your career.” ■

Ukrainian Bar Association

Motto: “The Strong Voice of Legal Profession of Ukraine”

The organization unites 6,000 lawyers, notaries, attorneys, judges, scholars in law and lawmakers. A student branch has another 1,000 members.

Established in 2002.

President: Denys Bugay, attorney, partner of VB PARTNERS

Association’s values: independence, openness, political neutrality, democracy, equality of members.

What association does: lobbies, builds relationships with government, participates in the lawmaking process, improves existing legislation, cooperates with other bar associations and societies; protects rights of members; monitors public authorities. Since 2006, the Ukrainian Bar Association has been a member of the International Bar Association.

Former presidents:

- Valentyn Zagariya, managing partner at Spenser & Kauffmann, former head of Qualification and Disciplinary Commission of Ukraine
- Sergei Konnov, senior partner at Konnov & Sozanovsky
- Igor Shevchenko, founder, attorney and ex-ecology minister

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Recently the Minister of Infrastructure of Ukraine Mr. Omelian held a press-conference where it was proudly announced that a new low cost airline Ryanair is set to launch its operations on the Ukrainian market.

Should the market anticipate problems from the entry of a new player?

Based on the announced flight network, the first flights are to be operated mostly to cities where other Ukrainian carriers already operate a large number of flights. Thus, it is inevitable that confrontations and traffic flow reallocations will take place.

Obviously, carriers which have invested financially into promoting these traffic routes will try to aggressively preserve their market share.

Every airport that provides services to new low cost carrier will have their own motivation programme for carriers. It is clear that they are somewhat different from the point of view of their ideology. For instance, the Boryspil International Airport encourages transfer carriage, unlike the LvivDanyloHalytskyi International Airport. These conditions are public and equally available to any airline intending to operate from the said cities. However, expecting the launch of Ryanair’s operations, the Lviv Airport has amended its motivation programme to better suit the new carrier. For instance, they introduced discounts for “new” companies which had not operated from the airport before and regulations to for discounts on new flights not applicable to the existing operators on the equal conditions.

Can a carrier have discounts only because it is deemed new or is a low cost carrier?

We believe that the traffic volume should be the main motivation programme criteria for both state-owned airports. The larger the traffic volume is, the more advantageous fares a carrier should have. This is the ideology of IATA and ICAO policies.

Any departures from market conditions can be deemed government aid and this may cause claims against airports and Ukraine.

We may also expect surprising commercial decisions. It appears that Ryanair initially planned to operate from the Kyiv International Airport (Zhuliany). But, the airport announced its refusal to cooperate with the low cost carrier just before the press-conference. We suspect that this decision was motivated in no small measure by its rival Wizz Air announcing it is to move from Zhuliany to Borispil. Will the Lviv Airport have to change the flight network either? It’s no secret that a number of flights operating to Lviv were of an image-building and social nature and probably it makes no sense to keep them.

It should be said, that the upcoming confrontation will affect not only Ukrainian carriers, but to a greater extent their foreign colleagues, such as Wizz Air, British Airways, KLM and Lufthansa.

Obviously, the aforesaid carriers have significant experience in dealing with anticompetitive behaviour, as well as more opportunities to defend their interests, ranging from the European Commission to the judiciary.

The European Union long ago defined the main principles of governmental aid to be given to airports and airlines. These principles are used as the basis for the current Ukraine–European Union Association Agreement and the Ukraine–European Union Single European Sky Agreement. The obligation to avoid discrimination is one of the core international obligations of Ukraine.

What should a regulator do to avoid the unnecessary escalation on an already unsteady Ukrainian aviation market?

First off, the discrimination of outside market players should be avoided to both airlines and airports. Pressure on state airport, non-transparent arrangements between the ministry and private carrier, public speaking of state officials – it’s not merely an aggressive promotion, these are clear signs of distortion of competition by the state. The biggest effect of the new low cost carrier entering the market is not about cannibalization of current traffic flows, but about generating new ones through newly formed traffic routes, cheap fares and new handling technologies. Secondly, it is long overdue that the government should reconsider the current airport charges system, which was established over 10 years ago under different economic conditions. And of course as expected by the market, it is highly probable that operations of low cost carriers will speed up the harmonization of the Ukrainian legislation along with the EU legislation.



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Lawyer seeks justice for murders of EuroMaidan Revolution protesters

(Kostyantyn Chernichkin)



Yevheniya Zakrevska

Position: Pro bono lawyer representing families of killed Euromaidan activists

Key point: Investigating EuroMaidan crimes is a historic chance for the nation

By **Olena Goncharova**
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Lawyer Yevheniya Zakrevska knows each of her 40 cases by heart. Most of them involve the murders of demonstrators during the EuroMaidan Revolution that forced ex-President Viktor Yanukovich to flee to Russia on Feb. 22, 2014.

For almost three years, Zakrevska has been representing the families who lost relatives in the revolution on a pro bono basis.

“They often motivate me the most,” Zakrevska explains during an interview with the Kyiv Post. For her clients, Zakrevska is a problem solver and their only hope that those responsible will be held to account.

EuroMaidan case

It all started three years ago, when Halyna Didych, who lost her husband on Feb. 18, 2014, got in touch with Zakrevska.

“I found out that she had some information regarding my husband’s death,” Didych explains in a phone interview with the Kyiv Post from the western Ukrainian city of Ivano-Frankivsk, where she lives. They have been communicating since then.

Zakrevska took on many more cases of the slain protesters, but the Didych case remains one of the most complicated ones.

Halyna Didych’s late husband, Serhiy Didych, was participating in the EuroMaidan Revolution when he was killed in a hit-and-run accident on Kriposny Lane in central Kyiv at the height of the protests.

The investigation found that fellow protester, Leonid Bibik, had been driving the car. He confessed but was not punished: In 2016, the court acquitted him based on a law that grants amnesty to EuroMaidan protesters. Zakrevska filed an appeal, which wasn’t yet been heard.

Before being killed in the hit-and-run, Didych was beaten up by Berkut riot police during their crackdown on Feb. 18, 2014. The case has made progress, but not much. One Berkut officer suspected of the beating was arrested on March 10, three years after the alleged assault took place. Another suspect,

Berkut unit commander Viktor Shapovalov, has been on trial for attacks on protesters since 2015. A third attacker was given a suspended sentence in 2016.

Didych is happy that she at least knows the names of those who attacked her husband. She gives Zakrevska full credit. "None of this would've been possible without Yevheniya," the woman says.

However, she has little hope that her husband's and other cases would lead to jail terms for those responsible. "We're just trying to document history," Didych says.

That's what Zakrevska has been doing for the last decade.

Dream job

Zakrevska started working as an attorney in 2008, but dreamed of being a lawyer since early childhood. She not only helps her clients -- her clients help her. They do so by investigating cases themselves, searching for witnesses and evidence on their own.

"It would be very difficult without them," Zakrevska says.

In the case of the murders of 47 protesters on Feb. 20, 2014, Zakrevska represents the families of 10 of them. This is the most successful EuroMaidan-related case: the court hearings are regular and more than 100 injured protesters have testified already. The court is taking just a couple of days to analyze each murder in this case.

"It's a pretty good pace," Zakrevska says.

Now the additional investigative experiment is pending, according to Zakrevska, as they want to check the area again where police opened fire on protesters with the video evidence the lawyers have.

Zakrevska says that the worst-investigated cases are the earliest killings of EuroMaidan protesters: the murders of Sergiy Nigoyan, Mykhailo Zhyznevsky, Roman Senyk and Yuriy Verbytsky, which took place on Jan. 22, 2014.

Many internal police documents and videos were destroyed, Zakrevska says.

Speed of the investigation is not always the most important aspect. Zakrevska recalls an example in Lithuania, where it took 23 years to investigate the events of 1991, when Soviet troops stormed a TV tower and the radio and TV headquarters in Vilnius, which led to the deaths of 14 civilians and injuries to about 1,000 people.

Zakrevska believes that Lithuanian authorities did the right thing by investigating the assaults as one case, while Ukraine is investigating the EuroMaidan attacks in a dozen separate cases. "It would be easier for everyone, especially for the injured people, to attend one hearing instead of dozens," Zakrevska explains.

But to follow Lithuania's example, some of Ukraine's laws first have to be fixed. One of those that needs to be changed is the law on trials in absentia. Its current version clashes with international law.

Another one is a law backed by the parliament in 2014 that made the changes to the country's criminal code. One of the amendments, Zakrevska explains, decriminalizes any abuse of power that didn't cause financial losses. "Many high-level officials managed to avoid being held to account for abuse of power thanks to this law," she said.

Nevertheless, she believes that investigating EuroMaidan crimes is a "historic chance" for the country.

"It will be either distorted or recorded in the public memory as a set of correct judgments," Zakrevska says, adding that Ukraine has to send as many cases as possible to Ukraine courts, before resorting to such venues as the International Criminal Court. ■

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Victor Moroz
Managing Partner,
SUPREMA LEX

PROTECTING AGAINST RAIDERS. SHARK REPELLENT.

In Ukraine, in the wake of the Maidan protests, there has been a new wave of raids connected to the change of authorities at all levels, and the ATO or anti-terrorist operation in the eastern region of Ukraine. What are these raids, and what can a business do to protect itself against a raid? We will try to give a general outline on what to do.

A raid is hostile enterprise takeover directed against its owners — majority shareholders or its CEO. One kind of raid is referred to as greenmail — a situation in which a large block of stocks is held by an unfriendly company, forcing the target company to repurchase the stock at a substantial premium to prevent a takeover.

Usually in a raid the seizure of assets is based on a formally lawful basis, but takes advantage of a legal loophole or a systemic weakness of state institutions' functionality (the system of courts and law enforcement, the system of legal entity registration, etc.) and the continued high level of corruption. Due to this formal legitimacy and fast change of owners connected to the raider, ensuring there are effective protections for a business can be quite difficult.

The main ways to conduct a raid are through charter capital, creditor indebtedness, the management body or disputing incorporation or privatization results.

Raids through the charter capital are possible if it is dispersed or is under insufficient control of the business owners. This type of raid is executed through the purchase of a company's shares and can be detected by a stock tender offer.

A second popular way is to take over a business due through creditor indebtedness. Buying up a business's defaulted debts and raising demands for the payment such debts can be a cause for bankruptcy of a company, which then has to be settled by an insolvency officer, who can be working in coordination with the raiders.

Another weak point of a company can be its management, which can sign a property over to a company controlled by the raiders.

Incidentally, in 2017 the Ukrainian government has created even more instruments that could be used to carry out effective raids through the mechanisms of State Labor Service of Ukraine, which now has almost unrestricted authority and can impose quite large fines.

Protection measures against raids are called shark repellent. Depending on the type of raid, the key focus of an anti-raiding protection strategy has to be focused on:

- business control strategy;
- regular checks on business incorporation papers and contacts with registrars;
- transparency of business ownership and adequate capitalization of business;
- bringing HR documentation in line with legal requirements;
- monitoring of correspondence.

Certainly, to ensure effective protection against raids, effective cooperation with lawyers, insolvency officers, HR-managers, accountants and security staff has to be organized.

Ukrainian legislation is insufficient to provide effective protections against raids and requires refining, but there are adequate measures that can be used to prevent a hostile takeover.

Unfortunately, the Criminal Code of Ukraine does not include effective provisions to punish raiders, and the procedures of criminal prosecution are not fast enough to block the raiders' activities.

When protecting the businesses of our clients against raid, our law firm prefers to use a full range of legal instruments — court defense, criminal prosecution and administrative instruments (i.e. Business Ombudsman Council).

The strategy of using a wide range of legal actions allow us to achieve an effective defense of clients' interests, and the most beneficial result for them.

But the most effective defense against raiding activities can be achieved only if there is full cooperation between business and lawyers who can monitor business activities, and can help to identify possible problems or unfriendly actions like a raid.

Until the Ukrainian authorities are able to overcome such negative factors as corruption, economic crisis, and raiding of businesses, the only possible effective protection for business is good cooperation between investors and lawyers who can act quickly, providing the best quality services to provide a full range of protections against any type of hostile takeover.



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Ab omni iudicio provocari licet

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Vlasiuk twin brothers work in IT law, but prefer criminal justice issues

(Kostyantyn Chernichkin)



Vladyslav and Vitalii Vlasiuk

Position: Twin private lawyers
Key Point: Pay full taxes, don't violate intellectual property, help government

By **Denys Krasnikov**
krasnikov@kyivopost.com

Vitalii Vlasiuk, 28, says he's a man who practices what he preaches. He claims he's never downloaded or streamed anything from pirate websites. This would violate intellectual property rights, his area of legal expertise.

"My conscience is clear," says Vitalii, opening a wardrobe full of DVD discs in the office he shares with his twin brother, Vladyslav, in Kyiv. Here, in a small, messy room strewn with ties and jackets, they run a law firm called ePravo.

The brothers Vlasiuk are both men of law. Apart from graduating from Kyiv National University, Vladyslav studied in London's Queen Mary University, while Vitalii got his doctorate in Kyiv.

However, the Vlasiuks are not just monetizing their knowledge: Alongside running a small seven-staff business with turnover around \$200,000 a year, they've been serving the public pro bono.

Vladyslav, for example, was a co-author of the popular National Police reform bill. He rose through patrol police ranks to become chief of staff of the National Police, but quit in March 2016. He says he was "exhausted" by the pushback against change.

"I'm proud I've managed to bring many good people with right value," Vladyslav says. "It's a rare opportunity at such a young age."

The brothers now have a running joke that Vladyslav has worked in two startups in his life – ePravo and the National Police of Ukraine.

In the meantime, Vitalii was working for Ukraine's Justice Ministry, where, he says, he witnessed all the layers of bureaucracy and idleness of some of his former colleagues.

"Now I separate civil servants into two categories: those who work constantly, and those who don't give a damn about their jobs. They just don't give a damn," Vitalii says, with disappointment. He says some ex-colleagues in the ministry would work on just one document and then watch TV the rest of the working day.

He goes quiet for a while.

“We rule our country – not Martians,” he says eventually. He says Ukrainians by nature tend to rely on other people, and expect the government to look after them.

“That’s the result of the failed experiment called the Soviet Union.”

Having worked as civil servants, the twins say they realized that in order to bring about change, one has to start with oneself.

“The government does not work as it should, but people need to make the breakthrough. People need to change,” Vitalii says. “Deputies steal, but we elected them. The current state of Ukraine, our current authorities – it’s a mirror that reflects us.”

The twins’ work in the Justice Ministry and National Police is long over.

Now Vladyslav is in the process of setting up a nongovernmental organization called LEAD to provide legal assistance to officers.

“I share my opinions and give tips, and it seems authorities even listen to me,” Vladyslav jokes, adding that he and reformist lawmaker of the Bloc of Petro Poroshenko, Mustafa Nanyem, are aiming to build a public organization out of LEAD “to build a bridge between law enforcement and the public.”

His brother Vitalii, in turn, lectures at the National Prosecution Academy of Ukraine.

“We’d like to continue to work for the government in the future. For us this is more interesting than pure business,” says Vitalii.

While the Vlasiums run their public initiatives separately, they share most other things: family, friends, a passion for jurisprudence and their ePravo business.

The brothers launched the company in 2012 to jump on the information technology bandwagon, despite their preference for criminal law.

According to the brothers, the Ukrainian tech business is more open to change and not as rigid as other sectors, such as agriculture. There, most of the big firms became the clients of established law firms long ago, and new market players don’t pop up as fast as they do in the IT industry.

The brothers compare the tech industry with a boiling cauldron, and other spheres to dead water. IT is now ubiquitous, and new law is being written for it all the time.

“IT penetrates everything,” Vladyslav says. “It’s interesting how it bonds seemingly absolutely different things and spheres.”

Most of the company’s time is spent with tech startups. The Vlasiums help them to protect their intellectual property,

set up corporate structures, choose the way they pay taxes and conduct money transactions.

But like any business in Ukraine, the brothers say, the IT business isn’t always honest: some use offshore companies to conduct money transactions, others register their employees as entrepreneurs, which gives them “a legal but illegitimate right” to pay 5 percent in taxes instead of 40 percent.

IT companies often blame the government for not supporting smaller business, but at the same time, they mostly register their employees as freelancers.

“That’s a loophole,” Vitalii said. “EPravo pays the whole 40 percent. Is it fair?”

Active supporters of a progressive tax system, the brothers think it’s vital in Ukraine for all firms registered in Ukraine, IT ones included, to pay taxes in full.

In spite of this position, however, the brothers consult on the use of offshores, advising some of their clients to move some of the processes or services overseas to ease money transactions or pay less in taxes.

“It is difficult to get the money out of Ukraine even if you’ve earned it honestly,” Vitalii says. “And not everyone wants to work with Ukraine directly, taking us for a third world country.”

But while the brothers have strong opinions about many business issues, they say a good lawyer should never tell a client what to do – only advise.

“Lawyers should clearly explain all possible options, and then let their client choose.” ■













Vitalii Vlasium says he doesn’t watch pirated movies, because it violates intellectual property rights. He always used to buy DVDs, which are now stored in a wardrobe in his office. Vlasium claims he embraced Netflix as it entered Ukraine in January 2016.







LEGAL SERVICES









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				ALEKSANDR PEREMEZHKO & PARTNERS attorneys at law & consultants		
+38 044 364 3777	Aleksandr Peremezhko	Kyiv, Ukraine	2010	Litigation & Arbitration; Tax and Customs; Corporate and M&A; Competition and Anti-monopoly; Media and Communication; Intellectual Property; White Collar Defense	Bershka Ukraine, Sharp Electronics Ukraine, Lego Ukraine, B&H, UFD, LeDoyen Studio, Ciklum Ukraine, AstraZeneca, Panama Grand Prix, Metinvest, Oysho Ukraine	English, German, Polish, Russian, Ukrainian
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				ALLIANCE RATUSHNYAK & PARTNERS international law & tax professionals		
+38 044 227 1681 +38 044 227 1682	Volodymyr Ratushnyak	Kyiv, Ukraine	2005	Transport & Logistics; Tax law; Labor Law; Foreign Trade; Insurance; Litigation; Corporate; Construction & engineering	DHL International Ukraine, Bruker Optiks Ukraine, JSC Altsest, Raben Ukraine, BT Ukraine, Prushynsky, Bikor	English, Russian, Ukrainian
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+38 044 277 2300	Andriy Guck, Kateryna Ishchenko	Kyiv, Ukraine		Litigation; Corporate; White collar; Transport & Infrastructure; Aviation; Energy & Natural resources; Employment; IP; Tax & Customs; Pharmaceuticals	Emirates, Lufthansa, Austrian, British Airways, Zdravo	English, Turkish, Russian, Ukrainian
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+38 044 390 55 33	Timur Bondaryev, Managing Partner	Kyiv, Ukraine	2002	Antitrust & Competition, Corporate and M&A, Banking and Finance, Real Estate & Construction, Domestic & International Litigation and Arbitration	ADM Ukraine, Deutsche Bank AG, EBRD, IKEA, Leroy Merlin, OTP Bank, Porsche Holding, Puratos, Raiffeisen Bank Aval, Sandoz, Sineat, Softline, Turkcell, UkrSibbank, UniCredit Bank, Venbest	Russian, Ukrainian, English, German
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+38 044 230 6000	Oleksiy Didkovskiy, Armen Khachatryan		1995	Full-Service Law Firm	L'Oreal, Coca Cola, Nissan Motor Ukraine, S.C. Johnson, EBRD, IFC	English, Russian, Ukrainian
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+38 044 591 33 55	Mykola Stetsenko, Managing Partner; Glib Bondar, Senior Partner; Dmytro Marchukov, Partner	Kyiv, Ukraine		Finance, Corporate/M&A, Dispute Resolution, Restructuring, Tax, Competition, Capital Markets, Employment, Real Estate, Energy and Infrastructure Projects	AGCO, Allergan Inc., Altran, Boehringer Ingelheim GmbH, CPPIB, CNBM, EBRD, Ferrexpo, ING Bank, Kernel, MHP, Ministry of Finance of Ukraine, Raiffeisen Bank International AG, UDP, UniCredit Group	Ukrainian, Russian, English
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38 044 578 2337	Denys Beregovyi, Dmytro Gadomsky, Bogdan Duchak, Nazar Polyvka	Kyiv, Lviv Ukraine	2016	Information technology	BlaBlaCar, ProZorro, Innovecs, Stanfy, TripMyDream, 908.vc, Datas/Egar, Kuna Bitcoin Agency, Clicky, VertaMedia, DOU, Grossum, Yalantis, rabota.ua, VDNH-TECh, Wishround, MLSDev, Rialto, GetSocial, ImageX, Ecoisme	Russian, Ukrainian, English
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B.C. Toms & Co 18/1 Prorizna St., Suite 1, Kyiv 01001, Ukraine; kyiv@bctoms.net www.bctoms.net <div style="float: right; border: 1px solid black; padding: 2px;"> B.C. TOMS & CO LAW OFFICES <i>Kyiv - Lviv - London</i> </div>						
+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
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+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', Izdrom, Valeriy Gromov Jewellery, SE3, KaTimo	Russian, Ukrainian, English, Arabic
CMS Cameron McKenna LLC 38 Volodymyrska St., 6th floor, Kyiv 01030, Ukraine; KyivOffice@cms-cmck.com cms.law, cms-lawnow.com <div style="float: right; text-align: right;">  </div>						
+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
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+38 044 537 0910	Oleg Bondar	Kyiv, Ukraine	1998	Corporate & M&A, Antimonopoly & Competition, Dispute Resolution, Air Law and Transportation, 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 <div style="float: right; text-align: right;">  </div>						
+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, Czech
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+38 044 235 0444	Vitalii Vlasiuk, Vlad Vlasiuk	Kyiv, Ukraine	2012	IT: E-commerce, SaaS, Tech; Startups; Intellectual Property; Corporate&Litigation; International Tax; Criminal	Alta, Astrafit, Hedi Group, Hideez, Khimfarminvest, MMI Group, MyDutyFree	English, Russian, Spanish, Ukrainian, German
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+38 044 490 7001	Andrey Astapov, Oleh Malskyi, Oleh Beketov, Eugene Blinov, Oksana Kneychuk, Maksym Uslystyj, Yevgeniy Lukashuk	Kyiv, Ukraine	2002	Dispute resolution, corporate, M&A, tax, international finance, compliance, regulatory enforcement, IP, insolvency, construction, real estate acquisitions, oil and gas	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
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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; Ukrrichflot PJSC; TNK-BP Commerce, LLC; Plastics-Ukraine, LLC; Kyivstar, JSC; Consulate General of Poland in Lviv	Ukrainian, English, Poland, Russian

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FCLEX Law Firm						
14D Bekhterivsky Lane, Kyiv 04053, Ukraine; info@fclex.ua www.fclex.com						
+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, Ferrexpo AG, National Bank of Ukraine, Ukrainian Business Group, Vernum Bank, AIS Group, Concorde Capital, NEST Corp., Arterium Corp., Crystal Bank, AutoKraz, Helen Marlen Group and others	English, Russian, Ukrainian
GOLAW Law Firm						
19B Instytutaska St., office 29, Kyiv 01021, Ukraine; info@golaw.ua www.golaw.ua						
+38 044 581 1220	Valentyn Gvozdiy, Sergiy Oberkovich	Kyiv, Ukraine	2003	Litigation, Taxation, Corporate, Business Restructuring, Dispute Resolution, White Collar Crimes, Agribusiness, Energy, Family Business, Compliance	CEB, EGAP, BNP Paribas, Marks&Spenser, GAP, Red Bull, Zara, Stradivarius, Bershka, Donegal, Syngenta, JTI, Reckitt Benckiser, Azelis, OMYA, Printec, Aviareps, Amazone, Mercator Medical, Cargill, Expobank, Oriflame.	Russian, Ukrainian, English, German
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
Law Firm GORO legal						
72 Velyka Vasylkivska St., office 21, 13th floor, Kyiv 03150, Ukraine; info@goro.in.ua www.goro.ua						
+38 044 383 1857 +38 050 436 0077	Goroshynskiy Oleksandr, Ovsyij Dmytro, Kornev Igor	Kyiv, Ukraine	2010	Litigation and legal practice; Land, construction, real estate; Business support; Intellectual property	SOCAR Ukraine, KyivObiEnergo, Kyivgorstroy, Kyivpastrans, MCDonalds, Riverside Development, ATB-Market, Apollo Group, A+S Ukraine, Stolitsa Group, Altis Development, lun.ua, igitalaxy.ua, TERRA project, Fitocom	English, Russian, Ukrainian
GP Advisors						
143/2 Velyka Vasylkivska St., 5 floor, office 16, Kyiv 03150, Ukraine; office@gpa.ua www.gpa.ua						
+38 044 585 3801	Anatolij Gasyuk	Kyiv, Ukraine	2008	Full legal support for international companies/NGO: registration, legal advice on tax, labour and migration issues, accounting outsourcing and HR support. Trademarks. Business registration in Poland	Benetton, Horizon Capital, Nuscience Cehave Korm, METRO, WNISEF, MercyCorps, Patriot Defence, World Congress of Ukrainians.	Russian, Ukrainian, English, Polish
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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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+38 044 227 9212	Helen Lynnyk, Igor Lynnyk	Kyiv, Ukraine	2016	Corporate/M&A, Banking&Finance, Tax, Compliance, Due Diligence, Forensics, 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, Furshtet, Eco-Market, Atoll Holding, Karbon Invest, AIS Group, Astelit, Federation of Trade Unions of Ukraine.	English, Russian, Ukrainian
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4, Volodymyrska St., 3 floor, Kyiv, 01001, Ukraine; bbarrier@jeantet.org www.jeantet.fr						
+38 044 206 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

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
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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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+38 044 490 7197	Alexander Minin, Maxim Oleksiyuk, Alexander Shemiakin, 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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+38 044 228 2552	Koval Maxim, Koval Natalia	Kyiv, Ukraine	2003	Trademarks; Patents; Designs; Copyrights; IT law and domain name disputes; Licencing and Franchising; Customs and Border Enforcement; Anti-counterfeiting and anti-piracy operations	Naspers, Philipp Plein, ForexClub, Efes, SCM, Stoller, Teddy Mountain, Alpha Industries, Eyyap, Coral travel, TicketForEvent	English, Russian, Ukrainian
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+38 044 253 5939	Yuri Kushnir	Kyiv, Ukraine	2003	Banking & Finance; Corporate; Energy; Investments; IT; Labour; Litigation; Real Estate; Tax; Trade Law	3M, General Electric, Ecolab, Johnson & Johnson, UNIQA, LG Electronics, Emfi, Agroprosperis (NCH), Leimholzprofi, National Oilwell Varco, Sibelco, Araj, Voxel, Medfarcom, Television Industry Committee, Space IT	English, Polish, Russian, Ukrainian
LCF Law Group 47 Volodymyrska St., office 3, Kyiv 01001, Ukraine; info@lcf.ua www.lcf.ua 						
+38 044 455 8887	Anna Ogrenchuk Artem Stoyanov	Kyiv, Ukraine	2009	Dispute Resolution; Banking & Finance; Corporate & Business Law; Bankruptcy & Restructuring; Contentious Tax; Employment; Family Law; IP Law; Real Estate; Regulatory & Compliance	Agro Holding MRIYA, Allianz Ukraine, AVK Confectionery Company, Alfa Bank, Bank of Cyprus, Bunge Ukraine, Carpathy petroleum, Danube Shipping-Stevedoring Company, Golden Derrick, Kievguma, Oschadbank, OTP Bank, S.I. Group Consort, TAS Group, Ukrenegy Coal Ltd, Ukrsofsbank, Universal Bank, Vikoil, YURIA-PHARM	English, German, French, Russian, Ukrainian
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+38 044 232 2904	Volodymyr Vorobiov; Artem Atepalykhin	Kyiv, Ukraine	2016	Banking & finance, Corporate and M&A, Intellectual property, International trade, Information technologies	K-Prime investments, POSH, DataRoot, PEOPLE IN, Premier Event Group, UMBUM	Russian, Ukrainian, English
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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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+38 044 227 0514	Artur Megeria, Mykola Kovalchuk	Kyiv, Ukraine	2008	Banking and Finance, Banruptcy, Dispute Resolution, International arbitration, Criminal law	OTP Bank, UkrSibbank, VTB Bank, Sberbank Russia, UniCredit Bank, Piraeus Bank, VS Bank	Russian, Ukrainian, English, German

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+38 044 220 0711	Oleksandr Aleksyeyenko Borys Danevych Oleh Marchenko	Kyiv, Ukraine	2013	Antitrust & Competition; International Arbitration; Investor-State Disputes; IP; Life Sciences; Litigation	AAK, AbbVie, Baxalta (now Shire), Centraviv, Deutsche Trustee Company, EBRD, Eli Lilly, H&M, Hilton, Home Group, Johnson & Johnson, LafargeHolcim, Lufthansa, Novo Nordisk, PPD, Sanofi, Verizon	English, Russian, Ukrainian
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+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
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+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, Concessions & Infrastructure; Real Estate & Construction; Taxation	WND	English, German, Swedish, Russian, Ukrainian
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+38 044 581 16 33	Denys Bugay, Volodymyr Vashchenko	Kyiv, Ukraine	2005	Dispute Resolution, White Collar Crime, Investments, Tax	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

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War-displaced Ukrainians turn to lawyer for help in solving problems



Artem Fomenko

Position: Private lawyer

Key point: Helping displaced people assert their rights

By **Natalie Vikhrov**
natalie.vikhrov@gmail.com

Halfway through 2016, Artem Fomenko lost count of the number of cases he'd handled for internally displaced people.

It had been less than a year after he had left his government job as a social worker to join the Ukrainian charity foundation Gorenje, where he offers free legal aid to IDPs.

While still at his government job, he started working with internally displaced persons shortly after Russian-backed forces seized control of parts of Ukraine's Donetsk and Luhansk oblasts.

The 27-year-old had logged plenty of volunteer hours too. Helping IDPs find housing and employment was in all in a day's work.

"Like all citizens, I helped how I could. Then I wanted to do more. I started looking for opportunities," he said.

That's what finally led him to work full-time at Gorenje.

Some 1.7 million IDPs are registered in Ukraine – although it is widely recognized that the figure is inflated, with scores of pensioners claiming IDP status after the Ukrainian government began withholding payments to those living outside Ukrainian-controlled areas.

Gorenje has two branches, in Pavlograd and Dnipro, some 390 kilometers southeast of Kyiv, and its proximity to Donetsk means the charity is flooded with calls for help.

The Dnipro-based lawyer receives more than 20 phone calls a day from people seeking help with problems, ranging from suspended social benefits to unfair dismissal and reinstatement of documents.

Some cases lead to lawsuits and some days stand out more than others.

Russian news

A few months into the job, Fomenko was approached by the director of a boarding school in Zaporizhzhya.

A 15-year-old girl with little more than a

birth certificate had fled her home in Makiyivka, an industrial city in Donetsk Oblast, and was seeking refuge at the school.

Subjected to Russian propaganda from her family and her classmates, the teenager told Fomenko she could no longer tolerate it.

"Her mother would sit them in front of the television from six to eight every night to watch Russian news and then go to bed. She said her brain was exploding," he said. "The neighbors hinted that they were leaving for government-controlled territory, so one night she climbed through her window, jumped in their car and left for Zaporizhzhya."

Back then IDPs were registered only through their passports while children were registered in their parents' IDP certificates. Fomenko's client had neither.

There was no procedure for this kind of situation at the time either.

"Officially, there wasn't even money to feed her. She was fed thanks to volunteers and the director, out of their own pockets," he said.

Fomenko believes the authorities turned a blind eye to her presence while they explored various options, including emancipation from parental guardianship, to grant her the status of an IDP.

Then in late 2015 and early 2016 the Ukrainian government passed a series of changes, which included expanding its list of identification documents accepted for IDP recognition as well as departmental powers to register unaccompanied children.

Legal changes

Fomenko's workload comes in waves.

"Even the smallest changes can cause an increase of inquiries," he said.

There is no shortage of work.

In 2016, the government made several amendments to legislation directed at internally displaced persons.

Fomenko helped push for some of those – including the simplification of the IDP registration procedure, which no longer requires certificate renewal every six months.

Other changes, less favored by human rights groups, saw the government designate state-owned Oschadbank as the gatekeeper for social benefits and pensions. The bank was also granted further powers by the Cabinet of Ministers to suspend payments to pensioners who failed to attend regular physical identification checks.

It forms part of the government's plan to cut down on "pension tourism" in which people living in Kremlin-controlled areas try to claim benefits from the Ukrainian state.

But Fomenko said this has led to unmanageable crowds flooding bank branches.

Human rights groups reported that a 64-year-old man on March 15 died waiting to pass physical identification in a line of 100 or so people of a Severodonest branch of Oschadbank.

Fomenko believes pensions should be distributed regardless of a person's location.

And he says the government needs to understand many people are simply unable to cross into government-controlled territory.

"Some of them are chronically ill, some are disabled... some are looking after such people, others have small children and were simply too scared to cross," he said. "These people, for two-and-a-half years, have been hostages of the situation." ■



Denys Bugay
*attorney-at-law, partner,
head of White-Collar
crime practice in
VB PARTNERS law firm*

UNDERSTANDING INTERPOL IN ORDER TO COOPERATE BETTER

In recent times, one of the most important areas of international cooperation for Ukraine is Interpol, in particular - its search database. Now 1,763 persons out of 10,000 are wanted by Interpol at the request of Ukraine.

How does this search base function and whether it is possible to remove a notice of international search?

The Interpol's management bodies are the General Assembly and its Executive Committee, and the General Secretariat. The General Secretariat is the actual management body, which makes key decisions.

A special place is taken by an independent body - Commission for the Control of Interpol's Files (hereinafter – the "Commission"). Its function consists in supervising over compliance with the rules processing data in the Interpol's base.

The Interpol's search database means the scope of all data about the wanted objects / subjects, depending on the purpose of search:

- **Red notice** means a search of the convicted or accused to extradite;
- **Yellow one** means the retrieval of missing persons;
- **Blue** means the need to collect information about a person in the interests of investigation;
- **Orange** means possible danger to health and property of person;
- **Green** means potential and repeated offenders;
- **Purple** means the instruments of crime or criminal schemes;
- **Black** means unidentified bodies.

It is important to remember that the process of notice publication is not automatic, a request should go through several stages of checking by the National Bureau and General Secretariat. For example, Interpol has recently rejected the Russian Federation's request to place the "red notice" of V. Muzhenko.

Meanwhile, there is a procedure of "preliminary appeal" against the decision on publication in search as was used by Alexander Onishchenko. This procedure provides for considering by the Commission the complaint about illegality of search of person before publishing the "red notice".

In practice, the most common reasons to reject placement of the "red notice" or its removal are:

- Expiration of sanctions, amnesty, etc. For example, as the Head of Ukrainian Bureau has recently stated, tracing requests will be canceled, if information about termination of criminal proceedings against Yu. Ivanyushchenko is confirmed.
- Political motives of persecution (this ground is being actively used by the defenders of Viktor Yanukovich, V. Zakharchenko, Klyuiev brothers, S. Arbutov, A. Klimenko, S. Kurchenko and other);
- This cause is a strong argument both at the stage of publishing the data about person (as an example – the "red notice" in view of I. Kolomoisky), and at the stage of appeal against the already published notices of search (in particular, D. Yarosh).
- On the other hand, the Commission found no political component in the search of E. Stavitsky.
- Commercial motives of persecution - criminal prosecution of a person aimed at taking possession of his/her assets (case of Jordanian businessman F. Almhairat).
- Risk of violations of human rights - freedom of speech, right to a fair trial, prohibition of torture, etc.
- Purpose of "notice" placement was reached - location of a person was identified, the person in question was seized or extradited. For example, today we do not see the "red notice" of Yurii Kolobov, H. Guta, B. Timonkin.

The person, information about him/her is in the Interpol database, (his/her representative) has a right to apply to the Commission for correcting or deleting the information.

It should be noted that the Commission's meetings are held rarely. Since 2017, the number of the Commission's members has been increased from 5 to 7, and the number of meetings has been increased from 4 to 6, which, however, cannot significantly accelerate the consideration of thousands of complaints.

Therefore, Interpol is the structure, cooperation with which may bring many advantages to Ukraine. At the same time, the key of efficient interaction should become the proactive work of Ukrainian law enforcers.



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Lawyer for digital age sees ways for technology to transform profession

(Volodymyr Petrov)



Artem Afyan

Name: Position: co-founder and managing partner at Juscutum
Key Point: The legal profession needs to use technology to make itself more 'user-friendly'

By **Rahim Rahtemulla**
r.rahtemulla1@gmail.com

When Artem Afyan was in seventh grade, he already knew he wanted to be a lawyer. He'd had a brief flirtation with becoming a game developer, but that soon passed. The law was his calling.

Fast forward two decades, and the 32-year-old has found a way to combine the two professions. Juscutum, the law firm he co-founded at the age of 24 and where he is a managing partner, is in the process of developing a computer game that teaches players how to react if their homes or offices are searched by police.

The game is more than just a chance to have some fun. It addresses a serious problem today in Ukraine: Abuse of power by law enforcement agencies.

"It's one of our leading practices," he told the Kyiv Post. "We focus on protecting businesses from the government and from police harassment."

Corrupt schemes

A typical scenario involves authorities groundlessly confiscating a firm's computers and then demanding payment in exchange for their return. Juscutum has defended clients who have come up against this problem and is working pro bono with the government to draft legislation that would make it harder for police to carry out such corrupt schemes. Afyan believes such work is an essential part of being a lawyer.

"We're trying to do our best to make society better," he stated. "That's what I think this profession is about. You can't get very rich as a lawyer. The only reason to work in this field is because you have a chance to change the surrounding nation."

Afyan has seen how graft inside the Ukrainian justice system has damaged the image of lawyers. He says legal professionals are sometimes disparagingly referred to as "luggage carriers" because of the belief that their main function is to offer bribes to judges on behalf of clients.

"This system is somehow alive and that

means that some lawyers are involved,” he said. “I don’t know the numbers, but it doesn’t matter how many, because a corrupted part corrupts the whole system.”

Using technology

Afyan hopes his firm can improve lawyers’ standing in society. Chiefly, it is trying to do this by making greater use of technology.

This includes the development of a smartphone app, already now available for download, which functions like a hotline. At the tap of a button the app sends a signal to Juscutum with the user’s location, and a lawyer is dispatched to provide assistance.

Afyan says he set out to be so heavily involved in technology at the start, but it turned out to be the best way to affect change.

“We came to this not because we specifically wanted to be involved in ‘legal tech’ but because we told ourselves that we won’t give bribes, we won’t steal from the state budget, and we won’t take part in corporate raiding,” he told the Kiyv Post. “We just wanted to find our own way to develop our business and change the market. Technology seemed to be the only way left to be competitive.”

Juscutum’s involvement with the digital sphere is not limited to in-house innovations. It also provides legal services to the IT sector. Past cases it has advised on include that of a developer who wanted to release a smartphone app about growing cannabis on the U.S. market.

The firm has also worked with governments to help them understand the benefits of blockchain, the platform behind Bitcoin. In 2013, Juscutum became the first legal practice in Ukraine to accept the digital currency as payment.

“All these IT issues will soon cover the whole of society and you won’t even notice,” Afyan said. “It’s already hard to remember the moment when smartphones became an ordinary thing. The same thing should happen with these technologies. Blockchain, for example, can solve lots of problems. Maybe it will bring new ones, but we’ll solve them.”

Lawyers in space?

Engagement with technology is only one aspect of a grander plan. He hopes lawyers – at least the ones at his firm – will come to be thought of not just as consultants but as “social engineers” who “advise you on how you should establish your relationships in society.”

The 32-year-old says the motivation behind the vision came when he heard SpaceX chief executive Elon Musk announce plans to build shuttles that could take hundreds of people to Mars sometime around 2030. He realized then that if the legal profession fails to cultivate a wider appeal now, it is at risk of becoming obsolete.

“We understand that there will be no place for lawyers on space flights,” said Afyan. “Nobody will want to take a lawyer with them. That’s why we feel this profession needs to change.” ■



Teenagers play with their smartphones on Kyiv’s Independence Square. According to Artem Afyan, a managing partner at law firm Juscutum, the legal profession needs to become more “user-friendly” through technology. Juscutum has developed and released its own smartphone app which allows users to summon a lawyer to their location at the touch of a button. (Volodymyr Petrov)

Lawyer tries to recover money for customers swindled by their banks

(Ukrinform)



Rostyslav Kravets

Position: Private lawyer

Key point: Pressuring the government over clients who lost money in banks

By **Josh Kovensky**
kovensky@kyivpost.com

Rostyslav Kravets no longer trusts bankers. “I used to look at them with great reverence,” he says.

Now, after years of experience in the Ukrainian banking system, he represents depositors defrauded by bankers. And in a country where unregulated insider lending among bank owners is the norm, Kravets has no shortage of cases.

“After all these court cases and from interacting with them, it seems like the words ‘fraudster’ and ‘banker’ have become synonymous,” he said.

Kravets is one of many lawyers in Kyiv who have made a career out of rampant fraud in the country’s banking sector, which could end up costing taxpayers \$20 billion in losses. So far, nobody has been convicted of bank fraud, even as the National Bank of Ukraine has declared half of the nation’s 180 banks as insolvent.

Kravets and other lawyers have filed lawsuits against the Deposit Guarantee Fund. The aim is to force the institution into paying people who lost their money in fraudulent schemes operating under bank cover. More controversially, he also represented the former CEO of Bank Mikhailivsky, Igor Doroshenko, before ending the contract after his client attempted to flee in January.

The cases have put pressure on the government. A round of court cases and public protests over Bank Mikhailivsky, for example, forced President Petro Poroshenko into signing a law in November that made the bank’s former depositors eligible to receive DGF payouts even though the Mikhailivsky fraud funneled clients’ money outside of the insured portion of the bank.

Located in an office building down the street from the country’s Deposit Guarantee Fund, Kravets has assembled a white collar law firm since the 2008 global financial crisis, when he got his start.

Called Kravets & Partners, the group focuses on filing civil lawsuits on behalf of people

who claim to have been defrauded by Ukraine's banks.

"I was at a bank last week that was still working, and it was like I'd come to speak with a walking corpse," Kravets said. "They say that they'd develop some sort of program, but I can tell that even the bankers don't believe what they're saying."

Kravets talks publicly about legal issues involving banking, but doesn't take part in protests by defrauded depositors. But the Kyiv attorney has no problem leveling scandalous accusations against National Bank of Ukraine Governor Valeria Gontareva.

"We've filed tons of cases against Gontareva," Kravets told the Kyiv Post. "All of Gontareva's actions are directed towards the destruction of Ukrainian banks." At the same time, he conceded: "There's no one better to replace her, that's the problem."

Protest attorney

Kravets is not the only lawyer trying to recover money for depositors who have lost their uninsured money in banks — there's plenty of people like this in Ukraine.

The depositors themselves also share part of the blame, with many placing their savings in banks that offered astronomical annual interest rates of 40 percent.

Arsen Marinushkin, a Kyiv lawyer fond of wearing pin-striped suit, practices in an office off Khreshchatyk Street. He got involved after losing money in VAB bank.

"If you don't take any notice of us, then we promise you a third, 'financial Maidan,'" Marinushkin was quoted as saying at a 2014 protest over the bank's collapse. Since then, he has represented clients in civil cases against banks and the government, including Bank Mikhailivsky depositors.

Political ends?

Both Marinushkin and Kravets have crossed paths with political forces that have much to lose from the central bank's cleanup of the sector.

News website Ukrainska Pravda associated Kravets with ex-Justice Minister Andrey Portnov, who worked in the era of ex-Ukrainian President Viktor Yanukovich, driven from power on Feb. 22, 2014 by the EuroMaidan Revolution.

He was reportedly part of a group of lawyers that Svoboda member of parliament Andrey Ilenko had called for police to disperse, saying they were former Portnov associates.

When Kravets met with the Kyiv Post, he had a red pamphlet in his office accusing Gontareva of corruption. The pamphlet was produced and released by Donbas businessman and member of parliament Sergiy Taruta at an International Monetary Fund meeting in Washington, D.C., in October.

The pamphlet was seen by many in Kyiv as part of a campaign by billionaire oligarch Ihor Kolomoisky to discredit the NBU to prevent it from nationalizing his PrivatBank.

Kravets says that most of his clients are defrauded depositors, and that he took the pamphlet from some of



Taruta's people who visited his office. But he says he doesn't work with Taruta.

One week after the Taruta pamphlet was released, Bank Mikhailivsky protesters staged a massive action that shut down the center of Kyiv.

"I sympathize with them, but I don't organize protests," Marinushkin said. "If you look at it, other banks like Forum and VAB had much better-organized protest campaigns."

Regardless of whether they will have success in recovering lost money, these lawyers are making their name by criticizing central bank policies they say hurt Ukrainian nationalism.

Kravets faults the NBU for turning for giving state-owned and foreign banks majority control of Ukraine's

Defrauded depositors from Bank Mikhailivsky protest outside of the Ukrainian parliament on Feb. 7. Arsen Marinushkin, a Kyiv lawyer, has represented the group in court.
(Anastasia Vlasova)

Swindled depositors are finding it difficult to recover their uninsured losses after an epic banking scandal that will end up costing Ukrainian taxpayers some \$20 billion.

banking system. With the nationalization of PrivatBank, state-owned banks now account for nearly 52 percent of the sector. Assets held in Ukrainian banks account for 13 percent.

Russian banks make up 11 percent by assets.

"The NBU needs to focus on Ukraine, not foreign investors," Kravets said, although he conceded that Ukrainian banks set a poor example: "The average insider loans rate at Ukrainian banks is around 60 to 70 percent."

Marinushkin, however, was far less positive.

"I don't keep my money in the banks here because I'm not crazy," he said. "The Ukrainian banking system is built so that depositors take responsibility for the risks of the government and the bank owners."

If that's true, then it doesn't look like lawyers will be winning any civil lawsuits on behalf of clients anytime soon. ■

Lawyer battles indifference in fight for the rights of stateless persons

(Ukrainian photo)



Oleg Levytskyi

Position: Head of Ukrainian Helsinki Human Rights Union's legal aid unit

Key Point: The state ignores people without citizenship

By **Josh Kovensky**
kovensky@kyivpost.com

Gela Tushishvili has spent 20 years in independent Ukraine as a stateless person. Although the government has briefly recognized him as a Ukrainian citizen twice, he has spent years of his time here living on a Soviet passport.

"Human rights are violated everywhere, but in Ukraine, it's a total nightmare," he told the Kyiv Post.

The 54-year-old Tushishvili grew up in his native Georgia, where he was a professional soccer player during the Soviet Union, and then Russia, before coming to Ukraine.

But after the collapse of the Soviet Union in 1991, he never traded in his Soviet passport, making him stateless.

There may be a few thousand stateless people like him as well, although authorities aren't certain. The cases usually become known only when the person seeks residency, citizenship or needs legal representation.

"In my soul, I felt myself to be a citizen of the Soviet Union," Tushishvili said. "But I was extremely offended that we had lived together for 75 years and Ukraine would not register me."

Oleg Levytskyi, a Kyiv attorney who is the acting head of the Ukrainian Helsinki Human Rights Union's legal aid unit, took on Tushishvili's case in September.

"The Ukrainian state ignores people without citizenship," Levytskyi said. "It's as if they did not exist."

Passport withdrawn

Levytskyi mostly represents people facing citizenship issues, and the subsequent human rights violations that come with that.

The 48-year-old attorney represents clients ranging from stateless people like Tushishvili to Russians who came to Ukraine to fight in the east against their own country, and who are now seeking asylum.

"Stateless people come to us who have lived in the country without documents for decades. They cannot document the fact of their

physical existence in any way,” Levytskyi said. “They’re not extradited anywhere, not deported, because they’re stateless.”

Tushishvili has spent the better part of the past 20 years in bureaucratic limbo. When he wasn’t hanging out at a migration service office, he says, he was being hassled by the police because of his “Caucasian appearance.”

But Tushishvili’s story of statelessness marks itself out from the thousands of others who face his problem. The Tbilisi-born Kyiv resident received Ukrainian identity documents two times, but then had them rescinded, Levytskyi said.

Kyiv Oblast authorities granted Tushishvili a passport in 1999 based on his Soviet documents, after he registered in the apartment of a friend’s relative. But one year later, Tushishvili says, Solomensky district police took the passport from him after asking for his documents.

“They opened a criminal case against me for forging government documents,” Tushishvili said, adding that the police eventually determined that he did not forge the passport, but nonetheless did not return the document.

A second time in 2004, a Kyiv judge ordered the migration service to give Tushishvili permanent residency. The subsequent bureaucratic runaround lasted until 2011, when the migration service informed Tushishvili that they no longer agreed with the 2004 court ruling.

“The migration service is possibly the most wicked structure in our country’s executive branch,” Levytskyi said. “These cases tend to be hopeless.”

Defending the stateless

Levytskyi has worked with the Ukrainian Helsinki Human Rights Union since 2006, he said.

Unlike other Kyiv human rights organizations, the Helsinki group is willing to represent combatants from Russia’s war on Ukraine.

One of Levytskyi’s clients is a Russian who came, Levytskyi said, to volunteer to fight on the side of Ukraine. He applied for asylum, but the migration service has refused to grant him refuge in Ukraine.

The case is now on appeal.

But the sheer number of clients means that Levytskyi has to ration out his time among them so he can provide help.

He divides cases into two stages: simple legal consultation as the first stage, with free,



full representation in court as the second.

For those he represents in court, Levytskyi says he can budget 10 days of time, maximum, to serve their needs.

“Three or four years ago, I was working alone,” he said. “We have more resources now.”

Levytskyi and Tushishvili filed a complaint against the migration service, demanding the

Gela Tushishvili has lived in Ukraine for more than 20 years without citizenship of any country. He hopes to receive a passport via court order, after Oleg Levytskyi took up his case. (Anastasia Vlasova)

There may be a few thousand stateless person in Ukraine. But nobody knows for sure. The persons usually become known only when they seek residency, citizenship or need legal representation.

return of his passport, with a Kyiv court in December. They are now waiting for a reply.

“It should come within four months, but given the backlog, it could take as long as a year,” Levytskyi said.

Although cases like Tushishvili’s can often seem hopeless, Levytskyi sees a silver lining in the work.

“In spite of the state being disloyal to human rights and totally corrupt, there’s joy in that, in spite of these factors, we can help real people,” he said. ■

Deputy justice minister puts in place enforcers to carry out court orders



(Volodymyr Petrov)

By **Josh Kovensky**
kovensky@kyivpost.com

Three years ago, a mere 5 percent of court orders in Ukraine were enforced. Even if the judiciary were completely cleansed of corruption, it would be of little help if their orders were not enforced.

But Sergiy Shklyar, the deputy minister for enforcement at Ukraine's Ministry of Justice, says there's already been improvement since he took office, citing a new figure of about one-third fulfillment.

The 43-year-old lawyer has spent the last few years pushing to remake Ukraine's court executor service into a professional institution that can serve the interests of justice.

To do this, Shklyar is creating a market for debt enforcement.

The market has huge potential: Shklyar said that once the system is fully implemented, up to Hr 310 billion (\$11.5 billion) in debt enforcement will be available for private executors. Since the executors will work for a percentage of the retrieved debt, they have an interest in collecting on huge unpaid loans.

There are around 5,500 executors currently employed by the Ukrainian government. The first three groups of private executors, 70 in each group, are currently in training.

Mixed system

Shklyar entered government in March 2015 after directing the Arzinger law firm for 12 years.

Since joining the government, he has shepherded the creation of a private executor service from the legislative drawing board in the Rada to its ongoing implementation.

Neighboring Poland and Bulgaria have both put private executor systems into place, with positive results. Bulgaria employs around 225 private and 250 state executors, with the private executors taking a total of around 200,000 separate cases a year, Shklyar said.

Ukraine chose Bulgaria's system as a model for its own.

The parliament passed two laws in June as part of a Western-backed overhaul of the judiciary, aimed at reducing corruption in the

Sergiy Shklyar

Position: Deputy Minister for Enforcement at the Ministry of Justice
Key point: Private executors will dramatically increase enforcement of court decisions

system while adding accountability and oversight to Ukraine's courts.

As part of the package, the Rada approved two laws on creating a corps of private executors.

These new contractors will be hired by businesses and private individuals in debt disputes to fulfill court orders. They are to be trained by the Justice Ministry, and empowered under the law to be able to seize property, with "personal liability" for their actions.

The idea is that the Justice Ministry creates a market for the enforcement of debt-related court decisions, with businesses and private citizens being able to hire the best executor based on their record of enforcement. The enforcement of other court orders, including evicting residents who can't pay their rent and moving children from parent to parent, will remain under the jurisdiction of the State Executor Service.

"We're trying to create a mixed system," Shklyar said.

Unlike private debt collectors, the private executors have the legal authority to seize property. Shklyar added that they will also be able to bring police officers along with them to enforce rulings.

The executors will be able to enforce the repayment of larger debts as they gain experience. The first year, they will be limited to individual contracts of up to Hr 6 million (\$223,000); the second year, Hr 20 million (\$740,000). The payment restrictions expire after the third year.

The government will also regulate the service until they establish their own professional association.

Market manipulation?

If the possibility of unleashing a free market on the justice system sounds worrying, Shklyar offers a salve: independence.

"They have a very good financial motivation," he said. "From a financial perspective, private executors will be interested in working on large debts at the beginning, while the market is not saturated."

But many of Ukraine's biggest debtors are so-called "politically connected individuals." It is an open secret in Kyiv that people's deputies are also the country's largest deadbeats, owing millions in unpaid loans (often insider) to banks.

Shklyar argued that private collectors will be allegiant to the market, making them "more



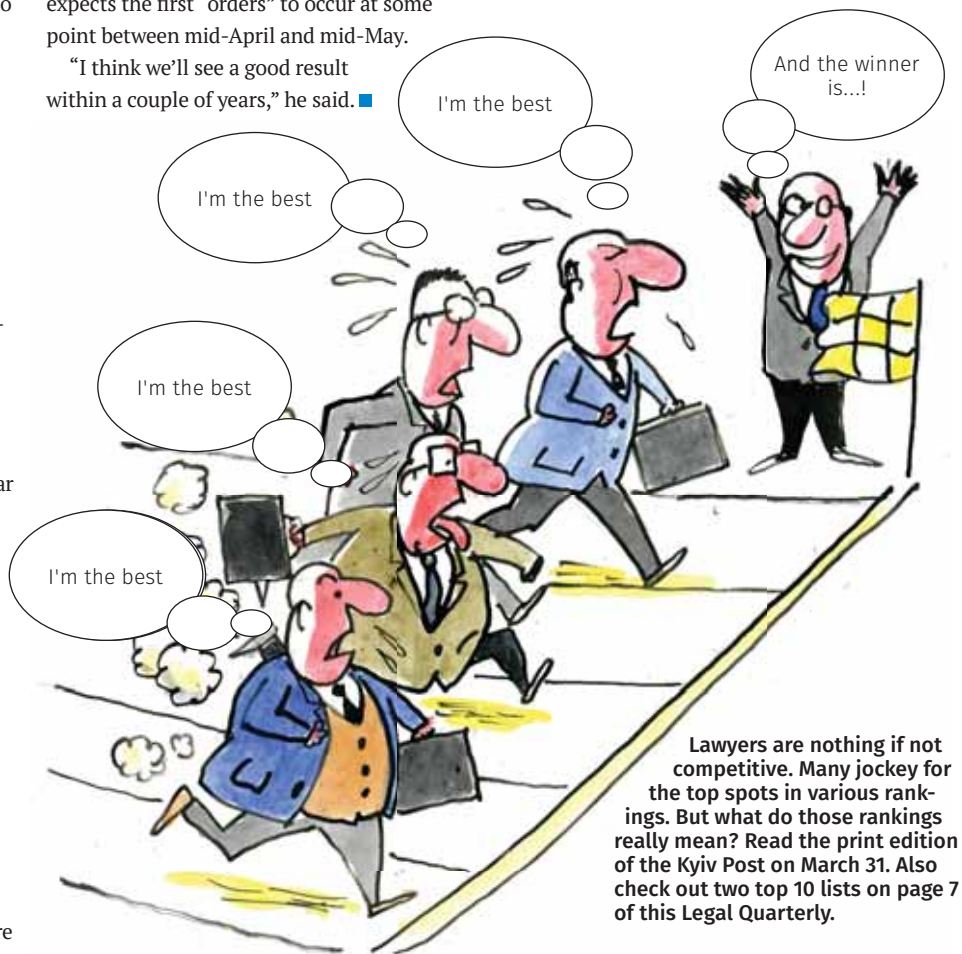
effective" in politically sensitive cases.

"He is not incentivized in any wrong way – he has the proper motivation, so it's impossible to influence him," Shklyar said. "He's an independent individual."

The system is gearing up for action. Shklyar expects the first "orders" to occur at some point between mid-April and mid-May.

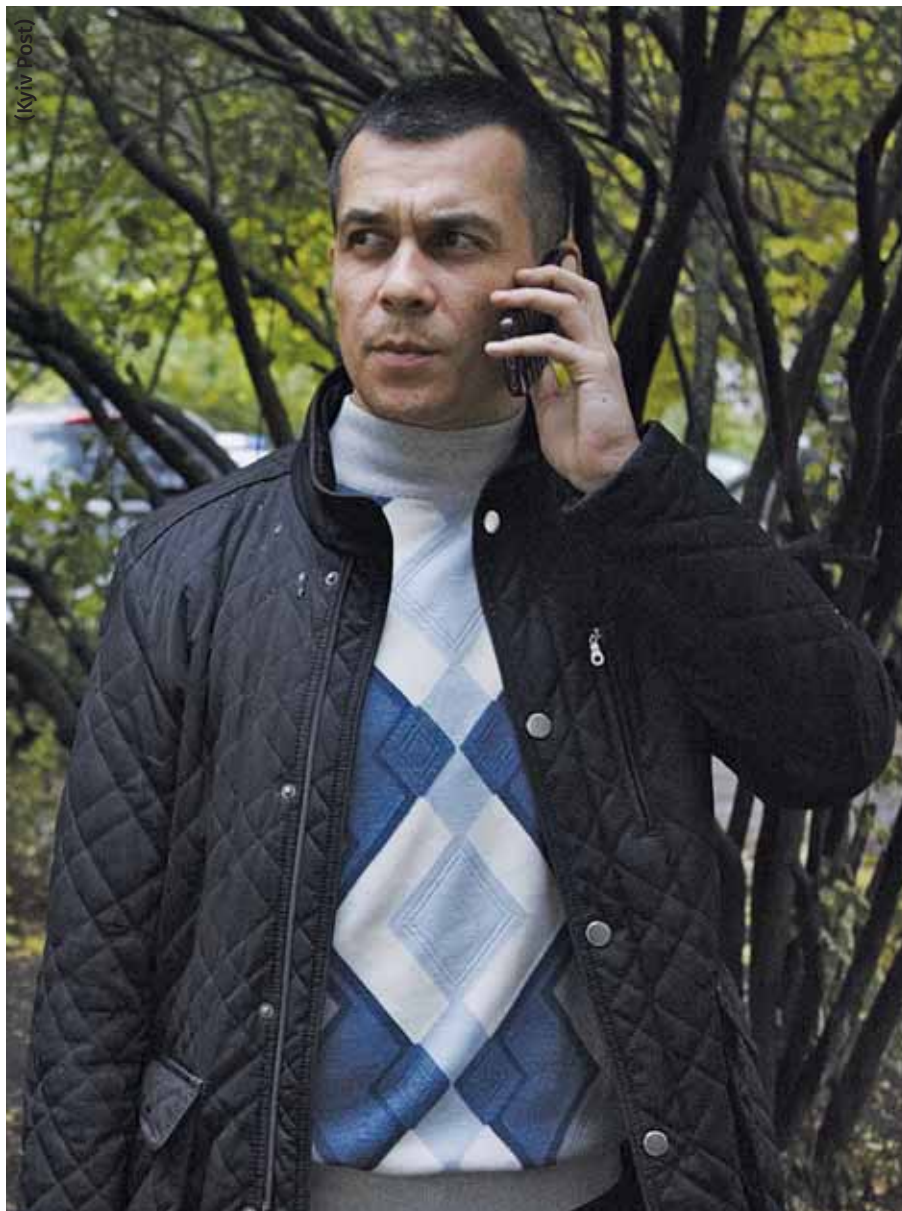
"I think we'll see a good result within a couple of years," he said. ■

Sergey Makarenko (R) and Anatoliy Televskiy, state executors in Kyiv, register cars in March. Ukraine is in the early stages of having a private executor service. The first batches of executors are in training and set to execute their first orders by mid-May. (Anastasia Vlasova)



Lawyers are nothing if not competitive. Many jockey for the top spots in various rankings. But what do those rankings really mean? Read the print edition of the Kyiv Post on March 31. Also check out two top 10 lists on page 7 of this Legal Quarterly.

In Russian-held Crimea, lawyer fights repression against Crimean Tatars



Emil Kurbedinov

Position: Private lawyer

Key point: Helping Crimean Tatars fight persecution

By **Veronika Melkozerova**
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Crimean Tatar Emil Kurbedinov, a 35-year-old lawyer, has defended several prominent Crimean Tatar activists against harassment by the Russian occupying authorities in Crimea.

But on Jan. 26 he was the target of harassment. His car was stopped as he was traveling with a colleague to be present at the search of a client's home. He was arrested.

At the same time, officers from Russia's FSB security service were searching his office – in violation of the law. Soon after that, other officers turned up at his apartment in Simferopol, in the heart of the Russian-occupied Crimea, where Kurbedinov lives with his wife, two children, mother and grandmother.

FSB officers forced their way into the apartment, and according to family members, made offensive remarks about their religion and nationality. At one point, an ambulance was called for Kurbedinov's mother, who was taken ill from stress.

Kurbedinov spent the next 10 days in prison on charges of promoting extremism.

"They let me call my mom while I was in jail, and she told me she was proud of me and that I was doing everything right," Kurbedinov told the Kyiv Post on March 2. "My family worries about me. But I want my kids to live in a state where their rights and the rule of law are respected."

Muslim, lawyer, Crimean Tatar

Kurbedinov's promotion of "extremism" was to re-post a video of a 2013 protest led by Hizb ut-Tahrir, an international pan-Islamic political organization, which aims to reestablish an Islamic caliphate. The organization is banned in Russia, but not in Ukraine.

Kurbedinov is the defense lawyer of Ilmi Umerov, the deputy head of Crimean Tatars' Mejlis, Akhmet Chiygoz, Crimean Tatar politician, Mykola Semena, a Krym.Realii (Radio Liberty branch) journalist and others.

"While I was in jail, the FSB initiated several court hearings in cases of my defendants

without my presence,” said the lawyer. “This an act of horriification, and pressure on me, my colleagues and my team. This is also a message to other lawyers – to be more loyal and friendly to the government and law enforcement agencies.”

Kurbedinov describes himself as a Muslim, Crimean Tatar, human rights lawyer and a citizen of two states but supporter of one – Ukraine.

Kurbedinov studied law in southern Russia, at Kuban State University of Krasnodar. Soon after graduation, he moved to Simferopol. He started working as a legal assistant in 2003.

Now Kurbedinov works for the Crimean Advocates Association of Simferopol.

“Every day we face the injustice of courts and law enforcement agencies. We see children, left without fathers just for the fact that their fathers are Muslims and Crimean Tatars who dared to tell the truth,” Kurbedinov said.

On Jan. 26, the day of Kurbedinov’s arrest, the so-called Counter Extremism Center of Crimea, in fact an FSB-affiliated organization also searched the Advocates Association offices.

“They confiscated our computers and other information devices containing secret legal information,” Kurbedinov said.

Changes made to the Russian Criminal Code in 2014 allow for prison terms of up to five years for online extremism, plus other penalties.

And Umerov, one of Kurbedinov’s clients, is worried that his advocate’s outspokenness will land him in prison and prevent him from working as a lawyer.

Defendants

Kurbedinov said all his clients are being prosecuted in Russian-occupied Crimea on politically motivated charges.

Investigators of the Crimean branch of Russia’s FSB in May launched a criminal inquiry against Umerov on suspicion of inciting a violation of Russia’s territorial integrity.

That happened soon after Natalia Poklonskaya, a Crimean prosecutor who became a lawmaker in the Russian State Duma, alleged on Facebook that Umerov had publicly called for the violation of Russia’s territorial integrity on ATR Crimean Tatar Channel.

On March 1, the FSB finished the investigation and submitted the case against Umerov to the courts.

Kurbedinov and his colleague Semedlyayev

are also working together on the case against Seyran Saliyev, a Crimean Tatar activist, and the son of Zodiya Salieva, a member of the Crimean Tatars National Movement.

Saliyev and Kurbedinov were arrested on the same day. A few minutes before Saliev’s arrest, Kurbedinov published a video on Facebook in which he and Semedlyayev are stopped by traffic police in Simferopol while heading to Salieva’s apartment to be present during a search of it by the FSB.

All of the charges against Kurbedinov’s other clients are connected to their pro-Ukrainian positions.

Crimean Tatar politician Chiygoz was detained in 2015 for participating in a demonstration to support Ukrainian territorial integrity near the Crimean Parliament in 2014. In March, a Crimean court extended his arrest until July.

Journalist Semena is also accused of extremism. Prosecutor says that in his story on the Crimean blockade in 2015, Semena supported the blockade, and therefore supported extremism and terrorism.

Lawyers under fire

Speaking at the time of Kurbedinov’s arrest, Refat Chubarov, the leader of the Crimean Tatar representative body the Mejlis, and a Bloc of Petro Poroshenko lawmaker, said that Kuberdinov’s conviction marked the start of a more intensive wave of repression of the Crimean Tatars.

The latest crackdown started on Jan. 25 when the FSB arrested Russian lawyer Nikolay Polozov, who on Jan. 23 took part in a briefing by the Ukrainian delegation to the Parliamentary Assembly of the Council of Europe in Strasbourg, France.

Kurbedinov, however, has not lost hope. People on the peninsula are awakening to Russian repression, he said.

“Enemies have become friends, and vice versa,” Kurbedinov said. “Our people have become more united, and have started putting more value on every human being.” ■

NEWS ITEM: Crimean Tatar lawyer Emil Kurbedinov, who helps other Crimean Tatars to fight persecution in Russian-occupied Crimea, spent 10 days in prison on charges of promoting extremism. Kurbedinov said while he was in jail, the Russian FSB security service initiated court hearings in cases of his clients without his presence. “This is also a message to other lawyers – to be more loyal and friendly to the government and law enforcement agencies,” Kurbedinov said.



Kyiv lawyer helps transgenders fight for dignity, against discrimination



By **Natalie Vikhrov**
natalie.vikhrov@gmail.com

When Russia's war broke out in eastern Ukraine in the spring of 2014, Oksana Surchok fled Donetsk.

"If I'd stayed I would have been shot, and not even for being a transgender, but because I'm pro-Ukraine," she said.

Surchok now runs her own legal practice in Kyiv.

"I take all kinds of clients, the only difference is I don't take money from transgender clients," she said. "I know they're poor, nearly of them are on the verge of survival and rarely do they have work."

According to Ukrainian NGO Insight LGBTQ, there are no statistics on the transgender population in Ukraine, largely because discrimination keeps the community closed off and the state has never shown interest in conducting studies. However, international surveys estimate transgender populations across the globe vary from 0.1 to 1.2 percent.

Since Surchok moved to Kyiv in 2014, she has taken on cases of around 50 transgender clients – most facing discrimination from medical practitioners.

But her biggest battle has been repealing an obsolete Ukrainian Health Ministry directive - order 60 - and establishing a new, dignified protocol for gender recognition.

Adopted years ago, the anachronistic framework forced transgender people to undergo often traumatizing procedures to have their gender identity legally recognized.

Under the old rules, a transgender person would be forced to undergo psychiatric observation in hospital for 30 to 45 days as well as surgery, such as gender reassignment - whether they wanted it or not - to change their documents.

Those who were jobless, homeless or had underage children would also be unable to have their gender identity legally recognized.

In August 2015, Surchok with Sergii Shum, deputy director of the Health Ministry's Ukrainian Research Institute of Social and Forensic Psychiatry, began to write a new framework.

Oksana Surchok

Position: Private lawyer

Key Point: Fights discrimination against transgender clients

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Then in late 2016, acting Health Minister Ulana Suprun repealed order 60 and signed off on the new protocol.

“It was hard work because I had to translate materials from different sources and adapt it to Ukrainian law. We had to prove a lot,” Surchok said. “But it took even longer to get it signed.”

Under the new rules adopted by the Health Ministry, which regulates the procedure for gender correction, transgender people can receive a diagnosis from a psychiatrist

There are no statistics about the size of the transgender population in Ukraine, but international surveys put the population at 0.1 to 1.2 percent globally.

via outpatient visits, remain married and are no longer required to undergo surgery.

That was what Surchok and Shum originally co-authored as part of the new rules.

But Shum told the Kyiv Post that somewhere throughout the process, the document was sabotaged.

“When we saw what happened, we were shocked, because somebody reinserted mandatory surgical intervention,” he said.

Shum said as soon as the unplanned amendment was spotted, under Suprun’s orders, they drafted a new protocol with several human rights groups.

Nevertheless, both Shum and Surchok say even at present, the changes brought in last year were progressive. Perhaps the most progressive change, Surchok says, gives teenagers under the age of 18 access to hormone therapy

Activists protest treatment of transgender persons in Kyiv on October 22, 2016 for the International Day of Action for Trans Depathologization. (UNIAN)



and medical assistance, with parental permission.

It comes as a major turnaround from the previously prescribed reparative psychotherapy, which was aimed at coercing a person into accepting the gender they were assigned at birth, something Surchok condemns.

“Gender identity cannot be normalized; it has been proven. You’re always born with it,” she said.

Gender identity

Transgender identity is currently listed as a mental disorder by the World Health Organization, but the public health agency is looking at declassifying the condition in its revised edition of International Classification of Diseases, due out in 2018.

However, Surchok fears that even if the change is enacted at a global level, it may take years for Ukraine to catch up.

While LGBT rights in Ukraine are slowly progressing, the transgender community is still largely and openly stigmatized.

The Kyiv lawyer believes it’s part of the reason why progressive changes for the transgender community, including the repeal of order 60, are often dragged out or given low priority.

“We’re not needed by anyone, we have no money, very few people are interested,” she said.

Transphobia transgression

According to a 2016 Insight LGBTQ report, transgender people become victims of hate crimes more often than other minorities. But there are no statistics on transphobia related murders and many of the crimes are “hushed up,” written off as “hooliganism” or lumped together with domestic disputes.

Furthermore, the transgender community is at a high risk of suicide, which, according to Ukrainian transgender civic initiative T-EMA, grows when a person is rejected by family, friends or resides in a country that offers no legal protection.

Surchok says she tried to suppress her gender identity for decades, which drove her to a suicide attempt at 30.

“After that I realized there was only one option, to transition,” she said.

Adoption rights

Surchok is currently assisting Shum with changes to government rules that prevent transgender people from adopting children. Currently the Health Ministry lists a transgender diagnosis among a number of “diseases” which preclude adoption.

But under a draft framework this diagnosis, along with others related certain to HIV and disability statuses, could be scrapped from the list.

“The government is restricting people’s rights, people’s right to a family,” Surchok said.

It’s a right she hopes to win this year. ■

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