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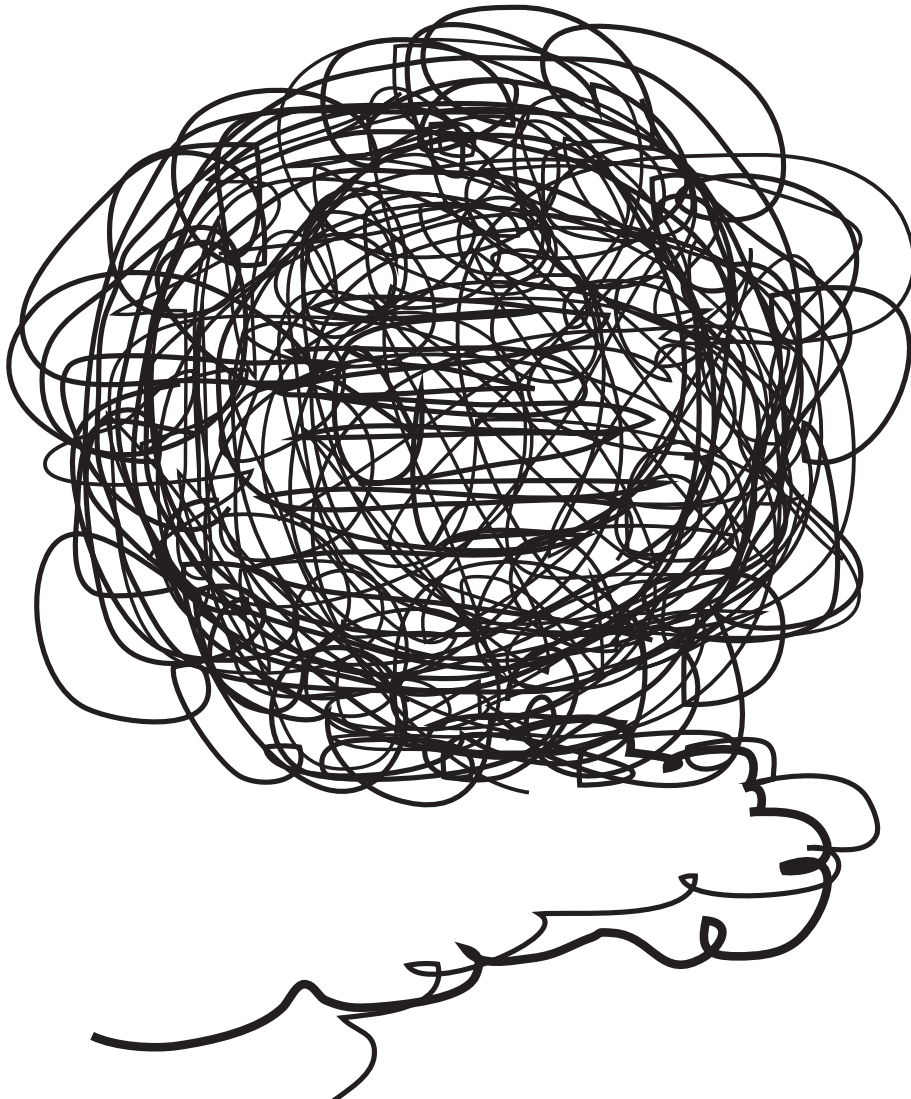
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Editors' Note

The Kyiv Post's Legal Quarterly is now in its second year and still evolving based on your suggestions. So please keep new and better ideas coming our way!

We launched this supplement to give readers a legal snapshot of the great political and business issues of the day. Ukraine's legal and regulatory environment is changing rapidly and we see our role as keeping readers up to speed with the debates taking place.

This is not meant to be an "insiders' digest" written by and for lawyers. Rather, the Kyiv Post has found that Ukraine's dynamic and competitive legal community is often the best – and sometimes the only – place to go for expert advice and commentary. Besides staying on top of all sides of the issues, many in Ukraine's legal community also excel at breaking down the importance of complicated issues in easily understandable ways to the public (including journalists!).

We want to call your attention to a few of the best stories in this edition.

Everyone loves rankings and top lists. So do we. That's why we asked Yurydychna Gazeta to share their latest survey of the top 100 lawyers in Ukraine. They did not rank them 1 through 100, but merely drew up a list of the 100 best, based on peer rankings.

Another issue to highlight is the slow pace of Ukraine's Parliament in lifting their members' immunity from legal prosecution for serious crimes. While there is consensus that elected politicians should be protected in carrying out their public duties, Ukraine's blanket immunity allows members of parliament to get away with serious crimes. And that's just not right, as Ukrainians said clearly during the 2013-14 EuroMaidan Revolution.

Of course, one of our favorite parts of the quarterly is the four-page directory that lists law firms doing business in Ukraine. It's a very useful resource for reference. Enjoy!



Brian Bonner
Kyiv Post
Chief Editor



Mariana Antonovych
Kyiv Post Legal
Affairs Reporter

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

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On the cover: A fight between members of parliament in Radical Party leader Oleh Lyashko's faction and defector lawmaker Serhiy Melnychuk on March 3. (UNIAN)



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Publisher: Mohammad Zahoor

Chief Executive Officer: Nataliya Bugayova
Chief Editor: Brian Bonner

Sales Director: Alyona Nevmerzhytska
Sales Managers: Elena Symonenko, Yulia Kovalenko
Designers: Vladyslav Zakharenko, Jurij Ternicki
Project Team: Mariana Antonovych, Guy Archer, Anastasia Forina
Photo Editor: Pavlo Podufalov
Photographers: Volodymyr Petrov, Anastasia Vlasova

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Naftogaz vs. Gazprom: Battle



By Mariana Antonovych
antonovych@kyivpost.com

Ukraine's reliance on Russian gas supplies – 14 billion cubic meters out of 42 billion consumed in 2014 – is a major risk for the nation's independence.

The brief cutoff of gas supplies in 2006 and 2009, in response to Ukraine's refusal to serve Russian President Vladimir Putin's interests, undermined Ukrainian energy security, says Vladyslav Vlasiuk, legal expert at ePravo, a law firm in Kyiv.

Since those events, Gazprom's gas pricing has become an instrument of foreign policy rather than a market tool.

"You can imagine how difficult it might be for Ukrainian officials to

attle of giants



(Bottom, from left): Russian Energy Minister Alexander Novak, European Union Energy Commissioner Gunther Oettinger and Ukraine's Energy and Coal Industry Minister Yuri Prodan sign an agreement at EU Commission headquarters in Brussels on Oct. 30 as, standing from left, Gazprom CEO Alexey Miller, European Commission President Jose Manuel Barroso, European Commission vice president Maros Sefkovic and Naftogaz CEO Andriy Kobolev and look on. (mpe.kmu.gov.ua)

recuse themselves from the energy sector since our politicians were making a fortune off of it for years," says Stanislav Batryn, a partner at Lions Litigate.

"When we filed a lawsuit in 2013 against the Cabinet of Ministers of Ukraine and the Ministry of Energy and Coal Industry seeking the nullification of the 2009 gas contracts, in all instances it was unanimously ruled these are relationships between two independent economic entities. It means that any interference by (former presidents) Viktor Yushchenko, Viktor Yanukovich and later, Petro Poroshenko in this sector was not legitimate. The only exception is the minister of energy and coal industry because the state holds a 100 percent stake in Naftogaz."

The two monopolies, Gazprom and Naftogaz, are suing each other in the Stockholm Arbitration Court over the price of gas supplies and use of the Ukrainian gas transportation system.

A ruling is expected by summer 2016 at the earliest.

"We told Gazprom that we would like to have a price review of the contract," says Naftogaz managing director Yuriy Vitrenko. "They refused."

Ukraine's energy giant Naftogaz, which employs 14,000 people, now pays Gazprom \$329 per 1,000 cubic meters of gas, while at the end of last year it was paying \$378. The discount was made after European Union-brokered talks in Brussels.

According to Vlasiuk, Ukraine has an advantage regarding the determination of price due to clearly discriminatory Gazprom pricing.

"Unless Ukraine departs from \$268.5 per 1,000 cubic meters, fixed by Yanukovich's agreements with Gazprom in early 2014, and recognizes another price, for example \$378, as a fair one, Ukraine will win this claim," Batryn believes.

To support its stance in Stockholm, Ukraine issued all payment documents mentioning the price of \$268.5 per 1,000 cubic meters of gas. This looks like a wise move and inspires optimism that the compromise price will be set at the level of \$320 and leaves no chance for the \$400-\$485 estimate, according to Batryn.

He says that Shearman & Sterling, a company who recently won a case on behalf of Russia's former oil giant Yukos, had proposed representing Naftogaz. Instead, Naftogaz commissioned the services of Wikborg, Rein & Co., a Norwegian company.

The Ukrainian government needs not only legal expertise, but also powerful lobbying instruments, because Gazprom has hired top-notch lawyers, according to Batryn.

ePravo's Vlasiuk admits the arbitration process lacks transparency.

Naftogaz refused to comment on the matter, citing a desire to preserve the integrity of the proceedings.

Last year, Gazprom was the source for 14 billion cubic meters of gas for Ukraine's energy market, or 33 percent of the nation's needs. Ukraine has tried to diversify supplies with limited success.

Prime Minister Arseniy Yatsenyuk says that he's proud that Ukraine is now buying more gas from companies in the European Union, such as Norway's Statoil and Germany's RWE, than from Russia.

Vitrenko says Ukraine can buy up to 20 billion cubic meters of gas from the West, almost half of the country's annual needs.

Russia's war against eastern Donbas is, however, taking an economic toll on Naftogaz. Last year, Naftogaz lost about \$700 million due to Russia's military aggression. ■

Legal problems for Ukraine's war-displaced people worsen humanitarian catastrophe

Ukraine's government says it is scrambling to help people who fled their homes and who need humanitarian assistance, but the needs are vast.

By Mariana Antonovych
antonovych@kyivpost.com

According to the Ministry of Social Policy, as of March, almost 1,123,670 Ukrainians from Russian-occupied Crimea and the eastern Donbas had been displaced within Ukraine.

Many have moved to other regions of Ukraine following Russia's military invasion, while others have moved to Russia.

Some of them have moved to Kharkiv and to territories of Donetsk and Luhansk oblasts controlled by Ukrainian forces, while some have moved to Ternopil, Chernivtsi and Ivano-Frankivsk.

But while the mass movement of internal migrants has slowed since the initial days of the invasion, the many legal complexities and problems surrounding internally displaced persons continue to mount and add to the terrible humanitarian toll already inflicted.

Migrant communities are highly vulnerable victims of crime, according to Tetyana Rudenko of the Organization for Security and Cooperation in Europe. "Criminality is a sphere which adjusts extremely quickly," she says. "Obviously migrants fall within both the risk and targeted groups. When you are moving, you are taking your passport and cash with you." This makes for easy targets.

There are also urgent humanitarian and legal issues involving displaced orphans and children without parental care. The plight of these children, according to Maryna Saienko, an attorney at Zakon Peremogy, urgently calls for a program to assist their transfer and rehabilitation.

However, rigorous legislative restrictions do not allow volunteers to evacuate these children. "In fact there is no mechanism ensuring that volunteers won't be accused of kidnapping in such situation, which is absurd," she says. "Even if volunteers take the risk, they lack available instruments to place such children in foster homes or healthcare institutions."

More bureaucratic difficulties also create great strains for Ukrainian displaced persons. The receipt of pensions and disability benefits is impossible to obtain without the requisite entitling documents, which were left behind in war zones, Saienko says.

Zoya Zamikhovska of the Legal Alliance Company believes that the procedure for registering internally displaced people by the State Migration Service of Ukraine has to be improved. According to the Ministry of Social Policy, the International Organization for Migration has initiated projects to provide technical support for the introduction of a registration of internally displaced people.

Kafkaesque bureaucratic challenges face former residents of Crimea who are trying to recover deposits left in their local banks. Before deposits can be returned, banks are requiring individuals to produce a certificate from the Deposit Guarantee Fund, which provides no such certification. They also require a certificate from the Russian Federal Migration Service confirming that a person has refused to accept Russian citizenship. The services provide no such certification.

"It is high time for NBU to render such claims illegal," Zamikhovska says.

However, important initiatives have been taken to clear away regulations for the construction of emergency housing for displaced people, according to Natalia Dotsenko-Belous of Vasil Kisel & Partners.

At a session of the Ukrainian State Emergency Service, Prime Minister Arseniy Yatsenyuk promised to take an inventory of all construction projects for dormitories and health and rehabilitation centers that are already 80

A woman looks for clothes at the Humanitarian Aid Center for refugees from war-torn Donbas and Crimea on 9/11 Frolivska Street in Kyiv on Dec. 15. (Volodymyr Petrov)



percent complete to assist with the immediate shelter needs of war migrants. Similarly, a bill on deregulation, pending the president's signature, gives local authorities the right to lift construction freezes (ones imposed due the insolvency of tenant builders) and to build.

Meanwhile, in addition to the lifting of regulations, mobile housing is being brought that can legally skirt many building regulatory issues. Germany's GIZ, a development aid agency, has begun constructing mobile homes for migrants. "According to our experiences in other crises, mobile housing units are most flexible," says Norbert Schwarzer of GIZ. "The ground preparation work is done quickly, and the units will be erected in a short time, and they are easily adapted to local requirements and climate situations."

GIZ closely cooperates with the State Emergency Service. "The project is giving support for seven settlements in seven cities," Schwarzer says. "A settlement includes up to 250 system modules. The modules have different functions - bedroom, living room, kitchen, bathroom."

On top of losing their homes to Russia's war against the eastern Donbas, displaced people find little support and face bureaucratic hurdles in getting basic benefits.

The German government invested as much as 19 million euros in the project, while these settlements may become homes for up to 4,600 people.

When the Social Policy Ministry began helping internally displaced people, it invited experts from the OSCE to join in its efforts. And the OSCE has helped in facilitating the mediation between the IDPs and local communities to prevent potential conflicts. "This creates a good prospect for stability and a quicker settlement," says Andrii Dziubenko of OSCE.

Rudenko says that while it is important that numerous non-governmental organizations help migrants, these programs should be led by the government. "It is the state that has the primary responsibility to protect its people," she says.

Along with legal, sheltering and employment issues, as well as psychological, internally displaced persons need comprehensive care – a case manager who will coordinate efforts to help a particular person or family, Rudenko believes. To administer this kind of coordinated effort, the Ministry of Social Policy and the OSCE have set up a joint project, Improvement of Ukraine's Response to Migration Processes Caused by Conflict. The term of its implementation is June 2014 – December 2015, and the project is financed entirely by the OSCE.

"Last year short-term funding was provided by Germany in the amount of 100,000 euros, but that obviously was not enough to facilitate the whole project," Rudenko says.

The Ministry of Social Policy advised the OSCE on where best to direct the money, and it advised that the rendering of social services at the regional level and the extensive training of social workers were the priorities.

Natalia Yeremenko, head of social services for Luhansk Oblast's Kremynsky district, has praised OSCE trainings on how to provide aid to war migrants. ■



Alina Bakulina,
Head of Transfer Pricing Group, EBS

FAQ: TRANSFER PRICING

Transfer pricing rules are currently at the top of Ukrainian taxpayers' agenda. We frequently hear and answer the following questions. If you have a question for EBS, please contact us.

What should be done to avoid the tax authorities' requirement to provide TP documentation?

At this stage it is hard to suggest what the tax administration will consider grounds for requiring TP documentation. We assume that the tax administration can make such a decision based on available information, i.e. based on the tax report on controlled transactions. In this regard, we recommend that taxpayers prepare reports on controlled transactions in a responsible manner. If the report contains sufficient information about controlled transaction and there is no need to obtain any additional information from the taxpayer, the risk of the TP documentation requirement shall be low. But taxpayers should remember, that even in case of a perfect report on controlled transactions, the TP documentation may be still required, so they should not ignore the issue of the documentation's preparation.

We have had the same transactions with the same counterparty for many years. Is it possible to prepare the TP documentation only once? After all, the Tax Code does not require preparation of the documentation on an annual basis.

Indeed the Ukrainian Tax Code does not directly require that the TP documentation be prepared annually. However, the OECD recommends examining data from the year of the transaction and previous years. This recommendation is not always applicable in practice, as in case of the profitability range determination based on information databases (i.e. the database of International Agency 'Bureau van Dijk'), because the companies' financial data cannot be obtained earlier than the companies file their financial statements, after which database developers need more time to process data. For this reason the profitability range is usually determined based on data from the three previous years. Therefore, we don't believe that it is necessary to prepare TP documentation every year, but you should at least conduct benchmarking annually and update the documentation section regarding economic analysis.

The penalty for failing to provide a report on controlled transactions is 3% of the amount of undeclared controlled transactions and is limited to 200 times the minimum monthly salary. But the penalty for failing to declare any controlled transaction in this report is 5% of the amount of the undeclared operations. Thus, is it better to not submit the report on controlled operations than to submit an incomplete report?

Oddly enough, yes. However, the Verkhovna Rada shall examine a draft law in the near future, which foresees reducing the penalty for failing to declare all controlled transactions in the report to 1% and also the limitation for such a penalty to 100 times the minimum salary. We hope these amendments will happen.

Since January 1, one of the criteria for recognizing controlled transactions is the taxable income amount for income tax purposes, of the taxpayer and all his related entities, in excess of UAH 20 million. Shall we also take into account his associated non-resident entities?

There is no clear understanding yet since, on the one hand, this provision foresees consideration of the taxable income of all related persons, which also includes non-resident entities. On the other hand, such non-resident entities mostly don't have status as Ukrainian taxpayers, while the provision does not indicate that the income may be determined for income tax purposes in any jurisdiction, not only for the purposes of the Ukrainian income tax. However, it is possible that the aforementioned draft law may clarify this issue. If the draft law is passed, the transactions shall be recognized as controlled if the annual income from all transactions with the same counterparty exceeds UAH 20 million, regardless of the total income amount of the taxpayer and its related parties.



EBS
13A Universytetska St., Kyiv 03110, Ukraine;
info@ebskyev.com, www.ebskyev.com
+38 044 249 7905



Antonenko: NBU wants more accountability in troubled banking sector

As of Jan. 15, Leonid Antonenko appointed director of the registration and licensing department of NBU. (Volodymyr Petrov)

By Mariana Antonovych
antonovych@kyivpost.com

A big shakeout is coming in the banking sector that will separate the good from the bad and force bankers to take more legal responsibility for insolvencies.

In January, Leonid Antonenko joined the National Bank of Ukraine as director of the registration and licensing department. And he has had to move quickly in a whirlwind and decisive few months, with International Monetary Fund demands looming fast and hard.

Over a short period of time, Antonenko has had to tackle such complex issues as determining murky bank ownership structures, increasing the liability of bank owners and purging the banking system of toxic assets.

On March 6, a law was passed, largely attributed to Antonenko, which increased the liability of bank owners and people closely associated with a bank's management.

"We were very short on time as the law was one of the conditions for IMF credit," Antonenko says.

Also short of human resources for research and development, Antonenko and his team used earlier precedents, focusing on Turkish reforms after its own 2001 banking crisis as a guide.

The law met the IMF deadline and the fund, along with the World Bank, have since advised Antonenko and NBU on how to build and improve upon it.

Still, Antonenko says, cooperation can be complicated with these international banks. It is not always possible to tie European standards

to Ukrainian reality. He admits that the law is not perfect, but believes it does go a long way in addressing important bank ownership and liability issues.

“It is not a secret that some banks do not have all of their owners on paper,” he says. “My department is aimed at changing this situation.”

It is also typical for Ukraine to have 11 or 12 equivalent shareholders in a bank’s corporate structure. But Antonenko says that this is not tenable. “It is rare in big businesses, and especially in banking, to have even five equivalent partners,” Antonenko says. “Such a system is very unsustainable.”

Determining liability within a Ukrainian bank’s management is also another difficult problem. To avoid accountability, real managers create

‘This is not a raid...When people acquire this understanding, the situation will become normal.’

– Leonid Antonenko

quasi-management structures and positions, although everybody within the bank understands who is really giving the orders. Antonenko says the National Bank is also examining this problem.

The NBU is also looking into the touchy issue of what constitutes having “significant influence” within a bank. Ukrainian law addresses this topic, but no guiding precedent or parameters have yet been established.

“As long as a person was elected to a board or occupies a quasi-management position, even if he or she has an insignificant number of shares, such a person can be considered to have enough influence to be qualified as a ‘major stakeholder,’” Antonenko says. “This is another direction in which we plan to work.”

In an oversight that Antonenko calls absurd, legislation required the disclosure of limited-liability companies’ 20 biggest shareholders – but not for banks. The recently adopted law fixes this. Antonenko says that the National Bank has now gone even further and has obliged banks to disclose their entire ownership structures within the next two months.

Antonenko emphasizes that the new ownership and liability regulations are not meant to be punitive, but to bring better transparency and stability. “The banking sector is a very sensitive matter,” he says. “It is regulated by accurate genuine signals. We do not need to wallop the sector. This is not a raid ... When people acquire this understanding, the situation will become normal.”

Antonenko believes that with the introduction of new equal and transparency standards for all banks, only a fraction of the existing banks will remain in a sector that now seems saturated.

Another chief priority, Antonenko says, is revisiting what is meant by a “public company” in Ukraine. “Recently I dealt with the documents of a bank, which has 60,000 shareholders with less than 0.1% stake, while one major shareholder has 99%. This is a structure of public companies in Ukraine. While we have to deal with such ‘public companies,’ we will not build a stock market.”

Antonenko, who was legal counsel at Sayenko & Kharenko before joining NBU, is also chair of the Corporate Law and Stock Market Committee of the Ukrainian Bar Association. ■



Delta Bank was among the biggest ones declared insolvent this year. Now owners will bear legal responsibility for the financial performance. (Volodymyr Petrov)

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Alternative energy market faces unfavorable tariffs

By Mariana Antonovych
antonovych@kyivpost.com

The energy market regulator reduced the green tariff – the amount paid for electricity produced from renewable sources – by 50 percent on Feb. 27.

Previously, on Jan. 31, it reduced the tariff for solar power production by 20 percent.

Market players now view these as unfriendly moves against alternative-energy development in Ukraine.

The green tariff has long been criticized for being a basis for corruption. Though it was introduced a year before President Viktor Yanukovich came to power in 2010, it was closely overseen by people in his circle, says Yaroslav Petrov from Asters law firm.

“There were attempts to limit access to foreign investors and mid-sized Ukrainian investors in the market,” he explains.

The development of the alternative energy sector is supported by the European Bank for Reconstruction and Development, says Nataliia Slobodian of the International Center for Policy Studies in Kyiv.

Slobodian says that the “creation of unfavorable financial conditions for renewable energy will inevitably lead to the re-division of the market. Small companies will either leave or freeze their development strategies and the wind power giants will win. Then, the giants will get their favorable conditions back.”

Energy Minister Volodymyr Demchyshyn told Focus magazine in a Feb. 23 interview that “alternative energy is interesting, but expensive. At the moment, Ukraine is not financially ready to develop such projects.”

Demchyshyn seems to favor extracting available resources, mostly coal and gas.

Guerman Ainbinder, head of DTEK’s subsidiary, Wind Power, believes the recent move by regulators will fail to stimulate production adequately to reach the 11-percent target set for energy produced from renewable sources by 2020.

“With the reduction of the tariff, producers of renewable energy will not be able to service their loans denominated in foreign currency,” Asters’s Petrov says. “If such a reduction will last for a long period of time, new projects will be frozen or cancelled.”

Oleksandr Volkov, legal expert at Egorov Puginsky Afanasiev & Partners, says that if a state promises something significant to attract foreign investments, and the later ignores that promise, it should expect lower investor confidence.

“In a similar case with Guatemala’s change of its electricity tariff, the state was found liable for its failure to meet the established procedure of changing the tariffs,” he says. “While in Ukraine there was no such procedure at all, allowing the state to unilaterally change the tariff.”

“It would take about a year to start arbitration against Ukraine and about three years to complete it,” Volkov adds.

Maksym Sysoiev, an expert on energy law with Dentons, says lawsuits will follow soon and court rulings will bring serious losses to the state budget, as the decision by regulators to cut tariffs is poorly judged. Wind Parks of Ukraine, an energy company, has already filed lawsuits against the tariff commission.

Meanwhile, politicians believe that the nation’s alternative energy market is a mess. Yuriy Chyzmar, a member of parliament with Oleh Lyashko’s Radical Party, says it’s corrupt and overseen by poorly qualified staff. ■

Novoazovsky Wind
Park in Donetsk
Oblast on July 11,
2011. (PHL)



Experts on deregulation law say it's too early to celebrate changes

By Mariana Antonovych
antonovych@kyivpost.com

On Feb. 12, the Verkhovna Rada adopted a bill – known as the “deregulation bill” – aimed at making it easier to do business in Ukraine. Pavlo Petrenko, Ukraine’s justice minister, said President Petro Poroshenko favors the changes. Petrenko expects the law will come into effect in April.

“The reform of the administrative services will help Ukraine to improve its stance in the ease of doing business rating of the World Bank, in particular in the categories of starting business and registering property,” Petrenko said.

Currently, Ukraine’s rankings in those two categories are 69 and 88, respectively. Overall, in 2014 Ukraine was ranked 112 out of 189 economies.

The Economic Ministry declared earlier that the “implementation of this law will mean savings of Hr 40-60 billion by 2020.”

Businesses will be able to reduce their expenses related to the preparation of documents by as much as Hr 100 billion, while unofficial payments will be at least Hr 150-250 billion less.

“The deregulation law significantly decreases the regulatory burden in a number of directions,” says Andrew Zablotsky, a legal expert at the Sayenko Kharenko law firm. “It abolishes 16 certificates, conclusions, and other forms of state regulation, which definitely will allow businesses to reduce their costs and diminish the corruption component.”

However, Olga Belyakova of the CMS Cameron McKenna law firm says that it’s too early to be euphoric. “It is true that the number of licenses decreased,” she says. “However, in many sectors they were not the main obstacles for business.”

Oleg Matiusha, legal expert at DLA Piper Ukraine, believes the measures taken by the law are too superficial. “In practice, state and local authorities often deliberately make mistakes in adopting decisions,” he says.

Moreover, some experts believe that the title of the bill does not exactly convey its essence. “Deregulation usually implies less interference by public offices into legal business activities, which is not a case in the current situation,” Matiusha says.

“The law indeed comprises certain positive changes,” he adds. “Meanwhile, in general it focuses on the elimination of unnecessary duplication of powers between the state and local authorities.”

Additionally, the bill provides significant changes in agricultural regulation. According to Zablotsky of Sayenko Kharenko, “it stimulates the rational use of agricultural land and the facilitation of land-lease issues.”

The law sets a seven-year minimum duration for agricultural land lease. On the one hand, it stimulates investment. But on the other, the

measure is not technically a deregulation, and not all agricultural enterprises are interested in a lease for such a term.

“However, with the adoption of the bill they will be obliged to conclude agreements for seven years, even if it is not beneficial for them from a commercial perspective,” DLA Piper’s Matiusha says.

Moreover, these measures are unlikely to boost the real estate market, as it needs more than technical improvements.

“The real estate market lacks financing,” Matiusha says. “The simplification of the procedure of assignment of rights over state and community land and public access to the cadastral register can change the situation crucially. However, the bill is silent on the matter.”

Experts agree that reforms should be more aggressive and comprehensive if Ukraine wants to revive its economy.

While Belyakova of CMS Cameron McKenna agrees that the ideas and motivation behind the deregulation law are strong, it will take time to adjust the whole regulatory environment. “The implementation of these changes is necessary for every citizen. It is not the International Monetary Fund who needs them.” ■

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Experts say recapitalization of banks is necessary, but how to do it fairly is the question



Protesters demonstrate in front of the National Bank of Ukraine on Feb. 27. to demand the dismissal of its head, Valeria Gontareva. Many also want help for borrowers who took out loans in foreign currency, making repayment more expensive because of the sharp decline in the value of the Ukrainian hryvnia. (Volodymyr Petrov)

By Mariana Antonovych
antonovych@kyivpost.com

Some experts think Ukraine's banking sector needs more than \$8 billion to achieve financial stability. While some banks may emerge from the crisis in better shape, one lawyer does not preclude "a meltdown."

Ukraine's banking system suffered a net loss of Hr 53 billion (more than \$2.5 billion) in 2014, with one-third of the amount coming from insolvent banks.

As a result, the Verkhovna Rada passed new measures on Dec. 28 requiring additional capitalization of the country's banks. At this point, the government plans to allocate as much as Hr 28 billion in 2015.

Seventeen out of 35 big banks have failed stress tests and have not met the requirements of the National Bank of Ukraine. The hryvnia's substantial devaluation has significantly contributed to the banking woes.



Local banks are particularly vulnerable, says Oleh Zahnitko, a legal expert at Gide Loyrette Nouel.

Experts think that the banking system could need as much as Hr 170 billion (\$8 billion) cash inflow to achieve stability, while the central bank thinks that Hr 66 billion is enough.

Ihor Olekhov, partner at the law firm Baker & McKenzie, believes “the NBU had no choice but to implement aggressive steps to save the Ukrainian banking sector from a complete meltdown.”

To eliminate insider deals and protect depositor interests, a new law bans the payment of dividends by commercial banks. It applies to both compliant and non-compliant banks, which experts criticize.

“Compliant banks are threatened by the draconian powers of the regulator,” says Gide’s Zahnitko. “Thus, their natural reserve strategy will be to look to exit the market rather than to invest in the Ukrainian business.”

Experts recognize that many other steps need to be taken.

Oksana Volynets, an expert at Wolf Theiss, proposes giving incentives to banks and borrowers to restructure bad loans and to convert the loans denominated in foreign currency into hryvnia at a reasonable rate. Declaring individuals insolvent is also an option, a common instrument in developed economies.

Moreover, long-awaited measures aimed at reducing legal risks for banks should finally be introduced, Volynets says. Otherwise, the failure to protect the rights of banks as creditors will lead to their inability to repay deposits, which will affect many.

If politicians introduce a moratorium on enforcing mortgages in order to win over their electorates, for example, banks will suffer because of a lack of enforcement mechanisms over the assets acquired by borrowers via their banks’ loans, according to Olekhov of Baker & McKenzie.

He sees huge opportunities for the banking system during the crisis. “In the banking sector, the strongest and fittest banks will survive and the sector will become much more transparent,” he says. “However, one may not exclude a scenario that the banking sector may experience a meltdown and will need to be reconstructed virtually from scratch.”

Meanwhile, Gide’s Zahnitko is skeptical about the law on capitalization, believing that it is a means for procrastinating, rather than for solving more fundamental problems. ■



A passerby walks past currency exchange table on Feb. 26 in Kyiv. (Volodymyr Petrov)

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Ukraine finally, slowly undertakes partial judicial reform



Judge Serhiy Vovk (L) reads out the prison sentence to former Ukrainian Interior Minister Yuriy Lutsenko (R) during the trial in Pechersk district court on Feb. 27, 2012 in Kyiv. Lutsenko was jailed for more than two years on a vague Soviet-era “abuse of office” charge, but freed in April 2013. (UNIAN)

In a nation where judges earn pauper wages and are notorious for issuing verdicts at the behest of politicians, Ukraine is only now starting to clean house.

By **Anastasia Forina**
forina@kyivpost.com

Ukraine is starting to revamp its notoriously corrupt and politically subservient judicial system. The law on fair trial was approved in February, introducing new ways to hold judges accountable, improve their work and create more transparency. At the same time, an internal cleansing of the system is being carried out, beginning with parliament’s decision to strip several judges of the infamous Kyiv Pechersk Court of their immunity.

The Pechersk Court

The Pechersk Court discredited itself during the tenure of ousted President Viktor Yanukovich, when it issued a number of politically

motivated rulings, including gilding verdicts against former Prime Minister Yulia Tymoshenko and former Interior Minister Yuriy Lutsenko. Both rulings were condemned by the European Court of Human Rights.

Even after the collapse of the Yanukovich regime, the court's unjust practices continued. One high-profile example was granting of bail to former Berkut chief Dmytro Sadovnyk, who was charged with giving an order to shoot EuroMaidan protesters. The court also released on bail the former head of the Party of Regions, Oleksiy Yefremov, who was suspected of abuse of office and forgery.

"Everyone should be equal before the law, including the judges," says Virgilijus Valancius, team leader of the European Union project, Support to Justice Sector Reforms in Ukraine, which advises Ukraine's government on judicial reform. "Persons in charge of issuing indictments and making decisions on pre-trial detention usually take into consideration a number of circumstances. However, any case [that involves the] deprivation of liberty should be performed strictly in accordance with the Criminal Procedure Code."

In February, parliament allowed for the arrest of Pechersk Court judge Rodion Kireyev, who is charged with delivering an unlawful verdict against Tymoshenko in 2011. She remained imprisoned until Feb. 22, 2014, the day her political nemesis Yanukovich fled power. Kireyev has been on a wanted list since summer.

Also recently, three other Pechersk Court judges – Oksana Tsarevych, Viktor Kytsyuk, and Serhiy Vovk – have been stripped of their immunity.

Vovk is suspected of issuing an unlawful ruling that deprived legal ownership of property, while Tsarevych and Kytsyuk have been charged with unlawful rulings targeting activists of the AutoMaidan, the organizers of car protests during the EuroMaidan Revolution. The General Prosecutor's Office also recently launched criminal proceedings against Vovk over the unfreezing of accounts of former agriculture minister and close Yanukovich ally Mykola Prisyazhnyuk, who is suspected of abuse of office and the massive embezzlement of state funds.

Kytsyuk and Tsarevych were also involved in the court's investigation that implicated Tymoshenko in the 1996 murder of Donetsk businessman and member of parliament Yevhen Shcherban. The case was later closed for lack of evidence. Vovk delivered the verdict in Lutsenko's case, which was later slammed by the European Court for Human Rights for being arbitrary.

Serhiy Vlasenko, a lawmaker in Tymoshenko's party who acted as her defense in court, has filed a draft law calling for the liquidation of the Pechersk Court, the dismissal of its current staff, and the recruitment of new staff. "The Pechersk Court is a symbol of the unlawfulness during the time of Viktor Yanukovich," he says. "I think such symbols have to be liquidated like the Bastille during the French Revolution."

Law on fair trial

Ukraine's 9,000 judges will be obliged to pass qualification exams in order to be able to continue their work, according to the new law on fair trials that comes into force on March 28. The law also restarts the operations of the High Council of Justice, a body that oversees the work done by judges and has the authority to dismiss them. Its work was suspended for almost a year after its members were dismissed when Yanukovich's government was ousted, allowing for numerous judges to get away with unlawful rulings made during the Euromaidan

Revolution. The law introduces new competitive procedure for hiring and selecting members of the Council and recruitment already started. A regular evaluation of the work by judges will be launched while the list of disciplinary offenses and sanctions is expanded, according to the new law.

Experts from the European Union and the Organization for Security and Cooperation in Europe working with Ukrainian officials welcomed the law as a significant step towards implementing comprehensive judicial reform. "In my opinion, the newly adopted law is a good step for the reform of the judiciary system of Ukraine that will bring Ukraine's judiciary closer to the European standards," Valancius says. He also lauds the evaluation of judges as an important novelty.

The opportunity to film court hearings without getting special permission from the court, which is now guaranteed by the new law, will increase the level of transparency of court processes, according to Natalia Stupnitska, project manager of OSCE's rule-of-law unit. At the same time, according to the law, the president holds the right to liquidate and reorganize courts and appoint judges, which raises fears of continued political influence on the courts.

The Venice Commission has recommended a ceremonial role for the president regarding the appointment and dismissal of judges, according to Stupnitska. But in several OSCE member states such as Lithuania and the Czech Republic, laws allow for similar presidential powers as in Ukraine now, she says.

Kyiv Post staff writer Anastasia Forina can be reached at forina@kyivpost.com. ■

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Antimonopoly Committee to replace staff, raising expectations



The failure of the Antimonopoly Committee of Ukraine is clear to all in a nation where billionaire oligarchs and others dominate some sectors and exclude competitors. Ukraine will start over by replacing the committee's entire staff in the next few months.

By Mariana Antonovych
antonovych@kyivpost.com

An agreement between Ukraine and the International Monetary Fund stipulates that the current staff of the Antimonopoly Committee of Ukraine must be replaced in the first half of 2015, Economic Minister Aivaras Abromavicius said on March 6.

Many hope that the appointment of a new committee chairman will revitalize reforms and ensure that stakeholders are actually subject to the committee's regulations. There are also expectations that the shakeup in staff will bring the committee into line with anti-monopoly regulatory agencies in developed countries by creating greater accountability and responsibility on the part of its officials.

The Antimonopoly Committee of Ukraine is a central executive authority with a special status, responsible for the enforcement of competition in the marketplace. One of its main interests is to protect consumers by preventing monopolies or breaking up existing ones. Ukraine's president has authority over the committee, which also reports to parliament.

Mykola Barash, acting chairman of the committee, replaced Vasyl Tsushko at the end of March 2014.

Mykyta Nota, a legal expert at Avellum law firm, says there should be more effective cooperation between the committee and market players, including public access to the committee's decisions. Also, the procedure for challenging decisions in court should be more transparent, he says.

The Antimonopoly Committee of Ukraine has said that it has no objection to publishing its rulings, but the problem is that some of the information is confidential. "In 2014, AMCU rendered nearly 1,950 decisions in cases regarding the protection of economic competition, almost eight decisions per one working day, most of which contained confidential information," the committee reported.

According to experts, the committee often imposes substantial fines for violations. Sergiy Shklyar of the Arzinger law firm says that his clients have been taken aback by the heavy penalties. "They thought someone was trying to destroy their business," he says.

Acting Chairman of the Ukrainian Antimonopoly Committee Mykola Barash speaks at a press conference on June 23 in Kyiv. (UNIAN)

The committee imposed an Hr 210 million fine in 2013 on the KLO-Karta and Avtoruh gasoline chains for violations. However the deal that regulators were investigating involved only Hr 130,000, making the fine seem excessive.

"Although the parties were not our clients, clearly, that fine was not proportionate, even though it did not exceed 10 percent of the companies' turnover in a prior year," says Shklyar.

Meanwhile, the Antimonopoly Committee believes their procedure for rendering fines corresponds to European Union standards. The average fine in 2014 was Hr 60,000.

Lack of transparency was one of the problems of the Antimonopoly Committee of Ukraine, including no public access to decisions and no clear procedure for challenging decisions.

To meet its current obligations under the association agreement with the EU, the committee is now preparing a document that explains its mechanism for defining the size of the fines.

"The law marginally changed during the last 13 years, while the economic situation and European legislation on economic competition changed fundamentally," the committee reported. "The committee's practice has also encountered significant changes."

According to committee statistics, violators do not pay fines in 80 percent of the cases, finding ways to bypass them.

To solve this problem, Arzinger's Shklyar proposes obliging companies to make prepayments that will be deposited pending a court decision.








"Obviously, it is impossible to pull Hr 100-200 million out of a company's turnover," he says. "However, funneling assets will not be an option while you are in court. The committee should initiate this and parliament should duly implement it."

Interaction between the committee and market players has yet to be fine-tuned. Graham Conlon of CMS Cameron McKenna and Shklyar of Arzinger agree that effective dialogue with the Antimonopoly Committee is not yet possible, though it did exist prior to the 2010 presidential elections that put Viktor Yanukovich in power.

"Now, there is obviously no adequate dialogue, probably because the personnel remained unchanged," Shklyar says. ■

Legal services

Listing is arranged in alphabetical order

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86D Kazymyra Malevycha (Bozhenko) St., 3 rd floor, office 31, Kyiv 03680, Ukraine; office@opp.com.ua, www.opp.com.ua				ALEKSANDR PEREMEZHKO & PARTNERS <small>attorneys at law & consultants</small>		
+38 044 371 4007	Aleksandr Peremezhko	2010	Kyiv, Ukraine	Litigation & Arbitration; Tax and Customs; Corporate and M&A; Competition and Anti-monopoly; Media and Communication; Intellectual Property; White Collar Defense	VIETTEL Global Investment JSC, Sharp Electronics Ukraine, Lego Ukraine, B&H, UFD, LeDoyen Studio, Eurofins Food & Agro Testing Sweden AB, Ciklum Ukraine, AstraZeneca	English, German, Polish, Russian, Ukrainian
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Eurasia Business Centre, 75 Zhylyanska St., 5 th Floor, Kyiv 01032, Ukraine; mail@arzinger.ua, www.arzinger.ua						
+38 044 390 5533	Timur Bondaryev	2002	Kyiv, Ukraine	Litigation; Antitrust/Competition; Corporate/M&A; Real estate; IP; Arbitration; Tax; Banking & Finance; Bankruptcy; White Collar Defense	Astelit, Bayer AG, Bunge, Citibank, GlaxoSmithKline, Henkel, Lafarge, Porsche, SHARP, SCM, UNIQA AG, Ukrtelecom	English, German, French, Ukrainian, Russian
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2A Mykolya Haitsana St., 5 th floor, Kyiv, 01010, Ukraine; info@averlex.com.ua, www.averlex.com.ua						
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Renaissance Business Center, 24 Bulvarno-Kudriavska (Vorovskoho) St., Kyiv 01054, Ukraine; kyiv@bakermckenzie.com, www.bakermckenzie.com						
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+38 044 278 1000						

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CMS Cameron McKenna LLC38 Volodymyrska St., 6th floor, Kyiv 01030, Ukraine; KyivOffice@cms-cmck.com, www.cmslegal.com, www.cms-cmck.com, www.cms-lawnow.com

+38 044 391 3377	Mr. Daniel Bilak	2007	London, UK	Energy; 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	WND	English, German, French, Ukrainian, Russian
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**CMS Reich-Rohrwig Hainz**19B Instytutska St., Kyiv 01021, Ukraine; kyiv@cms-rrh.com, www.cmslegal.com

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Dentons (LLC Dentons Europe)49A Volodymyrska St., Kyiv 01034, Ukraine; kyiv@dentons.com, www.dentons.com

+38 044 494 4774	Oleg Batyuk	1992	Global law firm	Banking and finance; Corporate/M&A; Dispute resolution; Investments; IP&T; Real estate and Construction; Restructuring; Tax	Multinational corporations, commercial and investment banks, energy companies, developers, hotel chains, investment funds, international organisations	English, Russian, Ukrainian
+38 044 494 1991						

Dmitrieva & Partners Law Firm3 Dneprovskaya Naberezhnaya St., Kyiv 02098, Ukraine; office@dmp.com.ua, [skype: office_dmp](https://skype.com/office_dmp), www.dmp.com.ua

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+38 067 503 0108						

DLA Piper Ukraine LLC77A Velyka Vasylkivska St., Kyiv 03150, Ukraine; ukraine@dlapiper.com, www.dlapiper.com

+38 044 490 9575	Karpenko Margarita	2005	London, UK	Corporate and M&A; Antitrust/ Competition and Regulatory; Finance & Projects; Real Estate; IP and Technology; Tax	Slavutich Carlsberg Group, Pfizer, Boeing, EBRD, Toshiba, GlaxoSmithKline, Sanofi, Reckitt Benckiser, Damco, Leroy Merlin, Billa, etc	English, Russian, Ukrainian
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EBS13A Universytetska St., Kyiv 03110, Ukraine; info@ebskiev.com, www.ebskiev.com

+38 044 249 7905	Helen Volska	1998	Kyiv, Ukraine	Legal Services; Management Consulting; Accounting and Financial Management Outsourcing; Tax and Audit; IFRS Reporting; IT and HR Consulting; Transfer Pricing	Florange, Yves Rocher, Wizz Air, Microsoft, EBA, 3M, Michelin, Dragon Capital and others	English, German, French, Russian, Ukrainian
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Egorov Puginsky Afanasiev and Partners Ukraine38 Volodymyrska St., Kyiv 01030, Ukraine; kyiv_office@epap.ua, www.epap.ua

+38 044 492 8282	Serhii Sviriba, Oksana Ilchenko, Markiyani Kliuchkovskiy, Roman Stepanenko, Ilona Zekely	1997	Kyiv, Ukraine	Banking & Finance, Capital Markets; Bankruptcy; Competition; Criminal Law; Domestic Litigation; Employment; Family Law; IP / TMT; International Arbitration & Cross-Border Litigation; International Trade & Customs; M&A and Corporate; Pharmaceuticals & Healthcare; Real Estate; Sports Law; Tax	BASF, Citi Bank, Credit Suisse, DCH, Erste Bank, IBRC, IDS, Intesa Sanpaolo, Johnson Controls, J.P. Morgan, Morgan Stanley, Regal Petroleum, Samsung, Unilever, Sodrugestvo Group, UEFA	English, German, French, Polish, Spanish, Russian, Ukrainian
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+38 044 498 7380	Irina Nazarova	2009	Kyiv, Ukraine	Commercial dispute resolution (incl. international arbitration); Corporate law (incl. mergers & acquisitions)	UniCredit Bank, Smart Holding, Scania Group, Repriza Café-Pâtisserie, Fuji Film, Bionade AG, Hazera Ukraine	English, German, French, Spanish, Czech, Russian, Ukrainian
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EY19A Khreschatyk Str., Kyiv 01001, Ukraine; kyiv@ua.ey.com, www.ey.com/UA

+38 044 490 3000	Albert Sych	1991	London, UK	Commercial, corporate, contract law; legal structuring; finance, currency control; banking regulations	WND	English, Russian, Ukrainian
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14D Bekhterivsky Lane, Kyiv 04053, Ukraine; inform@fclex.com , www.fclex.com						
+38 044 238 6420	Viktor Barsuk	2002	Kyiv, Ukraine	Banking and Finance; Competition; Corporate and M&A; Dispute resolution; Intellectual property; Labor; Real Estate; Bankruptcy; Tax; White Collar Crimes	Ferrexpo AG, Concorde Capital, Azovmash, NEST Corp., ACME Color, Finance&Credit Bank; Terra Bank; NorYards AS; Arterium Corp.; AutoKraz; IC«Omega»; SOTA Cinema Group and others	English, Russian, Ukrainian
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4 Volodymyrska St., Kyiv 01001, Ukraine; ukraine@gide.com , www.gide.com						
+38 044 206 0980	Bertrand Barrier, Dr Julian Ries	2006	Paris, France	Corporate and M&A; Banking&Finance; Competition and General Commercial Law; Projects (Finance & Infrastructure), PPPs; Real Estate; Tax; Dispute Resolution; Employment; Intellectual Property	Air Liquide, Bongrain, BNP Paribas, Briziums, EBRD, IFC, EIB, Societe Generale, VTB Bank (Austria) AG, UniCredit Bank Austria AG, Sony, LBBW, Porsche Finance Group, VA Intertrading	English, French, German, Russian, Ukrainian
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16 Mykhailivska St., Suite 7, Kyiv 01001, Ukraine; office@gramatskiy.com , www.gramatskiy.com						
+38 044 581 1551	Ernest Gramatskiy	1998	Kyiv, Ukraine	Business-Advocacy; Foreign Investments; Foreign Trade; Real Estate; Agribusiness; IT Law; Litigation; Tax Law&Tax Disputes; Business Restructuring; Corporate Security; Due Diligence; Insolvency & Bankruptcy	City Capital Group, Seven Hills, Danfoss, TM De-vi, PlayTech, ClickMeIn, Terra Bank, ULMA Ukraine, Celentano, Banka, Jeltok, Promkabel, Larsen, Graal, All-Ukrainian Advertising Coalition	English, Italian, Greek, Polish, Russian, Ukrainian
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9/2 Velyka Vasylkivska St., office 67, Kyiv 01004, Ukraine; reception@jurimex.com.ua , www.jurimex.com.ua						
+38 044 287 4838 +38 044 287 7676 +38 044 284 3777	Danylo Getmantsev	2003	Kyiv, Ukraine	Taxation; Intellectual Property; Real Estate and Construction Corporate and M&A; Banking and Finance; Litigation and Arbitration; Registration of Trade Marks; Bankruptcy and Financial Restructuring; Telecommunications and Broadcasting; License Obtaining; Medicinal Products and Medical Devices Registration	MSL, Travel Professional Group, Ukravtodor, Modnakasta, Espresso, TV, ukrudprom.ua, Bontrup Ukraine, Watsons, Viasat, High-Point Rendel, Avtomagistral - Yug	English, Russian, Ukrainian
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14 Vozdvyzhenska St., office 18, Kyiv 04071, Ukraine; info@mandk.com.ua , mandk.com.ua						
+38 044 227 7944 +38 093 030 3424 +38 093 414 3344	Kalita Andrey	2006	Kyiv, Ukraine	Corporate; Pharmaceuticals; Contract Law; Disputes resolution; Immigration services; Tax	EGIS Pharmaceuticals, ACTED, People in Need, Wärsilä Corporation, Innotec International, DROMI	English, German, Russian, Ukrainian
Lavrynovych & Partners						
41 Saksahanskoho St., Kyiv 01033, Ukraine; office@lp.ua , www.lp.ua						
+38 044 494 2727	Maksym Lavrynovych	2004	Kyiv, Ukraine	Banking & Finance; Tax; Corporate and M&A; Competition/Antitrust; Infrastructure; IP; Dispute Resolution	ArcelorMittal Kryvyi Rih, Danone, Dragon Capital, Hyundai, Kyivstar, Louis Dreyfus Commodities, Swissport International	English, Italian, Russian, Ukrainian
Law Company Prove Group						
4 Volodymyrska St., Kyiv 01025, Ukraine; provegroup@lcpg.com.ua , www.lcpg.com.ua , www.facebook.com/ProveGroup , twitter.com/ProveGroup						
+38 044 225 5510	Vladislav Kochkarov	2014	Kyiv, Ukraine	Tax and Customs; Dispute Resolution; Litigation; Criminal; Private Law; Commercial Law; Labour Law	LLC Unison Group, LLC Multimedia invest, LLC Vesti Mas-Media, PJSC Communication Group ESG	English, Russian, Ukrainian
LCF Law Group						
47 Volodymyrska St., office 3, Kyiv 01001, Ukraine; info@lcfgroup.com.ua , www.lcfgroup.com.ua						
+38 044 455 8887	Anna Ogrenchuk, Artem Stoianov	2009	Kyiv, Ukraine	Legal services: Litigation, Corporate, Finance	Alfa-Bank, Bank of Cyprus, Universal Bank, Zlatobank, QBE Ukraine, Allianz Ukraine, Arab Energy Alliance UA, Vikoil Ltd., Ukrenergy Coal Ltd	English, German, Russian, Ukrainian
L.I.Group						
13 Mykoly Pymonenka St., Block 6A, office 23, Kyiv 04050, Ukraine; lawyer@ligroup.com.ua , www.ligroup.com.ua						
+38 044 227 0514	Artur Megeria, Mykola Kovalchuk	2002	Kyiv, Ukraine	Banking and Finance; Bankruptcy; Litigation; International arbitration	OTP Bank, Energobank, UkrSibbank, VTB Bank, VAB Bank, Ukrchay, Yusuf Nari	English, Russian, Ukrainian

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Lexwell&PartnersSophia Business Center, 6 Rylysky Lane, 5th floor, Kyiv 01001, Ukraine; lexwell@lexwell.com.ua, www.lexwell.com.ua

+38 044 228 6080	Andriy Kolupaev	2005	Kyiv, Ukraine	Corporate Law; M&A; Antimonopoly Law; Competition Law; Dispute resolution; International Arbitration; Real Estate & Construction; Taxation; Labour Law	AET, Bridgestone, CRH, Dniprospeksstal, DuPont, East Metals, Evraz, Honda Trading, ING, Marubeni, Millhouse, Mykolaivcement, Naftogaz of Ukraine, Odesaoblenergo, Pfizer, Podilsky Cement, Schenker, Sojitz, Stiro, Subaru, Sumitomo, Toyota, Ukrproduct, VS Energy	English, Russian, Ukrainian
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Misechko and Partners, Law Firm

76B Volodymyrska St., office 7, Kyiv 01033, Ukraine; office@misechko.com.ua, www.misechko.com.ua/en



+38 044 279 3943	Volodymyr Misechko	2009	Kyiv, Ukraine	Tax; Transport law; Corporate law; Litigation; Sport law; Antitrust and competition; Intellectual property; Real estate	United Aviation Services, Panalpina, Progresstech, Stroytransgaz, Metal Holding, Ibis, Kerch Shipyard, PFTS, Dontehrezina, Luxoptica	English, Russian, Ukrainian
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PLP Law Group

Business Center Illinsky, 8 Illinska St., Kyiv 04070, Ukraine; info@plp.kiev.ua, www.plp.kiev.ua



+38 044 377 7361	Andrii Popko	2002	Kyiv, Ukraine	Corporate/M&A; ISC; Contract law; Litigation; Mediation; Arbitration; Finance; Banking; Securities&Funds; Tax; Investment; Debtor-Creditor; Due Diligence, AML	Kredobank, UniCredit Bank, Casagrande, Bunge, CHS, Kvazar, Souzdrak	English, German, Polish, Russian, Ukrainian
+38 044 377 7362	Ivan Legeida					

Rödl & Partner

Forum Business City, 13 Mykoly Pymonenka St., building 1B, office 31, Kyiv 04050, Ukraine; kiew@roedl.pro; klaus.kessler@roedl.pro; www.roedl.com/ua

Rödl & Partner

+38 044 586 2303	Klaus Kessler	2003	Kyiv, Ukraine	Tax; International Trade; Corporate/M&A; Banking and Finance; Competition/Antitrust law; Litigation; Debt restructuring; Real Estate and Construction; Employment law; Renewable energy; Corporate secretary services	WND	English, German, Russian, Ukrainian
+38 044 586 2304						

Strateg legal company

18A Kikvidze St., Kyiv 01103, Ukraine; info@strateg-llc.com, www.strateg-llc.com



+38 044 227 9391	Oleg Nalyvayko	2009	Kyiv, Ukraine	Customer legal support; Corporate law; Representation in court; M&A	Multinational corporations, Ukrainian companies, commercial bank	English, Russian, Ukrainian
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Squire Patton Boggs-Salkom International Association

12 Khreschatyk St., Kyiv 01001, Ukraine; www.squirepattonboggs.com, www.salkom.ua



+38 044 591 3100	Peter Teluk,	1992	Kyiv, Ukraine	Anti-Corruption (FCPA/UK Bribery Act); Antitrust and Competition; Banking and Finance; Commercial Contracts; Corporate; Dispute Resolution; Intellectual Property; Labor and Employment; Litigation; M&A; PE; Real Estate; Tax and Customs	Acron, Carlsberg Ukraine, ContourGlobal, Furshet, Group DF, Lufthansa Ukraine, MTS Ukraine, Nadra Bank, Orithil, Ukrainian Construction Company, UniCredit Bank, United Capital Partners, Velti, Winner Imports Ukraine	English, Russian, Ukrainian
+38 044 591 3140	Evgeniy Kubko					

Syutkin and Partners

10 Redutna St., office 2, Kyiv 01015, Ukraine; office@siutkin.com, www.siutkin.com



+38 044 383 0000	Mykola Syutkin, Nataliya Osadcha	2006	Kyiv, Ukraine	M&A; Bankruptcy and Debt; Real Estate; Assets Securitization; Litigation; Corporate Law; Tax	Noble Resources Ukraine, Carlo Pazolini Trading, IFD Kapital, Satellit	English, Russian, Ukrainian
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Vasil Kisil&Partners

Leonardo Business Center, 17/52A Bohdana Khmelnytskoho St., Kyiv 01030, Ukraine; cs@vkp.kiev.ua, www.kisilandpartners.com



+38 044 581 7777	Oleg Makarov	1992	Kyiv, Ukraine	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	Alfa Bank (Ukraine), Arricano, BASF, Bayer Consumer, BNP Paribas, British American Tobacco, Central European Media Enterprises, Coca Cola, Danone, DuPont, Google, Hubei Changyang Hongxin Industrial Group, Inditex Group, Mary Kay, Samsung, Seven Hills, Shell, YouTube.	English, German, Swedish, Russian, Ukrainian
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Wolf Theiss LLC

5 Spaska St., Kyiv 04071, Ukraine; kiev@wolftheiss.com, www.wolftheiss.com



+38 044 377 7500	Taras Dumych, Ronald Given	2008	Austria, Vienna	Corporate and M&A; Banking and Finance; Capital Markets; Tax; Dispute Resolution; Energy, Natural Resources; Competition; Real Estate, Construction; Employment; IP/IT; Agriculture	EBRD, Geveko, ThyssenKrupp, VIG, QBE, Rubellius Capital, Aventures Capital, Lukoil, Raiffeisen, Alvgogen, Dr. Oetker	English, German, Russian, French, Polish, Ukrainian
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A woman holds a poster that reads “Pu-
tin, get your hands off Ukraine!” during
a demonstration for peace and unity
in Ukraine on March 5 in Simferopol.
(Anastasia Vlasova)

European Court of Human Rights loaded with Ukraine cases

By **Mariana Antonovych**
antonovych@kyivpost.com

On March 13, 2014, prior to Russia’s fake referendum in Crimea, Ukraine lodged the first of many actions against Russia in the European Court of Human Rights. The dispute focused on alleged violations committed by Russia while its troops controlled Crimea.

It was followed by two more disputes regarding the abduction of Ukrainian orphans and children without parental care on three occasions, as well as a case about the detention of Hayser Jemilev, the son of Crimean Tatar leader Mustafa Jemilev.

Since then, some 160 individual cases against Russia or Ukraine, or both, have been filed and are pending in the European court. Such disputes are generally considered to be measures of last resort after diplomacy fails.

“Regarding the Crimean cases, this is the very first time since the Second World War that the court has had to deal with the issue of annexation in the framework of an inter-state dispute,” Stanislav Shevchuk, a former ad hoc judge of the European Court, told the Kyiv Post.

Ukraine and most other nations do not recognize Crimea as a part of the Russian Federation.

“Ukraine relies on the decision by its Constitutional Court on March 14, 2014, rendering the so-called Crimean referendum illegal,” Shevchuk says. “Given the recent statement by (Russian President Vladimir) Putin calling the annexation of Crimea a ‘special forces raid,’ there is no room left for doubts as to the genuine motives of Kremlin.”

Regarding Crimea, a key problem for Ukraine will be gathering evidence, particularly in cases of human rights violations.

“The outcome of a dispute will be closely linked to the quality of evidence provided by the parties involved,” Shevchuk says. “Although Crimea has been transformed into a military base and

loaded with modern military equipment and FSB agents, Ukraine still has to meet the burden of proof.”

As plaintiff, Ukraine must collect testimonies from victims, witness statements and reports from independent international organizations in order to provide proof of human rights violations beyond a reasonable doubt. The court can also assign a fact-finding mission to Crimea to become better informed, as it did in disputes between Georgia and Russia.

Shevchuk says that the process of making a case should be as transparent and impartial as possible. “Any instance of fudging evidence would be used against Ukraine,” he warns.

According to Shevchuk, the cases of Crimea and the so-called “people’s republics” should also be clearly differentiated. Donetsk and Lugansk oblasts have not received any recognition as territories separate from Ukraine. Despite all of its efforts, Russia has not succeeded in transforming these regions into analogues of Transnistria.

“Obviously, what is going on in eastern Ukraine is no longer an anti-terrorist operation, it is Russia’s war against Ukraine,” says Shevchuk. “Thus, the court will face a serious challenge balancing the necessary use of force, a standard set up under the European Convention, and de facto armed hostilities. According to Article 2 of the European Convention on Human Rights and the Court’s practice ... any use of force that results in the loss of life must be absolutely necessary and carefully planned, and a state should abstain from any actions likely to endanger lives unnecessarily.”

Natalia Sevastyanova, a former representative for Ukraine for the European Court of Human Rights, says that it’s too early to comment on the enforcement of any future rulings by the court. “At this stage, any such comments would be inaccurate, as the time frame of the court’s considerations and outcome of the case are vague,” she says. “However, I would like to emphasize that the enforcement of the European Court’s decisions is an obligation of the High Contracting Party.”

Shevchuk is wary.

“On one hand decisions of the court should not be underestimated, as they form an international policy regarding an aggressor’s actions,” he says. “On the other hand, if Russia refuses to enforce these decisions, nobody will be able to force it. The only meaningful option will be to exclude Russia from the Council of Europe. However, this is a political issue. I believe many would say the best way to cultivate Russia’s democratic values is to retain its membership in the European Council.”

Regarding Ukraine’s own practice of not enforcing rulings by the European Court, Shevchuk believes this problem will be resolved when the agencies responsible for enforcement concentrate on obligations under the law over those in their respective manuals.

“If Ukraine was a developed democracy instead of centralized populist autocracy, everything would be different,” he says. “Democracies are not fighting with each other. They are pursuing the very same goals for the improvement of people lives and the protection of rights and freedoms.”

Overall, the ECHR has rendered one pilot decision (Ivanov vs. Ukraine) and about 10 quasi-pilot decisions against Ukraine, drawing the government’s attention to systematic problems within its legal system. None of the penalties have been fully implemented.

According to the budget law, the Cabinet of Ministers now has the right to restructure the total amount, Hr 7.5 billion, owed by Ukraine to plaintiffs according to the European Court by means of a 10 percent

partial payment and by issuing government treasuries for the rest of the sum with 3 percent annual interest. In Sevastyanova’s opinion, this will help improve the situation.

Shevchuk believes paying compensation is not enough. In his view, much more needs to be done, beginning with legal education and ending with an independent judicial branch.

“Before its implementation, judges were applying the reasoning of

‘Obviously, what is going on in eastern Ukraine is no longer an anti-terrorist operation, it is Russia’s war against Ukraine!’

– Stanislav Shevchuk.

European court in a very formalistic manner, as a persuasive argument to make their decisions look more significant,” Shevchuk says. “Now, the law on the reinstatement of trust in the judiciary makes a judge subject to scrutiny if a judgment he has rendered is in violation of the European Convention on Human Rights ... European values are quasi-constitutional and universal. A judge cannot interpret rule of law at his own will.”

“The 23-year history of imitating democracy, sovereignty, independence, including the independence of the judiciary, cannot last forever,” Shevchuk says. “People started Maidan because they lost trust in governmental institutions. Now that a political nation has formed, it is high time to create new institutions, which can’t be achieved with the simple rewriting of laws. This is a question of moral responsibility.” ■

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Some say lawmakers dragging their feet on lifting immunity from prosecution



Although Ukrainians don't want their members of parliament to be above the law, lawmakers have been slow in lifting their legal immunity from prosecution for serious crimes. Many agree that lawmakers' public statements and votes should be legally protected as part of their official duties, but not serious crimes.

By Anastasia Forina
forina@kyvpost.com

Cancelling lawmaker immunity from criminal prosecution was one of the demands of the EuroMaidan Revolution. And when parliament recently advanced a draft law with this aim, initiated by President Petro Poroshenko the move was popularly embraced. But obstacles remain, including the Constitutional Court, inertia and no clear idea to what extent lawmaker immunity is permissible or even necessary.



The reflections of members of parliament in a pendulum clock on the sidelines of the Verkhovna Rada on March 3. (Pavlo Podufalov)

Parliament Speaker Volodymyr Groysman has said that lawmakers will return to the draft law in September after they amend the Constitution and receive an approval from the Constitutional Court and Venice Commission. If the bill is passed and enacted into law, immunity will be lifted and no approval by parliament will be required to arrest or detain lawmakers (as is now required).

European Union countries do not offer their politicians total, blanket immunity from prosecution. Lawmakers, however, have legal protections related to their votes as public officials and the views they express while carrying out their legislative and professional duties. Similarly, the Ukrainian draft law offers immunity for lawmakers for opinions expressed in their work as legislators.

“We will have voting on this law and I know the mood of many lawmakers who support it,” Groysman told the Kyiv Post. “Immunity causes irresponsibility and impunity, which cause organized crime. Maybe for corrupt lawmakers we will even do something good, as the absence of immunity will prevent them from committing crimes.”

In Ukraine, blanket immunity from criminal prosecution for lawmakers, combined with notoriously corrupt and ineffective prosecutors and judiciary, has led to numerous cases of abuse. Members of parliament have even been able to get away with murder, financial corruption and other serious crimes.

One high-profile case involved former lawmaker and member of ex-Prime Minister Yulia Tymoshenko’s parliamentary faction, Viktor Lozynsky. His fellow lawmakers cancelled his immunity from prosecution, but he fled and managed to avoid prosecution for a 2009 murder for two years. In 2011, however, he was sentenced to 15 years in jail. The sentence was then commuted to 10 years and he was freed in 2013 for health reasons. He returned to prison in 2014.

At the end of 2014, in another high-profile case, the Prosecutor’s General Office brought charges against Yuriy Ivanyushchenko, a former lawmaker who was being investigated for his involvement in crimes connected with the embezzlement of state funds and their illegal transfer during the tenure of deposed President Viktor Yanukovich. At the time, Ivanyushchenko was a member of the then-ruling Party of Regions. He fled the country and is currently on a wanted list.

Nevertheless, there has been no move to lift immunity since February, and experts doubt this can happen any time soon.

Legislative attempts in the past to cancel the total immunity of parliament members have not been successful.

The Constitutional Court has ruled several times that lawmaker immunity is not a benefit, but a guarantee of their work and protection from avenging authorities. “The scope of the immunity can be changed,” says Viktor Musiyaka, co-author of Ukraine’s Constitution. “But cancelling it all is unacceptable.”

It’s important to guarantee the independence of the lawmakers when they take decisions in parliament, he says.

Grievous crimes and crimes against the state should not be covered by immunity, while the lawmakers should be free from prosecution for the results of voting and the views they express, says political analyst Taras Berezovets, who heads the Berta Communications consultancy. He assumes that the parliament will pass the current version of the law. “This draft law is reputational for the authorities,” he says. “It’s the reputation of Poroshenko and Groysman, who initiated the law. That’s why Poroshenko, having the largest faction in parliament, will have to push it through.”

But the bill will be blocked by the Constitutional Court, Berezovets speculates, which will rule that it’s unconstitutional. Moreover, the procedures for revising the bill through the court could last from half-a-year to a year-and-a-half, he says.

“This is the game of the lawmakers,” Berezovets says. “They don’t want to cancel their immunity. They will formally support it, but in fact will be doing everything to delay this process. At the end of the day, I hope they will get to the normal European practice and will reduce the degree of immunity, but not cancel it completely.”

Kyiv Post staff writer Anastasia Forina can be reached at forina@kyivpost.com. ■



A woman looks at deputies of the Verkhovna Rada from the press box during a session of parliament on Feb. 6. (Volodymyr Petrov)

Degree of immunity is at center of debate over lawmakers' privileges

Ukraine's Parliament is famous not only for its brawls among members, but also for enjoying legal immunity from prosecution. This allows lawmakers to get away with serious crimes.

By Mariana Antonovych
antonovych@kyivpost.com

On Feb. 5, a resounding majority of the Verkhovna Rada, 365 out of 450 members, voted to abolish all legal immunity for deputies and judges in Ukraine.

What is now popularly being embraced as a necessary reform, however, has some legal experts concerned. The measure is too severe, they warn, and in its current form it could have dangerous and unintended consequences.

The bill, now being reviewed by Ukraine's Constitutional Court, will cut all present and existing legal immunity enjoyed by members of parliament and judges.

However, the cuts will preserve parliamentary indemnity, the protection against criminal prosecution based on public duties such as votes cast or specific statements in the performance of legislative duties.

Judges will still have more cover and not face consequences for

actions conducted during their administration of justice. Moreover, they still can only be detained or arrested through the consent of the Higher Council of Justice, with certain specific exceptions.

European countries make a degree of immunity available for public officials so that they can more effectively carry out their duties.

"In Ukraine, immunity is a mechanism for avoiding responsibility," says Mykola Kozubra, a Constitutional Court judge from 1996 until 2003. "But it should be a guarantee of parliamentary and judicial activities, and of the flawless operation of Parliament and the judicial system as whole."

After its vote, Ukraine's Parliament filed a petition with the Constitutional Court of Ukraine to consider the consistency of the bill with relevant articles of the Constitution. The court then appointed a judge-rapporteur, and according to court rules, its decision must be rendered in the coming weeks.

Stanislav Shevchuk, a Constitutional Court judge, says the court won't keep the Ukrainian public waiting for long and will keep its deliberations in the public's eye. "It is important to conduct public hearings on the matter and attract press," he says. "The future of the Constitutional Court lies in the transparency of its procedures."

Parliament's speaker, Volodymyr Groysman, has little doubt about the general outcome. "After the court's findings, the Verkhovna Rada will vote in the bill en bloc at the regular session in September," he says enthusiastically.

Kozubra does not share Groysman's excitement, however. In his view, the total abolition of immunity for members of Parliament and judges is inadvisable. "At least functional immunity must remain," he says.

"The problem is, Parliament has managed to infect people with this

idea," he says. "Thus, it has to be decided. If members of parliament did not roll out this campaign, immunity would be some 30 place down among the interests of Ukrainians."

Yet while many people slam legal immunity for MPs as a feudal practice, the extent of immunity provided under the Ukrainian constitution is largely in line with that provided by most other European countries.

The immunity of judges was functional since the birth of the Constitution," says Oleksandr Vodyannikov, an OSCE project coordinator. However, laws mutilated constitutional provisions to such an extent as to confer absolute immunity.

Legislation could bring immunity back into line with its original intent, Kozubra says. "It is enough to bring to an end to the notorious practice of 'covering up kin,'" he says.

Kozubra advocates continued immunity for activities carried out by judges and legislators in the line of duty. He also says that instead of totally abolishing immunity for criminal cases, a mechanism could be put in place wherein police structures and prosecutors were still free to investigate the alleged crimes of judges and legislators, and courts could still rule in these cases. But a special judicial or parliamentary panel would have to rule in the event that the detention of a judge or legislator would take place during the judge's or legislator's time in office.

Both Vodyannikov and Kozubra agree that the amendments in question are likely to be approved by the Constitutional Court, as they seem to be consistent with the Constitution.

Still, he doubts that the coalition can ultimately collect the 300 votes necessary to abolish immunity during the next parliamentary session in September. "I do know members of Parliament who believe this is an ill-advised move." ■

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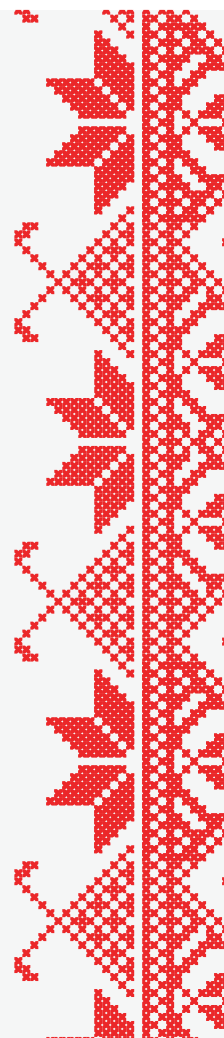


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Legal clinics grow in popularity, providing pro bono advice to poor people



On March 1 the Central Legal Clinic started to provide free legal assistance to individuals on a regular basis in Kyiv. The project is made possible thanks to the support of Lavrynovych & Partners Law Firm. (Volodymyr Petrov)

For those who cannot afford a lawyer, a network of legal clinics staffed by law students and providing legal advice has been set up by billionaire Victor Pinchuk and the International Renaissance Foundation.

By Mariana Antonovych
antonovych@kyivpost.com

Legal clinics are now becoming more popular in Ukraine out of necessity. At these clinics, local law students provide free legal advice to those who can't afford it. About 60 of these clinics are part of the Kyiv-based Association of Legal Clinics.

In 1996, Ukrainian students studying abroad first proposed the clinics for Ukraine after seeking how they worked internationally. In 2006, the Cabinet of Ministers required some law schools to establish such clinics.

Since 2004, with the help of Ukrainian billionaire Victor Pinchuk and the International Renaissance Foundation a network of 37 clinics in 21 regions was established. Overall, Pinchuk's investments in the project stand at \$733,000.

The majority of Ukrainian law firms are also involved in various charity and corporate social responsibility programs. Lavrynovych & Partners views the establishment of legal clinics as a worthwhile project and welcomes other law firms to cooperate in this effort.

On March 1, Lavrynovych & Partners established the Central Legal Clinic in Kyiv. It's known for its effective supervision of students and graduates by practicing lawyers instead of academic professors. This is likely to raise the quality of pro bono legal aid in Ukraine, according to Maksym Lavrynovych, the company's managing partner.

Moreover, the idea of providing pro bono legal services and staffing legal clinics with professional lawyers is popular among such globally renowned law and audit firms as White & Case, Clifford Chance and EY.

"Since the legal market is not in demand as much as it was before, a lot of qualified graduates are off the legal road," Lavrynovych says. "The legal clinic will give them an opportunity to practice law and will help us to staff our law firm with the best young specialists."

However, he believes it is just the right time to revisit the concept and to have legal clinics revolve around the practices of law firms. "Just before this interview, I passed by one of the older legal clinics on my way to office. The windows were nailed up. This is the state of legal clinics in Ukraine," he said.

While an exaggeration, the quality of a legal clinics' services largely depends on the quality of education provided by the accompanying university, says Natalia Stupnitska of the Organization for the Security and Cooperation in Europe.

Representatives of the Kyiv-Mohyla Academy, Kyiv Taras Shevchenko University and Lviv Ivan Franko University say the clinics take on up to 200 cases a year. It is difficult to measure the success, since usually they do not represent clients in the courts.

Being poor can also mean being powerless in Ukraine's courts.

"Sometimes clients come up with neglected cases that are being reviewed by the cassation courts. Obviously, we are powerless in such situations," says Anna Pelyushkevych, head of the clinic at Lviv Ivan Franko University.

Meanwhile, Yulia Matveeva, head of Kyiv-Mohyla's experimental law clinic, says the Cabinet's regulation has had an adverse effect.

"I have recently been to one of Kyiv's universities, which has a law faculty and a huge budget," she says. "Instead of a law clinic I found nothing but a nameplate. It did not even have a journal of registration of requests. Thus, it is great time to introduce standards for the legal clinics."

Though she finds pro bono legal services useful, she believes the legal clinic brand should be part of law schools, not law firms. "While it is good that licensed attorneys provide legal services pro bono, according to existing standards, they cannot possess the title of 'legal clinic'."

While there is much to be done, the Viktor Pinchuk Foundation believes the legal clinics project has been successful.

"Throughout its existence, it has enabled Ukrainian citizens to learn about their rights and to protect them against unjust and non-transparent aspects of the legal system," it said in a statement. "The fact that now a Ukrainian private legal company (Lavrynovych & Partners) took up the idea and built upon it can be seen as a proof of the success of the project." ■



Kasko blames investigative agencies in failures of international cooperation

By Mariana Antonovych
antonovych@kyivpost.com

Vitaliy Kasko, 38, was appointed deputy prosecutor general for international legal cooperation in May 2014, bringing his extensive experience to the job and raising expectations at a time when the duties of his office are more exacting – and more closely watched – than before.

Now very much in the spotlight, he is in charge of criminal proceedings against former Ukrainian officials who fled the country, leaving more than 100 demonstrators killed in their wake. And he has successfully built international support for asset-freeze extensions against former top officials suspected of plundering Ukraine's treasury.

On March 5, the European Union agreed to a one-year extension for asset freezes of former President Viktor Yanukovich and 13 of his allies suspected of stealing from Ukraine. Kasko also negotiated three-month extensions for freezing the assets of former justice and education ministers and of Yanukovich's son.

Kasko is gratified by these successes, since his office has been facing serious challenges.

Since the EU first imposed sanctions on March 18, "media reports have warned several times that the sanctions would be lifted," Kasko says. "However, it did not happen due to our cooperation with the EU. Along with the Ministry of Foreign Affairs, we beat the odds. We communicated with the EU nearly every day."

However, he adds: "Unfortunately our efforts were leveled by the inactivity of investigators."

Kasko says his department within the General Prosecutor's Office is badly hampered by the fact that it is not permitted by law to work with investigators.

On March 12 Vitaliy Kasko met with the Kyiv Post to talk about his first 10 months in office. (Volodymyr Petrov)

“We do not conduct investigations and lack the instruments to influence investigators,” he says. “I am deprived of the right even to have a glance at their cases. The law forbids this. The only mechanism or involvement (in an investigation) is to explain to them the possible consequences of a protracted investigation and the inactivity of investigative agencies.”

“We proceed from the premise of provided material,” he says.

Kasko believes the only way to improve investigative agencies is to rebuild them from scratch.

He said that during the era of Yanukovich’s top prosecutor, Viktor Pshonka from 2010-2014, “the purpose of investigation was ultimately mutilated. It worked mostly on corrupt or framed cases. Investigators were not oriented at collecting legitimate and admissible evidence and taking a winning case to court. Rather, they waited for a head of an office to give them a green light to close a case. Under these circumstances, it is necessary either to re-train or fire all of them.”

A warrant has been issued for the arrest of Pshonka, who is suspected of involvement in the murders of EuroMaidan Revolution demonstrators and embezzlement, among other suspected crimes.

Kasko is responsible for high-profile extradition cases.

One of them involves Yuriy Kolobov, Ukraine’s former finance minister, who was recently arrested in Spain. While the formal process of extradition takes time, Kasko is optimistic that the Kolobov’s extradition will take place.

Kasko believes that most of the former top-ranked Ukrainian officials wanted by the Prosecutor General’s Office are in Russia, whose own officials are not likely to extradite them to Ukraine.

For trying criminal cases against those outside Ukraine, Kasko believes a year is enough to lodge criminal proceedings.

“We developed and implemented a procedure of consideration of a case in absentia that is in line with European standards and the practices of the European Court of Human Rights,” he says.

The law contains necessary procedural guarantees, including for notifications about trials and for the right of convicted individuals to new trials if they appear later before the court.

Kasko views hiring more and new personnel as clear priorities. A new department heads need to be put in position and similar measures need to be put in place in the regional prosecutor’s offices.

Kasko also would like to see better and more transparent mechanisms developed and implemented for investigating prosecutors via the new National Anti-Corruption Bureau.

“Whichever name the Prosecutor General’s Office will pick for the department responsible for investigating prosecutors, it is a clear conflict of interest,” he says. “A prosecutor will not investigate cases against prosecutors in good faith. Even if he does, Ukrainian society is not likely to trust him.”

Kasko has extensive experience within the Prosecutor General’s Office, including service as an investigator and deputy chief investigator. He took a hiatus from the department during Pshonka’s time as head, during which time he worked at the Arzinger law firm.

When asked to comment on the turmoil within the General Prosecutor’s Office and the resignation of Vitaliy Yarema as prosecutor general in February, Kasko says the problem lies both in the individuals and the system.

“I have been a deputy during the terms of three prosecutors general already – (Oleg) Mahnitskyy, (Vitaliy) Yarema, and (Viktor) Shokin,” says Kasko about the turnover in the top job over the last year. “Until we change the system – and we are up to it – even the most outstanding person won’t be able to change the situation radically.” ■



Vice Prime Minister of Ukraine Oleksandr Vilkul (L) and Minister of Finance of Ukraine Yuriy Kolobov (R) in Presidential Administration on Oct. 21, 2013 in Kyiv. (UNIAN)

Yurydychna Gazeta's survey of 100 best lawyers in Ukraine

By Mariana Antonovych
antonovych@kyivpost.com

Yurydychna Gazeta, a Ukrainian trade publication, introduced a new annual survey in 2010 called "Client Choice: The Top 100 Best Lawyers of Ukraine," to assist corporate lawyers and businesses in finding the best legal counsel.

It conducted a similar survey of the Top 50 Lawyers in 2006 and 2008. They increased the total to 100 in 2010.

Such surveys give opportunities to young and promising, though less experienced and less famous lawyers. The surveys also help lawyers assess which qualifications they need for career growth.

The survey is based on responses – all confidential – from managers and in-house lawyers from about 2,000 leading Ukrainian and international companies operating in Ukraine (according to Forbes-Ukraine and Delo.ua) that work with Ukrainian law firms and international law firms in Ukraine.

The methodology and ideas underlying the survey belong to Yurydychna Gazeta. The market research agency Noksfishes is the project partner and conducts the analysis.

Respondents received a list of 17 legal practice

categories and were asked to fill in the names of the best lawyers, according to his or her experience working with them. The major criteria for the survey were objectivity, impartiality, client-orientation, and transparency. Within the top 100, there is no ranking.

Oleksiy Feliv, a partner at Gide Loyrette Nouel, believes the Top 100 Best Lawyers is "a fair and objective ranking that provides for a good market overview of outstanding lawyers."

The survey found these are the 100 best lawyers in Ukraine, in no particular order, so they are listed alphabetically.

But others aren't so sure about the value of such rankings. Andriy Stelmashchuk, a partner at Vasil Kisel & Partners, is skeptical about Ukrainian rankings. He believes that lawyers should continue caring more about the quality of their legal services than the results of ratings.

Based on survey results, it appears that the Ukrainian legal market is rejuvenating. Clients praise a growing number of young lawyers in their specialization, education and diversity.

The Top 100 ranking includes many young lawyers, perhaps a natural evolution as an older generation of lawyers moves on to politics and public service or takes the ranks of top managers in their firms.

Despite the turnover, many in the Top 100 in previous years still retain their positions.

Another trend shows that lawyers working for multifaceted law firms covering a wide range of services score high. Clients have become more exacting. While they strive to obtain quality service from a law firm with specific areas of specialization, they also need assistance in other law-related fields, such as taxation and due diligence.

Because of the survey and its results, it is clear that the Ukrainian law market is becoming more competitive. In the next decade, it seems, only the strongest – and most diversified – will survive.

The following list is published in alphabetical order as the ranking does not attempt to sort the lawyers qualitatively from 1 to 100.

A statue of the Greek goddess of justice Themis near the building of the Court of Appeal in Kyiv. (UNIAN)



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