

KyivPost

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**Civil Service and Labor Law Reform:
How To Break Free From
Human Locusts
Stripping Ukraine's Economy**



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Editors' Note

The relationship between employers and employees in Ukraine, in the public and private sectors, works badly for both sides.

From the employers' viewpoint, labor laws are stacked in favor of employees, an extension of the Soviet mentality of guaranteed lifetime employment. Such rights didn't really mean much in a state-owned economy governed by a totalitarian regime. The old saying springs to mind: "We pretend to work and they pretend to pay us."

A dynamic, free-market economy requires a competitive workplace, where employers and employees each have codified but reasonable rights. The employer wants to hire the best, fire the worst and set pay and working conditions. The employee wants the right to compete for the best job and best pay, to have legal protections that govern work hours, prevent discrimination and, ideally, provide for pension and other benefits.

But this is not how it works in Ukraine. The 1971 labor code still in effect (with modest changes) is loaded with such unreasonable protections that, combined with confiscatory taxes, employers bypass hiring employees officially altogether, leaving them without any legal rights and rendering labor unions practically useless.

In the public sector, anticipation is high over how a new civil service code will work starting in May. Currently, from the employees' side, wages are low and rules stifle creativity. From the employers' side, it's impossible to provide efficient government service when laws make it so difficult to fire anyone and budgets are so tiny. A case in point is Ukrzaliznytsia, the state railway monopoly. It is overstaffed by as many as 100,000 employees, in a case of grand featherbedding. But they keep their jobs because nobody wants the social unrest or strike that could come from firing so many people at once.

Clearly, a better balance of rights is needed between employers and employees.



Brian Bonner
Kyiv Post Chief Editor



Allison Quinn
Kyiv Post Editor



Euan MacDonald
Kyiv Post Editor



Olga Rudenko
Kyiv Post Editor

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

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Publisher: Mohammad Zahoor

Acting Chief Executive Officer: Alyona Nevmerzhytska
Chief Editor: Brian Bonner

Sales Managers: Elena Symonenko, Yulia Kovalenko

Designers: Vladyslav Zakharenko, Jurij Ternicki

Project Team: Olena Goncharova, Isobel Koshiw, Josh Kovensky, Yuliana Romanushyn, Ilya Timtchenko

Photo Editor: Pavlo Podufalov

Photographers: Kostyantyn Chernichkin, Volodymyr Petrov,

Anastasia Vlasova

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Cover: Neither Ukraine's civil service nor existing labor codes serve the nation well. But vested interests resist change and game the system. The public sector, meanwhile, soaks up too much of the official economy as high taxes and stifling regulations push people into the shadow economy. (AFP)



A demonstrator with a suitcase of dollars and pockets bulging with currency calls attention to corrupt government-business ties on Sept. 17, 2009 in Kyiv outside the Ministry of Health. (UNIAN)

Civil service reform key to modern economy, stable democracy

A new era dawns on May 1, when Ukraine's new civil service code takes effect. The aims include trimming excess numbers of poorly paid civil servants and creating conditions decent pay and better performance.



Jan Tombinski

Whenever a country chooses to transform itself, and rid itself of old, bad traditions, civil service reform isn't usually something that at the top of the "urgent to do" list.

However, boring as the topic is to the average Andriy, in my experience it is the key to successful reforms. No country that has

successfully morphed from a post-Soviet state into a modern economy and stable democracy has managed it without carrying out civil service reform.

It often starts with trimming the enormous number of civil servants – who are poorly paid, making them search for other, illegal sources of income. Then comes procedural and

Salary indexation. What are the risks?



**ALEXANDER
SHEMIATKIN**

Partner, Attorney at Law



**TETIANA
SUCHYK**

Of Counsel

Salary indexation is a state guarantee provided to each employee under the legislation of Ukraine. However, in recent years, not many employers in the private sector have been concerned about this guarantee. Until 2015, failing to index salaries merely resulted in an administrative fine being imposed on companies' officials, and the fines themselves were small — up to Hr 1,700 (or \$63). Only under the worst case scenario, under very particular circumstances, could violations have resulted in criminal charges. There was also a risk of civil litigation, with employees claiming the balance of unpaid indexed salaries. However, despite the fact that such civil lawsuits have indeed occurred, many employers still turn a blind eye to the matter of salary indexation.

But at the beginning of 2015, the financial penalties against employers who fail to provide their employees with the minimum state guarantees for remuneration of labor were introduced to the Labour Code of Ukraine. Salary indexation is considered one of these state guarantees.

The sanction for the above violation is a fine imposed on an enterprise at the level of 10 subsistence minimum wages for able-bodied individuals, which is now UAH 13,780 (or \$510). Such a fine is to be imposed for the violation of salary indexation of each employee. Therefore, in calculating the fine, the sum of \$510 is multiplied by the number of employees. For example, if there are 100 employees at the enterprise, then the fine for failing to index salaries would be \$51,000. As can be seen, the sum of fine, depending

as it does on the number of staff, could be quite significant. Moreover, such fines can be imposed without any time limitations since it has been established.

But these fines remained off the radar for employers until February 2016, as no procedure for imposing the fine was established until then. Basically, employers could be found liable for a fine, but there was no mechanism for imposing it. That changed on Feb. 10, 2016, when a resolution issued by the Cabinet of Ministers of Ukraine determining the procedure for imposing the fine came into effect. The imposition of such fines is now a real possibility.

So considering the above, the issue of salary indexation now requires the careful attention of every employer.

In view of this, let us consider in more detail the basic rules of salary indexation.

Firstly, salary indexation is obligatory for all enterprises from March 1, 2003 (when the Law of Ukraine 'On Indexation of the Population's Incomes' came into effect). Therefore, starting from this period, the salary of each employee should have been indexed. Taking this into account, the overall amounts of indexation for the whole period of non-indexation might appear significant. But before jumping to any conclusions and picturing huge amounts of unpaid indexation, it is worth noting that if the employer continuously increased salaries there might had been no need for indexation, or the sum could be insignificant. In the first place, the respective calculations are required.

Secondly, we have to emphasize that salaries have to be indexed no matter what size they are — Hr 1,500 or Hr 20,000 for example. An employer might pay high salaries, which guarantee a good standard of living to an employee, but still be obliged to index them.

However, it's worth noting that not all of the salary has to be indexed, but only within the subsistence minimum wage for able-bodied individuals. For example, if an employee's salary equals Hr 10,000, only Hr 1,378 (or

\$51) is liable for indexation — this is the base sum for calculating the indexed sum.

Next, the base sum is multiplied by the index of price growth, which basically reflects the growth in consumer prices due to inflation. For employers, it is important to remember that the sum of indexation greatly depends on the length of time since the employee's last raise. The general rule: the more recent the salary increase, the smaller the sum of indexation. For example, if an employee's increase salary was in January 2014, then the sum of indexation for March, 2016 will be Hr 1,064 (or \$39), which has to be paid in addition to employee's salary, regardless of its size (i.e., if an employee's salary was Hr 20 000, then he/she, after indexation, should be paid Hr 21,064). If the employee's salary was last increased in January 2015, then the sum of indexation would be Hr 523 (or \$19), which is half the amount. However, in this case the size of the salary increase also has to be taken into account.

There are many other factors that influence salary indexation. For example, many employers in times of high inflation decided to pay extra bonuses to support their employees standards of living. Thus, employees' income increased, and in this case employers fairly expect that the payment of such bonuses would affect their obligations with respect to indexation. However, there are doubts over whether such bonuses can be included when calculating the sum of indexation. So, it appears that even if the sum of the bonus covers the sum of indexation, the employer is nevertheless still obliged to pay the sum of indexation.

To sum up, employers should expect a revival of activity by the state authorities concerning the issue of salary indexation. Therefore, it is advisable to analyse all periods of salary accrual and payment, with a view to meeting salary indexation obligations, as well as reviewing the structuring of employees' salaries in general.



A man walks next to the Cabinet of Ministers of Ukraine on April 24, 2014, in Kyiv. (Kostyantyn Chernichkin)

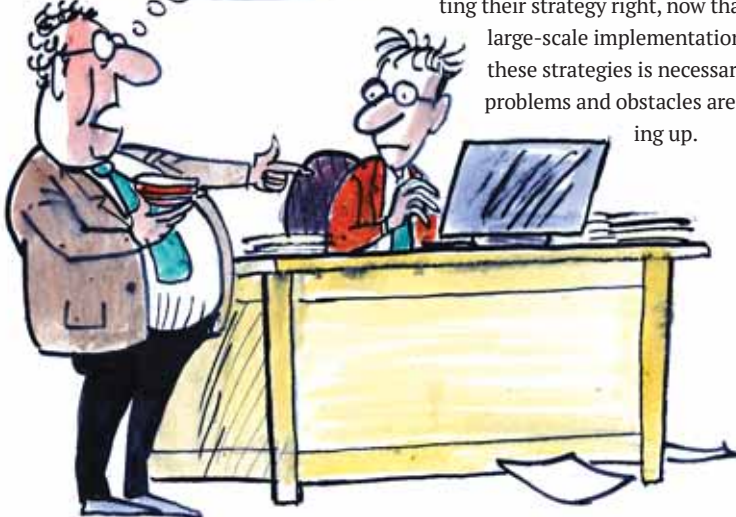
structural reform – one cannot design bold, effective reform plans, but then pretend that the administration that has been in place for the past 30 years will be able to carry them out using the same old ways and procedures.

In summary, a combination of “badly paid” and “let’s do as we’ve always done” in the public sector is a sure-fire recipe for disaster.

This is why I have always regarded public administration reform, together with judicial reform and fighting corruption, as systemic prerequisites for all reform in Ukraine.

Not dealing with this properly will block the entire reform process. While this has perhaps not been obvious while reformers were busy getting their strategy right, now that large-scale implementation of these strategies is necessary, problems and obstacles are piling up.

You know how to use that thing, right? So take care of those documents while I finish my sandwich.



What needs to be done?

Clearly, a modern framework of rules and conditions for officials is essential - rules on merit-based recruitment, performance measurement and ethical behavior. Last but not least, fair pay, allowing officials to lead a decent life, is essential to removing the temptation to take bribes.

But even a professional workforce of officials won’t make much difference if they are stuck in an inefficient environment. Ask any minister in Ukraine what shocked them most when taking office and they usually answer: “The procedures. I can’t believe I need to sign 800 documents a day, most of which should never have reached my desk at all.”

This means public administration reform must go well beyond a new legal framework for civil servants. It must look at the fundamentals – how do we want to work together to get results, what can we do to become efficient, how can we remove redundancies?

And let me be very clear: public administration reform is not about the European Union paying the salaries of Ukrainian officials. Increasing salaries without a profound restructuring and modernization of the civil service will not bring lasting benefits. In our jargon: it will not be sustainable.

So the Ukrainian government will have to clearly show how it will finance a salary increase for officials over the long term, once international support has ended. The EU will be pleased to provide technical support to study

Ukraine’s modern reformed-minded officials, such as Infrastructure Minister Andriy Pivovarsky and Deputy Minister Max Nefyodov, have complained about the presence of too many uneducated civil servant who don't even know how to use computers.

ways to achieve this objective, but the concept should be part of Ukraine's overall, comprehensive civil service reform strategy - and it will be on the basis of this strategy (and not an isolated plan to somehow quickly raise salaries) that the EU will provide financial assistance in support of the overall strategy.

To sum it up: public administration reform must be comprehensive to make sense. It is about reshaping the entire administration and bringing it into the 21st century. It is about modernization, about empowerment and, ultimately, about better serving citizens.

What EU has done

With intensive technical and political support from the EU, in a long, painful process, the law on the civil service was finally adopted at the end of last year. For the first time, all the basics of a modern administration have a legislative basis. Most importantly, merit-based competitions will mean that to become a public servant, it won't be who you know (or, worse, how much you can pay) but who you are and what you know that is important. We are helping to prepare the regulations and practical steps needed to ensure the law on the civil service enters into force on May 1.

Along with that, for more than a year now, we have been in an intensive dialogue with the government to support the drafting of a comprehensive civil service reform strategy and an implementation plan. We are not trying to invent something new, nor should Ukraine do so. The principles of good public administration exist and are known. Building on them is the only way to keep the reform process on track.

However, progress on that has not been as swift as I would have wished. One of the basic conditions for successful public administration reform is that there is a leading institution, led by a political figure who has the responsibility and capacity to manage the reform, but is also able to generate consensus and, if necessary, impose unpopular decisions. This condition is not yet fully met, but I hope and expect that the appropriate decision will be taken soon.

Another issue is that functional reviews have not yet been carried out in all ministries. Such reviews would identify overlaps and superfluous control layers, establishing whether a government service is even necessary, and if so, whether it is efficient. Some ministries, such as the Economy Ministry, have already made good progress in reviewing and streamlining their processes, producing a much leaner, more efficient organization.

As EU Commission President Jean-Claude Juncker has said: "you keep reforming, we keep supporting." The EU is ready to dedicate significant resources to support the preparation and then roll-out and implementation of civil service reform.

These resources will come as soon as Ukraine adopts a comprehensive, sustainable strategy that fixes all identified shortcomings, and starts implementing it. And as implementation continues, so will our support. The ultimate goal is that, once the EU financial support runs out in a few years, the efficiency gains will mean the reform pays for itself, making it sustainable.

Civil service reform is not easy, and it doesn't happen overnight. However, there are plenty of good examples that show it can be done reasonably quickly and in a way that truly benefits Ukrainian citizens. That is our ultimate common goal.

Ambassador Jan Tombinski has been the head of the European Union's delegation to Ukraine since Sept. 1, 2012. ■



By Andriy Navrotskiy, LL.M.

Partner at DLF attorneys-at-law

Effects of LLC quorum reduction

LLC quorum reduction

The Parliament of Ukraine made amendments to the Law of Ukraine "On Business Entities" (the "Law") concerning reduction of quorum of general meeting in limited liability companies (LLCs) from 60% to 50%. Such amendments aim at reducing effects of abuse of rights by minority shareholders, who own the blocking shareholding and use their rights in abusive manner by way of preventing convocation of general meetings and adoption of key resolutions. The amendments became effective on 13 December 2015.

Thus, the shareholder owning 50%+1 vote is independently and solely able to call for general meeting, to hold general meeting and to resolve the majority of issues regarding the company's economic activity. Respectively, the owner of 49% of votes is not capable to influence the general meeting by its absence and to block adoption of decisions at such meeting.

It is worth considering implications of practical implementation of such changes, in particular by way of comparison of the similar mechanisms in joint-stock companies (JSCs) and LLCs.

Quorum in JSC

For JSCs the similar provision in relation to 50% quorum of general meeting became effective on 27 March 2015. However, changes to the Law "On JSC" (the "JSC Law") and to the Law in relation to reduction of quorum have different effects for *already registered* JSCs and LLCs.

Charters of all JSCs, until complied with requirements of the JSC Law, are applied in part, which does not contradict provisions of the JSC Law. In other words, if the charter of JSC provides for quorum of general meeting of shareholders to be 60% or more votes, such charter, until complied with requirements of the JSC Law, is applied only in part, which does not contradict the JSC Law, i.e. the provision of the JSC Law, which establishes quorum of 50% +1 vote prevails over any provision of the charter.

Quorum in LLC

The approach is different towards LLCs. Charters of LLCs, until complied with requirements of the Law, are applied in part, which does not contradict the Law, but at the same time the shareholders are entitled to establish other threshold for quorum. Therefore, the Law applies only if otherwise is not specified in the charter. The reduced quorum of 50% +1 vote becomes mandatory exclusively upon amendment of the charter. At the same time, the Law does not specify any consequences or sanctions in the event if no such amendments take place.

It is also worth mentioning that the obligation to make such amendments to the charter is only applicable to those LLC wherein the state has its shareholding.

Corporate relations scenarios

Thus, the new changes result in the following scenarios for development of corporate relations within LLC:

1. Everything remains as it was prior to such changes;
2. Shareholders of LLC voluntarily reduce quorum required for convocation of general meeting;
3. Upon establishment of new LLC, there is a possibility to lower down influence of minority shareholders, who aggregately own 49% and fewer votes, in order to avoid blocking of general meeting and failure to adopt important decisions by such minority shareholders.

Alternative approach

In addition, there is an alternative option aimed at protection from abusive actions of minority shareholder, who blocks general meeting. Such option is based on the following notion. The newly adopted changes to the Law introduced new threshold, upon which the general meeting is competent, and, therefore, requires the charters of LLCs to be complied with the new requirements. At the same time, the Law allows the shareholders to deviate from the established threshold, but, however, only upon appropriate specification of such deviation in the charter. This brings us to conclusion that the Law obliges shareholders of LLC to convene general meeting and to specifically resolve whether to update or leave unchanged the number of votes required for quorum of general meeting.



Torus Business Center, 17d Hlybochytska St., 04050 Kyiv, Ukraine
+380 44 384 24 54, info@DLF.ua, www.DLF.ua.



Infrastructure Minister Andriy Pivovarsky (L) and Agriculture Minister Oleksiy Pavlenko, considered two of the nation's more reformist and progressive ministers, during the Yalta European Strategy conference on Sept. 12 in Kyiv. (Volodymyr Petrov)

Pricing out corruption

Civil service shake-up in May designed to improve skills, pay

By **Yuliana Romanyshyn**
and **Olena Goncharova**
romanyshyn@kyivpost.com,
goncharova@kyivpost.com

Bloated staff numbers. Mounds of paperwork. Departments within departments within departments.

Ukraine's system of government inherited this and more from the Soviet Union, and little was done since 1991 independence to get rid of this unwanted legacy.

Then came the EuroMaidan Revolution, which was triggered not just by society's disgust with corrupt former President Viktor Yanukovich, but its desire to modernize the way the country is run, along the model of a

free-market democracy. Two years later, things are only slowly starting to change.

Staff cuts

Civil service staff numbers are a prime target for cuts.

Ukraine has by some estimates up to 380,000 civil servants working on the national level.

By contrast, the United Kingdom – with 64 million people compared to Ukraine's 44 million people – has about 400,000 civil servants in all.

Several state agencies have managed to reduce staff numbers, with about 50 percent of the employees of the Economy Ministry (around 800 people) and Justice Ministry (around 12,000 civil servants) being axed.

Economy Minister Aivaras Abromavicius, who resigned on Feb. 3 after complaining about the corrupt interference of a leading presidential ally, was leading the way in trimming Ukraine's staff-heavy bureaucracy.

"We started the reforms with ourselves, creating an effective team, and reducing an inefficient apparatus," Abromavicius said on Dec. 9. "First, we replaced 100 percent of the deputy ministers and 80 percent of heads of departments, while reducing the number of departments from 29 to 18."

Volga Sheyko, a lawyer at Asters law firm, said some of the staff cuts were achieved by introducing electronic registers and centralizing services. It was long overdue. "We're so bureaucratized that we need a certificate to get another certificate, and 35 certificates to get that last certificate," Sheyko said. By getting rid of required paperwork, it became possible to get rid of people employed just to shuffle it around.

Ideally, various electronic registers should then be merged into one, Sheyko said. This would allow citizens to obtain any certificates they need in one place, rather than having to traipse around government departments on a lengthy paper chase, as many still have to do now.



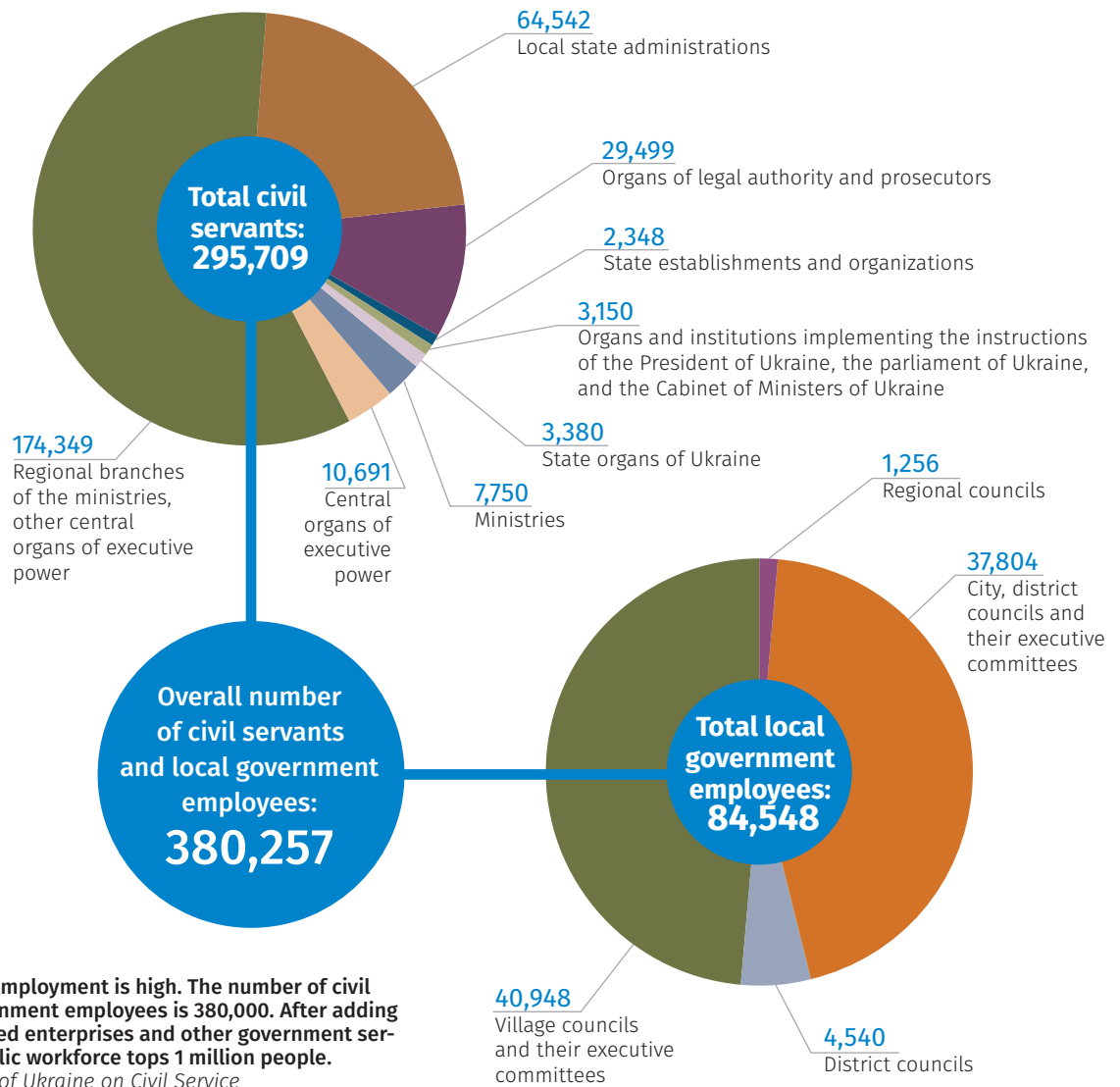
Many well-educated Ukrainians have volunteered to serve in Ukraine's government, hoping to make their country a better place. Some, with Western degrees and extensive private sector experience, have been providing their services for poverty-level public salaries.



TCM Group Ukraine
10-A Vozdvizhenska str.,
Kyiv, Ukraine, zip 04071

Tel.: +38 044 228 1338
E-mail: info@tcm.com.ua
Web: www.tcm.com.ua

Guide to overall numbers of civil servants and state employees working in government.



Ukraine's public sector employment is high. The number of civil servants and local government employees is 380,000. After adding employees of state-owned enterprises and other government services, the estimated public workforce tops 1 million people.
 Source: National Agency of Ukraine on Civil Service

Revolutionary change

The new civil service law, which comes into force on May 1, promises to revolutionize the way Ukraine is governed, Sheyko said.

"I think this law is progressive, but the problem is not that simple," she said. It will take time to see results, she said. The new law sets out competitive hiring procedures for the civil service, among other innovations.

It is expected to improve skill levels, said Sheyko. She recalled a recently conducted re-certification of civil servants who work at management positions in Justice Ministry agencies. Most weren't even able to switch on a computer.

After further tests of the civil servants' knowledge of laws and bylaws, 60 percent of them were dismissed.

"Competitive selection will lead to civil servants being more progressive," Sheyko said.

Money problems

Employees of the new, leaner and ideally better-skilled civil service should enjoy better working conditions, higher

salaries and better prospects for promotion and other benefits.

However, the civil service law doesn't stipulate that money saved on salaries of former employees should automatically go into the wage fund to pay higher salaries to the remaining workers, Sheyko said.

Deputy Prosecutor General Davit Sakvarelidze expected to be able to reallocated salaries of fired prosecutors to the remaining ones. "That didn't happen," Sheyko said, referring to the Prosecutor General's Office, which still has up to 18,000 prosecutors at all levels in the nation. Those who remained in Sakvarelidze's office continue working for a salary of Hr 1,500 (\$57) per month.

While the government recognizes the need to increase wages, Sheyko said the proposed increases aren't high enough. A civil servant should earn enough "to not be tempted to take a bribe," she said.

One of the co-authors of the civil service law, human resources specialist Denis Brodsky, told the Kyiv Post that the wage issue is a cornerstone of civil service reform.

Unfortunately, the wording of the new law doesn't stipulate high or even adequate wages, he said.

According to Brodsky, top officials in government should be paid Hr 200,000 (\$7,620) per month and department chiefs approximately Hr 150,000 (\$5,710). "Today, the head of a big enterprise gets this kind of money, so these people are used to working with a good level of payment, which gives them a proper level of living" so that they can do their work "virtuously and conscientiously," he said.

Brodsky said that most Ukrainians will no longer work for free as many did after being inspired by the EuroMaidan Revultion. "Two years ago a huge number of people were happy to work for free, while now there are almost none of them," Brodsky said.

Professional development

Alina Sviderska, a member of the board at Professional Government Initiative, told the Kyiv Post there were three ways money could be found to fund a wage rise for civil servants. Ideally, an independent fund sponsored by international donors should be launched. In fact, this option was backed by donors, but wasn't supported by the government, which she said was wary of "control" from the outside.

While a new civil service code goes into effect in May, experts caution that changes won't be visible for months. Nonetheless, many hope the new law will eventually reduce corruption and increase professionalism in government.

The second option is to use a secondment format, in which people from private sector are brought in to work in the state agencies for a couple of years. While this practice works in Canada and the U. K., it has found no support from the Ukrainian government, Sviderska said.

A compromise decision would be to pay state sector wages via donor funds. A transparent scheme for this is found in the civil service law, but it needs further development and approval from the Cabinet of Ministers.

Besides a good salary, civil servants should be given the opportunity to develop their skills, Sheyko said. The law aims to make the appreciation and reputation of a state official's job outweigh the temptation of taking a bribe, she said.

Moreover, the law aims to break the dependence of subordinates on their chief. In many state agencies, employees still get a small official salary, topped up with monthly bonuses (often worth much more than the basic salary) awarded at the discretion of a department boss.

The overarching goal of the new civil service law, according to Sheyko, is to change the public's attitude to the civil service, making it an attractive profession, rather than one tainted by corruption.

"This is an anti-corruption law in its essence," she said. ■



Roger Frick

Trustee/TEP, Principality of Liechtenstein

Family Office — Services for the individual needs of worldwide linked up families

An internationally located and worldwide active wealthy family searches Family Office services in countries, where, besides the political and economic stability, it experiences that kind of professionalism, which is necessary to build up mutual trust, often lasting for generations, as well as a relationship network, which guarantee its legal security and planning security with reference to asset protection and succession planning.

A professional Family Office renders for its customers, either with its own staff or by including external experts, services like asset planning, inheritance planning and succession planning, enterprise sales, administration of assets, tax consultation and legal advice, coordination of the charitable activity of the family and a lot more. According to the specific needs of a family, the services of a Family Office can also include the administration of the properties, yachts, airplanes or also art collections, which are in the possession of the family. Further, Family Offices, when required, also look after personal affairs of the members of a family.

On 21 November 2013, Liechtenstein signed the Multilateral Convention on Administrative Assistance in Tax Matters (MAK). Among other things, the Convention provides for various forms of information exchange. The Convention will be ratified in 2017.

In today's world of increasing transparency and cooperation between the countries as in the case of an existing MAK or disclosure of shareholders in registries, an increasing gap stands out between the expectations in property structuring with respect to the maintenance of personal control / influence, on one hand, and discretion / confidentiality as well as effectiveness on the other hand. Noticeably, these two expectations are contradictory. However, a professional Family Office advisor knows how to take care of the cultural circumstances of such expectations, listens and justifies the trust of his customers, when he represents their interests reliably and responsibly. Based on the expectations of his customers, he will offer tailor-made solutions in context of the Family Office support. It is important to highlight that wealth structuring can indeed lead to different results with respect of the MAK which might not only include exchange of information upon request, but also spontaneous exchange or Automatic Exchange of Data in the nearest future.

Internationally operating families are more and more faced with the fact that one and the same property structuring can be more effective for a family, which operates internationally, than when a family lives exclusively in one country and is working there. Here, an elbowroom arises, which does not open for families or members of the families, who do not change the residence. An example can be given, that a member of the family, who moves to Switzerland with a tailor-made trust or a tailor-made foundation achieves that the assets and yields are not attributed to the person residing in Switzerland, which opens enormous elbowroom for planning for any inbound or outbound investment.

Liechtenstein financial products, that means foundations, trusts, trading companies like for example corporations or the company forms specific to Liechtenstein like the establishments or registered trusts, are interchangeable, at the first sight, with structures of other jurisdictions. What, however, is not interchangeable is the 90-year-old experience of the financial center of Liechtenstein in the international trust and company law fields, which started to develop already in 1926 with the introduction of the Liechtenstein personal and company law.

Further, it is also possible to obtain residence in Liechtenstein in special cases, what opens further planning potential.

Upon the establishment and administration of foundations and trusts, as well as of companies, the international developments must be considered. It is important that an internationally operating family profits from a Family Office service, which takes these aspects into consideration, be it for inbound or outbound investments.



Aeulestrasse 5, P.O. Box 83, 9490 Vaduz, Liechtenstein
T +423 237 34 34, T +41 848 80 34 34, F +423 237 34 60
www.atu.li



Soviet Communists celebrate the 55th anniversary of the Great Bolshevik Revolution on Nov. 7, 1972, at Red Square in Moscow. (TASS/ AFP)

Ukraine's labor code dates to 1971: What's the hurry in changing it?

By **Isobel Koshiw**
ivkoshiw@gmail.com

A proposed new labor code to govern relations between employees and employers in Ukraine still has not been adopted by lawmakers. A bill passed its first reading in November. That's where it stopped. Talk of replacing the 1971 Soviet-era labor code has been ongoing for at least a decade.

But the current political crisis has stalled action again, making an April deadline set by the Ministry of Social Policy unrealistic, lawyers Valeriya Savchuk and Oksana Voynarovska, who sit on the parliamentary working group overseeing the draft, told the Kyiv Post.

Either way, the proposed new code still over-regulates employment contracts and is skewed in favor of employees. It's simply not revolutionary, they said.

"It's not enough – the principles stay the same," Yuri Zarembo of Avellum Partners said. "A labor code should allow an employer and employee to create their own terms of employment. But it does introduce many new changes ... so it is a breath of fresh air."

The new labor code would introduce background checks on employees and permit remote monitoring, via video cameras for instance.

Employers will also be able to dismiss employees for

breaches of confidentiality.

Legal working hours will rise to 48 hours a week, but the extra hours will have to be agreed in writing and paid in advance. The probation period before a person can qualify for maternity leave will increase. It also will now be possible to fire pregnant women, women with children under three and single mothers with children under 15.

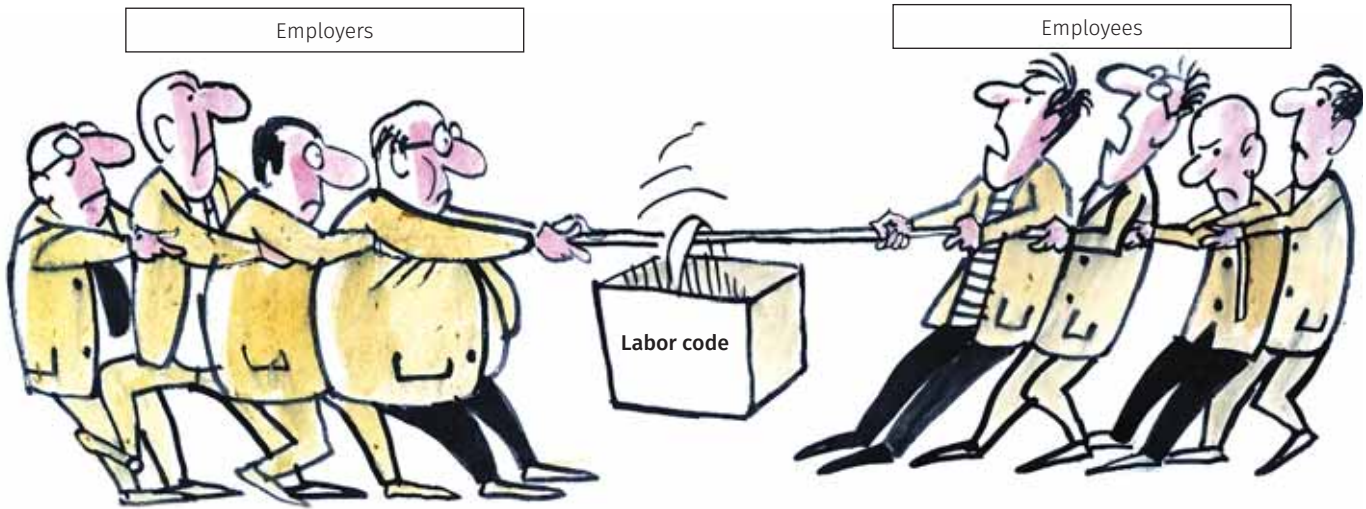
"Under the current code, it is impossible under any circumstances to fire a single mother, unless there is the complete liquidation of the company," said Inesa Letych, a lawyer with Asters law firm. "This is very important for employers, because it means that even women with children can be dismissed if they do not work properly."

On the other hand, irregular work such as freelancing or remote working is now regulated, along with irregular working hours and overtime.

Employers can't discriminate by age, family situation, disability, sex, sexual orientation or criminal record.

Employers must also pay more when their employees work odd hours – an extra 30 percent of a person's hourly wage, as opposed to 20 percent before.

The number of days of paid vacation could increase from 24 to 28 days per year.



Ukraine’s labor code dates back to 1971, 11 years before the death of Communist Party General Secretary Leonid Brezhnev. After the collapse of the Soviet Union in 1991, vested interests have been keeping the dysfunctional and hopelessly outdated code largely in place. Members of parliament are still resisting changes outlined in a proposed new labor code.

Aside from overregulating contracts, the first draft of the new code fails to address obvious problems and even excludes some positive amendments made on the 1971 code.

For instance, according to Letych, legislation surrounding trade unions can cause major headaches for employers. At present a trade union can be created by just two people, with a simple recording of the minutes of the union’s first meeting enough to make it official. The union can then take measures to protect its members. Letych said that, theoretically, a person expecting to be fired could even create a trade union to try to stop it from happening.

“In my opinion, that’s not normal, because a trade union should represent the rights of more or less the majority of the employees ... who would assess the situation more objectively,” Letych said.

Another shortcoming of the new code, according to several lawyers, is wording covering non-compete agreements. These restrict employees from, on termination of their employment, immediately working for a competing company or starting their own competing business using confidential knowledge gained from their previous employer.

“I have to tell employers it’s not enforceable in Ukraine,” Zaremba said.

Because of Ukraine’s Soviet past, employees have traditionally enjoyed a privileged position in the law, at least on paper. Any moves to swing the balance of rights back towards employers is going to be unpopular, experts said.

According to Valentyna Danishevskaya of the Center for Commercial Law, the new labor code has been hobbled by politicians pandering to voters rather than looking at what’s best for the nation in the long run.

“With the threat of elections looming, lawmakers don’t want to do anything that could hurt their ratings,” Danishevskaya said.

The Center for Commercial Law spent two years campaigning for owners or investors to have the right to fire a poorly performing company director. Amendments were finally added to the previous labor code in March 2014, but are not included in the new version. “Lawmakers are also company directors, you see,” Danishevskaya said.

The amendments awarded dismissed directors six months of severance pay, but since most receive the bulk of their salaries unofficially

and a small part officially, this clause doesn’t have much of an impact.

The current Soviet-style code treats a director as an employee who can only be fired if the owner or shareholders can prove they are guilty of wrongdoing. When employment disputes with directors arise, it sets off a chain reaction of bribes, counter-bribes, and litigation that can take months for the courts to sort out.

“In some cases it’s been easier for people to kill the director than to fire him,” said Igor Nikolaev of the Center for Commercial Law. ■

A comparison of labor laws in Europe

Labor Code Conditions	Country		
	Ukraine*	Poland	France
Maternity leave	10 weeks before and 8 weeks after	2 weeks prior and 20 weeks after	16 weeks
Overtime pay in percentage of remuneration	Between double and triple wages	Plus 50 or 100 percent or compensation days	Plus 25 percent for up to 8 hours, plus 50 percent after that
Working hours per week, incl. overtime	48 hours	48 hours	48 hours
Night work (23:00-06:00)	Plus 30 percent of regular hourly rate	Plus 20 percent of hourly rate	Extra pay or weekly rest days
Non-compete clauses	No	Yes	Yes
Trade union creation	Two people and minutes of the meeting	10 people, and must be registered with the National Court Register	Must win 8-10 percent support from workforce to be considered representative, and registered with relevant City Hall
Days holiday	28 days	20 and 26 days after 10 years	25 days
Background checks	Yes	Not unless required by law	Yes, aside from previous convictions, unless obliged by law
Employer can change terms of employment without notice	No	No	No
Non-discrimination	Yes	Yes	Yes
Notice period in cases of dismissal or redundancy	one month, and extra pay	two weeks for up to six months of employment, one month for up to three years, and three months for over three years	Up to six months, depending on the type of company and nature of work, but generally one month for up to two years of employment, and two months for more than two years
Percentage of population estimated to be employed by shadow economy**	16.61 percent (2012)	5 percent (2013)	1 percent (2013)
Shadow economy as percentage of GDP	44.5 (2015)	24.4 percent (2013)	10.8 percent (2013)
Social insurance contribution paid by employer	36.76-49.7 percent, may not exceed 17 times the minimum subsistence wage	25 percent	Up to 50 percent, but few companies have to pay the full amount

Labor codes across Europe offer favorable conditions for employees, at least on paper, compared to the United States and some less-developed countries.

Sources: Ukrainian, Polish and French labor codes, European Commission: Shadow economy and undeclared work, Friedrich Schneider: The shadow economy in Europe (2013), European Commission: Undeclared work in the European Union (2013), Ukrainian State Statistics Service of Ukraine, Ukrainian Ministry of Economy

What does a civil servant's life look like?

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

Ukraine's hopes for a more effective and less corrupt government rely on 9-to-5 workers, the nation's nearly 400,000 civil servants.

Many of them lack engaging work, are short of basic resources such as office supplies and, more dispiritingly, all are officially underpaid.

Without change, government service is not likely to improve or become less corrupt.

"Stop by any ministry any morning, and ask some miserable person in a grey coat, with a miserable face, with a grim look, ask them how they live," said Denis Brodsky, ex-chairman of National Agency on Public Services.

Brodsky works as human resources director for Victor Pinchuk's Starlight Media, but also serves as an expert on civil service reform at the Reanimation Package of Reforms.

He served as head of Ukraine's civil service oversight agency for only six weeks in 2014 before quitting after a conflict with Prime Minister Arseniy Yatsenyuk and what he describes as members of the Ukrainian government's "old guard."

Reforming the civil service will require drastically changing work lives. Civil servants are paid as little as \$100 monthly, contributing to unhappiness and boredom.

"But," Brodsky said, "at least this is some sort of job and some sort of income."

'Ridiculous' pay

"The pay is ridiculous!" said Vlad Belograd, a lawyer at the Cherkassy branch of the Interior Ministry's emergency situations division.

Belograd, 27, wants to work in the private sector but only knows government service.

"The career ladder is very small," Belograd said. "I see no future in this service."

The low wages make graft a way of life, while the lure of year-end bonuses make them sometimes beholden to corrupt managers.

"Some of these civil servants make decisions involving hundreds of millions of dollars, all the while receiving pay in the hundreds of dollars," said Mykola Bygovski, a civil service reform expert at the non-profit organization Reanimation Package of Reforms. "It's nonsense."

Relying on savings

National Bank Head Valeria Gontareva receives Hr 10,000 each



Oksana Voynarovska

Partner, Vasil Kisil & Partners

Youth is the engine of progress. The more youth works in a company, the more progressive and innovative such company is considered to be. However, much discussions are spread worldwide on how difficult is to manage today's young employees. Those, born in late 1980's – early 2000's, who have just entered workforce market, are called generation Z or Millennials (hereinafter "Gen Z"). People of this generation indeed poses specific features, which differ them from other generations, and make it a real challenge to work with and even more — to manage them at a workplace.

Representatives of the Gen Z are the best in creativity, multitasking, they work with true enthusiasm, have sufficient educational background and perpetual striving to self-development. On the other hand, they experience extreme necessity in freedom and flexibility, need to be heard, understood and considered. Also they are known for fast fading, laziness, self-centrism and rebelliousness. Such combination may create an unfavorable image of a young employee, but also may be converted to a benefit for employer by a wise manager. The question is how to develop pros, cope with cons and in general wing from hiring one of Gen Z. These are some key tips on how to manage Gen Z employees successfully:

Keep up with the changes. Smart manager understands, that today's junior employee is future business leader. Thus, it is indeed important to understand the new generation, to play with them on the same side and subsequently manage and lead them in proper direction for mutual prosperity. The best managers of young employees are people who would otherwise love teaching for a living. They prize helping others grow and tend to explain in details their reasoning for decisions. Short but regular talks with explanations usually make junior employees excited, grateful and give the feeling of being valued, since they are gain insight into decision-making processes. It also makes them better at working for the company, because it teaches them how the company thinks.

Teach and educate. Young people are especially hungry both to learn and to receive affirmation that they are doing a good job. Set up regular teaching sessions for your young colleagues on different parts of the business. Organize workshops to expose highly promising young employees to various processes in the company. Encourage formal and informal education, upgrading courses, mastering extra skills. Invest into advance trainings. Investment of this kind lead to fruitful feedback.

Be an example. The young beginners have great respect and loyalty for leaders, who enters them into the business world. At the same time, loyalty and respect must be earned. Gen Z does not respect authority "just because." In fact, loyalty to the individual is the #1 reason for staying in the job, especially during the first years. Dissatisfaction with the boss is the #1 reason for quitting. It is no longer enough for a manager to hire the right people and show them the way, now the manager himself must be the right person to win the affection of new generation of employees.

Respect work-life balance. Gen Z is self-centered. Young employees are dedicated to completing their task well and fast. They do not feel comfortable sitting 8 hours in the office, being only 4 hours occupied. New generation feels the value of time and do not like to waste it. They ask for assignment, go about figuring the best, fastest way to complete that task, and then they consider themselves done. They prefer to work and be evaluated for the result, instead of for number of working hours. That is why part-time job, flexible working hours, distant work are appreciated. Ukrainian labour laws in most cases allow to introduce such working regimes for employees. Young employees fill their lives with many activities — sports leagues, social groups, classes, time spent with friends. They work hard, but they are generally not workaholics. Home, family, and friends are often their first priorities. It should be considered that work-life balance is very important to young employees.



VASIL KISIL

Leonardo Business Center,
17/52A Bohdana Khmelnytskoho St.,
Kyiv 01030, Ukraine;
+38 044 581 7777, cs@vkp.ua, www.vkp.ua



Deputy Infrastructure Minister Vladimir Omelyan (L) works in his office on March 17 in Kyiv. (Volodymyr Petrov)

month and lives off money she earned before going into civil service in 2014.

Artem Sytnyk, head of the National Anti-Corruption Bureau, receives Hr 70,000 monthly.

Andriy Kobolev, CEO of state-energy company Naftogaz, makes Hr 26,000 a month.

While even the most powerful and known civil servants make in a month what some Western leaders make in a few hours, Ukraine's average civil servant lives on even less: Hr 3,700 each month -- not even \$150 a month.

Deputy Infrastructure Minister Vladimir Omelyan said that turnover is high because top workers have other options.

"The main breakthrough at the ministry was done by volunteers," Omelyan told the Kyiv Post. "And now they are leaving -- problems with their families, their lives -- because they're underpaid."

Are there perks?

Many of Ukraine's government ministries perform overlapping work. A requirement that every government action has a specific, parliament-approved legal definition means that official responses quickly drown in legalese.

As irritating as this is for millions of Ukrainian citizens, this work is meaningless and draining for civil servants, too.

"They come and do an unnecessary job," said Brodsky. "Meaningless."

Belograd, 27, said that his office lacks computers,

meaning that civil servants must buy their own in order to complete their work.

"To buy a good laptop, I need to save all my pay for half a year," Belograd told the Kyiv Post.

Ivan Khilobok, an adviser at the Presidential Administration and a public administration reform manager at the National Reforms Council, told the Kyiv Post that many ministries still maintain resorts and sanatoriums left over from the Soviet days for their workers.

"They are in the Carpathian Mountains, on the Black Sea -- across Ukraine," Khilobok said.

But those small perks will likely be swept away.

"It's better for the government to dismiss all the non-core assets and non state-function assets, like vacation assets or resorts, and privatize them and then just give normal salaries to civil servants, so they can take a holiday if they want, either in Ukraine or outside," Khilobok said.

Belograd, the Interior Ministry worker, said that he and his co-workers receive little benefits for their work beyond their paltry salary.




"I think it is unjust," he said. "People who save the lives of others, each day risking their own, should receive worthy pay."

Khilobok added that few people regard the civil service with any respect, which only degrades the quality of its workers.









"In the USSR civil servants were the highest class in society," Khilobok said. "It used to be a matter of prestige." ■









LEGAL SERVICES









Listing is arranged in alphabetical order

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
Aleksandr Peremezhko & Partners ALEKSANDR PEREMEZHKO & PARTNERS attorneys at law & consultants						
86D Kazymyra Malevycha (Bozhenko) St., 3rd floor, office 3.1, Kyiv 03680, Ukraine; office@opp.com.ua, www.opp.com.ua						
+38 044 371 4007	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, Eurofins Food & Agro Testing Sweden AB, Ciklum Ukraine, AstraZeneca, Volyntabak	English, German, Polish, Russian, Ukrainian
ALEXANDROV&PARTNERS ALEXANDROV & PARTNERS						
58 Poliova St., Sofiyivska Borschagivka, Kyiv region, 08131, Ukraine; office@lawyers.com.ua, www.lawyers.com.ua						
+38 044 501 2064	Dmytro Alexandrov Oksana Kryzhanivska Oleksandr Sydorenko Vitaliy Yankovych Kseniya Shein Oleksandr Ruchko	Kyiv, Ukraine	2002	Agribusiness; Land; Real Estate; Construction; M&A; Investment; Customized Services	Trigon Agri A/S, Ramburs Group, PariMatch, Bionic Hill, Pionerskiy Kvartal	English, Russian, Ukrainian
A.L.Terra  A.L.TERRA ATTORNEYS AT LAW						
72 Velyka Vasylkivska St., Olympic Business Center (floor 22, office 66), Kyiv 03680, Ukraine; office@alterra.kiev.ua, www.alterra.kiev.ua						
+38 044 300 1307	Trushkivska Lesia Dovbnia Kostiantyn	Kyiv, Ukraine	2016	Litigation & Arbitration; Disputes Resolution; Corporate Law; Commercial Law; Bankruptcy; Investments; Tax & Customs; White Collar Defense; Criminal Process; Agribusiness; Pharmaceutical; Media	Indar, Ukrainian Media Holding, Bio Agro, BF Group	English, Russian, Ukrainian
Ante Law Firm  ante LAW FIRM						
Europe Business Centre, 5th floor, 103 Stolychne Highway, Kyiv 03131, Ukraine; office@antelaw.com.ua, www.antelaw.com.ua						
+38 044 277 2300	Andriy Guck Kateryna Ishchenko	Kyiv, Ukraine		Litigation; Corporate; White collar; Transport & Infrastructure; Aviation; Energy & Natural resources; Employment; IP; Tax & Customs	Emirates, Lufthansa, Austrian, British Airways, Atlasglobal, Zdravo	English, Turkish, Russian, Ukrainian
Arzinger Arzinger 						
Eurasia Business Centre, 75 Zhylyanska St., 5th Floor, Kyiv 01032, Ukraine; mail@arzinger.ua, www.arzinger.ua						
+38 044 390 5533	Timur Bondaryev	Kyiv, Ukraine	2002	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

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
Asters						
Leonardo Business Center, 19-21 Bohdana Khmelnytskoho St., 14th floor, Kyiv 01030, Ukraine; info@asterslaw.com, www.asterslaw.com						
+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
International Law Group "AstapovLawyers"						
Sophia Business Centre, 6 Rylskiy Ln. Kyiv 01601, Ukraine; pr@astapovlawyers.com, www.astapovlawyers.com						
+38 044 490 7001	Andrey Astapov Oleh Malsky	Kyiv, Ukraine	2002	Litigation & Arbitration; Corporate & M&A; Antitrust & Competition; Tax & Restructuring; IP	WND	English, Russian, Ukrainian
ATU						
Aeulestrasse 5, 9490 Vaduz, Principality of Liechtenstein; office.frick@atu.li, www.atu.li						
+42 3 237 34 34	Roger Frick	Vaduz, Liechtenstein	1929	Structuring, protection and investment of assets, inheritance and succession planning for natural and legal persons	High-Net-Worth-Individuals and Families, Entrepreneurs	English, German, Italian, French, Chinese, Russian
Avellum						
38 Volodymyrska St., 4 floor, Kyiv 01030, Ukraine; info@avellum.com, www.avellum.com						
+38 044 591 3355	Mykola Stetsenko Glib Bondar Dmytro Marchukov	Kyiv, Ukraine	2009	Capital Markets; Corporate/M&A; Competition; Disputes; Employment; Energy and Infrastructure; Finance; Real Estate; Restructuring and Insolvency; Tax	Bayer, DTEK, EBRD, Ferrexpo, FUJB, ING Bank, Kernel, Lafarge, MHP, Ministry of Finance of Ukraine, Mriya Agro Holding, Nadezhda, Novartis, PrivatBank, Raiffeisen Bank International AG, UniCredit Group	English, Russian, Ukrainian
AVER LEX Attorneys at law						
2 Khrestyovyi Alley, 5 floor, Kyiv 01010, Ukraine; info@averlex.com.ua, www.averlex.com						
+38 044 300 1151	Olga Prosyanyuk Vitaliy Serdyuk	Kyiv, Ukraine	2012	Criminal law and process; Litigation; Taxation	WND	English, Russian, Ukrainian
Baker & McKenzie						
Renaissance Business Center, 24 Bulvarno-Kudriavska (Vorovskoho) St., Kyiv 01601, Ukraine; kyiv@bakermckenzie.com, www.bakermckenzie.com						
+380 44 590 0101 +380 44 590 0110	Serhiy Chorny Serhiy Piontkovsky		1992	Antitrust & Competition; Banking & Finance; Corporate; M&A; Securities; Dispute Resolution; Employment; IP; International Trade; Real Estate and Construction; Tax and Customs; Energy & Infrastructure	Arcelor Mittal, EastOne Group, Horizon Capital, ING Bank Ukraine, Metinvest BV, RaiffeisenBank, MasterCard, UkrSibbank BNP Paribas Group	English, Russian, Ukrainian
BDO Ukraine						
201-203 Kharkivske Road, Kyiv 02121, Ukraine; bdo@bdo.kiev.ua, www.bdo.ua						
+38 044 393 2687	Alla Savchenko Sergey Balchenko Victor Nevmerzhiysky	Brussels, Belgium	1996	A&A; Transfer Pricing; IFRS Reporting; Management Consulting; Accounting & Financial Outsourcing; Legal Services; IT & HR Consulting; Tax Compliance; Valuation; IR Reporting; IPO flotation	International & Ukrainian companies of the following areas: energy, pharma, insurance, manufacture, natural resources, non-profit, RES, retail, TMT, transport & engineering, banks.	English, Russian, Ukrainian
CMS Cameron McKenna LLC						
38 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	Daniel Bilak	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	WND	English, French, Ukrainian, Russian
Dentons (LLC Dentons Europe)						
49A Volodymyrska St., Kyiv 01034, Ukraine; kyiv@dentons.com, www.dentons.com						
+38 044 494 4774 +38 044 494 1991	Oleg Batyuk	Global law firm	1992	Banking and finance; Corporate/M&A; Dispute resolution; Investments; IP&T; Real estate and Construction; Restructuring; Tax	Multinational corporations, commercial and investment banks, energy companies, developers, hotel chains, investment funds, international organisations	English, Russian, Ukrainian

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
DLF attorneys-at-law						
Torus Business Centre, 17D Hlybochytska St., 04050, Kyiv, Ukraine; info@DLF.ua, www.DLF.ua						
						
+380 44 384 2454	Igor Dykunskyy	Kyiv, Ukraine	2012	Corporate Law; M&A; Insolvency; Labour Law; Competition Law; IP Law; Real Estate and Tax Law; Agriculture Law; Renewable Energy Law; Litigation and Dispute Resolution	International companies from German and English speaking countries from various sectors of economy, Ukrainian companies, embassies in Ukraine	English, German, Russian, Ukrainian
ePravo						
28/9 Pushkinska St., 2nd floor, office 24, Kyiv 01004, Ukraine; welcome@epravo.ua, www.epravo.ua						
						
+38 044 235 0444	V. Vlasniuk	Kyiv, Ukraine	2012	Litigation and Corporate; Intellectual Property; E-Commerce; Tax and International Business Administration; Legal Advice for Startups; Investments in Solar Energy in Spain	Allta, Astrafit, Askertrade, Studway, Orion.Group, National Police of Ukraine (<i>pro bono</i>), Khimfarminvest, NBK	English, Russian, Spanish, Ukrainian
EY						
19A Khreschatyk St., Kyiv 01001, Ukraine; kyiv@ua.ey.com, www.ey.com/UA						
						
+38 044 490 3000	Albert Sych	London, UK	1991	Commercial; Corporate and M&A; Contract Law; Legal Structuring; Finance; Currency control; Banking regulations; Tax and Customs; Energy sector	WND	English, Russian, Ukrainian
FCLEX Law Firm						
14D Bekhterivsky Lane, Kyiv 04053, Ukraine; inform@fclex.com, www.fclex.com						
						
+38 044 238 6420	Viktor Barsuk	Kyiv, Ukraine	2002	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
Golovan & Partners Law Firm						
33B Bulvarno-Kudriavska (Vorovskoho) St., Kyiv 01054, Ukraine; info@golovan.ua, www.golovan.ua						
						
+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
Gramatskiy & Partners						
16 Mykhailivska St., Floor 2-3, Kyiv 01001, Ukraine; office@gramatskiy.com, www.gramatskiy.com						
						
+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, TOMAK, All-Ukrainian Advertising Coalition	English, Italian, Greek, Polish, Russian, Ukrainian
Gryphon Legal (Gryphon Investment Consulting Group)						
5B Dimitrova St., office 305, Kyiv 03680, Ukraine; office@gryphoninvest.com.ua, gryphoninvest.com.ua						
						
+38 044 227 9212	Igor Lynnyk	Kyiv, Ukraine	2011	Corporate finance; M&A; Banking and Finance; Tax; Compliance; Forensic; Litigation; Due Diligence; Business Structuring; Debts Restructuring	IFC (World Bank Group), Alfa-Bank Ukraine, Alfa Insurance Ukraine, Allianz Group, Aesthetic Consilium Clinic, Leogaming Pay, Furshtet, Eco-Market, Atoll Holding, Karbon Invest, Privat Bank, AIS Group, FC Finance, Life:) Astelit, PKO Bank Polski, Kredobank, 24nonStop, Fox trot	English, Russian, Ukrainian
ICF legal service						
10 Muzeinyi Lane, office 101-102, Kyiv 01001, Ukraine; info@icf-ua.com, icf-ua.com						
						
+38 044 255 5767	Natalya Ulyanova	Kyiv, Ukraine	2005	International Tax Planning; Business Structuring; Corporate Restructuring; Organization Of International Trade; Solutions For Financial And Securities Companies; Business And Assets Protection	WND	English, Russian, Ukrainian

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
Kinstellar LLC						
Business Center "Gulliver", 18th floor, Sportyvna Sq., 1A, Kyiv, 01601, Ukraine; www.kinstellar.com						
+38 044 394 9040	Kostiantyn Likarchuk	Firmwide Management Committee	2008	Dispute Resolution; M&A and Corporate; Banking, Finance & Capital Markets; Competition/Antitrust	Major Ukrainian and international companies, major international law firms	English, Russian, Ukrainian
KM Partners						
5 Pankivska St., 5 floor, Kyiv 01033, Ukraine; admin@kmp.ua , www.kmp.ua , www.ao.kmp.ua						
+38 044 490 7197	Alexander Minin	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
Koval & Partners, Patent & Law Company						
23 M. Raskovoy St., apt. 602, Kyiv 02660, Ukraine; info@koval-partners.com , www.koval-partners.com						
+38 044 228 2552	Koval Maxim Koval Natalia	Kyiv, Ukraine	2003	Trademarks; Patents; Designs; Copyrights; IT law and domain name disputes; Licencing and Franchising; Castoms and Border Enforcement; Anti-counterfeiting and anti-piracy operations	Naspers, Philipp Plein, ForexClub, Efes, SCM, Stoller, Teddy Mountain, Alpha Industries, Evyap, Coral travel, TicketForEvent	English, 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 Stoianov	Kyiv, Ukraine	2009	Litigation; Banking and Finance; Bankruptcy and Restructuring; Tax law; Corporate and M&A; Intellectual Property; Antitrust and Competition	Alfa-Bank, Arab Energy Alliance, Carpatsky Petroleum, Danube Shipping-Stevedoring Company, Humana People to People, Kievguma, S.I. Group Consort, PLANT 410 CA, TAS Group, UniversalBank, Vikoil	English, German, Russian, Ukrainian
Lex Liga Law Firm						
8 Harmatna St., Kyiv 03067, Ukraine; info@lexliga.com , www.lexliga.com						
+38 063 977 7171 +38 044 227 3827	Anatoliy Yevmin Dmytro Mitriushyn Yuri Rudenko	Kyiv, Ukraine	2010	IT & Telecommunication; Pharmaceutical Industry; Construction & Real Estate; Banking & Finance; Agriculture; Power Industry; Anti-Corruption Law; Competition Law; Contract Law; Corporate Law; Criminal Law; International Law; Intellectual Property Law; Litigation; Tax Law	WND	English, Russian, Ukrainian
Lexwell & Partners						
Sophia Business Center, 6 Rylsky Lane, 5th floor, Kyiv 01001, Ukraine; lexwell@lexwell.com.ua , www.lexwell.com.ua						
+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
Marchenko Danevych						
4B Ivana Franka St., office 49, Kyiv 01054, Ukraine; office@marchenkodanevych.com , www.marchenkodanevych.com						
+38 044 220 0711	Oleh Marchenko Borys Danevych	Kyiv, Ukraine	2013	Antitrust & Competition; Corporate/M&A; Dispute Resolution; Intellectual property; Life Sciences/Pharmaceuticals; Tax & Customs	AAK, AbbVie, Aspen Pharma, AstraZeneca, Deutsche Bank, Eli Lilly, Goodyear, GSK, Johnson & Johnson, LafargeHolcim, McKinsey & Company, Morgan Furniture, Novo Nordisk, PPD, Sanofi, XPO Logistics	English, Russian, Ukrainian
NOBLES						
7/11 Khreschatyk St., Kyiv 01001, Ukraine; info@nobles-law.com , www.nobles-law.com						
+38 044 495 3080	Alexander Weigelt Volodymyr Yakubovskyy Tatiana Iurkovska	Kyiv, Ukraine	2007	Corporate; Mergers & Acquisitions; Antitrust; Banking & Finance; Commercial; Insolvency & Restructuring; Employment; Energy; Real Estate; Intellectual Property; Litigation; Arbitration; Tax	AMD, Avon, BSH, Claas, Credit Suisse, Daimler, Deutsche Telekom, EBRD, Fujitsu, Groupon, Lufthansa, Mothercare, Navico, Otto, Rocket Internet, RBS, Swatch, Teradata, Viacom	English, German, Ukrainian, Russian

Phone number	Top executives	HQ	Est.	Main Specialization, services	Major clients	Languages
LAW COMPANY "PROFECTO"						
6 Bratska St., 4 floor, office 420, Kyiv 04070, Ukraine; profecto@profecto.com.ua, www.profecto.com.ua						
						
+38 044 223 3803	Markiv Nazar Dulich Vlad	Kyiv, Ukraine	2005	Litigation & Arbitration; Tax and Customs; Corporate and M&A; Administrative; Banking and finance	TOB "Енергетик", TOB "Спецремонт", TOB "БМК-Альпі", LIMITED LIABILITY COMPANY "D LIGHT" (LLC "D LIGHT"), TOB "ВЕЛМАШ-УКРАЇНА"	English, Russian, Ukrainian
LAW FIRM "P.R.S. & Co."						
21 Marshala Tymoshenka St., K 12-A, office 201, Kyiv, 04212, Ukraine; law_firm_prs@ukr.net, prscompany.com.ua						
						
+38 044 537 7381	Sergei Shutyi	Kyiv, Ukraine	2011	Banking and Finance; Civil law; Criminal law; Litigation & Arbitration; Debt Restructuring; Corporate/M&A; Tax; Investments; Real Estate; Agricultural Business; Private Clients;	Respect trading house, Factory musical, Iberus Kiev, Sport club Formstyle, Gross Grain, SportLider, Hazera Ukraine	English, Ukrainian, Russian
Redcliffe Partners						
75 Zhylyanska St., 13th floor, Kyiv 01032, Ukraine; office@redcliffe-partners.com, www.redcliffe-partners.com						
						
+38 044 390 5885	Olexiy Soshenko Dmytro Fedoruk Rob Shantz Sergiy Gryshko	Kyiv, Ukraine	2015	Antitrust; Banking and Finance; Capital Markets; Corporate and M&A; Debt Restructuring & Insolvency; International Arbitration; Litigation; Real Estate	Abbott Laboratories, Amadeus IT Group, BaDM, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, EBRD, FMO, IFC, ING, JPMorgan, Macquarie Bank, Monsanto International, Morgan Stanley, Raiffeisen Bank International, Renaissance Capital, UniCredit Bank, Vitol	English, Russian, Ukrainian
Skliarenko, Sydorenko and Partners, Attorneys At Law						
31 Tarasa Shavchenko Blvd., 3rd floor, office 8, Kyiv 01032, Ukraine; info@s-partners.org, www.s-partners.org						
						
+38 044 235 8575	Oleksandr Skliarenko Andrii Sydorenko Yulia Stusenko	Kyiv, Ukraine	2011	Litigation; Criminal Law and Procedure; Commercial Law; Corporate Law, Tax Litigation; Corporate Disputes; Insolvency and Bankruptcy; Mediation; Civil Law; Labor Law	Grawe Ukraine, IDS Group Ukraine, OTP Bank, Kvazar, Mamamusic	English, Russian, Ukrainian
Squire Patton Boggs-Salkom International Association						
12 Khreschatyk St., Kyiv 01001, Ukraine; www.squirepattonboggs.com, www.salkom.ua						
						
+38 044 591 3100 +38 044 591 3140	Peter Teluk Evgeniy Kubko	Kyiv, Ukraine	1992	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, ContourGlobal, Group DF, Intellectsoft, Kyivstar, Lufthansa Ukraine, Nadra Bank, Orithil, Sovereign Wealth Fund, Ukrlandfarming, Ukrainian Construction Company, UniCredit Bank, United Capital Partners, Velti, Winner Imports Ukraine	English, Russian, Ukrainian
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	Kyiv, Ukraine	2006	M&A; Bankruptcy and Debt; Real Estate; Assets Securitization; Litigation; Corporate Law; Tax	WND	English, Russian, Ukrainian
TCM Group Ukraine						
10A Vozdvyzhenska St., Kyiv 04071, Ukraine; info@tcm.com.ua, tcm.com.ua						
						
+38 044 228 1338	Denys Kopii Dmytro Golopapa Arthur Tretiakov Dmytro Govorun	Kyiv, Ukraine	2014	Alternative Dispute Resolution & Mediation; Litigation & Arbitration; Recognition & Enforcement of Arbitral Awards/Court Judgements; Bankruptcies; Crime Investigations & White Collar Crimes	Discovery, FedEx, Reebok, Erste Bank, Coca-Cola, Du Pont, Xerox. HSBC, Barclays, Bank of Ireland	English, Russian, Ukrainian
Vasil Kisel & Partners						
Leonardo Business Center, 17/52A Bohdana Khmelnytskoho St., Kyiv 01030, Ukraine; cs@vkp.ua, www.vkp.ua						
						
+38 044 581 7777	Andriy Stelmashchuk	Kyiv, Ukraine	1992	Agricultural Business; Antitrust & Competition; Capital Markets; Corporate / M&A; Energy & Natural Resources; Finance & Securities; Intellectual Property; International Trade, Project and Trade Finance; Labour & Employment; Litigation & Arbitration; Private Clients; Public Private Partnership, 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



A worker at state-owned rail monopoly Ukrzaliznytsiya repairs a train track. Employees of state-owned enterprises cannot be prosecuted under Ukraine's government anti-corruption laws. (Volodymyr Petrov)

Theft by employees of state-owned enterprises goes largely unpunished

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

One perennial complaint among Ukraine's reformers is that no matter what labor legislation gets passed, it will be ineffective as long as much of the country's workforce is employed unofficially, working in the shadows.

Without having contracts or legal work status, employers and employees in the private sector can sidestep Ukraine's current, Soviet-era labor code – and its replacement, when it comes.

But the roughly one million employees at

the country's 3,000 state-owned enterprises find themselves in a legal loophole for a different reason.

Many of these employees operate under the purview of government ministries, use state funds in their daily operations and are regulated by the country's Soviet-era labor code. But non-officer employees of state-owned corporations are not civil servants, and so current Ukrainian anti-corruption legislation, which defines governmental bribery as improper payments made to civil servants, doesn't apply to them.

No corruption prosecutions?

According to Ivan Khilobok, an adviser on questions of civil service reform at the Presidential Administration, applying equal treatment to state and private companies is a matter of principle: “There should be no difference between private companies, and (companies) that are owned by the state,” Khilobok said.

Khilobok added that a state-owned enterprise’s employees should be paid out of the company’s own profits.

But that leaves open a loophole in corruption legislation for employees at state companies. While they operate with state support, they cannot be held accountable under anti-corruption laws, and their workers cannot be prosecuted as recipients of official bribery under Ukrainian anti-corruption legislation.

Mikhail Samus, the deputy director of the Center for Army, Conversion, and Disarmament Studies, gives the notoriously corrupt Ukroboronprom, Ukraine’s state-owned defense manufacturer, as an example.

Ukroboronprom officials cannot be prosecuted for corruption, as they are not public officials, he said.

“In the anti-corruption legislation – it’s always about civil servants,” Samus said. “Workers at Ukroboronprom are not civil servants, so they don’t fall under anti-corruption legislation. It’s a state concern, but since they are not civil servants, they can go outside the bounds of this legislation.”

In fact, many foreign international anti-corruption laws are stricter than domestic Ukrainian legislation on the definition of who constitutes a government official. For instance, under the U.S. Foreign Corrupt Practices Act, which prohibits bribery in exchange for business with foreign governments, foreign officials are defined as anybody acting on behalf of the interests of a government.

U.S. federal prosecutors often target businesspeople who make improper payments in order to win contracts with state-owned enterprises.

Circular problem

In a sense, the problem is circular.

Workers at state-owned enterprises are subject to the labor code but not the civil service code, because state-owned enterprises are supposed to function like normal companies.

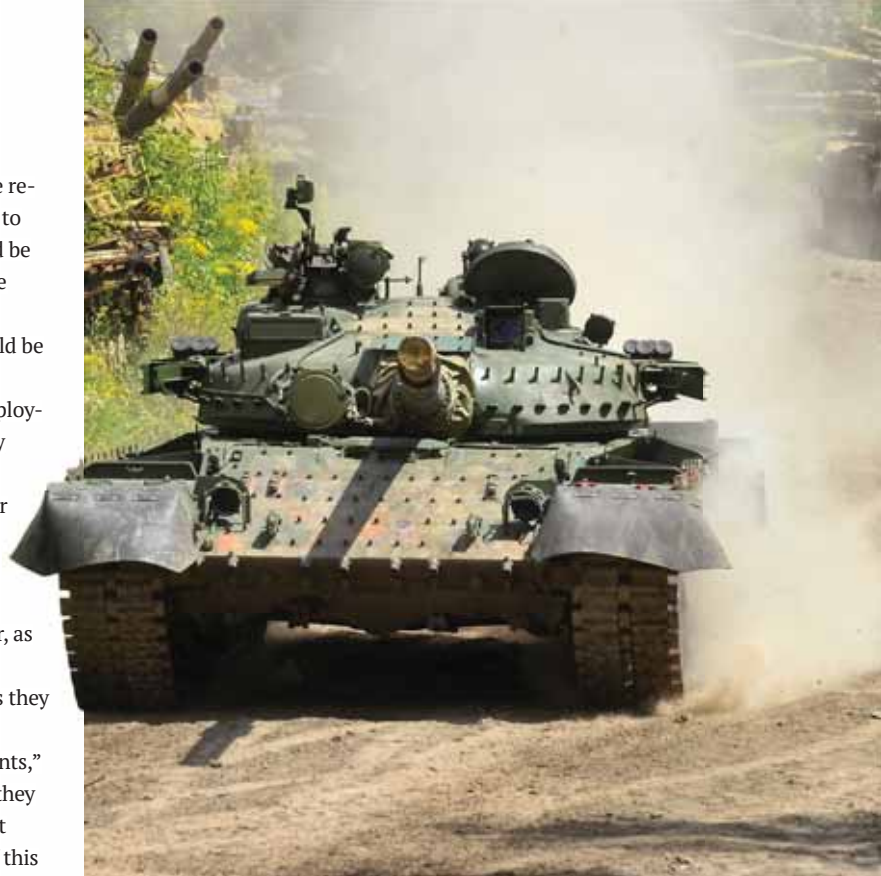
But these companies have a continual need for financial support from government ministries, draining public funds.

Khilobok said the companies need financial support from the government “due to corruption schemes” which get covered by the state budget via subsidies.

In turn, the government can’t prosecute those involved in corrupt schemes at state companies because they aren’t civil servants, and thus not subject to the civil service code, under which they could be charged with bribery.

Meanwhile, the labor code, which is skewed heavily in favor of workers, means it’s virtually impossible to oust corrupt managers from state-owned companies.

Experts say that additional regulations could be passed to solve the problem. However, until the underlying issues of low salaries and the lack of systematic prosecution of state corruption are addressed, the problem will likely continue. ■



Modernized T-80 tanks undergo testing at a factory before being deployed for military service on July 13. (Ukrafoto)

An advertisement for Profecto Law Company. The top part features the company logo, which consists of a green square with a white grid pattern, followed by the text "PROFECTO Law Company". Below the logo is a photograph of a man in a white shirt and dark trousers, seen from behind, standing in a large, complex maze. The maze is made of white walls on a light blue floor. In the bottom right corner of the advertisement, the text "Law company for your business" is displayed, with "business" in a green box with a white arrow pointing to the right. At the bottom of the advertisement, the contact information "profecto.com.ua • +38 044 223 32 03 • profecto@profecto.com.ua" is listed.

Corruption in tax service stunts Ukraine's economic potential

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

Ukkraine's tax collectors get paid a few hundred dollars a month but wield tremendous power in enforcing laws to raise more than \$30 billion in annual revenue for the nation.

It's been a recipe for graft, with a bitter aftertaste that dissuades managers and employees from entering into official employment arrangements lest they fall under the corrupt and typically unreasonable gaze of the fiscal police.

"They're called the most corrupt because they interact with business the most, but still they're the most corrupt," Pavlo Kukhta, an expert at the Reanimation Package of Reforms told the Kyiv Post.

Azarov's shadow

People working to streamline Ukraine's tax system told the Kyiv Post that all their efforts would come to naught if so much of the economy remains unofficial – in the shadows, so to speak.

The large size of Ukraine's shadow economy – perhaps half of all economic activity is off the books – has much to do with breathtakingly incompetent 1990s officials who designed impractical legislation, experts said.

Kukhta explained that former Prime Minister Mykola Azarov, now in exile in Moscow, was the architect of Ukraine's tax policies when he ran the service from 1996 to 2002, before rising in the Finance Ministry and later as prime minister under exiled ex-President Viktor Yanukovich.

"With the way they act, they were essentially created as a kind of extraction tool," Kukhta said. "It's essentially a large administration that tries to go everywhere and after everyone."

According to Vladimir Dubrovskiy, a senior economist at the Center for Social and Economic Research of Ukraine, ex-President Leonid Kuchma created the tax service as his personal enforcer before Azarov took over. But, Dubrovskiy said, Azarov failed to understand the basic principles of taxation, leading to a corrupt and absurd tax authority.

In the 1990s, for example, a combination of skyrocketing inflation and a 90 percent tax on the highest income bracket put most taxpayers in this category. This and other absurdities, Dubrovskiy said, prompted most people to avoid paying taxes.

Unofficial employees – often "paid through envelopes" – lose recourse to law if their workers' rights are violated and cannot unionize since they officially do not work.

Ripple effect

Dubrovskiy said that systematic corruption in the tax service has made it impossible for the country's workers to work officially.

"The tax services were not created to serve the people, they were created to serve the authorities," Dubrovskiy said.

The tax legislation drafter added that since so many people view the tax service as a means of "confiscation" and not of serving the state, the best way to avoid scrutiny is to evade taxes.

Dubrovskiy said that enforcers were motivated to "destroy businesses" because they received bonuses based on fines they collected.

"The official public servants were stimulated to collect as much fines as possible and actually destroy business," he said, adding that this, in turn, prompted companies to not file paperwork so as not to attract attention. "This is a kind of institutional memory that cannot fade away quickly. It's selective enforcement of impracticable laws," he said. "At least some of the tax departments are corrupted 100 percent."

Bloated service

Experts like Kukhta, as well as lawmakers like Samopomich Party member Andriy Zhurzhiy, told the Kyiv Post that the workforce's bloat ripples across Ukraine.

But Kukhta said that cuts had already succeeded in trimming half of the tax police.

"It was at 40,000 to 50,000 at its peak," said Kukhta. "It's been trimmed by half, and I think it might be trimmed by up to like 5,000 to 6,000, mostly to personnel sitting in Kyiv and the oblast centers."

The service is under the Finance Ministry led by Natalie Jaresko, who has made improving tax collection and reducing corruption in the tax service her top priorities for the year.

Questions have also been raised about the head of the tax service, investment banker Roman Nasirov, who was accused by a former top deputy in September of owning two pricey London apartments that he didn't declare. He has denied any wrongdoing.

The government civil service is, moreover, resisting change and retaining a Soviet mentality. "They treat businesses as enemies who try to hide taxes that belong to the people, the mentality is skewed," said Kukhta.

Within the service, incentives skew tax assessors' motivations. Inspectors still receive bonuses based on fines they collect, for example.

Centralize

Many of those drafting the legislation focus on structural changes as a means of improving the situation.

The tax service is largely decentralized, making regional office susceptible to local corrupt officials and oligarchs.

"We need more centralized organization, without these local branches and local dealings," said Kukhta.

Zhurzhiy echoed Kukhta's assessment of the situation.

"We need centralization," Zhurzhiy told the Kyiv Post. "One legal authority to administer tax matters."

Kukhta said that a patrol police-style total remake of the tax service could work, but that it would be difficult to achieve given that tax law is "harder to train than the police."

Dubrovskiy said that he would support a complete overhaul, but that as long as "the tax service remains so lucrative, there is little sense in changing the personnel. A clean person would destroy the business." ■



Ukrainian lawmaker Anton Herashchenko (C) talks to Estonian Yanika Merilo (L) on March 14 during a picket in front of parliament in Kyiv. An expert for State Agency for E-Government in Ukraine, Merilo is seeking to introduce Estonian practices of e-governance in Ukraine. (Volodymyr Petrov)

E-government taking off in Ukraine, bringing light to nation's dark, corrupt places

By **Olena Savchuk**
savchuk@kyivpost.com

Government agencies in Ukraine provide more than 1,000 services. Behind this number, there are a host of public servants with low salaries exacting a huge cost from the people they are supposed to be serving – through nerves and through time or money paid in bribes to get the bureaucrats to work faster, or at all.

Many countries have taken out the human equation through automation – saving money and improving public service in the process – through introducing electronic government platforms.

The United Nations ranked Ukraine ranked 87th out of 193 countries in its e-government survey in 2014. That is far behind Europe in terms of providing services online, but in 2015, the country made significant strides in making more government services available over the internet.

According to Oleksandr Ryzhenko, chairman of the State Agency for E-Government in Ukraine, the process was

spearheaded by the ministries of justice, regional development and ecology.

Justice Ministry leads

To get registered as a private entrepreneur in Ukraine, a person used to have to spend several days in line or pay a bribe to officials to skip the ordeal. Now, a new online service launched last year allows a person to register themselves as an entrepreneur within 24 hours.

Out of the 3.5 million entrepreneurs who registered in Ukraine last year, 2.5 million registered via the ministry's free online registration service, and a half a million registered online and paid an official fee to expedite the process, said Justice Minister Pavlo Petrenko. The ministry has also created a service that allows citizens to obtain an entrepreneur's certificate from the Unified State Registers within an hour, for a set, official fee.

The key advantage of going online is that it reduces the risks of corruption in the Justice Ministry's system, Petrenko said.

By the end of 2016, the ministry plans to make all its services electronic. That will enable citizens to amend a company's corporate charter and core business definition, change its director, register a change in surname, and register a marriage, divorce, death or birth online using a digital signature.

Created by volunteers

Pressure to remove the bureaucratic obstacles to delivering government services in Ukraine came largely from the ground up, from civil society.

But with no coherent state strategy for implementing e-government, the country has at least two platforms that claim to offer similar functions.

Dmytro Dubilet, the project manager of iGov – a new state administrative services portal – said his initiative started with a Facebook post. Dubilet called on other information technology specialists to volunteer to make the delivery of state administrative services more convenient and efficient. More than 100 people responded to the call, and they are now actively developing the project after the portal launched in June 2015.

Developed on open source software, iGov cost the state nothing. "If we built the project on a commercial footing it would cost millions of hryvnias every month," Dubilet said. As of now, 20 percent of the government's services are available on iGov. The plan is to add all 1,000 of them to the platform by the end of 2016.

Some services are provided entirely remotely, such as applications for subsidies. For others, citizens still need to fill in an application, pay a fee, and schedule a visit to a government agency to receive the certificate they require.

As electronic signatures are not widely used in Ukraine and not all ministries recognize them, the problem of verification was solved with the help of bank IDs – nine Ukrainian banks have joined in the project.

Currently, the online provision of state services is spread unevenly

through Ukraine, with Dnipropetrovsk Oblast taking the lead.

While earlier volunteers were asking government agencies to use their platform, now the central and municipal administrative bodies are coming to the iGov developers with requests to make their services available on the platform.

As no big portal can survive on the enthusiasm of volunteers forever, iGov's founder is now looking for grants, and has hired the project's first full-time staff. Dubilet said that after iGov is finished and removed from the volunteers' shoulders, keeping it going should cost the state less than Hr 100,000 per month. He said that the Economy Ministry will audit the portal before taking over responsibility for it.

One stop shop

Apart from the volunteer initiative iGov, the Economy Ministry has its own online government services pilot project -- poslugy.gov.ua.

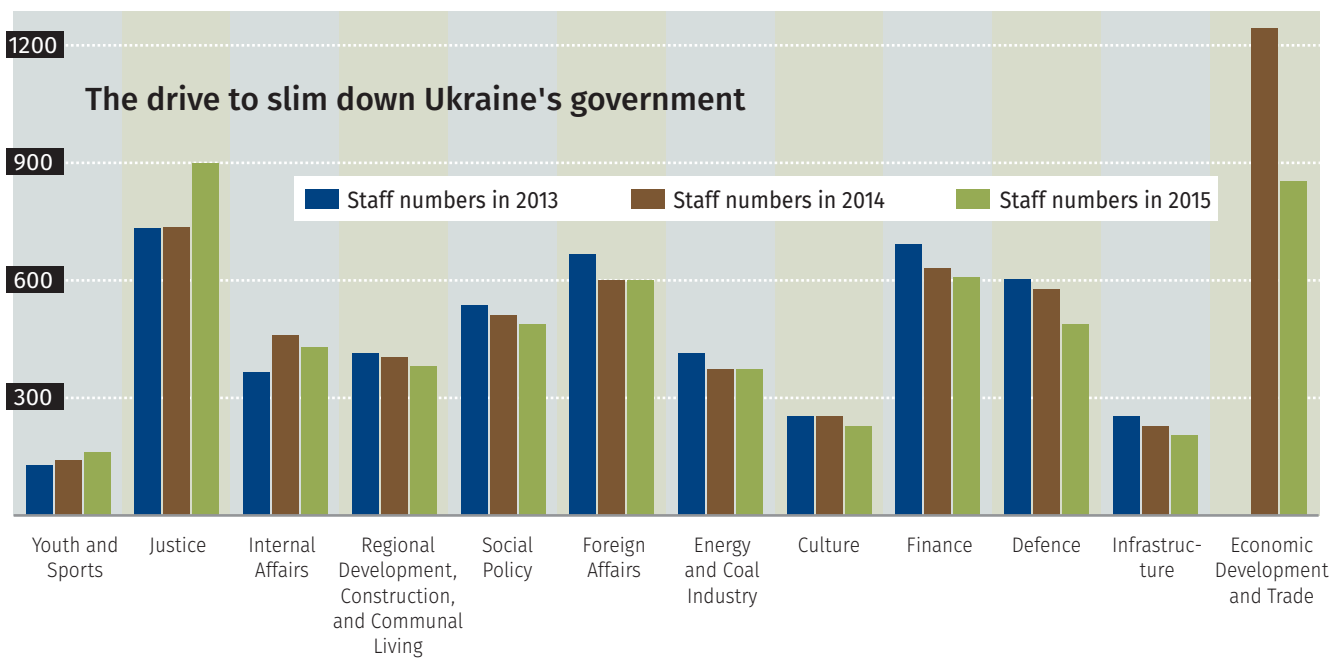
According to Ukraine's law on providing administrative services, this unified state portal should play the role of a "one-stop shop," providing information about all administrative services in the country. At the moment, citizens can obtain online only those services that are provided by the Economy Ministry. However, other services that become electronic later should also become available on poslugy.gov.ua.

"Respectively all other portals that offer state services should be integrated into it, according to the rules. Those rules are almost finished and are being agreed for now," the State Agency for E-Government's chairman Ryzhenko said.

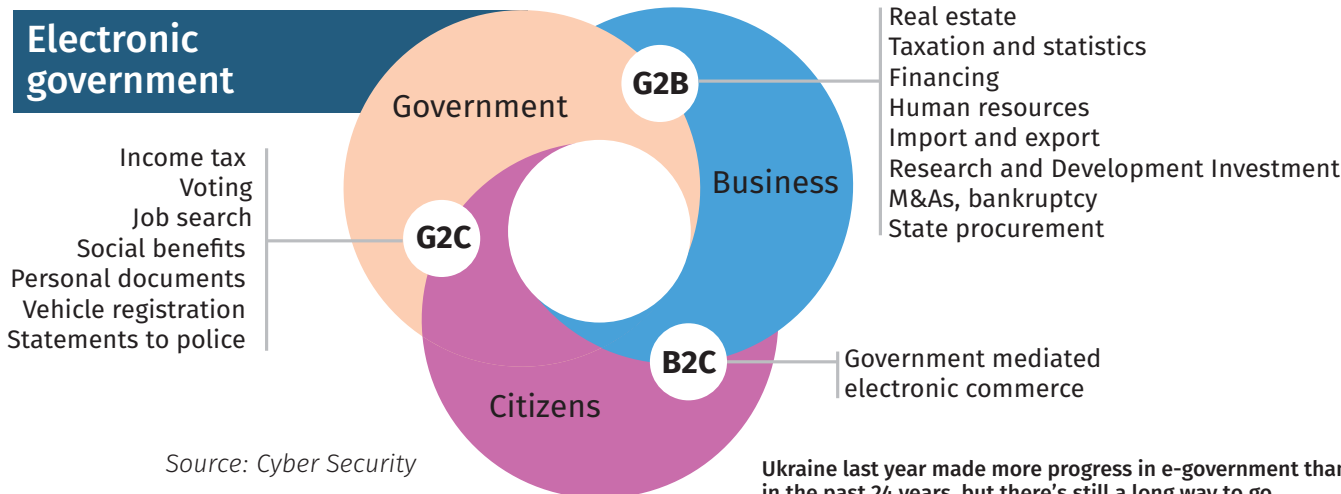
According to officials, unlike iGov, the Economy Ministry's portal will allow citizens not only to schedule a visit to a government agency, but also to submit documents and receive services online.

At the same time, Ukrainian law does not forbid government agencies and local authorities from providing their services separately on their own websites, just as the Justice Ministry does.

The problem with making government services available online in Ukraine is that everything that has already been achieved will need to



Ukraine's government has made modest progress in reducing the number of ministry employees. The greatest reduction has been in the Economic Ministry under Aivaras Abromavicius, who resigned on Feb. 3, alleging interference in his anti-corruption drive from political allies of President Petro Poroshenko. Source: *Novoe Vremya* news agency



be re-done, says Oleh Levchenko, e-governance expert from the non-governmental Reanimation Package of Reforms.

He doubts that the biggest portal, iGov, will become a centralized e-government platform, because it is a non-government initiative. There is also the question of the security of the personal data stored on iGov.

"It's not enough to have the will and an electronic program. It is important to make officials work with it," Levchenko told the Kyiv Post.

As for government initiatives, the problem with the online services of the Justice Ministry is that they are being introduced without a coherent strategy, Levchenko said. Thus, when other ministries go online, additional challenges will arise in efficiently connecting those systems.

On the other hand, before introducing e-government, Ukraine needs to simplify or cancel many of its bureaucratic procedures, all of which are stipulated in laws, Levchenko said. The civic activists who are working on the iGov cannot re-engineer the legislation, he said. It can be done only by the ministries and state agencies which provide those services.

Levchenko said this process is part of the state administrative services reform that is underway in the country.

"Thus, most management processes have been suspended or are only half complete," he said. "This is why the effort to create e-government at this time looks like an attempt to make chaos electronic." ■

ADVERTISEMENT

Moot Court Movement Makes Great Strides

On February 26-29 a remarkable event in the Ukrainian legal sphere took place — the 21st National Round of the Philip C. Jessup International Law Moot Court Competition. Being popular worldwide, the moot court movement is gaining momentum in Ukraine. So what is it all about?

A Moot Court represents a simulated process. It is a trial on a fictional or hypothetical issue, which serves as training for future lawyers. Jessup, in particular, imitates a dispute between

countries before the International Court of Justice, the judicial organ of the United Nations. This year students had to deal with an issue of the legality of cyber-surveillance and cyber-attacks under international law.

Jessup was one of the first moot courts established in Ukraine. With 12 teams from different universities participating in the event this year, it proved to be the largest moot court in the country. This year, for the first time in history, the team Yaroslav Mudryi National

Law University became the National Champion, followed by the team from Taras Shevchenko National University of Kyiv. According to the competition rules, these two teams will represent Ukraine in the international rounds in Washington D.C. on March 27 — April 2, 2016.

The law firm Marchenko Danevych has supported the Jessup competition since 2011. Partners of the firm believe that moot courts are an important instrument for development of students' key competences and their preparation for future career in the law sphere. Moreover, moot courts allow for intercultural exchange and learning about legal orders of other countries, which will help young lawyers to sustain a competitive advantage in the era of globalization.

It is noteworthy that the Jessup competition is driven by volunteers, students and professionals alike. If for the former it is an opportunity to immerse in the Jessup atmosphere and prepare for future competitions, for the latter it is an act of dedication to preparing the next generation of conscientious lawyers and, therefore, fostering qualitative changes in the legal sphere.

In its pursuit of expansion of the Ukrainian moot court movement, Marchenko Danevych with the aid of a group of

enthusiasts intends to establish a summer camp for future mooters. This camp will aim at preparing students for written and oral rounds of the competition. It will serve as a platform for exchanging ideas and experience among 'newbies', seasoned jessupers, coaches and judges. Participants of the camp will learn, inter alia, how to organize and manage a team, conduct legal research and analysis, present their ideas in front of the audience. The camp is expected to draw attention of young lawyers to Jessup and the moot court movement in general. It will encourage students to engage proactively in mooting and give them the tools needed to form teams in their respective universities. In addition, participants will extend their knowledge of law and hone their skills.

There is still a long way to go before flaws in Ukraine's legal system are eliminated and law officers reach the high standards that we expect from them. Nevertheless, the first step in the right direction is taken: many students capitalize on their participation in moot courts and make a valuable contribution to the improvement of legal environment in the country. The best is yet to come!

**MARCHENKO
DANEVYCH**



State industries hold cards in collective bargaining

By Josh Kovensky
kovensky@Kyivpost.com

According to Ukraine's largest employers and their attorneys, the Soviet Union may have succeeded in creating a worker's paradise – at least in terms of labor laws.

Managers complain that it is impossible to fire anyone for a litany of reasons, and that disgruntled employees frequently wield trade union agreements as a weapon to retain jobs for which they are otherwise unqualified.

But with a wave of privatization supposedly set to occur across Ukraine, particularly of large industrial enterprises, the primacy of unions may become a bigger issue as workers' collectives push to alter the terms of sales.

According to Oksana Voynarovska, a labor attorney at Vasil Kislil & Partners, trade unions are typically strongest in the state-owned industries, but they tend not to be a meaningful force in the private sector.

However, many former state-owned firms that were privatized retain their union agreements, Voynarovska said.

"Traditionally, they were the big manufacturing companies in the Soviet Union, and then they were privatized by foreigners or they got an investment program according to which (investors) have to retain the rights of the employees without making massive redundancies," Voynarovska said.

Test case at Odesa Portside Plant

Two separate labor attorneys said that the privatization of the Odesa Portside Plant would be closely followed in terms of how the plant's union managed to negotiate with its eventual purchaser.

The plant, which produces ammonia and other industrial chemicals, is widely expected to be the first large industrial entity to be privatized in the next round of selloffs of state property.

Dmitriy Ternavskiy, a worker at the plant, said that all 4,000 workers were members of its trade union. He said that the union's leadership intended to set conditions on the enterprise's sale for any future buyer.

"They want it to be sold with the condition that all jobs are retained over some period of time," Ternavskiy said.

Privatization regulation

Labor attorneys say that trade unions are typically used as instruments of manipulation, either on a small scale by employees fighting dismissal, or by wealthy businessman who see them as opportunities to stifle resistance.

According to Mariana Marchuk, a labor attorney at Baker McKenzie in Kyiv, as few as three workers can form a trade union. Once one is formed, a company will need permission to dismiss any worker in the union from the trade union itself.

"New trade union formation is often related to such situations, when an employee should be or is dismissed for disciplinary violations," Marchuk said.

The Baker attorney added that while it is possible to resolve these conflicts, such situations were often an example of "pressure tactics either to avoid dismissal for disciplinary violations, or to have a formal pretext for challenging the termination, or to negotiate more favorable terms."

However, state-owned companies on the path to privatization, like the Odesa plant, tend already to be covered by one large union. "In the terms of privatization there will be a separate chapter regarding collective bargaining rights and obligations to fulfill the terms of the collective agreement," Marchuk said. Within one year after privatization, new collective bargaining should commence, she said.

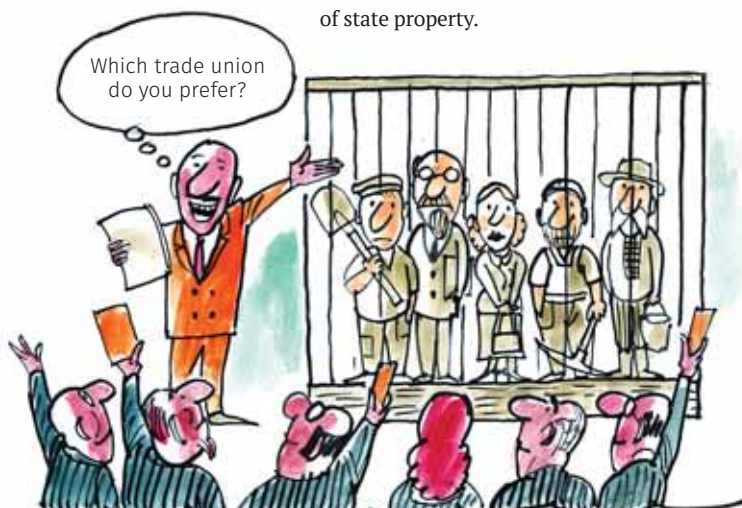
Fighting for nothing

Volodymyr Monastyrskyy, a labor attorney at Dentons, said that it is difficult to delineate many collective bargaining rights. Many people work unofficially, meaning that a lot of labor disputes cannot be effectively settled, he said.

"As long as employees continue to be paid in envelopes, there is no real future for collective bargaining," Monastyrskyy said. "People would be fighting almost for nothing."

Many of the country's wealthiest businesspeople control the country's unions. The head of the union of employers, for example, is Dmytro Firtash, the Group DF head who remains in exile in Vienna, Austria, after fighting of extradition to the United States on a bribery charge that he denies. ■

Trade unions in Ukraine are manipulated to serve vested interests instead of solving workplace problems.



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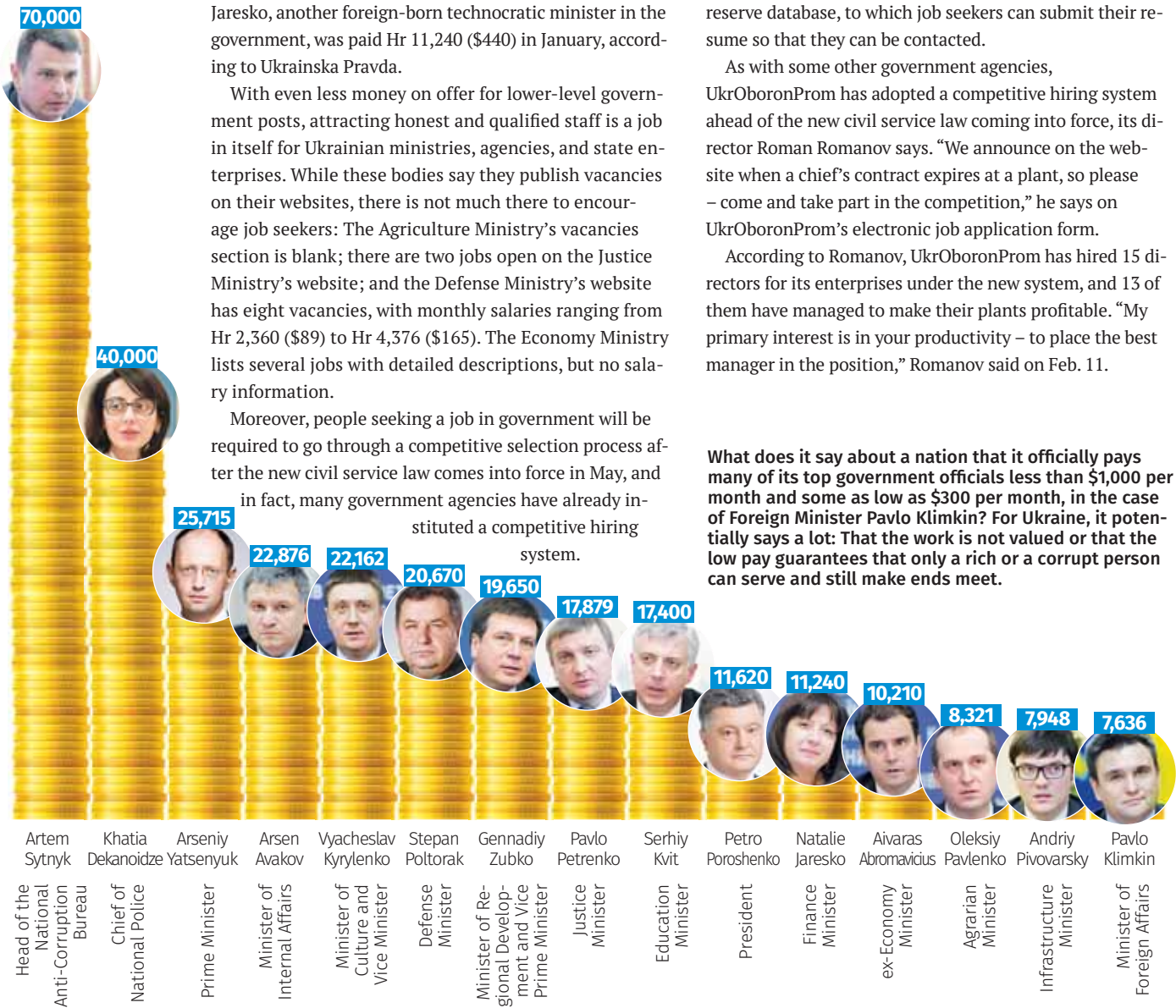
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Ukraine pays public servants ridiculously paltry salaries

By **Yuliana Romanyshyn**
romanyshyn@kyivpost.com

State wages amount (including taxes)



Whoever takes over from Economy Minister Aivaras Abromavicius, who resigned on Feb. 3, won't be doing it for the money.

The minister earned just Hr 5,542 (\$209) in February, according to a report appearing on Ukrainian news website Ukrainska Pravda on March 14. Most of it (Hr 4,524, or \$170) was vacation pay.

The minister's full salary is likely closer to the Hr 10,210 (\$385) he was paid in January. Finance Minister Natalie Jaresko, another foreign-born technocratic minister in the government, was paid Hr 11,240 (\$440) in January, according to Ukrainska Pravda.

With even less money on offer for lower-level government posts, attracting honest and qualified staff is a job in itself for Ukrainian ministries, agencies, and state enterprises. While these bodies say they publish vacancies on their websites, there is not much there to encourage job seekers: The Agriculture Ministry's vacancies section is blank; there are two jobs open on the Justice Ministry's website; and the Defense Ministry's website has eight vacancies, with monthly salaries ranging from Hr 2,360 (\$89) to Hr 4,376 (\$165). The Economy Ministry lists several jobs with detailed descriptions, but no salary information.

Moreover, people seeking a job in government will be required to go through a competitive selection process after the new civil service law comes into force in May, and in fact, many government agencies have already instituted a competitive hiring system.

New strategies

The low wages for senior positions, combined with low public awareness of government job openings, has led several agencies to adopt new strategies for attracting employees.

State defense enterprise UkrOboronProm, which oversees 99 manufacturing companies, says it publishes all vacancies for positions as head of its enterprises on its website. In addition, UkrOboronProm has created a staffing reserve database, to which job seekers can submit their resume so that they can be contacted.

As with some other government agencies, UkrOboronProm has adopted a competitive hiring system ahead of the new civil service law coming into force, its director Roman Romanov says. "We announce on the website when a chief's contract expires at a plant, so please – come and take part in the competition," he says on UkrOboronProm's electronic job application form.

According to Romanov, UkrOboronProm has hired 15 directors for its enterprises under the new system, and 13 of them have managed to make their plants profitable. "My primary interest is in your productivity – to place the best manager in the position," Romanov said on Feb. 11.

What does it say about a nation that it officially pays many of its top government officials less than \$1,000 per month and some as low as \$300 per month, in the case of Foreign Minister Pavlo Klimkin? For Ukraine, it potentially says a lot: That the work is not valued or that the low pay guarantees that only a rich or a corrupt person can serve and still make ends meet.

Sources: Ukrainiski Novyny news agency, Cabinet of Ministers, pravda.com.ua online media



Outsourced recruiting

While state enterprises like UkrOboronProm may offer candidates higher wages and less paperwork, government bodies have a harder sell. To cast their net wider for potential job candidates, some ministries and state agencies are outsourcing their recruiting.

Iryna Brytska, a research specialist at HeadHunter (hh.ua), a leading Ukrainian job website, said her organization is happy to cooperate with government. “We gladly placed their vacancies for free last year, so helping to attract employees to their positions,” she said. HeadHunter also has an agreement this year with the State Employment Service to place its vacancies on the hh.ua website free of charge.

The ministries came to HeadHunter with the request to list vacancies, Brytska said. For ordinary clients, the website would usually charge Hr 120 per vacancy. HeadHunter also offers its database of resumes for Hr 45,000. Those who buy it can then post vacancies free of charge.

So far, the website features only one position in a ministry – chief of staff at the Agriculture Ministry. There is no

indicated salary, common for vacancy notices in Ukraine, even in the private sector.

High demand

Nevertheless, Brytska said that interest in jobs in the state sector is high, especially for posts such as head of department or head of a directorate. One vacancy attracted 500 responses. “At the moment (the state sector) is quite prestigious and promising,” Brytska said, a change in attitude since the EuroMaidan Revolution toppled the former government two years ago.

Brytska doesn’t see low salaries at state enterprises as an obstacle for employers. “Many hope that investment will come here. They’re quite willing to go to the state sector, because they expect stability,” she said.

Also, a group of Ukrainian alumni of Western universities has launched the Professional Government Initiative to help authorities match educated Ukrainians with government bodies in need of professionals.

Since March 2014, the initiative has brought 32 civil servants to various ministries and state enterprises. To

Ex-Economy Minister Aivaras Abromavicius participates in a meeting in Kyiv on Feb. 2, the day before he resigned. (Volodymyr Petrov)

Key people in civil service reform

Name	Position
Olena Shkrum	Member of Parliament (Batkivshchyna Party)
Alex Ryabchyn	Member of Parliament (Batkivshchyna Party)
Ivan Khilobok	Presidential Administration adviser
Alina Sviderska	EasyBusiness, Professional Government Initiative
Kostyantyn Vashchenko	Chairman of the National Agency on Civil Service
Denys Brodsky	Head of the National Agency of Ukraine on Civil Service
Ihor Koliushko	Head of the Center of Policy and Legal Reform

Source: Kyiv Post

The drive to modernize and professionalize Ukraine's government service has included participation from lots of people, including advisers of foreign governments and international governmental institutions, such as the European Union.

Bureaucratized government bodies

Agency name	number of services it provides
State Fiscal Service	118
Justice Ministry	116
The National Commission for State Regulation of Financial Services Markets	88
The National Commission for State Regulation in the Energy Sector	74
Interior Ministry	53

Source: Department of Regulatory Policy and Entrepreneurship

The State Fiscal Service is the leader in the number of administrative services it provides, followed closely by the Justice Ministry.

Paying decent wages has been a top issue in reforming Ukraine's civil service. Infrastructure Minister Andriy Pivovarsky, in particular, has been vocal in demanding better salaries for staff in all ministries where salaries of \$150 monthly are common.

achieve this, the initiative started a hiring website – www.proukrgov.org. Job-seekers upload their resumes to the website's database of professionals, and when a government body gives the initiative a list of its vacancies, it receives a list of suitable candidates within few days. The state institution then contacts the candidates directly.

While new selection processes are starting to be used, under the new civil service law candidates still have to collect a raft of documents when applying for a government job. Supporting documents include a motivation letter and application form, copies of diplomas and passports, a certificate of knowledge of Ukrainian (and English, starting 2019), a certificate proving the applicant isn't subject to lustration following the EuroMaidan Revolution and an income declaration.

Ukraine's government is trying to more actively recruit the best professionals for service, but low pay is a major obstacle to attracting highly qualified candidates.

Living on savings

Low wages are the main obstacle to more professionals applying for state jobs, as can be seen from the example of Brain Source International, an executive jobs website. Its head Andriy Krivokorytov said candidates who look for a job through his website are mainly top and middle managers looking for jobs in the private sector.

Krivokorytov said that Hr 20,000 is should be the minimum salary for positions such as chief of a government department. But the wages offered by the state are a quarter of that at best. "Not so many people among them can afford to work for Hr 5,000" monthly, Krivokorytov said. ■



Sergey Makarenko (L) and Anatoliy Televskiy, state executors in Kyiv, register a debtor's car for auction at a state car depot on March, 17. (Anastasia Vlasova)



Private executors to improve enforcement of court orders

By **Isobel Koshiw**
ivkoshiw@gmail.com

It's hard enough to win a court case in Ukraine. But it's even harder to get a judge's decision enforced.

Although official statistics put the numbers higher, many legal experts estimate that only 3 to 4 percent of court orders are properly executed and enforced.

The blame lies largely with the State Enforcement Service, the inefficient and underfunded agency under the Justice Ministry, which is supposed to execute court orders. State executors in Ukraine seek to enforce on issues ranging from taking a child into foster care to confiscating a debtor's car.

Now, following more than a decade of discussion, two laws aimed at making the service more efficient and reducing corruption are up for second reading in parliament in March.

According to the new legislation, Ukraine will move towards a mixed system of state and private executors, working conditions for executors will be improved, and elements of competition will be introduced to encourage efficiency.

The laws are part of the wider reform of Ukraine's judiciary system that the International Monetary Fund has flagged as a prerequisite for its continued financial assistance to Ukraine.

Salaries low, bribery high

"There's no point in having a good court system if the judge's decisions aren't carried out," said Deputy Justice

Minister Serhiy Sklyar, who heads the State Enforcement Service.

The main issues hurting performance are low salaries and bad working conditions of state executors. Salaries are Hr 2,200 (\$83 per month) -- an invitation to corruption. The workload is heavy. Each employee is expected to take on 1,000 cases per year, Sklyar said.

Andrey Avtorgov, a partner at the Agency for Debtors and Bankruptcy, said that this is a recipe for corruption: "Each side (the executor and the claimant) tries to find their own way to benefit, so that's when corruption takes place," he said.

High staff turnover is also another consequence as people leave in search of better pay and conditions.

Lawmaker Ruslan Sydorovych, who sits on parliament's judicial committee, agreed that -- along with the stick -- more carrot is needed to keep state executors performing well in their jobs.

"The fight against corruption can't just come from prosecuting those who abuse their positions, it also has to be about changing conditions... We need to motivate the executors," Sydorovych said.

Legal earnings

Under the proposed new laws, executors will be entitled to a commission or bonus, depending on the type of case they're working on. Private executors will also be free to

negotiate an additional bonus with the claimant. For instance, they might ask for an extra fee to prioritize certain cases.

“Of course we understand that we need to raise state workers’ salaries, but at the same time we understand that the state doesn’t have the resources to increase salaries without raising them across the board,” said Sklyar. “So we’re creating a system where these people can legally earn money themselves.”

Sklyar said “populists” in parliament have been claiming that private executors will seek to profit by evicting grandmothers who can’t keep up with their loan repayments, or that government is effectively legalizing loan sharks.

“This is simply not true, there’s nothing to be scared of,” Sklyar said. Under the new law, any cases involving individuals, children or state debtors will continue to be under state jurisdiction, he said. In private matters, claimants will be able to choose between a state or private executor.

Furthermore, according to Sklyar, all private executors are required to have a university degree and undergo examinations created by foreign experts. Private executors will not be hired if they have criminal convictions or a poor disciplinary history. In contrast, “a loan shark doesn’t need any qualifications,” Sklyar said.

He said private executors are more efficient and cost-effective. “I hope that in the next five years that most of Ukraine’s executors will come from the private sector,” he said.

The new laws were drawn up using experiences from other countries, particularly Bulgaria, lawmaker Sydorovych said.

The Ukrainian state currently employs 5,500 state executors, whereas Latvia and Bulgaria employ 250 and 400

respectively. Although Ukraine’s population is much larger, smaller countries have shown that not all court orders have to be executed by the state, Sydorovych said.

Cautious optimism

Lawyers, state executors and businesses appear to welcome the changes.

“I think both laws will be passed, as the current situation doesn’t help anyone – not the banks, not businesses,” said Avtorgov, a bankruptcy law specialist.

Sydorovych said: “When the number of court orders executed starts to increase, this will be a very good signal for business and foreign investors.”

Valentyna Danishevska, director of the Center for Commercial Law, who worked on the first drafts of the laws, said change is welcome. “Ukraine finally needs to introduce private executors,” she said.

However, she noted that private executors would still be working within the same legal confines as state executors. For instance, certain law prevents an executor from quickly freezing a person’s assets, which complicates their work.

“We need to create the right conditions so that private executors are immediately successful, or the public won’t value this reform. Not everything has been done for this to happen,” Danishevska said.

“We are only for reform,” Anatoliy Televskiy, a state executor of the Dniprovsky region in Kyiv told the Kyiv Post on the way to a state car depot where debtors’ cars are held.

“But the problem is we still won’t have enough law enforcement support,” Televskiy said. “At the moment we have to just approach people and ask politely. We need to have our own police force within the department. People aren’t scared of us.”

Sergey Makarenko, a state executor also in the Dniprovsky region, told the Kyiv Post on a routine job involving debtors’ cars, that executors are not happy that the new law only allows three days to claim their rewards.

“Three days is not enough. What if the accountant is sick? I think five is more reasonable,” Makarenko said.

Danishevska noted other factors, such as requirements in the proposed new laws that restrict private executors to working in particular territories. She said the restriction also hurts the consumer, who might want to use a certain executor – say a top-notch private one from Kyiv to help in a case in Odesa – but who wouldn’t be able to have that choice.

“Unfortunately there is little understanding of these subtleties,” Danishevska said. “But that doesn’t mean that (the laws) shouldn’t be passed, because if we don’t start with something, we will never learn.”

Meanwhile, even if the laws do make it through parliament, it will still be another half a year before the promised changes appear, the Justice Ministry’s Sklyar said.

“If the laws are passed in March, it will take six months of preparations before we see the first private executors,” he said. ■

Guards let Sergey Makarenko (L) and Anatoliy Televskiy, state executors in Kyiv, into a state car depot on March 17. (Anastasia Vlasova)





Kyiv Post's first digital book

Two years after the EuroMaidan Revolution protests, the Kyiv Post looks back on the dramatic events of the winter of 2013-2014, when a nation rose up and drove President Viktor Yanukovich from power.

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