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## Combating corruption in Ukraine – the beginning of a long march

Marta Jaroszewicz, Piotr Żochowski

From a public opinion point of view, corruption has been the gravest problem of today's Ukraine, excepting the armed conflict in the east of the country. The government might be able to delay certain key reforms such as the constitutional reform or the reform of local government structures, however, without stepping up measures to combat corruption they would face the risk of losing social support which has already been weak. There is no single strategy for combating corruption in Ukraine. What has been implemented is a series of often contradictory concepts and actions (initiated by the president's office, the government, civil society institutions, or launched to meet the requirements of donors). The successes of the new government have included efforts aimed at fighting corruption at the middle level of government and the introduction of legislative changes in compliance with international practice. The main weaknesses, on the other hand, have been the lack of efficient mechanisms to implement the adopted legislation to ensure that an individual charged with corruption (regardless of political connections) could be effectively tried and the money received as bribery could be returned to the state. Similarly, the judiciary system has not been prepared to actively handle corruption cases.

### Corruption in Ukraine

Europe's main anti-corruption convention, i.e. the Council of Europe's 1999 Civil Law Convention on Corruption, defines corruption as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof"<sup>1</sup>. Corruption can take various forms: from the most basic one such as bribery, through embezzlement of public property, nepotism and clientelism, to appropriation of state institutions by corrupt networks. There is no single recipe for combat-

ing corruption effectively. Some countries focus on the harsh penalisation of corruption crimes and increasing the effectiveness of the system of detecting and punishing corruption-related offences. Other countries emphasise the need for state institutions to function transparently, including giving citizens unrestricted access to public information and making public assets declarations pertaining to state officials. The most widely-used instruments aimed at fighting corruption typically include: the penalisation of various aspects of corruption, the creation of an effective system of combating corruption free from external influence, the confiscation of property obtained by way of corrupt practices, a reduction in all immunities which hamstringing the prosecution of corruption-related offences, and the introduction of anti-corruption provi-

<sup>1</sup> Civil Law Convention on Corruption, ETS no. 174; Ukraine ratified the Convention in 2005.

sions to rules and regulations pertaining to the work of public officials.

Corruption in the West is different than that observed in Ukraine. In the West, the main form of corruption involves using private money to exert influence on public officials to persuade them to make certain desired decisions. In Ukraine, on the other hand, corruption takes the form of transferring public money to private companies<sup>2</sup>. Moreover, in Ukraine corruption is not just a system anomaly, but it forms an integral part of the system of the state's functioning. There are several levels of corruption: low-level corruption (related to the everyday life of citizens), corruption at the middle level of government and large-scale political corruption. As far as the latter is concerned, two phenomena are typical of contemporary Ukraine: the actual takeover of state institutions by corrupt networks, and also politicians' dependence on big business and the sponsoring of political parties by oligarchy groups. During Viktor Yanukovich's presidency Ukraine was one of the most corrupt states in the world (in 2014 it was ranked 142<sup>nd</sup> out of 176 states in the Transparency International Corruption Perception Index). The years 2010–2013 can be referred to as a period of actual illegal takeovers of key state institutions by Yanukovich and his immediate circle, aimed at appropriation as much funds from the state budget as possible.

### New trends

The change of power in Ukraine has eliminated a number of the so-called 'corruption schemes' associated with the old government. However, several significant problems have been left unresolved. Firstly, corruption in Ukraine is of an institutional nature. It has produced a system of informal relations of the authorities vs. the citizen and of the subordinate vs. the superior occurring from the highest level of government down

to the local level. Secondly, politicians continue to be dependent on the oligarchs who sponsor them or in fact are oligarchs themselves who get involved in politics in order to pursue their business objectives. Thirdly, the outbreak of the armed conflict in the east of Ukraine and the emergence of the uncontrolled territories has facilitated the emergence of new corruption schemes.

### Corruption in Ukraine is of an institutional nature. It has produced a system of informal relations of the authorities vs. the citizen.

Corruption has been the main cause for society to be disillusioned with the policy pursued by the new government. According to the results of an opinion poll conducted in January 2015 by the Kyiv International Institute of Sociology, commissioned by the *Dzerkalo Tyzhnia* weekly, nearly 80% of the respondents claimed that corruption has remained unchanged after the change of power or that it has increased in scale. Meanwhile, the main objective of the Revolution of Dignity was to combat corruption<sup>3</sup>. Similarly, entrepreneurs have complained that corruption and criminal 'corporate raiding' (taking companies over by force on the basis of counterfeit documents) have been the main cause for investors' reluctance to locate their investments in Ukraine, alongside the dire economic situation of the country.

Unlike under Yanukovich, currently there is no publicly available evidence for direct corrupt activities carried out by top-level Ukrainian politicians. Just like during the previous government's rule, accusations of corruption are mainly being formulated towards individuals operating at the interface of public administration and the energy sector. These individuals reap profits

<sup>2</sup> R. Karklins, 'Typology of Post-Communist Corruption', *Problems of Post-Communism*, July/August 2002.

<sup>3</sup> For more on this topic see T. Piechal, 'Disappointment and fear – the public mood in Ukraine', *OSW Analyses*, 14 January 2015; <http://www.osw.waw.pl/en/publikacje/analyses/2015-01-14/disappointment-and-fear-public-mood-ukraine>

mainly from dubious intermediary activities in the field of purchase, sale and the processing of fuels; and from obtaining rebates, licences or loans from the state which they are not entitled to. Another practice which has been observed involves the heads of certain public institutions or publicly owned companies persuading employees to move their current accounts to banks associated with these principals or to buy state-owned land for next to nothing. Other very frequent corruption schemes occurring in government offices and state-owned companies include: inflating the value of public tenders to transfer excess money obtained in the tender procedure to private accounts, as well as managers forcing their subordinates to make unofficial monthly payments to their superiors. These types of practices were mentioned in the charges brought against the head of State Service for Emergency Situations and his deputy, both of whom were detained on 25 March 2015 during a government meeting.

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Tax offices, fiscal monitoring as well as the customs service, militsiya (i.e. the equivalent of the police force in Ukraine) and other institutions involved in issuing permits and licences have been considered the most corrupt state administration bodies. According to the [www.slidstvo.info](http://www.slidstvo.info) website, systemic corruption still persists on Ukraine's borders and for each cargo to efficiently pass customs clearance the so-called *otkat* (Ukr. *vitkat*; or 'share') must be paid. Average citizens are most affected by corruption in militsiya structures, including traffic police. The scale of corruption in law enforcement structures has been indirectly confirmed by words spoken by Ukraine's prime minister,

Arseniy Yatsenyuk recently. In late February he demanded that the interior minister clean up the situation in the militsiya, at the same time accusing the ministry itself of becoming an "organised crime group"<sup>4</sup>. New corruption schemes emerged when the war in eastern Ukraine broke out. These include the practice of bribing conscription boards to exempt specific individuals from military service or of Ukrainian officials offering bribes in exchange for being granted the status of a counter-terror operation veteran (which exempts them from the compulsory lustration)<sup>5</sup>.

### Measures undertaken

No major modifications in the state's anti-corruption policy were made immediately after the change of power in Ukraine. This delay has been caused by the process of the new political order being formed (2014 saw both presidential and parliamentary elections) and by the fact that the government has focused on carrying out military actions in eastern Ukraine. It was only in autumn 2014 that legislative changes and slow practical changes in combating corruption in public institutions were launched. In December 2014, the Cabinet of Ministers adopted a new government agenda which for the first time contained an entire chapter devoted to 'new' anti-corruption policy. In recent months, actions aimed at bringing officials associated with the previous regime to justice have been intensified. At the same time, the government launched institutional changes including in particular the formal establishment of the National Anti-Corruption Bureau. However, there has been significant delay in implementing these changes. A reform of the prosecutor's office and of the ministry of the interior is under way. Public tender procedures have also been modified. The increased activity of civil society activ-

<sup>4</sup> After <http://www.rbc.ua/rus/news/yatsenyuk-poruchil-avakovu-provesti-kadrovye-chistki-v-mvd-24022015123000>

<sup>5</sup> Details on lustration below.

ists and journalists is also worth noting. They have managed to expose a number of corruption scandals and launch the project of compiling publicly accessible databases to disclose public officials' assets.

### **Legislative changes**

The most important measure aimed at cutting the links between the new government and the corrupt regime established by Yanukovich was the adoption in September 2014 of a law to clean up the government (lustration law)<sup>6</sup>. The law was an attempt at combining political lustration (the verification of officials in terms of their possible involvement in *illegal* decisions taken by the Yanukovich regime and of officials who cooperated with the Communist system) with a top-down dismissal of corrupt officials associated with the previous government. Pursuant to this law, certain categories of officials (e.g. the prime minister, individual ministers and heads of other central offices, prosecutors and judges, top-ranking military personnel) were subject to a ban on holding public office for ten years if they had held these posts during the presidency of Viktor Yanukovich (lower-level officials faced a five-year ban). Some lower-level public servants would not be automatically dismissed; instead, they would be subject to individual lustration. The advantage of the law is that it has made it possible to dismiss a large number of corrupt officials, which would not otherwise have been possible due to the inefficient judiciary. The disadvantages, however, have included the risk that the withdrawal from the system of proving each individual's guilt in a separate trial may be contrary to the provisions of the Ukrainian constitution. Another weakness of the law is that due to purely opportunistic reasons, lustration is not intended to cover officials directly elected to their posts (the president, members of parliament

etc.). Whether the law proves to be an efficient anti-corruption mechanism will be evident once it is fully implemented. Heads of specific state institutions are responsible for the enforcement of the law, and the overall coordination of the process has been tasked to the Ministry of Justice. Currently, after nearly a year of the law being in force, it is evident that it is being observed to a varying degree: in some offices it has been enforced, whereas in others officials falling within the provisions of the law still hold their posts.

### **The law on the National Anti-Corruption Bureau (NACB) provides for the creation of a specialised body to protect public order by prosecuting corruption-related offences committed by public servants.**

Another measure taken was the adoption of a package of anti-corruption laws in October 2014 which included laws: on the National Anti-Corruption Bureau, on preventing corruption and on the fundamentals of anti-corruption policy of Ukraine for the years 2014–2017. Adoption of these regulations was a condition for Ukraine to receive macroeconomic aid from the EU and fulfil the EU's requirements concerning visa-free regime<sup>7</sup>. The law on the National Anti-Corruption Bureau (NACB) provides for the creation of a specialised body to protect public order by prosecuting corruption-related offences committed by public servants<sup>8</sup>. Both the law on preventing corruption and the law on the fundamentals of anti-corruption policy have the form of documents/political platforms rather than laws introducing legal standards. Nonetheless, their adoption triggered the implementation of several significant changes. In late March 2015,

<sup>6</sup> For more see T. A. Olszański, 'The Ukrainian Lustration Act', *OSW Analyses*, 1 October 2014; <http://www.osw.waw.pl/en/publikacje/analyses/2014-10-01/ukrainian-lustration-act>

<sup>7</sup> EU releases €250 million of grants to support Ukraine, Brussels, 13 June 2014, [http://europa.eu/rapid/press-release\\_IP-14-676\\_en.htm](http://europa.eu/rapid/press-release_IP-14-676_en.htm)

<sup>8</sup> 'Zakon Ukrainy pro Natsyonalne Antikoruptsyine Byuro Ukrainy', *Vidomosti Verkhovnoy Rady*, 2014, No. 47, p. 2051, <http://zakon2.rada.gov.ua/laws/show/1698-18>

the National Agency for the Prevention of Corruption was established at the Ukrainian government with the task of verifying the assets declarations submitted by public officials. Other changes have also been planned to increase the state's transparency, including: opening up access to the state register of real property, the creation of a state register of individuals who have committed corruption-related offences and the introduction of special anti-corruption screening procedures for public servants. Another important measure has been the introduction of provisions making it possible to temporarily confiscate the property and assets of individuals suspected of corruption. This, for example, will make it possible to confiscate illegally obtained assets belonging to former president and prime minister, both of whom fled to Russia<sup>9</sup>.

The adoption in April 2014 of an amended public procurement law was another significant change in the fight against corruption. According to EU experts, the new law has been largely convergent with EU practice, in particular in terms of reducing the number of exceptions in which the public tender procedure can be omitted<sup>10</sup>.

### ***Anti-corruption investigations***

No Ministry of Justice data on corruption-related investigations launched in 2014 is publicly available. According to statistics compiled by the General Prosecutor's Office and made available to the media, between January and October 2014 approximately 2,000 corruption-related investigations were launched (pursuant to two major corruption-related provisions of the criminal code)<sup>11</sup>. In 2013, the figures were largely similar. The difference, however, is that inves-

tigations launched in 2014 concerned former prominent representatives of the Yanukovich regime or public officials currently holding relatively important posts. Previously, corruption-focused investigations had mainly targeted lower-level officials holding posts in local government or in regional branches of central government offices, public servants at the lower level of central government or militsiya officers<sup>12</sup>.

### **The National Agency for the Prevention of Corruption was established at the Ukrainian government with the task of verifying the assets declarations submitted by public officials.**

Immediately after the revolution, investigations were launched focusing mostly on the former president and former prime minister and their closest relatives involved in the illegal practice of transferring state-owned assets abroad. The process of disclosing offences committed against middle level officials in ministries, public institutions and local government bodies has also started slowly (Ukrzaliznytsia, the Ministry of Health, the fiscal service, customs service, local government units responsible for the sale of state-owned land etc). This has been possible mainly due to initiatives by social activists involved in combating corruption.

It was only in recent weeks (when the general prosecutor changed<sup>13</sup>) that the general prosecutor's office launched several new investigations targeting former officials associated with Yanukovich (though corruption charges, which are the hardest to prove, were not a priority). The investigations launched included those focused on Oleksandr Yefremov (former leader of a faction within the Party of Regions), Mykhailo

<sup>9</sup> 'Zakon Ukrainy pro zapobiganiya koruptsyyi', Vidomosti Verkhovnoy Rady, 2014, No. 49, p. 2059, <http://zakon2.rada.gov.ua/laws/show/1700-18/page>; 'Zakon Ukrainy pro zasady dierzhavnoy antikoruptsionnoy polityki w Ukrainy na 2014-2017 roki', Vidomosti Verkhovnoy Rady, 2014, No. 46, p. 2047, <http://zakon2.rada.gov.ua/laws/show/1699-18>

<sup>10</sup> EU Cooperation News, 16.12.2014, <http://euukrainecoop.com/2014/12/16/eu-state-building-contract/>

<sup>11</sup> <http://www.rosbalt.ru/ukraina/2014/12/05/1345413.html>

<sup>12</sup> Transparency International Ukraine, 'Alternativnyi zvit shodo otsinki efektyvnosti dierzhavnoy antikoruptsionnoy polityki', 2015, [http://ti-ukraine.org/system/files/docs/news/alternativnyy\\_zvit\\_shchodo\\_ocinky\\_efektyvnosti.pdf](http://ti-ukraine.org/system/files/docs/news/alternativnyy_zvit_shchodo_ocinky_efektyvnosti.pdf)

<sup>13</sup> Vitaliy Yarema was replaced with Viktor Shokin.

Chechetov (a prominent Party of Regions politician), and Yuriy Kolobov (former minister of finance). Similarly, in March 2015, the most controversial judges who adjudicated in the cases of Yulia Tymoshenko and Yuriy Lutsenko were dismissed from their posts. In March 2015, corruption charges were brought against several high-ranking officials currently in office. These included the head and the deputy of the State Service for Emergency Situations, and the head of the State Financial Inspection. Due to professional negligence the head of the State Road Traffic Inspection at the Ministry of the Interior was also dismissed. Moreover, in April 2015 the Higher Committee for the Qualification of Judges dismissed five judges suspected of corrupt practices, depriving them of their immunity and opening the way for criminal investigations to be launched against them.

### *Institutional changes*

Until the beginning of May 2015 none of the specialised institutions to combat corruption planned in the legislation had been established in practice. Therefore as under the previous government, the operational and investigative activities are being carried out by the Ministry of the Interior and the Security Service of Ukraine (SBU) which cooperate with the prosecution authorities. In recent months, these institutions increased their activities related to combating corruption. One of the reasons behind this has been the significant delay in the forming of the National Anti-Corruption Bureau. Due to this delay, the Ukrainian government decided to launch an anti-corruption offensive using the current institutional structure. This has been confirmed for example by decisions made by Prime Minister Yatsenyuk to raise the salaries of employees of the Ministry of the Interior involved in combating corruption or to form anti-corruption flying squads<sup>14</sup>. Increased

activity has also been noticeable in the general prosecutor's office. In recent weeks, it launched a dozen or so new anti-corruption investigations. However, social activists involved in fighting corruption have made numerous accusations towards the Ukrainian government. According to them, the current increased activity is not of a systemic nature but has been the result of 'manual control' over law-enforcement agencies by the prime minister and the president aimed at quickly achieving spectacular effects<sup>15</sup>.

The degree to which a specific institution is able to combat corruption externally also depends on whether it has a capacity to effectively eliminate corruption from its internal structures. Certain measures in this respect have been taken by both the Ministry of the Interior and the prosecutor's office. According to data from the Ministry of the Interior, in 2014 20,000 officers were dismissed from their service in the militsiya (with a further 20,000 to be dismissed this year). This is aimed at making it possible to raise the wages of the rest of the employees to discourage them from taking bribes. A reorganisation of the State Road Traffic Inspection (the 'traffic militsiya' – DAI) was carried out includ-

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ing its incorporation into the patrolling service. Open competitions for some posts in the new traffic police have been announced and a reform of the system of paid services rendered by the Ministry of the Interior (e.g. the issuing of documents) has been launched to reduce the

<sup>14</sup> <http://www.mvs.gov.ua/mvs/control/main/uk/publish/article/1427611>

<sup>15</sup> Shabunin.



scale of corruption<sup>16</sup>. As far as the reform of the prosecutor's office is concerned, the amended law on the prosecutor's office of February 2015 has introduced a number of significant changes from the point of view of combating corruption coupled with a review of how dependent

**There is little reflection as to how the institution will function or on the competences planned for prospective investigators.**

the prosecutor's office is on political influence. These changes include: eliminating the dubious task of exerting general supervision over entrepreneurs and natural persons from the scope of duties of the prosecutor's office, introducing the obligation for official orders from a superior to their subordinates to be formulated in writing, and expanding the scope of self-government<sup>17</sup>. The head of the general prosecutor's office has also announced a reduction in the number of prosecutors, which will make it possible to raise the salaries of the remaining employees and to introduce an electronic documents system (a very significant change from the point of view of the transparency of decisions).

Pursuant to the law on preventing corruption, public officials have been obliged to submit annual publicly accessible assets declarations (by 1 April each year). Still, however, there is no mechanism to verify these statements. This is due to delays in launching the operation of the National Agency for the Prevention of Corruption.

### ***Civil society measures***

Social activists and journalists supported by a group of parliamentarians involved in an-

<sup>16</sup> <http://uatoday.tv/politics/former-georgian-deputy-interior-minister-lays-out-her-plans-to-reform-ukraine-s-interior-ministry-407941.html>

<sup>17</sup> 'Zakon Ukrainy pro prokuratury', Vidomosti Verkhovnoy Rady, 2015, No. 2-3, p. 12, <http://zakon2.rada.gov.ua/laws/show/1697-18> Implementation of this law was originally intended for late April. However, it has been postponed until July 2015.

ti-corruption initiatives, have continued to play an important role in exposing cases of corruption. Moreover, non-governmental experts have taken an active part in legislative work on new anti-corruption laws. Civil society organisations (including Transparency International Ukraine, the Centre for the Prevention of Corruption, the Reanimation Package of Reforms) and specialised journalistic and social initiatives (Slidstvo.info, Nashi Groshi, Koruptsyi Nii, Ukrayinska Pravda) are able to analyse and publish information on suspicious assets owned by public officials or expose cases of corruption at the middle level of government. It is obvious, however, that without operational capabilities and access to foreign data, they are unable to disclose cases of large-scale corruption, for example to trace money transferred by the Yanukovich regime. Social activists have also raised society's awareness of corruption. This has been possible due to their active involvement in civil society groups at specific ministries. In some regions, activists have also been employed by the SBU.

### **Cases of abandonment and delay**

At present, Ukraine has had a relatively coherent legal base in the field of combating corruption. The main problem of Ukrainian legislation, however, has continued to involve the clash between individual legal standards, the arbitrary nature of numerous legal provisions, and the lack of executive regulations to the adopted laws. Institutional weakness has continued to be one of the major problems of Ukraine's anti-corruption policy. Serious delays, or even cases of abandonment, in the process of forming new anti-corruption institutions, have been clearly evident. What is equally important, however, is the collapse of the Ukrainian judiciary expected to try individuals charged with corruption.

### ***The National Anti-Corruption Bureau***

Ukraine has witnessed significant delays in the forming of the National Anti-Corruption Bureau

(NACB). According to the adopted legislation, the NACB was to be formed in January 2015. However, it was not until mid-April 2015 that the head of the Bureau was appointed<sup>18</sup>, and so far no recruitment of employees has been announced. This generates the risk that the NACB might not start its operations this year, especially since – pursuant to the law on the NACB – strict recruitment requirements have been introduced. Meanwhile, the creation of a professional, politically independent office to combat corruption may be the long-awaited system change which could be followed by other similar developments. Should the NACB fail to perform its role, the fight with corruption will continue due to the involvement of civil society activists and investigative activists. Delays in the forming of the NACB seem to be the result of the excessive importance the government attached precisely to the appointment of the bureau's head (more than 170 candidates submitted their applications in the first stage of recruitment). Meanwhile, there is little reflection as to how the institution will function or on the competences planned for prospective investigators. This is confirmed by the very structure of the law on the NACB: most provisions concern the system of appointing the bureau's head. It is also possible to have reservations regarding the wording of the NACB's mission: the bureau is intended to combat corruption only among high-ranking central and local government officials. However, the emphasis should rather be placed on the scale of economic damage suffered by the Ukrainian state (this concept was the underlying principle of the provisions of the Polish law on the Central Anti-Corruption Bureau). This purely clerical wording of the mission of the new bureau may be an obstacle in carrying out investigations targeted at oligarchs or businesspeople involved in bribing public officials.

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<sup>18</sup> Artyom Sytnyk, legal counsel and former prosecutor, has been appointed to that post.

### ***Other institutions***

The future of the Anti-Corruption Prosecutor's Office and the State Investigative Bureau is unclear, even though Ukrainian legislation requires these institutions to be established (including the law on the prosecutor's office and the 2012 code of criminal proceeding). The new Anti-Corruption Prosecutor's Office would be intended as a response to the problems posed by the lustration of prosecutors – prosecutors or officers of law enforcement bodies employed in the current anti-corruption units would be banned from taking posts in the new institution. Currently, however, the Ukrainian government mentions the need to form this specialised prosecutor's office with ever diminishing frequency. Moreover, there are no executive regulations concerning its establishment. On the other hand, the State Investigative Bureau would be expected to be a special investigative body dealing with complex criminal cases (including investigations against militsiya servicemen; it is unclear if the target group would also include officers working for the anti-corruption bureau). The Security Service of Ukraine currently holds these powers and would cease to be a special service dealing with economy-related crimes; it would instead focus on tasks strictly related to counter-intelligence actions and the protection of constitutional order. There is serious concern that the powers of the NACB and the new investigative body might overlap.

The process of creating the National Agency for the Prevention of Corruption has reached a more advanced stage: in March 2015 the Cabinet of Ministers passed a relevant resolution<sup>19</sup>. An open competition for agency board members is underway; however, no recruitment of employees has been announced. The new agency has mainly been vested with coordination and preventive tasks. Its key task in the field of combating corruption involves collect-

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<sup>19</sup> <http://zakon4.rada.gov.ua/laws/show/118-2015-%D0%BF>



ing and verifying assets declarations submitted by public officials. Also in this case considerable delay should be expected ahead of the new agency becoming operational – it will probably be unable to verify statements submitted this year (which are being submitted according to the new standards).

### ***Cleaning up the judiciary***

Reforming the judiciary has been a key challenge for Ukraine's future. However, this issue reaches far beyond the framework of the anti-corruption policy. After the reform of the judiciary carried out by President Yanukovich in 2010, judicial independence was seriously infringed, and the president's influence on bodies of judicial self-government or individual judges was increased. This has caused an increase in the scale of judicial corruption and a surge in criminal cases launched by political order. After the Revolution of Dignity, Ukraine's parliament enacted two laws on lustration (including one limited only to judges) which were intended to help clean up the judiciary. The lustration results have proved insufficient – the judges subject to lustration frequently continue to hold their posts due to legal loopholes. Administrative paralysis has spread to major institutions of the judiciary such as the Higher Council for Justice or the Higher Committee for Qualification of Judges. In January 2015, the parliament passed a law on securing the right to a fair trial. The law was intended to break the deadlock within the judiciary, for example by introducing the re-attestation of judges, increasing the role of judicial self-government, introducing the principle of open competitions. These changes are in compliance with the recommendations of the Venice Commission, but they also increase the risk of current corruption schemes being preserved. It seems that a complete renewal of the composition of judicial self-government bodies could be an effective method for combating corruption in the judiciary. Self-government could launch obligatory screening proce-

dures to be carried out in the case of suspected corrupt practices among judges. Other recommended courses of action are: the requirement to organise open competitions when recruiting judges at all levels of the judiciary, to promote a further toughening of disciplinary measures pertaining to judges, and the introduction of the electronic documents system<sup>20</sup>.

### **Conclusions**

(1) The Ukrainian government's approach to combating corruption (corruption has been ranked second after defence of independence on the list of national challenges) confirms positive changes in the awareness of the problem among the political elite. Most probably, this is largely due to growing pressure by society, by civil society activists and to international pressure. The process of abandoning the superficial approach to adopted legal solutions (which is typical of the Ukrainian political scene) has been clearly evident.

(2) Most legal solutions passed by the new Ukrainian government have been in compliance with international practice. However, real successes in the fight against corruption can only be confirmed when these solutions are fully implemented. Ukraine has been witnessing significant delays in the process of forming the new institutional system to combat corruption. The delays in forming the National Anti-Corruption Bureau and in devising a system of verification of assets statements submitted by public officials are difficult to understand (civil society activists have been emphasising this for months).

(3) The most significant challenge continues to be the need to renew personnel. This process is expected to take years, especially given that it often meets with strong resistance on the

<sup>20</sup> <http://pravo.org.ua/2010-03-07-18-06-07/lawreforms/1893-roman-kuibida-pro-perevahy-i-nedoliky-novoho-zakonu-pro-zabezpechennia-prava-na-spravedlyvyi-sud.html>

part of the employees of law enforcement bodies or of the judiciary. However, it is realistic. It would be worth considering whether this process should continue to be based on the principle of lustration. Perhaps currently it would be better to organise open competitions more frequently, to carry out obligatory verification of employees' skills and a similar screening procedure for possible corruption.

(4) In recent months there has been an increase in activities aimed at combating corruption at the operational level. However, the anti-corruption investigations which have been launched, in particular those relating to crimes committed by representatives of the former regime, should have been launched last year. The more time passes, the more difficult it will be to return the illegally appropriated assets to the state treasury. The fact that the anti-corruption powers are vested in 'old' institutions such as the Ministry of the Interior, the SBU and the prosecutor's office poses a risk that the process of forming

the NACB will be delayed further still and that the bureau itself will operate under conditions of rivalry for specific powers.

(5) The system to combat corruption currently being formed has the fundamental flaw of placing its emphasis on state bureaucratic structures and limiting its focus on the middle level of government officials. Meanwhile, active steps need to be taken to combat corruption among representatives of private businesses, in particular in the context of public tenders and of the actual supervision of private business-people over state-owned property.

(6) The precondition of success in the fight against corruption in Ukraine involves carrying out a reform of the judiciary, including increasing the scale of detectability of corrupt practices among judges, limiting the immunity of judges suspected of corruption and reducing the level of tolerance for all aspects of corruption among judges.

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EDITORS: Adam Eberhardt, Wojciech Konończuk

Katarzyna Kazimierska, Anna Łabuszewska

TRANSLATION: Magdalena Klimowicz

CO-OPERATION: Nicholas Furnival

DTP: Bohdan Wędrychowski

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Centre for Eastern Studies

Koszykowa 6a, 00-564 Warsaw

phone: +48 | 22 | 525 80 00

e-mail: [info@osw.waw.pl](mailto:info@osw.waw.pl)

Visit our website: [www.osw.waw.pl](http://www.osw.waw.pl)