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The beginning of reforms to the Ukrainian judicial system

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On 2 June, the Ukrainian parliament adopted an amendment to the constitution concerning the judicial system, as well as a law connected with the amendment concerning courts and the status of judges. These acts are intended to reform Ukrainian justice, which is presently completely corrupt, and is regarded by the public with suspicion, if not downright hostility. The new legislation introduces far-reaching changes to the organisation of the judicial system, the most important of which is the withdrawal of parliament's right to appoint, discipline and dismiss judges, and the limiting of immunity for judges and the abolition of specialised courts of cassation. In this way, the process of reforming Ukrainian justice has at last been initiated. However these changes, which will be introduced over a period of several years, do not guarantee success, and they merely provide an opportunity to cleanse the system. They are also more like reforms in nature, but certainly do not constitute a revolution – such as, in particular, the idea proposed by civic organisations of starting from scratch: dismissing all the country's judges and creating an entirely new class of them.

The reform's political context

The judiciary of Ukraine is one of the most corrupt areas in the functioning of the state. For this reason it also enjoys the exceptionally low trust of the general public: in 2015 only 1% of respondents declared their full trust in the courts, and 9% partial trust; 45% expressed a total lack of trust (in a survey by the Razumkov Centre). The main links in the chain of corruption are the presidents of the courts, who put pressure on the rank-and-file judges and the courts of cassation. Cleansing the judiciary was one of the main demands of the Revolution of dignity. Despite many declarations by the new authorities that reform of the justice system would be a priority (in his inaugural address, President Petro Poroshenko called it "the reform of all reforms"), the attempts made since the Maidan to repair the situation have not produced any results. In elections to the posts of court presidents by benches of judges in 2014, up to 80% of the incumbents were re-elected, and inertia and the sabotage of the regional judicial bodies thwarted the verification of the candidates' qualifications and integrity. The failure of the efforts to reform the judiciary has led to growing impatience from the public and Kyiv's Western partners, who understand that this is a key element in Ukraine's fight against corruption. Reluctance or even open hostility to reforms came from those who derived material and political benefits from their informal control over the justice system. These included oligarchs on the local and national levels, as well as their clientele among politicians and bureaucrats.

The amendment to the constitution was supported by 335 MPs (thus passing the required majority of 300 votes). Faced with abstentions by the Self-Reliance and Radical parties, as well as some of *Batkivshchyna*'s deputies (including Yulia Tymoshenko), the adoption of the project was decided by 38 votes from the Opposition Bloc. It is not clear how President Poroshenko convinced that party's leadership to support the reform of the judiciary. Perhaps its members received some confidential assurances, or perhaps they were intimidated by threats to publish the recently discovered 'black accounts' of the Party of Regions (the list of bribes to corrupt politicians and journalists). It is also possible that part of the agreement involved the recent increase in energy prices, which benefits the company DTEK, belonging to Rinat Akhmetov. It seems that another important role was played by the popularity of the slogan 'Cleanse the courts' among the Opposition Bloc's electorate, as well as the growing rifts within that party associated with the competition between the groups led by Serhiy Lovochkin and Rinat Akhmetov, and the related fear that the President's circle might try to split the parliamentary faction, and even the party as a whole.

Above all, the result of the vote is a success for Poroshenko, who personally presented the project to parliament. He has demonstrated that he is in control of the political situation in the country and is able to carry out critical decisions, and also that he can influence the main opposition party. Thus the result of the vote has strengthened Poroshenko's position on both the internal and international arenas. Parliament's activities since the formation of the new government indicate that its new speaker, Andriy Parubiy, is proving much more effective in organising the work of parliament than his predecessor, and that the rivalry between the President and the former Prime Minister Arseniy Yatsenyuk has weakened (Yatsenyuk expressed his support for the changes by his presence in parliament during the debate). Pushing through the constitutional amendment has in turn strengthened Parubiy (as the 'director' of parliament's work), and indirectly, the government under Poroshenko's close associate Volodymyr Hroisman.

The reform's most important elements

The current reform is a response to the demands and suggestions of the Venice Commission, as well as pressure from European structures, which in particular insisted on strengthening the self-governance of the judges, and removing legislative and executive representatives from influencing the composition of the courts. The shape of the reform is a compromise, and the individual items will be implemented gradually over several years. The idea of verifying all judges, which had been quite a common expectation among the public, was dropped.

The reform of Ukrainian justice is to start from the very top: within one month of coming into force, a new Supreme Court is to be formed, which will become the sole authority of cassation. The three specialised courts of cassation, which had been a hotbed of corruption, will be abolished; in this way, the number of instances of Ukrainian judiciary will fall from four to three. The Supreme Court will be able to contain lawyers who are duly experienced, but who have not previously worked in the judiciary (such as solicitors and academics).

The amendment changes the composition and expands the competencies of the High Justice Council, the constitutional body whose main task was hitherto to propose candidates for judges to the President and parliament. The composition of the Council

guaranteed a decisive majority of representatives of the judges' congress (the most senior body of judges), which weakened the role of the President and parliament. All disciplinary proceedings against judges passed through the hands of the Council, including the removal of their immunity (which hitherto had been in the competence of parliament). The new Council will be formed gradually over three years (as its members' terms expire), but the Council's new powers will come into effect immediately.

The procedure for the appointment of judges has also been changed. Previously they were appointed by the President for five years, and thereafter they were elected by parliament, this time without a term limit. Now the five-year 'trial period' will be abolished, and the judges will be appointed by the President upon the recommendation of the High Justice Council, which he cannot turn down. Candidates put forward by the Council must be appointed in the course of a competitive procedure. The dismissal of judges now falls within the competence of the High Justice Council. These moves will strengthen the self-governance of the judges, and will indeed depoliticise the procedure, but they also entail the risk of maintaining corrupt systems. However, the European partners insisted on the adoption of these measures, arguing that the executive and legislative representatives should not be able to influence the appointment and dismissal of judges.

The judges, appointed for five years, will fulfil their duties until the end of this period, and then they will have to undergo a procedure to verify their qualifications and integrity, and only on the basis of this result can they (but need not) be appointed indefinitely. The same applies to a further 800 or so judges who, despite having passed this deadline, have not received an open-ended nomination; as almost all of them were appointed by Yanukovych, it can be expected that most of them will be removed from the judiciary.

The constitution now includes a new basis for the dismissal of judges: "breaching the obligation to confirm the legality of sources of assets", and the law obliges them to declare not only their assets, but also the sources of those assets. Any ambiguities revealed in this area will form the basis for disciplinary action, which could lead to the dismissal of the judge. Judges are now also required to declare their family relationships, that is, to indicate whether they have relatives in positions in the structures of the state or in business: this is intended to reveal potential conflicts of interest.

Conclusions

The adoption of the reform the judiciary is a good start, but nothing more – it provides an opportunity to reform the judiciary, but does not guarantee its success. The proposed solutions are a compromise, with many radical ideas having been abandoned under the influence of the Venice Commission's criticism. Some of the items will have to be clarified by downstream legislation (in particular by the justice minister), and lobbyists will try to influence the content of this legislation. The success or failure of the parallel reform of the public prosecutor's office will be of particular importance. Strong resistance should be expected from some of the judiciary and their protectors, who will wish to maintain the existing situation, in particular the links between the judges and the oligarchs at the local level. How effective the breakdown of this resistance will be remains open to question; it will depend primarily on the determination of the President, the government and the parliamentary coalition, on the rate at which the judiciary and public prosecution are

replaced, as well as on many other factors. However, without the laws of 2 June, no positive change would be possible at all.