

The Struggle to Bring Real Justice to Ukraine

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Ukrainians call the Maidan events that swept away former President Viktor Yanukovich's regime "the revolution of consciousness." The term describes the awakening felt by so many people across Ukraine when they finally lost patience with the extraordinary level of stealing from the state by their leaders and took to the streets to assert their rights.

Bringing down a leadership that has forfeited its legitimacy is the easy part. Can the energized part of Ukrainian society also lay the foundations for a new one based on new institutions that respect democratic values and the rule of law?

What passes for a justice system in Ukraine is a direct inheritance from the Soviet past.

Unfortunately, Ukrainians have already tasted the bitter fruits of revolution gone sour, after the leaders of the 2004 "Orange Revolution" failed to deliver on their promises. This has bred the cynical view that every new set of people in power in Ukraine is worse than the previous one.

There are strong reasons to argue that this time is different from the heady days of 2004: civil society is more mature, the war in the east has brought much of the country together, and the provisions of the association agreement with the EU all lay heavy emphasis on improving governance and the efficiency of the judicial system.

For many Ukrainians, the appeal of deepening ties with Europe is based on a perception of legal standards that uphold property rights and encourage people to invest in the knowledge that what belongs to them is theirs and cannot be arbitrarily taken away from them by corrupt elites.

To say that Ukraine now needs urgent judicial reform is to hugely underestimate the scale of the task. The country has to develop an entirely new system of justice, and this will take decades to complete.

Although the Yanukovich system was egregiously corrupt, it only continued with greater vigor and shamelessness the tradition of previous political leaderships, including those of the Orange Revolution, and merely stole what had already been stolen by earlier corrupt officials.

What passes for a justice system in Ukraine today is a direct inheritance from the Soviet past, one that protects not the rights and freedoms of its citizens but the personal interests of those in power under the guise of protecting mythical interests of the state.

Staffed as they are at present, the courts and the law enforcement agencies will continue to work for others willing to privatize the legal system rather than for the people they are supposed to serve.

It is no coincidence that many officials from the judicial system, the Prosecutor's Office, the Ministry of Internal Affairs, the Security Service and the Tax Inspectorate have become very wealthy. The normal explanation for this is that their relatives happened to be "very talented businesspeople." In reality, these state officials are engaged in pure corruption.

These people need to be removed from office as a matter of urgency. In theory, the recently adopted Law on Lustration that will screen close to a million civil servants should serve as the basis for rooting out officials associated with the malpractices of the Yanukovich days but Ukraine does not currently have the capacity to implement the law.

This will only happen gradually and once the country has managed to develop and expand a small and well-trained cadre of honest investigators, prosecutors and judges who are able to work independently of political pressure and interference and who will not allow the judicial system to be the instrument of others who abuse the system to further their own interests.

These changes are evolutionary rather than revolutionary. Unlike post-war Germany, Ukraine cannot call on the experience of an earlier generation of judges with practical experience

of operating outside a totalitarian mould.

We have to commit ourselves to making a fresh start and making sustained progress using all the tools available, whether they come from our own resources, Western governments and donor agencies or the Ukrainian diaspora.

At the same time, we have to be realistic. New EU member states such as Bulgaria and Romania continue to struggle with the legacy of a system of justice established to serve a Soviet-style state.

Transforming the judicial system will be slow and painful, but we must make the effort to learn from others, particularly those with the most relevant experience.

While a new anti-corruption agency is being established, it is still business as usual for Ukraine's courts. They are continuing to produce shocking examples of lawlessness based on "telephone law" dictated by government agencies and oligarchical interests.

The recent illegal transfers of assets belonging to businessmen Serhiy Kurchenko and Pavel Lebedev are evidence of corporate raiding activities legitimized by the law enforcement agencies working in close collaboration with the courts.

Economic improvement so desperately sought by Ukrainians must begin at home with better laws and better implementation of those laws. Ukraine's Western partners need to maintain the pressure on the politicians in Kiev to keep renewal of the judicial system at the top of the country's reform priorities.

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