



EU standards of democratic governing— The only way to desovietize public administration in Ukraine

Vira Nanivska, Director of the City Institute, L'viv, Ukraine

Ukraine's political crisis is universally viewed as the only obstacle to the country's integration into the European Union. Typically, only two main causes for the crisis are recognized: the "Ukrainian mentality" and a bad political leadership.

In contrast, the causes underlying the failure of Ukraine's government that are presented in this study demonstrate that it is not any "mentality," not Ukraine's cultural and political history, not a bad elite, and not an East-West conflict that are hampering Ukraine's European integration. In reality, it is the incomplete, fragmented desovietization of the country—one that, moreover, is not based on introducing European standards of government—that has sunk the country into chaos and hopelessness. Ukraine has made one huge step towards political and economic liberalization, but the other foot is stuck in the 1970s, in unreformed soviet public institution.

The sovietization of Ukraine

Back in 1991, Ukraine experienced a major shift in political regimes, opposite to the cataclysms that took place in 1917 and 1939. In 1939, Pavel Sudoplatov, the notorious NKVD boss, the founder of the first soviet terrorist agency, who personally assassinated Yevhen Konovalets on Stalin's orders and oversaw the murders of Lev Trotsky and Stepan Bandera, who was in charge of the annexation of the

Baltics, Belarus and Western Ukraine, — this Soviet General in his 1994 memoirs¹ gave a definition of sovietization:

"In L'viv, which in 1939 was a bourgeois city, we had to undertake total sovietization. This meant the complete liquidation of private property and independent political activity. Sovietization was supported by ideological and organizational instruments."

In short, brainwashing each person from birth through an upbringing and educational system that taught that person to live in the communist system. Of course, this was all supported by legislation, institutions and funding.

The prohibition of private property and political freedoms through institutional repression and ideological filtering changed the minds and worlds of hundreds of millions of people. Alas, *Homo sovieticus* remains—a mental, cultural and anthropological phenomenon of the 20th century that is still very much alive in the 21st.

¹ "Secret Tasks: The Memoirs of an unwanted witness — a Soviet Spymaster" and "Special Operations. Lubyanka and the Kremlin, 1930 — 1950," memoirs of Pavel Sudoplatov (1907 — 1996). Sudoplatov was known as "the main saboteur and terrorist of the Soviet Union." During WWII, he headed the 4th Main Department of the Ministry of State Security, which was involved in sabotaging and eliminating enemies of the Stalin regime.

Sovietization used fear as the foundation, the glue and the motivation in the transformation process. Fear led unquestioning endorsement of the political system, undisputed obeisance of all commands, and the skills to survive in the face of omnipresent informers. Fear was the basis for the "soviet values" of class intolerance and the suspicion of any free communication.

The totalitarian soviet state machine was formed to serve one party and one ruler. The separation of powers into legislative, executive and judicial branches was unthinkable because it would have made the totalitarian system dysfunctional. Every smallest detail of life had to be decided by the Communist Party. Property, people's lives—all belonged to the same sole ruler. The communist centrally-planned economy meant that a monster—a huge ministry called Gosplan or State Planning—calculated which factory, from the largest to the smallest, had to produce which goods. As a result, all consumer goods suffered from shortages in the Soviet Union: only in the South could you buy fur hats, only in the North swimming suits, and only in a Kyrgyz mountain village shop, books by Russian poets. The command administration guidelines were all top-down: from the ministries to the regional, county, city, and village party committees. Those who dared think about the cost of policies, undertake impact analysis, or consider stakeholders' interests...were shot or sent to concentration camps. They were excluded from the Communist Party, of course, and that meant exclusion from soviet life entirely.

Collapse into chaos

The collapse of the soviet system brought radical changes when Ukraine gained independence in 1991: private property rights began to be restored, the political system switched from one-party to multi-party, the separation of powers into legislative, executive and judicial branches began, and slowly the country saw the formation of new social classes. In short, it was the beginning of legitimately competing political parties, competitive private business, self-governing communities, and the emergence of civil society.

Except that public administration and the civil service never managed to change—not even names were changed. Totalitarian political control over public administration was destroyed, but was never replaced by a democratic system of control. To this day, the Ukrainian government does not understand what this is. What's worse, this gap has led to a dangerous lack of control and accountability in the country's state administration—which holds the keys to all the nation's wealth: the State Budget, natural resources, and the regulation of commercial activities. Government policies and decisions began to be lobbied by politicians and businesses alike (often with little delineation between the two groups!) without any rules or restrictions, whether totalitarian or democratic and this whole sphere has become an infinite source of corruption.

In short, Ukraine has done something utterly unthinkable: allowed unrestricted, unlimited, uncontrolled **liberalization of government administration**. The KGB control of soviet times has gone, and nothing has been put in its place.

European-style democratic governing separates executive functions institutionally. Although these institutions have different names and numbers in different countries, they all have separate protected bodies to oversee public services and exercise financial control over public finance. Each controlling or supervisory function is executed by a separate government body that is both independent and protected from those whom it oversees. The situation in Ukraine is exactly the opposite: every public governing body both manages and supervises, effectively acting as manager, employer, policy-maker, evaluator, inspector, and trainer.

A wrong turn on the way to reform

Although Ukraine has gone a remarkable way towards the separation of powers as the basis for its political democracy, this process has not been followed up with effective reform of public administration. Indeed, it went wrong from the very beginning. The country was oriented towards inappropriate goals like "strengthening the capacity of the civil

service," and "organizing the moral ideal" of people in public service instead of introducing European standards that would have changed the public administration system as radically as the political and economic spheres had been changed.

It was no surprise, then, that these "reforms" were more of a hindrance than a help. Wrongly-conceived reforms simply strengthened a soviet administrative system that was completely incompatible with democracy, rather than radically transforming soviet "state management" into a democratic public administration in terms of principles and values.

Large-scale legislative reform has been attempted in regional development, territorial-administrative structure and local government.² It has not succeeded. Numerous reform concepts propose strengthening decentralization and self-governing communities, but pay no attention to the main obstacle: unchanged soviet functions of state administration. This partial reform has run into trouble at all its incompatible junctions. Every attempt at regional development gets enmired in a conflict between the new democratic nature of local government and unreformed soviet-minded central bodies. Territorial administrations are expected to replicate the job of the new local governments, that is, to take responsibility for the social and economic development of a given territory—just as they used to do in the soviet era as regional Communist Party executive committees.

The obstacles to decentralization are evident in the everyday operation of public administration, in the behavior of civil servants, in the nature and quality of public services—these have not only not changed their soviet nature but have become much worse because there is no control over them.

² The concept of regional policy dated 29.08.2008, Concept of Local Government Reform dated 11.12.2008, Draft of Reform of the Administrative-Territorial Structure of Ukraine dated 11.12.2008, Bill of Ukraine "On the basis of regional policy" (Revised 08.10.08), on-line version, Ministry of Regional Development and Construction of Ukraine, <http://www.minregionbud.gov.ua>.

Because the reform of anti-corruption legislation launched in 1995 was not properly oriented, it failed to bring any results. The basic anti-corruption law, "On Fighting Corruption," has been amended 11 times since 1995. More than 70 judicial acts, including 12 laws and 12 Cabinet resolutions have been produced to fight corruption. Yet, no practical progress has been achieved because of the wrong direction chosen from the very beginning.

Ukraine's Law "On Fighting Corruption," adopted in 1995, has reduced the battle against corruption to a matter of misdemeanors (administrative violations). The law's orientation on fighting corruption that has already taken place, rather than on preventing and eliminating the underlying causes and conditions lead to corrupted actions, made it impossible to seriously reduce the level of corruption in Ukraine. Special restrictions included in this Law that are intended to prevent corruption do not perform a preventive function, because they are not supported by other regulations establishing the rules of conduct for public servants. For similar reasons, the 1997 National Program against Corruption known as "Operation Clean Hands" failed to work, too.

Indeed, today we can say with certainty that, despite all these efforts, the situation in Ukraine has actually deteriorated.

Needed: A better roadmap

What makes Ukraine's anti-corruption legislation so ineffective, despite all the changes? What distinguishes it from the anti-corruption legislation in EU countries that appears to be working?

For starters, there is the vagueness of how corrupt actions are defined, no clear connection to specific punishments, and no independent corruption control in the anti-corruption legislation Ukrainian legislation encourages corruption by eliminating any risk that a public servant will actually be punished. By contrast, Western legal and institutional frameworks are strict and explicit, which enables them to work as a strong disincentive to succumb to corruption.

An additional source of corruption lies in the institutional factors that were mentioned earlier, that is, the totalitarian top-down subordination of oversight functions within the executive branch.

In practice, this means that, without changing the very principles on which Ukraine's anti-corruption legislation is based, nothing can be done today to combat or prevent corruption in Ukraine. There is no room for simply "tweaking" the legal base since it is wrong to its very core.

What kind of legislation would actually work? Does Ukraine need to re-invent the wheel? Of course not. SIGMA³ provides the criteria for an effective legislative framework: identifying and punishing violations; preventing discretionary decisions; protecting the independence of supervisory bodies from those under supervision; controlling and monitoring organizations, procedures and standards, both mandatory and regular; providing constant oversight over the effectiveness of legislated norms and rules; and mandating the universal application of deontological rules, that is, a code of conduct for public servants.⁴

Despite dozens of government bills and concept papers on fighting corruption, despite hundreds of millions spent on international experts, corruption continues to spread in Ukraine.

For one thing, Ukraine's government has not followed the recommendations of Group of states against corruption (GRECO):⁵ less than one third of the recommendations in the Evaluation Report of 11-15

³ Ukraine: An evaluation of the government system, March 2006, SIGMA Support and Improvement in Government Management, a special initiative of the OECD and the EU financed primarily by EU funds: <http://www.sigmaweb.org/dataoecd/47/1/37127338.pdf>. State management assessment based on SIGMA primary indicators: <http://www.center.gov.ua/storinki-sigma/ocinka-derzhavnogo-upravlinnya-za-bazovimi-pokaznikami-sigma.html>.

⁴ Christian Vigoroux, *Déontologie des Fonctions Publiques*, Paris, Edition Dalloz, 2006, 458 pp.

⁵ Joint First and Second Evaluation Rounds, Evaluation Report on Ukraine, adopted by GRECO at its 32nd Plenary Meeting in Strasbourg, 19–23 March 2007: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2006\)2_Ukraine_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_EN.pdf).

May 2009, that reviewed the steps taken by the Government of Ukraine to carry out 25 recommendations posted in the Annual Report on the joint 1st and 2nd joint assessment rounds undertaken 19-23 March 2007. Neither were the recommendations adopted under the Istanbul plan of the Anti-corruption Network of the Organization of Economic Cooperation and Development (OECD) for the Central Europe and Central Asia countries carried out, either.

Two GRECO comments regarding recommendations and evaluations should demonstrate how vague and non-binding they sound for the Ukrainian public servants: "GRECO recommended creating a body...which **may be given** the necessary level of independence for performing an efficient monitoring function" and "The positive changes in this field are **potentially capable of indicating** a breakthrough in the process of setting up a fully functional anti-corruption body in Ukraine. However, **it is still to be seen the extent to which the method of implementation** of the post of Main Representative for anti-corruption policy will promote the creation of anti-corruption authority."

Recommendation XIII: "GRECO recommends **determining the overall strategy of reform in public administration in Ukraine in order to ensure common understanding of the need for change and informing the general public.**" Regrettably, this recommendation is not connected to the international assistance planning of public administration reform.

Overall, the recommendations are not likely to have a perceptible impact because it is too easy to implement them in bits and pieces. They are not prioritized or organized according to importance, indispensability or urgency. Ukraine's Government is given complete freedom of choice "to do or not to do" because the advice is couched in too many diplomatic niceties. This kind of "diplomacy," when it comes to serious reforms, especially regarding corruption, does more harm than good.

On 11 June 2009, the Verkhovna Rada adopted yet another package of anti-corruption laws that came into force on 1 January 2010.

The new anti-corruption laws sound serious because the term "prohibited" is used for the first time. A long list of violations is included, which is also revolutionary. But responsibility for ignoring or disregarding information received as a result of anti-corruption audits is not properly determined. Audit results can be thrown away and the perpetrators go unpunished. Worse, the body charged with supervising the implementation of anti-corruption legislation is Cabinet of Ministers, which means there is no oversight because the overseer is Suspect # 1!

The Ukrainian partners in international anti-corruption projects are usually public servants (key suspects) rather than the legislature, self-governing communities, business and civil society (main victims).

What EU standards in Ukraine's public administration will mean

- Changing the basic principles underlying legislation to exclude discretionary decision-making and include strictly defined norms and procedures for the decision-making process, tying violations of those norms to inevitable penalties.
- Instituting the mandatory separation of functions that inevitably lead to corruption when all in one entity: supervision, policy-making, financial audit & control, administrative audit and control, independent dispute arbitration, hiring and firing, independent performance reviews and promotions, and statistics.
- Introducing a new function called "prefects" at the local level to promote national interests in lieu of the soviet centralized command administrations and strengthening the new, democratic local community governments by providing them with their own administrations.
- Establishing EU democratic public service standards for politicians, ordinary citizens and businesses. For voters, this means providing a complete list of mandatory information about services provided by each public official and a list of actions a citizen needs to take to obtain the service. Open information makes bribery obsolete.
- Including new services for politicians: impact analysis, cost of inaction, consultations with stakeholders, analysis of stakeholder positions, communication strategies, and political, economic, financial, and social forecasts.

- Understanding that, in order to overcome and prevent corruption in Ukraine, the existing system of anti-corruption legislation cannot be tweaked because in essence it is opposite to democratic legal systems for preventing corruption. The same concerns territorial governing. Endless efforts to "fix" legislation are canceled out by the contradiction between the new, democratic nature of community governments and the totalitarian nature of the country's central administration.

As long as Ukraine's Government lacks the EU democratic standards of expertise and skills to work in the context of multi-party political competition and mandatory openness, any reform projects are doomed to failure.

Ukraine risks losing its hard-won political freedoms because of unreformed government institutions that are not designed to establish a new democratic social order. When freedom is equated with chaos, corruption and crime, voters tend to prefer "order without freedom." The bottom line for Ukraine to succeed is to be aware of the clash between its totalitarian fossils and EU democratic systems of governing.

Ms. Vira Naniivska is Honorary Chair of the ICPS Supervisory Board, Director of the City Institute (Lviv). Widely regarded in Ukraine's democratization process, Ms. Naniivska is active in public policy development, civil service reform, and economic and political research. During 2006-2009, Ms. Naniivska was the President of the National Academy of Public Administration. During 1997-2006, Ms. Naniivska was director of ICPS.

European Focus is an ICPS monthly that raises debate on key issues of European integration for Ukraine, EU policy towards Ukraine, and other important issues connected to Ukraine's European ambitions. This publication is financed by the Think-Tank Fund of the Open Society Institute.

e-mail: office@icps.kiev.ua
www.icps.com.ua