law, the sphere of international law covers two levels: 1) legal regulation of international flights in the airspace of a number of states; 2) legal regulation of flights in international airspace. Each state independently determines the procedure for admission of foreign aircraft to its airspace. Such a permit system is the basis of the legal regime of the airspace of all states today, which is mandatory for both scheduled and non-scheduled international flights.

Note that no differences were found. The article also reveals the features of aviation and characterizes its types, which include civil and state aviation. The author also examined the problems existing in the legislation of Ukraine in the field of safety of international flights and suggested possible solutions.

Key words: international flights, airspace, safety of international flights, legal regime of international flights, Air Code of Ukraine.

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JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION IN UKRAINE

Problems to solve. Arguably, a free and independent judiciary is the basis for good governance within any society. It is an 'essential prerequisite for upholding the rule of law' (United Nations General Assembly, 2012:3), crucial for enforcement of policies and reforms introduced by the government. Furthermore, it is fundamental for determining and implementing appropriate and effective punishment for those who disregard said legislation. Thus, the lack of an independent judiciary in Ukraine has often been critiqued as the primary reason for insufficient anti-corruption enforcement.

Analysis and Literature review. Based on the results of the studies of Dubrovskiy, Giardullo, Kostanyan, Wilson and Zhernakov and theoretical principles, conclusions have been formulated to reflect the directions of the solution, albeit fragmentary, of the existing problems. Thus, remains the lesser-researched problem of the independence of the judicial system of Ukraine in the enforcement of anti-corruption reforms. This article will discuss the most significant reforms within the judiciary; the Supreme Court reboot, the establishment of the National Anti-Corruption Bureau of Ukraine and the High Anti-Corruption Court, and the reform of the High Qualification Commission of Judges.

Aims of the article. This article is an analysis of the state of scientific development of the problem and the causes of corruption, emphasising that scientists acknowledge the need to combat this phenomenon.

Content of the article. Firstly, the package of anti-corruption reforms introduced under Poroshenko involved the creation of new institutional bodies for the enforcement of reforms, attempting to fulfil the first and second aims set out by the government in 2014. This intended to establish mechanisms for legislation implementation, primarily seen through the re-establishment of the Supreme Court in 2014. The reforms restructured the court system 'from a four-tier system (involving first and second instance courts, high (specialised) appeals courts, and the Supreme Court) to a three-tier system (first and second instance courts, and the Supreme Court with specialised integrated courts of cassation)' (OSCE, 2017: 11). The merging of the cassation courts aimed to resolve 'potential disparities in jurisprudence between the courts within the new Supreme Court' (Ibid.). The announced objectives of the reform aimed to completely 'reboot and renew the highest judicial body' (AntAC, 2017) as part of a more general court clean-up. The reduction of four levels of justice to three, as well as the introduction of several digitalisation policies to improve transparency within the system hoped to progress reform. These changes led to over 2,000 judges voluntarily abandoning their positions between 2014 and 2017 (Dubrovskiy, 2018: 30) beginning the complete reconstruction of the judiciary. The introduction of the 'Electronic Court' system created a 'single judicial information and telecommunications systems' (Unian, 2017) to operate in court proceedings. Legal documentation was also digitalised, allowing it to be exchanged electronically, in line with new legislation (Accace, 2017). The benefits of this system improved transparency as documentation and records of court proceedings could now be accessed online, through the relevant court's automated systems, with binding electronic signatures from judges. Finally, the new platform allowed parties the ability 'to apply the procedural documents' (Ibid.) for a variety of other uses, such as 'enquire about open appeal proceedings, obtain information about bankruptcy and pay court fees online' (Ibid.).

However, Dubrovskiy (2018: 30) does not believe that these changes have led to a significant 'rebuilding of the judiciary' due to significant failures within the composition of the new Supreme Court. The appointed judges fall 'short of what civil society' (Ibid.) hoped for in 2014, with '80 per cent of the appointees having previously served' (Ibid.) within the court system. This meant progressive constitutional change was met with a lack of enforcement mechanisms. In the absence of significant change in the composition of the new court, its so-called reboot seemed redundant, with little indication of progress. This exemplifies the most significant problems within judicial reform. Despite the constitutional changes, the government has yet to establish detailed procedural legislation on the implementation of these changes.

Reforms have been slow due to the persistence of a 'deep underlying culture of corruption' (Ibid., 2.) embedded in the judicial system. Historically, there has been little 'tradition of independence' (Ibid., 7.) of the courts which explains why previous anti-corruption efforts, preceding 2014, have been stalled. Dubrovskiy labels all prior judicial reform as 'tokenistic' (Ibid.) merely serving a purpose to settle civil society demands for reform rather than a direct source of judicial improvement. Poroshenko's predecessor, Yanukovich, contributed to the reduction of public funds available for reform progress. Yanukovich's centralisation of control for nepotistic reallocation of 'rents to his family' (Ibid.) created a lack of available resources within the judiciary, withdrawing reform funding. This contextualises the slower pace of Poroshenko's reforms; however, more progress has been made since 2014, implying there is hope for change in the future, however long-term it may be.

Secondly, the creation of the National Anti-Corruption Bureau of Ukraine (NABU) was a significant anti-corruption reform, creating the first investigative body dedicated solely to rooting out corruption among high officials. The Bureau assesses cases of corrupt individuals, as well as monitors asset declarations, with the application of appropriate consequences for misconduct in public office. The Bureau works alongside two other new units; the National Agency for Prevention of Corruption (NAPC) and the Specialised Anti-Corruption Prosecutor's Office, both acting to aid the Bureau's enforcement of prosecutions. The establishment of the NABU was a reform aimed at 'cleansing government of corruption' (NABU, 2014). However, since its establishment in 2014, the NABU has been criticised for its lack of commitment with 'no high-level officials being convicted to date' (Kostanyan, 2017: 2). The Bureau has seen little success in its investigation into high-level corrupt officials as the agency's work has been obstructed by the 'unreformed' (Ibid.) Prosecutor General's office. Courts have been seen to 'routinely delay' (Ibid.) corruption hearings – a particular case demonstrating the rampant corruption was seen of the parliamentarian whose sentence was delayed by the Verkhovna Rada to allow him to 'slip out of the country before his prosecution' (Ibid.). Although much of this criticism was recorded in 2017, by January 2019, the NABU reported that 'UAH173.87 million in funds had been refunded' (NABU, 2019: 21) through corruption prosecution. Despite this large sum, the agency reports that out of the '745 proceedings under investigation' in 2019, merely '28 of these resulted in convictions' (Ibid.). Although this is a start, it must be considered too slight a fraction to be classified as a successful reform.

The organisation has been developed to become an established institution, with a 'director, permanent offices in Kyiv and a publicly elected civil society committee' (Bilan, Duane, Gorodnichenko & Sologoub, 2015: 5). This is evidence for its success in establishing itself as an authoritative government body, ready to implement anti-corruption reforms. The NABU investigators have become some of the 'highest-paid civil servants' (Bilan et al. 2015: 6) which not only attracts highly skilled detectives but more significantly 'insulates them from corrupting influences' (Ibid.). An important aspect of the NABU's success would lie in its independence from the government, without which it would not function effectively. However, within its first year, the NABU's integrity was compromised, with several attempts made by the government to manipulate the committee formation process.

The Ukrainian Criminal Procedure Code outlines the obligations of the Prosecutor General, which involve decision-making powers within the NABU. It must be noted that this position is 'appointed by the president' (Kalenyuk, 2015) and must be approved by the parliament. President Poroshenko had the largest political faction within the parliament, therefore, de facto, power over the appointment of one of the most influential positions within the NABU. This failed attempt at checks and balances undermines 'the fundamental principle of the political independence of anti-corruption prosecution' (Ibid.) and the Bureau itself. Furthermore, the well-regarded anti-corruption Non-Governmental Organisation (NGO), Transparency International, filed a lawsuit against the government of Ukraine, alleging that the Cabinet of Ministers 'circumvented the law to control the process of vetting and appointing the NAPC's' (AntAC, 2015) management committee. These cases expose the Ukrainian government's inability to enforce lasting reform. The initial establishment of the NABU was met, practically instantly, with attempts to discredit the body's investigative capabilities. This was done by attempting to place individuals in charge who would serve to protect precisely those high-level corruptors which the body aimed to eradicate. Moreover, these cases demonstrate the NABU's vulnerability to political intervention into anti-corruption prosecution, thereby, decreasing its reliability to enforce reform.

The Bureau's vulnerability was further exposed in 2017, a few years after the initial cases, during its efforts to investigate corrupt members of the State Migration Service of Ukraine (SMSU). While documenting the participation of the First Deputy Head of the SMSU, a NABU undercover agent was 'illegally detained' (Unian, 2017) by the Office of the Prosecutor General, falsely accused of a 'provocation of bribery' (Ibid.). Undercover operations have been a vital aspect of the Bureau's investigations, as the investigative body does not have the authority for 'autonomous wiretapping' (Ibid.). Therefore, the intervention of the Prosecutor General's Office into the investigation of a highly corrupt individual demonstrates further the NABU's susceptibility to internal interference into anti-corruption investigations. These cases are merely a few of many, with various examples of how the NABU's effectiveness is compromised by its lack of independence from the government. Furthermore, the Bureau's inability to obtain the necessary permissions and authority for wiretapping, required for the complex dismantling of internal corruption networks, confirms its failure, without which it will never be able to fulfil its aims.

Thirdly, in addition to the new Supreme Court, an entirely new court was created solely to assess corruption cases. The High Anti-Corruption Court (HACC) was established in April 2019 (Transparency International, 2019a) and has been one of the latest efforts in the fight against corruption. The court's purpose is to review cases put forward by the NABU relating to claims of abuse of power, bribery, illegal enrichment or fraud. Transparency International has been highly involved in ensuring the HACC's jurisdiction to be within the focus of NABU to ensure its independence from the rest of the judicial system, in hopes of minimising its susceptibility to corruption from other sectors. After reviewing the list of candidate judges, out of the 38 appointed to the HACC by the Ukrainian government, only seven were deemed unworthy of this position by a team of NGOs working in this field (Transparency International, AutoMaidan and AntAC). In light of this, it seems that the majority of judges within the body have

passed the approval of civil society, after a thorough analysis of histories of 'judicial decisions, property, business and political ties' (Transparency International, 2019a).

These successes can be compared to the appointments made to the newly established Supreme Court in 2014, with the PIC evaluating '25 % of the total number of the court's judges' (PIC, 2017) as dubious or politically motivated. As the establishment of the HACC is a relatively new initiative, it is difficult to assess the success of its actions fully. However, its composition seems capable of providing Ukraine with a much-needed system through which to enforce corruption punishment. Dubrovskiy (2018: 30) praises the creation of the HACC as it has taken on 'symbolic importance' within judicial reform, which has seen particular success within the international community. However, he marks that despite the HACC being an 'important part of the effort' (Ibid.) for corruption awareness, it is yet to find success in its 'closure of the space for corrupt practices' (Ibid.). The lack of enforcement and investigation to break the corruption networks, created by years of bribery and illicit enrichment, must be prioritised. These investigations, whether carried out by the NABU or directly by the police, will bring these underground networks to justice, without which the HACC will simply not have any cases to review.

In his retrospective analysis, Giardullo (2018: 2) provides a compelling summary of the reforms introduced within the four years after the 2014 Revolution of Dignity during which 'protestors demanded an end to corruption'. He comments on Ukraine's 'struggle to bring the reform of its justice sector to completion' (Ibid.) indicating an attempted but unenforced reform path. The greatest weakness highlighted is the 'entrenched vested interest' (Ibid.) of elites within positions of authority which are slowing the ever-difficult process of change. Commenting on the renewal of the Supreme Court, Giardullo draws attention to its exhibitionist nature which merely provides a façade of change, passing the 'litmus test' (Ibid.) for justice-sector reform, without real transformation. The two courts were reformed four years apart from one another, yet the difficulties in the success of these reforms appear similar; with a distinct struggle in appointing independent judges. In order for reform to be effective, judges must be independent and free from susceptibility to corrupt practices, such as bribery, which have almost replaced the bureaucracy within jurisprudence. This failure to appoint such judges shows that Ukraine, although taking clear steps towards reform, has deeper institutional difficulties with corruption, which inevitably delays reforms.

Finally, the resolution of this barrier to reform lay in the creation of a governing body, with authority to aid the selection of independent judges. Thus, the High Qualification Commission of Judges (HQCJ) was re-established as a dedicated and impartial body in the assessment, qualification and appointment of judges to courts within Ukraine. However, despite the hopes of the reboot, the 'HQCJ failed to perform its duties' (Halushka & Chyzhyk, 2019). The newly reformed body 'discredited itself by recommending tainted judges' (Ibid.) to the new Supreme Court. The nine-month-long proceedings of the assessment and recommendation of judges to the new Supreme Court were undermined after the Public Integrity Council (PIC) criticised the selections. The PIC announced that '25 % of the total number of the court's judges' (PIC, 2017), selected by the HQCJ, received negative opinions. The re-appointment of these judges was damaging to the integrity of the newly established HQCJ, as well as the Supreme Court itself. It set a precedent that would allow politically dubious judges to maintain their positions of authority without consequence.

Furthermore, reform failures stem beyond the HQCJ due to the shortcomings of the High Council of Justice (HCJ). Under 2017 law, the HCJ assumed the 'function of appointing, disciplining and dismissing judges' (Kyiv Post, 2017), which aimed to remove the political element from the judicial system. Therefore, it was, in fact, the HCJ which 'greenlighted the appointment of the notorious judges to the Supreme Court' (Coynash, 2019) despite the overlooking by the HQCJ. The greatest downfall of the HCJ was the appointment of '227 Maidan judges' (Ibid.) persecuting peaceful EuroMaidan activists. Among these 'Maidan Judges' was a group who 'used disciplinary proceedings to harass independent judges' (Ibid.) who attempted whistleblowing within the court system. The case of independent judge Larysa Holnyk revealed persistent harassment against her attempts at challenging bribery within the judicial systems. Holnyk suffered an attack after publishing a video showing an unsuccessful bribery attempt from the Mayor of Poltava. After reporting the incident to the president of her court, he 'suggested her to accept the bribe, and criticised her stubborn attitude' (Judges for Judges, 2019) revealing the internal corrupt mindset of senior members. This incident was followed by an 'endless row of attempts to make work impossible' (Ibid.) for Holnyk, in a crude effort to showcase the consequences of whistleblowing within the judiciary. The failings of both the HCJ and the HQCJ in preventing the existing corrupt judges from maintaining control within the system deconstructed the hopes of a 'post-Maidan full overhaul of Ukraine's judiciary' (Ibid.). Thus, this discredited the work of the HQCJ as well as undermining the reforms against the re-appointment of corrupt officials.

Conclusions. Judicial sector anti-corruption reform has been largely unsuccessful. These failures are evident through the persistent appointment of tainted judges, flawed assessments by the HQCJ and HCJ and the ultimately unreformed Supreme Court. Political dependence of the courts and telephone justice, in which 'prosecutors settle cases over the phone' (Wilson, 2016: 7), both remain the most significant barriers to anti-corruption reform. Reform has failed to see through the overhaul of the judiciary, falling short of the aims set out in 2014.

Firstly, despite the requirements for asset disclosure, the NABU investigations against corrupt individuals and the re-established HQCJ, politically dubious and corrupt judges have remained in power. Bohdan Lvov, Mykhailo Smokovych and Stanislav Kravchenko are but a few examples of such individuals. Lvov, selected as the head of the Cassation Commercial Court, has 'violated Supreme Court law [...] bypassing the automatic case distribution system' (Chyzhyk, Zhernakov, Maselko, & Halushka, 2019) to gain illicit assets. Smokovych and Kravchenko have also failed to declare illegally obtained assets through bribes and manipulation of the justice system (Ibid.). Secondly, the flawed assessments of HQCJ and HCJ further contributed to the downfall of corruption reform in Ukraine. These bodies allowed for the aforementioned judges to remain in power, despite evidence drawn against them of blackmail, political interference and bribery. The bodies 'ignored nearly 60 % of negative conclusions regarding judicial candidates' (Chyzhyk et al. 2019) provided by the PIC. While tainted judicial appointments proceeded with-

out concrete justifications, ‘whistle-blower’ judges, like Serhii Bondarenko, recommended by civil society panels, received the lowest integrity scores from the commissions (Ibid.). The newly established commissions, which aimed to eradicate the corrupt individual appointments amongst judges, failed to remain truly independent and apolitical in their selections. Lastly, the unreformed Supreme Court has demonstrated various cases of ‘questionable rulings’ (Ibid.). One of the notorious examples has been the Supreme Court ruling in favour of the oligarch Firtash’s acquisition of commodity companies. Firtash, ‘indicted on bribery charges by the United States government’ (Ibid.), was allowed the transfer of illicitly gained funds to personal offshore accounts. This case demonstrates the persistence of oligarchic state capture and influence over the judiciary.

The judicial sector was reported as the least progressive reform compared to the success of reforms within other sectors. The European Parliament reported ‘outstanding steps forward in areas such as public procurement, macro-economic stabilisation and the decentralisation process’ (European Parliament, 2017), as will be discussed in the following chapters on success. However, the judicial sector has remained lagging in its reform progress, with public trust at a significant low. Merely 3 % of Ukrainians reported as having complete trust in the body compared to the significant 62 % who reported no trust at all (Democratic Initiatives Fund, 2019). As of 2015, the figures reported 2.4 % and 51 % (Ibid.) respectively, revealing the lack of progress and public trust in Ukraine’s courts. To conclude, overall, the judicial sector reforms under Poroshenko have not seen the success anticipated at the start of his presidential term, and there is yet much reform to be passed and enforced within Ukraine’s historically corrupt judiciary.

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Резюме

Смирнова С.М. Судова реформа і боротьба з корупцією в Україні.

Вільна і незалежна судова система є основою для ефективного управління в будь-якому суспільстві. Це «істотна передумова для підтримки правопорядку» (Генеральна Асамблея ООН, 2012: 3), вкрай важлива для забезпечення реалізації політики та реформ, що проводяться урядом. Судові органи України давно відомі як один з найбільш корумпованих секторів в інституційній структурі. Відсутність незалежної судової системи в Україні часто критикувалася як основна причина недостатнього антикорупційного правозастосування.

Поразка корупцією владних структур неминуче призводить до зниження ролі держави як регулятора економічних і соціальних процесів, стимулюючи паразитування незначної частини суспільства на проблемах і тяготі більшості. Це переводить нормальну систему взаємин між людьми в тінову, кримінальну сферу.

У статті розглядаються найважливіші реформи судочинства України, здійснені в 2014–2019 рр.: перезавантаження Верховного Суду, створення Національного антикорупційного бюро, Вищого антикорупційного суду, а також реформа Вищої кваліфікаційної комісії суддів. У цих державних інститутах намічалася спроба докласти всіх більших чи менших зусиль для системного вирішення боротьби з корупцією та хабарництвом за допомогою ряду різних інструментів для запобігання корупційних дій або прояви корумпованого клімату.

Крім того, передбачалося, що подібні дії мали основоположне значення для визначення і застосування належного та ефективного покарання для тих, хто ігнорує вказане законодавство. У статті оцінюються успіхи реформ судочинства України, здійснених у 2014–19 роках. В роботі визначені причини неефективності деяких реформ і їх запобігання в суддівському співтоваристві. Викладено проблеми організації і функціонування судової системи України в реформаторських умовах, а також введені аргументи щодо удосконалення окремих форм судової системи.

Ключові слова: судова реформа, корупція, хабарництво, антикорупційна організація, законодавство, судочинство, суддівське співтовариство.

Резюме

Смирнова С.М. Судебная реформа и борьба с коррупцией в Украине.

В статье рассматриваются важнейшие реформы судопроизводства Украины, осуществленные в 2014–2019 годах: перезагрузка Верховного Суда, создание Национального антикоррупционного бюро, Высшего антикоррупционного суда, а также реформа Высшей квалификационной комиссии судей. В этих государственных институтах намечалась попытка приложить все большие или меньшие усилия для системного решения борьбы с коррупцией и взяточничеством с помощью ряда различных инструментов для предотвращения коррупционных действий или проявления коррумпированного климата. Кроме того, предполагалось, что подобные действия имели основополагающее значение для определения и применения надлежащего и эффективного наказания для тех, кто игнорирует указанное законодательство.

В работе определены причины неэффективности некоторых реформ и их предотвращение в судебном сообществе. Изложены проблемы организации и функционирования судебной системы Украины в реформаторских условиях, а также введены аргументы относительно усовершенствования отдельных форм судебной системы.

Ключевые слова: судебная реформа, коррупция, взяточничество, антикоррупционная организация, законодательство, судопроизводство, судебское сообщество

Summary

Sofia Smirnova. Judicial reform and the fight against corruption in Ukraine.

The article assesses the success of Ukrainian governmental judicial reforms implemented between 2014 and 2019. The judiciary has long been known as one of the most corrupt sectors within the institutional structure. The lack of an independent judiciary in Ukraine has often been criticized as the main reason for insufficient anti-corruption legislation. The article examines important reforms within the judicial sector; the reset of the Supreme Court, the establishment of the National Anti-Corruption Bureau and High Anti-Corruption Court, and the reform of the High Qualification Commission of Judges. The article further identifies the key reasons for the ineffectiveness of reform implementation and enforcement, as well as their efforts in promoting corruption prevention in the judicial community.

Key words: anti-corruption reform, progress analysis, Ukrainian judiciary, reform analysis, public trust in institutions.