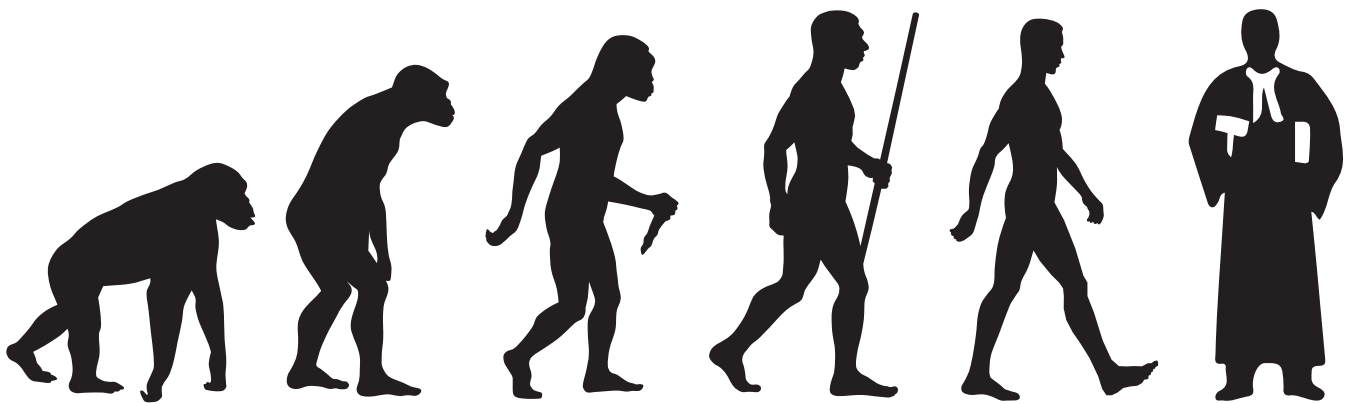


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How To Fix Ukraine's Broken Legal System

At left, lawyer Valentyna Telychenko speaks with Eugenia Tymoshenko, daughter of ex-Prime Minister Yulia Tymochenko, and lawyer Serhiy Vlasenko in the courtroom of the European Court of Human Rights in Strasbourg, France, on Aug. 28, 2012. (UNIAN)



Is it time to scrap Ukraine's legal system and start over with another nation's system?

By **Brian Bonner**
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A number of lawyers and others who have looked at Ukraine's archaic and dysfunctional legal system have come to one inescapable conclusion: It needs to be replaced with one that allows Ukraine to become a rule-of-law democracy with a modern economy.

An incremental approach, they say, will not fix the fundamental flaws.

Irina Paliashvili, founder of the RULG Legal Group, leads a drive among law firms in Ukraine to find solutions to the legal problems, outlined in periodic "white papers," the next version of which will be published in autumn.

Her conclusion?

"Throw everything out, replace it with somebody else's laws," Paliashvili said. "Ukraine's legal system and judicial system need external management. Find the most modern system in European countries. I have no trust in the current judicial system, which is actually being reinforced as far as I can see. It's beyond fixing."

Paliashvili, who also chairs the legal committee of the U.S.-Ukraine Business Council, said that Ukraine is stuck in Soviet times in the legal sphere.

"What we have is a Soviet-based system and, on top of that piles and piles of special interest legislation of very bad quality. Over 20-something years, there have been piles and piles of these corrupt schemes incorporated in the legal system with zero care towards the people, towards the businesses," Paliashvili said. "That also explains the incomprehensible language of the legislation. When you find out why it's

written so, you understand it's just another smokescreen behind another corruption scheme."

Daniel Bilak, managing partner of the CMS Cameron McKenna law firm in Kyiv, also said that he doesn't think Ukraine's government is capable of reforming from within.

"We keep fragmenting the issues," Bilak said. "Somebody is talking about judicial reform, someone else is talking about reform of the prosecutor. Nobody is talking about reform of legal education. All of it is one actual unit."

Bilak said that President Petro Poroshenko's judicial reform strategy, outlined on his official website on May 27, will only perpetuate the existing system.

"The latest decree of the president plays around the edges of reform," Bilak said. "It keeps the existing structure and just makes the existing system more transparent. This is not the wholesale institutional reform Ukraine needs."

Judicial reform is crucial to the economy. "You cannot have a market economy unless you have protection of property rights. Otherwise you will always have corruption. These rights are the only leverage that business has against the administrative resources of the state. It provides a check on government," Bilak said.

Mykola Stetsenko, managing partner at Avellum Partners in Kyiv, favors a more incremental approach.

"It's not that we need to cancel all the laws in Ukraine and start over," Stetsenko said. "It's impossible and we don't need to do it." Stetsenko cited improvements in taxation,

deregulation and steps towards “cleansing the judiciary and firing those judges who were absolutely corrupt” as signs of progress.

While Paliashvili, Bilak and Stetsenko are focused on civil law, the criminal justice system is also a mess, said Valentyna Telychenko, a Kyiv lawyer who has represented Myroslava Gongadze, the widow of slain journalist Georgiy Gongadze, and ex-Prime Minister Yulia Tymoshenko.

“The whole society is sick,” Telychenko said. “We have prosecutors who had unlimited authority and judges who worked with prosecutors and who also had unlimited authority. It’s very deep in our blood.”

Paliashvili agreed, concluding: “During the Soviet period, whatever real justice people had in their mentality was eliminated the hard way, by throwing millions of people in the gulag and by using fake institutions and fake pretenses. In every person, there’s common sense and intelligence, but this is not translated into legislation and the legal system. What we have now is totally imposed on the people. It’s all the same clique. They are trying to save the system.”

Here’s their breakdown of some of the hot-button issues and possible solutions:

Estonia and Georgia as models: “Estonia did e-government. What they have in Estonia is much more advanced. Why not take something which is several steps forward? What Georgia can offer is an example of a successful anti-corruption fight and enforcement as well. If you combine those two examples, you will throw Ukraine into the stratosphere. It’s now in the stone age,” Paliashvili said.

Fewer but better – and enforced – laws are needed: “When the system doesn’t want to do something, it becomes extremely legalistic and extremely technical. The system serves (politicians) very well. It lets them do it. ‘The tapes must be original’ and ‘on this document, the corporate seal should be on the right side and not on the left side.’ Then when the system doesn’t want to see infringements, it ignores them,” Paliashvili said.

Cancelling the commercial code: Bilak and Paliashvili are among the lawyers critical of conflicting codes – civil and commercial – that regulate economic activity. They want the Soviet-style commercial code scrapped and the more progressive civil one kept.

“The simple thing is to cancel the commercial code. It’s useless,” Paliashvili said. “For corrupt judges, it’s a dream come true. If they cannot make a decision based on the civil code, they can issue one based on the commercial code. For business, it’s a nightmare. You have two fundamentally conflicting documents regulating the basis of entrepreneurial activities.”

Prosecutors: Prosecutors have too much power. “What Ukraine needs is a state prosecution service that represents the interests of the state in criminal matters,” Bilak said. “What we have is very broad investigative and oversight powers that go way beyond what a proper prosecution service in a democracy has,” Bilak said.

Impunity: Ukraine’s politicized system means innocent people go to jail and the guilty go free. “Until we see

Lawyer Irina Paliashvili says Ukraine should adopt the best laws from other nations to replace its corrupt Soviet system.

actually criminal investigations that result in trials and convictions, not much will change,” Stetsenko said.

Judges: “The current judges are basically blackmailing society, saying only they are experienced and only they know how to operate this legal system,” Paliashvili said. “If you throw out the old system, they are no longer relevant. They cannot blackmail anybody. A modern system will require new modern judges. You cannot replace one without replacing the other. Both have to go.”

On absence of jury trials: Politicians, through appointed prosecutors and others in the legal system, don’t want to give up control of who goes to jail and who goes free, irrespective of evidence. Telychenko said that General Prosecutor Viktor Shokin, while more competent than predecessors who staffed the prosecution service with political cronies, remains Soviet at core. And that doesn’t bode well for jury trials in the future. “He is absolutely sure that a judge should decide as the prosecutor says,” Telychenko said.

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Mykola Stetsenko

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