

A close-up, profile view of an elderly man with white hair and a serious expression, looking slightly to the right. The background is a light, neutral color.

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Obstruction Of Justice

The case for firing Prosecutor
General Viktor Shokin

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Lawmaker's arrest exposes Ukraine's lack of due process, selective justice

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The arrest of member of parliament Ihor Mosiychuk in the Verkhovna Rada on Sept. 17 made for great theater – and terrible justice.

But it is only the latest high-profile example of Ukraine's long and inglorious history of selective justice.

Mosiychuk, an opposition member of parliament, was arrested on suspicion of accepting bribes and is jailed in a pre-trial detention center. Prosecutor General Viktor Shokin personally turned up in parliament to present video evidence against Mosiychuk, a member of Oleh Lyashko's opposition Radical Party.

Mosiychuk's supporters portrayed the arrest as politically motivated revenge by Shokin and President Petro Poroshenko. It took place after the party, which had been collecting signatures for Shokin's dismissal, left the government coalition and formally joined the opposition on Sept. 1.

Responding to the accusations of selective justice, Shokin said on Sept. 21 that he had no "blacklist" of disloyal lawmakers to be arrested. He said that, to avoid such accusations, he would not seek to prosecute any member of parliament again until immunity is lifted for all lawmakers.

Meanwhile, associates of ex-President Viktor Yanukovich and allies of those currently in power are not being prosecuted for crimes, including alleged cases of embezzlement totaling billions of dollars and alleged murder of EuroMaidan Revolution demonstrators.

The uprising that sent Yanukovich fleeing on Feb. 22, 2014 was supposed to end selective justice and bring rule of law to Ukraine. It has done nothing of the kind, with Mosiychuk's arrest violating numerous rules of criminal procedure.

The Mosiychuk case is a worrying indicator that the present government is sticking to old, bad habits of using justice as a political weapon, Daniel Bilak, managing partner at the Kyiv office of British law firm CMS Cameron McKenna, told the Kyiv Post.

"It was great theater but it certainly didn't look like much justice," Bilak said, speaking about Mosiychuk's arrest. "This will send a signal to everybody that it's open season on political opponents."

He argued that such violations of due process could reverse Ukraine's movement towards rule of law.

"That's a very slippery slope, because if you can get away with it once,



Then-Verkhovna Rada members Petro Poroshenko (L), Arseniy Yatsenyuk and Mykola Martynenko (R) on Jan. 29, 2014. Lawmakers say Ukraine is obstructing a Swiss investigation into suspected multimillion-dollar bribery by Martynenko, a close ally of Yatsenyuk, Ukraine's prime minister. Martynenko denies the allegations. (UNIAN)

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you can do it again,” Bilak said. “Nobody is safe, and we’ll be back to the Yanukovich years.”

Irina Paliashvili, chair of the U.S.-Ukraine Business Council’s legal committee, agreed with Bilak, describing Mosiychuk’s arrest as an “in your face” violation of procedural norms, and a “circus.”

“Mosiychuk’s arrest is a throwback to our old traditions of selective justice,” she told the Kyiv Post.

The video Shokin presented in the Rada appears to show Mosiychuk specifying the size of bribes for lobbying for businesses’ interests, and then receiving cash. Mosiychuk denies the accusations, saying the video was manipulated.

The procedural violations were so obvious that they were even admitted by Verkhovna Rada Speaker Volodymyr Groysman, who said they were necessary to speed up the investigation.

One of the violations is that the issue of stripping Mosiychuk of immunity from prosecution was not considered by the Verkhovna Rada’s rules committee.

Another violation is that Mosiychuk was not given the floor to answer the accusations.

“Equality before the law and the right to be heard are fundamental principles of justice,” Bilak said. “Both of them seem to have been somewhat breached, based on what I’ve seen and heard.”

Law enforcement employees also had no right to conduct

surveillance of Mosiychuk because this is only possible after parliament authorizes a criminal investigation against a lawmaker, critics say.

Moreover, the video recording had not been independently verified and recognized by a court as proper evidence, Bilak said.

“From what I have seen, a judge would be within the law to release him on the basis that procedural norms and the laws were not followed,” Bilak said. “What’s the point of having immunity if it can be taken away at the whim of the speaker, president or prosecutor general?”

He argued that “due process is as fundamental an aspect of doing justice as having somebody going to prison for their crimes.”

“You cannot have one set of rules for some people and another set of rules for others,” Bilak said. “This puts the entire administration of justice into disrepute.”

And it’s not just politicians who are targeted now: Yevhen Zakharov, head of Ukraine’s Helsinki Human Rights Union, said that similar cases of selective justice have happened during numerous investigations against nationalists and fighters of volunteer units, who critics say are seen by the authorities as a challenge to their power.

Critics argue that the political nature of Shokin’s actions is clear from the contrast in the way Mosiychuk and Serhiy

Ihor Mosiychuk, a Verkhovna Rada member, at a hearing at Kyiv’s Pechersk District Court on Sept. 18. (UNIAN)





Lawmaker Serhiy Klyuyev at a session of the Verkhovna Rada on June 3. (UNIAN)

Klyuyev, an ex-member of Yanukovich's Party of Regions, were treated when they were stripped of parliamentary immunity. While Mosiychuk is accused of getting a Hr 100,000 bribe, Klyuyev is suspected of embezzling billions of hryvnias.

Darina Kaleniuk, executive director of the Anti-Corruption Action Center, told the Kyiv Post that the General's Prosecutor's Office had ignored the most substantial evidence against Klyuyev when it asked parliament in June to strip him of immunity. Given the weakness of the case it presented, it did not even request his arrest initially and did so only after he had fled Ukraine.

The General Prosecutor's Office justified its inability to arrest him by saying it could not conduct surveillance without parliament's approval and referring to other procedural formalities – something that critics say it openly violated in the Mosiychuk case.

Many other Yanukovich allies have also escaped justice one way or another.

The General Prosecutor's Office is investigating many of those who fled Ukraine after the EuroMaidan Revolution, but the cases are moving at a snail's pace. Not a single corruption case against top Yanukovich-era officials has been sent to court almost two years after the revolution began.

Despite vast journalistic investigations and, in some cases, past

criminal cases against them, Yury Boiko, Yevhen Bakulin, Serhiy Lyovochkin, Serhiy Kivalov, Mikhailo Dobkin and many other Yanukovich allies are not currently suspects in any criminal cases.

"Where there is big money, there is no morality," Kaleniuk said. "There are no enemies there, only partners. There could be a political agreement at the top level not to touch Party of Regions people, allow them to flee and let them hide the stolen stuff."

Yanukovich associates could also have some compromising information on the current government, and cases are being sabotaged to keep them silent, Kaleniuk said.

Just like the previous government's corruption, accusations against allies of the incumbent authorities are mostly ignored by prosecutors.

The Prosecutor General's Office has done nothing to investigate a procurement scheme said to involve Russian businessman Konstantin Grigorishin, a partner of Poroshenko, or graft allegations against State Fiscal Service head Roman Nasirov, an ex-lawmaker from the Petro Poroshenko Bloc. Nor are prosecutors probing a money-laundering scheme allegedly linked to Poroshenko's chief of staff Borys Lozhkin that is being investigated in Austria.

Ukrainian prosecutors have also failed to express any interest in a Swiss bribery investigation against Mykola Martynenko, a lawmaker from Prime Minister Arseniy Yatsenyuk's People's Front party.

"It would be logical if the prosecutor general sought to strip of immunity some bigger fish like Mr. Martynenko, as opposed to Mosiychuk, the sacrificial lamb," Kaleniuk said.

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