

Breaking the Ukrainian Procuracy

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Securing the gains of revolution is often more difficult than the act of insurrection itself. The 2014 Maidan uprising has proven to be no exception to this rule, and despite notable achievements over the past two years, a growing consensus now exists that the reform process has hit a considerable, and potentially fatal roadblock: the prosecutor's office.

Numerous outsiders – including Vice President Joseph Biden¹ – have highlighted the deficiencies within the procuracy [*prokuratura*], particular its lackluster fight against corruption. Other commentators have called for a clean sweep and

the replacement of all prosecutors. Yet on closer examination, the issue is not just one of personnel; it is structural, and indeed, goes to the heart of Ukraine's political and legal inheritance from the Soviet Union and Imperial Russia. For almost 300 years, the procuracy has served as the “eyes of the sovereign,” and even President Petro Poroshenko, as it turns out, is reluctant to lose control of the one institution that secures his power, and the overarching power of the state, over the other branches of government.

The procuracy stands at the nexus of three ongoing and interrelated reform processes in

Ukraine: anti-corruption, the division of powers,
and the rule of law. Real change requires that
Ukraine confront the procuracy's historical legacy -
and decisively break from it.

been under Russian and Soviet legal theory: the procuracy serves the sovereign as opposed to broader principles of the rule of law.

Ukraine's Cancer of Corruption

Significant changes have been introduced since the Maidan to reform the procuracy. Its broadest power, that of general supervision, has been eliminated by the 2014 law on the procuracy, thereby reducing much of its administrative and oversight authority. Therefore, the procuracy has been re-constituted as an institution that primarily focuses on representing the state's interests in court. In addition, the procuracy's endemic corruption has prompted a major bypass operation to create new cadres of prosecutors untainted by the negative practices of the past.

In particular, the National Anti-Corruption

but that instead, he will use his bureaucratic powers to defend its established interests.

Yet it is not just Ukrainians who have settled on the procuracy as one of the major obstacles in the struggle against corruption. Vice President Biden, in his December 9, 2015 address to the Verkhovna Rada, announced that the “Office of General Procurator desperately needs reform” if Ukraine is to overcome its entrenched corrupt practices. Despite the growing calls for new leadership, however, Shokhin remains in his position, raising difficult questions both about Poroshenko’s possible ulterior motives and Ukraine’s prevailing system of governance. Is Poroshenko all talk but no action in his fight against corruption? Alternatively, did he make deals with Ukraine’s oligarchs at the height of the war in the eastern provinces that he cannot now change? Can Poroshenko maintain his political viability if he does not have the procuracy – and the threat of prosecution – to keep his opponents and purported allies in line?

The Procuracy and the Prospects for Ukraine’s Reform Agenda

Two years into the Ukrainian revolution, civil society remains determined to hold the country’s elected officials accountable. Yet doubts about civil society’s ability to maintain this pressure also are growing because of a combination of political fatigue, disillusionment, and the genuine fear that the major players may start turning against each other. There is little doubt that the procuracy would serve as the key institution in any internecine struggle, since its historical creators – in Imperial Russia and the Soviet Union – always envisioned the procuracy as an arm of the state.

Thus, the procuracy needs more than a thorough housecleaning; it needs to be depoliticized. The 2014 law on the procuracy has already taken a major step in that direction by getting rid of the procuracy’s longstanding powers of general supervision and converting it into a more traditional prosecutorial agency. This law now must be fully implemented. The Ukrainian constitution also must be brought into accordance with this legislation and stripped of out-of-date references to the procuracy’s supervisory powers.

Other constitutional amendment’s must be adopted to complete the procuracy’s transformation. The president has proposed to remove the procuracy from the Ukrainian constitution as

a separate legal institution possessing its own constitutional heading and unique grant of authority. Instead, the procuracy, with significantly reduced powers, would be moved to Chapter VIII (Justice) of the constitution, which deals with the courts.

The Venice Commission has endorsed this change, yet the above re-shuffling raises the question as to whether the procuracy needs to be included in the constitution in the first place. In any system of division of powers, justice is rendered by the judiciary, with the procuracy merely serving as a participant – albeit, a critical one – in the process of adjudication. Thus, if Ukraine truly wants to

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break with the past, it should consider placing the procuracy within the Ministry of Justice and the executive branch (which in the Ukrainian context means the prime minister, not the president) while ensuring that the procuracy retains sufficient independence – and impartiality – in order to conduct its assigned judicial tasks. As Deputy

Endnotes

- 1 "Remarks by Vice President Joe Biden to the Ukrainian Rada," The White House, Office of the Vice President, December 9, 2015. (<https://www.whitehouse.gov/the-press-office/2015/12/09/remarks-vice-president-joe-biden-ukrainian-rada>)
- 2 "EU requires replacing the Quartet was killed in the Commission on the choice of the anti-corruption prosecutors," *News from Ukraine*, October 27, 2015. (<http://en.reporter-ua.ru/eu-requires-replacing-the-quartet-was-killed-in-the-commission-on-the-choice-of-the-anti-corruption-prosecutors.html>)
- 3 "Vitaliy Kasko: As long as the procurator-general remains in the Presidential Administration, we will not be able to build a European model of the procuracy," Ukrainian Pravda. November 17, 2015. <http://www.pravda.com.ua/rus/articles/2015/11/17/7089117/> (in Russian/Ukrainian)



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