

The destruction of an independent judiciary in Ukraine

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This essay was submitted to the WSW by Maxim Goldarb, the chairman of the Union of Left Forces (For a New Socialism) party, which has been banned by the Zelensky government because it opposes the US-NATO proxy war in Ukraine against Russia.

An independent judiciary is one of the fundamental features and principles of bourgeois democracy. As far back as in the 18th century, Charles Montesquieu clearly outlined the division of state branches of power into three: legislative, executive and judicial, and argued each of them should be independent of the others.

In turn, any regime that tries to become dictatorial, first of all makes efforts to destroy the independence of the judiciary.

Over the past 10 years, the judicial system of Ukraine has undergone four cardinal reforms, countless changes, and judges have undergone endless attestations and recertifications, dismissals, rotations and even persecution. The attempts of the authorities to destroy the remnants of judicial independence and completely subjugate the judiciary have reached their apogee during the presidency of Volodymyr Zelensky.

Back in 2021, Zelensky tried to take control of the Constitutional Court of Ukraine (CCU), a judicial body that evaluates the constitutionality of decisions of the president and parliament. In 2020, the Constitutional Court declared the judicial reform which was initiated by Zelensky and subsequently adopted by the Verkhovna Rada (parliament) to be partially unconstitutional. The CCU also declared several articles of the Law “On the Prevention of Corruption” unconstitutional. All this provoked anger on the part of Zelensky and threats from his office against the judges of the Constitutional Court.

The president does not have the authority to dismiss judges of the Constitutional Court. They are supposed to be independent, and decisions on early termination of the powers of judges are taken only by the Constitutional Court itself, in a few cases expressly stipulated in the Constitution.

However, in order to remove judges not under his control from the court, the president issued a decree in March 2021 by which he tried to dismiss the head of the Constitutional Court Alexander Tupitsky and judge Alexander Kasminin. At the same time, Zelensky issued a decree canceling the presidential

decrees from 2013, by which these judges, in accordance with the Constitution, were appointed judges of the Constitutional Court. This criminally exceeded his powers and grossly violated the law.

The illegality of such actions by Zelensky was so obvious and blatant that the Supreme Court recognized them as illegal and canceled the relevant decrees.

In retaliation for this, on May 27, 2022, at the request of the prosecutors of the Office of the Prosecutor General, the chairman of the Constitutional Court, Tupitsky, was put on the international wanted list on charges of—attention!—a supposedly illegal departure from Ukraine in March 2022, although there is no legal basis whatsoever for such a charge.

The very wording of the groundless accusations against the head of the Constitutional Court testifies to the obvious involvement of the authorities in this case of illegal persecution of the judge. Clearly, the Zelensky government sought to create a precedent to intimidate any other Ukrainian judge who is trying to go against the president.

The work of the Constitutional Court was, in fact, blocked in 2022. And no one, neither the citizens of Ukraine nor the subjects of constitutional appeal, can actually use their right to apply to the Constitutional Court to check the constitutionality of presidential decrees and parliamentary laws.

In an even more extreme case, the authorities attacked the District Administrative Court of Kiev (OASK), whose judges opposed acting as servants of the president’s office. The OASK was the court responsible for considering the legality of acts of the highest officials of the state, including the president.

Thus, the District Administrative Court at one time canceled the decision to increase electricity tariffs; declared it illegal to increase the price of gas for the population; canceled the decision to rename Moskovsky Prospect and General Vatutin Avenue in Kiev into Stepan Bandera Avenue and Roman Shukhevych Avenue, respectively, in honor of the leaders of Ukrainian nationalists who collaborated with the Nazis; designated the symbols of the SS “Galicia” division as Nazi symbols; and made many other decisions objectionable to the authorities.

Then, on December 13, 2022, the Verkhovna Rada of Ukraine voted for bills No. 5369, developed by the office of the

president, on the liquidation of the Kiev District Administrative Court, and No. 5370, on the formation of the Kiev City District Administrative Court instead. In this way, the president and parliament simply eliminated an independent court.

The Kiev City District Administrative Court, created by the new law, has not yet begun its work. As a result, citizens are effectively denied the opportunity to appeal against decisions of the president and other higher authorities that restrict their rights.

Moreover, two key bodies that make decisions on the appointment of judges are not working at all any more. In particular, the High Qualifications Commission of Judges (HQC), due to changes in legislation adopted in November 2019, had not been working for 26 months by February 24, 2022.

In addition, a very important constitutional body, the High Council of Justice (HJC), was paralyzed, because 10 of its members all resigned on February 22, 2022, two days before the beginning of the war. About 60 state functions, which they collectively carried out, were stopped. The HJC is the body responsible for the appointment of judges and may punish and dismiss judges. Almost the entire judicial system is in the hands of this body.

The reason for the collective resignation of 10 members from the High Council of Justice was the creation by the Zelensky government of the so-called Ethics Council. This was supposedly designed to establish the compliance of a candidate for the position of a member of the High Council of Justice with “the criteria of professional ethics.” But half of this Ethical Council consists of foreign citizens from Western countries. This was openly demanded by the authorities of the United States and other Western countries in a clear effort to control the judicial system of Ukraine through their representatives in the Ethics Council.

The High Council of Justice quite rightly insisted that the powers of the Ethics Council have no constitutional basis. Moreover, according to the Constitution, citizens of other countries generally do not have the right to participate in the formation of public authorities in Ukraine.

Since the beginning of the war, the authorities, hiding behind the concept of “military secrets,” also began to actively close access to citizens to the register of court decisions. On February 24, 2022, the State Judicial Administration, the body responsible for the operation of the register and the reflection of court decisions in it, completely closed access to the register. It was resumed in June 2022, but human rights activists found that almost all criminal convictions over the past three years have disappeared from public access. Thus, for example, in the Kharkiv region, only 30 sentences for 2022 remained in the court register, and only 19 for the whole of 2021. If you believe the court register, then for the whole of 2020, all the courts of the Kharkiv region (with a population of more than 2 million people) issued only four verdicts, which is clearly impossible.

On December 21, 2022, human rights organizations filed an open appeal with the State Judicial Administration (SCA), in which they demanded it stop the practice of restricting access to documents in the Unified State Register of Court Decisions, to restore access to the adopted court decisions and to ensure the timely submission of procedural documents to the register.

The SCA did not have the authority to seize open-access court decisions just because they had data on the location of legal entities—public authorities, as well as critical infrastructure. This is a direct violation of the Law of Ukraine “On Access to Court Decisions.” The Unified State Register of Court Decisions is an important source for journalists who investigate corruption offenses and abuses of power, which become doubly dangerous for the country during the war. In addition, access to court decisions is a daily necessity in the activities of lawyers, law enforcement officers, public activists and human rights defenders.

As a result of this severe pressure exerted by the authorities on the judiciary, a lot of absurd and frankly illegal decisions are made by courts. For example, people are sentenced for “unpatriotic and anti-state” mobile phone conversations, and all opposition parties in Ukraine were banned on the basis of fabricated, blueprinted judgments.

In this way, the courts have been transformed into tools for the suppression of democratic rights and dissent. Particularly severe sentences are passed against anti-war activists. One of the most infamous such cases is the story of the pacifist Ruslan Kotsaba. Several years ago (2015), he publicly called for an end to the war in the Donbas and for a refusal to mobilize. Kotsaba was then accused of treason and obstruction of hostilities and arrested.

He spent 524 days of arrest in custody. By the decision of the Ivano-Frankivsk city court, he was sentenced to 3.5 years in prison and released only after pressure from international human rights organizations.

This systematic destruction of an independent judiciary in Ukraine, backed by the NATO powers, is yet another clear refutation of the lie that the war in Ukraine against Russia is waged “in defense of democracy.”



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