

The Ukrainian Week

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progress, powers and prospects

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BRIEFING

- 4 **Surprise!**
Response to the wealth exposed in e-declarations
- 7 **Trick or treat?**
What anti-corruption entities are expected to do about ridiculously wealthy officials



POLITICS

- 10 **Oksana Syroyid: "Minsk is an attempt to escape from reality"**
Parliament Vice-Speaker on balance of power in today's Rada, effect of Minsk and political parties in Ukraine

FPCUS

- 16 **The daily life of cartels:**
On competition and current anti-monopoly policy in Ukraine
- 20 **Zoya Borysenko: "It is more important to create a competitive environment than to fight against monopolists"**
A woman behind Ukraine's anti-monopoly policies of the 1990s on oligarchs, the Anti-Monopoly Committee and ways to cure the system



ECONOMICS

- 22 **Social schizophrenia:**
How many Ukrainians pay taxes and social contributions
- 26 **Potential at land's edge:**
Changes and prospects in Ukraine's sea ports

SOCIETY

- 30 **Let our people go!**
Why the number of Ukrainians imprisoned by Russia continues to grow



- 34 **All used up:**
What the killings of warlords in the occupied Donbas signal

- 36 **A well-rehearsed scenario:**
An activist's experience from various elections in the Donbas

NEIGHBOURS

- 38 **Putin in The Hague:**
The MH17 case
Mechanisms to charge those responsible for the airplane shoot-down
- 41 **What will people say?**
How much Ukraine's image in the West defines its future
- 42 **Chatham House's James Sherr on Valdai 2016 and Russia's messages**
- 43 **Britain flexes its cyber-muscles:**
How the government reacts to online attacks by foreigners
- 44 **Proceed to the exit? Not so fast:**
Will Brexit ever happen?
- 46 **French philosopher Marc de Launay on our perception and understanding of others, intellectuals in European culture, Ukraine's nationalism**



CULTURE & ARTS

- 48 **Reflections on our "Youth":**
Old and new, traditional and innovative, and the co-existence of man and woman at Kyiv's Molodist film festival
- 50 **Contemporary art, political cartoons and new-wave electro-folk:**
The Ukrainian Week offers a selection of events to attend in November



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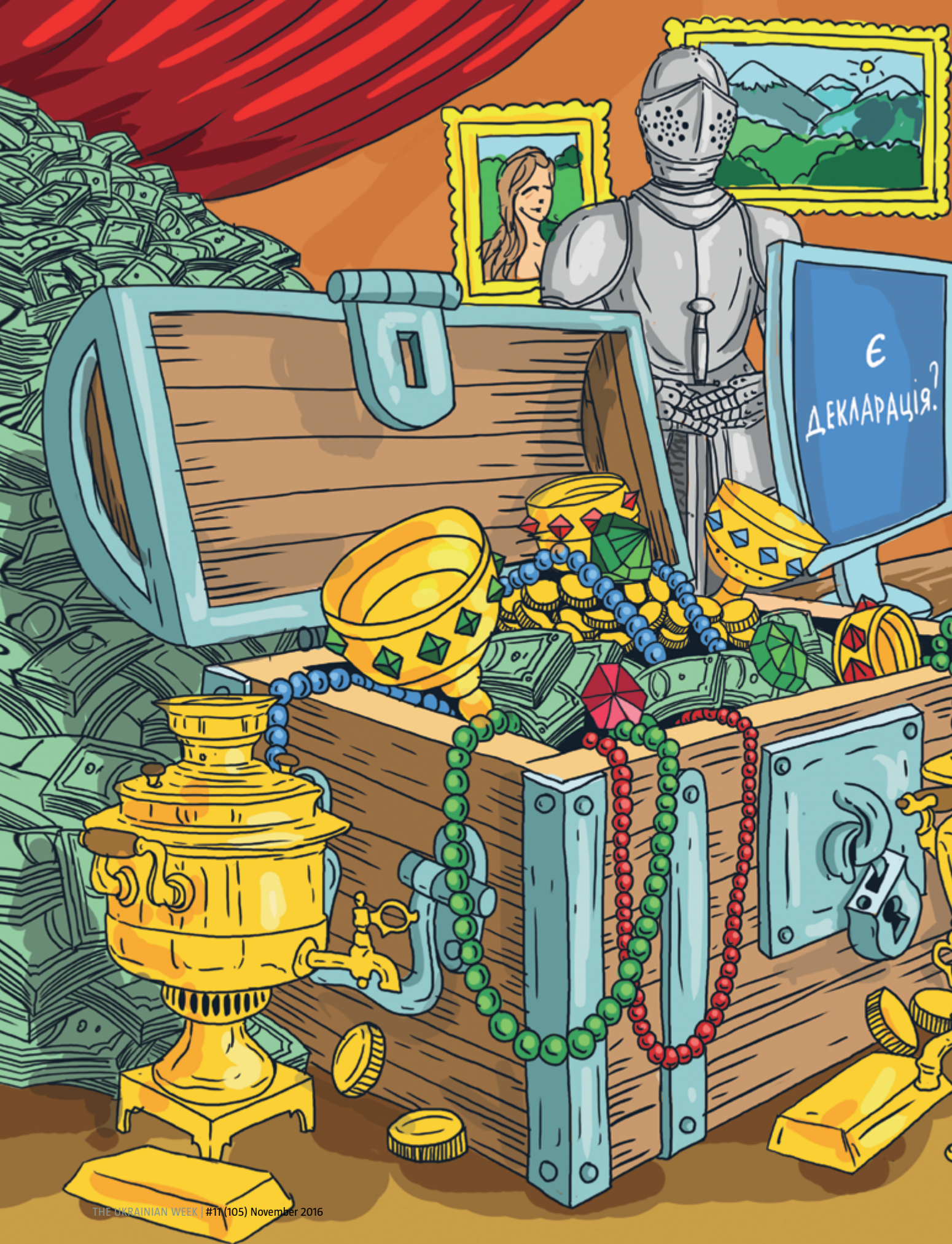
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BRIEFING

Surprise?

Yuriy Makarov

I agree, vehemently and without reserve... but only partly. I agree with the general outrage over the publication of the wealth of more than 100,000 public men—and women—, but I most certainly can't share the genuine surprise. I can understand the scandalized foreigners, but tell me, what have we Ukrainians learned that we hadn't long suspected before now? May I share some detail?

I confess that I avoid—though sometimes I can't—visiting people who have connections to those in power. Not because, God forbid, I'm going to be struck to the depths with envy, but simply so that I don't unintentionally insult those whose tastes I don't share. This is that case where, having taken a sip you know what the rest of the pot tastes like. It's all "Pshonka-style"—without exception. One generally decent and pleasant politician held up in the battle with his wife, who decided she wanted to install a rococo fireplace in their suburban living



room. When her husband asked her why the heck she needed it anyway, her response was straightforward: “We have status now.”

“People of status” have been living this way for many a decade, having to occasionally—very occasionally!—, without much personal desire, engage in intraspecific mimicry, because otherwise their own species might not understand. Just don’t think that I



THE COLLECTIVE COMING-OUT OF UKRAINE’S ELITE IS NOT THE END, BUT JUST THE STARTING POINT FOR A LONG AND WINDING PATH, THE FINISH OF WHICH WILL BE THE ELITE’S BREAK-UP INTO POLITICIANS, BUREAUCRATS, AND PROPER ENTREPRENEURS

feel sorry for them. They themselves chose their path of conspicuous consumption and haven’t noticed how their lifestyle remorselessly sucks everything up, losing all sense of reality. Maybe this is exactly why our elite has lost its survival instinct to such an extent. They have never hidden themselves, even when they could have avoided putting their estates, apartments and limousines on display, along with all the Louis Vuittons and Patek-Philippe. And now suddenly, “Trick or treat!”

So public response to this has been as expected... and infantile. First of all: what of this did we not already know? Secondly, the hatred is being directed at all of them, without distinguishing: prosecutors, MPs, and

One important issue in the “parade of declarations” is to what extent this will influence voter preferences. In other European countries, the revelation of unexplained millions and paintings in an MP’s declaration would be the death knell of their political careers. In Ukraine, this rule does not work right now. The good Ukrainian voter will first curse the “bloodthirsty leeches,” then vote for them again and again. Populists have learned to sign declarations of their millionaire wealth with one hand and angry proclamations about the terrible rise in utility bills and calls for a rates Maidan with the other hand. Judging by the latest ratings of the various parties, this kind of rhetoric is a sure win, given the circumstances today.

In order to continue the advance against corruption, firstly Ukrainian voters need to learn not to vote for candidates with a corrupt trail, no matter what. Even for money. Maybe the latest scandal with the declarations will finally provide a serious argument in favor of such an approach. Otherwise, there will be no one to blame for their continuing misery.

Cheaters in high office did not appear out of thin air. This society has allowed them to get there. To renew our politicians, we obviously need a new law on elections that the owners of huge safes and collection-quality china are in no hurry to pass for obvious reasons. Only society can demand this from them—if it is interested in a high-quality reset of our political system. Next, the most interesting places in the declarations that reveal illegal enrichment to the naked eye should attract the interest of law enforcement agencies, especially NABU and NABU.

Still, reviewing declarations and possibly launching criminal cases, even in the most optimistic projections, will drag out for months, if not years. In the meantime, passions will die down and eventually little attention will be paid to these processes. It’s enough to simply recall the course of all the high-profile cases in the last two years. Perhaps the authors of these declarative masterpieces are counting precisely on this.

ministers who haven’t spent a single day outside the state service and yesterday’s businessmen who never felt shy about putting on the Ritz. Of course, when those Ukrainians who aren’t quite flourishing donate their hryvnia to buy a television for the boys at the front, they could have altered their habits, but this is not a matter of the law, or of etiquette, or esthetics. Meanwhile, the calls rage from “in the calaboose!” to “up against the wall!” without distinguishing who should be punished. Everyone’s guilty!

I’m convinced that the collective coming-out of Ukraine’s elite is not the end, but just the starting point for a long and winding path, the finish of which will be the elite’s break-up into politicians, bureaucrats, and those same entrepreneurs. Today, these three incarnations are mixed together both because of the unclear rules of the game and because of the impunity—hard to say which is more of a factor. Those who want to find a place in our country naively and boldly want everything, now. They need to be told that only one option is possible: the adrenaline politics, the stable, predictable functionary, or the risks and potential wealth of a business owner. Take your pick.

I was genuinely impressed by the well-known story of Joe Biden. The current Vice-President of the US was a Senator for the State of Delaware for the previous 35 years. A senator’s salary is hardly poor, but it also hardly enough to put on the Ritz. After his wife and daughter were killed in a crash, Biden himself raised his two sons and traveled between Dover and Washington 2.5 hours each way. When one of his sons became seriously ill, he had to borrow money from his boss, Barack Obama. How hard is that? On the other hand, he earned himself a line in history books.

Today, inertia is making it hard to survive purely in your own category. Business owners without political cover are afraid to end up defenseless against freewheeling bureaucrats and their more agile competitors in relations with those in power, just like bureaucrats and officials without a line to business are afraid of being poor. If not for the efforts of our foreign partners, who—let’s call a spade a spade—are threatening our leaders with the loss of international support in the ongoing war, a visa-free regime, and lines of credit, the law on e-declarations would not only not have come into force, it would never have even come up for debate. Never.

Maybe at least this way, with the help of pressure from the Brussels-Washington tandem, we will be able to insert some brains into the narrow-minded leaders of our nation. Entrepreneurs will have to use less archaic instruments to get rich, bureaucrats and law enforcers will have to give up uncertain “perks” in return for a safe but secure minimum, while ordinary citizens without grand ambitions but with dignity won’t find themselves envying the other guy’s wallet while that wallet is connected to the underworld. This is the ideal, and in our world of vote-buying and jars of cash, the process will be a lot more distorted, slow and boring. But without today’s shake-down, there’s no way we will ever even approach this ideal.

Last, but not least, these same ordinary Ukrainians will gradually learn to find a cause-and-effect link between their electoral behavior and their pain from the self-evident revelations about those to whom they, and no one else but they, delegated power. ■

Trick or treat? Life after e-declarations

Stanislav Kozliuk

Ukraine's first stage of electronic declarations ended, somewhat appropriately at midnight, October 31. Officials at all levels of government were supposed to have declared all their assets, although, of course, attention was mostly focused on MPs and the country's top leadership



Stripped down to the bone. Activists demand officials to reveal their hidden wealth by submitting e-declarations by the deadline

It has been no secret to ordinary Ukrainians that the country's politicians are anything but poor. This was obvious in 2014, when officials under the Yanukovich regime began fleeing from Ukraine. Then, Ukrainians got a good view of the self-indulgence and absurdity of the people who were running the country: gold-encrusted chapels in suburban villas next

to swimming pools with tacky marble sculptures, colonnades in the style of the US White House, luxurious interiors, vast chandeliers dripping with Swarovski crystals, and so on. The apotheosis of all this was the Yanukovich estate at Mezhyhiria, built as a five-storey wooden hunting lodge, complete with ostriches in its private zoo and a legendary cottage called

Khonka with its own boat landing. Golden loaves of white bread and portraits in the style of a Cesar became a national joke and popular memes. But this was just the tip of the iceberg, as it turns out.

In 2016, Ukraine launched electronic declarations. In fact, this is the first real step towards combating corruption in the country. Now, officials must declare their wealth and assets and explain their origins. In other words, they can no longer ask the country to take their word for it that they have only a smallish apartment and a soviet-era Zaporozhets to drive around in. From now on, everybody has to declare both moveable and immovable property, expensive items such as paintings or sculptures, and to show the income for the previous year. What's more, they have to show the assets of their immediate family as well: husband, wife and kids.

It was expected that dragging the wealth of elected officials out “from under the mattress” into the light of day would not be easy. Firstly, nearly all of the MPs began filling out their declarations in the very last few days. Secondly, the National Agency for Preventing Corruption (NAPC) kept complaining about the site where

section for cash was added to the e-declaration form.

Meanwhile, the coordinator of the “Declarations Under Control” coalition, Sasha Drik, accused the SSCC of simply lying, saying that some of its statements, in particular about the “software code full of holes,” simply weren't true.

“This is just the latest lie, talking about how awful the software code is, that ‘you can poke a finger through its holes,’” Drik wrote in her own blog. “This software has beaten off something like 230,000 attacks and not one got through. Instead, after the State Communications Committee made ‘improvements’ to the system, that's when all these technical problems began to pop up. That's in addition to the fact that the Committee's ‘specialists,’ instead of the e-declaration system, appear to have broken NAPC's home page!”

Despite these and other problems, the declarations were, in the end, registered. As of November 7, more than 130,000 government officials had registered their declarations of assets. However, the most interesting of these were, as expected, the declarations of MPs and Ministers. We're not talking just about wealth—cash on hand that was shown by Ukraine's politicians could have been measured in dozens and even hundreds of kilograms— but also about openly bizarre things.

For instance, one deputy from the Petro Poroshenko Bloc declared a small church in a village in Vinnytsia Oblast, while an MP from the Radical Party declared a cross with 13th century relics; a member of the Opposition Bloc known as a supporter of the Moscow Orthodoxy turns out to have a 666 sq m—6,660 sq ft—apartment. Yet another deputy thought he would be funny by declaring UAH 1 trillion, although there aren't that many hryvnia banknotes in all of Ukraine: this is about 2-3 times more than are in circulation, according to various calculations.

The public was abuzz about the number of golden watches, enormous buildings upward of 1,000 sq m in some cases, dozens of apartments, and collections of art, weapons and cars. It seems that these well-to-do politicians don't seem to trust the banking system or the national currency, don't know how or don't want to invest, and still live somewhere in the wild 1990s, the time when primary capital was being accumulated that seem never to have ended.

Beside this shock, Ukrainian society must prepare itself for the next stage. Soon, officials will be submitting their declarations for 2016 and it might be expected that cash on hand will grow among the MPs, because the dozens of works of art and antiques being held somewhere in collections have never been seen by anyone. It's quite likely that part of what was declared only exists in cash form that these elected officials kept aside for the next declaration. This cash all needs to somehow be laundered, including through the “sale of antiques.” Especially since we are unlikely to ever see scanned copies with a formal valuation of any of these “goods.”



THE E-DECLARATION CAN BE SEEN AS AN ATTEMPT TO BRING ALL THOSE OFFICIALS WHO GOT RICH ON THEIR VARIOUS CORRUPT SCHEMES OUT FROM THE SHADOWS AND GET THEM TO PLAY, IF NOT TRANSPARENTLY, THEN AT LEAST BY THE RULES

these declarations were to be filled out not working reliably. Responsibility for this belonged to the hosting provider, Ukrainian Special Systems (USS). Meanwhile civil society organizations, especially the Reanimation Project for Reforms (RPR) and the Anti-Corruption Center (AntAc), blamed the State Special Communications Committee (SSCC) for the problems.

Towards the end of September, AntAc chair Vitaliy Shabunin wrote in his blog that because of constant “improvements” to the software of the e-declarations system—for which the Committee itself was responsible—, the Register kept crashing.

“Every day, the information in the Register and its interface are changing, while the actual form of the e-declaration still doesn't meet the requirements of the law on preventing corruption,” Shabunin wrote angrily. “In this way, the e-declaration system ensures that any official who lies on a declaration and hides illegal assets will never be punished. Incidentally, right now declarers cannot even write in how much cash they have on hand, because the form requires people to indicate what banking institution their money is kept in. The declarer can also submit more than one declaration for the same reporting period, which is against the law.” Eventually, the

In the meantime, the e-declaration can be seen as an attempt to bring all those officials who got rich on their various corrupt schemes out from the shadows and get them to play, if not transparently, then at least by the rules. Since the high-and-mighty will have to declare their assets every year, it will be possible to at least track the movement of capital. And in 5-10 years, we will have a complete picture that shows their real assets. Of course, there's no point in expecting these people to show any conscience in this instance. It's very unlikely that anyone who is under the Rada dome will resign from their seat once it is known how much capital they have accumulated illegally. The only thing that Ukrainians can hope for is that the law enforcement system will somehow respond to this.

One element of this law enforcement system is NAPC. Now, that the declarations are in, NAPC will begin reviewing them and randomly monitoring the lifestyles of the declarers. NAPC chief Natalia Korchak has already told the press that confirming the declarations could take a while.

"The law does not contain timeframes for reviewing declarations, but we have no interest in dragging this out for years at the Bureau or in other government agencies," Korchak said at a Nov. 2 press conference. "Nevertheless, the procedures for reviewing them are not something that can be done in a month, either. This is likely to take a certain amount of time, but not years, believe me."

Korchak also added that NAPC is having certain problems operating properly. Among others, the agency does not have sufficient funding from the state, and some of its staff are working on their own computers. She expressed the hope that the agency's budget for 2017 would provide enough funding for the agency to work properly.

NAPC also explained what they would do with the "jokers" who declared, for instance, UAH 1 trillion in cash. Korchak's deputy, Ruslan Radetskiy, said that deputies who misinformed on their declarations will definitely face fines. Unwarranted delays in registering an e-declaration call for fines ranging from UAH 850 to 1,700, while the failure to report the opening of hard currency accounts or significant changes in the status of a person's assets, the fine is UAH 1,700-3,400. Fines for hiding assets will be somewhat larger, although they are unlikely to hurt the pockets of hryvnia and dollar millionaires. For instance, if the value of undeclared assets is less than UAH 345,000 or around US \$13,200, the fine will be UAH 17,000-43,000 or about US \$650-1,650. If the undeclared assets are worth more, it becomes a criminal case and the penalty is a fine of around UAH 43,000 to UAH 51,000 or two years in jail.

After the declarations have been reviewed, NAPC will issue protocols if it finds administrative violations or misdemeanors. If more serious violations are uncovered, the agency will have to present its findings with the necessary arguments and send them to other law enforcement

agencies, such as the National Police, the Prosecutor's Office, and the newly established National Anti-corruption Bureau of Ukraine (NABU) and Specialized Anti-Corruption Prosecutor's Office (SAP).

NABU's director, Artem Sytnyk, has already announced that NABU has taken upon itself the review of 20 officials who have declared especially large sums of cash and whose names have been in the press.

"We've already begun reviewing many of these declarations," says Sytnyk. "We can't just ignore the Top 20 'fans of cash,' as the press calls them, and so we've begun looking into their declarations." Sytnyk also says that should there be the necessary evidence, information about any crimes will be submitted to the Consolidated Register of Pre-trial Investigations. Moreover, the NBU director says, two MPs have already appealed to NABU to review the e-declarations of certain of their colleagues.

Meanwhile, the Prosecutor General's Office has been trying to interfere in the process. For instance, during the briefing for the press, Prosecutor General Yuriy Lutsenko announced that



UKRAINIAN SOCIETY MUST PREPARE ITSELF FOR THE NEXT STAGE. SOON, OFFICIALS WILL BE SUBMITTING THEIR DECLARATIONS FOR 2016 AND IT MIGHT BE EXPECTED THAT CASH ON HAND WILL GROW AMONG THE MPs

the PGO would begin to review the tax records of MPs who declared more than US \$100,000 in cash. He also threatened some who provided some data jokingly in e-declarations with criminal prosecution for false information.

In the meantime, NAPC has begun its work as well. In a commentary for *The Ukrainian Week*, NAPC Deputy Chair Ruslan Radetskiy said that inspections on the deadlines of e-declarations were being held as of November 7. "Currently, we are checking whether the declarations were submitted within the due timeframe. After this, we will be verifying data, including the numbers the individuals have provided in their declarations," he said. "As to possible criminal proceedings: let us do our work first, and then we'll talk more." Earlier, Radetskiy claimed that the proceedings would be taking place no sooner than January 2017.

He added that there were no conflicts of interest between NAPC and other law enforcement entities (by contrast to that between Prosecutor General's Office and NABU recently), nor can there be any since the law clearly outlines NAPC's functions in declaration checking. Radetskiy also said that, should violations be discovered in the process of checking, the information revealed would be transferred to the respective entities, including SAP, NABU and others. ■

Oksana Syroyid:

«Minsk is an attempt to escape from reality»

Verkhovna Rada Vice-Speaker Oksana Syroyid on re-balancing power in Ukraine, the effect of the Minsk process, and occupied territories.

Interview by
Roman Malko

Two years ago in an interview with The Ukrainian Week, when asked whether parliament is leaving behind the tradition of decision-making in back rooms, you said that there is some inertia, but everything will be all right. What has changed?

– There is some inertia, but everything will be all right (laughs). But seriously, of course, there are reactionaries and the old "tradition" is recovering. The people who have been in this system for a long time desire to put everything back the way it was. This reactionary response began about six months after the newly-elected parliament started work. Once parliament settled into a routine, these people wanted to return to "business as usual" – you scratch my back, I scratch yours, and other sorts of deals. And this is partly the case. The majority of decisions are made in this way. But there is more. A small number of MPs are bearers of other values and independent from oligarchic parliamentary groups; they are not part of the Byzantine tradition, and in one way or another always disavow the current process. This is already irreversible. Previously this caused great irritation to bearers of the Byzantine tradition: they were outraged and offended, but now realise that these people cannot be intimidated, bribed or changed – they will always be the same and say whatever they feel. This is a positive development. As for when everything will be "all right", I will answer: when there is a majority of people who are bearers of these transparent, responsible values.

There is a perception that Ukrainian politics will change when new people, independent from the oligarchs, come into it. But experience shows that the quality of people is more the problem. Can we expect the next elections to bring completely new political parties, a critical mass of high-quality new faces into parliament?

– That's the million-dollar question. The current political system is oligarchic. It was formed over at least 15 years. Almost all political forces in parliament are the products of oligarchs, oligarchic brands. Moreover, most of the oligarchs who stand behind those forces are by their very nature not Ukrainian, and often stand for anti-Ukrainian interests. Oligarchs are those that have big business, a political party and big media. These people use their money to create political projects – new ones for each election – and use their personal media to promote them, effectively marketing these brands. They get into parliament, form a government that will always be in their pocket and get access to three things: the state budget (through procurement and social payments), monop-

olies and natural resources (gas, oil, electricity, land, minerals), public enterprises and privatisation. As a result, they get even richer and invest even more money in new political projects and so on. This is how the self-renewal and endless circle of Ukrainian politics work. In parallel, there is ongoing investment in personal judges and prosecutors, who are basically providers of services for certain people. The issue for us – these few dozen people in parliament – is what to do about this and how. It is a big challenge to meet the needs and expectations of a society that has moved forward and needs new governance right now.

In order to change this, there are some critical points we have to put pressure on.

First, we need a new election law based on proportional representation with open lists. If this doesn't happen, the next elections under the current law will lower the quality of parliament. There will be fewer independent people and more pro-Russian forces.

Secondly, public funding of political parties. It was launched this year, which is good, but, for example, the National Agency for Preventing Corruption (NAPC) has received direct instruction from the Presidential



PHOTO: UNIAN

Oksana Syroyid is an MP of the 8th convocation and Vice Speaker of the Verkhovna Rada. Born in 1976 in Lviv Oblast, she graduated from Kyiv-Mohyla Academy (Political Science), Taras Shevchenko University (Master of Law) and the University of Ottawa (LL.M). Ms. Syroyid was an assistant and consultant to MP Ihor Yukhnovskiy (1996), an expert in social reform for UNDP projects (1998-1999) and National Project Manager of the OSCE Project Coordinator in Ukraine (2004-2012). She worked on projects in the field of administrative law, administrative justice, legal education and human rights education. Ms. Syroyid was also director of the Ukrainian Legal Foundation and expert for the Reanimation Package of Reforms.

Administration not to give Samopomich (Self Reliance) the 39 million hryvnias (\$1.5m) it should be allocated under the gender quota. This is an example of political pressure for those of us who do not have money from oligarchs.

This is an example of how, on the one hand, we have taken a step forward and there is now a fund to finance political parties, and on the other hand – it was immediately turned into a tool for manipulation and applying pressure.

In addition, there are the points of oligarchic self-renewal that I mentioned and we have to hit them hard. To eliminate the budget-linked source of renewal, we have to change the public procurement system, audit the pension fund, as well as all social benefits, and put in place a new tax administration system. These hide at least one more budget, maybe more. Today, the pension fund, tax office and customs are a Klondike for embezzling public funds.

The second point is natural resources. In this case, we have to deal with all regulators. No president ever wanted to give up his influence on the regulators, especially in the fields of energy and utilities. The fact that we passed a law on regulators is not a blow to oligarchic circles, but a small, buzzing fly. In fact, the law has basically normalised the current opaque system of licensing, setting tariffs and monitoring, as well as the regulator's dependence on the president. Therefore, the law is no good: it will not bring anything new to regulation on the energy market or add any transparency. There should be a completely new approach. This should apply to all regulators.

The third component is state-owned enterprises and privatisation. For two years, we've been told: vote for this list of enterprises to be privatised. The argument was that a private owner is better than the state. Of course, it's better. But who will this owner be? No country has completed its privatisation process without scandals. Legitimacy of a procedure depends on its transparency. This means that there should be no risks of re-privatisations or mysterious deaths of State Property Fund (SPF) chairmen, which we have already had two of.

We must understand that the same management rules as for private companies should apply to state-owned ones too, as well as privatisation procedures that meet the requirements of transparent competition.

First of all, there should be a law on corporate governance of state enterprises with supervisory boards and all related transparent elements. For now, however, there's the list of companies that we've been shown for two years, these companies being under the umbrella of the State Affairs Management – an agency governed by one person, the President of Ukraine. True, these companies have different directors, but ultimately they are all part of one pyramid. It's the same with the more than 140 Ukroboronprom, the complex of state-owned defence industry enterprises.

So, one law should offer transparent privatisation procedures. Reasonable procedures of formation and accountability to parliament should be introduced for the State Property Fund. Finally, no transparent privatisation is possible without institutions, such as courts, prosecutors etc, being independent.

Then, the law on state secrets - today, it does not protect state secrets, but the vast corruption in the field of security and defence. We need to increase the de-

fence budget as a country at war, but, with the current law in place, increasing it would only increase corruption. So we need a new one that will establish that state secrets do not apply to public procurements funded by the state budget.

Is there the potential to implement these ideas?

– The potential of this parliament is like turkeys voting for Christmas. People in parliament have been getting rich for years thanks to bad laws. They have to be forced into change. Typically, it is possible to make positive decisions when there are people in the Verkhovna Rada who understand this and are willing to fight. There is also civil society, which is active in some places and in others requires more work, as well as our international partners who understand the importance of such things. When we manage to close this triangle where interests converge, we are able to take very important steps. When I talk about civil society, I mean journalists too. They can play a very important role. Most journalists do not want to take on serious topics, preferring to describe scandals rather than delve into a certain theme and prepare society for important decisions. Which is also irresponsible.

To what extent is parliament an independent power? Despite the fact that we are officially a parliamentary-presidential democracy, it seems that parliament is in some way controlled by the Presidential Administration.

– Parliament is immature and subordinate for two reasons. Firstly, the dependence on oligarchs was formed over decades, so it is hard to expect that it will be possible to quickly jump out of it. Especially if the election law is not changed, people will again vote for the nice, slick person at the top of the list without looking at who is further down, and then, as usual, they will complain and ask why our MPs are so negligent, vote for the wrong things and are corrupt.

The second reason is hidden in the imbalance of power, especially the executive branch. According to the Constitution and the tradition introduced by Leonid Kuchma, a greater volume of executive power is concentrated in the president than the prime minister and cabinet. This is very bad. For example, executive authorities at a local level – the heads of county and district administrations – are supposed to represent the government, not the "presidential vertical".

As a representative body, parliament should oversee the entire executive branch. People elect it in order to monitor how the Government collects and spends their money. This is the function of the Rada. And laws are the consequences of this control. If parliament sees that the Government is abusing taxpayers' money, an appropriate response must follow.

As for the situation with the President of Ukraine, any of them: whoever is in that office has massive executive power, because he influences the collection and expenditure of public money without the control of parliament. The Verkhovna Rada has no tools to monitor what the president does in the executive branch. As a result, anyone holding the position of president, with such a large amount of power and access to public money, begins to slide into authoritarianism and corruption. It's human nature.

And if you have this absolute power for five years with no oversight at all, that's it – all hell breaks loose. ▶

This happens to everyone. Therefore, it must be corrected – the entire executive branch must be under the control of parliament. All of it.

Who bears political responsibility then?

– The person who has the most power. Which, by the way, few people understand. The more power you take on, the more responsibility you have to bear. Whereas people usually want a lot of power and less responsibility. Excessive power, without the correct accountability tools, becomes a tombstone for anyone who monopolises it. How should political responsibility be divided up? The president, parliament and min-



AS A REPRESENTATIVE BODY, PARLIAMENT SHOULD OVERSEE THE ENTIRE EXECUTIVE BRANCH. PEOPLE ELECT IT IN ORDER TO MONITOR HOW THE GOVERNMENT COLLECTS AND SPENDS THEIR MONEY

isters – 471 people – are a horizontal plateau that has to make decisions for the state. Meanwhile, anyone in Ukraine wants a godlike status as president – "whoever created everything, governs everything". Although in fact, everyone should be able to feel their own 1/471 share: the president for representing the state, the government for shaping public policy and parliament for supervising the government. A person who tries to take over everything himself will one day have to answer for everything.

The next parliamentary elections should be held in three years' time, unless a snap election takes place. How do you see the future political spectrum? Will there be new parties or will existing ones reformat?

– We must understand that early elections primarily benefit Russia. This is a way of internal destabilisation in Ukraine (elections mean six months of ineffectiveness) and a guarantee that pro-Russian forces will gain more influence in parliament. The Russian Federation is rather actively working on shaking up the situation here; there is much rhetoric from various political forces on how we need early elections and everything is really bad. I believe that we are developing now, no matter what; there is no stagnation or degradation. We are just not developing as quickly as Ukrainian society expected. But, paradoxically, the very facts that there is a war and Russia attempts to stir up Ukraine from within are the best proof that we are moving in the right direction. If we were degrading, Russia would not have to do anything – it would just wait for us to fall into its arms. This must be remembered. We take one step forward, three to the side, then one back, due to the great influence of oligarchs. We're trying to force these turkeys to vote for Christmas. And it is necessary to realise that they will not do this with pleasure and deference, but only under great duress.

Nevertheless, there are some resources to work with. In both government and parliament. It is just necessary to consolidate around the search for new high-quality solutions. Still, there is a set of anti-corruption legislation, which will bring a new quality of policy, there is still fear and 25% of judges have given notice

of their resignation. Now there will be more natural purification thanks to electronic declarations of officials' assets. In any case, certain processes are taking place that brush certain people aside and give others the opportunity to emerge. But political parties should be built from the bottom up. They are not born in the Presidential Administration, but in the community, the county and oblast centres, where you have the insight of the people. Not even in Kyiv. A political force born in the capital based on a purely national-level platform will not survive.

Do you see the Democratic Alliance, Mikheil Saakashvili's party or other political forces not represented in parliament as political allies and partners?

– I would be happy if there were at least 226 votes from pro-Ukrainian forces in parliament. That is my dream. It doesn't matter what they are called or who represents them, I will respect them and cooperate with them all. The main thing is that they be independent of the oligarchs, guided by certain values and able to conduct responsible politics.

Under what conditions could Samopomich return to the coalition?

– We left the coalition (with Petro Poroshenko's BPP, Arseniy Yatseniuk's People's Front, Yulia Tymoshenko's Batkivschyna and Oleh Liashko's Radical Party – Ed.) for one reason. When they got into parliament, all political forces declared the same thing. And the coalition was formed based on those declarations. Then it turned out that we say, think and do the same thing, while here the tradition is a bit different: say one thing, think another and do a third. This reached a critical point for us and there was a watershed moment, because we don't lie to our people and can't cover up double or triple standards. We have separated ourselves from this oligarchic alliance once and for all. Now we are in our natural state: we can be ourselves. At the same time, if we understand that the decisions made in parliament are useful, we support them, but we are not responsible for the decisions that the oligarchs produce as part of their scheme.

Is there a parliamentary coalition at all now?

– According to the Constitution, there is a coalition de jure. But after spending some time in the political environment, I can say that a coalition is something a little bit different. It's not about 226 votes. It's the ability to find consensus. This doesn't exist in Ukrainian political tradition yet, but we're learning. When the first coalition agreement was written after the election, it was our first experience of building consensus. You may remember, the president suggested that the leaders of the People's Front and Samopomich should sit down with him, the three of them together, and sign a coalition agreement. Only Andriy Sadovyi (Mayor of Lviv and Samopomich leader – Ed.) said: "We're not going to be in parliament. Let the people who are going to work there write and sign the coalition agreement." About a week and a half passed before the president agreed to this, but we kept our part of the bargain and sat down at the negotiating table to search for consensus. It just so happened that I moderated the whole process and could see the dynamic. We were such "freshmen", didn't

know anything or anyone, but the rest came with the baggage of mutual distrust that was built up over decades. Perhaps because we were brand new and genuinely tried to put all these pieces together, it worked out. Again, just because we did not have any experience in the past, we were able to persuade both sides to sit and work a bit more. Since then, we have had many coalition crises and the coalition now remains in a limited form, but the process of preparing the agreement is still cited as a success. When we have to seek consensus, politicians who were involved in that process often say: do you remember how we wrote the coalition agreement? The development of the country depends on the ability to build consensus. If there is political consensus and the ability to build it – this is a safeguard against early elections, subversion and political manipulation, as well as a guarantee of good planning and transparency in parliament.

How does your party affiliation influence your work as vice-speaker and vice versa?

– Very well. When I took this position, I was not yet a member of the party and had to give up my seat in the faction. However, very often this becomes the subject of manipulation. I came here with a team of people whose values I share. We hardly knew each other, but I intuitively felt that, although we often think differently, we know how to look for common solutions, so I was comfortable with them. When I moved to this office, and everyone else stayed where they were, other people tried to take advantage. They asked me, "What do you want?" and offered me anything I needed. They tried to take care of me and explained that because I'm unaffiliated, we can do things differently and I don't have to vote in the same way as the faction. No one realised that I made decisions not because of the party whip, but my own convictions. One day, I made an application to the party, went to them and said that I need this identity. First of all, I think that it is impossible to build a political system without being in a party. Saying that "someone someday will make the right party and I'll join it" is infantilism. Just try and build a decent party in a place where there's no tradition of this because they were always sold as a franchise. This is a very difficult thing, and it requires responsibility from the very start. I understood this, and also the fact that I just need the identity to have a circle of protection around me. Since then, although I am officially unaffiliated, I identify myself as Samopomich to everyone, and for me it is a great honour to be part of the team and bearer of a specific value system that is shared by people in the faction, party and local organisations. This helps a lot.

The political future of Samopomich will be closely linked with you, as you hold the highest position achieved by the party so far. Where do you see the political niche of Samopomich? Should it be social-democratic, right wing, liberal?

– We often discuss this vision of the party's mission and have come to the understanding that our challenge is a little different now. Traditional ideologies have shifted somewhat in the modern world. Tony Blair wrote about it in his book *A Journey*, for example. The way ideology was perceived at the beginning of the 20th century and at the beginning of the 21st century is two different things. People expect the

same things from the state, no matter which ideology they or their parents adhere to. That is, as far as Western democracies are concerned. The situation in Ukraine is different still. Today, we have two ideologies: oligarchic and anti-oligarchic. However today's political forces in parliament position themselves, all of them, except for Samopomich, change their rhetoric depending on the changing interests of the people that stand behind them. Often, they are also influenced by Russia. It is necessary that we have a critical mass of people in parliament whose primary ideology is the removal of the oligarchic political system. I am in no way bloodthirsty, and am not exactly champing at the bit to put everyone behind bars. These oligarchs will have to give back what they took from society. Because to a great extent they all acquired their wealth by abusing the benefits of society. And it's time to give back. Each one should build some sort of Rockefeller Center in order to leave something for the public. Let them continue to develop their businesses, but policy must be built by people who do are not so economically dependent. Big business will never make decent politicians. A person who comes into politics to defend their big business is unfortunate. They can't think about the interests of the state and society, because they have to think about how to preserve and increase their wealth – such is their nature. So we need to help them by pushing them out of the political system. This is our main ideology now. Then, when we get a political system where oligarchs do not have a majority influence, I will at least be able to calculate how much tax we collect. How can I say now whether we are a liberal or conservative economy, if I don't

The president, parliament and ministers – **471 people** – are a horizontal plateau that has to make decisions for the state. Meanwhile, anyone in Ukraine wants a godlike status as president – "whoever created everything, governs everything"

know how much money we have coming in, but I know that at least half of it is stolen? When I can count the taxes and audit the pension fund, I will know how much money we actually need for pensions, and then I can say that we should be such and such a type of economy. Now, it's all guesswork. We have no control over most of the public finances.

To what extent do the current beliefs of Samopomich leadership and founders correspond to the policy of local branches?

– People in the regions are mostly very good quality. However, finding them is a tough mission. Good-quality people do not want to go into politics. They say, let me help you a bit, but I don't want to get involved in politics. This stereotype should be broken. Politics can be different. People who join us do so based on certain values that are clear to everyone. On the basis of integrity, compassion, openness and accountability. Through this, we find common ground, and even complex issues are not a stumbling block. We speak the same language. Moreover, it's nice to watch people in our local branches learning horizontal decision-making. When they expect to get some orders from above, they are told: it's your decision, it's your town. We sit ▶

down together, have a think, they start to make proposals – and a solution appears. For them, this is a great mystery – they are only just finding the ability to make decisions in themselves. Or the opposite situation, when here in Kyiv there are attempts to influence decisions in the regions. People come to us and say that there will be a vote in Dnipro or Kherson, so we should have a word with our people there. We say that they are clever and know what decision to take, so how could we influence them. At first, they thought we that we were joking around, because that isn't the way things are done, but there is now an understanding that it's really the case – in principle, everyone is responsible for what they came to do.

What do you think of the peace-making potential of the Minsk or Normandy formats? Will it be possible for Ukraine to solve its age-old problem with its neighbour in this way?

– In fact, the wrong thing is being solved. Minsk is an attempt to escape from reality. Above all, by the Western world. Russia creates this false reality, and everyone falls for it. It wants to bring Ukraine into its imperial surroundings, wants a vulnerable and dependent EU that it will be able to disrupt, and all this in order to end up one-on-one with the US and divide up the world with them. That's the ambition. In order to destabilise Ukraine, Russia has used financial terror by investing partly in the economy and partly in the oligarchs that it brought into politics. Now, every time they need the horse to buck, they simply pull on the reins. When it was necessary to activate all this for the occupation of Crimea and Donbas, all the "sleepers agents" came out of the woodwork. Although there are still many of them in Ukraine. Russia has got a lot of the same "sleepers" in Europe. Political parties and the media that they finance, as well as Russian money. Europeans think that this money protects them, but it actually covers "sleepers agents", and no one knows how and when they will wake up. This is all a big threat. Today, Russia causes problems all around the world: Transnistria, Karabakh, Georgia, Ukraine, Syria. It's such a trouble-maker. Russia sells this instability in order to draw attention to itself and make itself a force to be reckoned with. Both Europe and the US should focus on solving the problem of Russia as a bad guy that is a pain in the neck for everyone. But no one knows which approach to take. Well, he's such a bully, he'll start to fight even more and cause us another headache. Because no one wants or knows how to pacify him, they have decided to appease him by offering certain benefits that, in the opinion of the West, could calm him down a little. And Ukraine is the bait. Russia has laid its hands on Ukraine, and now Europe and the Western world are faced with a choice: give the victim to the dragon or fight for it. Some people in the West have already realised that the dragon will not be satisfied with one victim and will eat the whole village. But since there is no real solution to the problem, they continue to try to do something with Ukraine.

I have already heard from European politicians ideas about continuing to democratise Russia and work with it from within. "From within? Where's that?" I ask. "What? You don't believe that they will let our information in?" I say, "No Russian brain will take in your information, be-

cause it contradicts their beliefs about themselves. You might get through Putin's censorship, but you won't get through the censorship of the zombified Russian brain. There's no angle to approach them from."

Again, in order to seek a solution, we must first recognise the problem openly and say that the problem is not Ukraine and that it's not a conflict in Ukraine. The problem is Russia, and it is necessary to look for a way to solve it. This is impossible to do in the Normandy format, because the US is not there, and it's unachievable without the United States. Actually, we should think about how to expand this format, change it and find the opportunity to involve the United States, perhaps the UK and other European countries. And we really need to seek a new legal order. The UN Charter does not work, obviously. The safeguards that were in the UN system and OSCE have all fallen apart; they are still pottering around under their own momentum, but it's gone and we have to look for something else. Otherwise, the world will not survive – there must be some systems of collective security.

Are we puppets in this game or active players? How independent is the Ukrainian president?

– We're not puppets. But what can we do at the moment? It's easy to blame the president and I criticise him myself when there is a good reason, but... The country is at war, a country that at the beginning of the war had no Armed Forces at all and which is surrounded by 6,000km of Russia and its allies. How can we be an active player in this situation? Once, David Kramer from the McCain Institute, commenting on the phrase that there is no alternative to a diplomatic resolution of the conflict, put it very well, "Yes, but diplomacy only works when it is standing behind tanks." Now, I think the US understands the error of the Budapest Memorandum, which took away Ukraine's nuclear weapons and tactical missiles. Then, they thought that it would be easier to have one strong player, and changed Ukraine from a subject into an object. Now, they are apparently aware that the weakening of Ukraine led to a strengthening of Russia. You can even make parallels to World War I, when no one was interested in Ukraine being strong. There were a lot of neighbours who preferred Ukraine to be part of something else, under someone else's influence or a protectorate. I think that this will never happen again. Ukraine has established itself as a political nation over 25 years, but we still have a long way to go in order to change from an object into a subject, and an army is essential here. A very strong and powerful army.

Is a Croatian-style solution possible for Ukraine?

– Russia is not Serbia. We must understand that there are only two ways to regain this territory. We either recapture it or wait until Russia leaves it. I can't rule out the military option, but it will be decades before we can afford ourselves the opportunity to do that. Or Russia becomes so weak that it will be forced to leave these areas to deal with something else. And then the biggest battle will begin. For the hearts and minds of people who spent so much time under occupation, mainly informational occupation. Meanwhile, we should recognise the occupation, isolate the conflict politically and economically, and build a strong state of dignified people. ■

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The daily life of cartels

Lyubomyr Shavalyuk

On competition and state anti-monopoly policy in Ukraine

The market is not omnipotent. This conclusion is evident to both market economy theorists and practitioners, who are faced with its shortcomings on a daily basis. Nevertheless, humankind has not yet invented anything better. Moreover, 70 years of communist experiments prove that even when we get a better idea in theory, it will not be a replacement for the market, but rather its continuation, a sort of superstructure based on the same unshakable market principles.

Competition always exists alongside the market. It occurs where there is more than one seller (buyer), which forces manufacturers to be more active in order to make the most profit possible per time unit. Competition envisages an unprecedented strain on entrepreneurs' efforts, but ultimately rewards society with decreased production costs (saving public resources), increased product quality, lowered prices to cost level (the production cost of the least efficient manufacturer that remains on the market) and the elimination of inefficient producers. Entrepreneurs are always kept on their toes, progressing and evolving, while consumers enjoy a quality product for a low price. This positive social effect forces market economy theorists to passionately defend competition and government officials to keep tabs on it and step in at the first signs of market distortion. The economies of developed countries function in this way, more or less. Ukrainian circumstances differ significantly.

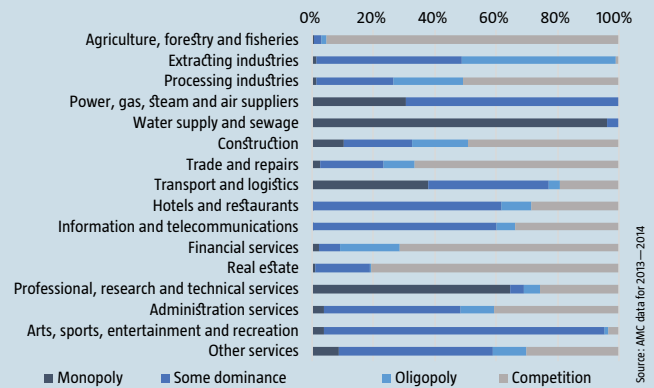
THE LAW IS AN ASS

Today, three laws form the basis of Ukrainian competition legislation: On the Antimonopoly Committee of Ukraine (AMC), On Protection of Economic Competition and On Protection from Unfair Competition.

The first regulates the activity of the AMC, which is the government agency responsible for antimonopoly policy. The law was adopted back in 1993, a year after the committee began work. It existed in its original form without amendments until 2000. This means that during the first ten years either everyone was satisfied with how the committee worked, or those who were not happy with it did not have sufficient influence in the state. The second option is more likely. To be precise, the oligarchs who established themselves on the country's economic and political scene at the turn of the century later began to use their power to change laws they disagreed with for their own benefit and the benefit of their businesses.

Fighting for position

According to the AMC, there are not that many clearly monopolized markets. In fact, however, if we look at all aspects of monopoly, a much larger part of the economy suffers from monopolization



The AMC has two key functions. The first is to protect competition, expose and stop any violations of it, and ensure the priority of consumer rights. The second is to control the concentration of companies, so that it does not lead to the formation of monopolistic monsters. According to experts, both functions of the committee, as well as its operation principles – as prescribed by the law and implemented in reality – are fully in line with international practices. At least they were at first, before the oligarchs started to interfere.

PROTECTING COMPETITION

The second law is fundamental to conducting antitrust policy. It was passed in early 2001 to replace the law On Monopoly Restrictions and Preventing Unfair Competition in Business. It was an attempt to rethink the principles of competition under the new conditions when the economy began to grow.

Two items that deserve special attention appear in the list of anti-competitive actions spelled out in the law, namely actions that lead to a limitation of technical and technological development and measures to remove other businesses from the market or limit their access to it. Violations of these two points, as will be shown later, are a common feature of all the monopolies that can be found in Ukraine and consistently hold back the country's development.

The law qualifies a monopoly position as one where one business entity has a market share exceeding 35%, the largest three market participants have a total share of over 50%, or the largest five have more than 70%. Based on this categori-

sation, the AMC divides markets into monopolies (with characteristics of individual dominance), oligopolies (with signs of collective dominance) and competitive ones. According to the committee (see Fighting for position), pure monopolies do not occur in Ukraine too often. Besides, their formal existence does not necessarily mean that a monopolist takes advantage of their position. However, many people are aware of how monopolies actually operate and how much effort businessmen, especially oligarchs, exert to have a monopoly on a certain market. If the juice were not worth the squeeze, then no one would fight in this way for a monopoly position.

Most cases of competition violation looked at by the AMC conclude with recommendations from the committee. According to the law, the guilty party is completely vindicated if it implements them. In fact, until recently, the committee specialised in issuing recommendations. Nevertheless, the law provides for fines of 1%, 5% or 10% of an offender's annual income, but this happens extremely rarely. The figures speak for themselves: according to the AMC annual report, last year the committee imposed 339 million hryvnias (~\$13m) in penalties, which is 3.4 times higher than the 2014 figure (evidently, the amount prior to this was even smaller). We should add that it was recently decided to fine seven oil traders 204 million hryvnias (\$8m). These are all of the committee's successes so far.

The fine issued to Gazprom for abuse of its monopoly position in natural gas transit through Ukraine, which amounts to 172 billion hryvnias (\$6.75bn) including penalty fees, could be the AMC's first considerable step in the financial struggle to preserve competition. A struggle that is accompanied by loud scandals every year in Europe and because of which companies like Google have to pay billions of euros into the budgets of European countries. For success in this area, the committee will have to do some good work in the courts, and judges, as well as AMC employees, will have to resist the bribes that the Russian side will doubtlessly offer them repeatedly to put everything on the back burner. Therefore, the Gazprom case will be the litmus test for changes in the committee and government institutions in general.

In any case, the size of fines for anticompetitive behaviour is increasing. That may signal that the committee is on the right track. But there are two sides to this coin too. To have high-quality antitrust policy, including fines, we need an effective law enforcement system and flawless operation of the committee. However, as soon as these conditions materialise, an army of politicians and oligarchs will immediately want to use the AMC as a tool to suppress competition. Then, in the Ukrainian context, the committee may become a body that punishes competition rather than restoring it. How can we achieve a balance? The issue is complex, and there cannot be a solution to it without the institutional independence of the AMC and the financial independence of its employees.

A GREY AREA OF RESOURCEFULNESS

The third law is "On Protection from Unfair Competition". It is surprising how inventive businessmen can be in gaining the upper hand. In the name of profit, wheeler-dealers label their products with competitors' trademarks, create brands similar to well-known ones (e.g., Adibas), copy the appearance of products from famous brands, discredit rivals with negative information, bribe competitors' suppliers or clients to act to the detriment of concluded agreements, acquire rivals' trade secrets from their workers (this is universal in Ukraine) and so on. The list of unfair competition tools is extremely wide. We can only guess where Ukrainian business would be if all this "creativity" was redirected in a constructive fashion.



EFFECTIVE COMPETITION POLICY IN UKRAINIAN CONDITIONS CAN MEAN NOTHING BUT MASSIVE TRANSFORMATIONS AND WIDESPREAD REFORM. ONLY THEY CAN PROVIDE COMPLETE AND PROFOUND DE-MONOPOLISATION OF THE ECONOMY


The law also provides for penalties of up to 5% of annual income for violations. If there is no income, the amount can be up to 10,000 times the tax-free allowance.

Unfair competition, although it is a negative phenomenon that shows the level of business culture in a country, does not have the same devastating impact on a system as monopolisation and the artificial, deliberate distortion of competition. It is necessary to pay attention to this, but the focus should be on de-monopolisation.

It is interesting that this and previous laws contain a provision that entitles people affected by distorted or unfair competition to compensation for the damage caused by offenders, which the victims have to prove in court. But do we know of even isolated cases when a consumer has been compensated as much as a few thousand hryvnias for false information on a label, or when a small businessman won millions in damages from a big monopoly? This is a rhetorical question. An affirmative answer to it will not be possible until the law enforcement system starts to function correctly.

THE STATE FACTOR

The developing economy stands for an economy in which the institutions are far from ideal. Ukraine has a typical developing economy, as many authorities promote monopolisation rather than competition. Most government agencies and the people who work in them have not only become accustomed since the days of the Soviet Union to constantly interfering in the affairs of businesses, but partly consider it their main function.

Last year, the AMC sent a questionnaire to 830 business entities, the replies to which are given in the 2015 Report of the Ukrainian Antimonopoly 

Committee. Most respondents had come across actions that distort competition. Indeed, 30% implicated the local authorities in this, 22% – central authorities, 20% – legislators (parliament) and 16% – the judicial system. Against this background, the 30% of respondents who see the actions of other entities – their competitors – as the cause of unfair competition seem like a negligible part of the problem.

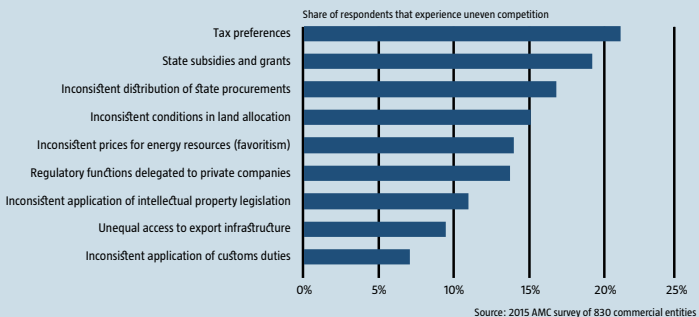
The exact forms of restrictive practices are also very interesting (see State Monopoly). The biggest problem, mentioned by 21% of respondents, is tax relief, when the state – ostensibly with good intentions – wishes to support certain companies and industries. The road to hell is paved with good intentions. These initiatives have only negative consequences: complications for efficient producers and the conservation of inefficient ones, as well as the use of tax incentives by oligarchs in order to fill their own pockets at taxpayers' expense. That is to say nothing about the social spending that this money could have gone towards. The worst thing is that there is still a whole host of supporters of such measures in Ukraine, even among academics.

The same applies to other factors that arise from government actions. Subsidies to enterprises, personal assignment of public contracts (relevant before the introduction of ProZorro), differing energy prices, the use of taxes and duties to pressure one company while being lenient towards others – all these anticompetitive actions are well known to anyone who has at least a bit of experience in Ukrainian business. Not to mention absolutely illegal activities, especially on the part of security forces (the police, Security Service, Prosecutor's Office), which often demand money from some while providing cover for others in return for an appropriate fee.

Indeed, the state, represented by various authorities, regularly distorts the competitive environment. This problem has many not only forms, but also inherent causes. First, as already noted, this is a direct consequence of the Soviet period, when an entrepreneur who had not even done anything wrong yet was seen as a potential criminal, just because they went into business. So they regularly had to prove that "two plus two does not make five". Such practices are still common, although reforms are intended to transform the situation. Second, another element of the Soviet legacy is the size of the public sector. It is so large that companies cannot avoid regularly coming into contact with the state and suffering from its unwieldiness, which at best does not have malicious intent, but still causes harm. To overcome this, the state's role, its influence, and the size and functions of the state machine should be reduced. No matter how noble the social motives used by opponents of this to justify their beliefs, a smaller public sector will provide great impetus to businesses and deliver considerable benefits, including for social services. Third, imperfect legislation and the right of the authorities, such as the tax office or customs, to interpret it at their own discretion. As a developing economy, we still

State monopoly

The state monopolizes the regulation of socio-economic processes. As the results of a survey of businesses shows, it uses this position to distort competition



have a long way to go in cleansing our legislation of Soviet relics and other superfluous elements. And until we go down it, our laws will resemble a swamp that sucks the energy out of any markets and competitive environments. Finally, it is clear that behind the scenes of these processes there are often oligarchs and "minigarchs" using the weaknesses of the state in their favour. Then it becomes merely a tool for light-fingered individuals to achieve their dubious goals. There is no solution that does not involve figuratively chopping off these fingers or minimising the influence of any one person on the decisions of public bodies. De-monopolisation (in the broad sense) and de-oligarchisation are intended to do precisely this.

The entrenchment of state factors that distort competition suggests a broader conclusion. In developed, European-type economies, businesses succeed through internal transformations (designs, inventions, know-how, cost reduction, active marketing). The market and competition are a platform for them to put themselves to the test and compare themselves with others in order to continuously improve. In Asian-type economies, most of which are still developing, success is achieved through external factors: connections, especially nepotism, the creation of conglomerates and contacts with the state. For such a company, the market and competition reveal its weaknesses, which businessmen want to hide, not understand. Unfortunately, there is still too much "Asia" in Ukrainian business, as nepotism and contacts with the authorities are one of the most important factors of production here. Under these conditions, economic development will never occur, so it is necessary to leave behind these traditions, which, by the way, are not inherent in the Ukrainian mentality. This transformation is impossible without releasing the energy of small businesses, which are now tunnelled on "the realities of doing business". This potential can only be truly realised in a normal competitive environment, which should be cherished as the apple of our eye.

UKRAINIAN-STYLE COMPETITION

The distortion of competition and monopolisation of markets in Ukraine have many more man-

ifestations than those described in legislation and which the AMC has the mandate to fight. These shortcomings are deeply rooted not only in the economy, but also in the minds of businessmen. Here are just a few examples.

Let's start with the banking sector. Many people are aware that a large number of financial institutions until recently operated like oligarchs' pockets, providing loans to their owners' companies at a low, preferential rate and to other borrowers at a high, market one. This is an incredible distortion of competition, as oligarchs' inefficient business received cheap financing, which was a factor that conserved their inefficiency and "limited technical and technological development", as the legislation mentions. Alongside this, genuine entrepreneurs were forced to pay high interest rates to oligarchs' banks, because they had no alternative sources of funding. In fact, for many of them this was a factor in their "removal from the market", which the law also refers to. Was there at least one AMC investigation in this field? Probably not. It is good that the National Bank has finally got down to business and has started to clean up these personal banks, simultaneously forcing financial institutions to minimise their lending portfolio to associated persons.

Yet another, very recent example from the banking sector. PrivatBank, which has a de facto monopoly position (about a quarter of the banking system's assets), takes advantage of this in order to not meet the requirements of the National Bank, which are identical for all. Why should PrivatBank be special?

We often cite the example of Apple, which was founded in a garage. If it had been based in Ukraine, then after the first signs of success it would be regularly visited by tax officials, security forces, firefighters, hygiene inspectors and common bandits; letters would start to arrive from the courts and there would be offers from competitors or oligarchs to buy the business. That is pure and simple "removal from the market", although not directly. How many thousands of these start-upshave been destroyed and who will be punished for this?

Another such sector is agriculture. Many now speak of it as the driving force of the economy. Today, we export almost 2/3 of all grain grown (in the future 4/5). According to data for the 2014/15 financial year, the 10 largest exporters accounted for 46.4% of the wheat, 38.6% of the corn and 68.8% of the barley sold abroad. Three years ago, these figures exceeded 50% for all mentioned crops. This is because the largest exporters are the only ones who own or control the infrastructure needed to transport and store grain. Given the fact that in each region the number of large companies is limited, this is a real monopoly. Does anyone really think that monopolies do not take advantage of their position by lowering the purchase prices for grain that they offer to small and medium farmers? This is a monopoly in principle, while we sit here saying that small agribusiness has no money or development opportunities. Of course not. And it never will, just like any small or

medium-sized business that has to compete at a disadvantage with monopolies just for resources, not to mention the price of the finished product.

It is possible to go on about oligarchs' monopolies for a long time. It is worth mentioning the Yanukovich era alone, when oligarchs, alongside the regime and using their monopoly on power, took part in corporate raiding, rewrote laws to suit themselves and carved up the budget. Let's hope that this phase will forever remain a thing of the past.

It is also worth mentioning state-owned companies, many of which are natural monopolies. Since they were only used to extract cash flow, no one was ever interested in their development. Moreover, the absence of changes in the regulation of entire sectors led to the fact that the relevant state enterprises preserved their status as monopolies and new businesses were simply unable to emerge. Here is the "limitation of technical and technological development" of public companies, which was caused by their state ownership and the cash cow function of these assets, as well as "restrictions on market access" due to the rejection of adequate regulation. Naftogaz [oil and gas], UkrGasVydobuvannya [gas production] and Ukrainian Railways, among others, serve as a good example here. In all developed countries, the fields in which these companies operate are not monopolies and they can mature thanks to adequate regulation. Inactivity and public ownership are factors of an anti-competitive environment. I do not even want to recall incidents such as the reduction of railway tariffs for the oligarchic metalworking industry at taxpayers' expense.

The somewhat less than economic factors of monopolisation and the distortion of competition that are inherent in the Ukrainian economy cannot be ignored either. First, the entire political class was until recently a closed club, which monopolised power and eliminated competition, drawing revenue from state monopolies. Second, as a result, the same class monopolised the right to withdraw capital from the country, which is sorely missed by genuine entrepreneurs. Third, in preserving and protecting the position of their inefficient businesses, oligarchs and top politicians (electronic declarations show that the political class may be inferior to oligarchs in their number of assets, but by no means in lifestyle) keep the number of jobs in the country low. They have a monopoly on hiring workers, which Ukrainians pay for in low salaries and pensions, as well as the shortage of jobs that results in systematic emigration.

The AMC has no bearing on an absolute majority of these forms of restrictive practices, as no laws give it the necessary powers. Effective competition policy in Ukrainian conditions can mean nothing but massive transformations and widespread reform. Only they can provide complete and profound de-monopolisation of the economy. Moreover, the actions of the committee alone are not enough – coordinated work will be required from most government agencies, supported by targeted pressure from civil society. ■

Zoya Borysenko:

“It is more important to create a competitive environment than to fight against monopolists”

One of the authors behind Ukraine’s anti-monopoly policies in the 1990s, Zoya Borysenko spoke to *The Ukrainian Week* about how oligarchs have limited the Anti-Monopoly Committee’s impact, and changes that are taking place in this domain today.

Few people can explain today why the Anti-Monopoly Committee exists and what it does. You were among those who helped create it. What was the original idea behind it? What mission did you see for it?

— The AMC was established in 1993-1995. The goal was to protect competition. Ukraine had to build its system from scratch, creating a completely new legislative field and respective state entities, and training specialists for all this. American and European experts from the OSCE, UNCTAD, USAID and World Bank provided huge assistance. They were interested in creating a civilized field for entrepreneurs in the country because international businesses had huge plans for us.

New markets are attractive for investment because they can yield huge revenues. Yet, people could not afford to come to a country with no adequate and competitive business environment. We could feel how enthusiastic people here were about this: a different Verkhovna Rada was in place, a different Cabinet too. Today, unfortunately, all this is very different.

What do you think of the AMC’s work today? Has anything changed?

— The system has been in place for over two decades now; a new generation of anti-monopoly specialists has appeared. Still, it took a year to appoint the current staff because those on top couldn’t pick the candidates that would be convenient for everyone.

The new managers are mostly fairly young people with prestigious degrees in economy or law. They have come to the AMC from private business, law firms or consultancies. Yes, most of them really never worked directly with the application of anti-trust laws. Moreover, virtually all new managers have little executive experience in running extensive teams. In the early 2016, AMC structure, including regional offices in every oblast, comprised 636 employees. This is a huge regulator tasked with control over very complex issues and protection of competition across Ukraine. To do this kind of work, one needs not only purely professional expertise and skills, but good organization capacity as well. Therefore, we shouldn’t expect any significant changes in the way the AMC operates anytime soon.

Given the data posted on the AMC’s official website, the newly-appointed team is still learning. They are having workshops, conferences and trainings funded

Interviewed
by **Andriy
Holub**

by foreign investors. Meanwhile, no improvements in procedures to prevent violations of anti-monopoly laws have taken place since 2015. The AMC website mostly informs us about licenses, appeals against violations in public procurement procedures or penalties for failure to provide necessary information to the regulator. The most burning issues, however, which are in the spotlight for most experienced anti-monopoly regulators in the world, take too long to be looked at in Ukraine.

Could you give examples?

— These are the things that common people and businessmen are worried about: outrageous violations by monopolists, cartel agreements, criminal actions of government entities against businessmen, numerous facts of imprudent competition. There are a huge number of such violations in practice, while the AMC stops very few of them. Utility services are just one example: the rates for them are unreasonably high while the quality of services is very poor. Take my own apartment: one radiator doesn’t work. Every year, the utility company people come over, try to fix something – and that lasts till the end of winter. The same thing happens over and over again, every year. The explanation is simple: I pay for the service, and when it’s not provided well enough, it means that the monopolist provider is abusing its status. It should be fined heavily to discourage from such practices.



Zoya Borysenko is Professor of Economy. In 1993-2001, she was First Deputy Chair of Ukraine’s Anti-Monopoly Committee. After that, she taught at the Kyiv Mohyla Academy and KROK University for Economy and Law. Since 2015, Mrs. Borysenko has been Senior Fellow with the Verkhovna Rada Legislature Institute.

Or take cartel pricing in the markets for petroleum products, medicines, or many other services? Obviously, price hikes that happen regularly at one time and for no good reason are a result of cartel agreements. Officials, meanwhile, prefer to not prove that this is the case. And when they do, key players on the given market are somehow overlooked.

In fact, our laws provide for a serious penalty for violation of competition rules. This can include a fine of up to 10% of the business entity's yearly revenues. The business entity in this case covers the violator, as well as all affiliated entities, i.e. founders, subsidiaries, family members and more. So the punishment can be very painful.

Earlier, when we were at the AMC, the violator could also end up in jail: the system of sanctions included criminal liability like it does in many developed economies. This means that the AMC has powerful tools to use against wrongdoers. Unfortunately, it is not exercising them to a full extent. Quite on the contrary, it often punishes not those who neglect the law. In some cases, the law envisages recommendations for the wrongdoer, not a fine. The problem is that these cases are not outlined clearly (significant or insignificant impact of the violation on competition is not defined clearly in law). Isn't this a legalized way to corruption for low-paid officials?

How were cartel agreements decriminalized?

— Until 2001, the Criminal Code of Ukraine had a fine or up to three years in prison for a wrongdoing. When a group of wrongdoers was involved, they faced up to 5 years in prison. When Oleksiy Kostusiev chaired the AMC (in 2001-2008 – **Ed.**), this penalty was changed several times, and eventually abolished in 2011. Lately, a campaign has been in place to review the system of fines, too.

What changes are the legislators looking to pass now?

— The Verkhovna Rada is currently looking at the draft law to change the system of calculating fines for anti-competition activities. MPs claim that the bill should be passed to restrict arbitrary actions of officials in defining the rates of fines and to create ways to appeal against penalty decisions in courts. This requirement stems from the Association Agreement with the EU. The problem is that the current laws lack even the most general description of a procedure to calculate penalties or a list of extenuating or aggravating circumstances. This means that currently an official decides everything.

The idea to change this is good in itself. However, if it is actually to work, it should be integrated into law. The suggested amendments, however, only offer to include a reference to the penalty calculation methodology which the AMC is developing. Because of this aspect the draft law was returned for further improvement in the second reading. But the necessary changes are still not being made.

Without integrating the procedure to calculate the penalty into the law properly, the idea will not work effectively: those who need it (foreign companies mostly) will be unable to appeal against officials' decisions in courts. Courts do not rely in their verdicts on methodologies. This is because Art. 92 of the Constitution says that the rules of competition and anti-monopoly

regulation are defined exclusively by laws. If the current draft law is passed, the EU's requirement will be met formally. But it will be next to impossible to prove an official's wrongness in courts.

Another tricky thing about this draft law is this: the methodology profoundly changes the concept of fine calculation that's applied in international practices. We used this concept in the early 1990s as the basis for developing Ukrainian laws. It placed an accent on penalties as prevention: they had to potentially exceed the wrongdoer's profit from violation. The AMC's current methodology provides for relatively small penalties, while the significant components of the punishment will be determined by a responsible official. This creates loopholes for corruption. Thus, we are now seeing a decrease in the severity of punishment for the violation of competition law. This plays in the hands of our oligarchs whose businesses mostly have monopoly positions in Ukraine.

Would it be right to say that oligarchs were the main driver of market monopolization in Ukraine over the years of independence?

— This is a very important question: it reveals a key reason for many of our malaises. Ukraine's economy is highly monopolized. This is not because some individual businesses have been hugely successful, but because some people had close ties to those in power in the process of property redistribution. It is too bad that the AMC has not prevented, but often encouraged this process throughout all years of independence – even though it had powers to regulate concentration. Oligarchs now own not only some big companies, but entire industries. It is not very difficult to redraw it all back and create a competitive environment. The only way to do this is to reveal and stop abuse of monopoly position. Yet, many newly-appointed officials who have due powers are lobbied by oligarchs and often try to avoid doing that.

What could change Ukraine's anti-monopoly policy?

— It would be more correct to refer to it as "competitive policy". It makes more sense to create a competitive environment than to fight with monopolists. Prudent competition would automatically solve most of Ukraine's economic problems which officials fail to do year after year. I think it is important to clearly follow the current laws in order to protect competition. International experts claim that Ukraine's competition protection laws are fairly sophisticated and take into account the practices of many countries which have a lot of experience in this field. Our main problem is not the lack of laws or officials who don't know what to do. It's that few actually stick to the law. One of the reasons why Ukraine's huge economic potential cannot be used to its full extent is the lack of a proper competition policy. It is also a big barrier in establishing cooperation between domestic businesses and the international environment.

In this, civic control is very important. People don't understand competition laws: this is true for average citizens, and for top officials. Very few actually realize how important competition is for the country. Therefore, our task No1 is to reinforce the role of civil society in solving the problems of competition policy. ■

Social schizophrenia

Oleksandr Kramar

Half of Ukraine's able-bodied adults are not paying taxes or social contributions, but still demand social services and benefits. How can this change?

The fiscal and economic problems facing unreformed post-soviet countries in recent years have grown worse because a significant portion of the working-age population is evading taxes and social contributions. Despite the switch to a market economy and capitalism, they all continue to live inside a soviet bubble: countless social benefits and “free” education and medical services are something that the state is “supposed to” provide. Yet too many able-bodied individuals don't contribute to the funds that are supposed to be financing all this. Even those who do, often only do so on a portion of their real incomes—and that a very small one.

TAXING THE FREeloadERS

The first “tax on freeloaders” was instituted last year by Belarusian President Alyaksandr Lukashenka. In April 2015, he signed a decree according to which all able-bodied citizens living on the territory of Belarus who are unemployed and have not paid any taxes for six months will have to pay a fee worth 20 basic units, currently €200 or be subject to fines or even suspended sentences requiring them to carry out community work.

This year, the idea was picked up by Russia. This past spring, Deputy Labor Minister Andrei Pudov announced that his Ministry was discussing the possible introduction of a tax on able-bodied individuals who were officially unemployed. When this announcement caused a stir, the Ministry's press service clarified that such a tax was only being discussed “at the expert level and in the context of studying the impact of this practice in Belarus.” Still, at the end of September, Russian Vice Premier Olga Golodets announced to the upper house of the RF legislature that a bill that would make unemployed citizens pay for their use of social infrastructure was being drafted, after all.

Still, it's actually Ukraine that faces the worst problem in this area, with nearly half of its working-age population neither contributing to the Pension Fund and other social services, nor paying taxes to the budget that finances their medicine and education.

TWIXT PAST AND FUTURE

In soviet times, the priority was to provide for as many of the basic needs of the population as possible by redistributing state resources through what was called social consumption funds. The Ukrainian SSR Constitution of 1978 included, beside the provision of free services and social

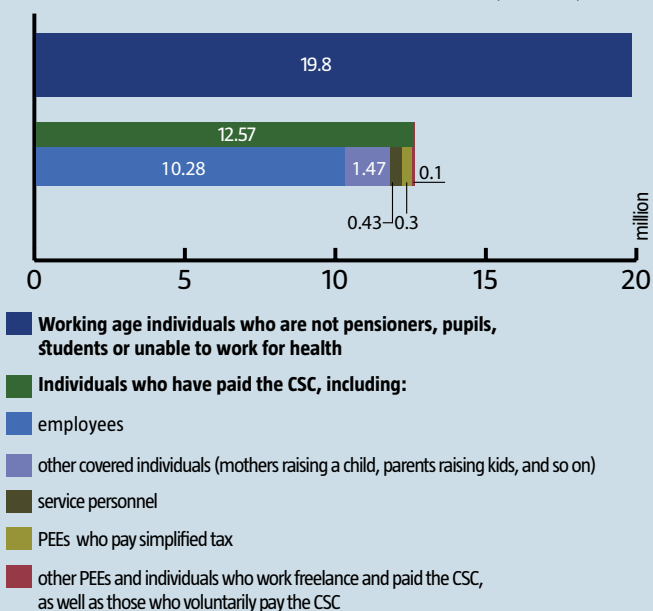
benefits, Art. 23, which declared that the state “with the purpose of more fully satisfying the needs of the soviet people, shall establish social consumption funds. With the broad support of community organizations and labor collectives, the state shall ensure the growth and fair distribution of these funds.”

Such social funds were the instrument for solidarity funding of a majority of most people's needs. For instance, the social consumption funds ensured that education and professional development were free, as were medical services, pensions and student allowances, and vacation pay, that rest cures to sanatoria were either free or deeply discounted, that children had pre-school institutions that took care of them, along with a slew of other benefits and discounts.

These funds were generated by the citizenry, whose incomes were under the state's watchful eye as everyone, without exception, worked for the state or in the ‘collective’ sector, meaning enterprises and organizations where any income earned by the workers was automatically transferred to the state.

On one leg

How many individuals should be paying the Consolidated Social Contribution (CSC) vs how many actually do



Source: Ministry of Social Policy data as of start of 2016 and DerzhStat data as of mid-2016; author calculations

In the USSR, it was a crime to “evade socially useful work” because then the state would lose the ability to control a significant portion of the added value that its workers were supposed to be generating on its behalf.

Soviet law, in fact, made it a crime punishable by incarceration up to two years or correctional labor between six and 12 months if a citizen “evades socially useful work and lives on non-labor-generated income more than four consecutive months or for four months during the course of a single year and has been issued, in this regard, an official warning about the unacceptability of such a lifestyle.”

Still, in a capitalist system and market relations, things are very different. With the owners of assets and employers generally private individuals and companies, while the state is now just one of many players, contributions into the “social consumption” funds are based on deductions from reported incomes. Moreover, there is no obligation to work or criminal investigation if it is avoided.

Instead, we have the far more effective principle of mutual dependence on participating in contributing to these social funds—in the form of insured medical, pension and other state and private funds—and strict liability for evading the payment of taxes to budgets at all levels of government. Based on this model, when someone fails to contribute to the various social funds, they and their family members have no right to draw on the services that are financed by such funds—even if that person were to die as a result.

Moreover, in a capitalist economy, such funds play a much lesser role because it replaces soviet collectivism with individualism, which means that everyone tries to give away as little as possible of their income to any common funds and to independently manage as much as possible of that private income. And that is certainly true of most Ukrainians today. However, among Ukraine’s citizens, this attitude is, paradoxically, not accompanied by an awareness that if you want something to be free, that is, medicine, education, decent unemployment benefits, sick leave and pensions all financed by public funds, then this has to be done by contributing 50% and more of your own real wages. The other option is to reduce the role of social mechanisms for funding education, healthcare, pensions and other social benefits and increase the role of the individual’s own efforts.

What we can see today in the attitudes of most Ukrainians can only be called social schizophrenia. People stubbornly hang on to the soviet mentality that expects the state to pay for all their needs in these areas, but equally categorically reject the notion of giving up a major portion of their incomes for public funding to pay for all these benefits.

DOUBLE INDEMNITY

The Consolidated Single Contribution (CSC) that was introduced on January 1, 2011, replaced four separate contributions: to the Pension Fund, the Unemployment Insurance Fund, the Temporary Disability Fund, and the Workplace Accidents Fund (known as Workers’ Compensation in some

countries). This contribution was cut steeply as of January 1, 2016, from 36-43% to 22%, of which around 18% goes to the Pension Fund and 4% to the State Service for unemployment and other social benefits to cover those same cases.

Since Ukraine does not have medical insurance and public funding of healthcare will continue to come out of the budget, personal income tax (PIT) until such time as medical insurance is fully instituted, the PIT is a kind of quasi-insurance payment in support of these services for the time being. The PIT is around 18%, but healthcare services actually cost the government a bit more than 50% of its PIT revenues: in 2017, UAH 77bn has been earmarked for this purpose out of anticipated PIT revenues of UAH 150.6bn.

The real problem is that, since the CSC was cut back, PIT revenues don’t even cover the shortfall in the social insurance funds that are funded by the CSC. The shortfall is expected to reach UAH 172.9bn in 2017. Based on the current number of contributors, even just to cover expenses for the social insurance funds and public funding of healthcare, the CSC or PIT rate would have to be raised from the current 40% to at least 46-47%. The only real solution is to radically increase the tax base.

A NUMBERS GAME

The Ministry of Social Policy data from the beginning of QII 2016 illustrates just how critical the situation is, in the correlation between those receiving pension benefits and those who pay the CSC. Currently, some 9.35mn pensioners across Ukraine receive this benefit due to their age, 1.4mn due to disabilities, 0.73mn due to the loss of the breadwinner, 0.66mn due to years of service, and 0.1mn for other reasons. But only 10.28mn individuals, including 0.61mn who are sole entrepreneurs,¹ pay the basic pension contribution. In addition, there are 0.43mn insured service personnel. Of the 609,000 FOP covered by the simplified tax, only 431,100 are insured and 130,000 of those are of retirement age or disabled. Of the 609,000 FOP in the general tax system and effectively self-employed, 225,000 did not contribute to the Pension Fund. Finally, 1.49mn Ukrainians belong to other categories of nominally covered individuals, but also did not contribute at all to the Pension Fund, including stay-at-home moms, foster parents, and so on.

For comparison, Social Policy Minister Andriy Reva says that Poland has 22mn contributors based on the same demographics. In Ukraine, there should be approximately the same number paying the CSC. According to Derzhstat, the state statistics bureau, only 17.35mn Ukrainians were registered as “economically active individuals of working age.” The actual number of able-bodied Ukrainians is much higher, because official statistics only include as “economically active” those who “are working or actively looking for work and prepared to start working within two weeks.”

Moreover, “working-age” individuals means men and women age 15 through 59, so it’s hardly surprising that, in Ukraine’s situation, the 10.9mn

¹Physical persons who are registered entrepreneurs, called FOP in Ukrainian.

who are “economically inactive” include mostly pensioners, pupils, students and individuals who cannot work for health reasons. Still, among them are 2.2mn of those who are “engaged in managing the household and are supported,” another 0.25mn of those “who don’t know where and how to begin looking for work” or “who think there aren’t any suitable jobs available.”

This already adds up to 19.8mn Ukrainians of working age who are not pensioners, pupils, students or unable to work for health reasons. This number pretty well matches the number of payers of social contributions in neighboring Poland, which has approximately the same population as Ukraine without the population of the temporarily occupied territories. The difference is that nearly half of this group in Ukraine contributes nothing to the budget or the social funds while at the same time expecting that they and the members of their families should have free medical and educational services, as well as at least a minimal pension in the future.

The social contributions and PIT base for individuals includes two groups of the employed: 5.1mn full-time employees in the private sector at enterprises with at least 10 employees, and nearly 3.5mn public sector employees, whose salaries are paid by the budget. Another nearly 1.5mn are engaged in micro businesses where there are fewer than 10 employees or are registered sole entrepreneurs. The number of self-employed Ukrainians who pay taxes and social contributions is insignificant. Moreover, most FOPs paying under the general tax system and self-employed individuals are in fact not paying the social contribution.

FREDDY FREELoader AND THE GANG

The problem is that a fairly broad range of individuals are considered formally employed in Ukraine when, in fact, they are not. Based on this, the state is delaying the resolution of a large-scale problem with hidden unemployment. Millions of people refuse official status as unemployed and the support for real job searching that goes with it. For instance, the largest group of nominally employed in agriculture is around 2.5mn country dwellers who have family farmsteads and gardens. Given the problems with finding jobs, especially in rural areas, they actually grow, or have the potential to grow a certain amount of produce for their family’s to live on and sometimes a portion of that is sold. In most cases, however, we are talking about a scale that is far from the one needed in order to consider this kind of activity as a viable source for keeping families alive.

At the same time, most of these people have undeclared income because they are working under the table in other towns in Ukraine or abroad, forming a major portion of the multi-million strong Ukrainian migrant labor force. Some of them may also be taking care of households or keeping the livestock while other members of the family work for money.

This does not mean that their problems with getting jobs that are more effective and stable should be taken off the agenda.

But they simply have no basis to avoid paying, together with other Ukrainians of working age, into those funds that will finance, at one time or another, medical services and pension benefits for them and members of their family, and unemployment or disability benefits. Otherwise, these benefits will have to be paid by the 11mn Ukrainians who do make these contributions, even though they are often no better off than those who work under the table.

The notion that the oligarchs will pay for this has no basis in reality. The budget, let alone social funds, is based on the contributions of all citizens. For instance, the latest report from the Finance Ministry for 2015 shows that revenues from the profit taxes of all corporations, public and private, were only UAH 39bn. The bulk of revenues came from ordinary citizens: the PIT contributed UAH 90.8bn, while the CSC brought in another UAH 185.7bn.

The fact that those Ukrainians who pay their CSC and PIT end up “sponsoring” not just their own needs but the needs of those who are avoiding paying these taxes tends to kill incentive, leading them to resent: “Why should I pay for benefits that others get anyway, even without contributing a single kopyyka?” and to understandably cut the number of contributors who keep paying without getting their fair share even more.

This vicious cycle can be stopped in a number of ways. One would be to refuse any state benefits to those who are not contributing to the Pension Fund, for example. But this is unlikely: if such voters end up at risk of dying of hunger and the cold, enough populists will pop up to lobby for such “freeloaders” to get paid at least some minimal amount of benefits from the state budget, including medical services and pensions—even if these individuals never paid a kopyyka of PIT or CSC to the budget.



THERE ARE MILLIONS OF CITIZENS IN UKRAINE TODAY WHO HAVE NOT CONTRIBUTED TO THE PENSION FUND FOR DECADES, YET WHO EXPECT THE STATE TO PROVIDE THEM WITH AT LEAST A MINIMAL PENSION WHEN THEY RETIRE

MAKING THE SYSTEM FAIRER

A large portion of individuals who officially are unemployed and are not contributing to the Pension Fund or paying the PIT are revealed by tax inspectors when they review companies on a regular basis. Just over January-August 2016, some 105,000 unofficial employees were discovered this way. For instance, in August, a review of a company making hanging chairs in Bakhmut County of Donetsk Oblast showed that, although it officially reported only four employees, in fact nearly 130 were working there.

Still, this kind of approach is unlikely to resolve the problem at a systemic level. Such companies may be forced to officially hire their under-the-table staff and pay the necessary payroll deductions, but a month or two or five months later, these same

people will be laid off while the company itself closes down and reopens under a different name, and so on.

The government needs instruments that will at least minimize the incentives to work in the shadows—even if they are unlikely to eliminate them altogether. The inevitable measure here seems to be the requirement to pay a minimal CSC and PIT, as the PIT has ended up “subsidizing” the CSC after it was significantly reduced. Eventually, mandatory medical insurance will be introduced, whose contributions will completely cover those basic services that are provided at no cost. The contribution to this kind of insurance should be at the level of at least 50% of the current PIT rate.

These contributions need to be made by all working-age citizens, whether they are working for pay or taking care of their household, living off rental fees or interest on deposits, or have other income from property that they own. To be employed or to simply make these contributions are everybody’s business. For instance, if one of the spouses considers that it makes more sense for their partner or one of their parents to stay at home and take care of the household rather than be hired somewhere outside the home, that person should pay their minimal CSC and PIT for them. This would guarantee that this person receives the minimum in pension benefits, medical services, and so on, so that this burden is not transferred to other taxpayers and CSC payers.

After all, even if someone is relatively well off today and has income from properties or is a member of a wealthy family, there’s no guarantee that their life won’t change significantly in five, 10 or 25 years and they might need public assistance in the form of a pension or basic medical services. For humanitarian reasons, it will be impossible to refuse them these benefits. Contributions above the minimal amount, of course, would be treated as voluntary.

Any changes in financing medicine will have to go both ways and motivate medical professionals to have a better attitude towards their patients. Since they will be making mandatory contributions through the PIT and medical insurance, individuals should then have the right to independently determine which state or private facilities they wish to frequent, based on their contribution to the funding.

PROPOSITIONS TO COVER SHORTFALLS

Today, there are about 39 million people living on territory under Ukraine’s control. Average annual budget spending per person for medical services is about UAH 2,000, based on the 2017 Budget Plan. This means that a family of 3-4 that has gone over to private medical facilities because of the unsatisfactory services provided by public ones has no way to make use of its UAH 6,000-8,000 share. If we only consider those families whose members are paying the PIT, then we are talking about an even larger sum. Of course, going to private clinics on a regular basis means paying considerably more than these sums. But at least part of this cost will be covered by the amount that

such families are currently simply “donating” to public clinics that they are forced to avoid.

MinFin’s draft 2017 Budget provides UAH 77.0bn for healthcare, UAH 161.6bn to subsidize the Pension Fund, and UAH 11.3bn to support the unemployable, which adds up to UAH 249.9bn. Yet only UAH 150.6bn is projected to be taken in from the PIT. In short, the shortfall in direct contributions from the working population is already UAH 99.3bn. If those 10 million Ukrainians who currently are paying nothing by way of PIT or CSC, or are paying them on nominal salaries that are below the minimum wage, were to make at least the minimal contribution to both, more than 80% of this deficit would be covered. The Social Policy Ministry proposes eliminating the remaining shortfall by relieving the Pension Fund of responsibility for paying out certain pensions, such as those based on years of service and other social benefits that the state has delegated to it.

The shortfall in direct contributions from the working population can reach **UAH 99.3bn** in 2017

There remains one serious problem. A lot of time has been wasted and there are millions of citizens in Ukraine today who have not contributed to the Pension Fund for decades, yet who expect the state to provide them with at least a minimal pension when they retire. Even if they start to contribute today, many of them will never attain the necessary years of contribution to get a pension at this point. At the same time, at the same time, it would be a social injustice to pay them even the subsistence minimum for pensioners that will also be paid out to a large portion of those who paid in all those decades.

In this situation, in order to not increase the retirement age across the board because of a particular group of citizens, a higher benchmark should be set for those who have not been contributing the necessary amount of time to the Pension Fund. If there is no indicator that there was a health issue—because that’s a different case where the need to receive a pension can arise well before retirement age—, the individual who is not vested because of not contributing long enough can and should be provided with pension benefits at a level that reflects their previous earnings and continue to work, if the pension isn’t enough to live on. The standard minimum pension can then be given at 70 or even 75, if no other health issues prevent them from working in the meantime.

In the meantime, increasing requirements to pay both PIT and CSC for those individuals who are either not contributing at all or are registered as officially unemployed should be accompanied by an active policy of incentivizing the creation of new jobs, especially in the manufacturing sector, particularly in depressed regions. *The Ukrainian Week* has more than once discussed the kinds of measures that might lead to this. If not, the country will be faced with a situation where a significant proportion of those who are genuinely unemployed will find themselves in a hopeless situation. ■

Potential at land's edge

Lyubomyr Shavaluyuk

How are Ukraine's ports changing the way they operate and what are their future prospects?

The last three years have been extremely difficult and extraordinary for Ukraine and changes have touched every aspect of life here. Economically, the difficulty is not that Ukrainians have lived through a lengthy crisis, but that this crisis was not a classical one. Unlike the crisis-driven decline in overall demand in 2008-2009, this time, business and investors are running into the destruction of infrastructure by armed conflict and plain theft—the confiscation of assets in occupied Crimea and Donbas—the loss of traditional markets and the search for replacements, and the need to eliminate the economic imbalances that have accumulated and stand in the way of a better future.

Developments in Ukraine's seaports are a very good illustration of the economic trends of the last three years. Having lost their Crimean harbors and undergone a real logistic revolution due to the military, geopolitical and economic events going on, this sector has barely lost anything on key indicators and is now gradually focusing on plans for growth.

WORKING UNDER CAPACITY

Ukraine has 13 functioning commercial sea ports. Last year, they handled 145 million tonnes of cargo. According to data from the Port Authority of Ukraine (PAU), their turnover capacity is 51mn t of liquid cargo, 180mn t of dry cargo, and 3mn t of TEUs.¹ This means that the ports were working at only 23%, 59% and 16% capacity in 2015, low numbers that were driven by a series of bottlenecks in their various systems.

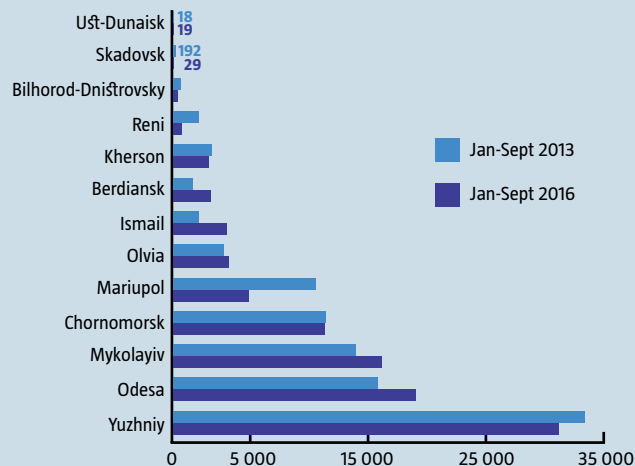
Of the handled volume, last year 72% of cargo went for export, 12% was being imported, 11% was in transit, and 5% was cabotage, that is, transferred between domestic ports by vessels from another country. The relative share of export to import cargo that is handled in the ports is based on the fact that raw materials, which Ukraine predominantly specializes in producing and exporting, is cheaper and heavier while the finished products that Ukraine imports and consumes are lighter yet more expensive because of their relatively higher added value. The small share of transit cargo suggests that there is untapped potential there. Since 2012, its share has shrunk by half from an already-low 23%, although even then it is far less than its potential. The problem, of course, is not just related to the stand-off with Russia, which is probably the main reason why transit cargo has gone down so much in the last 3-4 years, but in other, deeper issues.

When Russia took Crimea, it also took five ports, which handled 7.6% of Ukraine's total cargo ship-

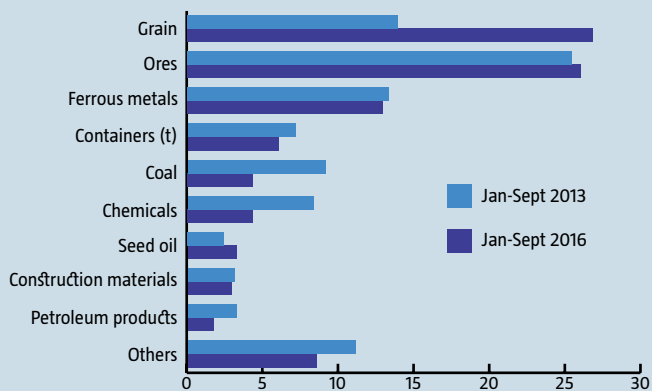
Staying afloat

Cargo handling at the sea ports under Ukraine's control has shrunk a mere 0.2% over the past three years, but its structure by ports and categories of cargo has changed significantly

Cargo turnover in Ukraine's ports, '000 t



Cargo handling structure in Ukraine's ports, mn t



Sources: Sea Port Administration

ments. Since that time, the traditional routes for shipments have undergone noticeable changes. The occupied peninsula's docks have lost pretty well all of their cargo traffic from mainland Ukraine and in 2014, their turnover fell by 67%. Eventually, Russia picked up the slack, amounting to 9.6mn t in 2015.

However, it's not practical for the Federation to handle its cargo in Crimean ports because, first of all, the only land connection is to mainland Ukraine and Russians are avoiding transiting through Ukraine. Secondly, the Russian press reports that

¹ Twenty-foot equivalent units measure the capacity of a container ship.

port fees in Crimean ports are three times higher than similar fees in Russian ports. The excuse provided is that they need to pay people wages. So of that volume, the biggest share, 7.8mn t, went to Kerch last year, although its documented capacity is only 6.9mn t. Prior to the takeover, the Kerch port had been working at 33-50% capacity. The Kerch harbor is being overused in order to supply Crimea, which from Russia's point of view is an island, with all its basic needs. Cargo turnover is growing: in the first nine months of 2016, it had already handled 7.1mn t, which was 32% more than in the same period of 2015. Still, the remaining Crimean ports are barely surviving and if the current geopolitical situation doesn't change, they are pretty much doomed. Since the international legal status of Crimea remains unresolved, the services of its ports will only be able to be used by Russians, for whom they are economically pointless.

APRÈS LE DÉLUGE, NOUS

Harbors in mainland Ukraine have also undergone major changes. The export orientation of cargoes that are handled in domestic ports has led the main indicators for these ports not only to maintain their levels but to even increase in the last two years: figures for 2016 show that they are back up to 2013 levels. For Ukrainian producers and exporters, it's clearly more convenient to ship through Chornomorske or Odesa than to Constanta, let alone Novorossiysk. For some it may now be more expensive that it was when they could ship through Crimean or Azov ports, but that is unlikely to change, for now, leaving the two Ukrainian ports as the optimal solution. The same is true for imports.

THE DECLINE IN CARGO HANDLING VOLUMES SINCE 2013 AT MAINLAND UKRAINIAN PORTS DUE THE ECONOMIC CRISIS AND A FALL IN PRODUCTION HAS BEEN COMPENSATED BY THE REORIENTATION OF CARGO FLOWS FROM CRIMEA TO THESE PORTS

As a result, mainland Ukraine's ports have been almost to maintain the same level of cargo handling over the last three years. Of the millionaire cities, only Mariupol's port has suffered serious losses, due to the difficulty receiving and shipping with a conflict zone just outside the city and Russia's complete control over the Kerch Strait. In short, the decline in cargo handling volumes since 2013 at mainland Ukrainian ports due the economic crisis and a fall in production has been compensated by the reorientation of cargo flows from Crimea to these ports. This has helped the docks to not feel the crisis, for all intents and purposes, and to continue to draw up and implement development plans.

The balance of cargoes handled in these ports has also shifted significantly. In tandem with the general trend towards growth in the farm sector, the volume of grain and oils handled has dramatically risen. The destruction of Donbas has led to a decline in

the handling of coal, coke, chemical and metallurgical products, but growing volumes of foodstuffs have compensated for these losses, tonnage-wise. The volume of petroleum and petroproducts has gone down as these shipments were reoriented towards deliveries to neighbors that are accessible by surface transport—Belarus, Poland and Romania—, while transit traffic has gone to Russian ports.

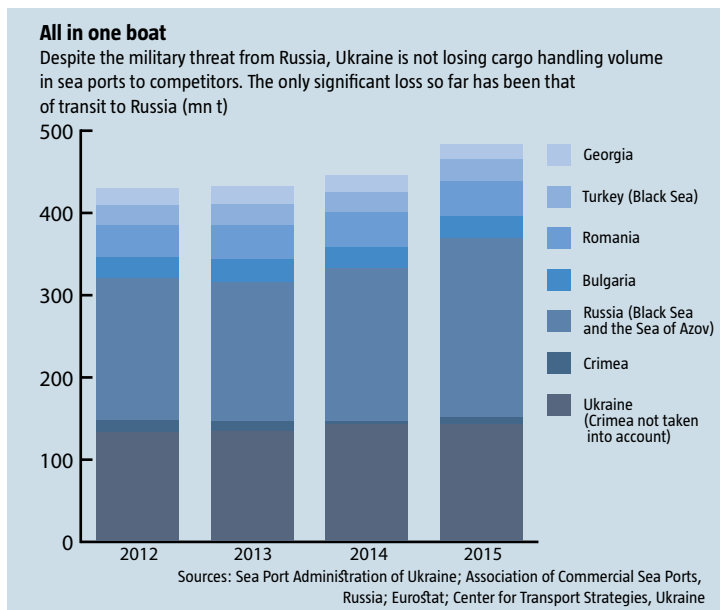
FIXING WHAT'S BROKE, FINANCING A FUTURE

Meanwhile, Ukraine's seaports have a number of problems and bottlenecks that are being worked on all the time. Moreover, this started well before the Euromaidan. The main changes took place in 2013, when the Law "On seaports in Ukraine" was adopted and then a Strategy for the Development of Ukraine's Seaports for the period through 2038 was drawn up. At the beginning of 2014, prior to Viktor Yanukovich's absconding, a separate strategic plan was approved for each of the harbors. At the time, rumors had it that these changes were meant to foster the "privatization" of the ports by the Yanukovich "Family." Fortunately, the Yanukovich regime never got that far, but the various transformations launched by it set up a chain reaction of some extremely necessary reforms.

For starters, this law separated the administrative and commercial functions of the sea ports, the latter being delegated to the Port Authority of Ukraine, as a state enterprise that has a branch in each of the ports and manages them all. The PAU also owns the marine shelves, hydrotechnical structures, docks, approaching roadways and service networks. The commercial side is handled by a state enterprise of the same name and stevedoring companies whom the DAU leases out port infrastructure. With the opening up of access to stevedoring operations for private entities, this segment has seen competition grow and investment projects to expand the quantity and variety of port capacities. The logical consequence of all this has been the gradual loss of market share for state stevedoring operators handling cargo.

Right now, there are a number of bottlenecks in the operation of Ukraine's harbors. First among these is the regulation of the ports, which the Ministry of Infrastructure is actively working to transform. A number of measures have been taken to deregulate ports, the number of procedures and oversight agencies has been reduced, electronic document use has been instituted and radio control automated, and mandatory control of insulated ballast has been dropped. All these steps are making it easier and cheaper for cargo to ship through Ukrainian ports and increasing their competitiveness at the international level.

Another problem is the inadequacy of port infrastructure to the requirements of the times: most older infrastructure is depreciated by 75-80% and many parameters, such as the depth of the port channels, the number of docks, the number and quality of warehouses, roadway approaches, are suitable neither to the economy today nor to potential transit volumes. The Infrastructure Ministry, PAU and private companies are working on re- ▶



solving this through local investment projects. The first efforts to systematize this kind of work were the previously mentioned strategic plans. However, since the Euromaidan, when private stevedoring felt the maximum of support from the state to attract investments, the quantity and quality of such investment projects that have been completed has skyrocketed, while the original plans have been adjusted substantially. That portion financed by the PAU has been growing steadily as well, thanks to the growing profitability of the company. In 2015, the Authority's net profits were around UAH 3bnm, as opposed to UAH 647mn in 2013. The company receives its payments in hard currency but pays its expenses in hryvnia.

Consequently, plans in 2016 were for capital investment of UAH 3.5bn, five times more than in 2015. This money will go to such projects as building docks, reloading complexes, slipways for ships, and marine entry channels, reconstructing existing channels, including deepening this channel at Yuzhnyi to 21 meters, and acquiring ships, cars, computer equipment and so on. Investments of one size or another are going to go into nearly every single port.

Dozens more investment projects are being financed by private companies. For instance, the strategic development plan for the port city of Chornomorske through 2018 approved in August 2015 includes 26 projects, mostly to develop reloading, warehousing and processing complexes, which will all be financed by private investors. Plans to develop the Odesa port include 12 points, only three of which will be financed by PAU and the rest by private independent investments, either solely or jointly with PAU.

The third problem is the actual sea ports are just one part of all the transport infrastructure in Ukraine whose state is far from what it should be. Roadways and railways need to develop in unison with the ports. This is extremely necessary if Ukraine wants to actualize its nationwide transit

potential. In this instance, only the state, as the regulator and organizer of capital investment flows is in a position to do anything.

PROMISING STRATEGIES

Today, it's clear that the process of developing the nation's sea ports is underway and is picking up pace. This is being helped not only by changes in regulating and managing the sector, which has made it possible to attract private stevedoring companies and significant investments in improving port infrastructure. Another positive change was the considerable profitability of state enterprises: not only PAU has seen its profitability rise as a consequence of hryvnia devaluation, but the state ports themselves have too. For instance, in the nine months of 2015, Yuzhnyi received UAH 796mn in net profits, whereas for all of 2013 it had only UAH 164mn.

Still, even all the good financial indicators, state ports are less mobile within the market and are realistically losing the competition to private stevedoring companies as their share of cargo handled shrinks. This process will continue, which means the profitability of state harbors is expected to go down. This means that Ukraine will gradually lose the value of these assets, but will gain greater quality of port services in exchange, better overall competitiveness of its ports, and growing volumes of transporting in the future.

This exchange will benefit the country, but not necessarily the state. And so there are a lot of complaints these days about state ports being squeezed out of the market. Given the current situation, it is the best time to privatize them all. Realizing this, the Infrastructure Ministry submitted a bill to the Verkhovna Rada in August in which it proposes removing the state ports from the list of assets that may not be privatized. If passed, they could become the prizes of next year's privatizations.

Still, in the long run, a number of more complicated issues also need to be resolved. Experts say that these investment projects could still be too little to bring Ukraine's transit potential to the necessary level. The country needs to think about how to radically increase port territory. And this means that adjacent farmland will have to be rezoned and effectively sold to the ports. That is a serious issue that has not been resolved, due to the continuing moratorium on the sale of agricultural land in Ukraine.

With the signing of the Association Agreement with the EU, Ukraine could become the sea trade entryway into Europe for many countries in Asia. This was already noticed by the Chinese, who signed a memorandum on building deep-water ports in Crimea with a throughput capacity of 140mn t of cargo per year. Those plans never materialized, but they have not been removed from the agenda. Inquiries from the Central Kingdom indicate that Ukraine needs to think of increasing the capacities of its ports and other transport infrastructure severalfold. Establishing branches of the Silk Road through the Black and Caspian Seas to bypass Russia confirm this once again. Ukraine needs to take advantage of this opportunity. ■

MY INVESTMENT
PERFORMANCE
IS A RESULT
OF YEARS OF
EXPERIENCE

**AND A DEEP
KNOWLEDGE OF
MARKETS.**

Caroline Connell, CFA

Ask firms why they employ investment managers with the CFA® designation and they'll tell you that those letters represent a proven understanding of investment management, commitment to ethics, and always putting clients' interests first. All of which contribute to the integrity and credibility of their organizations. Because, for our charterholders and their employers, those three letters are making a real difference every day.

Let our people go!

Stanislav Kozliuk

Ukraine has managed to gain the release of five Ukrainians in Russian captivity in the last two years. Still, the number of prisoners of conscience in Russia seems only to grow

The recent months, like never before, were filled with news connected to Ukrainians being persecuted by the Russian government. On September 29, the Supreme Court of the Russian Federation refused an appeal by Crimean Tatars over the ban of their governing body, the Medjlis. On October 24, it became known that international Ukrainian journalist Roman Sushchenko had been arrested. Days before this article went to press, Nikolai Polozov, a Russian lawyer and defender in the case against Medjlis Deputy Chair Akhtem Chygoz, posted a tweet: “I’ve found out that the FSB in Crimea is going to take investigative actions against me. The Prosecutor’s Office is trying to help them. Now, it’s not only the chief department of the RF Investigative Committee in Crimea, but these two as well. That’s success. And recognition that I’m doing the right thing.”

JOURNALIST AS SPY

Sushchenko, who has worked for UkrInform, a national news agency, since 2002, had traveled to Moscow on his vacation to visit some relatives. He had been working as UkrInform’s political correspondent in Paris since 2010, often traveling to Strasbourg. He also wrote about what the Ukrainian community in France was doing. From what we understand, on Sunday, October 2, he was supposed to come home from Russia. Instead, members of the Civilian Observation Mission in Moscow found him in the infamous Lefortovo detention center.

Just like Yuriy Soloshenko, who has since been released, Sushchenko was being accused of espionage. But he was unable to confirm the details of his arrest, except to note that he had been put under psychological pressure and unable to even let his wife know that he was being detained. Even his employer, UkrInform, had no idea.

The following day, First Deputy Speaker of the Verkhovna Rada Iryna Herashchenko issued a statement on behalf of the Ukrainian government demanding the immediate release of the journalist. Speaker Andriy Parubiy proposed MPs to reopen discussion about establishing visa requirements for Russia. Oksana Romaniuk, the representative of Reporters Without Borders, told *The Ukrainian Week* that Sushchenko’s arrest looked more like a kidnapping.

“Nobody, not his parents, not his wife, not the Ukrainian diplomatic mission, not even UkrInform, was informed about the court or about the

arrest,” said Romaniuk. “His status (as a journalist – **Ed.**) gives no guarantee, so it’s unlikely that we can count on a realistic approach from the Russian side, if it wasn’t even able to act in accordance with international rules in detaining him. And so, his arrest looks like nothing so much as a kidnapping. As the person representing Reporters Without Borders in Ukraine, I call on the Russian side to immediately release this Ukrainian journalist and drop all charges that have been laid against him.”

The International and European Federations of Journalists also called on the Kremlin to release Sushchenko. According to Anthony Bellanger, Secretary General of the IFJ, the arrest was not only in violation of all international norms, but also undermined freedom of the press. The European Alliance of News Agencies (EANA) issued a similar statement, demanding that Russia offer evidence of Sushchenko’s guilt. If it cannot, then it must release the journalist forthwith.

OSCE Mission representative Dunja Mijatovic also responded to the incident. “I’m working on this case. This morning, I asked the Russian government for more information and a request for release,” she tweeted.

Russia, of course, denies everything. The FSB claims that Sushchenko is a “professional spy,” who “was collecting information about the Armed Forces of the Russian Federation.” The Russian Foreign Ministry, however, claimed that the Ukrainian journalist was simply on the territory of Russia “without the press accreditation that is issued to all foreign correspondents working on the territory of the Russian Federation.” Meanwhile, the Kremlin’s response was that supposedly the Ukrainian was arrested as part of a “normal Special Forces operation.” At the time *The Ukrainian Week* went to press, the Ukrainian consul had still not been granted access to the Ukrainian journalist. Sushchenko’s defense attorney will be Mark Feygin, who handled both Pussy Riot and Nadia Savchenko.

Notably, this is not the first time that Russia has launched a criminal case against a journalist. In Crimea, Mykola Semena remains under a restricted movement regime. Accused under Part 2, Art. 280.1 of the Criminal Code of the Russian Federation: “public calls to actions intended to violate territorial integrity with the help of the press.” The maximum sentence for this is five years in prison. Semena remains in Crimea to this day.

UKRAINIAN PRISONERS IN RUSSIA AND TEMPORARILY OCCUPIED CRIMEA



Crimean Muslims Cases



Emir-Husein Kuku, Vadym Siruk, Enver Bekirov



Zevri Abseitov, Rustem Abiltarov



Teimur Abdullaev, Uzeir Abdullaev



Muslim Aliev, Arsen Dzhepparov, Refat Alimov



Remzi Memetov, Enver Mamutov



Ayder Saedinov, Emil Dzhemadenov, Rustem Ismailov

Yalta Case

Bakhchysarai Case

Simferopol Case

The 26th of February Case



Akhtem Chygoz, Ali Asanov, Mustafa Dehermendzhy

Persecutions of Maidan Activists



Andriy Kolomyiets (10 years), Mykola Shyptur (9 years)

TEMPORARILY OCCUPIED CRIMEA:

AT LEAST 20 PRISONERS



Case of Crimean Four



Oleg Sentsov (20 years), Oleksandr Kolchenko (10 years), Oleksiy Chyorny (7 years)

Chechen Case



Mykola Karpyuk (22.5 years), Stanislav Klykh (20 years)

Spy Cases



Valentyn Vyhivskiy (11 years), Viktor Shur (12 years)

Case of the Journalist



Roman Sushehenko (Moscow)

Hostage



Haier Dzhemilev (Astrahan)
illegally transferred to Russia from Crimea

Sebastopol Case of Crimean Muslims



Ruslan Zeytulayev (7 years), Ferat Sayfullaev (5 years), Rustem Vaytov (5 years), Nuri Primov (5 years)

Persecution of Maidan activists



Oleksandr Kostenko (3,6 years)

Case of the so called War Criminal



Sergiy Lytvinov (8,5 years)

Case of the so called Crimean Saboteurs



Yevhen Panov (Moscow), Andriy Zakhtiy (Moscow)

RUSSIA:

AT LEAST 17 PRISONERS



CRIMEAN TATARS OUTSIDE THE LAW

Earlier, it was possible to say that Russia was fabricating cases in four different ways: “Caucasus cases,” “banned means of warfare,” espionage, and cases related to Crimea. Now, RF law enforcement agencies have begun launching cases of “extremism.” Most of the newly arrested Ukrainians fall into this category, and most of them are from Crimea.

“Russians have begun to apply anti-extremist and anti-terrorist legislation, compounded by arbitrary application,” Euromaidan SOS coordinator Olexandra Matviychuk, who is also an activist in the “Let My People Go” campaign, told *The Ukrainian Week*. “As to cases involving Crimean Muslims, 14 individuals are being held for belonging to Hizb-ut-Takhrir, which Russia considers an extremist organization. All of them are behind bars and four have already been sentenced for essentially ‘kitchen talk,’ conversations in their homes. Moreover, this is becoming a trend. We can see that Crimea’s occupying government has all the conditions necessary to make it possible to jail every thirtieth or even every second person.”

Thus, at the beginning of this year, self-proclaimed Crimean Prosecutor Natalia Poklonska decided to ban the Medjlis of the Crimean Tatar people. Shortly after that, five Crimean Tatar organizations that were pro-Russian wrote an appeal in which they asked for the representative body of the indigenous Crimean people to be banned, insofar as they claimed that it had organized the blockade of Crimea. The European Parliament attempted to influence the situation by passing a resolution that called for the Russian Federation to stop persecuting Crimean Tatars.

“In March, a group of MEPs turned to EU High Representative Frederica Mogherini with a plea to organize a mission to the court hearings on the Medjlis,” the Euromaidan SOS coordinator notes. “In April, the Medjlis was nonetheless prohibited, showing just how little the RF cared for all those toothless resolutions. This is clearly not the kind of thing that’s going to stop Russia. At this point, the rollback of human rights and freedoms on the peninsula is turning it into a prison cell.”

KNOCKING ON HELL’S DOOR

The Tatars attempted to appeal this decision in the Russian Supreme Court, but they did not really expect a positive outcome, which they stated clearly during a rally on Maidan Nezalezhnosti in Kyiv September 29, the day the appeal was to be considered. According to members of the Medjlis, they did it mostly to uphold proper procedure in order to take the court to an international court.

“You have to understand that there is really no likelihood that this situation with the prisoners and the Medjlis ban will be resolved on a legal basis,” says Matviychuk. “We held a happening that we called ‘Session of the Russian Supreme Court’ on September 29, to determine whether the Crimean Tatar people have the right to their own representative body or not. There was a building marked ‘Court’ and there was a person in a man-

tle who was called the judge. But it had absolutely nothing to do with justice.”

“Friendly visits” in connection with the banning of the Medjlis have already begun. A few days before it was officially banned, the Center for Countering Extremism on the annexed peninsula had already called out three members of the council.

“They were actually fined for approving Medjlis resolutions, even though it was before September 29,” Euromaidan SOS reports. “This was done even though the Medjlis had already withdrawn all its decision-making members from Crimea. But we see that they continue to be targeted. And not only them, but all members of the Medjlis, and of regional Medjlis as well. After all, this is not a community organization, as Russia continues to pretend, this is the elected body of an indigenous people. So who among Crimean Tatars wouldn’t be connected to it?”

Meanwhile, Medjlis Chair Refat Chubarov says the threat continues to hang above all members of elected bodies at every level. Altogether, we’re talking about 3,000 individuals.

BRING ON THE PRISONERS!

This year, Ukraine has managed to release three of its citizens from Russian prisons. The most resonant of these was the return of pilot Nadia Savchenko, who was accused of and sentenced for supposedly crossing the border in to Russia ille-



MEDJLIS CHAIR REFAT CHUBAROV SAYS THE THREAT CONTINUES TO HANG ABOVE ALL MEMBERS OF CRIMEAN TATARS' ELECTED BODIES AT EVERY LEVEL. ALTOGETHER, WE'RE TALKING ABOUT 3,000 INDIVIDUALS

gally and for being an accessory to murder. The less famous was the return of Ghennadiy Afanasiyev, who was accused of and sentenced for participating in a “terrorist group” supposedly organized by filmmaker Oleh Sentsov, and Yuriy Soloshenko, who was tried for “espionage.”

Meanwhile, Stanislav Klykh and Mykola Karpuk languish in Russian jails while being tried for the so-called “major Caucasus affair.” The same Russian Supreme Court examined their appeal on October 26 and left the verdict unchanged. No one expects a positive result there, either. Others behind bars include Oleksiy Chyrniy, who supposedly also belonged to the “Sentsov terrorist group.” On September 28, he was removed from Moscow to Rostov-on-Don. Oleksandr Kolchenko was sentenced to 10 years in prison for supposedly “preparing terrorist acts” and remains in the city of Kopeysk. As the “leader of the group,” Sentsov was given 20 years and is now in Yakutia. Back in March, Ukraine’s Ministry of Justice sent a request that Sentsov, Kolchenko and Afanasiyev be returned, but only the last of these came back to Ukraine.

Serhiy Lytvynov, whom Russian propaganda has deliberately made out to be a “punisher,” has

been tried for robbery. Preliminary charges of “genocide against the Russian-speaking population” were not confirmed and the case fell apart before it even came to court. However, those accusations gave Lytvynov the opportunity to sue Russia and Perviy Kanal, the top government channel.

Crimean Oleksandr Kostenko was accused in the “court” of the annexed peninsula of attacking the Berkut during the Maidan and of supposedly possessing a barrel with weapons. He was given four years and two months. The activist tried to sue the police who tortured him, but without result. Kostenko’s lawyer is now working on an appeal of the sentence. The trials of the Crimean Tatars are also ongoing, including the Hizb-ut-Takhrir case.

“When Savchenko was released, some people were under the illusion that this was a precedent and that someone else would be released every month to return home to Ukraine,” states Matviychuk. “Obviously, that is not going to happen. We have to fight for every single person.”

TRACKING THOSE BEHIND BARS

Indeed, although a small number of Ukrainians tried for political reasons has returned home, the number of Ukrainian prisoners of conscience in Russian prisons is far larger. For the time being, we know about 28 individuals who are being tried for political reasons. That number is only likely to rise in the future.

The “Let My People Go” campaign and Euro-maidan SOS have been systematizing information regarding Ukrainian prisoners and are collaborating with the Foreign Ministry. They note that even their list cannot be considered exhaustive for obvious reasons.

“We had some information that 2,200 people had been tried in Crimea and they were transferred to prisons in 16 locations in Russia,” explains Matviychuk. “Understandably, we can’t possibly check every one of those cases. Plus, there are a number of others whom we are now verifying by contacting their lawyers and families. I think they will soon end up on our list. Take the case of Ilmi Umerov, who was tossed into a psychiatric ward. By international rules, this is the equivalent of imprisonment. He was on our list, too. But the minute he was released, we once again pointed out that 28 other citizens of ours are still in jail.”

There are also those Ukrainians who aren’t behind bars now but could easily find themselves sentenced there. The list could also grow longer as new Ukrainians are arrested, such as Sushchenko. In Russia, “anti-terrorist legislation is now in effect that makes it possible to jail someone for “kitchen talk,” as happened with human rights advocate Emir-Husein Kuku.

What’s more, the Kremlin continues to propagate the image of “bad Ukrainians,” launching new criminal cases related to the military activities. Thus, at the beginning of August, Russian media talked about the arrest of a “Ukrainian sabotage and intelligence group” that was supposedly planning a terrorist act on the territory of occupied Crimea. The Russians claimed that FSB personnel

were killed in the shoot-out with the Ukrainian saboteurs. In the end, they paraded two Ukrainian men: Yevhen Panov, the supposed leader of the group, and Andriy Zakhtei. Ihor Kotelianets, Panov’s brother, said that his brother was probably kidnapped from Zaporizhzhia Oblast. Yevhen had been helping the military in the ATO, said Kotelianets, while Zakhtei was a construction worker from Lviv Oblast. According to his neighbors, he went to Russia three years ago and was pro-Russian. According to human rights advocates, the two were likely tortured.

GETTING OUR CITIZENS BACK

It’s hard to say which of Ukraine’s many captives in Russia will be the next to be released and brought home, because the situation depends mostly on Russia, not on the Ukrainian side. All we can do is follow the statements of the lawyers



IT’S HARD TO SAY WHICH OF UKRAINE’S MANY CAPTIVES IN RUSSIA WILL BE THE NEXT TO BE RELEASED AND BROUGHT HOME, BECAUSE THE SITUATION DEPENDS MOSTLY ON RUSSIA, NOT ON THE UKRAINIAN SIDE

defending the Kremlin’s captives. When they start making more cautious statements to the press, it can probably be assumed that the negotiations process for the return of prisoners is starting. Still, it all seems too much like reading tea leaves.

Meanwhile, rights advocates do note a number of positive changes in the actions of the Foreign Ministry on this issue.

“In the second year of this hybrid war, we can see the slow formation of a state policy on releasing those who have been imprisoned for political reasons,” says Matviychuk. “There are efforts to look at these cases less reactively. How did it use to be? Afanasiyev was sent to a detention center and the MFA began to draft a note. A new case was opened against Klykh, and again the Ministry reacted with a note. Now they’re trying to put together a real strategy for defending the country’s citizens together with civil society organizations. In September, we had the first platform session under the MFA that will be taking care of prisoners of conscience. It includes representatives of the community that are involved with one or more specific prisoners.”

At the same time, the Justice Ministry continues to look for ways to apply international conventions on allowing prisoners to carry out their sentences in the land of their citizenship. It’s not able to resolve all the issue, however, because these Ukrainians will have to carry out their sentences in their homeland, but at least it tackles the main issue: getting Ukraine’s citizens home. Still, it seems that, so far, things happen only at the level of the presidential Administrations of the two countries, since Russia has shown over and over again that neither status nor international law matter one whit to it. ■

All used up

Denys Kazanskiy

Why is Russia rushing to put an end to the warlords in its self-proclaimed republics in occupied Donbas?

The murder of field commander Arsen “Motorola” Pavlov was a shock for supporters of LNR and DNR, as well as for the Russian nationalists who empathize with them. But for those who have been paying attention to developments in occupied Donbas, this death came as no surprise at all. It was just another link in the chain of events taking place in ORDiLO over the past two years.

High-profile field commanders who made a name for themselves in the early stages of the war and loyalists who had authority among the locals quickly carried out their assignments and were no longer needed. They were used in the first months of the conflict, when their charisma was necessary to actively draw locals into the ranks of their “militias.” But after that, when Russia changed course to seek a political resolution of the situation, these field commanders became unnecessary. Their purges began towards the end of 2014, when GRU and other Russian operatives like Igor “Strelkov” Ghrkin and Igor Bezler quietly went back home to Russia and never came back. What’s surprising about Motorola is not that he was killed but that it took so long to do this, nearly two years later.

Pavlov was clearly useless in the kind of DNR that Russia was establishing in Donetsk. At the end of 2014, the Kremlin decided to put its bets on local operatives with Ukrainian passports and began to call back its own men, who had helped initiate and run the conflict in its early days. In fact, the Russian handlers had decided to set up a chain-of-command much like Vladimir Putin’s in the two “republics,” which means it had to depend on malleable, average executives, not on outspoken gangsters who lived and breathed war. The best people for this purpose were older individuals who had shown their worth as rank-and-file in the Party of the Regions. That’s who the Kremlin wanted in charge.

A citizen of Russia, Strelkov protégé and loyalist, Motorola clearly did not fit into the new scheme of things as an outsider and his presence in Donbas obviously had an expiry date. More recently, rumors began circulating that he would be transferred to fight in Syria, but this never happened. But the continuing media exposure of a field commander with a Russian passport in occupied Donbas who had been with Strelkov in the take-over of Sloviansk in April 2014 was clearly becoming inconvenient for Moscow. For one thing, the



A new pantheon. Motorola, the Russian militant in the Donbas who was recently killed in an explosion, is now more useful for the “DNR” ideologues dead than alive

“Motorola factor’ allowed Ukraine to be uncompromising in the Minsk negotiations and gave clear evidence of a Russian military presence in Donbas. Moscow is getting desperate to have sanctions lifted and to force Ukraine to take back the largely destroyed and depopulated territories of DNR and LNR.

LOOKING TO BLAME

Subsequent attempts to paint the killing of Pavlov in a booby-trapped elevator as an operation by Ukrainian saboteurs proved illogical, as even the militants themselves admitted. For one thing, he was very well guarded and no outsiders were allowed access to his apartment building entrance. Right after the assassination, public announcements among the separatists appeared with testimonies from militants stating that claims about a “Ukrainian undercover group” were ridiculous.

IN THE SCHEME OF KREMLIN-BASED GEOPOLITICAL MANEUVERS PLAYING OUT IN UKRAINE, THE DNR/LNR FIELD COMMANDERS WERE LITTLE MORE THAN PAWNS THAT ARE EASY TO SACRIFICE AT THE RIGHT TIME

“The building where Motorola lived was extremely well protected,” wrote Briefs from the Novorossiya Militia. “Of course, no guards are a 100% guarantee that the person will be saved from killers. But this killing is a different matter. The place where the bomb was set is on a lock and only a small number of people have access to it: garbage collectors, utility personnel and their managers. In short, nobody from the outside could have gotten in there. And even if they did manage to get their hands on a key, strangers who were trying to get into a private building would immediately have been seen by the security detail that monitors the surrounding territory.”

Other authoritative voices from the separatist side, like Maxim Kalashnikov and Anatoliy Nesmian, known as the blogger El Miurid, also said it was doubtful that Ukrainian fingerprints would be found on the job.

“This kind of news has become quite commonplace for the ‘people’s republics,’ which have long been run by bandits,” wrote Nesmian. “More than likely, there wasn’t any Ukrainian diversionary group even close to the area. And this assassination was not for political reasons, either, because Motorola was emphatically outside of politics. So we’re left with the criminal world. It doesn’t really matter whether Motorola was even involved in any criminal schemes or refused to be so involved.”

Kalashnikov wrote: “Those leading the popular war, the real leaders, are being killed and eliminated because they are dangerous both to Kyiv and to Moscow. Like Mozgovoy, like the first leaders of the insurrection are being destroyed in Luhansk right now. People like Tsytkalov. Tsytkalov was tortured before he died, and then he was hanged. It wasn’t Praviy Sektor but more likely their own. Only Givi is left. But the trend is pretty clear. The insurgents in Donbas have, in fact, turned out to be dangerous, not so much for Kyiv but for Moscow.”

According to Kalashnikov, Russia is trying through political means to arrange for LNR and DNR to be

reintegrated into Ukraine again and is eliminating all those who are likely to get in the way of this. Still, even without these comments, it’s been clear to all that Motorola’s death was only the latest link in the long chain of deaths of DNR and LNR warlords and commanders since 2014.

WE MAKE YOU, WE BREAK YOU

Initially, no one even tried to pin the elimination of poorly managed field commanders who cast aspersions on the authority of the local bosses, Oleksandr Zakharchenko and Ihor Plotnytskiy, on Ukraine. The killing of cossack warlords in Roventy and Antratsyt back in 2014 was officially handled by the ‘Ministry of Internal Affairs’ of LNR. The January 1, 2015 assassination of Aleksandr “Batman” Byednov, field commander of the Luhansk militias was officially acknowledged by the LNR ‘Prosecutor’s Office’ as its handiwork: Byednov was supposedly killed during an attempted arrest because he was “resisting authorities.”

Still, after this murder, outrage spread among those who supported LNR/DNR. At that point, those behind it all decided it would be wiser to blame such assassinations on unidentified Ukrainian saboteurs, who were remarkably skilled at penetrating the depths of enemy territory, carrying out the most outrageous acts, and disappearing without a trace. Needless to say, no one really believed this, but, without evidence, it was also hard to deny completely.

Interestingly, after all these field commanders were eliminated, the armed formations that they had put together also fell apart almost immediately. After Byednov was killed, the Batman Rapid Deployment Force also ceased to exist. After the killing of Mozgovoy, his Pryzrak or Ghost Brigade ceased to be an independent group. Most likely, the same fate awaits Motorola’s Spartak group.

The time of the field commanders in this war has passed. In the grand scheme of Kremlin-based geopolitical maneuvers playing out in Ukraine, they were little more than pawns that are easy to sacrifice at the right time. When Motorola began to interfere, however indirectly, in Moscow’s plans to move the conflict from the military field to the political arena, an unknown Ukrainian sabotage group appeared out of nowhere, as though with the wave of a magic wand. Nor will this be its last appearance, either.

The reaction of Russian bloggers connected to Vladislav Surkov to the killing of Motorola has been very revealing. Well-known blogger and writer Eduard Bagirov tweeted wrote an offensive epithet to the dead warlord, accusing him of “taking on himself the functions of the Russian state without asking anyone.” The one-time coordinator of the pro-Kremlin movement “Nashi” [Ours], Kristina Potupchik, even made fun of his death, causing outrage among her followers.

In reality, representatives of the Kremlin guard have every right to be so condescending about the murder of the former car-washer. After all, they made him in the first place. Motorola the Hero appeared thanks to a massive PR campaign that promoted him in the media. And so, he remained in the center of attention exactly as long as he was needed by those who made him. ■

A well-rehearsed scenario

Yelyzaveta Honcharova, Bakhmut

How elections in the Donbas usually play out

Recently, the phrase "elections in the occupied part of the Donbas" has somehow become synonymous with the word "peace". At the very least, foreign and domestic advisers and consultants see a clear cause and effect relationship here. They say that as long as there is an electoral battle, there will be no war.

It is very easy to predict what kind of elections there will be. Although I have never stood for election myself, I have seen every trick in the book behind the scenes. Most of these stories are almost comical. But in the end, after laughing, we had to cry too... Aware of our own responsibility for this thoughtlessness.

I was not lucky enough to vote for the first president of Ukraine or have my say concerning the Declaration of Independence, as I had not yet reached the required age. Nonetheless, as a student at Donetsk National University, I experienced the next electoral race first hand. With my feet and ears.

"On election day, all students are not allowed to go home until they have voted! Course tutors should be present at polling stations and record their groups' turnout. Students who live in dormitories are noted separately: The dorm lift will not be turned on until all students registered in the building have voted!" – my photo album has a black-and-white picture in front of this sign in the university hall of residence, which even then seemed ridiculous to us. For the record, the building had 14 floors, so the lift was a big thing! And this was still not enough! Cars with loudspeakers were set up near the halls in the morning, so that lazy students would not "forget about" the voting process and the necessary parties would not lose votes (by the way, we were given their promotion materials at all classes and examinations). At exactly 8 a.m. we sprang up with a start, when Irina Allegrova, a Russian pop singer, started to blast out at full volume. We had no idea why she of all people was chosen to rouse the conscience of us devil-may-care students. However, it was hard to endure this outrage for too long – the girls and boys slowly stumbled down to the polling station, afterwards

sitting on the grass in anticipation of the promised lift.

"Petro! Come down already! We've been stuck here for over two hours because of you!" Ukrainian language students in unison tried to entice out their classmates, too lazy to run up the stairs to the top floor. The rector surely got a considerable "reward" for the high turnout.

Then I managed to get involved in the elections as an observer. On behalf of the opposition Yabluko party, which attempted to take a stand against FUU, the "For a United Ukraine!" alliance that was popular in the Donbas at the time (it was immediately nicknamed FUUD due to the food packages it distributed to potential voters). I was on duty at a polling station in the small hall



of the city gas office with a Communist grandma and a chap from the Social-Democratic Party, who as it turned out, was on friendly terms with the manager of the gas office and strong alcohol. Almost the whole day was spent stoically staring at the ballot boxes in order to prevent any illegal actions. Towards evening, our opponents' nerves gave out. The winking manager called the Social-Democrat observer into his office and they devoured a bottle of cognac. After this, he could not care less about boxes or candidates. The old lady, as idea-driven as she was, had to answer the call of nature, and was promptly locked in the toilet. She started to hammer on the door, shouting slogans and threats. And I, thin in both figure and voice, was simply obstructed by the body of a macho skinhead, who hissed "Just try to shout, I'll kill you!" – at this moment, another athletically built fellow pulled a few wads of ballot papers out of his trousers and tried to stuff them into a box. For some reason, I did not feel like dying for some paper pulled out of someone's trousers, especially as the fuss made by the communist relic in the lavatory was not helping anyway. It is unlikely that our duo or even trio with the tipsy Social Democrat would have been able to intimidate the ballot-stuffing specialists. Yabluko activists ended up calling the police, but they were advised to go home so that nothing would happen to me. The musclemen were smoking around the corner, snarling right at me.

It was worse still in 2004. Then, the cynicism reached a caricature-like level, and the election began to resemble a contest for the most impressive fraud. Teachers went around apartments where voters lived, very persistently asking who would definitely not go to vote for whatever reason. This was called "voter verification". Subsequently, all the electorate from those apartments, including some who already died but were still registered as residents there, turned up to their polling stations in the shape of these very same teachers... They put on wigs and changed their coats around the corner, applied different shades of lipstick and went back several times in order to help "their president" win.

I, admittedly, took advantage of one such dead constituent myself – I just wanted to experience how the process takes place first-hand. Only I think that the choice of my "proxy voter" would not have pleased the people in charge of the whole rigmarole.

Ten years later, in 2014, we were not given a chance to choose our next president at all. I rush towards the local authority office where the election commission is stationed. A colleague calls me, "Don't come, we've been captured!" I do not have time to react before I run into an armed man in a balaclava on the steps of the office. He rocks his machine gun back and forth, his eyes glinting expressively, as if to say – run along somewhere else with your camera. So I run. But not too far, because a crowd of people gathers by the nearby newspaper kiosk. I had no intention of leaving the regional press without unique – as it seemed to me at the time – photographs. Finding cover behind a

newspaper, I take pictures of the car into which two men in camouflage are loading all the paperwork from the constituency's election commission. Later it turned out that the purses belonging to female commissioners had been seized at the same time too. Obviously, to make extra sure that the voting would not go ahead. One of the members of the electoral commission told me he realised that only one gunman remained in the room at any one time, so he made a gesture to a policeman, who was lying face-down on the floor, suggesting they overpower and disarm the intruder. However, seeing the policeman's eyes wide with fear and vigorously shaking head, he realised that this hero could not be relied on. The law enforcement officer continues to perform his duties to this day, especially persistent in not letting Ukrainian activists into the local authority office. Unlike the masked man with arms during elections, activists do not have guns, after all.

A few days later, local residents, among which I saw my pensioner neighbour, return to the scene

"ON ELECTION DAY, ALL STUDENTS ARE NOT ALLOWED TO GO HOME UNTIL THEY HAVE VOTED! COURSE TUTORS SHOULD BE PRESENT AT POLLING STATIONS AND RECORD THEIR GROUPS' TURNOUT", SAID ONE ANNOUNCEMENT AT THE UNIVERSITY HALL

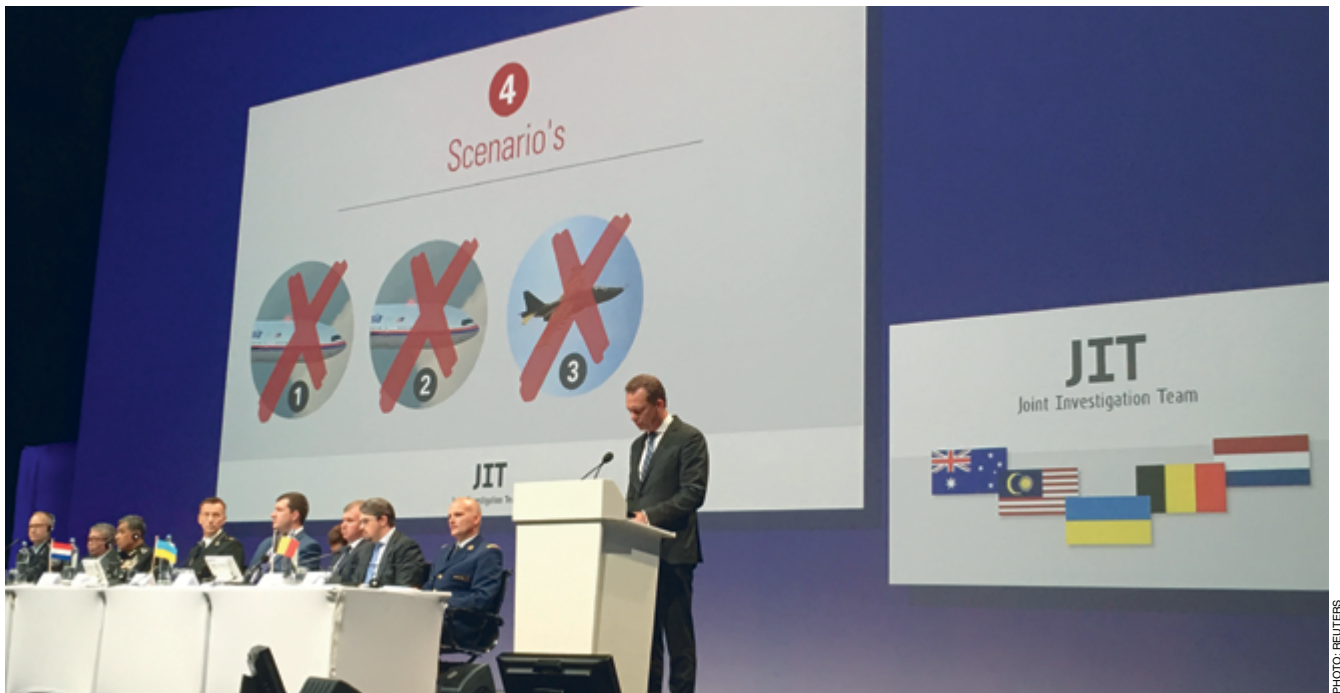
in order to spirit away the ballot boxes and papers. A woman leads him by the arm, telling him why he needs to do be there. A minibus is swiftly brought to the commission office and papers from the polling station are enthusiastically thrown inside. The "rescuers" believe that voting is detrimental to the health of local residents.

We chose our representatives to parliament only after being liberated. Well, who could we choose from? It was more the realisation that there is no choice. It was basically a head-to-head between the odious Serhiy Klyuyev, the brother of Yanukovych's ex-chief of staff and ex-Party of Regions MP who built a playground in every yard with stolen money, and the son of the then mayor. The latter had already been to parliament once and distinguished himself by using his powerful physique to block the rostrum. Klyuyev's sandpits and swings won the hearts and minds of local residents, which very much offended the mayor. Shortly after being elected to Rada, Klyuyev fled (he was charged with abuse of power and fraud), presumably to Russia, leaving us without a representative in parliament. Needless to say, decent candidates from democratic parties, which progressive citizens would have gone to vote for, were simply not nominated. Why would they be? The election rules of the Donbas do not provide for such a luxury. Why waste energy and money? You say "elections in the occupied part"... What else do we not know about their principles? And most importantly – how is this circus supposed to ensure peace and harmony? ■

Putin in The Hague: The MH17 case

Zhanna Bezpiatchuk

There are a number of mechanisms for charging those responsible for the shooting down of MH17. None is ideal but, put together, they could yield results



Who did it: Overcoming Russia's white noise

Nearly 100 individuals were involved in transporting and operating the BUK surface-to-air missile launcher that shot Malaysia Airlines' Boeing 777, known as Flight MH17 outside of Torez on July 17, 2014. The SAM launcher was driven into Ukrainian territory from Russia and after the passenger plane was shot down, killing all 298 people on board, it was removed to Russia again. What's more, the missile was launched from territory that was controlled by Russian proxies at the time of the tragedy: an elevated field stretching about 500 by 600 meters near the village of Pervomaiskiy, Donetsk Oblast.

These are the main conclusions in the interim report of the Joint Investigation Team (JIT). The team itself included representatives of five countries: Australia, Belgium, Malaysia, the Netherlands and Ukraine. These conclusions already constitute a major announcement that preparations are underway for lawsuits both against individual suspects and against Russia as a state.

The thoroughness with which evidence was collected and studied, the clarity and consistency of the work of the JIT, and the way that the actions of diplomats from the five participating countries were coordinated were quite remarkable. This gives reason to believe that we will see specific steps taken to bring those responsible to justice. Still, all is not so simple, as might have been anticipated.

The Team's next phase of work will be focused on identifying suspects in the return of the BUK. Meanwhile, both the lawyers and the diplomats will have to decide which of several possible pathways they will take.

First of all, it's critical to recognize that, when it comes to punishing the guilty, the Russian leadership will most likely either not cooperate with the investigation or will actually sabotage it. It's also unrealistic to think that Russia will give up the suspects. Russian politicians, official representatives and military command began firing a series of statements, like missiles from a Grad, intended to discredit the evidence presented, the role of Ukraine in the investigation, and the work of the JIT itself.

The official representative of Russia's Defense Ministry, Maj.-Gen. Igor Konashenkov, stated: "No Russian SAM system, including the BUK, ever crossed the Russian-Ukrainian border." Maria Zakharova, spokesperson for the Russian Foreign Ministry, claimed: "Arbitrarily deciding who is guilty and inventing the desired results has become the norm for our western colleagues." Even after the international report was presented, based as it is on information from radar installations, captured conversations among the militant proxies, images from satellites, information from social networks, and eye-witness testimonies, the Russian side kept insisting that MH17 was shot down by Ukraine's Armed Forces.

MANY WAYS TO SKIN THIS CAT

So the most ideal path to punish the guilty would be to set up an *ad hoc* international criminal tribunal based on a decision of the UN Security Council. This would bring to life the dream of “Putin in the Hague.” However, in July 2015, Russia, which is a permanent member of the Council, vetoed such a proposition.

The next option to setting up such an international tribunal, which is proposed by international attorney Volodymyr Vasylenko, a sitting judge on the International Criminal Tribunal on Former Yugoslavia (2001-2005): this kind of tribunal can actually be based on the approval of the UN General Assembly instead of the SC. In 1950, the GA passed Resolution #377 called “Uniting for Peace.” This document was intended to allow the GA to approve the necessary resolutions when the Security Council proved to be incapable of taking effective measures against countries that are violating international peace and security. At that time, Russia, in the form of the USSR, was blocking the necessary resolution regarding North Korea, which had attacked South Korea.

However, there are three problems with this mechanism. Firstly, the General Assembly can only approve recommendations. Its decisions are not legally binding. Secondly, Russia and its satellites will obviously vote against any such resolution. And so the legitimacy of an international tribunal established on this kind of wobbly legal basis could easily be challenged. Moreover, Belgian domestic law prohibits the country from participating in the formation of such a tribunal without the necessary decision of the UNSC. If there were the necessary political will to do so, the Charles Michel Government might even propose amendments to Belgian law. However, the Belgian system requires such decisions to be approved, not only by the national parliament but also by the legislatures of all three regions. This could take years.

A third option for bringing the guilty to justice is to launch a criminal investigation with the intent of then turning it over to a national court. This can be done within the Ukrainian court system or that of the Netherlands, as the country that lost the most citizens in the tragedy. At a meeting between the Foreign Ministers of Australia, Belgium, Malaysia, the Netherlands, and Ukraine at the UN GA in September, this was the scenario under discussion. For objective reasons, the Dutch court system has a clear advantage over Ukraine's. Firstly, its reputation worldwide is flawless, which can hardly be said about Ukraine's judiciary. Secondly, if the case against those suspected in shooting down the passenger plane is handed over to Ukraine's justice system, Russia's propaganda machine will simply present it as a farce and sacrilege. With the Dutch court, this will be a lot harder to do.

Yet these aren't the only options available to Ukraine, the international community, or the families of the victims. Arseniy Herasymiv, an attorney for the Illyashev & Partners law firm, says that the most effective place to bring Russia to justice for shooting down MH17 would be the European Court of Human Rights in Strasbourg (ECHR). The families of the victims would do well to work actively on this option. Its advantage is that in its practice, the court's justices have proposed a flexible understanding of the jurisdiction of a country over a given territory. It has recognized that when, a country loses control over part of its territory due to war, the presence of occupying forces, or restricted access to that territory because 'sepa-

ratist movements' supported by another state control it, that country is no longer held responsible for violations of human rights on that particular territory. Responsibility lies with the state that de facto has control over the territory, including through 'separatists.'

This particular approach is based on the notion of “effective control of territory,” and has evolved in cases involving events in Transdnistria, Nagorno-Karabakh and the Turkish Republic of Northern Cyprus. These are all territories of sovereign countries that were occupied by a foreign state or separatist groups supported by another state. Russia has already had to testify in the ECHR in defense of separatism.

The case of Cyprus against Turkey over the occupation of a part of the island country is quite illustrative. Turkey challenged the notion that it was occupying based on the jurisdiction of the “Turkish Federated State of Northern Cyprus,” a marionette state set up along the lines of LNR and DNR in Ukraine.

“In the end, the court rejected Turkey's arguments,” Herasymiv told *The Ukrainian Week*. “It said that the jurisdiction of a state extends not only across territory or on territory, but also with the help of the actions of persons and assets controlled by it within the jurisdiction of this state. And that's exactly what has taken place in Eastern Ukraine. The delivery and removal of the BUK missile complex with an RF Armed Forces crew, the illegal crossing of the border, and, added to this, the political, economic and military support of DNR and LNR on Russia's side, then these facts are more than enough to declare Russia responsible.”

Thomas Grant, an international attorney and professor at Cambridge University told *The Ukrainian Week* that there is yet another international mechanism for bringing Russia to justice for shooting down the passenger plane with a BUK brought in from its territory—the International Civil Aviation Organization (ICAO), of which Ukraine is a member. And handling disputes among countries is part of the ICAO's remit. According to Art. 3 of the Chicago Convention, which regulates foundation issues in civil aviation, “Every state must avoid the use of weapons against civil aircraft during flight.”

“The ICAO Council would try to avoid the difficult questions – in particular, the factual questions about what happened, and the legal questions about whether the conduct of the people who fired the weapon can be attributed to Russia for purposes of legal responsibility,” explains Grant. “If the Council refused to answer the questions, or if it gave an answer which the states bringing the dispute to the Council believed to be incorrect, then those states would have a right to appeal to arbitration. If Russia refused arbitration, they can then turn to the ICJ. (Of course, Russia, too, would have the right of appeal). This means that the dispute could be given a hearing at the international level, even if the result of that hearing would be uncertain.”

NAMING THINGS THEIR PROPER NAMES

Meanwhile, specialists in international law that *The Ukrainian Week* surveyed listed at least three legal issues that the plaintiff will face, regardless of which path is taken to sue those guilty for the tragedy. First is identifying the nature of the crimes committed. Among others, regardless of the international investigation into the downing of MH17, Ukraine is bringing into force the 1999 International Convention on the

Battle with Financial Terrorism. In relation to violations of its provisions, Ukraine and Russia have already had several rounds of negotiations, during which the issue of MH17 also came up. The Convention provides for arbitration if the sides in a dispute cannot come to terms. Why is it important to bring up this convention in relation to the prospects of investigating Russia as a state and its citizens for the shooting down of a civilian airplane? By bringing it in, the Ukrainian side considers this crime as a terrorist act as well. If the downing of MH17 is recognized at the international level as a war crime, that would be formally incompatible with the way that Ukraine is trying to get it recognized based on this convention.

The thing is that Ukraine as a state lacks a strategy for identifying Russia's crimes in a legally proper manner at the level of national courts, or for collecting evidence and transferring it to international courts. Both Ukrainian and foreign legal experts have advised Ukraine to set up a separate body to coordinate the preparation of lawsuits against Russia at the international level. So far, nothing has been done.



THE DELIVERY AND REMOVAL OF THE BUK MISSILE COMPLEX WITH AN RF ARMED FORCES CREW, THE ILLEGAL CROSSING OF THE BORDER, – THESE FACTS ARE MORE THAN ENOUGH TO DECLARE RUSSIA RESPONSIBLE

“In reality, everything is happening chaotically, from case to case,” says lawyer Stanislav Batryn, whose CSO Open Court has been gathering evidence of Russia's crimes in Ukraine. “A perfect example of this is the situation with the signing of a contract with the RF legalizing the Crimean Federal District by MinEnergO. Similarly, Ukraine has failed to put together a strategy for qualifying Russia's actions: support of terrorism or direct invasion.” Batryn's organization collects proofs of Russia's crimes in Ukraine. It has initiated a court case to establish the fact of Russia's military aggression against Ukraine at the Shevchenko District Court of Kyiv. In May of this year, the court ruled against this.

In terms of the history with the Boeing 777, most lawyers agree that this was a war crime. Vasylenko also says that the downing of MH17 was a war crime and a crime against humanity, not an act of terrorism, as it took place during an armed conflict and led to the mass murder of civilians.

CHOOSING THE RIGHT TOOLS

In any case, this crime should be considered as one episode in Russia's continuing aggression against Ukraine, so it would make sense to include the evidence gathered by the JIT in Ukraine's suit against Russia in the International Criminal Court in the Hague. In February 2015, the Verkhovna Rada issued a resolution acknowledging its jurisdiction regarding “crimes against humanity and war crimes carried out by highly-placed Russian officials and the leaders of two terrorist organizations known as LNR and DNR. Such crimes have led to especially heavy consequences and the widespread killing of Ukrainian citizens.”

The prosecutor in this international court still needs to decide whether to open this case or not. The key factor

in this case is the evidence presented by the Prosecutor General's Office (PGO) of Ukraine, the Security Bureau of Ukraine (SBU) and the Ministry of Internal Affairs (MIA). A first attempt to get a case heard in The Hague already failed, in this instance, related to the crimes on the Maidan. The quantity and quality of evidence presented by Ukraine's law enforcement agencies did not persuade the Hague prosecutor. Ukraine's own Foreign Ministry has hinted that the PGO's work in preparing evidence was unsatisfactory.

The results of the investigation into the MH17 catastrophe really is a boon for Ukraine: here, all the materials are ready and only need to be handed over to The Hague, that is, attached to the case. However, if Ukraine has any intention of someday suing Russia for damages for its military aggression in Eastern Ukraine and its annexation of Crimea, Ukraine must continue to document all possible evidence on its own as well.

In addition to this problem, lawyers urge Ukraine to prepare for Russia to argue that establishing a legal tie between those who shot the Russian BUK at MH17 and Russia as a state is impossible, that it simply doesn't exist. Thomas Grant notes that it won't be that easy to deny this, although there would seem to be plenty of evidence in the investigation. One way or another, in order to bring Russia to justice as a state, this link needs to be legally established. This will be one of the key challenges both for the ECHR and for the International Criminal Court—and for any tribunal that might be set up in the future.

Yet another issue is that the defense will argue that those who operated the BUK had no idea that they were shooting at a civilian aircraft, “because there was a military conflict underway.” And war, after all, is war, and sometimes innocent people die. Still, there is a legal counterargument for this point: the very fact that the BUK was moved onto Ukrainian territory from Russia is already a crime.

“Whether or not those who are accused knew or didn't know that they shot at a civilian aircraft will make no difference, because in this context, the important point to understand is that the missile was aimed at an aircraft and there was already a risk that civilians would be hit,” says Arseniy Herasymiv. “What's more, moving a BUK surface-to-air missile complex into Ukraine from Russian territory and back was an act of aggression, in and of itself.”

In the end, the process of determining which mechanism to use in suing Russia and its citizens for their crimes and the court review of the case could drag on for many years. This particular case will demand profound patience and very precise, systematic work on the part of all sides that want to see legal and ordinary human justice prevail. It took more than 10 years to bring Libya's special forces to justice for blowing up the PanAm passenger jet over the Scottish town of Lockerbie in December 1988. The case was heard in a Dutch court and the UN Security Council instituted sanctions against Libya for refusing to turn over the suspects. Eventually, Libya was forced to pay compensation to all the families of the 270 victims.

In other words, no single mechanism was used to bring the criminals to justice and punish them, but an entire configuration of mechanisms. For this particular mass-murder, both specific individuals and the state of Libya took responsibility. Clearly, in the case of MH17, we should also see this kind of combination of various tools in investigating those guilty of the tragedy. ■

What will people say?

Andrew Kornbluth

What the West thinks about Ukraine – and why it's not so important

After centuries of being variously ignored, misunderstood, and exploited by more powerful neighbors, the Ukrainians, like most Eastern Europeans, have justifiably mixed feelings about the outside world. Their relationship with the West is no exception; like someone with a more successful sibling, Ukraine has alternately resented the West and sought its approval in the decades since the collapse of the Soviet Union. But with the Russian annexation of Crimea and the invasion of eastern Ukraine, the need to know what Westerners are thinking about Ukraine has seemed ever more urgent. In particular, public opinion in the United States, which remains the ultimate guarantor of European security, is seen as critical to the survival of Ukraine in its struggle against Russian aggression.

It may come as a shock, then, to find out that the average American rarely thinks about Ukraine or, for that matter, any other foreign country. Although the world imagines Americans to be a wealthy, cosmopolitan nation, they are more like the inhabitants of a vast island, isolated from the rest of the world and consumed by the daily difficulty of putting food on the table. Only 40% of Americans hold passports and even fewer can afford to travel abroad – almost half do not have the money to cover a \$400 emergency, roughly the cost of a domestic plane ticket or car repairs. When 65% of young Americans cannot find France on a map, there is little chance that they know where Ukraine is. Western Europeans are hardly better; even the educated have only the vaguest notions about Ukrainian history, geography, and culture.

But the thinness of Western knowledge represents an opportunity for Ukraine. For the most part, the Western public feels a basic sympathy for Ukrainians as the continued victims of Russian imperialism. The darker sides of Ukrainian life, like the intersection of business, politics, and organized crime, are largely unknown to foreigners or overlooked in a time of war. And with a populist revival under way in the West, the rampant populism that has long hobbled Ukraine's democracy is easily forgiven. Of course, Western governments and international donors are under no illusions about just how serious Ukraine's internal dysfunction is. Still, the Russian threat and the lack of popular focus mean that Ukraine can count on more patience from its Western allies in implementing reforms than might otherwise be the case. It is also a chance to build a better, more attractive Ukrainian "brand," one that will contrast with the corruption, autocracy, and hopelessness traditionally associated with the former Soviet Union.

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To worry excessively, however, about Ukraine's image abroad would be a mistake. Sooner or later, when the conflict with Russia is either resolved or frozen, the West's attention will turn elsewhere, and life in New York and London and Berlin will go on, regardless of whether Ukraine has changed in any meaningful way. It is true that the Ukrainian government has failed to develop a coherent public relations strategy abroad or mobilized the many non-Ukrainians who support its independence, but at the end of the day it is the Ukrainians themselves who will have to decide if the revolution they began in 2013 is complete.

Nor is there any mystery about what the Ukrainian state needs to win the trust of the outside world and, more importantly, its own people: the rule of law, backed by an independent judiciary, police force, and a powerful anti-corruption authority from whom no official is safe. And despite the fatalism that pervades Ukrainian life, every citizen has a role to play in fixing the system by voting for politicians with a real commitment to reform. Without these changes, the sacrifices of the men and women on the front lines, the volunteers who support them, and the demonstrators of the Maidan will have been made in vain.

THE BATTLE FOR THE FUTURE OF UKRAINE WON'T BE WON OR LOST BECAUSE OF WHAT HER NEIGHBORS IN THE WEST THINK. ITS OUTCOME DEPENDS ON WHETHER UKRAINIANS AND THEIR LEADERS CAN CREATE A MORE JUST, HUMANE ORDER THAN THEIR NEIGHBORS IN THE EAST

The fact that most Westerners know nothing about Ukraine does not mean that they do not still hold certain preconceptions about the country. In the Western imagination, Ukraine fits into a generic vision of post-Soviet "Eastern Europe" which makes no distinction between Poland and Bosnia and simply assumes that all the lands east of Germany are one continuous area of comical accents, war, vodka, poverty, and exotic women. Every Eastern European country has struggled at one time or another to escape this characterization, with varying results. No one likes being reduced to a stereotype, all the more so in a globalized world where information about other people's success and failure is only an internet search away. But the battle for the future of Ukraine won't be won or lost because her neighbors in the West think that life there is somewhere between a cartoon and a James Bond film; its outcome depends on whether Ukrainians and their leaders can create a more just, humane order than their neighbors in the East. ■

VALDAI 2016

James Sherr, associate fellow and former head of the Russia and Eurasia programme, Chatham House

When one attends a session of the Valdai Club, one enters a museum of alternative truths. To those who 'know' Russia but have never experienced it, the process can be unsettling. To those who 'love' Russia, it can be therapeutic.

Yet to those whose immune system is intact, a week with fellow members and guests of this 'club' reinforces two pillars of wisdom. First, Russkiy Mir is a world with its own discourse, logic and coherence. The 'facts' that emanate from this world can be disputed and even dismantled. But the world view itself will not be dismantled by facts. Second, the discord between Russkiy Mir and the Helsinki-based order will not be overcome by a 'reasoned bargain', let alone the opiate of 'engagement'. It will be overcome when it is no longer sustainable in material terms or when somebody surrenders his principles.

To ask the Biblical question, what makes this year different from the others? The answer is probably Syria. In 2008 and 2014, Russia was on the offensive rhetorically as well as militarily, and this was abrasively evident in the tone of officials at Valdai. But at last week's session, rhetoric was muted. Moscow has been taken aback by



the sharpness of the West's response to its offensive in Aleppo, and it wants this sharpness to remain rhetorical until even Pentagon hawks grasp that the West has no cards to play. Thus, on interviews with the BBC as well as in Krasnaya Polyana (where the Valdai session took place), Sergey Lavrov confined himself to an aggrieved and factually turgid defence of Russia's policy. As is his wont, Vladimir Putin's response to the West's proverbial double standards was tart and contemptuous, but less so than on other occasions. Yet even members of the Valdai Club would have to be exceptionally credulous to believe that Russia will step back from what it has started. The logic of

DISCOVERING WHO WOULD BE WILLING TO DISCUSS VARIOUS ISSUES (AND RUSSIA'S ROLE IN THEM) 'CONSTRUCTIVELY' WAS PROBABLY ONE OF THE CLUB'S HIDDEN AGENDAS

its interests binds it to do everything possible to achieve immovable facts in 'useable Syria' before Hillary Clinton is established in office (assuming she will be).

Notably but not surprisingly, the Valdai session also gave point to what was scarcely discussed: Ukraine. There were panels on world order, the future of democracy, the Middle East, migration, globalization, technology and Europe (on which the author spoke). Discovering who would be willing to discuss these issues (and Russia's role in them) 'constructively', irrespective of Ukraine's subversion and dismemberment, was probably one of the Club's hidden agendas. Within this carefully vetted circle, the answer appeared to be 'most'.

The exceptions, as befitting their status, were Putin and Lavrov. Both confirmed what careful observers already discerned after the 'Normandy' meeting in Berlin on 19 October: that no agreement was reached on an OSCE 'police mission', and there would be no agreement without DNR/LNR (ORDLO) consent. No surprises here, but from this point forward, no excuse for complacency either. On one point, all can agree: 2017 will be a critical year. The fate of the Minsk accords will probably be decided then. Whether Ukraine can decouple its fate from Minsk, and do so with Western support, might also be decided then. The 2017 Valdai session is likely to be less tranquil than 2016. ■

"Last year, the Valdai forum participants discussed the problems with the current world order," Russia's President Vladimir Putin said in his speech at this year's Valdai which went largely unnoticed by non-Russian language media. "Unfortunately, little has changed for the better over these last months." Some of the messages uttered later were aimed at explaining who is to blame.

"The entire globalization project is in crisis today," Putin said. He blamed this on countries that "saw themselves as victors in the Cold War" and started reshaping the global political and economic order to fit their own interests 25 years ago, without substantive and equal dialogue with other actors in international life. Russia's President believes that, even though the Cold War is long over and new reality is on the ground, these countries do not demonstrate desire to adapt to it. Instead, they "churn out imaginary and mythical threats such as the 'Russian military threat'", and benefit from this as a "profitable business that can be used to pump new money into defence budgets at home, get allies to bend to a single superpower's interests, expand NATO and bring its infrastructure, military units and arms closer to our borders." Another message was referring to people in the West who are not happy with their democracies in which they "see no real opportunities or means for changing anything." In his view, Western elites "implant ideological ideas that are destructive to cultural and national identity." To conclude, he said that, while other leaders are busy inventing mythical threats, Russia understands its role in a leadership that sees real problems. So, the priorities for collective effort should be equal security in all states, end to conflicts, global economic growth, and development of human potential.

Britain flexes its cyber-muscles

Online attacks by foreign powers will be met in kind, vows the government

Philip Hammond, the chancellor of the exchequer, is not a man given to making dramatic statements. Known as “Spreadsheet Phil” during his cost-cutting stint as defence secretary, he does dry better than the Sahara. Yet on November 1, addressing a geeky conference hosted by Microsoft, Mr. Hammond declared that not only was Britain developing its offensive cyber-capabilities, but it was doing so “because the ability to detect, trace and retaliate in kind is likely to be the best deterrent”. It was a statement of intent that few Western governments have been prepared to make so explicitly.

Mr. Hammond went on to say that a “small number of hostile foreign actors” had developed capabilities that threatened the security of Britain’s critical national infrastructure and industrial control systems. Faced with such an attack, Britain needed to be able “to respond in cyberspace” because the alternative was to turn the other cheek or to retaliate by conventional military means, with all the legal and escalatory risk that entails.

To be fair, this was only one part of a speech launching a £1.9bn (\$2.3bn) investment in a national cyber-security strategy that will include wide-ranging defensive measures designed to protect government, industry and private citizens from the growing threat of criminal activity on the internet. But it was by far the most controversial part, and also the part that raises the most questions.

It has long been accepted that an offensive cyber-capability is as much part of fighting a modern war as planes or missiles. Since Russia’s war on Georgia in 2008, cyber-attacks have been established as the way in which state-on-state conflicts are most likely to begin. Nor has anyone expressed much surprise to learn that Britain and America have recently been using cyber-offensives to cut Islamic State off from the internet.

But it gets more complicated when it comes to responding to attacks of the kind that the Obama administration last month officially accused Russia of carrying out on American political institutions. Mr. Obama has promised a “proportional” response. Joe Biden, the vice-president, went further, implying that Vladimir Putin would soon be on the receiving end of a covert cyber counter-attack.

Mr. Hammond appears to have something similar in mind should the need arise—which, if Andrew Parker, the head of Britain’s security service, is right, could be at any time. Possibly by coincidence, a Guardian interview with Mr. Parker (the first a head of MI5 has given to a newspaper) appeared on the same day as Mr. Hammond’s announcement. While nodding his head to the endur-



ing menace of terrorism, Mr. Parker singled out the threat represented by Russia and its use of espionage, subversion and cyber-attacks across Europe to achieve its foreign-policy aims. It is “MI5’s job to get in the way of that”, he said.

SINCE RUSSIA’S WAR ON GEORGIA IN 2008, CYBER-ATTACKS HAVE BEEN ESTABLISHED AS THE WAY IN WHICH STATE-ON-STATE CONFLICTS ARE MOST LIKELY TO BEGIN

None of this makes it clearer what Britain would actually do if faced with a serious cyber-attack by a foreign power. The rules of this game have yet to be written. But the message that Mr. Hammond wanted to deliver both to adversaries abroad and voters at home was clear enough: do not think you can attack us with impunity. The prime minister, Theresa May, was defined by her six years running the Home Office. She wants the cornerstone of her government to be security. Cyber-security is no exception. ■

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Proceed to the exit? Not so fast

Michael Binyon

Will Brexit ever happen?



Against the flow. Gina Miller (center) won a unanimous judgment from the High Court that cutting Parliament out of the Brexit decision was unconstitutional. This tells the Prime Minister that she cannot begin the process of leaving the EU without consulting Parliament

Ever since Britain voted in June to leave the European Union, the government has been in turmoil, uncertain how to proceed. Angry disputes have erupted between those who want a total break with Europe and those who want to retain trade and other links. Now, in a devastating judgment from Britain's High Court, the Prime Minister has been told that she cannot begin the process of leaving the EU without consulting Parliament. And Parliament could easily veto all her plans.

Theresa May and a growing number of impatient Brexiteers want to trigger the negotiations to leave as soon as possible. She has promised that in March she will invoke Article 50 of the Lisbon treaty – the article that gives any state wanting to quit the EU

two years to reach agreement with its partners on the new relationship. But she insisted that she would not seek parliamentary approval first, arguing that outlining the details of the deal she was seeking would reduce Britain's bargaining power with the rest of the EU.

Many members of Parliament were furious. The overwhelming majority voted in the referendum to remain in the EU. Many now want a say in the talks to ensure that Britain gets the best trade deal possible with its partners and to stop the Brexit zealots from breaking all ties with the EU. But no one expected a private legal challenge to the government from a member of the public. So when Gina Miller, an investment manager born in Guyana, succeeded in winning

a unanimous judgment from the High Court that cutting Parliament out of the decision was unconstitutional, the result came as a bombshell.

Some diehard Remainers are delighted. They now see a chance to scupper all the negotiations by refusing to vote for any law authorising the government to invoke article 50. Together with the Scottish Nationalists, who unanimously oppose Brexit, some pro-European Conservatives and many pro-European Labour and Liberal Democrat Members of Parliament believe they can either force a second referendum on the terms of any deal, or cause such obstruction that talks on leaving cannot even begin.

The Brexiteers are aghast and furious with the three judges issuing the verdict. They have accused them of trying to thwart the result of the referendum, defying the popular will, behaving like unelected dictators and being in cahoots with the Remain camp. An outpouring of personal abuse of the judges on social media, and a barrage of insults from hardline Leave campaigners has now reached such a level that Mrs. May has been told to step in to stop the attacks. They are bringing the law and the courts into dispute, she has been warned, and are in danger of undermining the cherished independence of Britain's judiciary.

But the judgment has done serious damage to the government's negotiating position. Nobody yet know what it is. Two members of Mrs. May's Conservative party have resigned, angry over her decisions – reducing her wafer-thin majority in Parliament. Public argument has raged for months on whether Britain should seek continuing access to the single market – which Brussels says is only possible if EU citizens are still free to move to Britain to work – or enforce tough immigration controls at the risk of huge new EU tariff barriers that could cripple Britain's trade with Europe.

Mrs. May is fearful that any public scrutiny by Parliament of her plans will weaken her hand with EU governments, many of whom are determined to punish Britain for its Brexit vote and make the talks on leaving as difficult as possible.

She insists a majority in Parliament will, in the end, back a new law to open talks. She may be right. The Scots will all vote against any such law, but most members of the House of Commons, in both the ruling Conservative party and in the opposition Labour party, would be fearful of defying the views of their constituencies, even if they disagree with Brexit. But the House of Lords – the second chamber – is a different matter. The lords are not accountable to anyone. They cannot veto legislation, but, crucially, they can throw it out at least twice and delay any law for up to a year. That would be disastrous for any Brexit negotiators.

The government has one last chance. It can – and will – appeal to Britain's Supreme Court, in the hope of overturning the judgment. But the chances of victory there are slim. The ruling is based entirely on constitutional issues, not on politics. The High Court insisted that under the British constitution, Parliament is supreme and cannot be ignored or bypassed by the Crown – in this case, the government. The issue goes back hundreds of years and is at the very heart of Britain's long struggle to estab-

lish a parliamentary democracy. In the old days, the issue was whether the King could make laws on his own. When King Charles I tried to do so, civil war broke out in Britain in 1649, the king was beheaded and the monarchy was abolished. When the monarchy was brought back 11 years later, it was clear that the new king or his ministers could never again defy parliament, a ruling repeatedly underlined in subsequent constitutional rulings.

Most Britons do not understand the judgment, however. Millions are furious at what they see as an attempt to reverse the Brexit vote. But even some of the Leave campaign leaders see a huge irony: the referendum was about “restoring sovereignty” from Brussels, and returning power to Parliament. Yet the government is now try to make the biggest change for generations to the constitution – which will involve scrapping thousands of EU laws – without consulting Parliament.

MRS. MAY IS FEARFUL THAT ANY PUBLIC SCRUTINY BY PARLIAMENT OF HER PLANS WILL WEAKEN HER HAND WITH EU GOVERNMENTS, MANY OF WHOM ARE DETERMINED TO PUNISH BRITAIN FOR ITS BREXIT VOTE

What do Britain's EU partners make of it all? Most are confused, sceptical and fed up with what they see as the arrogance and shenanigans of Britain's government. Mrs. May has been touring European capitals, hoping to get a sympathetic hearing. She has, at best, received a watery smile and a polite hearing. No one wants to start any informal talks before Britain makes up its mind and invokes article 50. When Mrs. May attended a recent summit of EU leaders, she was allowed to speak for only five minutes, and her slot was scheduled for 1.00 am in the morning.

It is clear no one will make things easy for Mrs. May, at home or abroad. Scotland, which is trying to remain in the EU even if the United Kingdom as a whole withdraw, is now threatening to hold a second referendum on independence. Northern Ireland sees an economic disaster if the border with the Irish Republic is reintroduced. Britons who voted to leave the EU are furious that talks have not already begun, while those who wanted to remain are fearful for the future. The country is deeply divided, nervous and anxious for the future.

The only bright spot is that the economy, despite dire predictions, is doing much better than expected. The pound has collapsed, as a sign of no confidence in Britain's future outside the EU. But that is helping exports for the moment. The real challenge comes later, when international investment in Britain may dry up and financial dealers move from London to Frankfurt, Paris or Amsterdam.

Meanwhile, the civil war within the Conservative party between those wanting a “hard” or “soft” Brexit is gathering pace. Mrs. May's only solution may be to call a snap general election before March. She will hope to reinforce her tiny parliamentary majority and get on with the Brexit talks. But in today's febrile political climate, no one has any idea who might win that election. ■



Marc de Launay:

“Ukraine’s nationalism differs fundamentally from fascism in that it does not express a desire to take over foreign territory or to affirm itself at the expense of others”

Interviewed by
Hanna Trehub

France’s leading philosopher and historian talks to *The Ukrainian Week* about the direct tie between philosophical ideas and political practices, the need to reflect on the self and to turn to the depth of one’s own culture as the foundation of our perception and understanding of others, and the place of intellectuals in European culture.

Nowadays, the study of philosophy is quite diversified and its focus interwoven with social and political issues and the search for solutions. What gets people to read the classics of the German philosophers, especially someone like Kant, today?

– What’s interesting in Immanuel Kant today is his smaller works, especially his tract “On eternal peace,” his texts on cosmopolitanism, and his various models of history. In contrast to Hegel or Schelling, Kant did not create a closed philosophical system and so he remains an author whom we can read and re-read. In this way, he has remained meaningful to this day.

The complexity of the modern world can be looked at from three different aspects. In the context of the technical features of our times, it’s important to include a discussion of globalization. Next I would call the “mondialization” of relations that we can see in the enormous systemic interactions of countries around the world. The best example of this is relations between China and the US. The fact that the Central Kingdom owns a huge portion of the American national debt plays a key role in their dialog. These two aspects, globalization and mondialization, have established a new dimension in relations around the globe. In a situation when everybody on the planet is connected and we live in the same dimension while simultaneously living physically in different spaces, thanks to the internet, there is a sense that this connection expands not only to our contemporaries but also to our predecessors. They, too, are present here and now. The fact that anyone and anything are accessible even at great distances makes historical events from the past seem as though in they are contemporary.

Yet, this overcoming of space-time is an illusion. Next to globalization and mondialization is a level of universalization that is not a given but a goal. This dimension still needs to be established. I'd like to point out that universalization is not the same as uniformization, making uniform. These actions require various methods, but not systems. The method proposed by Kant regarding universalism is the possibility of shaping the content of such universalism. And this task is collective, transcultural and historical, one that will transform our social habits and traditions, our very perceptions. It's interesting that we need to always think within the framework of our own culture and our own lives, while looking, in parallel and simultaneously, through the lenses of other cultures.

If the way the contemporary global and universal world is structured does not offer freedom, then it will be little more than a global prison. Law and order through the barrel of a gun was common, not only to the great empires, but also to the two most totalitarian movements of the 20th century: communism and nazism. Why was it so important for them to make sure that freedom and responsibility were rejected at both the societal and individual levels?

– It's very easy for us to condemn totalitarian regimes after the fact. But we need to understand what made them so attractive to people at that time. They disappeared and thank God for that. They weren't just caricatures of the idea of universalism but a complete distortion of it. And they appealed to their citizens because they took the concept of freedom out of the equation, removing both freedom and responsibility at the same time. For the masses, its lack during totalitarian times was magnetic. People didn't have to choose or decide anything; they could live as slaves, but as egalitarian slaves. However strange it may seem, this seemed very attractive to many people who were happy not to have to carry personal or collective responsibility for their deeds.

Humanity lived for eons under the influence of all kinds of myths. Being dependent on mysterious forces of nature and great and lesser gods, humanity's lack of freedom in the face of these 'lords of the world' lasted for a major part of human history. This was an archaic way of thinking, of course, but it lasted for a very long time. If we think of Kant in this context, he was one of the first thinkers who declared that freedom could not realistically be defined as positive and that we could only outline its consequences. It requires individual responsibility, decisions, and the proper engagement in something.

European society cannot do without its intellectuals. We hear their voices but they remain faceless. Why are those whose minds determined the development of European civilization for the last two millennia not written into the halls of heroes and their praises sung by artists and poets?

– Artists are more likely to illustrate philosophical things using painterly methods. The portrait of a philosopher is not a method that makes this possible. A philosopher is not about the ideological content of his writings but about revolutionary ways of

Born in 1949 in France, **Marc de Launay** is one of the country's leading philosophers, a translator, professor at the École Normale Supérieure, and staff member at Paris's Husserl Archives. Renowned as an expert on the philosophy of Friedrich Nietzsche and having participated in the publication of the complete collection of his works in French, de Launay is a specialist in and translator of the German neopositivist school—Hermann Cohen, Ernst Cassirer and Heinrich Rickert—and the Neo-Kantian School. De Launay also writes on biblical hermeneutics and the theory of translation.

perceiving the world that his writings have brought. And that can be portrayed. That can be brought to life using artistic means. This is clearly seen in Rembrandt's canvas "Aristotle with a bust of Homer."

The organization of this painting is quite complex, showing the reverse path to the regular mechanism for developing philosophical understanding. In a sense, it's a provocation. When looking at something, we assume, a priori, that we don't know anything about it. The image is so obvious that it swallows us up and we are absolutely convinced that we see exactly what is to be seen. When we look into a mirror, we don't see what we are looking at. But the aspect of time disappears in the reflection. It's important to understand the way in which the artist we are talking about wants to show his aspect, a certain continuity. As soon as we try to convey temporality through a painting, we immediately kill it. Because we live in both time and space, the questions that we face concern more than just a specific moment, here and now. People ask about that which was and that which will be, because both the one and the other matter to them.

One of the myths about modern-day Ukraine is that the country is dominated by nationalistic practices that verge on fascism. How can we convince the outside world, and domestic opinion, that Ukraine's current resistance movement and the ideas it lives by have nothing in common with the totalitarian regimes of the past and very little with worrisome trends on the right in Europe?

– Here we have the problem of a difference between the concept of "legitimation" and "justification." It's absolutely right and proper that Ukrainians are waging a battle against an aggressor that is trying to claim their land. It's also right and proper that your people want to defend their political sovereignty and their cultural identity. In parallel with discourse about a completely legitimate struggle is another type of discourse: justification. In the second kind of discourse, there are a number of splits, from the most radical to the liberal. Ukraine's nationalism differs fundamentally from fascism in that it does not express a desire to take over foreign territory or to affirm itself at the expense of others. Ukraine has nothing like this. It is defending itself and resisting. This is a completely different notion from fascism. Even the most reactionary discourse of justification bears no relationship to this. Radical patriotism and fascism are different matters. The former can be criticized in all kinds of ways, with a preference for republican discourse, but the difference between radical patriotism and fascism is profoundly deep and a matter of principle. ■

Reflections on our "Youth"

Kateryna Barabash

Molodist film festival outlines the trends in world cinema

Despite advice to the contrary, many books in life are judged by their cover. For a film festival, this is the opening ceremony, and the contents are the prizes awarded. This year's 46th Molodist International Film Festival made a good showing in both aspects. That is not to say, of course, that the opening ceremony at the Ivan Franko Theatre differed from previous editions in style or production quality, although there was nothing particular to reproach it for either. The opening was pretty standard, but the film shown there – Stéphane Brizé's *A Woman's Life*, based on the Maupassant novel – although many people thought it would not be the best choice, was in fact very successful. The combination of old and new, traditional and innovative, a modern view on the age-old problem of the co-existence of man and woman and interesting "instant" editing is just what is needed at a festival with the passionate name Molodist, "Youth" in Ukrainian.

As for the contents, the international jury, led by that irrepressible Canadian Denis Côté, seems to have made the best decision we could have hoped for in choosing the winner of the Grand Prix, awarding the Golden Scythian Deer to Jan Matuszyński's *The Last Family*. It is a truly mature and serious film, executed better than anything else at this year's Molodist. We observe how the family of famous Polish artist Zdzisław Beksiński lives and dies over a period of 30 years, and how one person can fight for death instead of life, which leads to the victory of death. The main character, who lives in a world of his own surreal fantasies, ends up deprived of everything that filled his life with meaning. The original, slightly grim Polish humour in the 32-year-old newcomer's film is an excellent foundation for discussing the degradation of society and the fragility of art. The lead actor, well-known Pole Andrzej Seweryn, won the Silver Leopard at the Locarno International Film Festival for his role as Beksiński.

The choice of a Polish film as the best at the festival in a way affirmed the cultural and intellectual sensitivity of Molodist. Polish cinema, undoubtedly one of the strongest in the world, grew significantly weaker in the 1990s, and in the 2000s found itself close to death. Devoid of state subsidies, it was almost doomed to fail, and only the 2005 establishment of the Polish Film Institute, which has been delegated the distribution of government funds, marked the beginning of this art form's recovery from a profound crisis. The main prize for *The Last Family* is a kind of expression of respect for Polish cinema, which played a leading role in Eastern Europe in the mid-20th century and is now beginning a new life.

The professional intuition (or rather, of course, professional knowledge) of the Molodist selectors is faultless: the films in the international competition show that the main development vector of European cinema today has been taken into account and considered. They



The Grand Prix. The choice of Jan Matuszyński's *The Last Family* as the best at the festival in a way affirmed the cultural and intellectual sensitivity of Molodist

understand perfectly well how fresh and new the wind blowing from Eastern Europe is, compared to the West. When Poland surrendered its position as leader of Eastern European cinema, former Yugoslavia, the Czech Republic and Slovakia took its place. Romania and Bulgaria long remained on the margins, but Romania first established its own new film school, producing several dozen top-notch directors, and Bulgaria soon started to slowly but surely follow its neighbour's example.

There were no Romanian films in this year's competition at Molodist, but there was a sell-out crowd at an out-of-competition showing of a film by one of the most interesting Romanian directors, Radu Jude – *Scarred Hearts*, a Romanian variation on *The Magic Mountain* and a study of European decadence.

In contrast, the hall was almost empty for Bulgarian competition film *Godless* by Ralitsa Petrova, which only demonstrates that the taste for Bulgarian cinema has not been acquired yet. *Godless* was a winner in Locarno at one of the world's most prestigious art film festivals – the style and camerawork resemble a model example of Romanian cinema in recent years. Social issues are intertwined with the theme of a person's moral choice, their desire or reluctance to go down the long path from strong moral frustration to the ability to empathise, love and be compassionate. First-class actress Irena Ivanova plays a social worker – a young woman with an unhappy past and dismal present, who is in love with the wrong man, looks the wrong way and does the wrong things. An internal strength she did not even know she had forces her to turn off this road to hell, seeking – and finding – other paths in life.

Despite giving the Grand Prix to a Polish film, the jury did not dare to ignore Western European cinema. The judges declared Belgian-French-Swiss film *Keeper* (directed by Guillaume Senez) to be the best full-length feature film at Molodist. Given that it was impossible to completely overlook Western Europe and that there were only three works representing it in the competition: apart from *Keeper*, the not bad, but fairly standard Spanish romance *The Open Door* and the Icelandic *Heartstone*, it is obvious why *Keeper* was acknowledged. FIPRESCI (the International Federation of Film Critics) gave their prize to the Icelanders, boldly deciding to support this story about boys growing up and defining their sexual orientation in a fishing village at the ends of the earth. *Heartstone* is an example of how to work with teenagers, as well as a reference for competent casting and painstaking direction.

Keeper is young Frenchman Guillaume Senez's feature-length debut. The film, like many at Molodist, is about growing up, the infantilism of society and the invincible power of stereotypes. 15-year-old schoolboy Max learns that his girlfriend and classmate Mélanie is pregnant. Two families with diametrically opposing views on the further course of events are pulled into the drama. Despite all the obvious imperfections of the film, the director can be commended for the courage with which he goes against the feminist wave that has engulfed European cinema. We have become accustomed that women, at least in cinema, are smarter, more mature and stronger than the "stronger sex". The young director does obviously not agree with this and depicts a world in which a man makes the decisions, like in the "good old days", and takes all the difficulties of their implementation upon himself.

Traditionally, there are two major competitions at Molodist: international and national. There is also the Sunny Bunny competition for LGBT-themed films and a children's contest. The cinema hall was packed to the rafters for films in the national competition – mainly with young people. As a rule, they come to support their friends: most of the participants are student works. These screenings are usually the most fun, as many of the audience members know each other, chat across the hall and laugh at the least appropriate moments. Youth, after all! Nevertheless, the national competition, frankly speaking, gives little cause for laughter. Above all, the youngsters' lack of even a small number of clearly defined interests is disheartening. More than twenty films, and they are all sketches of various levels of proficiency on insignificant issues. Of course, we cannot expect the very young to dive into philosophical problems of existence or adult reflections on harsh Ukrainian social dilemmas. But when you look at an entire top twenty, in the selectors' opinion, a vector of interests is always conspicuous. In this case, it is impossible to get a feel on it. Three out of the twenty-one are in one way or another devoted to the current war in the East – they are all very lyrical and sentimental, without any heavy reflection. Several works were purely experimental – attempts at a young age to convey feelings about today's world through a mixture of animation, computer graphics and documentary elements are always praiseworthy and attractive. It is surprising that there were so few of these films in the national competition. And even more surprising that the jury of the national competition decided to commemorate one of the most traditionally shot films – Arkadiy Nepytaliuk's *Blood Sausage*. The melancholy

comedy about incurable xenophobia that a Jewish girl who travels to a remote village to meet her fiancé's parents falls victim to caused the room to react in exactly the same way as the authors evidently hoped – the young audience genuinely had fun.

Any festival is about not only the films themselves, but also high-profile events. What did Molodist have to offer in this category? The Ukrainian premieres, for sure. There were no tickets left for Ahmed Sarikhali's *Mustafa* two days in advance, and the lines of cinemagoers wishing to see it attacked the hall with all the aggression typical of those that do not have tickets. The protagonist of the film himself, dissident Mustafa Dzhemilev, came to the showing, while the luckiest guest was singer Jama-la, who occupied a seat of honour in the front row. The feature documentary about the Crimean Tatar leader is shot somewhat uninspiringly in cinema terms, but with enormous respect for its hero. The film contains the entire life, the whole story of this amazing man's struggle, a number of memories and permanent wonder: how are such efforts to humiliate an entire nation with a long and difficult history possible in the 21st century?



"YOUTH" WAS ALL ABOUT THE COMBINATION OF OLD AND NEW, TRADITIONAL AND INNOVATIVE, A MODERN VIEW ON THE AGE-OLD PROBLEM OF THE COEXISTENCE OF MAN AND WOMAN

Russian journalist Leonid Parfyonov tried to tell us about an entire nation too – the presentation of his TV project Russian Jews also attracted a full house. However, Leonid did not dare to directly respond to direct questions about the current political situation and Ukraine-Russia relations, just in case. Well, he does still have to sell his project.

Mariupolis by Mantas Kvedaravicius, a Ukrainian-Lithuanian-French-German documentary about the city of Mariupol on the frontline of military conflict, had already been featured at the last Berlin International Festival, where it also attracted a capacity crowd. It is a film about the life of a Ukrainian city during the war. The authors reach the literal heights of professionalism in their work, managing not to reveal a single word of their own position throughout the film. This is unusual, but also top-class workmanship. After all, fools cannot be convinced, and the wise will be happy to think for themselves.

The cherry on the Molodist cake was the film *Lobanovskiy Forever* – an attempt by Ukrainian filmmakers (director Anton Azarov) not only to paint a portrait of the legendary football coach, but also to show the dramatic fortunes of this complex man against the background of his complex era. People who themselves have long been legends talk about Lobanovskiy in the film: Oleh Blokhin, Michel Platini, Andriy Shevchenko, Nikita Simonyan, Oleksandr Shovkovskiy, Oleksiy Mykhailychenko. Step by step, story by story, like a puzzle, the fate of this extremely talented, controversial and obstinate man is pieced together.

Interestingly, there were no Ukrainian films in the main competition programme at Molodist. Of course, this is not an act of sabotage from the festival management. It is the sombre reality we are yet to comprehend and which should be the subject of a separate serious conversation. ■

Till Nov. 27 18:30**Event Horizon****Art Arsenal
(Kyiv, vul. Lavrska, 10-12)**

Event Horizon is a contemporary art project involving 20 of Ukraine's top artists, including Anatoly Belov, Alevtina Kakhidze, Oleksandr Chekmeniov, Illya Chichkan, the Ten-point group of visual artists, and many more. In science, event horizon is a nominal border in space and time after which the light gets into a trap of the black hole and never returns from it. This art project looks at the complex border between art and reality in the era where anticipation of radical transformations seems palpable. In it, the possible and impossible worlds and world-views collide, letting a viewer see what is unspoken or cannot be spoken out, something that's beyond the horizon.

**Oct. 29-Dec. 10****100 Years of American Political Cartoons****America House
(Kyiv, vul. Mykoly Pymonenka, 6)**

In the 19th century, American cartoonists created images which gained popularity and are recognized by people today. The cartoons currently exhibited at America House will help the viewers learn more about the history of the United States, offer a tour of American society, including its tradition to use humor in political and social processes, or to criticize their elected leaders. Make sure you have your passport or driver's license to enter America House.

**Nov. 4-25****Militarization of Everyday Life: My Enemy-Your Enemy****Art Arsenal
(Kyiv, vul. Lavrska, 10-12)**

A cycle of propaganda films and cartoons, the program features a collection of early Soviet Ukrainian cartoons, Agit-Prop – these tackle on the issues of disarmament, socialist construction, struggle against bureaucracy and the like that were important at the time when the pieces were created; propaganda films of the World War II times shot in Ukraine before and during occupation; militarized post-war films for children, and a series of Western agitation cartoons of the Cold War era.

**Nov. 27, 7 p.m.****Men In Motion
National Opera House
(Kyiv, vul. Volodymyrska, 50)**

The author of the Men In Motion concept is Ivan Putrov, a Ukrainian-born ballet dancer, formerly a principal with The Royal Ballet. He came up with the idea after a successful collaboration with Pet Shop Boys in The Most Incredible Thing, a production based on Hans Christian Andersen's story with some of the soundtracks composed by the band. Ivan's current project reveals the role of men in dance since the end of the 20th century. It is dedicated to the great dancers of the century, including Vaslav Nijinsky, Rudolf Nureyev, Mikhail Baryshnikov. The production will feature Royal Ballet principals Edward Watson, Vadim Muntagirov, Ivan himself, and others.

**Dec. 8, 8 p.m.****Panivalkova
Sentrum
(Kyiv, vul. Shota Rustaveli, 11)**

This new contemporary folk band includes three multi-instrumentalists known for their charisma and sophisticated sense of music. The girls will present their new experiments with sound and visual images, costumes and light. The audience will have a chance to attend a music session that is close to magic and shamanism in atmosphere. In 2016, the band released its solo album ДОНТВОПИ (DONTWORRY) and toured 15 cities across Ukraine afterwards.

**Dec. 11, 7 p.m.****ONUKA & NAONI orchestra
Zhovtnevyi Palats
(Kyiv, Heavenly Hundred Heroes Alley, 1)**

In this collab with NAONI, ONUKA's trademark electro folk is enriched with the freer, magical sounds of the talented rock orchestra and grows into a fusion that goes beyond standards or limits. After four years on stage, ONUKA, a project of lead vocalist Nata Zhyzhchenko and sound producer Yevhen Filatov, has become an easily recognized staple combination of folk instruments and contemporary electronic tunes.





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