

# The Ukrainian Week

International edition

#2 (120) February 2018

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## The Ukrainian Week

**The Ukrainian Week #2 (120) February 2018**

**Founder** ECEM Media GmbH. **Publisher** ECEM Media GmbH

**Address** Austria, Am Gestade,1, 1010 Vienna

State registration certificate KB № 19823-9623ПР 19.03.2013

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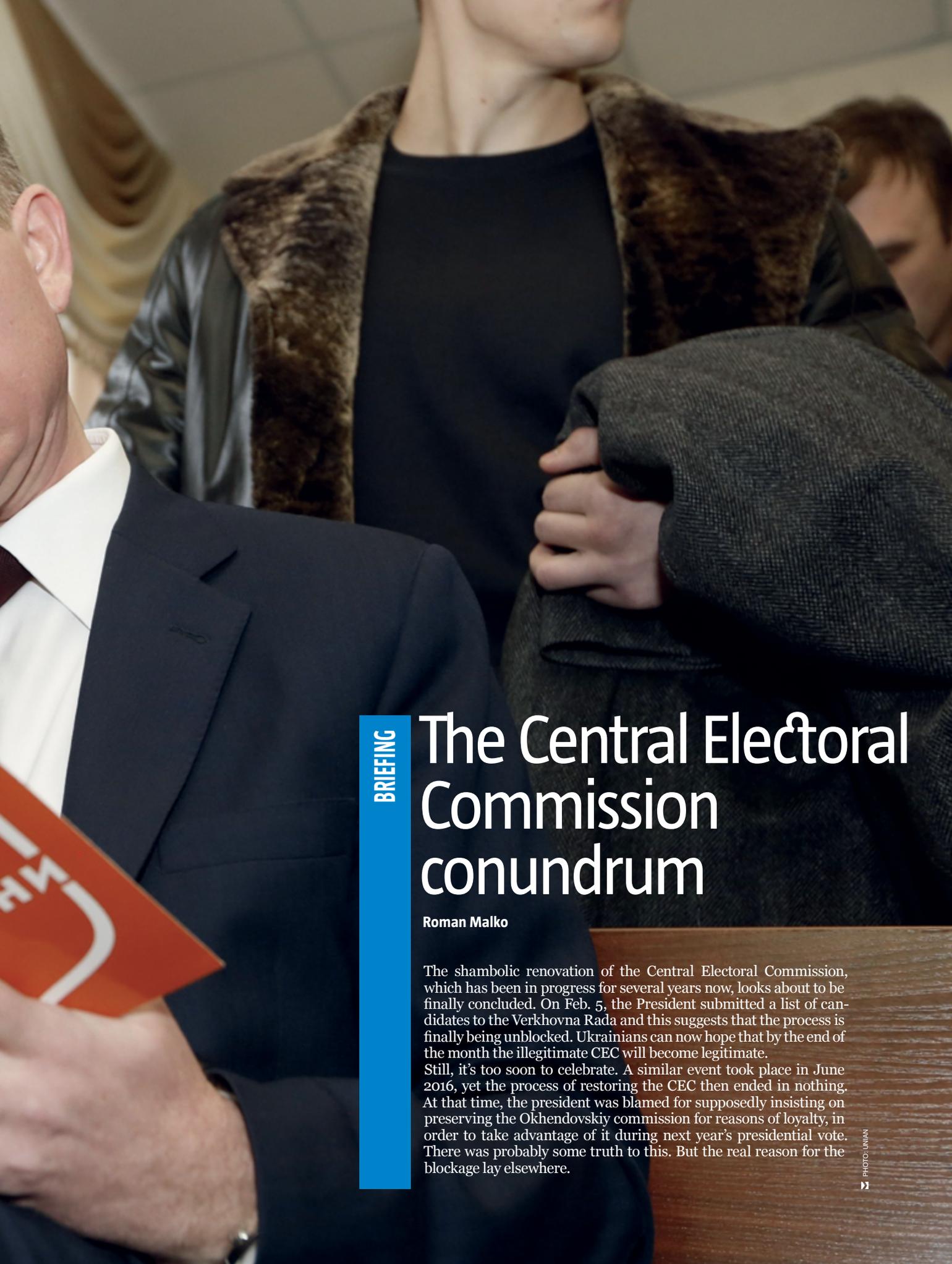
**Office address** Kyiv, Ukraine, 36A, vul. Bohdana Khmelnytskoho, apt. 3

**Print run** 15 000. **Free distribution**

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BRIEFING

# The Central Electoral Commission conundrum

Roman Malko

The shambolic renovation of the Central Electoral Commission, which has been in progress for several years now, looks about to be finally concluded. On Feb. 5, the President submitted a list of candidates to the Verkhovna Rada and this suggests that the process is finally being unblocked. Ukrainians can now hope that by the end of the month the illegitimate CEC will become legitimate.

Still, it's too soon to celebrate. A similar event took place in June 2016, yet the process of restoring the CEC then ended in nothing. At that time, the president was blamed for supposedly insisting on preserving the Okhendovskiy commission for reasons of loyalty, in order to take advantage of it during next year's presidential vote. There was probably some truth to this. But the real reason for the blockage lay elsewhere.

Poroshenko's list of candidates by some miracle had individuals under the Narodny Front quota that were apparently not proposed by the faction. It's hard to say whether this was a deliberate provocation or the faction simply was ignorant about some agreements among their higher-ups. But the search for a compromise took more than a year and all this time the chief suspect in all the delays continued to be the president. Nor has the cloud been lifted from him to this day—even after he submitted a revised list that reflects the requests of all VR factions except the Opposition Bloc. OppoBloc still hasn't submitted its nominee and that name will be added to the list once they do.

Needless to say, a great deal really does depend on who is sitting in the new CEC. The most important question is whether voters will trust it, because these people will control all elections for the next seven years. And elections are something the entire country pays attention to. This means that proportional representation of all the political parties in the Rada, which civic activists have been insisting on, is very important. The quality of the nominees and the transparency of their appointments are also critical and this is where any clashes are likely to take place.

OVERALL, THE PROFESSIONAL QUALITY OF MOST OF THE NOMINEES DOES NOT RAISE ANY RED FLAGS. AS EXPERTS HAVE NOTED, FOR A START, THINGS ARE A LOT BETTER THAN IN THE CURRENT CEC

Overall, the professional quality of most of the nominees does not raise any red flags. As experts have noted, for a start, things are a lot better than in the current CEC. Olha Zheltova (BPP), deputy chief-of-staff of the VR Rights Policy and Justice Committee, has co-authored a number of electoral bills. Oleh Konopolskiy is a lawyer who worked at the NF headquarters and was Arseniy Yatseniuk's right-hand man during the 2010 presidential race. Svitlana Kustova (BPP) worked on the team of lawyers in Viktor Yushchenko's suit against Viktor Yanukovich in the Supreme Court in 2004, when the results of the second round of the election were declared null and void; in the 2014 presidential race, she represented Poroshenko in the CEC. Vitaliy Plukar (BPP), a one-time aide to Valeriy Karpuntsov, head of UDAR's legal department, currently works in the Presidential Administration. Yevhen Radchenko (Samopomich), a civic expert, was one of the founders of the Committee of Voters of Ukraine, took part in many election campaigns and coordinated many election platforms. Leontiy Shepilov (NF), a lecturer at the Department of International Law and Special Legal Studies at the Kyiv-Mohyla Academy, also has a distinguished background in electoral matters. Mykhailo Verbenskiy (BPP) is a police general. Tetiana Slipachuk (Volia Narodu) is a lawyer. Tetiana Yuzkova (Radical Party of Oleh Liashko) is a lawyer and current MP. Andriy Yevstihniyev (Batkivshchyna), a lawyer, is a lecturer in the Department of Environmental Law at Shevchenko National University in Kyiv.

Some candidates on the list raise questions. Olha Lotiuk (BPP) is a notary and professor at the Taras Shevchenko University. Her father is Stepan Lotiuk, an ex-prosecutor involved in a case about property raids at Ukraine's Armed Forces. The question is why would a successful notary want to work at CEC? There is little information about the steep career of Natalia Bernatska (NF) and her assets – she could

not have possibly made them as a civil servant. She had been a lawyer in Odesa and a lecturer at the Law Academy before arriving in Kyiv in 2014 to become Government envoy to the European Court of Human Rights, then on to First Deputy Minister of Justice with no political background. Iryna Yefremova is another interesting NF candidate. She is an MP, head of the party's Kharkiv branch and Arsen Avakov's person. Her place on the list is interesting in terms of the possible plans of her patron rather than her own skeletons in the closet.

When the president's site first posted the list of nominees to the CEC on January 23, there were as many as there were vacancies: 13. The following morning there were suddenly 14 when Konopolskiy's name was added. When the list was finally submitted to the VR two weeks later, it was changed, again. This time Yevstihniyev's name was added. Hopefully when the OppoBloc finally decides on its nominee, all the factions will be represented. At that point, all the accusations that the president is being very selective should end: he did meet all the technical requirements fully. The only catch is that there are still only 13 vacancies but 15 nominees, so two of them will not make it to the CEC, no matter how you slice it. Who these sacrificial lambs will be is not just a guessing game, it's a serious problem. But it's the Rada's problem.

According to the procedure laid out in the CEC regulations, first the Rada votes to dismiss the entire current CEC, then it votes on each individual candidate nominated to the new CEC. If the list is presented alphabetically, then 14 and 15 will be out of luck: the vote may not even get to them. There have been cases in the past when some nominees simply weren't voted on. According to the rules, if one nominee is not approved, the president can nominate someone else, but the same candidate cannot be submitted a second time. Given the level of mutual mistrust in the Rada—it took three whole years to come up with a compromise solution—the possibility of betrayal is not to be dismissed. For instance, the Vidrodzhennia faction could, after voting for their candidate, Basalayeva, who is first on the list, simply refuse to vote on any others. They got what they wanted and that's that. What if Batkivshchyna gets Yevstihniyev and stops voting for other candidates? Nothing happens. The most at risk is the Radical Party's Yuzkova, being last on the list.

There are other possibilities that allow nominees to protect themselves against being ditched. This idea belongs to MP Ihor Popov (RPL), the former head of the Committee of Voters of Ukraine and known for his electoral smarts. In the VR Regulations, Art. 50 provides for an ad hoc procedure whereby it is permissible to deviate from the rules once and this, says Popov, is the saving straw. "Vote for all the nominees and then appoint the 13 with the highest rating as a group," he says. "That's how frenemies insure themselves from being dumped. And whoever is inconvenient simply won't make it into the CEC."

The last question is the CEC chair. Prior to the nomination of Bernatska, experts were betting on Kustova, but Bernatska is far stronger administratively. Whatever happens, these two will be in the management group, but the chair could easily go to someone outside the list. There's an interesting supposition going round that this someone could be Oleksandr Chernenko (BPP), a one-time CVU chair. Rumor has it that he's trying to finish his law degree at high speed. Maybe this is all just gossip, but why not? If Chernenko's name is ever submitted, the question of who will chair the CEC will automatically be decided. ■

# A historic law of geopolitical scale

What is important about the newly passed Deoccupation Law

**Volodymyr Vasylenko, Judge of the International Criminal Tribunal for the former Yugoslavia in 2002-2005, former Ambassador to Benelux countries, EU and NATO**

On January 18, 2018, the Verkhovna Rada passed Law No 7163 on Specifics of State Policy in Ensuring Ukraine's Sovereignty on the Temporarily Occupied Territories in Donetsk and Luhansk Oblasts. 280 MPs from the pro-European and pro-transatlantic coalition voted in favor of it while 36 MPs from the Opposition Block, a breakaway of the Party of Regions, voted against. The vote proved that Ukraine's parliament has a statehood majority which, regardless of interparty rivalry, political ambitions and personal tensions, has acted in unity around the idea of reinforcing resistance to the armed aggression of Russia and overcoming its consequences through mechanisms and under conditions that best fit Ukraine's vital national interests.

## LAW UNDER ATTACK

It was not surprising to see the establishment of the Russian Federation respond to it with a mix of negativity, frustration and hysteria. In Ukraine, it was criticized by the mouthpieces of anti-Ukrainian forces which are still present in government entities, including the Verkhovna Rada, echoed by numerous agents of Russian influence centered in different media or acting as independent experts, as well as useful idiots and some representatives of the human rights community.

They all present themselves as the "party of peace". In reality, they make the Fifth Estate, advocating peace through concessions that are existentially threatening to Ukraine's independent statehood. Orchestrated by

PHOTO: REUTERS



**A forced move.** In content and form, the Minsk Agreements are not international treaties that are binding for the parties and are regulated by public international law

the Russian diplomacy, propaganda and security services, this choir speaks against that law aimed at creating the modality for a peaceful solution that fits the national interests of Ukraine based on universal principles of modern international law.

The first target of this multilateral attack is the definition of the Russian Federation as the state that has committed the crime of armed aggression against Ukraine. While the outrage of Russian officials and unofficial speakers is understandable, negative response of Ukrainian citizens in whatever form is amoral and against the law. Such actors should be treated as participants of Russia's disinformation campaign to justify its armed aggression against Ukraine, deceive Ukrainian society and the international community, and set them against Ukraine's leadership.

Critics of the law intentionally distort its purpose, content and function as they draw focus on some of its

**THE LAW HAS NO PROVISIONS ABOUT REJECTION OF MINSK AGREEMENTS OR APPLICATION OF ANY REPRESSIONS AGAINST UKRAINIAN CITIZENS ON THE OCCUPIED TERRITORIES**

secondary flaws or important issues that are not a matter it regulates. The law is not perfect in terms of legislative technique or classic rules of lawmaking. However, its provisions do not contradict the Constitution of Ukraine and are fully in line with international law.

The document is primarily of a framework nature. It outlines many provisions that refer to the items of the Constitution, laws and other mandatory acts, as well as international treaties that are recognized as binding by the Verkhovna Rada of Ukraine and are part of Ukrainian law. This approach makes the provisions of the law flexible and usable to create viable, legitimate and fair mechanisms of regulation, including through the Minsk Agreement.

### **THE LAW AND THE MINSK AGREEMENTS**

Official Russian speakers, including Sergei Lavrov, MFA Speaker Marina Zakharova, Putin's Press-Secretary Dmitri Peskov and others, as well as those echoing them in Ukraine, including Yuriy Boyko, Hanna Herman, Vadym Rabinovych and others, say in various forms that the definition of Russia as aggressor state in law delivers a powerful blow to the Minsk Agreements, killing them, crossing them or denying them, and so it buries any hope of a peaceful solution of "the Donbas problem" and the establishment of peace in Ukraine. They underline, with no good reason, that this law is aimed at stifling dissent and deepening the alienation of Ukraine's territory Kyiv does not control. Boyko has gone farther than his Russian counterparts by claiming that the law provides for the punishment for all Ukrainian citizens residing in the temporarily occupied territories.

Such cynical demagoguery and deceptive statements are made to accuse Ukraine, in an unjustified and fake manner, of unilaterally dropping Minsk Agreements, and the intention to violate human rights in the occupied territory. The purpose of these claims is to persuade Western democracies that sanctions against Russia should be lifted for Ukraine's failure to stick to the

Minsk Agreements, and to nurture hostile attitude of civilians on the temporarily occupied territory towards Ukraine.

The law has no provisions about rejection of Minsk Agreements or application of any repressions against Ukrainian citizens on the occupied territories. The document makes no mention of the Minsk Agreements since the Verkhovna Rada is not involved in their conclusion. They never were a subject of special parliamentary analysis; the Verkhovna Rada never approved or ratified them.

Representatives of Ukraine's executive authorities were forced to sign the Minsk Agreements as a result of Russia's illegal armed aggression against Ukraine. This allowed Ukraine to stop the expansion of Russia's armed aggression. The Minsk Agreements demand Russia to stop the shooting, withdraw its troops and weapons, free the occupied territories, and create the conditions for Ukraine to restore control over its border with Russia. Also, they have a number of provisions that are unacceptable for Ukraine. These include changes of Ukraine's constitutional order, a special status for Donetsk and Luhansk Oblasts, elections in the occupied territories and more.

Two opposite approaches to the Minsk Agreements exist. The proponents of one see it as the ultimate evil. The proponents of the other see it as an ultimate panacea. This leads to a rejection of the Minsk Agreements as a fair peaceful solution, or to the perception of them as the way of stopping Russia's armed aggression and restoration of peace. The truth is somewhere in the middle. It should be sought in the legal nature of the Minsk Agreements and evaluation of them in the context of international practice and modern international law.

In content and form, the Minsk Agreements are not international treaties that are binding for the parties and are regulated by public international law. Even if there is a special consensus about treating them as international treaties, they will not be valid under Art. 52 of the Vienna Convention on the Law of Treaties. It defines any international treaty imposed on a state by force as null and void *ab initio*, i.e. from the moment of signing.

The Minsk Agreements are international political agreements signed by top officials who bear moral and political rather than legal responsibility for the fulfillment. In order to be applicable, any international treaties, regardless of their nature, should be analyzed in the context of universally recognized principles and norms of international law and morality, Constitutions of the parties involved and their legitimate interests.

This approach is especially necessary for the proper application of the Minsk Agreements. Ukraine's representatives signed them under extremely bad conditions resulting from illegal application of force and under time pressure. One consequence is the poorly structured provisions that run counter to basic rules of legal technique and sound reason. Hence the conflicting interpretations of the order in which the provisions should be fulfilled.

As a result of proper interpretation, the participants of the Minsk Agreements have reached an understanding of security provisions being the priority ones. These are the norms that envision the ceasefire, the withdrawal of heavy weapons and equipment from the contact

line, the withdrawal of foreign armed groups from the territories, and the restoration of Ukraine's control over its border with Russia.

The Ukrainian side has said that it is ready to conduct local elections. However, they would only take place on the Ukrainian territories from which Russian withdraws. Also, Ukraine has pledged to take other measures to restore the rule of law on the rest of the liberated territory. However, these measures should not violate the principle of non-interference with Ukraine's domestic affairs or undermine its constitutional order as a unitary state.

Despite the constructive approach of Ukraine to the application of the Minsk Agreements, Russia has chosen systemic and consistent violation of them. Contrary to the fulfillment of the security provisions, Russia continues its armed aggression against Ukraine. It conducts the war of exhaustion in order to impose the solution on Ukraine that is against modern international law or the Constitutions of both states, and aims to undermine Ukraine's statehood.

Russia's leadership and diplomats, security services and propaganda portray the Minsk Agreements as a tool of solving what is presented as an "internal Ukrainian conflict", rather than as a way to restoring international order violated by Russia's armed aggression. The Russian authorities are trying to prove that Russia is an intermediary in solving an internal Ukrainian crisis in the East, and brazenly deny the fact that there is a dangerous international conflict in the middle of Europe caused by Russia's armed aggression against Ukraine.

As it exploits the desire of Ukrainians to return to peace, Russia works through its agents and its Fifth Estate to make Ukrainian society and Western democracies believe that peace should be established as soon as possible in Donbas through automatic fulfillment of enforced and illegitimate claims and whims of the aggressor as they are listed in the Minsk Agreements. This is being done to work through Ukrainian society so that it presses its government to capitulate, and to persuade Western democracies that they should lift or weaken international sanctions imposed on Russia as aggressor state that violates the Minsk Agreements.

Russia's manipulative, cynical and provocative approach to these Agreements have become an important incentive that pushed the President to initiate and the Verkhovna Rada to pass the law whose preamble defines the extensive list of violations of international law by Russia. The law, however, does not urge the executive power to reject the Minsk Agreements or to abolish them. Ukraine's premise is that they can work provided the Russia shows good will and is ready to act in line with modern international law. The law confirms a number of important resolutions of the Verkhovna Rada, and specifies, generalizes and lists consistently and clearly the key components of Ukraine's state legal position in resisting Russia's armed aggression and in dealing with the consequences of this aggression.

Firstly, the law states that "the application by the Russian Federation of armed force against Ukraine constitutes a crime of armed aggression" with a reference to the United Nations General Assembly Resolution 3314 (Definition of Aggression) dated December 14, 1974. Under the modern international law, an armed aggression is always a war with signs of a serious crime

under international law that imposes special forms of responsibility on the aggressor state under international law. Resistance to an armed aggression is also a war conducted as self-defense from the aggressor, as defined by Art. 51 of the UN Charter.

Secondly, the law provides a clear definition of the armed formations and the occupation administration through which the Russian Federation is committing its crime of armed aggression against Ukraine. Under Art. 3.d of the UN GA Resolution (Definition of Aggression), the components of Russia's armed forces include irregular illegal armed formations, armed bands and groups of mercenaries that are created and funded by the Russian Federation, and report to it. The occupation administration of the aggressor state includes Russia-controlled self-proclaimed entities that have usurped executive functions on the temporarily occupied territories of Ukraine.

This approach matches reality and nullifies manipulative statements about an internal conflict in Ukraine or non-involvement of Russia.

THE RUSSIAN AUTHORITIES ARE TRYING TO PROVE THAT RUSSIA IS AN INTERMEDIARY IN SOLVING AN INTERNAL UKRAINIAN CRISIS IN THE EAST, AND BRAZENLY DENY THE FACT THAT THERE IS A DANGEROUS INTERNATIONAL CONFLICT IN THE MIDDLE OF EUROPE CAUSED BY ITS ARMED AGGRESSION AGAINST UKRAINE

Thirdly, the law states that temporary occupation of parts of Ukraine's territory by aggressor state is a result of Russia's armed aggression against Ukraine. It also outlines the specifics of their legal status and regime. The law qualifies the temporary occupation of Ukraine's territory as illegitimate and such that creates no territorial rights for Russia regardless of its duration. This provision is based on the universal norms of modern international law. It means that Ukraine does not lose its legal title to this territory and maintains its territorial jurisdiction there.

Equally important are the norms of the law that define the activities of Russia's occupation administration as contrary to international humanitarian law and illegal, and any act issued as a result of such activities as legally invalid and resulting in no legal effect.

Fourthly, the law confirms that the Autonomous Republic of Crimea and Sevastopol, in addition to the parts of Donetsk and Luhansk Oblasts, are the temporarily occupied territories of Ukraine. Art. 13.3 says that "This law acts without damage to the integral sovereign right of Ukraine to the territory of the Autonomous Republic of Crimea and Sevastopol that are temporarily occupied by Russia, and to the measures aimed at the restoration of Ukraine's territorial integrity within its internationally recognized borders." Therefore, some of the critics that accuse Ukraine of rejecting the Autonomous Republic of Crimea and Sevastopol are wrong. Moreover, the preamble and Art. 2 of the law mention Crimea as they refer to the Law of Ukraine on Guaranteeing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine dated April 15, 2014. The provisions of this law qualify Crimea as an occupied part of Ukraine's territory. ■

# Investigation put on hold

Investigators at the Public Prosecutor's offices and national police worry about further slowdown in their work as a result of the judicial reform

Sviatoslav Ptitsyn

Investigators are the second group of people after judges to fully experience the changes introduced by the judicial reform. This is mainly due to amendments made to a number of legal codes last year. All of them were based on one rather appropriate concept: ensuring compliance with the law during the investigation period. However, as noted by law enforcement officers who have spoken to *The Ukrainian Week*, the novelties have caused a number of problems.

The first is the mandatory audio recording of court sessions, including the ones where investigators request permits for searches, seizure of documents etc. According to our sources, such sessions were previously often of purely formal nature – the judge's decision was influenced by how necessary certain actions were. Now, a full judicial examination should take place complete with arguments from the investigator, documents and evidence. The judge must study the documents and make a decision. There must be an audio recording of all of this. Investigators worry that, given the insufficient staff of judges in Ukraine, they can only review a limited amount of requests in one day.

MANDATORY AUDIO RECORDING OF COURT SESSIONS, INCLUDING THE ONES WHERE INVESTIGATORS REQUEST PERMITS FOR SEARCHES, SEIZURE OF DOCUMENTS ETC WILL BE REQUIRED. GIVEN THE INSUFFICIENT STAFF OF JUDGES IN UKRAINE, THEY CAN ONLY REVIEW A LIMITED AMOUNT OF REQUESTS IN ONE DAY

"There are not enough judges. And the current ones are already busy. Take the Pechersk District Court in Kyiv. It covers around twelve investigative entities, from the Pechersk District Police Department to the Prosecutor General's Office which has eight investigative units. The court used to receive 200-300 requests for permissions of temporary access to premises or seizures a day. After the introduction of mandatory audio recordings, only 100 requests can be processed per day. If 200 are received, then there is an informal rule by which these requests are carried forward to the following day. If another 200 come in the next day, they will be postponed until even further. The amount of requests complied by the end of January would already take a week to consider. Judging by the future changes, it will only get longer. This will negatively affect the timing of investigations," says Serhiy Horbatiuk, head of the Special Investigation Department at the Prosecutor General's Office. The prosecutors in his department currently retain their investigation powers, unlike other prosecutors, in order to complete investigation of the Maidan cases. However, the lack of investigative judges could adversely affect the process.

Rank-and-file investigators are not enthusiastic about the waiting lists either. "More than one prosecutor files a request each day. From there, everything depends on the availability of the court. In the Shevchenko or Pechersk District, the courts do not have time to look at the requests. So the hearings are postponed until the following days. As a result, certain investigative actions lose their relevance," a Kyiv National Police investigator told *The Ukrainian Week* off the record.

He added that on March 15 a number of changes will come into force that could significantly increase the size of existing queues. "From March 15, all expert evaluations must be approved by the court. If a person, for example, is found dead on the street, we have to prepare a request for forensic tests, take it to court, the judge should examine the issue on the same day and, if a positive decision is made, give the expert permission to do their work. However, we have the waiting queues in mind. Previously, this issue was solved by the investigator: he made an entry in the Unified Register of Pre-trial Investigations and issued a decree scheduling an expert examination. Now everything is changing. In addition, we are obliged to conduct expert examinations in all cases of bodily harm. Believe me, there are a lot of them every day in Ukraine from domestic conflicts and disorderly behaviour. A problem will arise when we'll need a permission to conduct an examination from court and there are queues for two weeks. The victims don't care about changes to the codes – they want results. Instead of working, we'll have to wait with 20 more investigators like yourself in the corridor of the court. We'll spend more time queuing than actually working," the investigator complains.

The second change that is causing problems is the mandatory video recording of searches. The investigators we have spoken to mostly approve of these changes, but complain about the lack of funds and necessary equipment: video cameras, storage media, etc. They add that the recording itself can be problematic as the requirements for it are not clearly spelled out: in which conditions will the video be recognised as inadmissible evidence? What if the recording is interrupted? What if it is interrupted and ends up coming from several cameras? The first searches revealed a problem: the investigators do not have enough memory cards, so recordings were sometimes completed on mobile phones. What if the witnesses are not always on the video?

Petro Poroshenko's recent decree on the abolition of local courts to replace them with district courts adds to the concerns. Investigators worry about low-profile cases which the original courts have taken long relatively long to hear. With the upcoming change, the unfinished cases will have to go to the new courts. According to the rules,

## Plans on future reforms

Plans	
New law on lawyers and the bar institution	The goal is to reduce the influence of governing bodies such as the Bar Council of Ukraine and their opportunities to put pressure on ordinary lawyers. The discussion of draft legislation is still far from complete.
Creation of the Anti-Corruption Court	The goal is obvious: to strengthen the mechanism for combating corruption in Ukraine. Its implementation is seen in different ways. One of the key issues is whether the role of international experts in appointing judges to this body will be purely advisory or whether they will have the right to cast a deciding vote.
Adoption of the law on legal education	This law is supposed to define a clear list of legal professions and those who have the right to train such specialists.

## Reform progress in 2015

Date	Document	Key provisions
February 2015	Law on ensuring the right to a fair trial	This law removed obstacles to selecting new members for the Supreme Council of Justice, which had been inoperative for more than a year. A competitive appointment procedure was introduced for all judicial positions and current judges must undergo a re-attestation process. It allowed the video recording of court sessions without special court authorisation. At the same time, a number of human rights organisations said that the recommendations of international experts were not fully taken into account, in particular those concerning the limitation of political influence on the judicial system.
May 2015	Strategy for judicial system reform approved	The strategy covers the years 2015-2020. In addition to the reform of the court system itself and the Enforcement Service, the strategy envisages the reform of Prosecutor's Offices and the bar institution, as well as increasing the effectiveness of crime prevention and the rehabilitation of convicts.

the process of reviewing those cases should then start anew.

Take the Pechersk Court. Moderately serious cases can take more than three years there and hearings are held once every six months. If the cases are reassigned, the court has to start all over again. In addition, the rights of the victim and the suspects are violated. After all, not only the investigation, but also the trial should take place within a reasonable timeframe," the National Police investigator complains.

Another worrying factor is the notorious recent amendment by MP Andriy Lozovyi. It introduces shorter terms for pre-trial investigations after which the case should be closed, unless the investigation yields results. Law enforcers complain that the aforementioned queues and deficit of judges will only give them more headaches.

"Starting from March 15, the deadlines for investigations will change. The investigator will have two months to

work from the moment a case is registered in the database. The public prosecutor can extend the investigation for another month. The extension issue has then to be resolved through courts. Here's what we will have: an investigator applies to court to extend the investigation period 10 days before the deadline. The court has a waiting list of several weeks, so the investigator does not meet the deadline. In that case, the investigator must close the case in line with the Code of Criminal Procedure. This means that investigators have to queue for the extension through court on day one of the investigation. Then, they also have to get on waiting lists for other permissions, such as expert examination. It turns into an avalanche," Horbatiuk remarks.

Another series of changes introduced by the judicial reform will also come into force on March 15. One is the possibility to appeal against suspicion notice after two months of an investigation. Another one is the opportunity to appeal against a decision to suspend pre-trial investigation. Investigators see this as a dangerous change: if the court rules in favour of the appealing side, the duration of suspension is included in the timeframe allowed for the investigation. For example, an investigation in a complex case took six months and was then suspended for three years. A court ruling satisfying an appeal against this can add these periods together. The total timeframe allowed for the investigation is three and a half years, so the investigator is obliged to close proceedings after it.

The legislature has prescribed that the new provisions of the Code of Criminal Procedure will only apply to proceedings registered after this date. The old version of the code will remain in force for older proceedings, although Article 5 states that the current version of the code is valid for all proceedings. The legislature has created conditions under which two codes will be in force at the same time. This may also complicate the work of investigators.

"I am convinced that investigators will register thousands of cases before March 15. Just in case, so as not to lose their proceedings. That's what the Military Prosecutor's Office once did. Actually, if such actions are not aimed at persecution, they can be interpreted as an attempt to save ongoing investigations," Horbatiuk comments.

**The Ukrainian Week's** sources also said that as part of the reform, investigating authorities should send their requests to the address where a legal entity is registered. In the case of the National Police, this would be the Main Directorate of the Kyiv National Police. Investigators at district-level police stations note that their stations are not legal entities. So they are tied to the Main Directorate.

Unless there are further changes or clarifications, investigators will be forced to send requests from all Kyiv districts to a court located in the same district as the Main Directorate. This could lead to an even greater burden on judges. In addition, both the police and courts are still not fully aware of how the paperwork will be organised.

An electronic documentation system could be helpful in solving this issue and is perceived approvingly by investigators. This prevents a great amount of bureaucracy on paper and the constant copying of materials. But even here the question arises: who will provide storage for the files on these criminal proceedings? Which servers will store the information? How secured will it be from external interference and who will be responsible for protecting the data? Who will be charged with organising such a system? Investigators are yet to find answers to these questions. ■

# Demand for justice

What hopes do human rights campaigners have for reforms?

Hanna Chabara

Human rights activists emphasise that Ukrainians still do not trust their courts. "The following objectives are a common thread running through all the concepts and explanatory notes of the draft laws: ensuring the independence of the judiciary, increasing the level of public confidence in the judiciary and so on. What does this mean? That, despite all the legislative perturbations and piles of documents, these goals have not been reached," Oleksandra Matviychuk, head of the Centre for Civil Liberties, told *The Ukrainian Week*.

Despite the general pessimism, it is worth noting a few progressive changes that (at least in theory) should help Ukrainians assert their rights in court. For example, in 2017 a mechanism for constitutional complaints was introduced, according to which every citizen may appeal against a law in the Constitutional Court of Ukraine (CCU). However, this is not so easy to do. "Due to the artificial limitation of grounds for filing such a complaint, it is not possible to fully guarantee the protection of a person against the abuses of Parliament," Matviychuk commented. The complaint must go through all lower courts and the CCU can refuse to open proceedings if it finds the complaint to be groundless.

solidate the monopoly of a business corporation in its Basic Law. I emphasise that it's not in a procedural code or other law, but in the Constitution itself. In this way, despite the ban on this in the Constitution, the authorities have restricted our right to choose a defence lawyer in court. As what was previously a possibility has been turned into an obligation with no alternatives," emphasises Matviychuk. There is also the risk that such changes will lead to a rise in the cost of lawyers' services, which is typical of any monopoly. At the same time, the authors of the amendments emphasise that the quality of legal services should increase, as well as the speed with which cases are examined.

Roman Kuibida, deputy head of the Centre for Political and Legal Reforms and expert for the Reanimation Package of Reforms, told *The Ukrainian Week* that the lawyer monopoly will exclusively concern elite cases. According to him, the monopoly does not extend to less significant cases. "There is a certain value criterion, and it is quite a significant sum: people usually sue for much smaller amounts, which the lawyer monopoly does not extend to. In these cases, it is not necessary to involve lawyers at all: anyone can be a representative in court", explains the expert.

Before the New Year, the presidential decree on the abolition of local and the establishment of regional courts caused quite a sensation. The goal proclaimed by the authorities is optimisation and better access to justice. Human rights advocates have begun to talk about risks to the Maidan cases, because in the case of judicial reorganisation there should be competitive selection for new judges, who would start by hearing old cases. To avoid this, the president promised to initiate bills that would ensure the continuity of legal proceedings. So far, these are just promises, but the reorganisation itself is a slow process. Roman Kuibida says that Ukrainians are unlikely to face any problems in the next six months to a year, as the selection process will last for a long time: more than 600 courts are subject to closure or reorganisation.

"This can be prevented, but amendments to the law are needed: if a case has begun, even if there is a change of judge, they continue from the same place. Now, judges can listen to recordings from previous hearings, but this is still not an ideal option, as a judge should deal with a case from the beginning in order to solve it properly. There is the principle of immediacy in trial proceedings: the judge should personally hear all the information and then make a decision. So I don't know whether such a solution would suit this problem, but it is not certain that anyone will suggest something better," says Kuibida. In his opinion, the advantages of reorganisation are that it will be possible to deal more quickly with cases in areas where there are fewer judges and the costs of maintaining the judicial system will also be reduced.

However, the systemic problems of the courts remain. According to Matviychuk, they include the aforementioned political dependence, the delaying of cases, corruption, the lack of mechanisms for revising judgements, violation of the principle of continuity, non-enforcement of court decisions, etc. Therefore, there is no trust in these bodies: research by the Demo-

ACTIVISTS AND HUMAN RIGHTS ADVOCATES HAVE REPEATEDLY EMPHASISED THAT THERE SHOULD BE SELF-ORGANISATION OF JUDGES AND THIS SYSTEM SHOULD TAKE RESPONSIBILITY FOR ITS REPRESENTATIVES SO THAT THE RIGHT TO A FAIR TRIAL IS NOT JUST THE NAME OF THE NEXT REFORM LAW, BUT A REALITY

In addition, the presidential changes to the procedural codes provide for the introduction of so-called electronic justice. The system provides for the exchange of documents between parties to a case in electronic form, the broadcasting of hearings and participation in them via video conference. Broadly speaking, this sounds modern and transparent, but it is not yet clear how it will turn out in practice. "The effectiveness of the innovations will depend on how well these ideas are implemented. It is a complex and ambitious task. At the moment, the European Court is very carefully introducing an electronic documentation system as a trial for individual cases, and that's taking into account its budget, small workload and the fact that it's just one court. I'm horrified to imagine what this kind of work could turn into in Ukraine. Look at how the electronic declarations system and system for submitting documents to universities crash on days of maximum demand. Here, we're talking about a system that is constantly under maximum demand," Mykhailo Tarakhkalo, Director of the Centre for Strategic Affairs at the Ukrainian Helsinki Human Rights Union, told *The Ukrainian Week*.

At the same time, the "lawyer's monopoly", according to which only a lawyer can represent another person in court, was enshrined in the Ukrainian Constitution. Human rights activists believe that if a monopoly really has to be introduced, then it should be at the law or legal code level, but by no means in the Constitution. "We are the first country in the world to con-

cratic Initiatives Foundation in conjunction with the sociological service of the Razumkov Centre in 2017 showed that this trust in courts is -75% in Ukraine. This testifies that the judicial reform is unable to satisfy the society's demand for justice, according to Matviychuk. "In a situation where society is polarised and the level of tolerance towards violence is increasing due to the continuing armed conflict, any delay from the authorities in satisfying this request will have fatal consequences. Demand for justice can easily turn into demand for revenge," she said. Public control over the appointment of judges could increase trust in the courts. The Public Integrity Council (PIC) that verified candidates for the new Supreme Court would be an element of this control. However, the PIC was given strictly advisory functions and the High Qualifications Commission and the High Council of Justice often ignored its conclusions.

Roman Kuibida, who is a member of the PIC, notes that the Council was created not for genuine public control, but for show. "There was no interaction between society and the judiciary. It seems that the HCJ apparently set itself the task not of renewing the judiciary, but rather of preserving it as much as possible," he says. Nevertheless, he believes that without the Public Integrity Council, the result of the selection process for the Supreme Court would be much worse. In turn, Mykhailo Tarakhkalo is convinced that judges should be appointed by the system and not at the public's request. "Monitoring is definitely necessary and people who have discredited themselves should not be able to occupy certain positions. But it seems to me that public outcry is a good mechanism for avoiding this," he notes. In his opinion, there is no guarantee that people who represent the public will elect the best judges. "There is another extreme: it is a great danger when justice is replaced by social necessity. A situation may arise in which the exclusive right to appoint judges is given to representatives of the public – in such a case, the judges will not maintain balance, they will be guided by certain short-term interests that may not have anything to do with human rights," warns the activist.

Each reform requires a systematic approach, but it is often replaced by a set of popular cosmetic mini-decisions. "The problem of all reform efforts lies in the narrow approach to judicial reform. Even the cumulative efforts of social institutions along these lines were reduced to the fact that "we need honest judges". But they inherently can't be perfect. Our task is many times more complicated. It is necessary to create a system where each judge is faced with a simple choice: either adhere to the law or leave the profession," says Matviychuk. In her opinion, these systematic actions would include the creation of a genuine jury trial based on the Anglo-Saxon model, which has a clear division between the responsibilities of "judges of law" (professional lawyers) and "judges of facts" (panels of jurors). What is now known as a "jury trial" in Ukraine is basically a court of people's assessors. In addition, it is first necessary to begin the processes of renewing and cleaning up the judiciary, Kuibida believes, and in order to do this it is necessary to change the competitive selection procedures to protect them from manipulation.

It seems that the reforms will continue as long as there is dissatisfaction with the work of the courts. The addition of people from outside the system to the judicial staff is no doubt a big plus and gives hope for change, but the system itself will not change soon. Activists and human rights advocates have repeatedly emphasised that there should be self-organisation of judges and this system should take responsibility for its representatives so that the right to a fair trial is not just the name of the next reform law, but a reality that leaves no room for surprises. ■

## Reform progress in 2016

June 2016	Changes to the Constitution relating to justice	These changes concern all parts of the judicial system. The mechanisms for their introduction will be subsequently specified in separate laws. Simply put, the judiciary is becoming a three-tier system – the high specialised courts [created under Viktor Yanukovich and overlapping in authority with the Supreme Court that was not entirely loyal to the Yanukovich administration] have been abolished. Judges will be elected not for five years, as previously, but for life. The election will be done by the President based on the recommendation of the Supreme Council of Justice (SCJ), not by the Verkhovna Rada. The SCJ itself was transformed into the High Council of Justice, where a majority will be elected by the Congress of Judges, while representatives of the security forces lose their seats. At the same time, the immunity of judges is limited: special permission is not required to detain them at the scene of a crime.
June 2016	Law on enforcement proceedings	This law removes the state monopoly in enforcing court decisions. Permission is granted for the operation of private bailiffs. On the whole, the document aims to speed up the enforcement of court decisions, which is a significant problem in Ukraine. Opponents of the law believe that it has not made significant changes to the industry and that the old problems remain unresolved.
June 2016	Law on the judiciary and status of judges	The creation of the Anti-Corruption Court is envisaged, but a precise timeline is not specified. The Public Integrity Council (PIC) was set up to verify candidates for judge positions. At the same time, a part of society was unhappy with the fact that the conclusions of the PIC will not have a decisive influence on the judge application process.
September 30, 2016	Judicial reform comes into effect	The amendments to the Constitution and the new Law on the judiciary and status of judges come into effect.
December 2016	Law on the High Council of Justice (HCJ)	The HCJ receives new powers, in particular regarding the appointment and dismissal of judges, as well as hearing disciplinary proceedings. Part of society is concerned that members of the former Supreme Council of Justice will retain their powers in the new body until 2019.

## Reform progress in 2017

July 2017	Law on the Constitutional Court of Ukraine (CCU)	This law unblocks the work of the CCU and enables the appointment of new judges to vacant positions. Citizens are given the right to make a constitutional complaint, i.e. an appeal to the CCU.
September 2017	Changes in the codes of justice procedures	The new versions of the codes clear the way for the introduction of "e-justice" and contain a number of other innovations: the opportunity to simplify and accelerate the hearing of simple cases, new methods for legal protection and securing claims, etc. At the same time, the final version includes the Lozovyi amendments, which significantly increase the operational burden on courts, although this problem is not new.

# A risky scenario

Why the current scheme of electricity exports does more harm than good to Ukraine's energy security and is more costly for domestic consumers

Oleksandr Kramar

Ukraine has been increasing exports of electricity for three years now. It sold 3.4bn kWh abroad in 2015, over 4bn in 2016 and 5.1bn in 2017. In 2018, Ukraine plans to export at least 5.9bn kWh. According to the latest estimates of the State Fiscal Service, electricity exports yielded US \$235.2mn in 2017. All this is presented as great success by Rinat Akhmetov's DTEK which holds a monopolist position both in electricity generation and in politics.

A closer look shows that the current scheme of electricity exports hurts the country. It yields financial benefits to Akhmetov's company alone, while domestic consumers in Ukraine are losing billions, the country's energy security is weakened and dependence on the import of anthracite coal from the territory Kyiv does not control grows.

Ukraine sold **3.4bn kWh** abroad in 2015, over **4bn** in 2016 and **5.1bn** in 2017. In 2018, Ukraine plans to export at least **5.9bn kWh**

A lion's share of exported electricity is now produced at two ZakhidEnergo DTEK-owned thermal power plants: Burshtyn TPP in Ivano-Frankivsk Oblast and Dobrotvir TPP in Lviv Oblast. In 2017, they generated 4.1bn kWh, i.e. over 80% of the electricity exported that year.

The electricity went directly into the grid to later be exported. On paper, however, DTEK ZakhidEnergo sold it to the Wholesale Electricity Market of Ukraine (WEM). Then, DTEK Trading, another unit of Akhmetov's monopoly, bought from it from that grid. The price at which electricity was sold into the grid was higher than the price at which it was bought for further exports. In December 2017, the gap was UAH 0.4 per kWh (see **A simple scheme**). This was almost the price of a kWh of electricity from EnergoAtom (UAH 0.47 in December).

Since DTEK was buying every kWh of its own electricity from WEM at UAH 0.4 below the price at which it nominally sold electricity into the grid, somebody had to cover that difference. Domestic consumers did: their suppliers were forced to buy the amount of electricity left at WEM at the price high enough to compensate for the difference earned by DTEK. This no longer looks like something that benefits Ukraine, especially its domestic consumers.

The two DTEK TPPs in Western Ukraine are the only that can export electricity to the EU right now. As that export grows, so does the supply of more expensive electricity from them at Ukraine's wholesale grid. Meanwhile, the share of cheaper electricity generated by nuclear and hydro power plants shrinks. In December 2017, TPPs sold electricity into WEM at UAH 1.78 per kWh, while the rate from nuclear power plants was UAH 0.47.

This increases the median price at which electricity is sold to consumers from WEM. The National Commission for Regulation of Energy and Utility Services admits that the "negative impact of change in the structure of generation in the given year

caused by expected decline in the generation by nuclear power plants and increase of generation by thermal and steam-electric power plants" is one of the key factors behind the increase of wholesale price of electricity in 2018. Virtually all of the increase in the production of electricity in 2018 (by 3.8bn kWh) is planned through TPPs (3.7bn kWh). By contrast, nuclear power plants are expected to cut generation by 1.2bn kWh compared to 2017.

Apparently, the Ministry of Energy realizes that impact. Increasing the share of thermal-generated electricity and its exports serves the interest of DTEK and hurts other consumers in Ukraine. It is hard to come up with explanations for this, other than corruption.

In addition, the abolition of "subsidy" certificates for electricity exports has been actively lobbied lately. They provide for a compensation for subsidized household electricity prices through higher prices for commercial consumers. Lately, that extra charge has been at 25% of the price commercial consumers would pay without subsidy certificates. If the certificates are abolished, DTEK Trading will buy its own electricity at half the price at which its subsidiary, DTEK ZakhidEnergo, sells it to the wholesale grid. As a result, domestic consumers will have to pay double for every kWh exported. For now, this does not reach the households directly: the regulator sets the rates for this segment at a level far below the market one. The impact is indirect, reaching household consumers through the growing prices of what's produced in the country. When the subsidizing of households stops, they will buy electricity from the market at the same price as other consumers do. As a result, the burden of paying extra for every kWh of electricity exported by DTEK will end up on the shoulders of millions of Ukrainian families.

## SECURITY ASPECT

Higher electricity prices for domestic consumers is just one consequence of the current scheme. An equally detrimental one is the import of much anthracite coal which is disguised as an effort to keep fuel prices down. This import comes primarily from Russia.

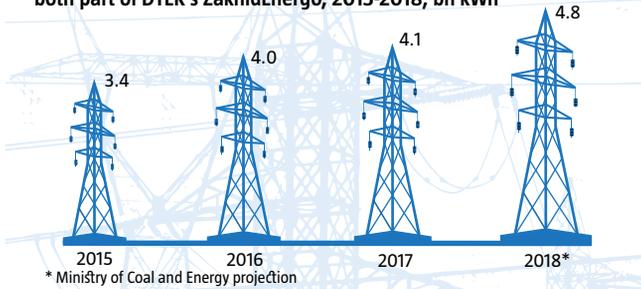
The deficit of gas coal in Ukraine is linked to the fact that it is burned at DTEK's TPPs in Western Ukraine to produce the subsidized export-oriented electricity. The need to import both anthracite and gas coal is used as an argument in favor of a steep increase of rates for coal-driven TPPs. These are largely owned by Akhmetov's DTEL and DonbasEnergo whose current real owners or co-owners are unknown.

In 2017, DTEK and the Ministry of Energy complained that switching all anthracite-driven thermal power plant blocks to domestic coal is difficult because Ukraine does not produce enough coal. Yet, it will take nearly 2mn t of gas coal to produce the intended 4.8bn kWh of export-oriented electricity at Burshtyn and Dobrotvir TPPs in 2018. The deficit of anthracite coal at Ukrainian TPPs will hit 4.2mn t in 2018. This will have to be imported.

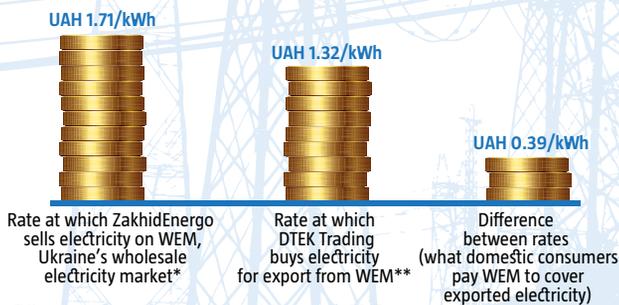
## A simple scheme

How much electricity the DTEK-owned ZakhidEnergo TPPs exports and how much of this is subsidized by domestic customers in Ukraine

### Exports of electricity generated by Burshtyn and Dobrotvir TPPs, both part of DTEK's ZakhidEnergo, 2015-2018, bn kWh



### The money merry-go-round



\* Source: EnergoRynok data as of December 2017

\*\* Source: EnergoRynok data on the price suppliers pay for WEM electricity at an unregulated rate

Author calculations based on UkrEnergo, Ministry of Energy and EnergoRynok data

If anthracite blocks of TPPs switch to gas coal and plants in Western Ukraine stop exporting electricity, the import of anthracite coal could be cut in half. This would minimize or abolish imports of that coal from Russia. In 2017, DTEK had to import gas coal from the US and Poland as a result of the deficit. This was used to justify the increase of electricity prices under the infamous Rotterdam+ formula. If DTEK ZakhidEnergo's TPPs stopped exporting electricity, this would make the imports of coal unnecessary, eliminating the role of Rotterdam+.

Lately, the rhetoric of the Energy Minister and DTEK leadership has changed. Since early 2018, they have been talking about the excess of gas coal which they seemed to have lacked badly some months ago. Also, they have been switching anthracite blocks at TPPs to gas coal, a necessary component of Ukraine's energy security. This led to a conflict: after the state-owned TsentEnergo mines refused to buy gas coal from DTEK, Akhmetov's companies stopped buying coal from state-owned mines in Lviv and Volyn Oblasts. Mykhailo Volynets, head of the Independent Trade Union of Miners in Ukraine known for a synchronized position with DTEK in the past years, laments that "TsentEnergo demanded that DTEK increases the extraction of coal to 250,000 t per month, or 3mn t over 2016." According to DTEK, it has set up new mining sections for that and now has nowhere to sell the surplus coal. So, it will supply more of it to Burshtyn and Dobrotvir TPPs while quitting coal from Lviv and Volyn mines.

It is important to note that the subsidizing of electricity from Burshtyn and Dobrotvir TPPs by domestic consumers is often presented as a way to support Western Ukrainian mines. This has little to do with reality. Instead, it's yet another myth that

benefits DTEK. According to the Ministry of Energy's forecast on the consumption of fuel at thermal and steam-electric power plants in 2018, Burshtyn TPP is expected to burn 4.6mn t of gas coal, and Dobrotvir TPP – another 1.14mn t. This is almost four times higher than the amount of coal to be extracted at all mines in Lviv and Volyn oblasts in 2018 – they produced 1.65mn t in 2017. Even if all export-oriented electricity production stops, mines in Western Ukraine will be unable to supply enough coal for the two DTEK TPPs. They will need to buy more fuel from Dnipro Oblast.

The surplus of gas coal that Ukraine seems to have is in fact a result of manual pumping of Russian anthracite coal into the country. Part of it may be coming from the occupied parts of Donetsk and Luhansk oblasts. Ukraine has failed to ban the import of energy coal from Russia in 2017. This has led to a dependence on that fuel that's dangerous for national security. Plus, the coal has been imported at dumping prices, encouraging TPPs to use anthracite coal.

Even the state-owned TsentEnergo has postponed the launch of a reconstructed block of Trypillia TPP scheduled for December 2017. Allegedly, it will now open in the spring of 2018. It will work on gas coal, while now the plant is burning imported anthracite. The opportunity to bring in unlimited amounts of anthracite coal from Russia (or ORDiLO) has discouraged Sloviansk TPP of DonbasEnergy and Kryvyi Rih TPP of DTEK to switch to gas coal. As soon as this dangerous approach is abolished and all TPP operating blocks switch from anthracite to gas coal, the deficit of the former fuel will be visible again while electricity export from ZakhidEnergo TPPs will hurt electricity supply for domestic use.

Eventually, the more electricity TPPs in Western Ukraine export, the more DTEK is encouraged to sabotage their turn towards the domestic grid. This hampers the growth of generation at nuclear power plants. On August 5, 2015, Arseniy Yatseniuk's Cabinet instructed the Ministry of Energy and the state-owned UkrEnergo to "take measures to switch three additional blocks of Burshtyn TPP to the unified grid of Ukraine" by October 15, 2015. DTEK as the owner has been sabotaging that.

## LOOKING FOR WAYS OUT

It will take profound changes to go from the current electricity export model that benefits Akhmetov's DTEK to the one that will benefit Ukraine. The country should stop the exports of electricity subsidized by Ukrainian consumers in favor of DTEK. Or it should stop subsidizing it through WEM: DTEK ZakhidEnergo can start selling its electricity directly abroad if anyone in Europe will buy it at the rate at which it's sold to Ukraine's wholesale grid. The best way out, however, is the following one. Electricity supply from DTEK's TPPs in Western Ukraine should first of all be redirected to balance out the deficit of electricity in Ukraine's grid at peak hours. This will enable a rational use of nuclear power plants and increase their production by 10-15bn kWh. Regular repairs should take place when regulatory restrictions halve EnergoAtom's generation capacity. Until recently, the potential of nuclear power plants was not used to its full extent because scheduled repairs were done at one part of the year, and regulatory restrictions were in effect in another.

As nuclear power plants start producing more electricity, it could be exported in larger amounts compared to the current ones. In order to do this, Ukraine would have to complete the constructions of transmission lines to wire electricity from Khmelnytsky and Rivne NPPs to EU countries. If exported, that electricity could actually benefit Ukraine through higher price and better energy security. With more nuclear-generated electricity Ukraine will need little to none imported coal from Russia or any other country. ■



PHOTO: ANDRIY LOMAKIN

# Tymofiy Mylovanov:

“We have to build capitalism where those who do a lot receive a lot”

Interviewed by  
Lyubomyr Shavalyuk

*The Ukrainian Week* spoke to Deputy Chairman of the National Bank of Ukraine Council and Honorary President of the Kyiv School of Economics about monetary policy, mid-term risks, fundamental problems in Ukraine’s economy, the role of confidence and the restoration of fairness in economic development.

**The NBU has increased the interest rate for the third time in a row. How does this affect the economy?**

— The NBU was following the rules like all regulators do. It increased the interest rate as a response to the growing inflation pressure and expectations. Initially, the inflation rate was expected to hit 8-10% but it has crossed that and is not going down. Something has to be done about it. What instruments do we have? We need to make money more expensive. That’s when it will be used less, so the prices won’t rise so fast. This is a very simple connection we see in practice. When the market has more money and the price of products doesn’t change, prices will be higher. And vice versa.

What is the NBU doing? It raises the interest rate to make sure that prices don’t grow so fast. This means that deposit interest rates are likely to grow with time. When deposits yielded 10% while inflation was 12-14%, some people may have preferred to buy more bread or a car rather than deposit their money. Now, it’s more convenient to deposit money. So, the amount of money in the economic system will shrink while the amount of money on bank deposits will increase. The NBU sterilizes that money by taking it from banks and paying a cer-

tain interest rate to them. That’s how the NBU accomplishes its goal of making money more expensive.

That’s bad for the Cabinet of Ministers and some companies. When money gets more expensive, loans do too. The economy always works like that — what’s good for one person is bad for another. If I want to deposit my money, it’s good for me. If someone wants to get a loan, it’s bad for that person. There’s also macroeconomic balance: if we make money more expensive, this is not necessarily good for the economy, but it does help to push inflation down.

We can discuss the point to which the interest rate should be raised. Experts are having heated debates about that: some say that it’s not working, while others say it is. I think this mechanism does work, even if not as ideally as it does in developed countries.

**Why is the inflation rate going up?**

— It’s an important question that is looked at from different perspectives. The Cabinet of Ministers and a number of experts believe that prices are growing for objective reasons, not as a result of the Government’s decision. These objective reasons may include growing prices for the goods we import in the world, the growing price of gas or oil, rising exports to the EU which pushes domestic prices up to the EU level, the increase of utility rates and many others. These factors cannot be controlled by the Government.

According to another perspective, whenever the Government raises pensions or salaries in the public sector beyond the level which the economy can afford, the problem emerges.

**Dr. Tymofiy Mylovanov** is Professor at University of Pittsburgh and Deputy Chairman of the National Bank of Ukraine Council. He is KSE Honorary President and a co-founder of VoxUkraine. Born in 1975 in Kyiv, Dr. Mylovanov graduated from the Kyiv Polytechnic Institute and Kyiv-Mohyla Academy. He received his Master degree in Economics from the Kyiv School of Economics in 1999. He earned his PhD in Economics from the University of Wisconsin Madison in 2004 and has taught at the University of Bonn, Penn State University, the University of Pennsylvania, and the University of Pittsburgh.

On the one hand, higher salaries create proper incentives for civil servants and attract smart people to the public sector. On the other hand, we spend more than we can afford on the state level.

Some experts believe that social spending is growing faster than the economy does, so the Government's actions, such as the increase of pensions or minimum wages, provision of subsidies and listing handouts in the budget, drive expected inflation rates up.

Regardless of which perspective is accurate, the NBU responds to the situation by raising the interest rate. This will have a negative short-term effect on the economy and a positive mid-term effect on inflation.

#### **Which perspective do you stick to?**

— I'll be diplomatic: I've heard different estimates. For instance, the increase of minimum wages partly drove the economy into the shadow as people switched to Individual Entrepreneur status, and contributed to inflation pressure. The figures on the pension reform I have seen show a serious burden on the budget. Many programs funded by the state also have a negative impact. However, I also agree with the idea that objective factors exist which the Government cannot control.

In fact, the fundamental factor is the underdeveloped economy. This raises questions to the Cabinet of Ministers, the NBU, the Presidential Administration and politicians — have they done everything possible to make sure that the economy develops? It is safe to say that their actions have led to the current situation. They could have conducted reforms more effectively, focusing more on structural changes and on making the economy more competitive, and less on political squabbling with each other.

#### **Why are reforms going so slow in Ukraine?**

— Reforms benefit those who are ready for them. As a result of the changes, the winners are those with better education (better professors and universities, including internationally); those who adjust better, and those who have longer life expectancy — the fruit of transformations come in the future. It makes sense to build an infrastructure for the rest to enable people to change their qualifications. That's what has not been done in Ukraine.

This shows the clash between the Government and the NBU that's rooted in the fundamental conflict between inequality and economic growth. Any policy aimed at macroeconomic stabilization will benefit younger and better educated people. This will increase inequality. One of the Government's tasks is to decrease it. In order to ensure economic growth, we need to build capitalism where those who do a lot receive a lot. This will create an incentive to work a lot. Also, this will deepen inequality — those who have done something will have more compared to those who have not done anything. As long

as society does not perceive this inequality as a fair norm, it will not support capitalism, economic growth and reforms that lead to it.

This takes us to another question: is the inequality we have in Ukraine fair? No. In the 1990s, a handful of people became wealthy in an unfair manner. They did so by creating the environment for their own enrichment rather than by competing fairly. They monopolized markets, controlled companies, made profits on a distorted gas market, set up captive banks, took part in cheap privatization etc. This has led to fundamental inequality where several percent of people are extremely wealthy compared to the rest, but they have not made that money competitively. That's why people in Ukraine don't trust the rich — we see them as enemies, not heroes. Inequality is perceived as an unfair thing in society. This has a complex and far-reaching impact.

Wealthy people are seen as loyal to those in power. Therefore, there is no confidence in the government, and there is a permanent demand for the restoration of fairness: for "bandits in jails", deoligarchisation or simply an answer to the question of who killed people on the Maidan. Ukraine's leadership is unable to meet that demand. It needs support and gets none from society because society does not trust it from day one. Unless society supports it, the government relies on those who do. And who is that? The wealthy people with resources and connections. At that point people say, "sure, we knew they were just like their predecessors and cannot be trusted". The result is a vicious circle: we don't trust the government, and the government is forced to rely on the people that are the reason why we don't trust it. We're stuck in it.

Someone has to restore fairness in a fundamental sense if we are ever to leave this point. It doesn't take putting someone in jail, shooting someone or dragging someone to courts for 20 years. Constructive fairness lies in giving people an opportunity to earn money in an honest way, in creating conditions for that.

An increase of pensions or minimum wages is a local solution that does not really solve the problem. Even when pensions are raised, nobody says "What a nice Government we have!". Instead, we hear, "These losers have given us something at least." That's not what nurtures confidence. It can only be gained through the restoration of fairness.

#### **How are the conditions created to help people earn money on their own?**

— First of all, people should realize that expecting the Government to make things work well for everyone, to increase pensions and salaries, is a way to nowhere. Even if the Government does raise pensions, it will do so through the budget. Eventually, this will lead to higher taxes which is bad, or to higher prices. This means that we will still be paying for the increase. Macroeconomics does not allow governments to simply give people money from the state. If I'm given money and you are not, I will feel good. If all are given money and all go and buy milk with no new dairy plants built, the supply of milk will not increase. We will have to import it from Poland, it will get more expensive and hryvnia rate will collapse.

If only Ukrainians realized that they cannot expect anything from the state, they would slowly start looking for ways out. Some are really good at knitting, so they can turn it into a small business and sell things online. We don't see this in Ukraine because nobody instructs people about ways to create a small business plan or get an individual entrepreneur status.

#### **What would it take to grow an Apple or Amazon in Ukraine?**

— There is one simple recipe for creating an Apple. You should not be afraid to do business. When you found a new company, ▶▶

you will inevitably violate something because you have not done anything like this before, or because you are introducing innovation that is not yet regulated. Trading in bitcoins or coding blockchain are good examples. There is no regulation for this yet, so the SBU [Security Bureau of Ukraine] can come by and say that you are sponsoring the “Donetsk People’s Republic”. That’s where change has to take place. Law enforcement authorities should not put pressure on small and medium businesses that do innovations. Not paying all the due taxes is still better than being intimidated. How many people try to do something but are scared away? This gets into the news and makes others think, hey, I won’t even try. People have to read news about others coming up with ideas, transforming them into a legitimate business and selling it to the Silicone Valley through an IPO, not about the SBU coming to a company and withdrawing all of its servers\*. People will not try to create anything here for as long as they read about the SBU in the news.

It’s like sports. When everyone reads about Dynamo and Shakhtar, everyone loves football and plays it. This leads to a selection of talents who grow into strong players. That’s how business should work too: everyone should try and do business while the system and markets will select the best ones. For now, nobody wants to do it because they will be attacked for merely starting to act as a businessman. It should be the other way around: violations should be forgiven even if they do take place at times.

ANY POLICY AIMED AT MACROECONOMIC STABILIZATION WILL BENEFIT YOUNGER AND BETTER EDUCATED PEOPLE. THIS WILL INCREASE INEQUALITY. ONE OF THE GOVERNMENT’S TASKS IS TO DECREASE IT

**Some do not expect any tranches of funding from the IMF up until the end of Ukraine’s program with it. What awaits Ukraine in a situation like that?**

— I think that Ukraine will then lack the money to pay its foreign debt. This will lead to high inflation and an economic crisis. Or the Government should borrow in foreign markets which will increase the debt burden for future generations. This is a no-win scenario.

We can meet the IMF’s conditions and get the next tranche. The first condition is the establishment of an Anti-Corruption Court. The second one is an increase in gas prices to meet the international market rate. It’s very important that gas price in Ukraine gets to the European scale. This is difficult for people, but this is also about our energy independence. Market prices will enable competition where nobody will tell us: I’m closing the gas tap for you in the coldest time of the year.

The gas tariff situation is even more difficult. The Government has pledged to establish it based on a certain formula. It is now saying that the formula is unfair and inaccurate. Even if we assume that the Government is right, how do our western partners see this? If the Government has committed to that formula, it must have been incompetent, or it does not want to stick to its promises now. The Government is saying that it protects the rights of the population. Then why is this protection selective, and why is there no fight against corruption, shadow economy or cleaning up of the tax system? What is hurting people more – corruption or high utility rates?

If Ukraine was cleared of corruption, people could be making more money. Or taxes could be lowered – then people would have different salaries and could afford more expensive

utility services. Clearly, the PM office cannot overcome corruption overnight. It takes consistent work. Screws should be tightened to remove the benefits of shadow dealings. Part of this work is about putting the breakers of new rules in jail. But new rules have to be created too, and this cannot be done overnight.

**There is a lot of talk about labor migration from Ukraine. Can anything be done to minimize it?**

— Why are people leaving? They have nothing to do in a country that’s not fair. So they will leave. If fairness is restored, people stop feeling second-rate and have something to do here, they will probably stay. It’s easier to create a startup in Ukraine than it is in Poland. You can try and build something here, become an owner of it. There, you will only be an employee.

The fact that Ukrainians are leaving is not the end of the world. I lived abroad for 18 years, getting my degree there, writing analytical and academic articles, making a career, and seeing how people work and study there. Some of this may be helping me do some things better in Ukraine today. Those who have not returned are transferring money here and sometimes coming to develop business with local partners. So there is nothing bad about it.

This problem affects the macroeconomic and demographic dimensions. When people, especially the young ones leave, who will work and pay taxes to cover decent pensions? If we cannot keep Ukrainians in the country, we should open up to the countries where life is worse than it is here. We are a racist society that doesn’t like anyone but Ukrainians and white people. We refer to people of other races as beasts, banabaks, blacks and so on. I think that this is unacceptable, but that’s our reality. And that’s a huge shame: we are not open to other people and new ideas.

What’s the sense of the fight against racism and for diversity overall? Diversity brings diversity of ideas. It makes it more likely that a good idea comes up; it means tolerance for new perspectives, fewer conflicts, more exchange of information, better networking, brainstorming, economy and life for all. While we spend our time squabbling over whether we should be on the right or on the left, people are setting up a new Google.

Therefore we can’t curb migration directly. We can’t set up a fence on the border. This is bad because emigration from Ukraine is at the point where it raises a fundamental question: who is Ukraine for? If Ukraine is for the Ukrainians who think that life here is bad, maybe it’s better for them to leave? Think of a child who will spend a lifetime working as a clerk for USD 300 per month, or can get lucky, go study abroad and make USD 50,000 per year? On a fundamental level, is it better to not let the person do that?

**Can Kyiv School of Economics contribute to solving the emigration problem?**

— If we are given land or a campus – I mean private capital, not just state funding – we will easily create an incubator for small and medium business. We will do this on a nationwide systemic level because we know how to do this.

We use the resources we have available to create a program for ATO veterans, teaching them to make business plans for an own business. I think we will launch it in March. We have many other short-term entrepreneurship programs and an MBA, so we’re helping people set up their own business. ■

\*In the first days of February 2018, the SBU searched the premises of a Kyiv-based company and withdrew its cryptocurrency mining equipment. According to official allegations, the company was involved in a scheme of mining cryptocurrencies and funding the “LNR” and “DNR” quasi-republics in Eastern Ukraine. This was met with controversy in Ukraine’s business, IT and media community.

# The other side of the fence

The good, the bad and the ugly about emigration from Ukraine — and some surprising numbers

Lyubomyr Shavalyuk

What makes a person leave their home and travel hundreds and even thousands of kilometers to a new place? As many answers as there are people. Some are looking for better opportunities for personal development, others simply want to see the world. Some don't identify with the place they were born in. Some simply aren't tied down: no family of their own, and the rest of their relatives are strangers to them. All of these people have one thing in common: they're looking for a better future.

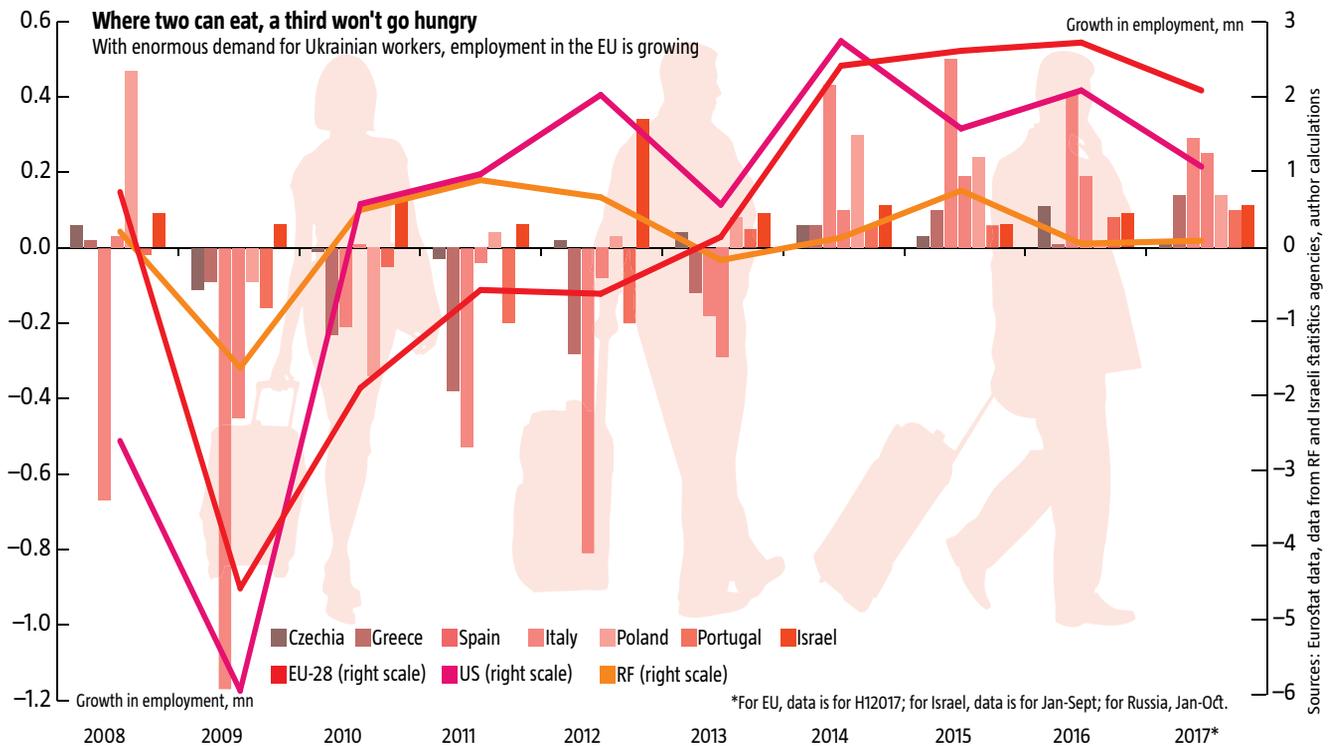
After all, no one leaves behind a place where they are happy and no matter how people think about it, in the majority of cases it all comes down to a higher standard of living—a good job for decent money. To leave on a long journey into the unknown and possibly never come back, a person has to be strongly motivated. A higher standard of living is the main factor in migration. In fact, there are few other internal or external factors.

## COUNTING HEADS

How many Ukrainians are leaving home is one of the hot topics of the day, both among ordinary Ukrainians and among politicians. But there are plenty of myths being

propagated as well, as there are few public estimates of just how many people have left and how many of them have not come back. According to official data from DerzhStat, the statistics agency, 6,500 Ukrainians emigrated in 2016, well down from previous years, when the numbers ranged from 14,000 to 23,000. If this number reflected reality, however, the issue would not be worth a fig and no one would be complaining about half-empty villages where only old folks and children live. Given that 14,000 people immigrated to Ukraine last year and migration numbers have been net positive since 2005, politicians could just clap their hands and talk about how great it is to live in Ukraine and how the country is seeing permanent population growth from migration.

Of course, this isn't what's happening. Official numbers do not reflect the reality because they only include those emigrants who actually filed stacks of documents prior to leaving, without which the fact that someone has actually emigrated is not established and so DerzhStat cannot report it. In the vast majority of cases, people simply go, avoiding this bureaucratic nightmare. Even without that, things are not easy for those who travel many leagues to a new land.



For one thing, many Ukrainians think that they will return and many of them do, after a certain time, if only to see their family again. These are all various streams of migration and official statistics can't capture them.

And so we can only estimate the real scale of emigration from Ukraine. For this purpose, *The Ukrainian Week* has used data from the State Border Service (SBS) regarding exits and entries by Ukrainian citizens (**see One in a Hundred**). If the majority of Ukrainians that leave the country in a year is more than the number that enter it, the difference between the two is the *de facto* number of emigrants during that period. Even if someone who left returns in the next period, either net emigration will go down or someone else will leave the country at the same time and the numbers won't change.

### WHAT THE NUMBERS SAY

The numbers tell an interesting story. First of all, the number of Ukrainians that leave—meaning the actual crossings of the border, given that some people cross back and forth multiple times a year—for all countries except the Russian Federation—meaning mainly to the EU, especially Poland—has grown 62% since 2013. For 2017, the number reached nearly 30 million.

The number of Ukrainians that leave—meaning the actual crossings of the border, given that some people cross back and forth multiple times a year—for all countries except the Russian Federation—meaning mainly to the EU, especially Poland—has grown 62% since 2013. For 2017, the number reached nearly **30 million**

As the graph shows, this number has been growing steadily since 2013, although the visa-free regime with the EU kicked in barely half a year ago. This shows pretty clearly that the European Union began to support Ukraine in deeds and not just words neither today nor yesterday, but at least since the Euromaidan.

The number of exits needs to be understood properly. Its key component is residents in bordering oblasts. They make their livings by buying goods in neighboring countries and selling them at home, or the reverse. They can easily cross the border several times a day, which means a hundred crossings a year in both directions. Tens of thousands of these shuttle traders account for up to a million crossings a year. In fact, they could account for much more. They typically celebrate the Christmas season at home, in Ukraine, so they don't figure in net emigration, nor can they be properly called migrants although they make a big difference statistically.

The next group are seasonal migrants, those who go to work to some place like Poland, mostly just for the summer. They also can cross the border back and forth several times a year, going home in mid-season for some holiday or for personal reasons. But they also celebrate New Year's and Christmas at home, because there's much less work abroad in winter and so they also don't figure in net migration. These two groups together form the lion's share of those who cross Ukraine's border. They have no issues with visas or passports, either, and so they were indifferent to Ukraine's gaining visa-free travel from the EU. The fact that they are mostly not on visas, they effectively do not affect statistics on border

crossings because the frequency of their crossings has not changed.

One more group is people who have no connection to migration at all: tourists, students and business travelers mostly associate themselves with Ukraine, at least at this point in time, so they will obviously return. Whether there are many or few of them, it's hard to say, but anecdotally at least their numbers have been growing.

### WHY PEOPLE LEAVE

This leaves the net balance—those who cross the border with a one-way ticket—even when they actually have a return ticket just in case they're asked by immigration officials. The best SBS statistics can offer is an approximation of about 200,000 individuals annually. This number has remained approximately the same over the last five years and was that high even before the Euromaidan. What does this suggest? Firstly, that those who are determined to leave Ukraine there are no obstacles: whether or not conditions for crossing the border are strict, they manage to do it. Most likely their motivation is not limited to material considerations, either.

After all, in 2013, Ukraine had "stability" with relatively high wages, a strong hryvnia, while the rest of Europe was in the middle of a crisis. This should have encouraged people to stay in Ukraine or to come back home from working abroad, but the emigrant flow never slowed down.

We might assume that a big share of these emigrants were people who simply hated Ukraine and could not imagine living there under any circumstances, or those for whom the difference between \$200 and \$400 in wages was not significant as they needed at least \$2,000. Every Ukrainian knows people like that, but are there really that many to form the main share of net emigration? In any case, over the last five years, socio-economic conditions have shifted more than one, and dramatically at that, yet the flow of net emigration from Ukraine to countries other than the RF has not changed. That's a statistical fact.

Indeed, the easier conditions for crossing into the EU that a visa-free regime ushered in has had very little impact on net emigration from Ukraine. Those who want to leave see no obstacles to doing so. In short, there's no truth to statements that emigration picked up pace after the Euromaidan: the same number of people left permanently both before and since. There's always a good reason if someone needs on: under Yanukovich the reasons were lack of prospects, reduced freedoms and unprecedented corruption at all levels; the reasons now are the economic crisis, the war, and widespread concerns about social issues.

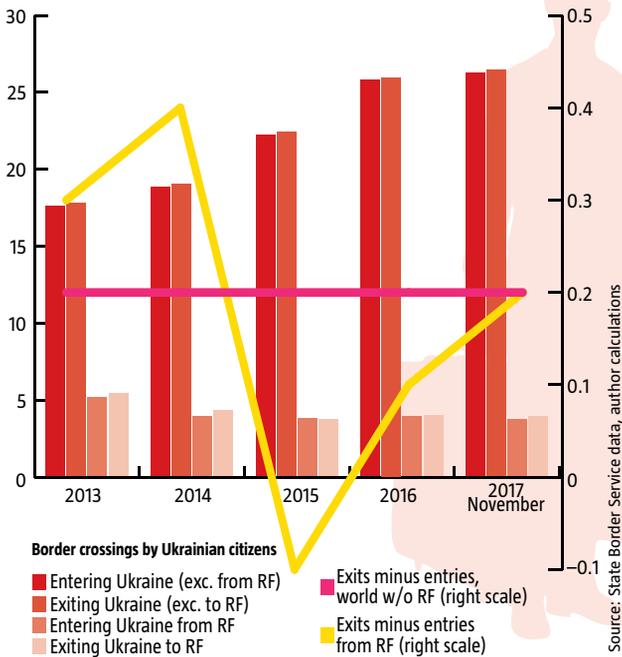
Meanwhile, liberalized conditions for entering the EU, the US, Canada and other countries are providing many opportunities for those Ukrainians who want to travel to learn, to meet people, to wander around, to work temporarily, and so on, but plan to come back. And that's why the total number of people crossing the border keeps rising... and will probably continue to do so.

### THE ENEMY'S REARGUARD

SBS data also make it possible to analyze emigrant flows to the Russian Federation. These reflect the actual number of crossings on those parts of the Ukraine-Russia border that are under Ukrainian control today, as there are no figures for the part of the border in ORDiLO, the

### One in a hundred

For every 100 Ukrainians who go abroad, only one will never return



occupied counties of Donetsk and Luhansk Oblasts where Russia controls the border. In the last four years, the number of Ukrainians who travel into the RF through official Ukrainian border controls has gone down by 22%.

As the graph shows clearly, 2013 was the watershed year. Since then, Ukrainians have been travelling less and less to Russia. There are several possible explanations for this. First, of course, the political factor is the extremely significant. The chances for a Ukrainian to be accused of espionage or to be jailed without an investigation or trial are quite high, as the hundred something Ukrainians currently languishing in Russian jails attest to. Why risk it?

Second is the economic factor. Western sanctions and falling prices for oil and gas led to a deep recession in Russia's economy and a steep devaluation of the ruble. Incomes went down significantly and are not as impressive as wages in other countries (**see Wage gap**). In short, it became less profitable to work in Russia at that point. Right now, the Russian economy is slowly recovering as the price of oil rises and so somewhat more Ukrainians have begun to go there, but nothing like the scale prior to the crisis.

Thirdly, worldviews have changed. Obviously, since the start of Russian aggression in Ukraine, a majority of Ukrainians, from both Eastern and Western Ukraine, are not receptive to Russia, and a good portion of them see the country as the enemy. Some have probably decided it would be better to be poor at home than to work for the enemy—a motive that is surprisingly strong for many Ukrainians.

Indeed, the dynamic of net emigration reflects all these factors. In 2013, total emigration from Ukraine to Russia was much higher than to all other countries put together. In 2014, the numbers continued to rise, most likely reflecting large numbers of refugees who fled the war in Donbas to Russia that year. In 2015, when hostili-

ties were at their fiercest, net emigration suddenly went into the negatives, that is, more Ukrainians returned from Russia than went there. Over the last two years, the number of people who left Ukraine permanently for Russia has started growing, but nowhere on the scale that it was before the war.

### CIVILIZATIONAL FAULTLINES

SBS data shows that over the last few years, a tectonic shift has taken place in migration flows. Many Ukrainians used to look for a better life in Russia: in 2013, 30% of all emigrants went there, while the share of temporary migrants was 150% higher even than that. Over the last four years, these numbers have halved.

Even Ukrainians from the western oblasts used to go to Russia for work: they knew the language more-or-less and cultural adaptation was faster because of the common soviet past. Moreover, the RF was very competitive in terms of wages: 10 years ago, it offered wages that were higher than the average in Eastern Europe, while Western Europe was too distant, both geographically and in terms of mentalities for many Ukrainians to try to adapt themselves and learn a very different language just for higher wages. When Europe's debt crisis began, Russia became even more attractive to Ukrainian migrant workers: it survived the 2008-2009 global crisis relatively intact, while the European crisis barely affected it.

Since then, much has changed. First came the war in Donbas and Russia's deep economic crisis, creating a set of objective and subjective factors that made it less attractive to Ukrainians looking for work. Some Ukrainians absolutely refused to go there under any circumstances. In Western Ukraine, people are more and more turning into shuttle traders, travelling into the EU and back, trad-

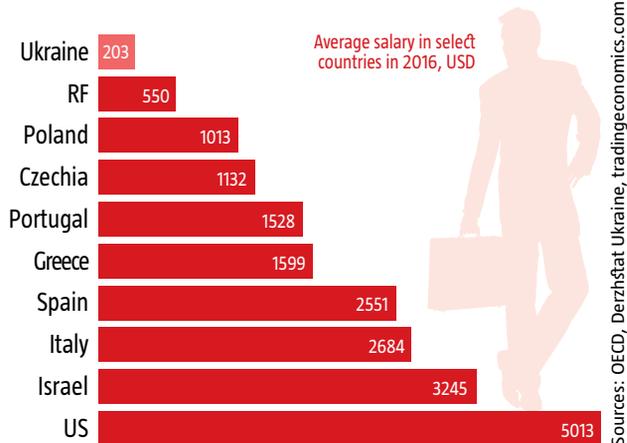
IN THE END, THE BUSINESSES OF OLIGARCHS, WHICH TEND TO BE INEFFICIENT, WILL LOSE IN THE COMPETITION FOR QUALITY LABOR BECAUSE THEY WILL BE UNABLE TO PAY MARKET WAGES AND EITHER CHRONICALLY OPERATE IN THE RED, GOBBLING UP THEIR OWNERS' ECONOMIC RESERVES, OR THEY WILL FOLD ALTOGETHER

ing goods from the Union, as stores with such products are available even in Kyiv. Others started looking for alternatives, but the options aren't many, because it means countries where Russian is spoken and are significantly wealthier than Ukraine. Interestingly, illegal migration to Israel has surged. As an example, a few months ago, on an excursion from Egypt to Jerusalem, the guide explained that 2-3 people from every excursion never went back, "So if any of you plan to stay, let me know right now so that we don't hold rest of the folks up." She noted that in 2016, nearly 40,000 illegal migrants made their way to Israel in this manner, many of whom were Ukrainians.

Second, the soviet generation is slowly leaving the stage and is being replaced by a more mobile, less ossified generation that finds it less of a challenge to learn a foreign language. These Ukrainians are quite willing to look for work in the EU. A decade and more ago, there weren't many of these, compared to labor migrants who went to Russia. Getting into Europe was much harder and even if someone from a village found a loophole to

### Wage gap

The difference in wages between Ukraine and its neighbors is enormous. Moreover, the advantage of western neighbors continues to grow.



get a visa and a job in a specific European country, then others from their village would follow suit. Some villages worked in Czechia, others in Greece, Portugal, Spain, or Italy. The European crisis sent many Ukrainians packing, who returned to Ukraine either stopped migrating for jobs or began looking for new opportunities.

Third, in the last 10 years, relative wages have changed radically (**see Wage gap**). Average wages in Russia are half of what they are in Poland today. Of course, illegal migrants are not paid that much, but there's little advantage to migrating to Russia for work, even for diehard pro-Russians. According to OSCE figures, the purchasing power parity (PPP) of wages in Eastern Europe, that is, Poland and Czechia, has become equal to those in Southern Europe, meaning Portugal and Greece. So there's little point in travelling all the way to Portugal from Ukraine just for a job. And that's why we hear that over a million Ukrainians are working in Poland today, large numbers of whom probably have moved east from more distant countries.

### CHANGING VIEWS, CHANGING DESTINATIONS

In short, Ukraine has made a huge leap not only in self-awareness but also in orientation, as emigration flows demonstrate. This shift is, moreover, likely not just to remain but to even deepen. Russia's economy is stagnating and few new jobs are being generated (**see Where two can eat, a third won't go hungry**). Hypothetically, rising fuel prices could help Russia but how long will these prices hold as alternative and renewable sources are developed at an accelerating pace? Meanwhile, European economies are coming out of their doldrums: growth is picking up and, more significantly, more jobs are being created. If the difference in wages and the ease of entry are added, the opportunities for Ukrainians become obvious.

The tectonic shift can even be seen in the infrastructure. Where earlier, the majority of Ukrainian migrant workers in a country like Spain were from Halychyna and fewer from adjacent oblasts. Once in a while there might have been someone from central or eastern Ukraine. Today, the mix is much more even. Once, transport to Europe was problematic and people looking to work there

mostly traveled in small groups with experienced private carriers.

Today, the choice of transportation is enormous: from Lviv alone, there are buses to the EU several times a day. In downtown Khmelnytsk, which is relatively distant from Ukraine's western borders, there's a huge board with the schedule of buses to Poland and other neighboring EU countries. Routes to the EU are being launched even from small towns in Donbas, which was once effectively closed.

What's more, UkrZaliznytsia's new train schedules and new flights to European destinations by low-cost carriers should ensure that there are plenty of options. Meanwhile, schedules to Russia are shrinking even though 10 years ago, thanks to the range of destinations inherited from soviet times, they offered the best options for leaving Ukraine. Whether they are being shut down because of the war or because of lack of demand, options to Russia are being curtailed.

### SILVER LININGS TO OMINOUS CLOUDS

No matter how much we might wish people good fortune and a better fate, mass emigration is a problem for any country. Over the last five years, net emigration out of Ukraine was nearly 2 million. This is far too much for any patriotic politician to ignore. The main negative consequence of large-scale emigration is that it sets up a demographic pyramid, where the number of young people is small relative to those who are well past their prime. The direct result is a financial chronic shortfall in the pension fund and low pension benefits. Indirectly, it means the population is in decline, which is a time bomb for the economy. This has not only other obvious results, such as dying villages, but also leads reduced number of users of infrastructure such as roads, power grids and social facilities, and it becomes economically unfeasible to upgrade them or even keep them in good working condition. Some elements might even have to be abandoned altogether.

Every Ukrainian is a marching economic unit, because even if they work in the shadow economy and don't pay any direct taxes, they still contribute indirectly through VAT and excise as consumers, when they buy goods and services from those who pay directly. Every Ukrainian's work contributes to the GDP and the country's economic strength. And, as many put it, the money transfers from emigrants do the same. However, the output produced in the country does not meet the amount of that money. This is money that the emigrants' families use to buy imported goods and services because domestic manufacturing doesn't meet demand.

What is the essence of an emigrant? Workers are an economic resource and when people emigrate, this resource is lost. Imagine if Ukraine's land were all taken away, the way the German army carted millions of tonnes of chornozem off during WWII, or if someone invaded Russia and took control of all its oil and gas? No one would just stand by if that happened. Nor should Ukraine stand quietly by in the face of such emigration numbers. Yet disquiet can be heard only from a handful of second-tier politicians. Premier Groisman says that Ukraine's economy should grow 6-7% annually, but nothing about the kind of labor pool that kind of growth will need. How will Ukraine ever reach that level when every year 2-3% of its most able-bodied citizens leave the country forever?

The only advantage to emigration is that it is undermining the oligarchy's hold on Ukraine's economy. When

the country was closed, there was a constant surplus of labor and so oligarchs were able to establish long-term monopolies on the backs of cheap labor, giving them economic clout and effective control over the country itself. Now people have a choice, they go where they find good jobs, and we hear about huge shortfalls in skilled labor, for instance, in Mariupol. In the end, the businesses of oligarchs, which tend to be inefficient, will lose in the competition for quality labor because they will be unable to pay market wages and either chronically operate in the red, gobbling up their owners' economic reserves, or they will fold altogether. Ukraine will be the winner in all this, but if the large outflow of migrants continues too long, the shortage of labor could mean that eventually market-oriented businesses will suffer along with the oligarchs.

**HOW TO FIGHT THE BRAIN DRAIN**

Labor migration is an issue that is not just Ukraine's problem. The population losses of the Baltics are also legendary, even though wages are far higher than in Ukraine. The Economist uses Bulgaria as another example of a country that has been losing its population for a long time: according to UN estimates, its population could shrink from 7.2 million to 5.2mn by 2050. The point is that some countries have governments whose policies are combating the impact of emigration, while others do not. Among the former are Poland, which has been patching up the holes with Ukrainian workers, and Slovakia, which is providing conditions to attract its

highly qualified emigrants back, writes The Economist. Ukraine belongs to the latter group.

To stem the tide of emigration, action needs to be taken. Ukraine needs to offer an alternative, such as jobs in Ukraine with wages that are not much lower than in the West. But the first step is to acknowledge that there is a serious problem, and then to come up with quality policies.

THE SOVIET GENERATION IS SLOWLY LEAVING THE STAGE AND IS BEING REPLACED BY A MORE MOBILE, LESS OSSIFIED GENERATION THAT FINDS IT LESS OF A CHALLENGE TO LEARN A FOREIGN LANGUAGE. THESE UKRAINIANS ARE QUITE WILLING TO LOOK FOR WORK IN THE EU

The investment climate must also move to a qualitatively higher level. There can be no room for raider attacks, a crooked judiciary, pressure on businesses from government agencies, and much more. SMEs should get comprehensive support. Overall, the state needs to organize life in such a way that economic resources—labor, capital, enterprise, public institutions and so on—are high quality and accessible. In order to do this Ukraine must learn to play in a completely different economic league. With the current line-up of players and trainers, this looks highly unlikely. ■



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# A shot away

Who is fighting against Ukrainian military in Donbas

Yuriy Lapayev



**Money, ideals or lack of other options.** Driven initially by different motivations to join the "armies of the republics", now the militants mostly do so for financial reasons

The self-proclaimed "republics" in Eastern Ukraine imitate statehood in various ways. They set up "ministries" and declare the opening of embassies abroad. The army is another institution the "Donetsk People's Republic" and "Luhansk People's Republic" mimic. Over the four years of war, Ukraine has had plenty of tragic encounters with it. Far from being the accomplishments of "tractor drivers and miners", virtually all of them involved regular Russian military. Who is on the other side of the rifle scopes of Ukrainian military today?

## ARISE, THE GREAT COUNTRY!

The "DPR/LPR" armies are in permanent preparation mode for an attack by the Ukrainian forces. Eduard Basurin who claims to be "DPR deputy chief of combatant command" talks about Kyiv's intents to go on a cunning offensive on a monthly basis. He supports his claims with Xeroxed papers marked as "A File From the Ukrainian Armed Forces Headquarters" with a Sharpie. In order to prepare for the offensive better, the "republics" announce mobilization on the occupied territory every year.

A recent order No11 from the "head of the Donetsk People's Republic" issued in 2018 has scheduled a boot

camp for the "DPR" reservists. In this way, the citizens of the "state living under a permanent threat from the aggressive junta" get to practice their basic military skills. Russian TV channels, including Rossiya 24, spend three minutes a news program showing how effectively "DPR" citizens train at tank drills. As the vehicles hit the targets, the background is full of talk about patriotism and the treacherous Kyiv. The show host refers to the drill participants as "volunteers" and says that some of them have served in the "militias" and fought against Ukraine. In fact, these people are not exactly volunteers.

The order from "DPR" leader Oleksandr Zakharchenko mentioned above instructs the "interior ministry" to assist military commissariats in "searching, mobilizing and delivering citizens to the location of the drills in case they do not arrive on their own". This means that the "volunteers" will be delivered to the drills forcefully if they refuse to arrive on their own. The official reason for the drills is "to compensate for the losses in the squads or military units, and in the conditions of intensifying military aggression." The upgrade of skills thus turns into a prospect of ending up in the frontline. This news triggered an intense reaction from the residents of Donetsk

Oblast, as much as it is possible under occupation. The locals discuss the nearing of the drills on social media and fear for their relatives.

In an effort to ease social tensions, the “DPR authorities” have issued a series of explanations, saying that this is a mere checkup of the notifications system and an overview of reservists. These statements seem to calm few down. The only positive aspect people see in the drills is an opportunity to earn some extra money: additional wages are promised for the time served in the military. Money is the only real motivation for the locals in their unstable economy. This is the main reason why regular Russian military and militants have been replaced mostly by the residents of the occupied territory. Contract service in the “republic’s army” has become virtually the only way to earn a stable income, even if risky.

Members of the Joint Operations Headquarters of the Armed Forces of Ukraine confirm this assumption. In a commentary for *The Ukrainian Week*, the Ukrainian military note that the Russian command is gradually filling up the military of the “republics” with the locals. According to the AFU JOH, the Donbas residents now make up to 80% (up to 25,000 people) of the 1st and 2nd army corps. Foreign fighters from Russia and other countries account for up to 15%, while regular Russian military are at 3% (900-1,000 people). InformNapalm, a community of volunteer reconnaissance activists, gives somewhat different estimates. They claim that the two army corps of nearly 30,000 people have 10% of regular Russian military staff, while foreign fighters make nearly one third of the force.

According to the AFU JOH, the staff of some illegal armed units increased in 2017 while human losses and shortages were filled on a relatively timely basis. According to representatives of Ukraine’s Armed Forces, this was a result of a number of factors.

One was reform of the units that enabled their optimization. Another was the lowering intensity of hostilities. This encouraged foreign fighters to extend their service contracts. The third factor is effective efforts by the military commissariats. This is linked to the fact that the top positions there are taken by the officers of Russia’s Armed Forces. While unemployment in the occupied territory drives up the numbers of those willing to serve.

## MONEY TALKS

At the same time, the AFU JOH notes that the inflow of foreign fighters from Russia has weakened somewhat lately. The numbers of those willing to risk their lives for “Novorossiya” shrink because people are unhappy with the conditions of the military service, strong psychological pressure and salary delays. While the salaries are fairly good for the locals in the occupied territory, Russian citizens don’t feel as attracted to the pay rates. A rank and file soldier is offered anywhere from 15,000 roubles or around US \$250, and part of this salary consistently goes to the commanders. Officers get anywhere from 25,000 roubles. The pay rate for those serving in the Russian army ranges from 20,000 roubles or US \$340 for a rank and file soldier with minimum skills or record to 68,000 roubles or US \$1,160 for a qualified senior. As a result, Russian citizens are not motivated to serve in the self-proclaimed “republics”.

Apart from the financial incentive, they also lack the moral one. The “anti-fascist” outrage that peaked in 2014 is slowly fading despite the constant propaganda on TV. Several factors contribute to this.

First, news from Ukraine is not that impressive anymore. Other issues are on the scene, including Syria, Donald Trump as friend or foe, and the upcoming presidential election as the main entertainment of the season.

Second, the militants are returning to Russia and sharing the ugly truth about the “republican” army and life in general. Such confessions are plenty on the Russian internet. The most embittered are idealistic militants who did believe that they would defeat “fascists”.

News of arrests of those involved in the Donbas illegal armed units on the territory of Russia and their extradition to Ukraine hardly add any optimism. The latest cases include detentions of two former militants, both citizens of Ukraine *de jure*, in Adler, a district in Sochi, on January 14, 2018. The Russians are preparing to hand them over to the Ukrainian authorities.

The best case against the “young republics” comes from the news of the crimes committed by the one-time fighters for the bright future of the Donbas. A surge in crime rates has been noticed across Russia, but it’s most visible in the regions adjacent to Ukraine. Rostov Oblast is among the leaders. Illegal trade in arms and ammunition, banditry, armed attacks — against law enforcers

THE BEST CASE AGAINST THE “YOUNG REPUBLICS” COMES FROM THE NEWS OF THE CRIMES COMMITTED BY THE ONE-TIME FIGHTERS FOR THE BRIGHT FUTURE OF THE DONBAS. A SURGE IN CRIME RATES HAS BEEN NOTICED ACROSS RUSSIA, BUT IT’S MOST VISIBLE IN THE REGIONS ADJACENT TO UKRAINE

among others — and murders make part of the list. Interestingly, some of the militants arrested for such crimes present their engagement in illegal armed units in Eastern Ukraine as a positive accomplishment in trials, seeking a softer verdict. The problem has grown to a scale that makes even Russian media talk about it.

## “THEY AREN’T THERE”

A key problem faced by the occupation forces in Donbas is the deficit of qualified military staff. Donetsk and Luhansk Oblasts used to have the most mines and industrial enterprises in Ukraine. However, they never had a strong military presence. Russia was not qualified as a threat in any of Ukraine’s past military doctrines. Therefore, there were few military units in the region. As a result, Russian curators have been appointed to all top and specialized positions. The Russians also act as instructors and advisors. Givi and Motorola, the infamous field commanders murdered in the past years, were mostly playing a media role, and not actually commanding the units. This was often something their unit members complained about, especially after difficult operations.

According to the AFU JOH commentators, Russian officers are sent to the “DPR” and “LPR” for short terms — from nine to twelve months. They mostly come from Russia’s Southern Military District and serve at the “defense ministry”, command of army corpses and at the tactical level in the “republics”. The Russians serve at the electronic warfare and communication sections as well. This helps the Kremlin solve a number of important issues.

It maintains permanent control and quality management of the military; the units are kept battle ready in the “republics”. This helps control the use of fuel and ammuni- ▶

tion, and keep track of weapons and military equipment. According to the Ukrainian military, the Russian curators do not trust the locals. The militants have claimed this many times on social media and in their video clips. The unification of “DPR/LPR” units with Russia’s regular army plays an important role too. Videos from the drills of the “republic” units show that the soldiers wear uniforms produced in Russia. The mobilized rank and file servicemen wear old *flora* uniforms while the commanders and instructors wear new Ratnik fatigues. The organizational and staff structure is being unified; so are the procedures for the use of equipment and communication systems. All this is done so that Russian and terrorist forces could interact effectively in a battle.

Open-source intelligence shows that trips to the Donbas are a sort of a condition for the Russian officers to get promotion; they thus have a better chance of being appointed to higher positions or entering a military academy. Those who have fought in Ukraine are appointed commanders of newly-established military units located along the Russia-Ukraine border. The Donbas has turned into a training field to improve the skills of Russian military students. New equipment of the Russian military complex — primarily electronic warfare tools — is tested in battle. Syria can be the next step in the career after Donbas. One example is Valeriy Asapov, a commander of the “DPR/LPR” army corps since the fall of 2015 known under the nom de guerre Tuman (Fog). His involvement in illegal armed units was confirmed by various sources, including his brother in an interview for Reuters. After Donbas, he went to Syria where he was killed, like a dozen other Russian officers and generals. According to official statements, he died in a mortar shelling near Deir ez-Zor

**VOLUNTEER MILITANTS, REGULAR MILITARY STAFF OR FIGHTERS DRIVEN BY IDEOLOGY – ALL OF THEM SHOULD END UP IN A PROCESS SIMILAR TO THE NUREMBERG TRIALS REGARDLESS OF THEIR OFFICIAL STATUS**

in September 2017. His route was a fairly standard one, from Rostov through Donbas to Syria and death, faced by the Russian militants and those who join private military companies.

### FOREIGN LEGIONNAIRES

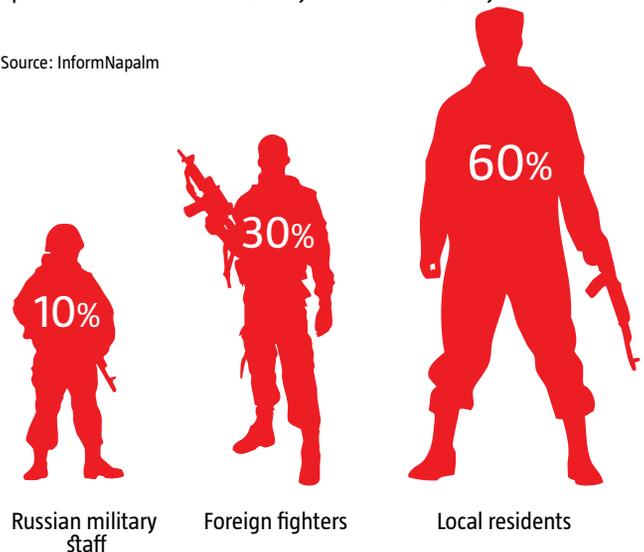
Apart from the locals and the Russians, the “armies” of the self-proclaimed “republics” host foreigners. Donbas is a magnet for various freedom fighters, the supporters of the “Russian world”, monarchists and criminals. While Basurin is looking for NATO squads or BlackWater militants in the Donbas steppes, and separatists discuss scary stories about “female snipers from the Baltic States” (the latter conspiracy theory has been around since the first Chechen War), foreign militants are fighting openly against Ukrainian forces. It is hard to say what all of them do in Donbas.

Some see it as an exotic safari. Some choose this as a way to fight against global capitalism or for the ideals of the Slavs. Some, such as the infamous St. Petersburg-based Nazi fan and sadist Aleksei Milchakov use the impunity for looting and violence. Some, like Brazilian Rafael Marques Lusvarghi, have watched too much TV and arrived to protect the “suffering Russian-speakers”. Lusvarghi ended up being arrested by the SBU and getting 13

### Forced volunteer

Military units of the self-proclaimed “republics” are mostly made up of the locals and controlled by the Russian military

Source: InformNapalm



years in jail in the early 2017, although his case was sent for a second reading later.

Thanks to their long-standing sympathy for Russia, Serbs make another category. They fought on the side of the terrorists in a unit called Slavic Chetnik Squad under the command of Bratislav Živković. This unit had been noticed during the takeover of Crimea: the Serbs were helping the Russian occupiers block Ukrainian military units, acting as local militants or *Russian kazaks*.

The fighters got into Ukraine through the territory of Russia and with the help of Russian funds, such as the Kosovo Front. According to the SBU, the lists of foreign terrorists have been transferred to the official Serbian authorities multiple times. President Poroshenko asked Serbia’s PM Aleksandar Vučić to take more action to stop the militants back in 2015. Officially, the unit stopped fighting in Ukraine in the late 2014. However, not all of its members have left Donbas. One is Dejan Berić, a Serbian sniper and a well-known figure in the media. Serbian Hussars, another small but well-known unit, is still active in Donbas. According to media reports, only one citizen of Serbia got a suspended sentence for participation in an illegal armed unit since the conflict in Eastern Ukraine began.

Few people have been sentenced in other countries. According to InformNapalm, “DPR” militant Aleksei Yershov was sentenced to two years for fighting in Ukraine. But he fled through Russia and rejoined the ranks of terrorists. Eight terrorists were arrested and sentenced in Spain in 2015. Radu Kirilov, a citizen of Moldova, was sentenced to three years in jail for fighting in the Sparta illegal armed group. Another Moldovan who fought in the notorious Somali battalion in 2015 was jailed for 12 years. A militant from Kazakhstan was jailed as well.

Once the war is over, Ukraine will have to spend a long time looking for all those guilty of committing crimes during the hostilities. Volunteer militants, regular military staff or fighters driven by ideology – all of them will have to end up in a process similar to the Nuremberg trials regardless of their official status. ■

# Ivan Lishchyna:

“The ECHR is one of the best international institutions to help Ukraine establish Russia’s aggression”

Interviewed by **Yuriy Lapayev**

To find out what official evidence of the presence of Russian troops on Ukrainian soil Ukraine has and what this evidence might help establish, *The Ukrainian Week* talked with Deputy Justice Minister and Ombudsman to the European Court of Human Rights, Ivan Lishchyna.

## What official evidence about the Russian Federation’s involvement in the conflict has been submitted to the European Court of Human Rights so far?

— Before we start, it’s important to understand the purpose of this process. The first question is what we are trying to achieve and why this case is being submitted to the ECHR. This Court has developed an approach specifically for cases when one member of the Council of Europe has taken over the territory of another member country. Our case is not the first such case, so the ECHR has established practice in this area. In accordance with international law, every country is responsible for all the territory over which it has jurisdiction.

This is a general rule, but there is one exception to it. It goes like this: if a country loses part of its territory, then it is no longer responsible for negative duties towards that territory, that is, the duty not to violate the European Convention on Human Rights. If a country has expanded its territory by adding parts of another, for the ECHR it’s irrelevant how this happened, whether this was done legally or illegally, but it must ensure the application of the European Convention on Human Rights across that territory.

And so, I believe that the ECHR is the one of the best international institutions that can help Ukraine establish that there really has been Russian aggression. The Court itself won’t do this, but it will confirm that some country has overall effective control over a specific territory. This is a special term that was devised by the ECHR itself for these kinds of situations. It will establish that the Russian Federation has effective control over a part of the territory of Ukraine, which essentially amounts to occupation.

For us, this is very important because this will be a fact established by a body with international jurisdiction and not by mere political declarations. For instance, this same fact was established in regard to Transnistria and Moldova is now preparing a claim against the Russian Federation regarding its illegal occupation of part of Moldova’s territory based specifically on a ruling by the ECHR.

The Court itself uses a number of criteria that establish whether or not there is control. The first and most important one is the presence of foreign military or boots



PHOTO: UNIAN

**Ivan Lishchyna**, born December 29, 1977, in Kharkiv, graduated in 2000 from the Faculty of Law at the Yaroslav Mudryi National Academy of Law with honors, specializing in jurisprudence. He worked as a lawyer for the Kharkiv Human Rights Group in 2000-2001, legal secretary at the ECHR over 2002-2008, legal counsel for a series of law firms, including international ones, over 2008-2016. Mr. Lishchyna graduated with a Masters in Law from London University in 2016. That same year, he was appointed Ombudsman to the European Court of Human Rights and has been Deputy Justice Minister of Ukraine since 2017.

on the ground. In this manner, the ECHR confirmed that Turkey controls Northern Cyprus and Russia controls Transnistria.

But in a recent case called *Chiragov and Others vs Armenia*, the Court ruled that even in a situation where there is no confirmation of boots on the ground, the territory can be deemed to be effectively under outside control if it can be proved that there are tight political or economic ties between it and a third state. The ECHR was unable to state with complete confidence that there are Armenian soldiers in Nagorno-Karabakh, but it was able

to establish that this region is tied to Armenia through such economic, political and other links that effectively they are one state.

**How useful might this be in a case when a hybrid war is being waged that uses soldiers with no identifying markings on their uniforms?**

— This is precisely what distinguishes the case of Donbas from similar suits regarding Crimea, where the Kremlin has completely acknowledged its control. In the case of “DPR” and “LPR”, however, it keeps insisting “We aren’t there.” That makes the task harder—and more interesting. We have to prove the presence of military and if we don’t succeed, then we have to provide evidence of close links.

We are providing evidence of Russian boots on the ground through testimony from those who have seen Russian soldiers, talked with them or captured them. Where possible, we provide video materials. We actually tracked down the authors of all the videos on YouTube and questioned them, meaning we aren’t just offering clips off the internet, but also a real person who provided notarized testimony explaining the video. Everything has been presented as fully as possible to prevent any future challenges to its factualness.

In addition to that, we have provided a military assessment of events in Ilovaik, the fact that the Russian army was used, which units they were and when they entered the area. There is also military testimony from those who were serving at the border and were attacked from Russian territory. We have information from the military prosecutor about both the general nature of events that took place and specific testimony that it collected during its own investigations.

Another source were the border guards. They have provided very detailed documentation about artillery attacks, hour by hour, the direction the shooting came from and where it landed. In fact, it was thanks to this information that I learned that tactical ballistic missiles, likely the Tochka, were launched against Luhansk Airport. Their information also shows that there was not just the odd overflight but actual attacks by Russian military helicopters against border stations.

**How much of the evidence you have collected came from non-government organizations?**

— Some of the data we were given came from InformNapalm, an international volunteer investigative community. This is very serious information about specific categories of weapons, when and where they were found, together with photographs and affidavits. We also have detailed information from Bellingcat that we didn’t simply download from the internet but talked to Eliot Higgins himself. He also testified under oath in the UK regarding his investigations and the methodology used in his research.

**What about material evidence?**

— The military prosecutor has provided information about captured weapons, both a general list and more detailed descriptions of individual items. If necessary, we’re prepared to bring the weapons to the Court. We have examples of those weapons that were not made in Ukraine and were never sold here, with affidavits from the military prosecutor about the fact that they were not in Ukraine’s arsenal.

The most interesting aspect is the captured soldiers. We have data about them from the SBU, such as the paratroopers who “got lost” and their interrogations. We also have testimony from those people who actually captured them. These witnesses made the first videos that we later looked for on YouTube. I think that all the more-or-less known cases of captured Russian soldiers have been disclosed to us.

The same is true of the capture or destruction of military equipment together with any available documentation. In addition, we made a selection of all criminal cases involving Russian citizens who were captured in combat.

TESTIMONY FROM UKRAINIAN COLLABORATORS PROVIDED INFORMATION ABOUT WHAT INSTRUCTORS FROM THE RF ARMED FORCES TAUGHT THEM. WE HAVE TWO WITNESSES FROM THE OTHER SIDE

I should add that there’s also testimony from Ukrainian collaborators who have provided information about what instructors from the RF Armed Forces taught them. We have two witnesses from the other side. One of them gave himself in, the other was taken in by the SBU. According to what they’ve stated, the commanders at the battalion or separate company level, and all the HQs are staffed by Russians.

**What’s the strategy with regard to the second criterion, the evidence of political or economic ties?**

— Here we’re talking mainly about the supply of arms and equipment. Beyond that, the Russian servicemen who are either commanding officers or instructors, or act as “military advisors”.

In this aspect it’s going to be important to show clear links between this entire structure, which exists both in the pseudo-republics and in the RF, to show that even if there is no massive military presence, this is nevertheless a part of the Russian army. They have the same titles, uniforms and system. And if there is a first and second “DPR/LPR” army corps, there should be something above them. These aren’t the “Donetsk” and “Luhansk” corps because, logically, they’d then belong to countries by those names.

Separate from this is evidence of economic and political ties. Here we have taken information regarding such things as the supply of Russian rubles. We also asked managers how exactly it’s organized. From what I understand, it’s a complicated system because one part is held by the FSB, another is managed by the GRU, some bits are subordinated to the RF Presidential Administration, and others are under the Russian Government. There’s a Duma committee with a hard-to-understand title that in reality is the shadow government. It discusses completely specific and concrete issues regarding the administration of ORDiLO.

The next point is the provision of energy. Fortunately, this kind of information is open and we have official notices from Naftogaz Ukrainy which was billed (by Gazprom – Ed.) for the delivery of natural gas and oil to the occupied territories. All the relevant statements of Russian politicians are also being collected in a special file and all their moves are being noted. ■

# Putin's point man in Congress

How did a one-time hawkish Reagan aide become Putin's favorite congressman?

Yuriy Lapayev



**Unexpected trajectory.** Rohrabacher has swapped his anti-soviet sentiments for open support for Russia

In this old photograph, a middle-aged man with a beard looks at the camera, smiling. He's wearing a traditional Afghani tribal outfit: a vest and pakol. Equally traditionally for Afghanistan is the machine-gun in his hands—a Kalshnikov. Only this isn't a mujahideen or a Taliban fighter. It's US Congressman Dana Rohrabacher. A Republican from California, shortly after his first election Rohrabacher took time off and went to fight against communism on the side of the Afghan fighters. It was an understandable move on the part of a former special assistant to the notoriously hawkish Ronald Reagan. A journalist by profession, Rohrabacher's main task was writing speeches for Reagan. Later he decided to enter politics himself.

Nearly 71, Rohrabacher is now one of the grey beards of American politics. And yet, even though he was shortlisted for the post of Secretary of State by the Trump Administration, his next career move, which is coming up soon, will likely be retirement. In the meantime, though, Rohrabacher is holding on tightly to his seat, including the chair of the Subcommittee on Europe, Eurasia and Emerging Threats under the House Committee on Foreign Affairs.

What threats in Europe might a man who fought against the soviet army somewhere outside Jellalabad see? Yes, indeed. Rohrabacher thinks the main threat to Europe are the armed neo-Nazis who came to power in Ukraine after the Euromaidan and are now, as soldiers in private oligarch armies, busy killing the peaceful residents of Donbas with impunity. At least that's the kind of thing he stated at hearings by former State Department official Victoria Nuland and ex-US Ambassador to the UN Samantha Power. And

the only peacemaker that Rohrabacher believes capable of bringing order to the region is...Russia.

Interestingly, Rohrabacher also says the Kremlin should not be blamed for interfering in US elections because the US is no pinnacle of morality or innocent, either, and has frequently taken upon itself to interfere in the political affairs of other countries. He has expressed annoyance at American politicians who see Moscow as the enemy and he has very heatedly insisted that the US should improve its relations with the Russian government. After Donald Trump was elected president, Rohrabacher announced that there was nothing weird about his wish to "be friends with" Russia.

How did this hawkish Republican ever turn into Vladimir Putin's biggest fan? The answer to this may be found in recent developments around the Magnitsky Act. When asked by *The Ukrainian Week* to comment, Bill Browder, the British financier and Russia investor who had hired the late Sergei Magnitsky as his lawyer, said:

"Putin is highly motivated to stop the Magnitsky Act from spreading to new countries and to stop it from being implemented in countries where the law has been passed. He uses many methods to do this. First and foremost, he makes grand threats about Russian retaliation if any country passes it. Sometimes those threats are credible, as in the case of the US, where Russia cancelled adoptions of Russian orphans by US families. In some cases the threats are empty, like with Canada, where Russia has so far done nothing. In the cases of the US, Canada and the U.K., the threats haven't worked, but we've seen Ireland, for example, back down from Magnitsky legislation because of the threats."

In addition to threatening other countries, the Kremlin uses less obvious but no less effective means—politicians that are in its pocket to broadcast the necessary views of things. It came to light that, during his several visits to the Russian Federation, Congressman Rohrabacher was given information directly from the Russian government, including officials at the Prosecutor General's Office, as well as from Vladimir Yakunin, a Putin insider and a one-time boss of the Russian state railway. Yakunin was famous for being critical of "the consumer society imposed by the West," but was then exposed for having a storage closet full of luxury furs and an exceptionally lavish lifestyle. More recently, Yakunin's name joined the US sanctions list.

In addition to Yakunin, Rohrabacher managed to meet with Denis Katsyv, a Moscow-based businessman and the son of a former RF Minister of Transport. Katsyv's company, Prevezon Holdings, was involved in a money-laundering case that it settled with the US Department of Justice in May 2017 for US \$5.9mn in fines. Interestingly, Prevezon was represented by attorney Natalia Veselnitskaya, who just happened to be a go-between during the handover of compromising materials against the Democratic Party to Donald Trump Jr in summer 2016. Rohrabacher admitted to these

meetings, but claimed that nothing illegal was discussed at them. Still, after he returned to the US, he tried to actively use these materials to get the Magnitsky Act withdrawn.

“Mr. Rohrabacher seems to be highly interested in repealing the Magnitsky Act and promoting the FSB’s version of events in Congress,” says Browder. “He advocated against me and Sergei Magnitsky in many congressional meetings.” Rohrabacher also organized the film screening of an anti-Magnitsky film on Capitol Hill called “The Magnitsky Act—Behind the Scenes” that was supposed to expose Browder as a swindler. “He also presented amendments to Magnitsky legislation to try to have Sergei Magnitsky’s name removed from the law,” adds Browder.

In effect, Rohrabacher was using the same toolkit as the ill-treated investor. For instance, he hired lobbyists to reach key members of the Senate and Congress. They, in turn, tried to promote the Russian view of events around the murdered lawyer, to prove that he was nothing more than a thief. One of the most curious of these lobbyist was a certain Rinat Akhmetshin, a soviet-born American lobbyist who was officially hired by Katsy’s NGO to lobby for the adoption of Russian children to be restored.

However, Akhmetshin’s interests went somewhat further than the fate of unfortunate orphans. During soviet times, he was a counterintelligence officer and engaged in “active measures,” including propaganda and disinformation. Akhmetshin met with Rohrabacher and helped him in his efforts. The congressman himself claimed that he was only trying to “find the truth” and avoid unjustified accusations against Moscow. Rohrabacher also meets often with Julian Assange and has been working to gain him an amnesty. He has consistently denied claims that Russia interfered in any way in the US election, which has gained him the unofficial title of “Putin’s favorite congressman.”

“Again, none of this has worked,” says Browder, “but he definitely tried and he hasn’t given up.”

In his crusade, Rohrabacher is a relatively frequent and welcome guest on Russian state-owned media like Russia Today. There he often makes pronouncements that are in line with statements made by Russian FM Sergei Lavrov or Putin. It’s hard to say when his enthusiasm for Russia began. Possibly after an official visit to Moscow in 2013 as part of the commission investigating the Boston Bomber. Or in 2016 after the series of visits and his speech at the Federation Council. Or maybe years earlier, after he got drunk and lost a game of arm-wrestling to Vladimir Putin himself—who was then just the little-known deputy mayor of St. Petersburg under Anatoliy Sobchak. It may have come a bit late, but in October 2017, the Foreign Relations Committee finally prohibited Rohrabacher from visiting Russia at public cost because of his suspected ties to the Kremlin.

A closer look at Rohrabacher reveals him to be an interesting man, indeed. He’s capable of seriously questioning renowned scholars about evidence of ancient civilizations on Mars and of writing sentimental patriotic ditties. He plays the guitar and smokes marijuana to treat pain. He married someone 23 years younger than him and they have triplets who are about to turn 14. In a few more years, they will be going off college. Their father is on a first-name basis with some rock stars. Living in Costa Mesa, a very suburban California town, he likes to dive and surf. Clearly the congressman likes to enjoy life. But there’s just one problem with this: all of it needs a serious amount of money and money is the one issue that’s not going too well for Rohrabacher.

As in the classic detective story, “cherchez la femme.” In Rohrabacher’s case, it’s his 47-year-old wife, Rhonda. After

finishing her BA, she became involved in politics at a young age, starting as an election volunteer and then a coordinator and even a confidant to politicians. In 1997, she was charged with electoral fraud on behalf of one of the candidates for the first time. In between her political adventures, she found time to be a bit creative: her LinkedIn profile says that Rhonda Rohrabacher worked as a DJ and performed at big-name dance parties in Washington, Moscow and Beijing. After getting married, she dove into politics headfirst, joining her new husband’s election team. These days, she’s responsible for technical issues at its headquarters. Somehow, though, even this led to scandals. She is suspected of misappropriating half the money that had been donated to the Rohrabacher campaign.

So it looks like money may have been how Russian handlers recruited Rohrabacher. Browder has similar suspicions: “Having been a speechwriter under Ronald Reagan, ideologically he should have been a strong voice trying to contain Russia. I don’t understand his motivations and can only imagine that the Russian FSB have either found his financial weakness or some way of blackmailing him. In any event, his behavior is not that of an independent politician but of a person directly under the control of the Russian government.”

Some of the congressman’s fellow Republicans have also expressed suspicions: “I think there are two people that Putin is paying: Rohrabacher and Trump,” says Senate Majority Leader Kevin McCarthy.

THE PROBLEM ISN’T JUST DANA ROHRABACHER: HE’S SIMPLY THE MOST OBNOXIOUS AND VISIBLE POLITICIAN. THE REAL NUMBER OF AMERICAN AND EUROPEAN OFFICIALS WHO OWE THE KREMLIN IS NOT KNOWN, NOR ARE THEIR ASSIGNMENTS

In addition to his admitted goal—getting the Magnitsky Act repealed—, Rohrabacher could be playing a role somewhat like the illiberal and autocratic Liberal-Democratic Party leader Vladimir Zhirinovskiy in the Russian Duma. Zhirinovskiy plays Russia’s court jester-truthteller who gets to make all kinds of wild and contradictory pronouncements. These serve to test public reaction to various events or actions on the part of those in power without affecting the image of the alpha leader. Those who forgive the jester never forget the king.

But the problem isn’t just Dana Rohrabacher: he’s simply the most obnoxious and visible politician. The real number of American and European officials who owe the Kremlin is not known, nor are their assignments. Popular Ukrainian opinion notwithstanding, the political orientation of a politician means little. Democrat Barack Obama seemed to support Ukraine, but in 2014 he proved to be weak and did not offer more effective measures to stop Russia’s aggression. Prior to the 2016 US election, the Ukrainian press was filled with apocalyptic predictions for Ukraine should the supposedly evil and pro-Russian Trump win. Trump won, but so far, anyway, has not proved catastrophic for Ukraine. On the contrary, he has signed all the necessary legislation to enshrine and expand sanctions, and gave the green light to deliver lethal weapons. Ukraine really needs to stop fortune-telling based on American parties, putting its hopes in “righteous” Democrats or “militant and anti-Russian” Republicans. Only its own strong stance will help the country be less dependent on the whims of the residents of Capitol Hill. ■

# The Turkish gambit

Is Ankara going over to the other side?

Michael Binyon, London

Under President Erdogan, the country's prickly and authoritarian leader, a NATO pillar at the crossroads of East and West looks increasingly ready to throw aside its Western allies and seek a new role with its northern neighbour and former enemy, Russia.

Relations between Turkey and the West are at an all-time low. The Turks and the Americans, after an acrimonious quarrel about embassy staffing, have resumed issuing visas after briefly stopping their citizens from visiting each other's country. Now the Turkish army has launched an all-out assault on the Syrian Kurds, who have been key American allies in the fight against Islamic State terrorists. Turkish generals gave a warning that if US troops and advisers were working with the Kurds they could become targets and risked getting killed in the attacks.

Relations with Western Europe are hardly any better. This week the Netherlands announced that it would not be sending an ambassador back to Ankara, as a mark of frustration and anger at the Turkish campaign against the Dutch that has lasted for almost a year. And the Ger-

under which Moscow would sell Turkey surface-to-air missile batteries worth some \$2.5 billion. This is the first time that Russia has concluded a big military sale to a NATO member. Turkey's allies are worried that, because this system cannot be integrated into NATO's military architecture, Ankara will now be reliant on Moscow for its own defence, and will therefore have to align its policies more closely with Russia.

Syria is the issue that has brought Ankara closer to Moscow. When the civil war began seven years ago, Turkey was adamant that Assad would have to go. It offered arms, shelter and support to the so-called moderate rebels, and turned a blind eye to the arms flowing across its borders to the more extreme Isis rebels in eastern Syria. But the success of the YPG Kurds in northern Syria – a group that Turkey insists is closely linked to the banned PKK Kurdish separatists – began to alarm Ankara. The Syrian Kurds, backed by American weapons, were the only effective force that was in the field fighting against Isis. The YPG expanded its area of control so that it effectively was the main force in all the territory along the southern Turkish border.

For Turkey, the YPG success was more alarming than the threat of ISIS. It was determined to clear them from the border areas, and push their forces back to the east of the Euphrates river. Now that the US-led coalition of forces, including YPG, have liberated Mosul and other towns of the so-called "caliphate" set up by ISIS, the Turks are determined to re-establish their influence in the area. But this has brought them into direct conflict with the US forces, who remain in northern Syria and insist they must stay there to ensure that Isis fighters do not regroup and re-emerge as a threat. And the Americans have no intention of abandoning the YPG Kurds who played such a big role in the victory over Isis.

Matters have come to a head this week. The Turks decided to send their army across the border to wrest control of the territory in northern Syria now controlled by the YPG Kurds and their Arab allies. Two towns in particular, Afrin and Manbij, are the flashpoints. The Turkish military is trying to capture both towns, but has faced stiff resistance. Ankara has been infuriated by continued US support for the YPG and is openly hostile to any continued US military presence in the area.

Several officials in Washington argue that the US, having beaten ISIS, should now withdraw. The Trump administration, however, is fearful that if the Americans go, the Iranians will move in and re-establish a corridor of Iranian influence all the way from Iran, through Iraq and Syria, to the borders of Lebanon. The Iranians would then be free to resupply the Iran-back Hezbollah militias, enemies of the Israelis and key supporters of Assad. And so Washington has decided that the US forces, a mixture

WHILE ERDOGAN'S ANGRY DENUNCIATIONS OF THE WEST APPEAL TO HIS CORE SUPPORTERS, BUSINESSMEN AND THE MILITARY ARE WORRIED. THE MILITARY KNOW THAT IF TURKEY LEAVES NATO OR IS EXPELLED, THEIR OWN POWER AND INFLUENCE WOULD BE COMPLETELY CRUSHED BY ERDOGAN'S ISLAMIST SUPPORTERS

mans, still smarting from being insulted by President Erdogan who last year said Germany's behaviour today was like that of the Nazis, are finding their relations grow chillier by the month.

By contrast, Turkey is getting an increasingly warm welcome in Moscow. After a bitter quarrel three years ago when the Turkish air force shot down a Russian jet fighter said to have crossed into Turkish air space, the two sides put aside their differences. Mr. Erdogan offered a qualified apology as well as compensation and President Putin lifted the punitive sanctions that he had slapped on Turkey, which included a ban on all Turkish agricultural imports as well as forbidding Russian tourists to visit their favourite Turkish holiday resorts.

Since then, relations have improved rapidly. Mr. Erdogan has reversed his previous insistence that President Assad must leave power in Syria, and last year attended a peace conference on Syria in Kazakhstan, where he was joined by the Russian and Iranian leaders. Turkey now supports Moscow in allowing Mr. Assad to remain in power and has withdrawn support from some of the rebel groups.

Perhaps the biggest coup for Moscow was the conclusion of a massive arms deal with Turkey in December,



PHOTO: REUTERS

**Turkey is getting an increasingly warm welcome in Moscow.** After a bitter quarrel three years ago when the Turkish air force shot down a Russian jet fighter said to have crossed into Turkish air space, the two sides put aside their differences

of regular troops, military advisers and intelligence officials advising the Arab enemies of Assad, should remain as a “stabilisation force”.

That suits neither the Turks, nor the Russians. Moscow does not want to see a permanent US presence re-established in a region that was virtually abandoned by Washington during the Obama presidency. And with Russian encouragement, Syrian government forces have begun to attack the US-led coalition. It has proved a bloody confrontation. This past week the coalition repulsed a Syrian attack, leaving at least 100 pro-regime fighters dead. The real danger now is of an escalation in fighting and a direct Russia-America confrontation.

Erdogan is all the readier to support the Russians in this confrontation because he is still angry at what he saw as Western support for the Turkish military rebels who tried to stage a coup against him in July 2016. Since then he has demanded the extradition of Fethullah Gulen, the Islamist Turkish cleric who was once a close ally of Erdogan but quarreled and fled into exile in America. Erdogan has accused him of masterminding the coup. But the US has refused all requests for his extradition.

Erdogan has also been angered by the growing chorus of criticism in the West at the harsh government crackdown after the coup that has led to more than 50,000 people being dismissed or arrested. These include not only military officials, but also judges, com-

munity leaders and journalists, all accused of supporting Gulen.

His growing authoritarian style and suppression of the opposition and free speech has convinced most European leaders that Turkey should never be admitted as a member of the European Union, despite more than a decade of accession negotiations. This means that Erdogan has nothing to lose by quarrelling with his NATO allies. And he picked quarrels with both the Netherlands and Germany a year ago by trying to send ministers to get Turks abroad to support his referendum to change the Turkish constitution and give himself more power.

But while his angry denunciations of the West appeal to his core supporters, businessmen and the military are worried. The businessmen fear a sharp drop in foreign investment and an end to growth. And the military know that if Turkey leaves NATO or is expelled, their own power and influence would be completely crushed by Erdogan’s Islamist supporters.

Russia is playing a careful game in trying to woo Turkey. Putin does not realistically expect Turkey to leave NATO. But he knows that the more difficult and unreliable an ally Ankara becomes for the West, the more Russia can achieve its aims of remaining the dominant power in the Middle East and reducing the West’s power to challenge Russia’s behaviour around the world. For both sides, the future of Turkey is of crucial importance. ■

# Priests and politicians

Compared to many other countries in Europe, Ukraine's religious life is very active, although there is no state religion. So how do politics and religion work together here?

Hanna Trehub

Ukraine has no state religion: its Constitution clearly separates church and state and guarantees freedom of conscience. At the same time, religious life is far more active in Ukraine today than in many other European countries and the question of faith is generally a private matter. Its civic leaders do not require the blessing of any religious leaders to be seen as legitimate, unlike some countries, where the civic and church leadership are seen as two sides of the same coin. Yet, when Ukrainian politicians go to a church or temple for major holy days, or appear in public with clerics or even heads of religious institutions, there's a clear message for all and sundry: "We have common interests."

## THE POLITICS OF RELIGION

The relationship and interaction between religion and politics is an issue that naturally comes up for any observant researcher. The two hold the same instrument in their hands: influence over the people who are the source of any power that is real, rather than illusory. Not everyone will continue analyzing along those lines, getting more specific about which of the two is more powerful in terms of governing and influencing, who subordinates whom, and how exactly that happens. But the study of the politics of religion has been around since at least the time of Max Weber.

what is obvious is the tight internal connection and interdependence of states and the Church. This gradually moulded them into a single secular-ecclesiastic entity whose interests are closely intertwined. In practice, this kind of holism was not always upheld because such a union inevitably led to the subordination of the church to the imperial ruler or other type of government. Theocracy, on the other hand, is when the spiritual leader, usually the top cleric, like the Roman Catholic Pope, controls both spiritual and secular power. Both these principles are essentially a symphony between the church and the state. Alongside them is a third principle, the separation of church and state—whether that means that their relations could be those of antagonists, neutral forces, or allies.

## CHURCHES IN CHAINS

The history of the last 300 years or so showed a disturbing tradition in the relationship between the different Christian churches in Ukraine and those in government: in short, lack of freedom of conscience. It was the Orthodox Christians who found themselves in the worst position. In 1685, Gideon Sviatopolk-Chetvertynskiy became Metropolitan of Kyiv, having been ordained by Moscow Patriarch Joachim and sworn fealty to the Moscow Patriarchate. In this manner, the independent, self-governing Ukrainian Orthodox Church ceased to exist until at least 1919.

In 1721, Peter I waved his imperial hand and Muscovy became the Russian Empire. He also replaced the Patriarch of the Russian Orthodox Church (ROC) with an ecclesiastic college known as the Holy Governing Synod. This state institution, which operated in subordination and by decree of the Emperor, was headed by an imperial chief prosecutor—a secular official. Thanks to the orthodox clergy, who controlled preaching and schooling, all the colonized peoples across the empire were russified—including Ukrainians.

In 1919, this church institution was cut down, along with a slew of others that emerged when the Russian Empire collapsed and other faiths that had developed on its territories that became part of the USSR, all the way until to 1943 when the ROC was restored. State and church, church and schools were constitutionally separated while control over religious communities was placed in the hands of the NKVD, the soviet secret police, to counter what they called "counterrevolutionary" elements among the lay and clergy, and dissent. In the meantime, their taxes were increased and a slew of religious facilities were closed and destroyed. Anyone who served in these churches had to register with the NKVD and violate the sacrament of confession at the demand of the secret police.

THE PHENOMENON OF DEMONSTRATIVE DEVOUTNESS AMONG UKRAINE'S ELECTED OFFICIALS, MINISTERS AND PRESIDENTS IS AN INDICATION OF A PROFOUND TRANSITION PERIOD AND IS CLEARLY POST-SOVIET, MEANING IT COMBINES ELEMENTS OF BOTH THE SOVIET ERA AND OF THE NEW ONE

If we take a closer look at broad Ukrainian discourse about the religiousness of Ukrainians, then we can see that it's quite customary to talk about the country as a state that traditionally and historically orbited around Christianity and European world, a nation that, in addition to having an ancient culture, also leans heavily on Christian culture. And so this article will focus precisely on Christians in their enormous variety, and not members of other of Ukraine's contemporary faiths. For now, however, let's leave the variety of forms that Christianity takes aside and look at the configuration its relationship to those in power in the state have taken throughout history. In short, this is about caesaropapism vs theocracy, or systems in which there is no separation of church and state.

Under caesaropapism, the government has a single leader who combines the power of secular government with religious power, effectively making secular authority superior to the spiritual authority of the Church. Here



**Crozier and sword.** When built on the support of people, both politics and religion become almost invincible. The cover of Thomas Hobbes' original *Leviathan: The Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil* offers an illustration

During WWII, the USSR policy towards religions was softened on the direct orders of Josef Stalin. In 1943, the ROC was restored and its patriarch became Sergei Starogodskoi. However, there was no independence to speak of. That same year, the Council on ROC Affairs was set up and in 1944 the Council for Religious Affairs, whose remit was to establish contact between the government and the ROC and other religious organizations, including a variety of Christian churches. When Nikita Khrushchev came to power, a thaw began towards the arts but it did not affect the religious sphere. In those times, almost all of the concessions that Stalin had made on religious issues were cancelled.

In 1945, Stalin ordered that the Ukrainian Greek-Catholic Church (UGCC), which had entered a union with Rome in the late 16th century, be invited to subordinate itself to the Moscow Patriarchate. In May of that year, during the Lviv pseudo-Sobor, this move was made. Many UGCC clergy were persecuted and shot, including Patriarch Josef Slipyj, while the Church itself was forced to go underground and become a secret church in order to survive, until 1989. This was no surprise: the soviets needed

to push as far away as possible those who still remembered the time when soviet nations existed as independent states and could be sources of influence and information in soviet society. Leonid Brezhnev did everything possible to replace religious rituals in people's lives with alternative "civilian" ones.

### **DOLING OUT THE OPIUM**

The soviets understood that it was easiest to control those religious groups whose leadership was located on soviet territory. This, of course, excluded the Roman Catholics and Protestants, especially Evangelical Christians such as Baptists, Pentecostals and Adventists. In 1944, a resolution was issued in Moscow to set up an All-Union Council of Evangelical Baptist Christians, as though a single large pot to hold communities of Baptists, Pentecostals and an entire slew of other late Protestant groups. On one hand, setting up such an entity legitimized many religious communities of late Protestantism, but on the other hand, this legal status was earned at the cost of horrendous concessions, including eliminating differences in faith among the many denominations and rejecting any

and all mechanisms that would enable religious traditions to be preserved for the longer term.

Theological education was not available to all Christians in the Soviet Union. Theological academies and seminaries were all exclusively ROC, and at that were under the careful eye of the government and secret police, who decided who could study for the priesthood and be ordained—and even who could be appointed bishop. This education was intended to serve the purposes of the soviet state's social policies and to isolate and marginalize the clergy. In this way, orthodox priests became performers of rituals rather than not spiritual pastors, slowly losing the ground beneath their feet.

After the 1960s, many unregistered communities emerged in this environment who did not agree with the style of life being forced by the soviet government. During the period of Khrushchev's atheist campaigns, late Protestant groups were suddenly declared taboo and called "sects"—a feature that has unfortunately survived to this day—and were seen as threatening enormous harm to soviet society. Some of their leadership had been shipped to labor camps and prisons under Stalin, while its younger generation faced other forms of persecution: they were prevented from gaining a higher education because of their religious bent and in some cases even lost parental rights. It's worth remembering that Pentecostals and Adventists were protestant movements that came to Ukraine from the US—the USSR's bitter foe during the Cold War. Political neutrality, distrust towards the state and rejecting being part of it, being drawn to Eurasian communities or to unity within the CIS were all typical of late Protestants born in the USSR. For many years, they continued to be without the least possibility of gaining a spiritual education, let alone engage in the theological development of their tradition as it evolved outside the Soviet Union.

The Roman Catholic Church also suffered enormously under the soviets. Prior to 1920, it was largely ignored, because at that point the soviets still wanted to maintain contact with the Roman Curia in order to get around the diplomatic blockade. But in 1930, official ties between Moscow and the Vatican were broken off for a very long time. In 1934, a case was fabricated about "the attempt of Catholics to take the life of Comrade Stalin," based on which many faithful were executed and almost all Catholic churches shut down. The Roman Catholic Church managed to survive only in Lithuania, Latvia and Western Ukraine, where the Uzhhorod Vicarage was in charge. Relations between the USSR and the Vatican began to be normalized diplomatically in 1989, just two years before the Union collapsed altogether.

### SOME THINGS CHANGE, SOME STAY THE SAME

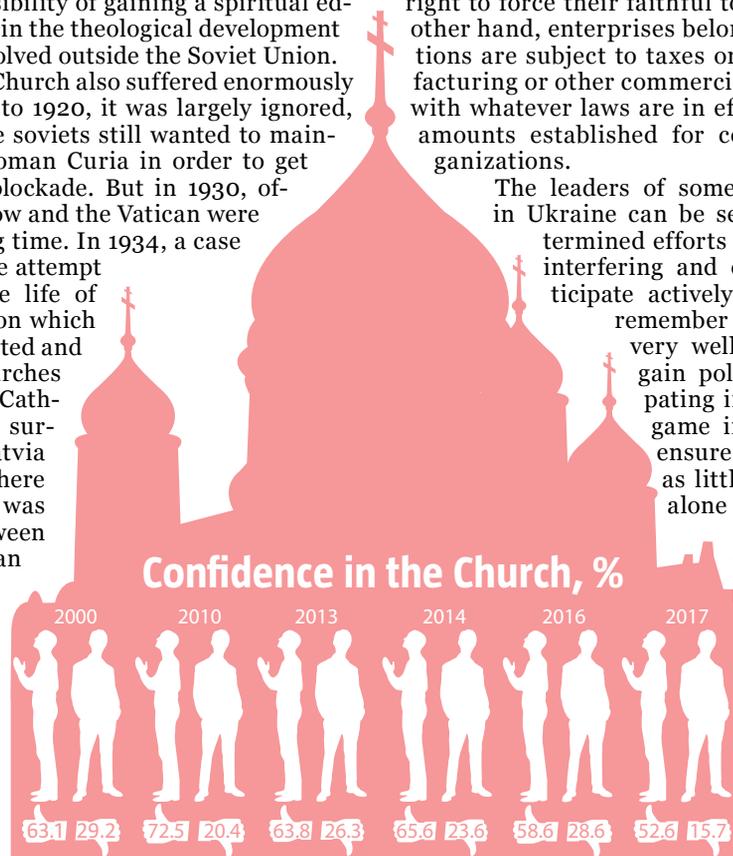
The phenomenon of demonstrative devoutness among Ukraine's

elected officials, ministers and presidents, once society began to pay attention to which church a particular official attended at Christmas or Easter is a clear indication of how the interaction between secular leaders and religion is changing. Right now Ukraine is in a profound transition period and is clearly post-soviet, meaning it combines elements of both the soviet era and of the new one.

What changed the most in the religious arena in 1991, when Ukraine declared independence, was the rejection of atheism as a state ideology, declared in the Law "On freedom of conscience and religious organization." This law is in force to this day. At that moment every Ukrainian citizen gained the right to freedom of conscience and the church, meaning religious organizations, and state were separated, and education was separated from the church as well. The document also stated that religious organizations would no longer carry out state functions, while the state would no longer finance the activities of any organization based on its position towards religion.

And so, religious organizations are not allowed to engage in party politics or to provide financial support to political parties, to nominate candidates for public office, to engage in politicking or funding the election campaigns of individuals running for office. Clergy are allowed to participate in political activities just like all other citizens. Meanwhile, religious institutions gained the right to solicit financial and other donations and to accept them. Financial and material contributions, together with other incomes of religious organizations are not taxed, including their expenses on charitable activities. At the same time, religious organizations have no right to force their faithful to contribute funds. On the other hand, enterprises belonging to religious organizations are subject to taxes on income from their manufacturing or other commercial activities, in accordance with whatever laws are in effect, in the procedure and amounts established for commercial community organizations.

The leaders of some Christian denominations in Ukraine can be seen to be making both determined efforts to prevent politicians from interfering and determined efforts to participate actively in politics. Many others remember soviet times and practices very well, and have less desire to gain political influence by participating in a deliberate independent game in political circles than to ensure that the government pay as little attention as possible, let alone control, what they are doing in their business and commercial activities as religious organizations. Audits, tax inspections, financial reporting, transparency and personal income declarations just like other members of society are things that such individuals are not especially happy to deal with. And so they try to resolve issues like this not through legislation



Source: Polls by Razumkov Center and Kyiv International Institute of Sociology (KIIS)

but through backroom deals, through agreements not to attack but to cooperate. Corruption goes a long way here, as well because it is a systemic phenomenon. To change this state of affairs means a different approach to interactions between society and its government in Ukraine, and so far that has proved very difficult, indeed.

### CHANNELING INFLUENCE

Religion is one of the more powerful channels of influence in a society, right next to the press. The faithful are, after all, citizens of the state with the right to vote during elections. They are an enormous resource whose mass vote determines who will or will not be elected to a post, from the local to the national level. How to influence them is what interests those seeking secular power. And this influence is how some part of religious leaders thank the government for not paying too much attention to their activities, especially commercial and business ones, and to their relationship to foreign administrative centers where those happen to exist. And so, politicking, even if indirectly, and success in an electoral race determine all.

Interestingly, since Ukraine became independent, political parties that were based on religious principles gained neither broad popularity nor powerful influence. A party like the Christian Democratic Union in Germany, which unites all Christians on an interconfessional basis, or the Christian Social Union, is nearly impossible to imagine in Ukraine.

Of the 352 parties registered in Ukraine as of January 2017, only five can be considered religious in orientation: the Christian-Liberal Party, the Christian-Democratic Party, the Republican Christian Party, the Christian Movement, and the Ukrainian Orthodox Assembly. Few Ukrainians have even heard of most of them, but should the need arise and funding be found these parties could suddenly appear on the list of those who are participating in an election campaign, especially in 2019. After all, “placeholder” candidates are always needed.

When politicians and ministers show up with the top clerics of a church, it’s a clear message to parishioners that “these are our boys and girls,” and you have to support yours. This works just as well as someone donating to this or that religious organization so that they can look good in others’ eyes. Indirect campaigning happens in various ways in various places: it doesn’t take much to drop a hint in a sermon or, even more subtly, during informal conversations at people’s homes. This kind of thing shapes preferences, not just about worldviews, but about politics as well. Distributing information further in the community becomes easy enough just using the grapevine.

This kind of scheme can be seen in the links between the members of the one-time Party of the Regions and Opposition Bloc with the Ukrainian Orthodox Church of the Moscow Patriarchate (UOC-MP)—Vadym Novynskiy gets around a lot—and in the open cooperation between ex-Kyiv Mayor Leonid Chernovetskiy and the founder and senior pastor of the charismatic New Generation Church, Oleksandr Lediayev, and before that with the Nigerian founder of the Embassy of God church Sunday Adelaja, and with Volodymyr Muntyan, the director of the Renaissance Spiritual Center who took Adelaja’s place.

This was also evident in the way that politicians tried to insure themselves support on both sides of the barricades during the Euromaidan, because they weren’t sure who would win. And so Ukrainians saw Yulia Tymoshen-

ko with the head of the UOC of the Kyiv Patriarchate at the All-Ukrainian Conference of young members of evangelical Christian faiths in Ukraine. Deputy Speaker Oksana Syroyid (Samopomich) and Samopomich faction leader at Kyiv City Council Serhiy Husovskiy both spoke at the Renaissance Spiritual Center. Various MPs have made high-profile pilgrimages across the entire country, also raising the questions: were they inspired by priests or politics and did they not perhaps cut a deal amongst them?

### SEPARATE BUT TOGETHER

However, not all the leaders of Christian churches in Ukraine have obvious political ambitions. There are also those who are working to overcome the system of relations between politicians and churches that is all too familiar in Ukraine, and have already taken specific steps towards this end. National Security Council Chair Oleksandr Turchynov, National Front MP Pavlo Ungurian, both of them from the Baptist community, and a long string of those who came from the Greek-Catholic community, especially members of Svoboda and Samopomich, have shown the example here.

RELIGION AND CHURCHES HAVE ALWAYS BEEN A POWERFUL CHANNEL FOR SHAPING PUBLIC OPINIONS AND ATTITUDES, AND, IN THE CASE OF UKRAINE, THEY HAVE ALSO LED IN PUBLIC TRUST. THE QUESTION IS HOW THIS INFLUENCE WAS USED AND IN WHOSE FAVOR

Religion and churches have always been a powerful channel for shaping public opinions and attitudes, and, in the case of Ukraine, they have also led in public trust. The question is how this influence was used and in whose favor. The power of politicians is unstable and changeable. What’s more important is whom society is really supporting. Those political activists and religious organizations that are able to listen to the public’s requests and demands, who have a social doctrine and carry out social work, have the support of Ukrainian citizens.

The thing is that mere performers of rituals are not Martin Luther Kings who can force an entire society and its politicians to change. Ordinary folks are interested in work that is important for all of society: help to orphans, the elderly, the crippled and the poor; the rehabilitation of people suffering from various addictions... and with the Euromaidan and Russia’s military aggression, this extended to volunteering, rehabilitating and returning prisoners of war and the wounded to normal life, and, last but not least, chaplaincy.

Yes, neither the American nor the German or French systems work in Ukraine. But state recognition of church documents on higher spiritual education and of academic degrees and titles issued by post-secondary theological institutions is a clear indication that religious organizations, including Christian ones, influence the secular government, not just the other way. And so, in modern-day Ukraine, politicians may speak through the voices of spiritual leaders, but the opposite is true as well, especially when it comes to support or lack of support for certain reforms, family values, migration abroad, and Ukrainian or other worldviews. The point is that, in a modern, democratic European society, we should hear the voices of all stakeholders, not just one particular group. ■

# When church and country clash

The Ukrainian Orthodox Church of the Moscow Patriarchate is expanding its influence and propaganda in Donbas

Yelyzaveta Honcharova, Bakhmut



**Spontaneous solidarity.** Several cities in Donetsk Oblast have joined a recent flashmob with toys brought to Moscow Patriarchate churches. It was triggered by an MP priest's refusal to hold a funeral service for a child in Zaporizhzhia because the 2-year old had been baptized at a Kyiv Patriarchate church

People in the liberated parts of Donetsk Oblast are observing, not only the obvious comeback of political forces that changed their names but remain anti-Ukrainian, but growing efforts in this direction by Moscow Patriarchate churches. Nor is this a surprise: these two forces have always marched in step in the Donbas as they had common goals. Right now, however, residents of the region are beginning to feel a worrisome trend as the UOP-MP once again gains power over the government and, even more disturbingly, over the school system. Just as they did prior to the start of the “Russian spring,” public schools in the oblast are once again eagerly opening their doors to individuals who support Russia and its aggression. Organizations that are affiliated with Moscow-based entities and are funded exclusively by the Moscow church have begun working on textbooks and holding large-scale meetings and events for teachers and pupils. Worse, Ukrainian officials are not responding to this controversial trend.

## INDOCTRINATION STARTS WITH THE YOUNG

“In Kostiantynivka County, an Orthodox youth center called *Stretenie* [The Visitation] similar to the one in Kislovodsk, Russia, was set up in 2011,” says Oksana Proselkova, a teacher at the Kramatorsk school. “That’s already a concerning turn of events. Of course, I’m not trying to blame anyone; what I’d like to have is facts. All the more so because I taught Christian ethics prior to

the war and was then a parishioner of the Moscow Patriarchate. But I was disillusioned and stopped going there after a conversation with the parish priest at the Kramatorsk church who is now in charge of the eparchy in occupied Horlivka in which he expressed nothing but suspicion and accusations.

“The essence of my conversation with him was that, since I had visited Lviv once again in December 2014—I was presenting our project, the first series of 2014 Winter Readings at the Center for Literary Research for children and teenagers—I was told to come to him and make my confession and clearly tell him what people THERE were teaching me. Right now, I believe that we need to avoid any kind of relationship whatsoever with the Moscow Patriarchate. I suppose there are MP priests who are Ukrainian patriots, but my own experience has shown that they are controlled from the center.”

Ms. Proselkova offers an example of how the Moscow Patriarchate in Donetsk Oblast works closely with state institutions in setting educational policy. In late fall 2017, the First Pokrova Pedagogical Sessions took place in the village of Serhiyivka on the topic of strengthening the institute of the family. The event was sponsored by the Donetsk Oblast Post-Secondary Education Institute and the Horlivka and Sloviansk eparchies, the *Stretenia* center, and the Sviato-Serhiyivska Nunnery. Teachers from all over Donetsk Oblast were invited to the seminar and they were

addressed by Metropolitan Mitrophan, the archbishop of Horlivka and Sloviansk. Yet no one was told in advance that the cleric would be speaking at the event. Nor did the Department of Education know about the participation of its teachers, as they were invited personally by their principals.

With the new Law on Education, it will be even more difficult to control such things centrally because principals and parents can, at their own discretion, invite anyone they want to teach their children. This is supposedly very good, because people are quite tired of the ministry forcing everyone to toe the same line. On the other hand, there's the real risk that Ukrainian children will become hostages to the hegemony of pro-Moscow priests. It is starting to look that way. For instance, it turns out that the religious association mentioned above is now promoting methodological projects in pre-schools and has started to work in the oblast's kindergartens. Indeed, its promotional brochures even announced that they would be getting the Education Ministry's seal of approval in 2018. But a wave of angry protest on the internet led to the next lecture, which had been scheduled for Kramatorsk, to be postponed.

Ms. Proselkova found herself under mounting pressure, but she found support among pro-Ukrainian activists who were very clear about their position: even if they are under the guise of secular organizations, members of a religious community have no business interfering in the work of state institutions—especially if their church has already shown itself to be one of the driving forces behind a military conflict and continues to deny both the nature of the conflict and its own role in fanning its flames.

### USING PETER TO INFLUENCE PAUL

On the other hand, standing up to this situation with the help of the SBU or through political means is unlikely to work. This very delicate situation requires an ability to analyze and to collectively recognize the need for self-preservation. That requires a certain amount of political will, as well. In Donetsk Oblast, the tradition of churches using government offices to strengthen their influence is strong and generally seen as natural. Nor is it limited to the public appearance of those in office at church events or feasts. It extends to the allocation of valuable land, the construction of churches using funds from the Mayor or local deputies as a demonstration of mutual loyalty. At open sessions that were organized during religious holidays by town or county administrators, priests openly demanded the right to use administrative leverage to force businesses, farmers and entrepreneurs to provide “voluntary” assistance. The answer was: “We’ll take care of everything.” “The clergy don’t shy away from the opportunities offered by those in power when they lobby their own interests,” says Maksym Potapchuk, director of *Liberi Liberati*, a cultural and education al foundation and one of the community activists who supported the understandably angry Kramatorsk teacher. “This includes getting permission to use land, free access to a young audience, and using public platforms for all kinds of propaganda, from public speeches to the dissemination of pamphlets. When all this takes place next to officialdom, it’s seen as correct, popular and recognized. But most of all, it’s part of the state. The government promotes such people like Metropolitan Mitrophan, showing that this person can be trusted.”

During the armed conflict, the influence of the most widely represented church in Donbas on the government seemed to fade somewhat. But that was perhaps simply because the local administration itself was lost and weak for a time. At that point both the UOC-MP and those in office tried to survive independently: even humanitarian aid began to come in from other confessions. Now, however, its influence has returned to pre-war levels, albeit its quality has somewhat changed. Today, various other confessions can also use public offices to strengthen their

positions and it’s not just the UOC-MP that is actively delegating representatives to all kinds of institutions that influence public opinion. The Greek Catholics and Protestants are also busy at it. Moreover, the appearance of orthodox centers of the Kyiv Patriarchate has become synonymous with the consolidation of the pro-Ukrainian community.

Not long ago, a number of cities in Donetsk supported a flashmob protest when a priest of the UOC-MP refused to hold a funeral service for a child in Zaporizhzhia. The two year-old had been killed when an unrelated man threw himself out of the window of their apartment building. When told that the child had been christened in the Kyiv Patriarchate, the “The Batiushka [the Russian name for parish priests, meaning Little Father] told us that our child was not christened and our church was false,” the toddler’s father later reported. This incident caused outrage in Ukraine that only grew stronger when the Moscow Patriarchate began to defend its priest. And so there was a call for a flashmob in social networks: people in various cities began to carry dolls to MP churches whose priests support the Russian proxies.

Many humanitarian missions also have a clear religious connection and the government has to take that into account as well. For instance, Sloviansk and Kramatorsk, which were the first cities to be occupied back in mid 2014, have a strong and active Protestant community today. Among others, it has had a significant impact on the process of rebuilding and assisting the towns materially through global religious foundations—and is slowly having an impact on the local government as well. Unsurprisingly, they are also gradually joining various state educational programs, not so much to be paid for their services as to expand their circle of supporters on a completely legitimate basis—provided by the government. For instance, not long ago the Donetsk Oblast Youth Administration requested that Protestants be added to its roster, since, they claimed, there were simply no secular specialists in this area.

IN DONETSK OBLAST, THE TRADITION OF CHURCHES USING GOVERNMENT OFFICES TO STRENGTHEN THEIR INFLUENCE IS STRONG AND GENERALLY SEEN AS NATURAL. IT EXTENDS TO THE PUBLIC APPEARANCE OF THOSE IN OFFICE AT CHURCH EVENTS OR FEASTS, THE ALLOCATION OF VALUABLE LAND, THE CONSTRUCTION OF CHURCHES USING FUNDS FROM THE MAYOR OR LOCAL DEPUTIES AS A DEMONSTRATION OF MUTUAL LOYALTY

### LASER BEAMS AND BRAINWASHING

Pressure is not always so directly applied. The most bizarre attempt by the UOC-MP to influence Ukrainian society as a whole and the government in particular was the dissemination of information among its parishioners claiming that biometric passports were dangerous. For a time there were even rallies and campaigns under this slogan. The first time this came to anyone’s attention was in a small town near the front when a woman asked lawyers how her child might acquire an ordinary passport rather than an ID card. The woman was a believer and her Batiushka had told her that Orthodox faithful should not accept documents with chips because the laser beam directed into the brain during photographing would alter the person forever. When she heard that the option of receiving a paper passport was no longer available for technical reasons, she said that in that case her child would be without any documents at all.

The question is, why is the Moscow Church so adamantly against about a purely technical matter? With biometric passports, of course, it’s much easier to go to developed countries—and this, like the fictive laser beam, is very dangerous for the mind of an orthodox person. ■

# The genesis of Ukrainian conservatism

What shaped the aristocratic tradition in politics between the Cossack period and the liberation struggle in 1917-1920

**Yuriy Tereshchenko**, historian and researcher of the 20<sup>th</sup> century in Ukraine



**Mass prayer at St. Sophia Square in Kyiv to celebrate the declaration of the Hetmanate. April 29, 1918**

As a political concept, conservatism is rooted in the resistance to radical transformations of society and public opinions triggered by the French Revolution. The advocates of conservatism – primarily, aristocrats and the clergy – promoted the conservation of the old socio-political system and resisted a simplified notion of equality that was gaining a foothold as natural and institutional differences between people faded.

Early displays of conservatism manifested themselves in the USA in the principles of checks and balances, protection of private property and the rule of law entrenched both in the plantation states of the South, and the mercantile industrial states of the North. The federal Constitution

arose from this foundation to protect the American society from radical upheavals. In fact, America's social transformation in the 18<sup>th</sup> and 19<sup>th</sup> centuries was not a revolution but a war for the independence of colonial entities from the metropolis.

By contrast to the systems of uniformity and pseudo-equality that paralyze civic initiative and lead to stagnation, conservatism supports private property as a guarantee of social diversity, civil liberties and cultural development.

Conservatism interprets radical struggle for liberty as a process that *de facto* leads to the destruction of liberty. As an alternative, it advocates restriction of radical movements and creation of an environment that is

most convenient for the evolution of society. For this purpose, conservatism supported private property as an institution that defends pluralism, social diversity, individual and social freedom and cultural development at various stages of history.

Conservatism was first used as a political term that described efforts to preserve civilizational accomplishments of the previous era and combine them with the challenges of the 19<sup>th</sup> century at the time of Napoleon and the subsequent years. It did not create a strict political model or a universal ideology. Instead, it offered society a way to preserve positive civilizational experience in a given country, and faith in the creative role of its traditional institutions of power

and spirituality, such as monarchy or church, as well as of the leading social stratum based on a historical tradition.

### ARISTOCRACY IN UKRAINE

Conservatism played an important role in Ukraine's history as a political principle that guided certain social classes, and as a tool for preserving the language, faith, rituals, and traditional ways of family and civic life. The conservative traditions of Old Kyiv and Halychyna-Volhynia Principality were the foundation on which the princes, the boyars and the military relied within the Grand Duchy of Lithuania. The Duchy offered decentralization for almost 200 years, ensuring the preservation of traditional local order and western vector of development in the territory despite occasional attempts of some Lithuanian princes to conduct a harsher unitary policy. In Ukraine, this resulted in the development of contractual relationship in socio-political life, the separation of state and church, the restriction of the grand prince's autocratic power, self-governance of territories and municipal communities, and the consideration of rights and dignity of an individual, even if in a limited social niche.

Ukrainian aristocrats preserved social institution of the previous epoch and kept them functioning up until the Union of Lublin in 1569 that incorporated Ukrainian land into the Polish kingdom. This launched the ruinous influence of the Polish class of magnates on Ukrainian aristocrats, primarily the top layer. This ruination included the degradation of long-standing modes of social life that had evolved from the Kyiv Rus and Halychyna-Volhynia Principality, and threatened continuity in Ukrainian statehood. In the new historic circumstances, the task of finding a solution went from the old feudal elite to the new class, Ukrainian Cossacks.

As they emerged centered around Zaporizhzhia Sich as its military and political center, so did the first cells of the state body that later transformed into the state led by Bohdan Khmelnytsky. Its statehood was based on a new socio-economic foundation shaped by the modern period in Europe. Unlike feudal landowners, Cossacks mostly used hired labor and rejected feudal land ownership and serfdom. "Bourgeois relations emerged in Cossack-ruled territories; they had an important impact on other regions," wrote

Volodymyr Holobutskyi, a researcher of Cossack history.

The socio-economic evolution of the Cossacks whose economic activities unfolded in an anti-feudal early bourgeois framework, clashed with the land ownership by the Polish nobility in Ukraine, leading to harsh social and national conflicts. While other classes in Ukraine did not move beyond the opposition allowed by law, the Cossacks defended their interests through armed resistance against the Polish regime.

As the Cossack state evolved, it absorbed old small and middle feudal elite. Civil servants, armed servants and small landowners joined the Cossacks in the late 16<sup>th</sup> century, having a powerful impact on the emerging entity's class identity, as well as political and social demands. These groups played an important part in transferring the statehood legacy to the Cossacks, and having the Cossacks revive it in a new historical environment. As they merged with the Cossacks, these groups injected a knightly element, the confidence in equality with the nobility.

The number of the Cossacks grew in Ukraine, and the population influenced by it expanded and refused to subject to the Polish administration. As a result, Rzeczpospolita saw a state created in the state. Eventually, this led to a nationwide explosion in Ukraine and the elimination of Polish rule.

There was no harsh chronological line between the first and the second stages of statebuilding. In 1648, the construction of a new Ukrainian state, Zaporizhian Host, began. After several years of bloody and exhausting war with Poland, Ukraine accepted the protectorate of the Moscow tsar in 1654. However, it remained a separate state body with its own socio-political order and church, administration, army, finance, diplomacy, hetman and privileges of some social classes. Ukraine entered into contractual relationship with Russia as a free and independent party that did not create any common state institutions with it.

### A DYNASTY WANTED

From the early days of the Cossack statehood, Bohdan Khmelnytsky realized that the traditional elected hetmans would not necessarily be able to build the prestige of the Cossack state or strengthen the authority of its institutions in the eyes of the

whole society in a long-term prospect. The authority of the hetman's power could be lost irreversibly if the mace, the hetman's symbol of power, ended up in less capable or popular hands.

The elected Cossack hetman had no power to consolidate all strata of Ukrainian society as the election process involved only parts of it and could always lead to unexpected results. Therefore, as the struggle for liberation intensified, Khmelnytsky showed stronger intentions to change the nature of the hetman's power.

Bohdan Khmelnytsky planned to eliminate two features of Ukrainian hetmanate: its elected nature and its dependence on foreign states. In his last years, his goal was to fill the hetman's authority with new essence, turning it into a hereditary institution and moving out of dependence on the Russian tsar through an alliance with Sweden.

Viacheslav Lypynsky, an ideologue of Ukrainian conservatism, saw the stability of the hetman's power and its transformation from elected to hereditary or dynastic as central among the slew of issues triggered by the 1648-1657 national liberation struggle. He viewed the dynastic principle for the hetmanate as one of the key pillars of the evolving order. In his works, Lypynsky provided many facts that proved the desire of Khmelnytsky, the leader of the Cossack revolution, to profoundly change the sense and the nature of the Hetmanate, and to transform it into an institution of hereditary succession.

Lypynsky concluded that the idea of hereditary Hetmanate in one form or another had been a permanent component of political mindset in the time of the Cossack state and evolved into a traditional Ukrainian reality. "The desire to turn the Hetmanate from a system of election for life, as borrowed from the Polish monarchy, into a hereditary non-elected monarchy was, from the time of Bohdan Khmelnytsky, Ivan Samoilovych and Kyrylo Rozumovsky a traditional aspiration of nation-state conservatism, i.e. the conservatism that looks for supporting points in its own country, not in its neighbors," Lypynsky wrote. The dynasty principle accompanied the struggle of Ukrainians for their territory and politics, demonstrating "Ukraine's separateness from Moscow" in Lypynsky's words.

He saw the policy based on dynasty and territory rather than culture and nation as an important factor of

national statebuilding which was as important for Ukrainians as it was for other European nations. “National separateness of the Bavarians from the Prussians lies in the House of Wittelsbach and their state,” he wrote. “[The separateness of] Austrian Germans from the German ones lies in the Habsburgs and their dynasty and territory policy; [the separateness of] the Walloons from the French lies in Belgium which is only possible as a monarchy state based on territorial and political grounds rather than cultural and religious ones.”

Similarly, the princes of Halychyna-Volhynia Princedom from the houses of Rostyslavovychs, Romanovychs, then the Gediminas, Koryiatovychs and Olgerdovychs impersonated certain Ukrainian territorial political trends in statebuilding. This tradition was taken over and continued by the hetmans and the Cossack statehood that was built, like the pre-

AS THE COSSACK STATE EVOLVED, IT ABSORBED OLD SMALL AND MIDDLE FEUDAL ELITE. CIVIL SERVANTS, ARMED SERVANTS AND SMALL LANDOWNERS JOINED THE COSSACKS IN THE LATE 16<sup>th</sup> CENTURY, HAVING A POWERFUL IMPACT ON THE EMERGING ENTITY'S CLASS IDENTITY, AS WELL AS POLITICAL AND SOCIAL DEMANDS

vious state entities, on the foundation of land ownership and settled farming.

Bohdan Khmelnytsky's dynasty-centered ideas were implemented in close contact with the overall processes of the Cossack state building. They required consolidation of all classes that had been “strongly assimilated by the Polish statehood and were difficult to persuade to take on separatist plans and follow the hetman's intents.” The difficulty of this task was partly rooted in the fact that Khmelnytsky and the Cossack leadership did not offer a nationwide program for some time, focusing instead on protecting the interests of their class first.

As he stepped on the path of entrenching his own dynasty, Bohdan Khmelnytsky was obviously unable to implement his idea without the support of the Ukrainian nobility that was still numerous and had not yet joined the Cossacks. His only chance to win such support was in becoming an “autocrat of Rus”, and “the Master and Leader of our land”, as described by Sylvestr Kosiv, the Metropolitan of Kyiv, Halychyna and All Rus, a found-

er of the Kyiv-Mohyla Academy and an active opponent of the Hetmanate Ukraine's 1954 union with Muscovy. The establishment of a united national front had to play a crucial role in Khmelnytsky's war, as it had in the later period of the 1917-1921 struggle for Ukraine's statehood. The only source of it was a struggle for Ukrainian statehood that would be common for all Ukrainian classes.

When Bohdan Khmelnytsky sensed a threat to the wider Ukrainian national interests from Moscow, he entered into a new alliance with Protestant states, including Sweden, Brandenburg-Prussia, Transylvania, as well as Moldavia and Wallachia. That block was aimed against Poland, as well as Moscow.

The hetman's split with Poland and the eventual acceptance of the Russian tsar's protection showed the “Rus nobility”, both Orthodox and Catholic, that it could no longer rely on Polish state institutions or any prospect of their reconstruction on Ukrainian land. “The Rus nobility was taking a hard, bloody way to realizing that there could be no peace and order in its Rus unless it returned to its original

statehood and fully united with its people,” Viacheslav Lypynsky wrote. “The Cossack statehood had matured by that point, and the Hetman of the Zaporizhzhia Host was resembling more and more the forgotten Crown of the Rus princes. In 1655, the nobility began to turn its attention towards Ukraine and its powerful leader.”

This class was the most consistent in preserving the old state and the national tradition on which the hetman relied to implement his statebuilding and dynasty plans. It also had a significant impact on the domestic and foreign policy of the Cossack state.

### NURTURING THE NATION

The return of the Ukrainian noble class, still Polonized, to Ukrainian statehood was a crucial component of “nurturing the Ukrainian Nation out of all of the parts broken off and fragmented earlier [...] that climaxed in the last year of Bohdan Khmelnytsky's hetmanship,” Lypynsky wrote.

The aristocratic conservative nature of the nobility in the western and north-western territories that merged into the Cossack state became the supporting pillar for the hetman's

wide-scale political plans. Integrated into the Cossack class, the nobility remained virtually the only carrier of the old state and national tradition, creating the ground on which Khmelnytsky's plans for a hereditary monarchy could gain a foothold.

Under his hetmanship, Khmelnytsky organized a Ukrainian state aristocratic class. It included the new “people's aristocracy” – the Cossacks and the descendants of the old state aristocracy, the Orthodox and Roman Catholic nobility. It was the unification of these two classes that kept the nation-state front secure from the aggressive claims of Moscow and Poland.

As the hetman's power gained a monarchist nature, even if the process was never completed, it turned into an important factor in the consolidation of Ukrainian society in the 1648–1657 liberation war.

### THE DUSK OF THE HETMANATE

The concept of a hereditary hetmanate did not fate with the death of its founder. The rivalry of the monarchist and republican approaches to the organization of power in Ukraine marked all of the Hetmanate's subsequent history. Shaped under Bohdan Khmelnytsky, the dynasty-based concept was considered by his successors, including Ivan Vyhovsky, Petro Doroshenko, Demian Mnohohrishny and Ivan Samoilovych. They tried to implement it. Ivan Mazepa was probably the most consistent and committed advocate of the hetman's absolutist power. However, the hetman's powers had been weakening after Khmelnytsky. Despite the undeniably positive accomplishments of Mazepa's hetmanship, including cultural and economic upturn, Ukrainian society was undergoing a painful ideological and moral corrosion that disabled national consolidation during his anti-Moscow campaign.

“In the long period of his own Moscowphilia and flirtation with Tsar Peter, he [Hetman Ivan Mazepa] undermined all independentists – those aspiring to present the nation-state cause in its full height and put it at the top of the liberation struggle of the time,” Lypynsky wrote. This demoralized the class which the hetman nurtured and to which he belonged, while the whole nation eventually succumbed to corrosion by Russophilia, losing its national ideals and consistent statehood goals.



Hetman Pavlo Skoropadsky. Kyiv, 1918

In 1708, Peter the Great imposed an anathema on Ivan Mazepa for his alliance with Charles XII of Sweden. Viacheslav Lypynsky noted that Mazepa's cause was lost, while the Ukrainian nation, confused by its own leaders and expats from Moscow, ended up "cursing, in the churches built by Mazepa, the one who wanted to give it freedom but failed, under the order imposed by the tsar".

As Lypynsky looks at the period of Hetman Mazepa and the tragic finale of his policy, referring to Mazepa as a "tormented patriot", he notes that the "leaders of the nation" should never "sacrifice the eternal and irreplaceable for as long as the nation exists, and nations [should never sacrifice] the common ideal of national freedom and solidarity in defense of this freedom" for private, class or any other fleeting political interests.

Ukrainian elite did not shed the idea of a dynasty hetmanship after the catastrophic outcome of the Battle of Poltava. Intended to ensure the continuity of the Cossack statehood, it was revived under the hetmanship of Kyrylo Rozumovsky. Ukrainian politicians thought of transferring the hetman's mace to Paul I, the son of Catherine the Great, during her lifetime. This could preserve the institution of the hetmanate. The Cossack elite returned to this idea under the rule of Paul I under the condition that his son, Grand Duke Konstantin Pavlovich, would become the "Great Hetman" with Andriy Hudovych, a political and military figure, and a leader

of the Hetmanate's autonomists, as regent alongside him. These last attempts of the Cossack elite to rescue the hetmanship with a surrogate Russian dynasty failed.

For a slew of reasons, the independentist nation-state idea did not become a dominant one in Ukrainian society in the 19<sup>th</sup> century. It was sidelined by the *narodnik* concepts of Ukraine's national development based on autonomy and federation with Russia. Still, the independentist idea flared up from time to time, reminding those involved in the Ukrainian movement about the continuity and indestructibility of the national statehood concept. Its tradition, centered on hereditary monarchy, lived on in different variations.

### THE PROJECT OF KYIV KINGDOM

The Ukrainian aristocratic class as the bearer of this tradition went through a difficult and controversial process of national awakening on both sides of the Zbruch river, in Halychyna and the Great Ukraine, throughout the 19<sup>th</sup> century. This was expressed in the shifts of perception of the national aspect and political orientation of long-standing noble Ukrainian families – the Sapihys, Shumlianskys, Sheptytskys and Fedorovychs in Halychyna, and the Halahans, Tarnovskys, Myloradovychs, Kochubeis, Skoropadskys, Khanenkys and more in the Great Ukraine. Despite the monopolistic position of liberal democracy and socialist trends in the Ukrainian movement, this evolution in the perception of society by the noble class showed its aspiration to balance out values and ideological orientations in the Ukrainian movement, and the urge to overcome the "fatal onesidedness of the nation", as Viacheslav Lypynsky described it, created by the underrepresentation of the right conservative wing.

In the 1870-1880s, the growing tensions between the Austro-Hungarian Empire and Germany on one side and Russia on the other – it threatened turning Ukraine into a battlefield – encouraged that shift. As a result, the Austrian leadership began to show more interest in the situation in Halychyna and inter-nation relations in the province. Numerous visits of the Austrian emperor and his successor, and their contacts with representatives of Ukrainian civic organizations there encouraged political activity in parts of the Halychyna

society – moderate conservatives primarily – that hoped to get concessions from the monarchy in the national domain.

The patriotic Ukrainian community faced a need to make the Ukrainian issue a visible element in politics, and transform the strife for Ukrainian national interests in Halychyna into practical implementation. Such hopes were further encouraged by an article titled *Russia and Europe* by Eduard Hartmann in *Die Gegenwart*, a magazine: it spoke about the prospect of separating western provinces from the Russian Empire. The key role in the project of fragmenting Russia would be played by the Kyiv Kingdom, a project that would cover most of ethnic Ukrainian territory.

In 1886, Prince Adam Sapiha, a Polish politician in Halychyna and a determined opponent of Russophiles, established friendly relations with Oleksandr Barvinsky, an influential figure in Western Ukraine. He used this contact to get in touch with the moderate part of the Old Community, a group of Ukrainian intellectuals and artists involved in cultural, civic and educational activities before the Russian tsar banned it. In 1888, Barvinsky as the leader of the conservative wing in Halychyna, visited Kyiv where the project of the Kyiv Kingdom was actively debated. In one of the meetings with the Old Community, linguist Pavlo Zhytetsky said: "Ask your Keiser when he will come to us?" These contacts resulted in the arrival to Lviv of Oleksandr Konysky, an active proponent of Polish-Ukrainian agreement. Konysky trusted Adam Sapiha and offered him to head a Ukrainophile party that would distance itself from political cooperation with the Russophiles. It was fairly safe to assume that Adam's son, Lev Sapiha, could get the crown in the potential Kyiv Kingdom.

The cult of statehood traditions from the medieval time was reinforced in the conservative wing of Halychyna by the fact Austrian emperors had accepted the old title and coat of arms of the king of Halychyna and Volodymyria in 1806, and used them until the collapse of the Austro-Hungarian Empire. On August 29, 1861, Bishop Spyrydon Lytvynovych [Metropolitan of Lviv after 1863] rejected the claim of the Poles that Halychyna was a Polish 'historic and political individuality' at the Austrian parliament. He noted that the kingdom of Halychyna and Volodymyria

“belonged to Ukrainian, not Polish history”.

Political activation of noble and aristocratic groups in Halychyna and some in the Great Ukraine raised the issue of turning to the idea of dynasty as an important pillar of the monarchist movement. The work of Viacheslav Lypynsky played a great role in this. In his 1909 work *Szlachta na Ukrainie* (Nobility in Ukraine in Polish), he described the positive role of German dynasties in the Balkans where their representatives had shaped monarchist institutions. According to Lypynsky, German princes “sitting on the thrones of the Balkan states suddenly felt loyal to different Balkan patriotisms.”

Apparently, he believed that this could be an option for Ukraine.

### COUNTERING THE LIBERAL DISCOURSE

The Ukrainian idea of a monarchy was closely linked to the independentist movement for the Ukrainian State of the late 19<sup>th</sup> century and early 20<sup>th</sup> century.

As independentist-oriented social democrats and conservatives moved closer together, they conducted a number of assemblies with Ukrainian emigrants and activists of Halychyna in Lviv in 1911. The struggle for Ukraine’s independence was put on the agenda. Alongside Viacheslav Lypynsky, this idea was initiated by Andriy Zhuk, Levko Yurkevych and Volodymyr Stepankivsky – all members of the Ukrainian Social Democratic Labor Party.

During World War I, the idea of the constitutional monarchy was used for the political platform of the Union for the Liberation of Ukraine that involved members of both parts of Ukraine. Lypynsky’s attempt to prop up conservatism with a clearly independence-oriented ideological and organizational foundation gained a foothold. “I was an independentist, I am one and I will remain one until I die,” he said.

The emergence of the monarchist concept in Ukrainian political life signaled a gradual loss of monopoly by liberal democracy, narodnik and socialist influences in the Ukrainian movement. It showed that Ukrainian society was able to respond adequately to the challenges of its time and strived to balance out ideological and political leanings. The surge of the national movement showed that the hetman tradition survived



**Pavlo Skoropadsky and Serhiy Shemet, an activist in the monarchist movement and a founder of the Ukrainian Democratic Breadmakers’ Party. Wannsee, 1926**

in Ukraine based on the conservatism of aristocracy and the peasantry as the two key social components of Ukrainian countryside, and turned into an important ground for the declaration of Pavlo Skoropadsky’s Hetmanate. The implementation of the traditional national statehood by Ukrainian conservative forces was a fragment of the pan-European conservative revolution, a reaction to the prevalence of liberalism born out of the 19<sup>th</sup> century and clad in new democratic disguise after the end of World War I.

The establishment of the Ukrainian State marked a decisive turn of Ukraine’s socio-political and cultural development towards the West European civilization, leaning on its legal and spiritual foundation. The Testament to All People of Ukraine of April 29, 1918, the first document of the Ukrainian State, noted that “private property as the foundation of culture and civilization are restored in full capacity.” The founders of the Ukrainian State of 1918 saw the institution of Hetmanship as a tool for national integration and the buildup of cooperation among all classes and organizations, not as a way to take over or eliminate all other political wings in Ukraine.

However, they failed to lead it through the skewed perception of conservatism by society in Ukraine. Ukrainian public failed to resist the vision of this trend as reactionary and pro-Russian, as imposed by Ukrainian liberals and socialists. As a result, Ukrainian democracy, together with the Bolsheviks ruined the Hetmanate as a conservative model of

Ukrainian statehood. It failed to create any durable alternative and drowned in endless squabbles, political clashes and party indoctrinations. Ukrainian conservatism as an organized political force – it was mostly represented by the Ukrainian Democratic Breadmakers’ Party founded by Viacheslav Lypynsky, Mykola Mikhnovsky, Serhiy and Volodymyr Shemeta in 1917-1920 – only managed to expand its activity in emigration. The moral and social legacy of Ukrainian conservatism and its speaker Viacheslav Lypynsky have not been properly accepted by society today.

National democracy that once again dominates Ukraine’s socio-political life today, like it did on the verge of the 19<sup>th</sup> and 20<sup>th</sup> centuries, is following the same ruinous political style as it did in 1917-1920. This frustrating impact of the domination of national democrats in the Ukrainian movement has yet to be studied carefully and in detail in terms of their historical path and ideological legacy. It is time to recognize that the leaders of the modern national democracy, just like their predecessors of the Ukrainian People’s Republic, are wasting the efforts of millions of Ukrainians in their struggle for independence. The application of their political ideas without critical analysis can be fatal for Ukraine’s statehood today. Turning to the political experience of Ukrainian conservatism and its nation-statehood ideology that aimed at consolidating all social strata in Ukraine can be a key to the solution of many painful problems in the country’s modern political life. ■

# How Elon Musk does it

The Falcon Heavy's creator is trying to change more worlds than one

It was not, in the end, the much anticipated take-off that took your breath away. It was the landings. Eight minutes after they had lifted the first SpaceX Falcon Heavy off its pad at Cape Canaveral on February 6<sup>th</sup>, two of its three boosters returned. Preceded by the flames of their rockets, followed by their sonic booms, the slender towers touched down on neighbouring landing pads a fraction of a second apart. After such power, such delicacy.

Up above the atmosphere, the rocket's second stage opened its fairing to reveal its cargo: a red roadster made by Tesla, a company which, like SpaceX, is run by Elon Musk. The dummy sitting at its wheel wore a SpaceX spacesuit, David Bowie played on the stereo, the motto from "The Hitchhiker's Guide to the Galaxy"—"Don't panic!"—was displayed proudly on the dashboard. In the background, the great blue disk of the Earth receded. Down below, a million geeks swooned.

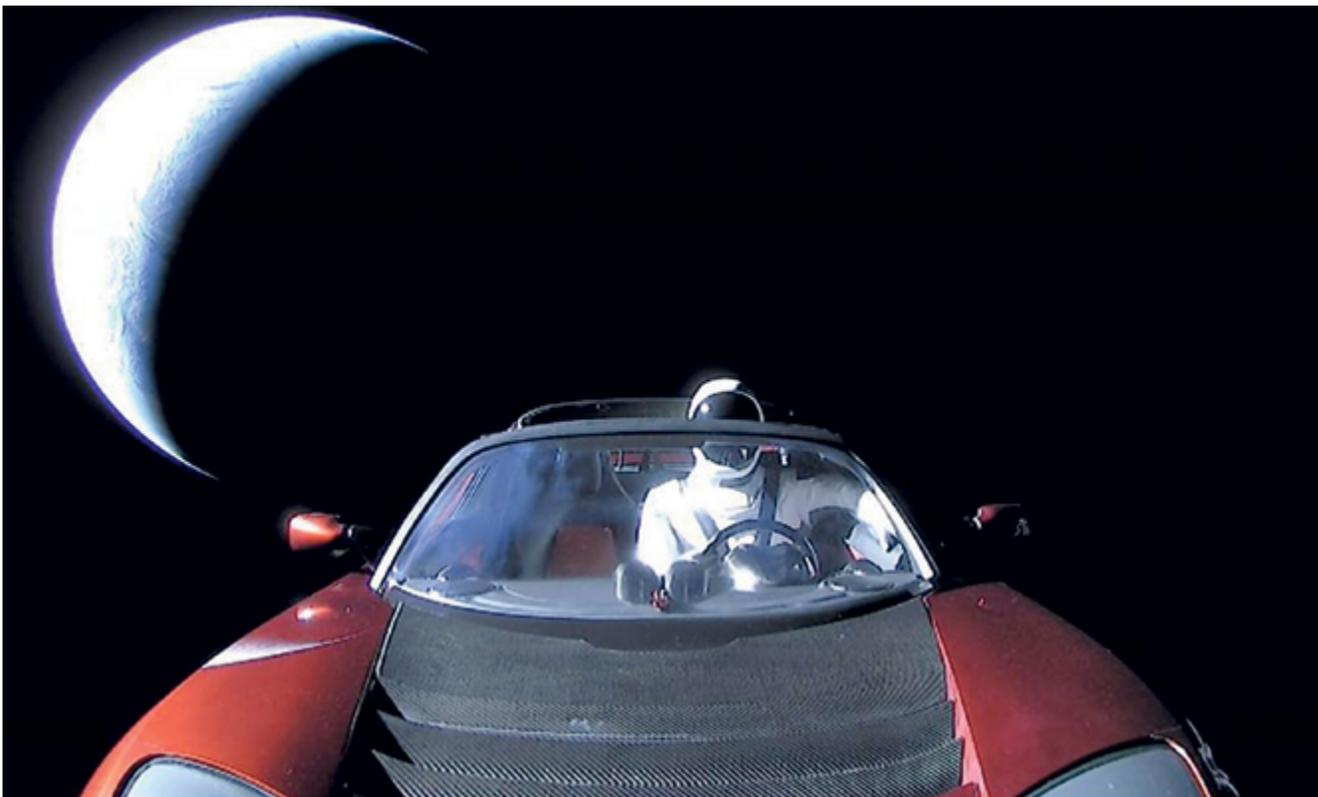
Topping off an extraordinary technical achievement with flamboyance and a touch of silliness is typical of Mr. Musk. It should not be mistaken for a lack of seriousness. Mr. Musk does not simply want to have fun building rockets and fast

cars. Nor is he running two multi-billion-dollar companies just to become rich, or to beat rivals. He wants to open up fundamental opportunities with which he thinks the market would not trouble itself. The purpose of SpaceX is to make humanity an interplanetary species, and thus safe from global catastrophe, by providing it with the means to build a civilisation on Mars. The purpose of Tesla, emblazoned on the wall of its factory in Fremont, California, is: "To accelerate the world's transition to sustainable energy".

Creating either of these companies would be a signal achievement. That the same person should have built and run them in parallel is remarkable. It shows that Mr. Musk has special talents as a strategist, manager and source of inspiration, as well as lofty ambitions.

Started in 2002, and with its first successful launch in 2008, SpaceX has come to dominate the commercial-launch market (see chart). In 2017 it launched 18 rockets—more than the rest of America and Europe combined. Its Falcon 9 is easily the cheapest big launcher on the market, in part because it is the only one that can fly its boosters back to Earth for reuse. (Even at SpaceX there are glitches: the third of the

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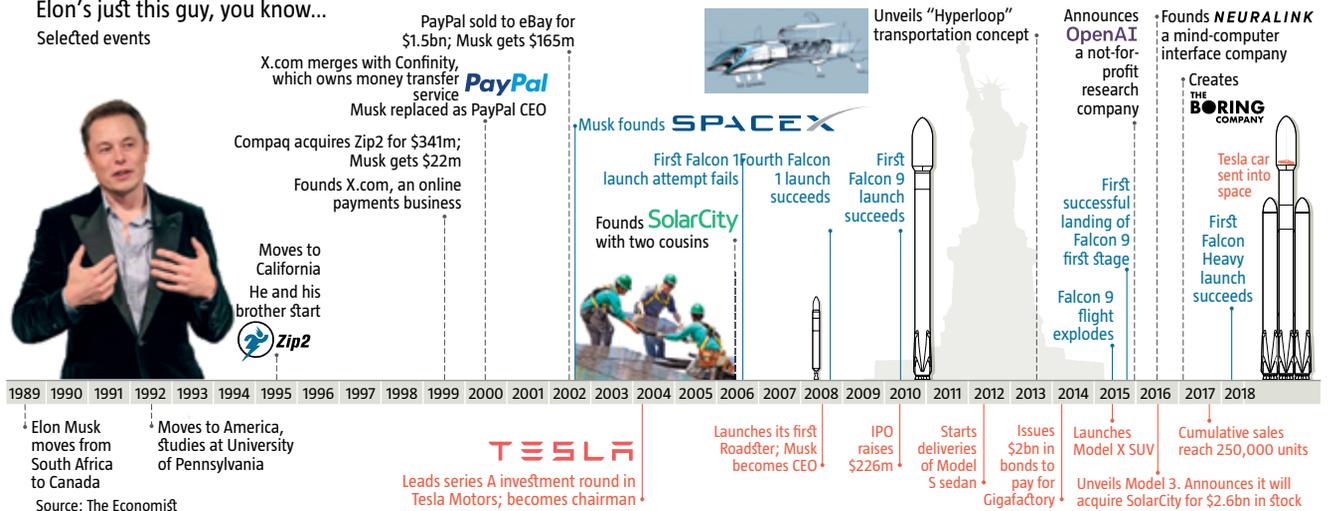


**Fundamental opportunities.** The purpose of SpaceX is to make humanity an interplanetary species, and thus safe from global catastrophe, by providing it with the means to build a civilisation on Mars

## Elon's just this guy, you know...

Selected events

PHOTO: REUTERS



Falcon Heavy's boosters hit the sea at 500km an hour, rather than touching down gently on the barge provided for it.)

Tesla, meanwhile, showed that an electric car could be every bit as good as the best petrol car—better, according to many owners—and, in so doing, very quickly established a premium brand. Tesla's Model S, which sells for \$70,000 and up, has been the bestselling electric car in America for the past three years. There have been more than half a million orders for its new Model 3, an attempt to capture the mass market that sells at half the price of the Model S.

Both companies beat the incumbents in their industries by combining a clear view of how technology was changing the scope of the possible with a fierce devotion to pushing that technology even further. That is familiar from other Silicon Valley success stories. But the fact that the firms' goals go beyond products and profit set the two companies apart from, say, Jeff Bezos's Amazon or Larry Page's Alphabet. In "The Complacent Class", which laments lost entrepreneurial vigour, Tyler Cowen, an economist, cites Mr. Musk as a counter-example, today's "most visible and obvious representative of the idea of major progress in the physical world." The head of one of the biggest private-equity funds in the energy industry says that nobody else is driving either clean technologies or new business models forward as much as Mr. Musk: "The world needs Elon Musk!"

But the achievements, the world-historical ambitions and the adulation they have brought do not mean that Mr. Musk can count his high-torque photovoltaic astro-chickens just yet. The very next words out of that fund manager's mouth were "Short Tesla." Production of the crucial Model 3 remains badly behind schedule, and the company's finances look stretched. Christian Hoffmann of Thornburg, an investment firm, calls buying Tesla shares on the basis that Mr. Musk will quickly solve its problems a "James Bond trade": "He needs to dodge the avalanche, avoid the gunfire, ski off the cliff, pull the ripcord and glide to safety so that he can save the world."

Maybe he can. In 2008 both SpaceX and Tesla were within days of bankruptcy. Now they have a combined value of more than \$80 billion. But the chronic problems at Tesla mean that this is Mr. Musk's highest-stakes year since then. To appreciate the risk, look at what Mr. Musk has, and hasn't,

achieved so far, and at the qualities that have allowed him to do so.

### LIGHTLY SEARED ON THE REALITY GRILL

Of the two goals, colonising Mars and contributing to the greening of the Earth, the second sounds more plausible, not least because it is widely shared. But SpaceX is in much better shape than Tesla. The firm is privately held (Mr. Musk, who has a controlling stake, says it will remain so). In 2015 Google and Fidelity invested \$1bn, and subsequent filings put the firm's value at over \$21bn.

SpaceX has a commitment to modular design, vertical integration and continual improvement not previously seen in the space business. The Falcon Heavy, for example, used 28 Merlin engines, all of them built from scratch at the company's plant in California, all of them much more powerful than the Merlins that powered the first Falcon 9 in 2012. The firm's achievements have established it as a satellite launcher and as a logistics company, with its reusable Dragon spacecraft providing supplies to the International Space Station. This business will expand when, probably some time next year, the Dragon is certified to ferry astronauts up there, too.

The innovation is continuing—which is just as well, because within a few years it may face serious competition from Blue Origin, a rocket company owned by Mr. Bezos which is likely to prove more sprightly, and more ambitious than those SpaceX has faced to date. Treating the Falcon rockets as cash cows, SpaceX is moving its development efforts on to an even larger (and possibly also cheaper) launcher, known as the BFR, and a constellation of thousands of communication satellites, an undertaking that would exploit its ability to get things into space cheaply so as to provide high-speed internet access all around the world. Morgan Stanley, an investment bank, reckons that could bring the company's value up to \$50bn—though it will require mastering a new manufacturing challenge and facing new competitors.

Tesla is already worth more than that: roughly \$60bn. That is more or less the same value as GM, which makes 80 times as many cars. In 2004 Mr. Musk took a big stake in Tesla, founded the year before, and became chairman; in 2008, when the company faced closure, he became CEO. It went

public two years later and quickly became the world's leading electric-car company; last year it produced over 100,000 vehicles. At the Model 3's launch Mr. Musk claimed that, by the end of 2017, it would be churning out 5,000 a week.

It wasn't. In fact it was nowhere near it. It made just under 2,500 Model 3s, half that promised week's worth, in the entire fourth quarter of 2017. It now says it will hit 5,000 a week later this year; a previous claim that it would go on to 10,000 a week by the end of the year has been dropped. Meanwhile, it faces ever stiffer competition. The world's established carmakers are getting into the electric game. Other new entrants include Alphabet, which owns Waymo, an autonomous-car firm that began as part of Google.

Given all this, many think Tesla's valuation unsustainable. Mr. Musk sometimes seems to see their point. "This market cap is higher than we have any right to deserve," he said when speaking to an audience of state governors in July 2017, soon after the company's valuation first topped that of Ford. To reassure shareholders of Mr. Musk's commitment, in January Tesla proposed a new pay plan that ties all his earnings to strict milestones for revenues, annual profits (of which, so far, it has made none at all) and market capitalisation. The last of these sets a target of \$650bn by 2028. That is roughly the current value of the world's largest ten carmakers combined.

To accomplish such rapid growth—all but unheard of in a company its size—Tesla has to become more than just the successful mass-market car company it still isn't. It has to become an industry in and of itself, providing better, battery-powered alternatives to the internal-combustion engine wherever it is found, from lawnmowers to juggernauts, and also selling battery-storage systems to consumers and utilities on a huge scale.

Why should anyone believe such hubris? One argument is that electric vehicles, designed and built the Tesla way, are both better and potentially much more profitable than the alternatives. A recent tear-down analysis by McKinsey, a consultancy, concluded that electric cars designed from scratch are much better (for example, on range and interior room) than those that are modified versions of petrol-fired cars and still made on existing production lines. And by keeping a great deal of its cars' engineering in-house, as SpaceX does with its rockets, Tesla may stand to be much more profitable than its current competitors. Jeffrey Osborne of Cowen, an investment bank, calculates that 80% of the value of a Tesla is created in its manufacturing plant in Fremont, some three to four times the share for a typical passenger car.

What is more, electric-car factories could be a lot more productive than those for internal-combustion engines; whereas a conventional car has about 2,000 components in its drive chain, a Model S has fewer than 20. Mr. Musk says that these advantages mean he can create a "machine that makes machines" qualitatively better than anyone else's. But the so-far-pitiful production of the Model 3 suggests that, at best, that machine is proving hard to bed in. It also means Tesla is not getting the revenues it based its spending plans on.

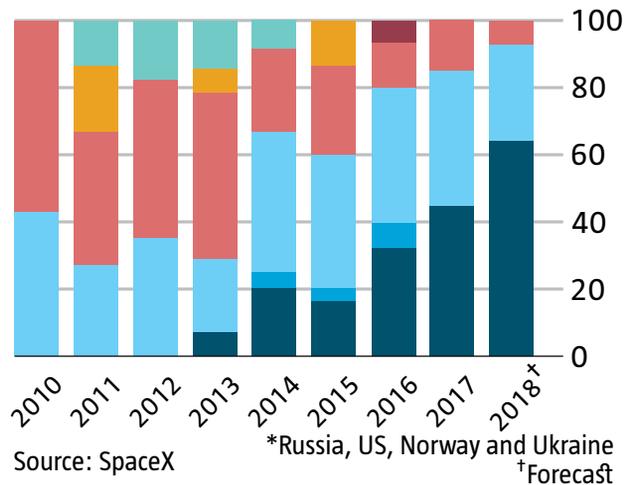
The "gigafactory", a battery plant in which Tesla and Panasonic are investing \$5bn, also has its problems. The investment is based on the idea that Tesla needs economies of scale in its battery business only achievable in a factory that is highly automated and utterly huge. Mr. Musk says the gigafactory—near the town of Sparks, Nevada—will be, by footprint, the biggest building in the world (see article).

Romit Shah of Nomura/Instinet, a bank, estimates that in late 2014, when the gigafactory was announced, global

## Hyperspace bypass

Commercial launch market, % of total

SpaceX (US) Russia Europe China  
Other US Sea Launch\* Japan



battery demand for electric vehicles was about 12 gigawatt-hours a year. Nomura thinks the gigafactory alone will have 40GWh of capacity by the end of this year. In 2016 Tesla bought SolarCity, a solar-power and home-energy-storage firm that Mr. Musk had helped two of his cousins set up, for \$2.6bn. One of the reasons was to soak up some of this huge supply of batteries. (Another was that SolarCity was drowning in debt; the bail-out of the CEO's side-gig was controversial, but Tesla shareholders ended up backing it by a large margin.) Storage, not cars, may be the biggest market for batteries long-term: it was not an accident that the company changed its name from Tesla Motors to just Tesla last year.

Getting the gigafactory up to its promised speed and scale is vital to Mr. Musk's plans. It has proved frustratingly difficult. A visit to Sparks late last year found J.B. Straubel, a co-founder of Tesla and now its chief technical officer, completely consumed with the automation efforts: "Ramping up such a complicated machine," he says, "on this unprecedented timescale, has never been done before." Last October Mr. Musk tweeted that the project was in "Production hell, ~8th circle".

### A SERIES OF UNLIKELY EXPLANATIONS

While Mr. Straubel struggles in hell, Tesla burns money as the Falcon Heavy burns kerosene. Barclays, a bank, reckons that Tesla will consume \$4.2bn this year. With just \$3.4bn in cash at the end of 2017 Mr. Musk will almost certainly need another injection of funds by the middle of the year—and maybe more later. Mr. Osborne of Cowen reckons Tesla's capital expenditures will amount to \$20bn-\$25bn between 2017 and 2020. Jim Chanos of Kynikos Associates, a prominent short-seller who predicted the collapse of Enron, recently denounced Tesla's history of missing deadlines and targets as meaning that "the equity is worthless."

As yet, though, the shareholders do not seem to agree. Tesla's stock price has held fairly steady; people might even buy more, if offered. They invest because, as a SpaceX insider



**Up and above.** Started in 2002, and with its first successful launch in 2008, SpaceX has come to dominate the commercial-launch market. In 2017 it launched 18 rockets—more than the rest of America and Europe combined

puts it: “They believe in Elon.” When he says, as he did on February 7th, “If we can send a roadster to the asteroid belt we can solve Model 3 production,” many happily accept the non sequitur.

His power to inspire is not limited to the public and his investors. It attracts bright people to his companies, where they work with a passion which matches his own (and may well feel his temper all the same). Mr. Straubel insists that “the mission really matters—that’s why we’re working so hard.” Gwynne Shotwell, SpaceX’s chief operating officer, says Mr. Musk’s extreme goals for SpaceX are “incredibly invigorating” and help her recruit the very best prospects: “We rarely lose a candidate.” Outside observers agree. Vinod Khosla, a Silicon Valley venture capitalist, says “Elon’s mission is motivating so many people. This is common at small social enterprises, but very rare at scale.”

But Mr. Musk’s companies rely on more than just his ideas and allure. Two other attributes stand out: his approach to risk and his embrace of complexity.

His way with risk is unlike that of his Silicon Valley peers, according to Amy Wilkinson of Stanford. She says entrepreneurs rarely take big risks on another venture after they have scored a stonking success. The few that become serial entrepreneurs typically stay within the same industry.

Mr. Musk, having sold his first company, Zip2, to Compaq for \$341m in 1999, ploughed the gains straight into X.com, an online bank that later become PayPal. Within 18 months of selling that to eBay for \$1.5bn he had invested almost all his gains in Tesla and SpaceX. He takes on more risk with each new round of financing.

A risk-taking boss does not mean a cavalier company. Ms Shotwell points to a dichotomy in attitudes to risk at SpaceX. It is in many ways a very unified operation. Most of the managers and engineers have desks in the manufacturing facility, in among production experts and line workers. People circulate easily, trying out new ideas and learning from colleagues who, in a more traditional structure, they might never meet. But the designers and engineers are encouraged to be mavericks, whereas the operations and manufacturing teams are most definitely not. A former senior executive says that Mr. Musk takes the risks he thinks he has to, but does not run extra ones just to cut corners. Another insider describes him as “a risk taker for himself, but a risk mitigator for everyone around him”.

Looked at like that, his risk-taking may fit with his greater purpose; a gamble, perhaps a self-sacrifice, undertaken as part of his urge to fend off catastrophe. His faith in technological progress is, unusually for Silicon Valley, explicitly tinged with darkness: he is a paranoid optimist. Thus Tesla



PHOTO: REDDIT.COM

offers amazing air filters on the basis that they will help passengers “survive a military grade bio attack”.

As befits a paranoid optimist, his broad hopes for the future are also tied up with fears. Some, such as climate catastrophe, are fairly widespread, some are more unusual—the need for civilisation to be backed up to another planet, just in case. He has been one of the loudest voices warning Silicon Valley and the world of the threats posed by out-of-control artificial intelligence (AI) and has set up a not-for-profit outfit devoted to lessening it.

Mr. Musk’s second defining characteristic is the willing embrace of complexity. “Complexity will happen inside or outside the organisation,” says Antonio Gracias of Valor, a venture capitalist who sits on the boards of both Tesla and SpaceX. “Elon’s view is that if you have it inside, you can manage it better...and can build faster, cheaper and to higher specifications.” His approach echoes that of Andy Grove, a legendary former boss of Intel whose investments in integrated chipmaking turned the firm into a global powerhouse. It eliminates the “margin stacking” enjoyed by layers of suppliers and allows a continuous improvement of what the companies offer. Understanding all the linkages and dependencies in such a system is a huge challenge; so far, Mr. Musk has met it.

This systems thinking can be strategic; you can see it in the way SolarCity has provided more in-house demand for the gigafactory, or in SpaceX’s plans to use its launch capability to create a vast new constellation of satellites. But it figures in the smallest decisions as well as the biggest. Spurning the received opinion that micromanagement is a bad trait in bosses, Mr. Musk prides himself on being a “nano-manager”. “Unlike other CEOs he’ll really walk through the technology with you,” says a veteran engineer at one of his firms. Mr. Gracias says he is the best zoom-in manager he has seen: “Elon can be at the macro, see everything that’s highly disruptive, and then can zoom all the way down to the micro, down to the door handle.”

One worry is that such intense focus, divided between two companies, cannot last—especially as Mr. Musk endlessly plays around with yet more ideas, such as ultra-high-speed intercity travel (a scheme called “hyperloop” which he conceived of in 2013 and is now revisiting), novel tunnelling equipment to solve congestion on the streets (see article) and mind-computer interfaces to keep humans—or at least cyborgs—a step ahead of the AI menace (a startup called Neuralink). With Tesla seeming to need all the attention it could possibly get, these tangents appear self-indulgent. At the same time, for many of the faithful the endless flow of ideas further burnishes his image.

### SO MUCH FOR SUBTLETY

Another worry is that Mr. Musk’s technological insight might let him down. For example, he believes that cameras and ever smarter software will be good enough to make Teslas fully autonomous. This puts a huge demand on the company’s AI team, and goes firmly against the technological grain. Other, currently more advanced, autonomous car-makers insist that lidar sensor systems are also vital. If they are right, Tesla will for the first time find itself on the technological back foot, and might even come to look unsafe (which would surely gall Mr. Musk deeply).

And then there are the overly ambitious targets. Mr. Musk routinely gets his teams to do things no one else can do, but they rarely pull it off by the date he originally set. Do not expect fleets of BFRs to head for Mars at any date he may suggest. Such dates are goads as much as targets. They drive the enthusiasts—and him—even harder. This has often proved forgivable. “Even if he misses his deadline, we are betting that he will still get there first,” as one equities analyst puts it. The Falcon Heavy is a case in point. When Mr. Musk unveiled the design in 2011, he said it would be on the pad in 2013. The task turned out to be a lot more difficult than that, and continual improvements to the Falcon 9 made it rather less necessary. But SpaceX was making money. Tesla is not.

It may be that Mr. Musk’s appeal will keep the company’s finances together. It may also be that, even in failure, he achieves his goals. Now there is one gigafactory, others may see its merits and build more. Now there is a market for high-quality electric cars, others will expand it. Indeed, if a truly big Silicon Valley fish wanted to do so, and Tesla stumbled badly, buying it might be a good way in.

Asked about a new space race after the Falcon Heavy launch, Mr. Musk was enthusiastic: “Races are exciting.” They also let pacesetters guide the field. If you start a race in the direction you think people should be going, it may not, in the end, matter if you win.

And if Mr. Musk does not personally deal the death blow to the internal-combustion engine, he will always have a gorgeous car in space to console him. ■

February 21, 19:00 — February 24, 11:00 — February 23-24, 19:00 —

**The Vilnius String Quartet**  
National Philharmonia of Ukraine  
(Volodymyrskiy uzviz 2, Kyiv)

From Lithuania with love and music, this evening is dedicated to the 100<sup>th</sup> anniversary of the restoration of the Lithuanian State. The Vilnius String Quartet is on an 80-concert tour of different corners of the world. Ukraine is one of the lucky countries on the schedule and will welcome its guests at the National Philharmonia. The VSQ's repertory is very rich, from masterpieces of world classics to music by Lithuanian composers. The Kyiv audience will be offered a unique series by classical Lithuanian composers: Ciurlionis's string quartet, Vainiunas's piano quartet and a string quartet by Dvorak.



**Mozart Music Festival**  
Parkoviy Congress & Exhibition Hall  
(Parkova doroha 16-A, Kyiv)

Music by the legendary Wolfgang Amadeus Mozart will fill this winter morning with expressive feelings and impressions. The performers at this celebration of classical music are soloists from the Virtuosi of Kyiv and Viennese Diva Michaela Selinger, accompanied by international prizewinning pianist Antony Baryshevsky. The festival program is in five parts, each of which reveals a different creative aspect of the composer. One section is directed at the youngest listeners, another is an electro-acoustic project based on images from Mozart's Magic Flute.



**Ten Tenors**  
Kyiv National Academic Operetta Theater  
(vul. Velyka Vasylkivska 53/3, Kyiv)

For the first time ever, Ukraine will see a concert combining the ten best tenors from Ukraine and Poland on a Kyiv stage. Bartosz Kuczyk, Mirosław Niewiadomski and Mariusz Ruta join their Ukrainian colleagues Anatoliy Pohrebnyi, Volodymyr Odrzynskiy, Volodymyr Kholkin, Dmytro Foshchanka, Oleksandr Chuppylo, Petro Chelali, and Serhiy Hurets for an unforgettable evening. The ten virtuosi will perform some of the most beloved tenor songs, including O sole mio, Besame mucho, Delila, Granada L'italiano, Volare, The Lion King, and more.



Until February 28 — March 7–11, 19:00 — March 13, 19:30 —

**Carte Postale. Woman at the Turn of an Era**  
Shtuka Coffeehouse & Gallery  
(vul. Kotliarevskoho 8, Lviv)

To see the image of a woman and to meditate on its essence—naturally we can not only do this looking at a canvas painting or photograph but also leafing through postcards. The Carte Postale. Woman at the Turn of an Era show offers a glimpse through postcards from the turn of the 20<sup>th</sup> century from the private collection of Oksana Boboshko-Vanderhoeven. "The slender female figures of that time with their dainty s-shaped silhouettes and coquettish curls were the source of inspiration for painters and the main subject of postcards of that era," says the show's curator.



**Sukhishvili Ballet**  
Palats Ukraina  
(vul. Velyka Vasylkivska 103, Kyiv)

An orchestra and 100 talented dancers—the National Ballet of Georgia fills concert halls wherever it performs. And Kyiv's Palats Ukraina is no exception. For five days, colorful Georgia will fill the atmosphere. What can Kyiv audiences expect? More than 2,000 fantastic costumes, virtuoso theatrical performances and music that will make hearts beat faster. The Sukhishvili Ballet, founded by Iliko Sukhishvili and Nino Ramishvili, is over 50 years old and in this half-century it has made Georgian folk dances known the world over.



**ONUKA and NAOFI**  
Solomiya Krushchynska National Academic Opera and Ballet Theater  
(prospekt Svobody 28, Lviv)

ONUKA, a Ukrainian electronic music band, will once again perform together with the National Academic Orchestra of Folk Instruments to bring Lviv fans a live version of its electrifying performance at Eurovision in 2017. The musicians will offer a new program involving nearly 50 musicians. But the band will also play its favorite hits, such as Misto, Vidlik, Svitank, and other pieces.

