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NEWSLETTER

OF THE FOURTH QUARTER OF 2015

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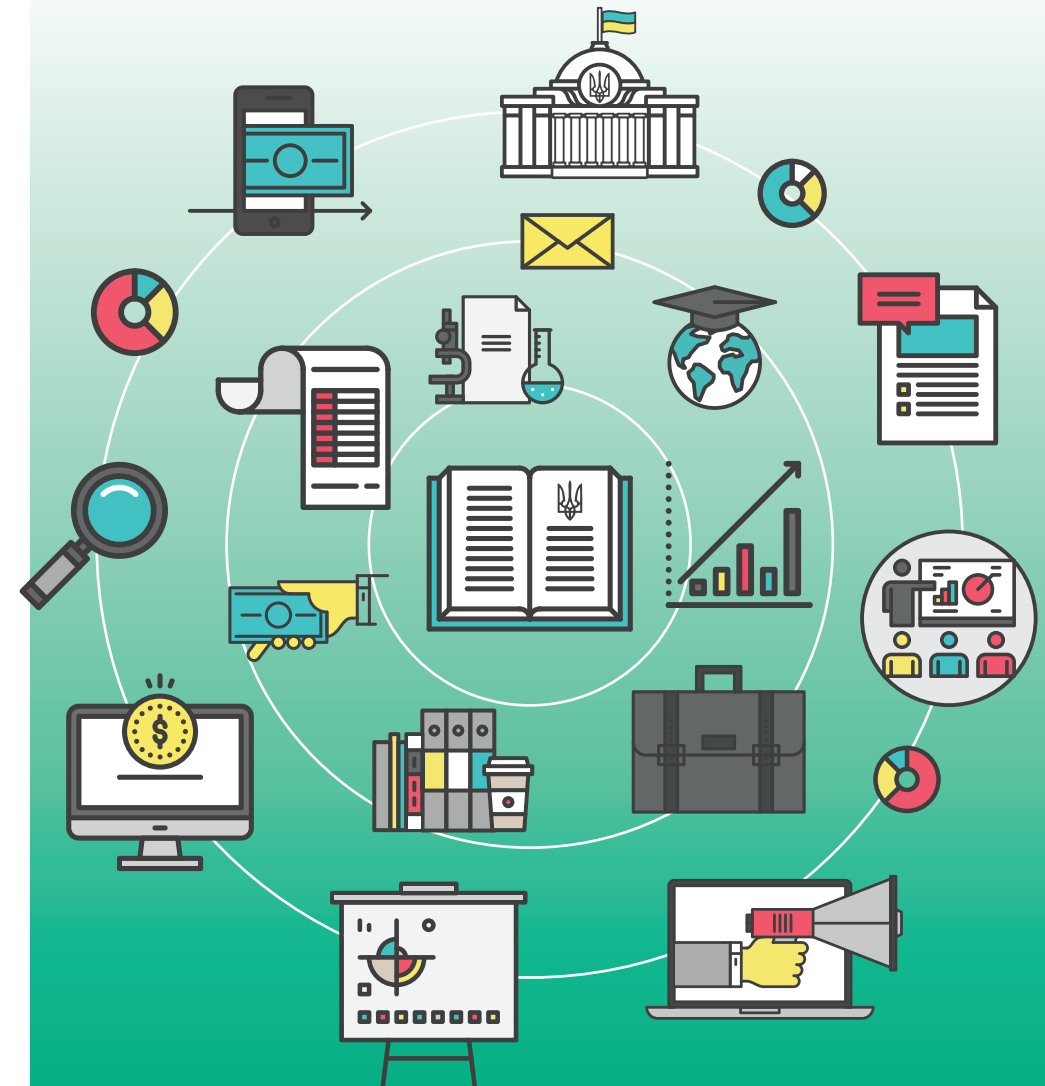


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LEGISLATIVE ACHIEVEMENTS



PUBLIC ADMINISTRATION REFORM

On December 10, 2015, the Verkhovna Rada of Ukraine adopted a new law **“On civil service.”** It provides for an exclusively competitive recruitment for all civil service offices. Recruitment for the offices of ‘A’ category shall be conducted by the Commission in charge of formation of the senior corps of civil servants, one third of which shall consist of the members of the public. The law also provides for the separation between political and administrative offices, creation of offices of state secretaries of ministries, and partial de-politicization of civil servants. On December 31, 2015, the President signed this law. It shall come into force on May 1, 2016.

However, to successfully implement the reform, it is **necessary to prepare a number of subordinate regulatory acts on the procedure of recruitment for civil service offices.** As of January 21, the RPR experts have prepared a draft law on the recruitment of the members of the public to the Commission in charge of formation of the senior corps of civil servants. The future public control over all appointments in the government, as well as institutional credibility to the government authorities depend on it. The sad experience of competitive commissions during the formation of the National Agency for the Prevention of Corruption urged us to develop a complex, yet objective system for recruiting the members of the public to the commission.

It is now being advocated and will most probably be adopted by the Cabinet of Ministers of Ukraine on the submission of the National Civil Service.

The RPR is also actively participating in the development of procedures of competitive recruitment for the civil service offices and of the regulation concerning the Commission in charge of formation of the senior corps of civil servants. The quality of recruitment of future employees, especially high-ranking officials, depends on it.

Moreover, the **RPR is actively working on the general rules of ethical conduct for civil servants, the order of conducting internal investigations, the procedures of assessment of civil servants’ performance, and a number of other regulations.**

All subordinate regulatory acts shall be finalized and adopted by May 1, 2016.

Mykola Vyhovskyi Manager of the RPR expert group on public administration, member of the RPR Board

“Adoption of the law “On civil service” is definitely a landmark event. However, to see it through to the end, it is necessary to implement the provisions stipulated by the law – and it needs as much efforts as advocacy of the draft law. It is a hard, daily, inconspicuous, yet essential work. Competitive selection will be effective provided a high-quality competitive procedure is developed and a regulation on the competition panel in charge of selecting top officials is prepared. It is also important to secure constant and thorough public control over the appointments. The next critical step is to adopt the subordinate legislation necessary to implement this law and launch this reform at full scale”.



REFORM OF THE STATE-OWNED AND MUNICIPAL PRESS

The landmark law **“On Privatization of the State-Owned and Municipal Press”** was finally signed by the President of Ukraine on December 29, 2015. It was adopted on December 24 after pro-active advocacy by the RPR-Media Reform group involving Telekritika, Media Law Institute, and the Institute of Mass Information CSOs. This legislative step shall trigger the reform of the printed media de-statisation in Ukraine, following numerous attempts of the last decade.



Taras Shevchenko co-head of the RPR Board and director of the Media Law Institute

“Notably, this law changes the whole philosophy of media – it shall put an end to the budget spending for PR of the local and central authorities, establish fair competition in the media market, and provide impetus to the development of printed media”.

WHAT IS NEXT:

the municipal and state-owned media can be either privatized by journalists and staff of the current editorial offices, privatized by third persons, transformed into the bulletins of official acts, or dismissed if there is no interest to transform such a media.

The transformation process consists of two stages: those editorial offices which are ready to get reformed into private entities (about 160) will be transformed in 2016 (the first stage). In 2017-2018, the rest of the printed media shall either be transformed or dismissed (the second stage).

As a result, there would be no voice of government at the taxpayers` expense, while the printed media market would operate on fair terms.



PUBLIC PROCUREMENTS REFORM

On the night of December 25, an important draft law **“On public procurement”** was unexpectedly adopted. The key innovation provided for in the draft law is a gradual transition to the use of e-procurement with mandatory electronic reduction. In particular, the central executive authorities shall conduct all competitive tendering online starting from April 1, while the rest of the customers – starting from August 1, 2016.

Paper is completely abandoned. During the procurement procedure, all information shall be presented in electronic form only. Moreover, all the submitted information, except for that reasonably determined as confidential, shall be open and accessible. In addition, not only the drafts, but also the contracts shall be publicly available.

The draft law, in fact, formalizes the use of PROZORRO e-procurement system which had been developed in close cooperation between the government (particularly Ministry of Economic Development and Trade), the public (Transparency International - Ukraine), and the business. The system has shown excellent results during the pilot stage. Since February 2015, over 36,000 tenders worth over 6,5 billion UAH have been called for in PROZORRO. **Potential savings total 500 million UAH or 12% of the expected value of tenders with the completed auction.**

Among other things, the draft law introduces the procedure of electronic appeal, gives the right to include not only customer's officials into the tender committees, and introduces the concept of central procurement organizations. The draft law makes it mandatory to publish all the information about the below-threshold procurements starting from 50,000 UAH into the system or conduct such procurement through this system.

REFORM PRIORITIES FOR THE FIRST QUARTER OF 2016

THE REAL CHANCE TO REBOOT JUDICIARY

On October 23, 2015, the Venice Commission (the VC) issued in overall a positive opinion on the draft law on the Amendments to the Constitution regarding judiciary developed by the Constitutional Commission (the CC). At the same time, the **VC recognized that the mechanism of renewing the corps of judges proposed by the RPR through creation of new courts where recruitment to the judges' offices shall be based solely on the results of the competition - does not contradict the European standards.** In particular, Clause 37 of the Opinion contains the following provision: "In case of reorganization of particular courts, the judges concerned should have the possibility to retire or apply for a new position."

On November 25, 2015, the President of Ukraine submitted the draft law "On amendments to the Constitution of Ukraine (regarding judiciary)" under Reg. No. 3524 to the Parliament. Thus, part 5 of Clause 161 of Section XV "Transitional Provisions" of the draft law is the same as Clause 37 of the Opinion. In addition, the **draft has a number of positive amendments and novelties strengthening the independence of judges**, such as those on establishment and liquidation of courts by law; resolving the issues concerning the judges' career and dismissal to be tackled by the High Council of Judiciary with judges constituting the majority being elected by their peers; introducing appointment of judges for an unlimited term; limiting the immunity of judges; introducing the assessment of judges with respect to their competency, good conscience, and ethical behavior, as well as introducing a mechanism of judge's participation in the competition or dismissal/transfer in case of liquidation or reorganization of the court they work at; preventing political influence on the procedure of appointment of judges (that of the President and the Verhovna Rada).

On December 18, 2015, the VC approved the Secretariat memorandum on the compatibility of the Constitutional Amendments regarding judiciary with the opinion of the VC of October 26, 2015. Moreover, in the article

126 – it is mentioned that the VC recommended that failure by a judge to produce an asset declaration justifying the legal origin of the judge's property, even if it is already a requirement under the law on the status of judges", should be explicitly mentioned in the Constitution as a ground for the judge's dismissal.

On December 22, 2015, the Verkhovna Rada sent the amendments to the Constitution regarding judiciary to the Constitutional Court of Ukraine for the opinion. Court gave positive conclusions for the amendments on January, 22, 2016. However, the President submitted the new version of Constitutional Amendments regarding judiciary to the Parliament on January, 27, 2016. According to this new version, the Parliament regains powers to express distrust to the Prosecutor General, the rest remains unchanged. This new version was approved by the Constitutional Court on February, 1, 2016, and **on February, 2, 2016 the Parliament adopted draft Amendments in the first reading.** The next step would be that the Verkhovna Rada finally adopts it during the next plenary session by at least 300 votes.

On December 28, 2015, the Judicial Reform Council introduced the "implementation law" to the Amendments regarding initial qualification evaluation of judges and changes to the existing procedure where citizens shall be involved in check good conscience of judges.



Mykhailo Zhernakov leading expert of the RPR judicial reform group, member of the RPR Board

It is assumed that in the first quarter of 2016 the issues on reorganization and the creation of new courts (the new Supreme Court and the courts of appeal), as well as on competitive selection of new judges in such courts, procedure and timing of such action shall be primarily considered. In addition, attention will be given to the unification of processes by reducing the burden on the courts, introducing e-justice, etc.

Despite this progress of the judicial reform, the RPR insists that it will not achieve its goal without **simultaneous adoption of implementation laws**, which would provide a transition to a three-tier court system and renewal of judges at all levels on a competitive basis.

REFORM IMPLEMENTATION

IRREVERSIBILITY OF PUNISHMENT FOR GRAND CORRUPTION

The work of the National Anticorruption Bureau (NABU) - the specialized body to investigate grand corruption - started in December 2015, when the first prosecutors of the Specialized Anticorruption Prosecution Office (SAPO), responsible for supervising investigations of NABU detectives, were finally appointed. Owing to a considerable public and international pressure aimed at ensuring independency of the SAPO, in late November, the Prosecutor General appointed Nazar Kholodnytskyi as Chief Prosecutor of the SAPO, having chosen him from two esteemed candidates shortlisted by the selection panel. The second candidate, Maksym Hryshchuk, was later appointed as First Deputy Chief Prosecutor of the SAPO.

As of late-January, more that 100 NABU investigative officers and analysts have already been selected and passed the trainings.

Candidates for the SAPO prosecutors are passing tests.



Daria Kaleniuk Antac executive director

"The process of selection is going very transparently now, however, I have to note that the competition is limited by law only to candidates who have 5 years of work experience in prosecution. This significantly limits scope of candidates who can apply - in fact, only those who used to work in a very corrupt system of prosecution have access now to a new agency. And it is very important to eradicate this limitation by parliament."

Initially, the competition was fairly tough: ten candidates per one position. At the second stage of competition for SAPO regular prosecutors only 75 candidates passed general skills tests and will be invited by the selection panel for interviews. Two RPR experts, Daria Kaleniuk, Antac executive director, and Yaroslav Yurchyshyn, TI-Ukraine Board member, are members of the SAPO selection panel.

Daria Kaleniuk Antac executive director

"I can't now say anything about the quality of candidates, as their professional skills and integrity will be assessed during interviews, which we expect to have the following weeks. As member of the selection panel I can guarantee that asset declarations of all candidates will be carefully analyzed and assessed... And should there be doubts in integrity of the candidates, I will try to convince selection commission to reject such candidates. As all interviews will be broadcasted online, it will be easier to do"

Although the SAPO is not working at its highest efficiency yet, a **few successful operations have already been conducted, among which detention of Rivne district judge and city judge from Luhansk region for bribery.**

LAUNCH OF THE NATIONAL AGENCY FOR THE PREVENTION OF CORRUPTION: «CONTRA SPEM SPERO»

The NAPC was launched in March 2015, and since then it has been formed on a competitive basis. The competition could have ended with the NAPC headed by five officials completely dependant on the Government, but three members of the Selection Panel, including two representatives of the RPR: Viktor Taran (Head of the Centre for Political Studies and Analysis), Andriy Marusov (Head of Board of TI-Ukraine), and Volodymyr Sushchenko (the Verkhovna Rada representative within the Selection Panel) did not let it happen. They demanded that the **competition shall be held in a fair and transparent manner to select truly independent and qualified members of the NAPC.** The abovementioned representatives of the Selection Panel detected severe procedural violations in the selection process, i.e. conflict of interest of Kostiantyn Vashchenko, one of the Selection Panel representatives, who voted for his direct subordinate, and the governmental appointment of three NAPC members on the basis of the protocol that lacked signatures of some Selection Panel representatives. Mr. Taran, Mr. Marusov, and Mr. Sushchenko filed a class action suit demanding to discard the appointment of the NAPC members that took place with the serious violation of the law. The suit is in the process of consideration.

However, on January 28, 2016 Viktor Chumak], MP who had been appointed as a NAPC member by the Cabinet of Ministers, resigned from his position in the Agency due to the severe violations of the NAPC management selection process, and the increasing political pressure over Mr. Chumak, who retained an independent position.

Therefore, only 2 members are left in the NAPC. The Government has announced a supplementary competition by January 16, 2016 to supply two vacancies. Over 100 candidates applied, the Selection Panel member check their integrity and will soon pass interviews.

In fact, the election of the capable Agency staff including at least 4 NAPC members could have been done in December, 2015, but was **blocked by the governmental representatives and some NGO activists for unclear reasons.** Moreover, such a move was a considerable violation of current legislation. Some Selection Panel members found their excuse in the “weakness” of the elected members and led to the loss of precious time due to the announcement of a new competition. The Selection Panel members right now remain the same ones.

There are also serious problems connected with the launch of the e-declaration system. The NAPC that has to start the system is not established yet, and some MPs are trying to repeal the legal grounds for this system, i.e. on December 24 the Parliament adopted the legislative amendments that postpone the e-declaration until 2017. Besides, 48 MPs filed a constitutional appeal claiming that the new declaration system that provides for public disclosure of information regarding the property of officials’ families potentially violates human rights. There are constant ludicrous claims of leaders of Parliamentary factions that the new system is “imperfect”. Moreover, neither of the two draft laws, aimed at obliging officials to file their declarations by April, 1, 2016 in new electronic form which is also more extended than the old one, were not even included into the agenda of the Verkhovna Rada.

Therefore, the complicated selection process of the NAPC and severe political pressure on the new e-declaration system create strong concerns regarding their proper establishment.

SUPERVISORY COUNCIL OF THE PUBLIC BROADCASTING

Institutionalisation of the Public Service Broadcaster (PSB) has progressed significantly. **The Supervisory Council of the National PSB Company was finally elected on December 15, 2015.** Now it involves 17 members, four of whom are the RPR experts – Taras Shevchenko (Media Law Institute), Svitlana Ostapa (Telekritika NGO), Viktor Taran (Centre for Political Studies and Analysis), and Vadym Miskyi (RPR Secretariat).

It is worth noting that the Council members coming from the NGO sector were elected upon a transparent competition, at the conference of civil society organisations representing such realms as the education and science, ensuring the rights of ethnic minorities, physical education and sports, journalism, human rights protection, child and youth advocacy, arts, local self-government, protection of the rights of people with special needs. **This body is in charge of setting main objectives and approving editorial standards of the broadcaster, as well as monitoring compliance with them.** Soon, the Council shall elect the Board, i.e. PSB executive body, appoint five members of the PSB Editorial Board, and approve all necessary internal regulations.



Igor Rozkladaj RPR expert and media lawyer

“The public broadcaster shall raise the bar for the media market standards. Yet, it is a pity to observe that our Government allocates little funds for the PSB, which is also the army, but on the intellectual level.”

REFORM COMMUNICATION

In order to provide a deep analysis of the progress of Ukrainian reforms, the RPR experts prepared policy briefs "Ukrainian Reforms Under the Microscope - 2015." **The brochure covers information on the achievements and challenges, as well as further actions, necessary to be taken in 15 sectors**, among which fight against corruption, judiciary, prosecution service, law enforcement bodies, mass media, public administration system, local authorities empowerment, energy sector, healthcare system, education, etc.

Policy briefs are available at the following link:
<http://rpr.org.ua/en/news/2015-12/0/442>.

PUBLIC FORUMS

During the fourth quarter, the RPR experts held three public forums on judicial reform, decentralization, and assessment of the Coalition Agreement implementation.

These forums are aimed at raising the awareness of broad audience on reform progress and challenges, as well as reach advocacy goals, as they serve as a platform for communication and discussions between different reforms stakeholders: MPs, representatives of Government and Presidential Administration, civil society, international partners, academician and others.



MEDIA BREAKFASTS

Five media breakfasts for foreign correspondents and representatives of embassies and international institutions were held in October-December, 2015:



Truth and Myths about the Civil Service Draft Law



Missed Opportunity for Election Legislation Reform
(In cooperation with Democracy Reporting International)



Decentralization: How to Ensure Irreversibility?



Constitutional Amendments with Respect to the Reform of the Judicial System



Where Is a Point of No Return of Ukraine's Anti-Corruption Reform?

STRUCTURE OF RPR



ASSEMBLY OF THE NGOS – highest Body in the RPR

Frequency: the Assembly holds its meetings at least twice a year.

Constitution: NGOs-participants of the RPR – authoritative, experienced NGOs with impeccable reputation – have the right of vote at the Assembly. New organizations are granted the status of associated members and take part in the Assembly with a consultative vote. 46 NGOs were participants by the end of 2015.

Decision-making: decision is adopted by 2/3 of the attendants.



BOARD OF THE RPR – body that implements the strategy

Constitution: 12 members. The Board has two or more co-chairpersons. Members of the Board are elected by the Assembly for the period of one year.

Decision-making: The Board of the RPR adopts decisions on the issues within its competence independently or delegates this right to other bodies, including those it set up. The Board of the RPR adopts decisions by a simple majority of votes from its total composition, except for decisions on creation and liquidation of groups and appointment and dismissal of the Head of the Secretariat, which are adopted by 2/3 of the total composition of the Board of RPR.

POWERS OF THE BOARD:

- 1 to develop the draft Strategy and submit it to approval of the Assembly;
- 2 to perform strategic management of the RPR on the basis of the Strategy approved by the Assembly;
- 3 to approve the Communication strategy and other policies of the RPR;



SECRETARIAT OF THE RPR – executive body

Key functions of the Secretariat: advocacy and communication support of the activity of the civil platform and its members.

Since the Secretariat of the RPR does not have a status of a legal entity, its financial and organizational support is provided by the NGOs which receive grants for support of the RPR. Such NGOs guarantee that all rules and procedures of the coalition are observed, while decisions of its management bodies are implemented.

POWERS OF THE ASSEMBLY:

- 1 to adopt and amend the RPR Charter;
- 2 to adopt the RPR Strategy;
- 3 to elect the RPR Board;
- 4 to listen to the reports on the activity of the Board and the Secretariat;
- 5 to accept and exclude organizations-participants of the Coalition as advised by the RPR Board.

POWERS OF THE BOARD:

- 4 to perform financial management, in particular to approve the RPR budget, fundraising regulations, and grant applications;
- 5 to approve RPR action plans;
- 6 to set up expert, consultative, and other bodies of RPR, delegating particular authorities of the Board to them;
- 7 to settle conflicts between groups;
- 8 to adopt decisions on ethical issues and observance of values of the coalition, or delegate these functions to a specially established body;
- 9 to approve a staffing table of the RPR Secretariat (including the rates of wages);
- 10 to create and liquidate groups, initiatives, and other structural divisions of the RPR, and lay down the rules of their activity.
- 11 to elect area managers of the RPR Secretariat and delegate the right to hire the rest of the personnel within the adopted staffing table to the Head of the Secretariat;
- 12 to elect the Head of the RPR Secretariat;
- 11 to approve RPR membership and associated RPR membership applications of the NGOs and submit them for consideration of the Assembly;

POWERS OF THE SECRETARIAT:

- 1 to coordinate the activity of the RPR;
- 2 to support the functions of advocacy, communication, international relations, regional activity, fundraising, and organizational development of the civic platform;
- 3 to prepare and hold RPR events (forums, campaigns, round table discussions, expert debates, etc);
- 4 to support activities of groups, initiatives, and other structural divisions;
- 5 to prepare and provide technical support of the meetings of the Assembly and the Board of the RPR, to prepare draft resolutions and make protocols of the meetings;
- 6 to ensure implementation of the decisions of the Assembly and the Board of the RPR;
- 7 to support implementation of the grant projects supported by the Board of the RPR and financed by the donors;
- 8 to prepare action plans of the Secretariat and submit to approval of the Board of the RPR.