

REANIMATION PACKAGE  
OF REFORMS

# NEWSLETTER

For September 2017 – March 2018



# CONTENT

2

Anticorruption reform

16

Media reform

6

Judicial reform

19

Energy sector reform

10

Public administration reform

23

Healthcare reform

12

Election legislation reform

26

Other reforms newsfeed

14

Land reform



# ANTICORRUPTION REFORM

In the anticorruption domain, the second half of 2017 was marked by failed attempts to finally set up an independent anticorruption court, unprecedented attacks on the National Anticorruption Bureau of Ukraine (NABU) from the side of authorities, complete failure to conduct verification of state officials' e-declarations, and continuous harassment of anticorruption activists and NGOs. The anticorruption agenda has not changed much since the beginning of the previous plenary session in autumn 2017, however, the deadlines for Ukraine to finally deliver on the most crucial benchmarks of anticorruption reform are becoming much tighter.

## **Establishment of independent High Anticorruption Court**

A key task for 2017 was to set up the High Anticorruption Court (HACC) as a specialized court of first instance with an autonomous Appeal Chamber within it to consider cases under the jurisdiction of NABU and the Specialized Anticorruption Prosecutor's Office (SAPO). In October 2017, the Venice Commission provided its legal opinion on the existing draft laws on anticorruption court (No.6011 and 6529) and invited the President of Ukraine to promptly submit his own bill that would envisage establishment of the HACC based on a transparent procedure of anticorruption judges' selection with international involvement. In particular, the Venice Commission stated that "international organizations and donors active in providing support for anticorruption programs in Ukraine should be given a crucial role in the body which is competent for selecting specialized anticorruption judges."

In late December 2017, President Poroshenko finally submitted his draft law No.7440 on the establishment of the HACC. However, it contains a number of contradictions to the Venice Commission recommendations, notably:

- ◆ representatives of international donors are given an advisory role, instead of a crucial one, in the selection of judges, which hampers the independence of this institution from the start;
- ◆ jurisdiction of the court does not fully cover cases investigated by NABU (including money laundering and declaring false information); on the contrary, HACC is assigned cases that are not related to top-level corruption (officials' drug dealing and arms trafficking);
- ◆ the bill sets unrealistic eligibility requirements for candidates for positions of anticorruption judges, under which it may be impossible to operationalize the court.

Therefore, the President's bill was met with staunch criticism from Ukraine's key international partners (International Monetary Fund, World Bank, the EU and the G7 Ambassadors to Ukraine), who expressed serious concerns regarding the bill's inconsistency with the authorities' commitments under Ukraine's macro-financial programs and with the recommendations of the Venice Commission.

As of March 2018, draft law No.7440 was adopted in the first reading. The Parliamentary Committee created a special working group in order to prepare the draft law for the second reading, and experts of the Venice Commission were invited to join the group. In any case, it is vital that the HACC becomes operational already in 2018. The law on HACC should be fully compliant with the recommendations of the Venice Commission.

### **Attacks on the National Anticorruption Bureau of Ukraine**

Systemic attempts to undermine NABU's independence and limit its powers was another alarming trend of the past months. NABU experienced setbacks on all fronts, beginning with manipulations around the appointment of a candidate for the external auditing commission of NABU and the dismissal of reform-minded Yehor Soboliev from the position of Chairman of the Parliament's Anticorruption Committee to open up the way to appoint a loyal auditor.



**Anton Marchuk**

Manager of the RPR Anticorruption Reform Group  
Board Member at NGO "Anti-corruption Headquarters"

*In the legislative field, several draft laws aimed at establishing political control over NABU or neutralizing it have been registered in the Parliament. In December 2017, the leaders of two biggest coalition factions in the Parliament registered draft law No.7362 which presumes depriving NABU of any guarantees of independence from the political will of the highest government leadership. According to this bill, NABU's director can be dismissed based on a protocol of an administrative offense related to corruption and in case of a no-confidence motion against him by a simple parliamentary majority. Such a legislative move triggered an unprecedentedly sharp international reaction, preventing it from being considered in the plenary hall, but it may be repeated in the future."*

Besides that, the old law enforcement authorities exerted physical interference in NABU's operations. For instance, in November 2017, an undercover operation conducted by NABU and SAPO regarding the disclosure of a large-scale corruption scheme in the State Migration Service of Ukraine was disrupted by Security Service

of Ukraine and Prosecutor General's Office. NABU's undercover agent was illegally detained as he was documenting one of the episodes with participation of the First Deputy Head of the State Migration Service (SMSU), and personal data of other NABU agents were disclosed. Such incidents severely impede NABU's capacity to investigate high-profile corruption.

Thus, protection of NABU should remain high on the agendas of the civil society and the international community in 2018.

### **Sabotage of NACP's verification of public officials' e-declarations**

In more than a year since its establishment, the National Agency on Corruption Prevention (NACP) has not become an independent and effective anticorruption agency, despite its sufficient resources and substantial legal powers.



**Olexander Liemenov**

*Most areas of NACP activities, namely financial control and monitoring of public officials' lifestyle, conflict of interests, political party financing, and protection of whistleblowers, have not been executed. Out of 1.9 million e-declarations submitted by state officials, NACP managed to verify approximately 150-170, with only 7 declarations containing false information, according to the Agency."*

The launch of the electronic declaration system and their subsequent verification was one of Ukraine's key obligations under the EU's Visa Liberalization Action Plan, State Building Contract and the Memorandum of Understanding for Macro-Financial Assistance (MFA) to Ukraine. As a result of non-compliance with this conditionality, in December 2017, Ukraine did not receive the third MFA tranche amounting to as much as 600 million EUR out of 1.8 billion EUR envisaged in total.

Moreover, the Agency was jolted by a loud scandal in November 2017, when the former Head of NACP Department on Financial Control Hanna Solomatina revealed a number of shocking facts about NACP leadership's malfeasance and political dependence on the Presidential Administration in e-declaration verification process. This disclosure once again attracted public attention to the problem of NACP's ineffectiveness and political vulnerability. Therefore, it is crucial to re-launch the Agency by selecting new leadership based on a competitive procedure with the involvement of international representatives; and to keep the independent verification of public officials' e-declarations as an important conditionality of prospective programs of international assistance to Ukraine.

## PLANS AND PROSPECTS



adopt the Law “On the High Anticorruption Court (HACC)” consistent with the recommendations of the Venice Commission and make the Court operational by the end of 2018;



adopt amendments to the Law “On corruption prevention” to re-launch the National Agency for Corruption Prevention and make the Agency independent and effective;



establish automatic verification of electronic asset and income declarations of public officials;



abolish the obligation to submit e-declarations for anticorruption activists and experts;



ensure the full independence of NABU and provide it with all necessary operational powers (i.e. empower the Bureau to wiretap independently).



# JUDICIAL REFORM

The key developments in the field of judicial reform during September 2017 - January 2018 concerned formation of the new Supreme Court, introduction of new procedural legislation, and the beginning of reorganization of the court system.

## Operationalization of the new Supreme Court

Establishment of the new Supreme Court, which started its operation in December 2017, should have become the milestone for reorganization of Ukraine's judicial system and the key element of its renewal. This new judicial institution replaced three higher courts and the former Supreme Court of Ukraine, as an indispensable part of Ukraine's transition from the four-tier judicial system (local, appellate, higher courts, the Supreme Court of Ukraine) to three-tier (local, appellate courts, the Supreme Court). However, despite the high expectations of Ukraine's civil society and the international community, the actual results of judges' selection, conducted for the first time through an open competition, raised some concerns about the quality of this newly established institution from the start.

Out of 115 justices of the Supreme Court, 27 received negative opinions of the Public Integrity Council (PIC), a civil society watchdog responsible for assisting judicial self-governance bodies in the process of judges' appraisal. These are the judges who submitted false information in their declarations, participated in political persecutions, banned peaceful meetings during the Revolution of Dignity, took politically motivated decisions, significantly violated the decisions of the European Court of Human Rights or could not explain the origin of their property.

The list of 115 candidates was composed in September 2017 by the High Council of Justice (HCJ) after the consideration of recommendations of the High Qualification Commission of Judges (HQCJ) and was signed by the President on November 10.



**Mykhailo Zhernakov,**

Chief Expert of the RPR Judicial Reform Group  
Director of DEJURE Foundation

*The big issue in this process was the conflict of interests among the HCJ members in regard to some competition entrants, whose requests for recusal were not fulfilled nonetheless. Additionally, the process of determining winners of the competition*

*was far from transparent: the HQCJ allowed a deviation from a predetermined methodology; psychological testing was aimed at selecting candidates loyal to the system; the HQCJ and the HCJ did not act as independent and impartial bodies, etc.”*

As to the composition of the new Supreme Court, 77% of its justices represent the old judicial system (out of them 42% used to serve as judges in the former Supreme Court and other higher courts that are being liquidated). Legal scholars and attorneys who were allowed to become Supreme Court judges for the first time, comprise only 23% of its composition, meaning that the intended renewal did not take place.

At the first plenary meeting of the new Supreme Court on November 30, Valentyna Danyshchenska was selected as its President. While this appointment is viewed positively, the bad news is that Bohdan Lvov, the former Head of the High Commercial Court, was selected as the Deputy President by an overwhelming majority of 69 (out of 89) judges, despite the fact that he was not able to justify his assets and was subject to several criminal proceedings, as reflected in PIC's negative opinion. Mr. Lvov was also elected as the President of the Commercial Cassation Court, with other former judicial bosses heading the other three cassation courts.

While the composition of the Supreme Court is already a *fait accompli*, the procedures that applied in the course of this competition will be definitive for the qualification assessment of at least 2,700 judges from various courts in the upcoming months. Therefore, the lessons from the Supreme Court competition open up the need to assess the compliance of the qualification assessment procedures with the needs of the selection of judges, that would allow participation of independent experts, as well as the validity, reliability and accuracy of the results of application of these procedures.

### **Adoption of new Procedural Codes**

In October 2017, Parliament amended the Civil and Commercial Procedure Codes, the Code of Administrative Justice and other legislative acts in order to ensure the transition from a four-tier judicial system to a three-tier one. As a result, new institute of cassation was introduced, and prerequisites for e-justice implementation, simplifications of judicial proceedings and launch of judicial mediation were created. At the same time, some amendments to the Code of Criminal Procedure can paralyze the investigation of many criminal cases and reduce the adversarial nature of criminal proceedings.

Most of the changes came into force on December 15 when the new Supreme Court began to administer justice. Amendments to criminal proceedings should come into force later unless the Parliament decides to review them.

## **Reorganization of the court system**

In December 2017, the President issued seven decrees envisaging the consolidation of a large number of courts through the reorganization and liquidation of individual courts. In particular, instead of 694 district, city and city-district courts, as well as regional commercial courts, 309 district courts were established. Instead of 44 courts of appeal of different specializations, 41 courts of appeal were formed. Only 27 district administrative courts were not affected by the reorganization. Such a consolidation is explained by the need to ensure justice in districts with too few judges and by the optimization of budgetary expenditures on courts.

According to constitutional amendments, the newly established courts should be filled by a competitive selection procedure, but it is possible that attempts will be made to form these courts through transfer of judges without any competition. These processes can last for years. The existing courts will cease to operate only after the new courts will be established and launched. Lawyers warn that as a result of reorganization, consideration of a large number of cases will have to be started from the beginning.

### **Qualification assessment of judges has started**

In October 2017, the HQJC started the qualification assessment of judges of local and appeal courts. The list of 999 judges to be assessed includes “five-years” judges (whose term of office has expired), judges aged 60 and over, and some judges of appeal courts who have expressed their willingness to undergo an assessment. The HQCJ members noted that during compilation of the list, particular attention was paid to the difficulty in fully staffing some courts.

### **Creation of the High Court on Intellectual Property**

In September 2017, the President of Ukraine issued the order establishing the High Court on Intellectual Property (IP). The Court will function as a specialized first instance court for IP-related cases. Its establishment was envisaged by the Law “On the judiciary and the status of judges” (2016). This Court will also review appeals related to decisions passed by it at the first instance. The Supreme Court will be the cassation instance.

The Court will be located in Kyiv and will consist of 21 judges. The HQCJ has already announced a competition for the vacant judicial positions and received 234 applications. They will start taking legal knowledge and practical skills exams in the second half of 2018.

## PLANS AND PROSPECTS

In the upcoming months, it is necessary to undertake the following measures:



establish the anticorruption court, based on the Venice Commission guidelines;



introduce changes in the composition of judicial governance bodies (HQCJ and HCJ) and improve the procedure of judges' selection and appointment. It is important to provide for an open voting during the judicial bodies' decision-making; to unify and strengthen the approaches to managing conflicts of interests within the judicial bodies; to strengthen the role of the public (PIC) in respective procedures;



conduct qualification assessment of judges and launch competitions to fill in judicial positions in reorganized courts;



introduce a mechanism for revision of sentences for arbitrarily convicted persons.



# PUBLIC ADMINISTRATION REFORM

The main achievements in the area of public administration reform over the past six months concerned the start of reorganization of 10 pilot ministries. It entails the establishment of new policy directorates in charge of qualitative development of public policy through policy analysis, strategic planning and impact analysis of government initiatives. New Directorates for Strategic Planning and Euro-Atlantic Integration will oversee implementation of strategic planning methodologies, conduct cost benefit and impact analysis of government initiatives, such as drafts of regulations, budget programs and other resolutions.

On December 27, 2017, the Government approved the Resolution No.1013-r “On approving the concept for the optimization of the system of central executive authorities”, which determines the basic principles for establishing and reforming the ministerial apparatus and other central executive bodies.

Competitions to as many as 821 new reform experts’ positions in 50 directorates have been announced, resulting in more than 13,000 online applications on the modernized civil service portal [career.gov.ua](http://career.gov.ua). So far 376 positions have been filled. Salaries of public officials have also doubled, and in some cases tripled, depending on the rank of civil servants. However, there is a huge difference between the lowest and the highest salaries of state officials, with a ratio of 1:40 instead of the appropriate 1:7. The structure of salaries also requires significant modifications—a base salary should significantly exceed allowances and bonuses, and there should be a strict correlation between the salary and performance of a civil servant.

Undertaking structural changes to the public administration system improved Ukraine’s standing in international rankings: it moved 34 positions up (65th place in 2017) for “Transparency of policy making” by WEF GCI. Additionally, the use of e-services and the launch of government’s open data portal, helped Ukraine gain 30 positions in the Global Open Data Index 2017.



**Serhii Soroka,**

Manager of the RPR Public Administration Reform Group  
Senior Project Manager at PAR Minregion

*The main challenge for 2018 is the completion of reorganization of 10 pilot ministries based on the principles determined by the Strategy of Public Administration Reform in Ukraine 2016-2020. The existing shortcomings of the reform, such as insufficient*

*reform coordination and lack of understanding of the necessity and principles of reforming executive authorities on the part of the majority of ministers and MPs, should be addressed and the reform dynamics should be fostered. It is also crucial to improve methodological support for reform in policy analysis, strategic planning and government resolutions quality assurance.”*

Besides that, the main setback of the reform in the last year was the passing and signing of the draft law No.7126, under which the Law “On the civil service” no longer applies to heads of district (*rayon*) and regional (*oblast*) state administrations. These legislative amendments create a system of politically dependent figures and result in an unconstitutional “presidential power vertical.”

## PLANS AND PROSPECTS

In 2018, it is important to proceed with the following steps in the domain of public administration reform:



determining, coordinating and approving target structures of the pilot ministries and the completion of their reorganization; creating rules and criteria for the establishment of new directorates, their functions and size;



conducting competitions for the positions of reform staff in the new ministerial directorates;



developing, coordinating and approving the concept for reforming the Secretariat of Cabinet of Ministers of Ukraine;



developing and approving changes to the Regulations of the Cabinet of Ministers of Ukraine and regulations concerning issues of strategic planning and procedures for drafting and approving government resolutions;



approving the law on administrative procedure which should set the general principles of various relations between executive authorities, local self-government, their officials and other administrative bodies, as well as individuals and legal entities;



promoting competitive procedures for staffing civil service positions to minimize subjective judgements in applicants’ assessment;



introducing and improving the system for planning and evaluating the results of civil servants’ performance.



# ELECTORAL REFORM

Over the last months, the electoral reform has finally witnessed some progress on three of its major components. First of all, the draft Election Code that was developed with the participation of RPR experts and meets international standards was approved in the first reading. Draft law on the inevitability of punishment for election crimes is at the final stage of consideration and has every chance to be submitted as a governmental law, which is also a great achievement. Finally, the reboot of the Central Election Commission is underway. However, alongside positive prospects to proceed with the reform, all three of its key components may face substantial challenges on the path to their realization.

## ◆ Change of electoral system to the open party list system

The Parliament's activities towards adopting the law on elections based on open list proportional representation began in October 2017, but MPs did not approve any of the three respective draft laws back then. Draft law No.1068-2, advocated by RPR, received the highest, yet insufficient, number of votes (181).

On November 7, 2017, MPs adopted in the first reading draft Election Code No.3112-1, developed with participation of RPR experts. However, there are high risks that the draft Election Code might fall through, since it was supported by 226 votes only, and this gave reasons to believe that voting on the draft Code was random. In two weeks after its adoption, as provided for by the Parliament's Rules of Procedure, MPs submitted over 4,000 amendments to be reviewed by the respective Committee. Such a large number might indicate that the consideration of the draft Code in the second reading is attempted to be delayed as much as possible, presumably until May-June 2018. This will then be used as an argument that changes in election law are not desirable within one year before the election, as recommended by the Venice Commission.



**Yevhen Radchenko,**

Chief Expert of the RPR Electoral Reform Group  
Development director of "Internews-Ukraine"

*We believe the chances of the Election Code adoption to be very slim. Four draft laws on the MPs' election that were developed on the basis of the 1068-2 draft have already been submitted to the Parliament for consideration. All of them are in line with the Coalition Agreement; therefore the RPR team will determine which draft to work on in the future."*

In December 2017, draft law No.7366 proposing the majoritarian electoral system for electing MPs, authored by Oleh Barna, was registered in the Parliament. The very fact of this draft law's registration raises many questions since it does not comply with part 4 Art. 100 of the Parliament's Rules of Procedure, according to which alternative drafts cannot be registered for a draft law approved in the first reading. The draft law was scrapped then, but on December 18, 2017 a revised version was registered. And starting on December 20, 2017, MPs registered 7 more alternative draft laws.

#### ◆ **Inevitability of punishment for election crimes**

The draft law "On amending certain legislative acts on strengthening liability for election legislation violation" was developed jointly by experts of the Ministry of Internal Affairs of Ukraine, the Main Investigation Department of the National Police of Ukraine, and the NGO Civil Network OPORA. In February 2018, the draft law was approved by the government committee and it is awaiting consideration by the Cabinet of Ministers before it can be registered in the Parliament as a governmental draft law.

#### ◆ **Reboot of the Central Election Commission (CEC)**

After June 2016, when the President submitted 11 CEC members, but there were not enough votes to consider the submission, the issue of the CEC upgrade was postponed for more than a year. In the period from September 2017 to January 2018, Batkivshchyna Party, People's Front, Radical Party and People's Will parliamentary group completely or partially changed candidates in their submissions. There are high expectations that a representative of the Opposition Bloc will be included in the presidential submission to reflect the interests of all groups and factions. On January 23-24, 2018, the submission appeared on the website of the President and includes 14 candidates for 13 vacancies. Once the candidates' background checks will be completed, their consideration will begin in the plenary hall of the Parliament.

## PLANS AND PROSPECTS



prepare the draft Election Code for the second reading;



further advocate the draft law "On amending certain legislative acts on strengthening liability for election legislation violation".



# LAND REFORM

2017 did not become a year of breakthroughs for the land reform: although it is one of IMF's requirements, introduction of the land market has not taken place. In December 2017, the moratorium on farmland sales was extended for one more year, affecting negatively the main stakeholders of the reform—landowners, representatives of small and medium-sized businesses, and government officials. The moratorium preserves all shadow schemes and manipulations that have reigned in the field of land relations for over 20 years, and poses unconstitutional restrictions on property rights.

The **main problem** is the lack of political will among current Ukrainian elites in the view of the upcoming presidential and parliamentary elections in 2019. Nevertheless, the idea of a free farmland market in Ukraine is gaining more popular support, as well as in expert and government circles. In 2017, 48 MPs voted against the moratorium, which demonstrates a peak in support among high-level officials for lifting the moratorium (compared with only 3 MPs in 2015 and 7 MPs in 2016). The appeal of 55 MPs to the Constitutional Court of Ukraine on the illegal basis for the moratorium, as well as a previously registered liberal draft law No.5535 “On the circulation of farmland” represent another advocacy achievement. Additionally, RPR experts continue to provide qualified legal assistance to landowners, who are trying to defend their constitutional rights by submitting lawsuits to the European Court of Human Rights (ECHR), since the existence of a moratorium contradicts both Ukrainian and European property right norms.



**Dmytro Lyvch,**

Manager of the RPR Economic Development Group  
Project Manager at EasyBusiness

*The moratorium on the sale of farmland has deprived 6 millions of Ukrainian landowners of the opportunity to fully dispose of their property for 16 years already. Populist political forces and politicians are trying to speculate on the issue, popularizing myths and manipulations, especially in the run-up to the 2019 presidential and parliamentary elections.*

*However, in 2019 Ukraine will reach the peak in its external debt obligations, and therefore the new government, no matter what political forces will form it, will face an acute shortage of resources for such payments. The study conducted by the*

*RPR expert group “Economic Development” shows that in a liberalized land market the value of a land plot grows by 80% in 2-3 years, which means not only additional revenue to the budget, but also a significant inflow of foreign direct investments. Moreover, international donors and partners of Ukraine, especially the IMF, have clearly expressed its position in favor of the land market in Ukraine.”*

Land market reform, defined as one of the government’s priorities for 2018, should ensure effective development of farming and attracting investment in the agrarian sector. Nevertheless, the government model, presented in late 2017 by Maksym Martyniuk, the First Deputy Minister of Agrarian Policy and Food of Ukraine, distorts the land market, since it aims to protect Ukrainian farmers and creates unnecessary restrictions for potential owners. Thus, RPR experts insist on imposing no (or minimal) restrictions on the land market in order to create mutually beneficial land relations in Ukraine. According to expert calculations, if a fully liberalized market is implemented, the land reform can boost the Ukrainian economy by doubling its GDP in the next 10 years.

Thus, sober assessment of the risks and challenges of the land reform within expert circles, government officials, and landowners are necessary to reduce the level of politicization of the topic. For this reason, communication of the reform remains crucial for consolidation of its stakeholders around the idea of a liberalized farmland market.



## PLANS AND PROSPECTS



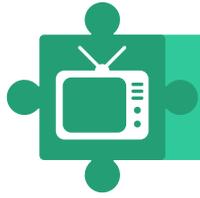
lift the moratorium on the sale of farmland in Ukraine by amending the concluding part of the current Land Code of Ukraine, which will introduce a fully liberalized market, as all the necessary acts are already in force;



introduce the land market through a legislative decision of the Parliament, which includes the adoption of liberal draft law No.5535 “On the circulation of farmland” that is already registered in the Parliament;



involve civil society in raising public awareness of the land reform in the regions through enhancing cooperation among main stakeholders of the reform with the help of RPR partner organizations and a network of regional affiliated structures.



# MEDIA REFORM

Establishment of an independent and well-financed public broadcasting - National Public Broadcasting Company of Ukraine (UA:PBC) – was the key task for 2017 within the field of media reform. After almost a year since its formation, UA:PBC continues overhauling TV channels and radio stations it has inherited, as well as optimizing its staff. The managerial team that won the competition in April 2017 has already launched a new season on three national channels of the Ukrainian Radio (the largest platform in terms of consumer coverage) in September, as well as on a nationwide TV channel UA:Pershyy in October.

In autumn of 2017, the Board of Directors held a competition for producers and managers of 24 regional affiliates of UA:PBC. The newly-selected leaders of local broadcasters chose employees who will remain to produce the minimum necessary amount of content in the regions: news, morning entertainment program, evening analytical TV program, and radio programs. The rest of the employees were made redundant. Therefore, as of April 2, 2018, approximately 80 employees will remain in each of the affiliates (formerly that number ranged from 110 to 315). The company will be outsourcing other programs at open pitching ideas; short-term contracts will be awarded to their winners. Pitch winning programs will be financed depending on the availability of funds at UA:PBC. On April 2, 2018, conditions and amount of remuneration of the employees (established by the UA:PBC Supervisory Board) corresponding to the market level will also come into force, which will allow to engage the best experts to work in the company.

Since the beginning of the public service broadcasting, regular attempts to interfere with the editorial independence of UA:PBC have been made by the Parliament – MPs registered draft laws envisaging the introduction of quotas for coverage of their activities as MPs on the UA:PBC channels. RPR and international partners have been successfully warding off such attempts so far, most recently in February 2018.

The key challenge for the public broadcaster's independence is the total discretion of the government and the Parliament when deciding on annual funding of UA:PBC. In 2018, the state budget of Ukraine provided for only 50% of the funds guaranteed by the law on public service broadcasting; this amount is lower than the 2017 funding.



### **Vadym Miskyi,**

Expert of the RPR Media Reform Group  
Program Director of NGO “Detector Media”  
Supervisory Board Secretary of UA:PBC

*The main risk for editorial independence of the newly-created public broadcaster is the current funding mechanism, which allows the Cabinet of Ministers and the Parliament to decide on annual allocation of funds. This discretion was used for political purposes in 2018, when the budget was cut by 50%. It hinders not only the reform itself, but also the existence of public service broadcasting in Ukraine. International pressure through money-for-reforms approach can help to change the funding mechanism in order to minimize politicians’ ability to interfere in funds allocation and strengthen institutional capacity of UA:PBC.”*

Proposals made by RPR experts to improve the funding model for public service broadcasting are intended to reduce the discretion of the government and Parliament when calculating the annual budget for UA:PBC. They suggest allocating 50% of revenues from leasing radio frequency resources to a special fund of the State Budget for UA:PBC financial support. Such proposals are in line with the practice of ensuring financial independence of public service broadcasters in other countries (for example in Lithuania), as well as in other areas of government policy in Ukraine (for example, financing of the judicial system through a special fund of the State Budget).

## **OTHER ISSUES WITHIN THE MEDIA REFORM**

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### **◆ Privatization of print media**

2018 is the last year to reform state-owned and communally-owned print outlets. All print outlets that fail to reform will be terminated on January 1, 2019, and their registration will be canceled. So far only 172 out of 727 print outlets, or 24%, went through the process of reform. From these, 164 (out of 643) are communally-owned and 8 (out of 84) are state-owned. This lack of progress in the reform is the result of the weak stance of the State Committee for Television and Radio Broadcasting on the issue, the central executive authority responsible for reforming print media.

In addition, the current law on privatization of print media contains many flaws because it did not gather much political support and was approved “as is” without important proposals from the Council of Europe experts. In order to eliminate legislative obstacles to print media privatization, draft law No. 6560 was prepared, with participation of RPR’s media experts, to improve the mechanism of the reform. Unfortunately, on March 1, 2018, it was rejected and withdrawn by the Parliament.

## ◆ Regulation of television and radio broadcasting

A major problem in the media sphere is the old Law “On television and radio broadcasting” that prevents resolution of a number of issues, including transition to digital broadcasting, regulatory authority’s sanctions, responding to new challenges in content distribution channels, and consumer rights protection. In December 2017, a draft law No.7397 “On audiovisual media services” was registered. This draft law aims to harmonize Ukrainian legislation with EU law in the framework of EU-Ukraine Association Agreement implementation.

## PLANS AND PROSPECTS



the Cabinet of Ministers should submit to Parliament amendments to the State Budget 2018 providing full financing for public broadcasting; Parliamentary factions (especially Poroshenko Block and Narodnyi Front) should support it;



the Parliament should adopt the new funding mechanism for UA:PBC, which will reduce possibilities of politicians’ influence on public broadcasting financing in accordance with CoE standards;



the State Committee for Television and Radio Broadcasting should intensify the awareness-raising campaign for the founders of state and communally-owned print media about the urgency of decision-making on the reform. After all, if this process is not completed by the end of 2018, their certificates of state registration will be canceled;



the Parliament should adopt draft law No.7397 “On audiovisual media services” to continue implementation of the EU-Ukraine Association Agreement.



# ENERGY SECTOR REFORM

Over the past months, no significant changes or successes in the energy sector reform occurred. Instead, this period was marked by some risks of distorting the essence of the reform, primarily due to delay in the procedural issues concerning the establishment of the National Commission for State Regulation of Energy and Public Utilities (NCSREPU), an independent energy regulator. The regulator, to which new members should be elected in compliance with the Law of Ukraine “On NCSREPU”, remains the focus of the reform.

**Achievements of 2017 include the adoption of important laws in the energy efficiency sector** (“On Commercial Metering of Thermal Energy and Water Supply”, “On the Energy Efficiency Fund”, “On the Energy Efficiency of Buildings”, “... On the Mechanism for the Energy Services Procurement”). At the same time, as of early February 2018, a large number of by-laws are under development or awaiting approval by the Central Executive Bodies. Due to the adopted legislation, the mechanism of energy service contracts (ESCO) has been introduced in Ukraine. It promotes the attraction of financial resources for the thermo-modernization of municipal buildings. As of today, 2200 of such buildings requiring renovation are included in a special database waiting for ESCO investors.

Despite the rise in electricity prices, Ukraine has not overcome a significant level of cross-subsidies in the electricity market, which poses a **significant risk for further sector development**.

To begin the implementation of the Energy Efficiency Directive 27/2012, the Cabinet of Ministers of Ukraine adopted the Resolution “On Approval of the Action Plan Aimed at Implementing Energy Management Systems in Municipal Buildings”, which should accelerate the implementation of the energy management system throughout the country.

In 2018, the Government provided for the largest in the history of independent Ukraine financial support from the state budget for the introduction of energy-efficient measures by the population in the amount of 2 billion UAH (almost 60 million EUR). Also, the Energy Strategy of Ukraine until 2035, which in particular focuses on the active development of renewable energy and the energy-efficient society, was approved in 2017. However, Action Plan to the Strategy is still undergoing the process of commenting and approval.

Ongoing challenges to the energy sector reform:

◆ **Energy Regulator (NCSREPU): competition and appointment of new members**

In 2017, the main challenge was the reform of the regulator, while the Law “On NCSREPU” was not implemented for a long period of time due to delays in the process by the President and the Government. Instead, NCSREPU, consisting of incumbent members, continued to make decisions in the interests of industry monopolists rather than consumers. Numerous public statements, meetings and constant public communication did not help accelerate the process. This resulted in a critical course of events when, at the end of the year, the operation of the regulator was paralyzed because of the lack of a quorum. The appointment of the temporary NCSREPU members by the President raised the issue of distrust on the part of market participants in the adoption of independent decisions by the regulator in such a composition. Furthermore, the RAB assessment method adopted by the National Regulator poses significant risks of increase in the cost of electricity without actually upgrading the grid.

The committee reviewing candidates for NCSREPU members commenced its work with a big delay of more than half a year – in the end of 2017. The first call for candidates to select 5 members of NCSREPU took place on March 2018. Nevertheless, newly chosen members were not appointed because they have to go through background check according to the acting legislation. Meanwhile, the Commission keeps working in the current (temporarily appointed) composition.

Should complications with the formation of the independent regulator persist, the reform of energy markets (electricity, gas) will be under threat, which will result in a further drop in public trust in the institution that is responsible for energy and utility tariffs.

◆ **Electricity market: by-laws**

The schedule for the implementation of the Law of Ukraine “On the electricity market” envisages the development and approval of more than 200 regulations of which at least 160 documents have already been developed and approved. However, the deadlines for certain measures in accordance with the Schedule have not been met (in particular, those concerning the settlement of the issue of debt repayment on the wholesale electricity market). The main developers of the documents are the National Regulator, SE “Enerhorynok” and NPC “Ukrenergo”, but some initiatives are put forward by the representatives of energy companies present on the current electricity market that are concerned about ensuring favorable conditions for their operation in the new market.



**Yulia Usenko,**

Chief Expert of the RPR Energy Sector Reform Group

*The new electricity market, which is being implemented in line with the requirements of European legislation (Third Energy Package), should keep in mind the consumer who needs high quality services and a favorable price. It is possible only under the conditions of competition in the market accessible and interesting for external players. This requires an independent regulator and the introduction of a series of European integration events to open the market for other participants.”*

The key role in the European integration activities lies with the future operator of the transmission system NPC “Ukrenergo”, including the task of becoming a member of the European Network of Transmission System Operators (ENTSO-E) and further synchronization of the United Energy System of Ukraine with the power system of continental Europe. Although the market opening for external players will have a positive effect on competition in the new electricity market, the issue of the transmission system operator certification remains unresolved. It is necessary to conduct corporatization of NPC “Ukrenergo” as determined in the final provisions of the Law “On Electricity”, otherwise Ukrenergo’s accession to ENTSO-E that requires the mandatory confirmation of the above certification and unbundling requirements will be hampered.

### ◆ Energy efficiency

Despite the adoption of the unquestionably important package of laws in the field of energy efficiency (“On Commercial Metering of Thermal Energy and Water Supply”, “On the Energy Efficiency Fund”, “On the Energy Efficiency of Buildings”), their actual implementation is delayed as the adoption of dozens of secondary legislation acts requires considerable effort and time. Also, a number of compromises in the Laws significantly reduces their positive effect and the achievement of important critical points of change, which means a high probability of their revision and additions in subsequent years.

In spite of the fact that an unprecedented amount of 2 billion UAH was allocated for the energy efficiency measures in the state budget, the use of these funds in 2018 is under question since the Energy Efficiency Fund was not physically established as of March 2018. Thus, the probability of using 1.6 billion UAH for direct purposes by the Fund in 2018 remains very low.



## PLANS AND PROSPECTS

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Conduct a transparent competition for the new members of the NCSREPU and their appointment to implement the Law “On NCSREPU”



Develop by-laws to the Law of Ukraine “On the Electricity Market” meeting the deadlines for the development and approval of regulations in accordance with the Schedule for the implementation of this law.



Conduct corporatisation of SE “NPC “Ukrenergo” in compliance with the Law “On the Electricity Market”



Ensure the basis (development of regulations) for the launch and further transparent and continuous operation of the Energy Efficiency Fund



# HEALTHCARE REFORM

The reform of the healthcare system has had several major breakthroughs in the course of the last six months. The legislative framework for the reform's implementation has been adopted, including draft law No.6327 "On state financial guarantees for the provision of medical services and medicines" and related draft law No.6604 amending the Budget Code of Ukraine, which came into force in January 2018. The Parliament also adopted bill No.7117 "On improving the accessibility and quality of medical services in rural areas".

An important element of the healthcare reform is giving autonomy to healthcare facilities, which will now be able to abandon the pay scale and raise doctors' salaries. This year, payments will be made at the level of primary healthcare – a doctor will receive payment for each patient with whom the declaration has been concluded. A pilot mode for signing declarations between patients and primary care physicians (family doctors, GPs, pediatricians) has also been launched.

Another important achievement was the approval of the Order "On certain issues of using the Ukrainian-language version of the international classification of primary care (ICPC-2-E)" by the Ministry of Healthcare of Ukraine. ICPC is the most widespread classification used in the primary chain in many countries of the world.

Furthermore, on February 5, the Project Office transferred the e-health system to the Ministry of Healthcare. Acting Minister of Healthcare Dr. Uliana Suprun signed documents on the free transfer of intellectual property rights from the public to the Ministry of Health.

As to the ongoing "Affordable Medicines" program, 41 new drugs have been added to the list. In total, the program now has 239 medicine names, and 47 of them are provided free of charge (patients can receive the others for a small additional charge).

Most importantly, the healthcare reform was planned using the full cycle of public policy-making process. About 10,000 citizens participated in the discussion of healthcare reform during the 6-months All-Ukrainian Tour ZminyTY (Change) organized by the Ministry of Health in cooperation with NGO CentreUA. Almost 6,500 of them were physicians.



**Oleksandr Yabchanka,**

Chief Expert of RPR Healthcare Reform Group

*For the first time in the history of Ukraine, the legislative framework for the reform was adopted after its essence and details were approved by all stakeholders in the process. This provides a solid basis for its successful implementation and a vivid example for other ministries to develop policies and implement reforms using the unprecedented experience of the Ministry of Healthcare”.*

While the healthcare reform is seen as a great success of the ‘autumn of reforms’ in 2017, it is crucial that its actual implementation is not endangered by a possible sabotage at the decision-making level of local self-government bodies or by lack of consolidation among the participants of the process: doctors and chief physicians of healthcare institutions, patients, local governments. It is also necessary to avoid miscommunication among the stakeholders, which may result in unclear actions (for example, if doctors do not have information about their duties and rights under the new healthcare legislation). Overall, evaluation of the reform’s results will be possible only after implementation of its first stage, which entails giving autonomy to healthcare facilities and transitioning to a new system of providing primary medical services.

## PLANS AND PROSPECTS



the campaign “Doctor for Every Family” to select primary care providers is due to start in April 2018;



the National Health Service of Ukraine will start operating; it will ensure the contracting of healthcare facilities and will pay for specific services provided by the healthcare system. On February 27, an experienced manager Oleh Petrenko was selected as the head of this body that will control all healthcare payments, choose hospitals that receive state funding, and supervise distribution of over 100 billion UAH annually on covering expenses on patients;



healthcare facilities will be granted autonomy—they will no longer depend on regulations from above, and will make their own decisions on how to improve performance;



transition to a new financing system will be undertaken by 2020. During this period, the funding for patients who had been assigned to a family doctor will be maintained and gradually reduced, and the proportion of patients who have signed a declaration will increase;



adoption of draft laws “On the protection of citizens from the harmful impact of tobacco” and “On transplantation”, which have been long registered in the Parliament, are essential in the processes of Eurointegration and the EU-Ukraine Association Agreement.

# OTHER REFORMS NEWSFEED:

## **Physical attacks and pressure on civil society activists and NGOs**

Over the last few months, the situation with the pressure on human rights defenders, civic activists and whistleblowers who are struggling against the old system has become truly threatening. The cases are spread broadly throughout the country. In December 2017, the car of the Civil Control Platform NGO and ZOV Initiative activist Hennadii Kyrychenko was burned in Dnipro. On November 22, 2017, a whistleblower judge Larysa Holnyk and her husband Ihor Havrylenko were attacked in Poltava. In Odesa civic activists were detained, arrested and beaten up. Last autumn, two cases of severe beatings took place in Kharkiv. Incidents of pressuring public journalists were recorded in Rivne. The most horrible case happened on January 1, 2018, when a lawyer and human rights activist Iryna Nozdrovska was murdered after she had been investigating the death of her sister for two years. Civil society in Kyiv and regions is being persecuted by corrupt officials and anti-reform activists. RPR has repeatedly appealed to representatives of the supreme authority and other relevant authorities to assess high-profile events and prevent further aggravation of the situation, but did not receive any response.

These physical attacks come in addition to the obligation of civil society activists to submit their e-declarations in the same manner as the public officials. G7 Ambassadors supported the recommendations of the Venice Commission to cancel e-declaration requirements for anti-corruption activists and international SOE supervisory board members which are not coherent with Ukraine's international obligations, negatively affect international assistance and obstruct the fight against corruption. Nevertheless, the Parliament failed to either abolish or adjourn mandatory e-declaration obligation before April 1, the end of submission period. Regardless of the potential cancellation, the consequences of this attack on the civil society will still be significant and range from defamation campaigns to further prosecutions. Meanwhile, Ukrainian civil society organizations committed to prepare a respective appeal to the Constitutional Court.

## Pension reform



**Vitaliy Melnychuk**

Chief Expert of the RPR Financial Sector and Pension System Group

*A system of effective and secure formation of retirement savings is crucial to ensuring the well-being of retired citizens, but it can also become a mighty source for internal long-term investments and economic development. In that context, the Law “On the introduction of changes to some legislative acts of Ukraine regarding pension increase,” adopted by the Parliament on October 3, 2017, is aimed at modernizing the solidarity-based state pension system, recalculating pensions, and carrying out measures of balancing existing retirement savings and expenses. Transition provisions of the law provide for the introduction of mandatory accumulative pension system - second level pension system, which will come into force on January 1, 2019. The National Securities and Stock Market Commission of Ukraine (SSMCS), which is responsible for introducing the system is currently exploring international experience in the field. Meanwhile, draft law No.6677, registered in the Parliament in July 2017, suggests introducing a decentralized second level pension system which relies on the activity of non-state pension funds and their administrators.”*

## Education reform

On September 5, the education reform was launched with the adoption of the Law “On education”, which allows for the liquidation of the Soviet administrative system in education. After the first reading of this draft law in 2016, more than 1,600 amendments were suggested, most of which were taken into account. It is envisaged that competence-based education with high quality contemporary content will be introduced; educational establishments will gain more autonomy; teachers will receive new incentives for continuous professional development; and norms regulating academic integrity will be instituted. This law also provides for implementation of the norms of international agreements regarding the right to education and opens up the possibility of official recognition of the results of non-formal and informal education. Although adoption of the law was only one of the stages of a complete education reform (a number of questions should be regulated by separate laws), its implementation will enhance the quality and competitiveness of education in the new economic and socio-cultural conditions.

## Decentralization



**Ivan Lukerya**

Manager of the RPR Anticorruption Reform Group

*Local governance reform is among the few that are being actively introduced in Ukraine and show positive and visible results. As a consequence of the reform local governance budgets are growing annually—in 2018 they are projected to grow by 20%. Ukraine has increased its support for local governance by 39 times through the State Fund for Regional Development, subvention for socio-economic development of territories, and subvention for the development of infrastructure of amalgamated territorial communities.*

*The reform of administrative territorial division through voluntary amalgamation of territorial communities is well underway. As of today, 725 amalgamated territorial communities have been established, uniting 3,372 councils and 6.3 million citizens.*

*Challenges on the way of further implementation of local governance reform include:*

- ◆ *creating legal conditions for association of territorial communities around cities of regional significance (by voluntary joining of territorial communities to the cities);*
- ◆ *ensuring ubiquity of local governance and improving the mechanism for spatial planning;*
- ◆ *transferring property rights and management of land which are beyond the territory of settlements to the amalgamated territorial communities;*
- ◆ *reforming public service for local governance by adopting new legislation”.*

## Privatization



**Dmytro Yablonovskyy**

Expert of the RPR Economic Growth Group

*In March 2018, the new law No.2269-VIII “On privatization of state and communal property” became effective. The law creates new rules for privatization and is expected to speed up the process. All enterprises are split into two groups – large*

*and small. Large companies will be sold with the assistance of an investment advisor, while small ones will be auctioned off on electronic platforms such as ProZorro. Privatization agreement may now be governed by English law. Presently, there are more than 3,400 state-owned enterprises in Ukraine, most of which are loss making. For the past three years, 17 billion UAH was projected as the annual revenue from privatization, but it was never fulfilled by more than 5%. The rules introduced by the new law are expected to change this situation. State Property Fund plans selling about 100 state enterprises in 2018.”*

## **Launch of the State Bureau of Investigations**

On November 16, after almost two years of work, the selection panel chose the management of the State Bureau of Investigations (SBI). The SBI will be extremely powerful, as it takes over investigative functions from the PGO and becomes the main investigative agency for crimes committed by law enforcement officers, high-ranking officials, and judges (except for corruption crimes committed by these senior officials, which fall under NABU's jurisdiction). Moreover, the SBI has powers to investigate corruption crimes of the top management of NABU and SAPO.

The composition of SBI leadership now looks as following:

- ◆ SBI director - Roman Truba, former chair of the PGO department on investigation of especially important cases;
- ◆ first deputy director - Olga Varchenko, former deputy head of the PGO department on investigation of especially grave economic crimes, who has been involved in quite ambivalent activities of the so-called “Kononenko-Granovskyi department”;
- ◆ deputy director - Oleksandr Buryak, former Kyiv deputy prosecutor.

All three SBI managers represent the old prosecutor's system, demonstrating the lack of improvement in the selection process, which was often marked by scandals: political interference, lack of transparency, and procedural violations. More notably, in 2013-2014 Roman Truba was directly involved in the unlawful prosecution of activists from Lviv oblast who supported Euromaidan.

The legislation provides for collective decisions on all important personnel, organizational and financial issues: they are to be decided by the director with mandatory approval of both deputy directors. However, from the first days of activity, the director removed his deputies out of important processes that should have been implemented through collective efforts. Therefore, it is critical to closely monitor the full-fledged launch of SBI and the first steps of its leaders to ensure that this newly established agency is working to advance anticorruption reform and not to help authorities with vested interests to undermine it.



**Volodymyr Petrakovskiy**

Manager of the RPR Law-Enforcement Bodies Reform Group

*Despite the fact that SBI will have very powerful mandate, it does require more attention of civil society and other stakeholders. The lack of attention may result in a chain of negative processes which will hinder the quality of the newly established institution. The activities of commissions for selection of candidates display two general trends: 1) Workers of unreformed law enforcement agencies with dubious reputation aspire for management positions of the SBI; 2) Selection of investigators for SBI was prolonged due to a fact that lawyers, who have never worked for law enforcement agencies abstained from applying and didn't fulfil the quota allotted for candidates outside of the law-enforcement institutions. Limited communication to the broader audience about the bureau, its mandate, remuneration package, and the selection process itself have contributed to the low levels of application."*

## **Developments in the Constitutional Court of Ukraine**



**Juliya Kyrychenko**

Manager of the RPR Constitutional Reform Group

*The realization of constitutional changes in the context of the reform of constitutional legal proceedings is ongoing. In particular, starting from April 2018, the Constitutional Court of Ukraine (CCU) will be able to begin examining constitutional complaints in practice. Up until that moment, realisation of the new institution of constitutional complaint was obstructed first by delays of the Parliament to adopt new version of the Law "On the Constitutional Court of Ukraine", and later due to the Court's inability to adopt its new regulations and establish new structures. On March 29, CCU established senates and boards of justices in accordance with new regulations. This paves the way to begin implementation of the new constitutional right for a complaint. The fact that the Court was able to relinquish its internal conflict and elect Stanislav Shevchuk as its new head allowed CCU to begin operation. Filling of two judges' vacancies in the CCU by the President (S.Golovatyy and V.Lemak) at the end of February also had a positive impact on the Court's activity."*

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