

By Vlad Lavrov\*

“I meant to give it to the church, but I didn’t have enough time to do it.” These were the now legendary words of Ihor Zvarych, head of the Lviv Administrative Appellate Court, on December 2008, when the Security Service of Ukraine seized almost 10 million hryvnas (US\$1.25 million) from his office.

“People would come and wish good luck at the new office building by giving coins and throwing money to the floor ... I don’t know exactly how much money was there,” continued Zvarych in his infamous explanation, adding that about 8 million hryvnas (US\$1 million) found at his office were “borrowed,” while another 83,000 hryvnas (US\$10,400) found in his wallet and pockets were collected and given to him by colleagues “to repair the court’s offices.”

Zvarych’s case certainly stands out. According to the deputy general prosecutor of the Ukraine, Renat Kuzmin, in Zvarych’s office, in addition to large amounts of cash, they found evidence of sexual orgies filmed with a surveillance camera. Yet the results of the US Aid and Millennium Challenge Corporation’s recent “Study of Corruption in the Court System of Ukraine” produced no less shocking results.

In that survey, lawyers and prosecutors were asked to give their assessment of how extensive corruption is in the different branches of the Ukrainian court system. Almost 80 percent of the lawyers considered the administrative courts (which deal with cases involving private individuals or companies suing the state or government) corrupt, and 86 percent considered the lowest the commercial and civil courts corrupt as well.

Among the prosecutors, the highest scores were for the criminal courts (65 percent considered them corrupt) while the civil courts again qualified as the dirtiest, with 83 percent of the prosecutors characterizing them as corrupt.

Court decisions and questions of bribery

Well-known Ukrainian lawyer Tetyana Montyan puts it in simple terms: “We have as many corrupted judges as stray dogs.” From her experience, being appointed as the head or deputy head of commercial or appellate courts in large cities of the Ukraine would require a bribe of several million dollars. “And the money breaks even immediately. It takes just several court cases,” she concludes. Her

colleague, Andriy Fedur, agrees, “You can make a phone call to a court, give money and get any kind of court decision that you want.”

The fact that even insiders of the legal system view it as corrupt could not possibly have remained unnoticed by regular Ukrainians, as revealed by the same survey. More than 90 percent of the people chose the answer “all corrupt” when referring to judges, the court’s administrative workers, prosecutors, lawyers and court heads.

During recent parliamentary hearings by the state on the court system in the Ukraine, the head of the Security Service of Ukraine (SBU), Valentyn Nalyvaychenko, highlighted Zvarych’s case as one of his agency’s biggest successes in fighting corruption in the courts. According to Nalyvaychenko, a total of eight judges of the Lviv Administrative Court were involved in 37 instances of taking bribes, with a single bribe ranging from several thousands to several hundred thousands of dollars. In total, during the preliminary investigation, over 23.1 million hryvnas (US\$2.9 million) were confiscated. According to the SBU, as of April 1, 2009, a total of 24 criminal cases against judges were opened.

Both the gloomy statistics of the highly negative public perception and the details of the Zvarych case leave little reason for Kateryna Tarasova, head of the Foundation of Assistance to Justice, a Kyiv-based NGO, to be optimistic. She insists that this case is an exception, but notes that “exceptions” like that can be found in any law-enforcement branch or governmental power in the Ukraine.

“There is not much good that I can say in this situation ... This person disgraced himself and his colleagues,” says Tarasova. Yet she adds that it would be a mistake to blame only the judges for all the problems regarding controversial court decisions. Tarasova explains that after reviewing all the complaints on presumably unfair judgments that her agency receives, often the problem is low professionalism by the attorneys, who fail to defend their clients properly, or in the clients themselves, who fail to present their cases clearly.

### Changes needed in the Court system

“When a side loses the case, their first reaction is that the winner bribed the judge,” asserts Tarasova. But she acknowledges that changes to the way the court functions are necessary, particularly in the way the judges are selected and in their responsibility for unlawful decisions.

“Currently, any judge at any stage can avoid responsibility for the decisions that he or she has made,” Tarasova says. She explains that there is no clear law or procedure to decide when a judge can be prosecuted, and the existent legislation is often confusing and complicated. Therefore, in many cases, judges can make opposite rulings and still stay within the limits of law, which leads to subsequent conflicts. The appointment of judges, which currently lacks transparency, must be improved, because, in her view, the court system is mainly about human factors.

“Unfortunately, in our country there is corruption everywhere — in courts, prosecutors’ offices, police and legal firms — therefore, selecting judges should be as strict as possible. No matter what reforms are done to the system, we will not make it automatic as a factory,” she says.

Political analyst Dmytro Potekhin thinks that in order to combat corruption in the legal system there needs to be a mechanism that protects whistle-blowers, so that judges, lawyers, prosecutors or regular citizens willing to testify about corruption get the necessary protection, legal assistance, and the possibility to stay anonymous throughout the court hearings. Potekhin notes that due to the lack of such a mechanism, whistle-blowing in the Ukraine is currently non-existent.

He claims that a series of successful and highly publicized cases of exposing corruption with information provided by insiders will make corrupt transactions more risky and, as a result, make a fair and transparent judgment perceived as the “cheaper alternative.”

Ironically, the infamous Judge Zvarych might become the first whistle blower in the history of the Ukrainian legal system. According to the Segodnya newspaper, quoting sources within the General Prosecutor’s Office that is investigating the case, Zvarych actively named his colleagues who gave and received bribes from him for getting certain potentially lucrative cases.

“Zvarych’s case could become the second Nuremberg process, with the number of accused being as high as 20 people,” quotes Segodnya, a member of the investigation brigade.

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