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Ukrainian government is not intended to implement the judicial reform

As far as observance of human rights is concerned, two key issues can be identified which to a large extent influence the safeguarding of other rights and freedoms in Ukraine, these being the right to a fair trial and the activities of the law enforcement agencies.

Without court protection any right is doomed to exist only on paper, and therefore many rights become meaningless where the right to a fair trial is not ensured.

This mechanism for protection of rights is still not as effective as it should be. The courts are overloaded and judicial examination of cases goes beyond any reasonable timescale. Judges are too dependent on figures of authority, or even on those in charge of the judiciary, with this placing a question mark over their impartiality in examining cases of public importance, especially when one of the parties is a State body. Furthermore, even those court rulings which come into effect are often not enforced. When virtually two thirds of all court rulings are not enforced, it is difficult to speak of real protection of ones rights through the courts.

We should add that this problem is also pointed to by the European Court of Human Rights. 2/3 of its judgments against Ukraine and there are not less than 80 per year, concern violation of the right to a fair trial.

Under such circumstances it would be logical to hope for political will to change the situation. In 2006 indeed, the President announced a year of court reform and spoke on many occasions of the need for such reform. This was supported by the leading political parties in their pre-election programmes at the 2007 elections.

In December 2005 the National Commission for the Strengthening of Democracy and the Rule of Law which is a permanent advisory-consultative body under the auspices of the President began drawing up a Strategy Concept for Judicial Reform. On 10 May 2006 the President approved this Strategy Concept for improving the justice system to ensure fair trial in Ukraine in accordance with European standards¹, prepared by the National Commission.

Later, in order to implement the Strategy Concept, several draft laws were prepared which the President submitted to parliament. In April 2007 these drafts were placed on the parliamentary agenda, however before their consideration it transpired that the President had sent a letter recalling

¹ Presidential Decree from 10 May 2006 №361/2006.

them. He had “changed his mind” about supporting judicial reform due to pressure from the Supreme Court² and for other reasons of political expediency.

Since according to parliamentary procedure, draft laws on the agenda cannot be withdrawn, they were considered and passed by parliament in their first reading. Their future progress was however hampered by the dissolution of parliament.

Later the President changed the makeup of the National Commission for the Strengthening of Democracy and the Rule of Law.³ Some of those who had taken a direct role in drawing up the Strategy Concept and the relevant draft laws were removed, and some currently serving judges and employees of the judiciary were included.

In 2007 a number of serving judges of the higher courts became members of a consultative and advisory board under the auspices of the President and began taking part in legislative activities which are not part of the scope for members of the judicial branch of power. The following became members of the National Commission for the Strengthening of Democracy and the Rule of Law:

- Andriy Vasylyovych Hnatenko – Chairperson of the Civil Proceedings Chamber of the Supreme Court;
- Viktor Vasylyovych Kryvenko – Chairperson of the Administrative Proceedings Chamber of the Supreme Court;
- Mykola Ivanovych Melnyk – in charge of the service of the Speaker of the Verkhovna Rada;
- Oleksandr Mykhailovych Pasenyuk – Chairperson of the Higher Administrative Court;
- Petro Filipovych Pylypchuk – Head of the Council of Judges, First Deputy Chairperson of the Supreme Court;
- Ivan Bohdanovych Shytsky – Chairperson of the Economic Proceedings Chamber of the Supreme Court.

The new members of the Commission immediately created a subcommittee with the task of revising the Strategy Commission passed by the President.

These actions in practice prove that the President has renounced his attention to introduce the Strategy Concept he approved despite the fact that it received favourable assessments from international experts from the Council of Europe, scholars, human rights defenders and judges of lower level courts.

The fate of judicial reform is now in the hands of parliament and the President who have, under pressure from the Supreme Court, virtually rejected its introduction. On the other hand certain political forces are aspiring to revise the content of the judicial reform in order to gain new levers of influence on the courts.

Euro-integration plans of politicians remain fine words only since they are impossible without reforms on ensuring rights and freedoms. Without significant reforms therefore, the achievements of the last years will be totally lost. Yet the possibility for these reforms is being blocked by a long-term political crisis effectively generated by the constitutional reforms of 2004. In conditions of permanent conflict within the regime it is impossible to achieve reform. And the President in turn is

² See, for example, “Head of the Supreme Court Vasyl Onopenko is concerned that judicial reform in Ukraine could contradict its main objective, improving the justice system and making it meet people’s needs, and is asking the President to withdraw the draft Law “On amendments to the Law “On the judicial system of Ukraine” // Information on the Verkhovna Rada website from 22 March 2007

<http://www.scourt.gov.ua/clients/vs.nsf/0/F2D409AA21601D74C32572A6004C76A3>; See also the Appeal from the Council of Judges of Ukraine to the President from 9 February 2007.

³ Presidential Decree № 914/2007 from 24 September 2007 “On a new makeup of the National Commission for the Strengthening of Democracy and the Rule of Law” <http://www.president.gov.ua/documents/6758.html>.

absolutely inconsistent in his policy, changing his views on the basis of political expediency (for example, over the judicial reform).