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In consultative status with the United Nations Economic and Social Council

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**To:
OSCE
OSCE Member States
OSCE of Ukraine
International Organizations**

THE INFLUENCE OF THIRD PARTIES ON INDEPENDENCE OF JUDICIAL AUTHORITIES IN UKRAINE

A non-government human rights organization "Public Advocacy" with consultative status at the United Nations Economic and Social Council acts in accordance with resolution of the UN General Assembly 1296 (XIV) from 23.05.1968 and monitors compliance of Ukraine's international obligations regarding the independence of its judicial authority.

Since 2014, the reforming of the judicial system takes place in Ukraine. During this time, about 10 laws were passed that bring the justice system in Ukraine into line with European standards. A new level of responsibility and subordination was established, the cassation link has been completely updated. In 2018, the updated bench of the Supreme Court, which is the highest court in the judiciary system of Ukraine, began to function. On the 29th of August, 2019 the President of Ukraine Vladimir Zelensky submitted a draft Law to the Verkhovna Rada called "On Amending Certain Laws of Ukraine Regarding the Activities of Judicial Administration" №1008.

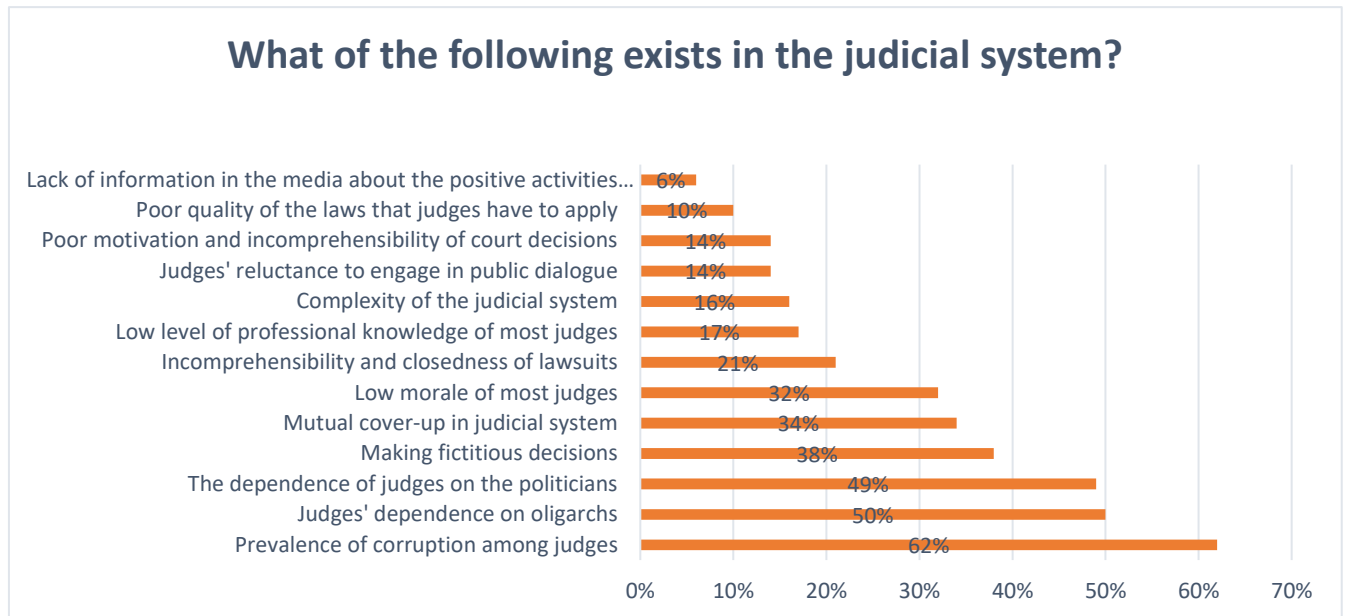
Thus, it can be affirmed that public authorities have the will to improve the judicial system of Ukraine as a whole.

Nevertheless, one has to admit that the ongoing reform is only partially aimed at solving the declared problems and, unfortunately, it did not lead to a decrease in the political dependence of judges and the manageability of the judicial manpower.

I propose to dwell on one of the most acute problems in the judicial system of Ukraine such as third-parties influence on the decisions adopted by judges. According to the data of a nationwide survey of Ukrainian population conducted by "Democratic Initiatives"¹ Foundation 61.8 % of respondents

¹ <http://www.pravo.org.ua/ua/news/20873806-sudova-reforma-ochima-gromadyan-scho-mogee-pozitivno-vplivuti-na-doviru-do-sudu>

believe that corruption is present in the judiciary system. Also, 49.5% believe that the courts are dependent on oligarchs, and 48.5% think that politicians influence on the court.



The scope of persons who influence the adoption of deliberately unjust decisions varies from the heads of courts and higher judges², politicians, oligarchs to a number of “third” persons who provide shadow services to assist in making illegal decisions.

The level of cynicism hit the all-time high, and the courts are used as a tool to suspend enforcement proceedings in order to evade the payment of debts. The media that conduct journalistic investigations³ are constantly talking about this fact as well as scientists who analyze the judicial reform⁴, non-government organizations⁵ and others.

Here is one of examples where I as a private enforcement officer became a victim of persons controlling the public and judicial authorities who helped the debtor to evade paying debts:

² <https://www.youtube.com/watch?v=-fXAK6AI04M&t=897s;>

https://www.youtube.com/watch?v=os7vUfLsu_Q;

<https://www.youtube.com/watch?v=QF3uU9wg6dY>

³ <https://www.youtube.com/watch?v=-fXAK6AI04M&t=897s;>

https://www.youtube.com/watch?v=os7vUfLsu_Q;

<https://www.youtube.com/watch?v=QF3uU9wg6dY>

⁴ <https://www.youtube.com/watch?v=-fXAK6AI04M&t=897s;>

https://www.youtube.com/watch?v=os7vUfLsu_Q;

<https://www.youtube.com/watch?v=QF3uU9wg6dY>

⁵ <https://www.youtube.com/watch?v=-fXAK6AI04M&t=897s;>

https://www.youtube.com/watch?v=os7vUfLsu_Q;

<https://www.youtube.com/watch?v=QF3uU9wg6dY>

In November 2018 I (a private enforcement officer) started enforcement proceeding for recovering about 25 million UAH from a large commercial bank in Ukraine. Posterior events suggest that controlling person (in the press opinion this is Andryi Dovbenko) helped the bank to evade paying debt. Most likely, the direct participation of controlling person influenced the courts that made the following unexpected and illegal decisions:

- on the prohibition to enforce by the court's decision on the basis of which a debt⁶ arose, what is forbidden by express legislation of Ukraine;*
- on blocking the account of a private enforcement officer (the access to this decision is denied), in order to be unable to carry out an operation to transfer funds collected from the debtor to the account of the collector;*

These decisions made the collection process of 25 million UAH more complicated, postponed this recovery for certain terms, and led to the temporary blocking of my activity as a private enforcement officer.

Subsequently, both of the above decisions were declared illegal.

The above example is not an exception, but rather is one of examples of how third parties influence the outcome of judicial and enforcement proceedings.

Article 14 of the International Covenant on Civil and Political Rights and article 6 of the European Convention on Human Rights emphasize the need for an “independent and impartial tribunal created on the legal basis” to ensure a fair and public hearing of persons brought to court.

In order to make sure Ukraine fulfills its obligations, public and judicial authorities are recommended to take the following measures to solve the described problem, which are as follows:

- to arraign on a criminal charge persons who are illegally influence the judicial system and force judges to make designedly unjust decisions;
- criminal prosecution of judges for making designedly unjust decisions;
- disciplinary action against judges: imposition of severe disciplinary penalty if preclusion of the execution of judgment will be detected;
- improvement of the institute of disciplinary responsibility of judges: the term of disciplinary proceedings should be realistic, it is necessary to simplify the procedure of disciplinary proceedings without impairment of procedural safeguards for participants.

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_____ Ivan Zhabotynskyy

⁶ <http://reyestr.court.gov.ua/Review/78121338/>