

Council of Europe training for managers of the new public prosecutor's offices: empowering the change agents

'I believe that our system has to change. Currently we see society and legislation changing. Ukraine has chosen its development vector. It is the integration into the European space. Any lawyer, let alone prosecutor, cannot work effectively enough without knowledge of the European Court's case law'. This is how the deputy head of local prosecutor's office of Vinnytsia, Lyudmyla Karmanchuk sums up the need for prosecutorial training. The conversation is taking place in the lecture hall of the National Academy of Prosecutors of Ukraine. Jointly with the Academy and the General Prosecutor's Office of Ukraine the Council of Europe organised the trainings for the managers of 155 local public prosecutor's offices from all regions of Ukraine. This training was held within the framework of the Council of Europe Project "Continued Support to the Criminal Justice Reform in Ukraine", funded by the Danish Government.

The EU-funded Project "Support to Justice Sector Reforms in Ukraine", the United States Department of Justice – OPDAT programme, the European Union Advisory Mission to Ukraine also contributed to the implementation of the training.

'Forget about clichés. With the new Criminal Procedure Code one has to contemplate, as the Code doesn't provide ready answers' - says attorney Nazar Kulchytskyi addressing the leaders of newly established local public prosecutor's offices. The attorney knows what he is talking about: he personally represented the state of Ukraine in Strasbourg working as the



Government's Agent before the European Court of Human Rights in 2012 and 2013. 'In terms of the European Court of Human Rights, clichés are a path to nowhere', says the judge of the Criminal Chamber of the High Specialised Court of Ukraine, Natalia Marchuk supporting the attorney. Rather than trying to request maximum terms of custody for suspects at any cost and in all circumstances, the prosecution has to work hard on the evidence' - and this requires changes in the conventional comprehension of their job.



Before, Ukrainian prosecutors did not often have a chance to engage in extensive professional discussions with high-level judges and experts with international experience. Usually, prosecutors see judges and attorneys in the court room. As opposed to the simulated environment at the training, in that court room everything is real. This leaves no room for mistake. 'I tell people how to prevent mistakes because

it is not in my interests to have someone lose cases because of poor performance. I would rather have all parties, including, of course, prosecutors do their job in a quality manner, and demonstrate excellent appearance before the court as we can see in court sessions in other European countries' - explains Natalia Marchuk.

Ukrainian prosecutors demonstrate remarkable talent for acting. 'The prosecutor must have made a poor job reading the motion, scarcely looking through it on the bus on his way to the court. His case does not demonstrate any analysis of the fact that my defendant had stable social relationships' - says a professional prosecutor. Playing the role of an attorney during a simulated court hearing, one of the training participants grew into the role so naturally, that even the demanding and strict judge exclaimed: 'I believe it'. It could very well be the first time that prosecutors have put themselves into the shoes of the defence. Even though it is just a role-playing game, it helps to start breaking down clichés that had been accumulated for decades within one of the most closed authorities in the country with a legacy of a repressive institution's image and functions inherited from the Soviet times.

'The training targets people that have to change the system' - trainer.

This is not just a series of lessons that became a part of two-week courses of continuous education at the Prosecutor's Academy. Those are not just exciting role-playing games when prosecution, defence and judges meet in one lecture room, and not just a training – albeit quite an unusual one – on the application of the case law of the European Court of Human Rights in the Ukrainian setting. This is also a forum for discussion of the most delicate and urgent problems that newly established local public prosecutor's offices face.



The heads of the local prosecutors' offices, followed by their first deputies and deputies, in turn, arrived in Kyiv to attend training sessions throughout the period of 14 March - 16 May 2016. The total number of visiting leaders was 600, with 150 prosecutors during each 6-day visit. The training has spontaneously become a laboratory of new approaches towards the job of a prosecutor in Ukraine, as well as a backstage where one could take a closer look at the new wave of managers of public prosecution service. A great deal of hope is now placed on them. Particularly when it comes to the attitudinal change of people that guide pre-trial investigations and represent the state's interests in court.

Council of Europe Project Manager Ketevan Tskhomelidze stresses the importance of the training participants' role in the reform of the prosecution service in Ukraine: 'Today, these prosecutors have to gain new skills very fast since the newly established local public prosecutor's offices have to become role models for further stages of the reform. It is important to bring them all together to discuss common problems and challenges they face. Thus the training has become one-of-a-kind platform for discussions and consultations.'

The managers of local public prosecutor's offices have successfully passed four stages of a competitive selection: in order to head such public prosecutor's office in local or regional centres, they had to sit professional and logic testing, fill out a psychometric questionnaire and pass an interview.



'They are mostly young and full of initiative. I hope that this driver of change cannot be stopped' - says the trainer on management Oleksandr Sudarkin.

'I went to Mykolaiv to work as a prosecutor because no one knows me there', says Deputy Head of the local public prosecutor's office.



Maksym Komarnytskyi is 29 and he is a Deputy Head of local public prosecutor's office No. 2 in Mykolaiv. He was born in Luhansk, in the East of Ukraine, got his law degree there and worked as an investigator in a one of the city districts. He says he chose that job to get as much grassroots level work experience of the law-enforcement system as possible, as quickly as possible. Furthermore he worked as the procedural supervisor of

pre-trial proceedings in district public prosecutor's offices in Luhansk and Luhansk region. He says that back in 2014 the situation there became very unsafe for himself and his family: the problem was actually not the shelling but his active pro-Ukrainian stand. Thus he was forced to take his family away from the conflict zone. Right after relocation he started working as an investigator in particularly important cases of a public prosecutor's office in Kyiv region, was involved in investigating the events occurred in Ilovaisk in August 2014 as part of the military prosecution, participated in the activities of the department of the General Prosecutor's Office in charge of investigation of corruption-related crimes. He decided to sit the tests and ended up with one of best results.

Answering the question why he chose Mykolaiv in the end, he says: 'Because no one knows me there and I don't know anyone. No one can come to me and tell me that he or she was going to school with me or used to know my parents. I immediately eliminated all such questions. And now I am very comfortable working with my system of principles'. The prosecutor is sure that his freedom from any friendly or family ties in Mykolaiv will help him gain people's trust.

Public trust in the prosecution system in Ukraine has reached a critically low level. According to the survey conducted by Razumkov Centre research institution in April 2016, only 9.9 per cent of the Ukrainian citizens trust the public prosecution, while 84.3 per cent do not trust the organisation.

Maksym Komarnytskyi acknowledges that it would be hard to improve the situation unless prosecutors learn to communicate in an accessible and humane manner. As he puts it: 'come out to people openly and look less formal'.

'We train prosecutors to understand what journalists want from them' - trainer.

A trainer for Ukrainian prosecutors on effective communications, journalist Lyudmyla Humenyuk remarks that many participants had a revelation: 'Maybe for the first time in their life some of them realised that journalists had in fact a lot of rights, because according to the Ukrainian media legislation they could do anything that is not specifically prohibited. Often prosecutors perceive journalists' questions as awkward, offensive, or subjective, because they think that journalists are biased in their work. During the sessions we helped them understand what journalists really wanted from them'.

Artur Sargsyan, 26-year-old Deputy Head of the local public prosecutor's office of Novoukrainka, which amalgamated eight district offices of Kirovohrad region, briefly summarises those messages addressed to his colleagues and himself: 'We have to refine ourselves'.



'We teach how to use knowledge in real life' - trainer

Maksym Komarnytskyi, in a discussion about problems and challenges in his daily routine, constantly emphasises that he as the manager of the newly established local public prosecutor's office needs specific mechanisms in place to solve specific issues. When a young professional enters an organisation which is not yet reformed and thus has all the associated barriers, he can only rely on the support of like-minded persons, people's trust and professionalism. In his opinion, the latter is defined as the command of action tools that are effective in complex situations.

And it is better to learn about those tools at the beginning of one's managerial path. According to Oleksandr Sudarkin, early training saves time and effort for people who occupy already stressful positions. Such knowledge and skills make the leaders of local public prosecutor's offices better prepared for challenges, as such they will have stronger chances to be successful in their work and to make changes that require years of meticulous labour.

'Our fellow trainers are lawyers who teach professional 'hard skills' and my colleague Oksana Korolenko and myself teach 'soft skills' - in other words how to use that knowledge in real life. And this is something unique and unusual for an education model in our country. Where do we learn how to participate in a meeting? You are lucky if your manager can explain that. What if not? Then you have to learn by doing for five years and get punished for making mistakes in the process. But that's five years of your life', - says Oleksandr Sudarkin.

His task is to train Ukrainian prosecutors to perceive their job similarly to effective managers. Suddenly there is a question from the audience: 'And how can we do it



without the order from the General Prosecutor's Office of Ukraine?'. He answers: 'You will not be violating any laws if you train your subordinate during your communication or team work, even if the law does not require you to do so. By doing so you will be making your own work easier'.

34-year-old Lyudmyla Karmanchuk, Deputy Head of local

public prosecutor's office in Vinnytsia is ready to perceive her daily work in a new fashion, from the perspective of the new knowledge she gained. 'I can hardly say that I was not aware of the impact of positive and negative managerial authority in my daily work. But now I understand better why I should speak differently to different subordinates. One instance of manifestation of negative authority requires nine instances of manifestations of positive authority.'

On the other hand the trainers of the managers of local public prosecutor's offices almost unanimously say that the participants have dismantled their stereotypes about the institution. 'Openness of the prosecutors' audience has exceeded my expectations.

I thought it would be more difficult. The participants proved to be more open than we expected prosecutors to be', mentions Oksana Korolenko, a human resources management trainer from the International Institute of Management (MIM - Kyiv).



Lyudmyla Humenyuk has similar thoughts: 'During our first training session my stereotypes about the prosecutors have been dismantled completely. From the beginning our participants have been extremely motivated to get to the essence of the problem of establishing communication with society.'

Lyudmyla Karmanchuk represents that part of the prosecutors' audience that the trainers mentioned as demonstrating the highest support to those new concepts they introduced. 'I don't have any resistance for something new. I don't like when people

tend to act following the 'proven ways'. Even though these trainings are mostly an organised representation on what we have learned from our experience', says the prosecutor.

The local prosecutor's offices are sometimes called the 'lowly labourers' of this law-enforcement institution because it is them who have to deal with procedural guidance of pre-trial investigations of most criminal offenses in the country. Thus, the local



managers of prosecution don't have the time to search for and learn judgments of the European Court of Human Rights, while the new Criminal Procedure Code as well the rest of the new legal framework requires the prosecutors to know the case law of the Strasbourg court. Training offered by the Council of Europe is a chance for local prosecutors to uncover European horizons.

Maksym Komarnytskyi acknowledges that here he was able to receive answers that he could not get anywhere in the Ukrainian criminal justice system: neither from courts nor from the General Prosecutor's Office. 'At the training they laid out the details on how to collect evidence that would be admissible for the court and would not contradict the European standards. Now we understand that it is not difficult at all', summarises Maksym.

The participants' communication was not limited to interaction with the local experts. The trainers' pool included French and American practicing prosecutors who shared experience gained in their countries with their Ukrainian colleagues. 'It was very exciting to go beyond the national understanding of the essence of prosecution, to refer to the prosecutorial practice of other states. The best way to learn is to receive the first-hand knowledge from those who apply it in practice,' notes Lyudmyla Karmanchuk.

'We suggest that the managers of public prosecutor's offices act as role models' trainer.

And if figuring out the complexities of European Court of Human Rights case law was not too complicated, especially having expert support, there are also challenges of another kind; challenges which can only be handled personally. Beginning to introduce the 'sustainability of results' can prove difficult when returning home, sometimes to the regions that are far away from Kyiv. The managers of local public



prosecutor's offices return to the environment where they are actually the only ones trained about such modern techniques and information. They have gained a clear understanding of how things are supposed to be, but the reality is different, the environment has not changed yet. This is the challenge for the new elites that are destined to change the machinery of the state. What do they do? 'What can be done right now is to set a personal example. The most effective tool is 'follow my lead'. In other words the manager acts as a role model', suggests Oleksandr Sudarkin.

Anyone who is currently involved into this complex process of reframing a 'proven way' of thinking and operation of such a closed institution recognises that changes will require time.



'It would be too ambitious to claim that these trainings could solve all problems. But I am sure that those who attended the training will share their experience once they return home. Besides, we cooperate with the General Prosecutor's Office in order to improve the internal regulations and procedures governing daily operations of prosecutors,' emphasises Ketevan Tskhomelidze.

Training participant Artur Sargsyan gives specific examples of the regulations that act as a brake for change – the Prosecutor General's decree concerning organisation of work and management within the prosecutor's office and other decrees issued with references to the old Law on the Public Prosecutor's Office dating from 1991. 'These are still the same old decrees, even though it has been half a year since we should have started working in a new fashion.'

New managers of public prosecutor's offices are outspoken in their criticism of the system and its limitations, which as it is, suggests that institutional progress is limited by the lack of appropriate performance indicators or transparent disciplinary procedures, as well as an absence of positive motivation tools and other mechanisms required for effective functioning of the institution.

In general, stories from people within the prosecution system about their everyday work are an accurate diagnosis of the problems and can be used as reference points to assess the baseline and plan future actions required for the implementation of the reform. At the same time all stakeholders acknowledge that system of education of prosecutors must be reformed as well.

'It is time to give up on lectures that are read from a piece of paper' Rector of the Academy.

The National Academy of Prosecutors of Ukraine promises to reap the benefits and experience of the training of the project "Continued Support to the Criminal Justice Reform in Ukraine". 'Just a few years ago any continuous education course for prosecutors was carried out exclusively upon Decrees of the Prosecutor General. Now we are changing. It is time to give up on



lectures that are read from a piece of paper. It has to be free communication without rigid boundaries', submits Ivan Prysyzhnyuk - the Rector of the Academy. He adds that both he and his deputies will attend trainings for the Faculty of the Academy as participants. The Council of Europe is already planning a training on modern teaching methods for the future trainers involved in the continuous education courses for prosecutors. This will give participants an opportunity to learn about best practices from other European countries.

The Faculty of the Academy has to launch a new programme of special training for candidates for positions of prosecutors, according to the new Law on the Public Prosecutor's Office adopted on the 14th of October 2014. The Council of Europe plans to provide support to this initiative as well.



Olga Kalachova, senior professor of the Academy of Prosecutors notes that chances for professional success of a new formation of prosecutors will also greatly depend on changes in approaches of judges and attorneys: 'If trial participants follow the principle 'every man for himself' then it will be impossible to use European practices. But since there are such trainings, as I am aware, both for attorneys and the judges, it

will have a positive result in the end.' In the past Olga Kalachova participated in the trainer programme for prosecutors, also organised by the Council of Europe.

Being allowed distance from their daily work and regular environment during a two-week period, the new managers were able to assess their work afresh, and obtain an outside perspective. Various techniques were employed in order to achieve this result. Participants were filmed in mock appearances before the press, in order to analyse their effective moves and recurring mistakes; participants also role played as both prosecution and defence in simulated court sessions, attended by highly qualified experts.

Crucially, it was emphasised that the new prosecutors are key agents of change and new wave of law enforcement in Ukraine; even if their everyday work doesn't feel like that.

In addition, it was also important for the Council of Europe project to show support to local prosecutors, acknowledging their complex tasks, and to understand their needs in order to give the best possible assistance in the future.



The Project "Continued Support to Criminal Justice Reform" started in September 2015 and will continue until 2019. There are quite a few initiatives waiting ahead: they include continued support to capacity-building of the faculty and prosecutors; support in developing effective guidelines and other internal documents, implementation of other measures aimed at institutional and operational

modernisation of the prosecution service. The Council of Europe is also willing to provide support to the prosecution service with its public outreach and awareness building efforts, as this is critical in order to change the public image of the institution and gain trust.

And prosecutors confirm the need for these changes. Because the new role of the public prosecution service set forth by the Criminal Procedure Code and the Law on the Public Prosecutor's Office requires changes both to operating procedures and established practices.



For decades of its existence in the Soviet Union and after its collapse, the prosecution service of Ukraine failed to define the notions of an 'effective and independent prosecutor, manager of the prosecutor's office'. Who is it? What can each individual in the public prosecution system do to transform this institution into a genuine, transparent and efficient service, guarding

human rights and ensuring proper administration of justice? During the training, the managers of the newly established local public prosecutor's offices had the opportunity to reflect on those questions and to start coming up with answers themselves.

Interviews by Zhanna Bezpyatchuk
Photos by Denys Sergienko