

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. 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,’ explains the Deputy Head of local prosecutor’s office of Vinnytsia, Liudmyla Karmanchuk, when addressing the need for prosecutorial training. Jointly with the National Academy of Prosecutors of Ukraine and the General Prosecutor’s Office of Ukraine, in 2016 the Council of Europe organised six-day trainings for the managers of 155 local public prosecutor's offices from all regions of Ukraine. The trainings were 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 Project ‘Support to Justice Sector Reform in Ukraine,’ the United States Department of Justice, OPDAT programme, and the European Union Advisory Mission to Ukraine also contributed to the implementation of the training programme.

‘Forget about clichés. With the new Criminal Procedure Code one has to contemplate as the Code doesn't provide ready answers,’ explains attorney Nazar Kulchytyskyi to the leaders of the newly established local public prosecutor's offices. The attorney talks from experience. He represented 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, they have to work hard on the evidence, and this is a real challenge for the training participants' conventional understanding of their job.



In the past, Ukrainian prosecutors did not have the chance to engage in extensive professional discussions with high-level judges and experts with international experience. They would normally see judges and attorneys in the court room. Compared to the simulated situations during the training, in the court room everything is real. This leaves no room for mistake. ‘I teach them how to prevent mistakes because it is in no one’s interest for the prosecutors to lose cases. I would rather have them do a qualitative job and demonstrate excellent performance before the court, exactly as we see in court sessions in other European countries,’ explains Natalia Marchuk.

Playing an attorney during a simulated court hearing, one of the participants grew into the role so naturally, that even the demanding, strict judge believed his acting. ‘The prosecutor must have done a poor job reading the motion, scarcely looking through it 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 prosecutor. It could very well be the first time when 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 institutions in the country with a legacy of a repressive body’s image inherited from the Soviet times.

The training targets people that have to change the system

This was not just a series of lessons that became part of a two-week course of continuous education at the Prosecutor’s Academy. This was not just an exciting role-playing game when prosecution, defence and judges meet in the same lecture room, nor just training on the application of the case law of the European Court of Human Rights in the Ukrainian setting. This was a forum for discussion of the most delicate and urgent problems that the newly established local public prosecutor's offices face. The managers



of the local prosecutors’ offices, followed by their first deputies and deputies, arrived in Kyiv in turn to attend training sessions throughout the period of 14 March-16 May 2016. The total number of visiting leaders was 600. The training room became the place to practice new approaches towards the job of a prosecutor in Ukraine, as well as the backstage where one could take a closer look at the new generation of managers of public prosecution service.

The new managers have successfully passed four stages of a competitive selection. ‘If we say that the system has to change, then these are the right people to change it. They are young, full of initiative and they are already managers. I hope this driver of change will not end soon,’ says Oleksandr Sudarkin, the trainer on management, about the new prosecutors.

I went to Mykolaiv to work as a prosecutor because no one knew me there



Maksym Komarnytskyi 29, born in Luhansk, is the Deputy Head of local public prosecutor's office no. 2 in Mykolaiv. After getting his law degree, he started working as an investigator, in order to get as much work experience at the grassroots level of the law-enforcement system as possible and in the shortest time. Then, he worked as the procedural supervisor of pre-trial proceedings in local public prosecutor's offices in Luhansk and Luhansk region. In 2014 the situation became very unsafe mainly because of his active pro-Ukrainian stand, so he took his family out

of the conflict zone. He started working as the investigator in 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 and participated in the activities of the department for investigation of corruption-related crimes in the General Prosecutor's Office.

He decided to sit the tests and ended up with one of the best results. Asked why he chose Mykolaiv, he says: 'No one knew me there and I didn't know anyone. Nobody could come and tell me that we had attended the same school or that they know my parents. I am now comfortable following my own system of principles.' Maksym also shares his experiences on how a young family can survive on a prosecutor's salary. Sometimes he had no choice but to accept support from his father or part of his grandmother's pension. Things have improved once his salary increased.



The prosecutor is sure that having no family ties in Mykolaiv will help him gain people's trust. He is also well aware that it would be a hard job to achieve this goal unless prosecutors learn how to communicate with journalists in a friendly manner, or as he puts it: 'to come out to people openly and look less formal.' And that is what they were taught at the training. 'Let's take a crisis situation as an example. Usually a presentation to give everyone an understanding of what happened looks like this: a very official looking representative of the public prosecutor's office, wearing a suit jacket, would recite a formal speech from a sheet of paper. We were told what we need to say in the beginning and what details to share at a later stage, so that people could understand the essence of the situation,' says Maksym.

We train prosecutors to understand what journalists want from them



The trainer on effective communication, Lyudmyla Humenyuk, remarks that many participants had a revelation: 'Often prosecutors perceive journalists' questions as awkward or offensive, because they think journalists are biased in their work. During the sessions we explained what journalists really want from them.' Artur Sargsyan, Deputy Head of the local public prosecutor's office of Novoukrainka, concludes: 'We have to refine ourselves.'

Maksym Komarnytskyi, in a discussion about problems and challenges in his daily routine, emphasises that as the manager of a newly established local public prosecutor's office, he needs specific mechanisms in place to solve various 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 those tools at the beginning of one's managerial path. According to the trainer 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 more resilient, and as such they will have better chances to be successful in a long career race and to make changes that require years of meticulous work.

34 year old Lyudmyla Karmanchuk, Deputy Head of local public prosecutor's office in Vinnitsya, is ready to perceive her daily work from the perspective of the new knowledge she gained. 'I can hardly say that I was aware of the impact of positive or negative managerial authority in my daily work. Now I understand why I should speak differently to different subordinates. One instance of manifestation of negative authority requires nine instances of manifestations of positive authority.'

Those who attended these trainings would share their experience once they return home

Everybody who is currently involved into this complex process of reframing a 'proven way' of operation of this institution recognises that no immediate results are to be expected. These trainings are simply the beginning of the change. 'It would be too ambitious to claim that they could solve all problems. But I am sure that those who attended the training will share their experience once they return home,' emphasises Ketevan Tskhomelidze, Manager of the Council of Europe Project.

The trainers say that the participants managed to dismantle their stereotypes about the institution. 'I thought it would be more difficult, but 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 in Kyiv. Lyudmyla Humenyuk has similar thoughts: 'Our participants have been extremely motivated to get to the essence of the problem of establishing good communication with the society.'



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 do not have the time to search for and learn judgments of the European Court of Human Rights. The training offered by the Council of Europe is a chance for local prosecutors to uncover European horizons.

Maksym Komarnytsky confirms he was able to receive answers that he could not get anywhere in the Ukrainian criminal justice system. 'At the workshop 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 communication with the local experts. There were also French and American prosecutors who shared the experience gained in their countries with their Ukrainian colleagues. 'It was 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 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

When returning home, applying what was learnt at the training can be quite a challenge, especially in the regions that are far away from Kyiv. The managers of the local public prosecutor's offices are the only ones who own modern techniques and information. They have gained a clear understanding of how things are supposed to be, but the reality is always different and the context has not changed. This is indeed a challenge for the new elites who are meant to change the machinery of the state from the bottom up. '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.



The 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 criteria or transparent disciplinary procedures, as well as an absence of positive motivation. 'If we could just decrease the influence of the central level on the local level, it would give us time to introduce the latest management concepts. However, if they are to be applied, it will happen in three to five years from now,' thinks Artur Sargsyan.

Olga Kalachova, a senior professor of the Academy of Prosecutors, notes that changes for professional success of a new formation of prosecutors will depend greatly 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 these trainings, targeted to attorneys and the judges, will eventually have a positive result.'

It is time to give up on lectures that are read from a piece of paper

The National Academy of Prosecutors of Ukraine promises to reap the benefits and experience of the training. 'Just a few years ago any continuous education course for prosecutors was carried



out exclusively upon Decrees of the Prosecutor General. Now we are evolving. It is time to give up on lectures that are read from a piece of paper. It has to be a free communication without rigid boundaries,' affirms Ivan Pryszyzhnyuk, the Rector of the Academy. Being allowed distance from their daily work for a two-week period, the new managers were able to assess their work afresh and get an outside perspective. Various techniques were used in order to achieve this result. Participants were filmed in mock

appearances before the press, so they could analyse their skills and weaknesses, and they also role played as prosecution and defence in simulated court sessions, attended by highly qualified experts. It was emphasised that the new prosecutors are key agents of change and law enforcement in Ukraine, even if their everyday work does not feel like that.

In addition to the abovementioned, 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 Support to Criminal Justice Reform continues...

Under the Council of Europe Project funded by the Danish government, that started in September 2015 and will continue until 2019, there are several initiatives awaiting including: continued support to capacity-building of the faculty and prosecutors, institutional and operational modernisation of the prosecution, and support in developing effective guidelines and other internal documents. Fewer guidelines, but better aligned to up-to-date requirements, will improve the everyday functioning of prosecutor's offices drastically.

The prosecutors confirm this, 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. 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.

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'. *What does the role imply? 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?* These were just a few questions that the managers of the newly established local public prosecutor's offices reflected during the training.

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