

# Irina Paliashvili: Legal and governance reform needed in Ukraine

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Local resident look at a destroyed building after recent shelling in the town of Popasna of Lugansk region on October 1, 2014. AFP PHOTO/ANATOLII BOIKO  
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Ukraine needs a fundamental, systematic and structural re-design of its entire legal and governance system. The current system, which is enforced by a massive bureaucratic class, is not only inadequate, but it also sabotages any chances of Ukraine to become a modern State with a developed market economy integrated into the globalized world economy.

On Sept. 25 for the first time in Ukraine's new history, the president of Ukraine declared just that, not a new round of "deregulation" or "liberalization," but called "to destroy the neo-feudalistic political and economic model, dismantle the mechanism, which enriches the small circle of oligarchs and corrupted bureaucrats, which in fact privatized the state..."

President Petro Poroshenko went further stating that "our sheer existence, for Ukraine to be or not to be, depends on the reforms." We could not agree more! The Ukrainian legal community has been calling for a massive, coordinated, systematic and on-going reform targeting the entire governance and legal system (and all of its components), and replacing it with a modern, transparent, competitive, liberalized and simplified, as well as decentralized system, fitted with new legislation and regulatory practices, and implemented by a new non-corrupt class of civil servants, protected by fair courts.

The U.S.-Ukraine Business Council on Sept. 22 released the [White Paper](#) with a high-level outline of our proposed proposed measures.

The current system stems from the old Soviet bureaucratic fundamentals, which were aimed at suppressing any initiative, entrepreneurship, civic society, human rights and freedoms.

On top of these Soviet fundamentals the successive governments of Ukraine built a manually governed special interests system, or actually an anti-system, which benefited only limited "elite" groups of society with special benefits, privileges and exemptions – at the legislative level, and even more so at the practical level. At the same time, the rest of the society was left at the mercy of this anti-system and the hostile and utterly corrupt bureaucratic class, deprived of any practical rights, or any chance to defend their rights in the equally archaic and corrupt law enforcement and judiciary.

This anti-system was outfitted with camouflage institutions, which in practice did the opposite of what they were designated to do. The Anti-Monopoly Committee, for example, in the past few years presided over the largest monopolization of Ukraine's economy in the hands of a select few, while turning from an antimonopoly regulator into a fiscal collector concerning all others.

The web of these schemes for years was weaved through laws and regulations, regulatory and court practices, and it cannot be eliminated by amending one law or another. Therefore, the myth, often repeated by various government officials, that "Ukraine has good laws, but needs better enforcement" could not be further from reality.

This myth is used by special interest groups to preserve the corrupt anti-system and to avoid real reforms. This anti-system is serviced by a massive archaic, conflicting and incomprehensible body of legislation (laws and regulations), with various corrupt schemes incorporated behind most of its provisions, which benefit one "elite" group or it is clear that the Association Agreement between the European Union and Ukraine, including the Deep and Comprehensive Free Trade Area when implemented, will be a powerful external instrument for modernizing Ukraine's governance and legal system and moving them closer to EU standards. There are many other external instruments, such as international treaties and conventions, to which Ukraine is a party, various international organizations, institutions and donors, etc. that can also assist with this process.

At the same time, these external instruments cannot achieve what only can be achieved internally within Ukraine – fundamental structural redesign of the governance and legal system. To this end Ukraine can benefit from the know-how and practical experience of several countries in the region, which have gone through similar transitions before Ukraine, and today demonstrate successful results – such as the Baltic States, Poland, Slovakia and others. These countries, however, have gone through fundamental reforms very early on and very fast, becoming EU members and not being influenced by several key factors that Ukraine is experiencing at this time.

It appears that the closest blueprint for Ukraine to follow is Georgia, which in 2004-2012 prepared, adopted and implemented a comprehensive package of reforms covering the entire spectrum of its governance and legal system, while minimizing corruption to a negligible level. Georgia has done it under circumstances similar to Ukraine's: on the negative side – under a trade embargo on Georgian exports to the Russian Federation, a cut off of gas supplies, a military invasion with subsequent occupation of significant parts of Georgian territory; and on the positive side – under the prospect of signing the Association Agreement with the European Union.

Ukraine may have the benefit of learning not only from Georgia's undeniable overall success, but also from its less significant practical mistakes made during the transition period.

As Kakha Bendukidze, the architect of Georgia's economic reforms, said - there is nothing in the current system worth keeping. Any arguments about taking it slowly, gradually, step by step, or adjusting the reforms to Ukrainian reality must be rejected outright as a recipe that did not work for 23 years of Ukraine's independence and led to its near collapse, as we are witnessing today. The current anti-system is beyond fixing, liberalizing and deregulating, and the current bureaucratic, law enforcement and judicial class is beyond modernizing and convincing to carry out the reforms and function in the new transparent and non-corrupt system. It is, therefore, high time now to change the reality instead of adjusting to the current reality.

One of the advantages Ukraine has at present, which other countries that went through whole-scale modernization did not have even a decade ago, is the benefit of new technologies. Using advanced IT solutions for governance and legal reform (including those already developed and tested in Estonia for example), can save a tremendous amount of time and effort, and to minimize corruption.

Ukraine's reforms should be as much about software and IT solutions as it is about new laws. We all need to change both the mind-set and the rhetoric now, the Ukraine story is no longer about the agony of fixing the unfixable, but about building a brand new modern and fair service-based system for Ukrainian citizens and businesses.

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