

Laws are for “Suckers”, not for “Big Shots”

by Larysa Denysenko, Kiev

beginning of February 2014

Euromaidan 2013 was born as a peaceful protest and later an uprising of Ukrainian people against: the lies of the authorities and pro-government forces, violations of human rights and basic freedoms, abuse of the law, state pressure on all levels, humiliation and distortion of values, concepts, meanings.

In 2004 the events that led to the Orange revolution and a re-run election of the President of Ukraine included systematic violations of electoral rights and freedom of speech on the part of the authorities. They were opposed by Ukrainians who took to the streets to protest against the rigged result of the election. Numerous systematic violations were later acknowledged in a historical decision of the Supreme Court of Ukraine.

This time the situation is more complex. The president of Ukraine and government officials have committed systematic violations of human rights, enshrined above all in article 39 (freedom of peaceful assembly), article 28 (right to being treated with dignity), article 29 (right to freedom and personal integrity), article 34 (right to freedom of speech and free expression of thought and beliefs), article 55 (right to a fair trial) of the Constitution of Ukraine and the corresponding articles of the Convention for the Protection of Human Rights and Fundamental Freedoms, to which Ukraine is a party. Moreover, the authorities and state officials have committed grave violations of the principle of the rule of law, guaranteed in part 1, article 8 of the Constitution, together with the constitutional principle of article 19, which states that state officials are obliged to act only on the grounds and in the manner envisaged by the Constitution and the laws of Ukraine.

We are now facing a situation when the constitutional and conventional mechanisms, as well as the laws, are powerless to resist the usurpation of power by the president, who suppressed the legislative, executive and judicial branches of power in the country.

Ukrainian parliament, dominated by the parliamentary majority of the president's ruling party and its traditional allies the communists, blocked the possibility of a legitimate resignation of the current government. A corresponding bill was proposed by the opposition but was not voted by parliament, making it impossible from a procedural point of view to raise the issue in parliament again this year.

The anti-constitutional violence was orchestrated and directed by representatives of the executive power. The special police unit “Berkut” - part of Ukraine's law enforcement system - committed violations of a number of Constitutional provisions by conducting a violent dispersal of the peaceful protesters in the Independence Square. They had to be rescued by the Church who provided shelter to the victims and saved them from further violence.

Currently, we observe violations of Ukraine's criminal law, the law on police, and the norms concerned with administrative violations against the protesters who took part in Automaidan motorcades. They are persecuted by traffic police, summoned for interrogations and are subject to police raids at home addresses.

Moreover, the pro-government forces exert a constant pressure on the vulnerable part of Ukrainian society, especially the employees of state enterprises on the state budget payroll. The authorities use pressure, intimidation and threats against

those who dare to peacefully resist injustice.

In recognition of an active role of Ukrainian students in the current events, the Ministry of Education and Science of Ukraine has colluded with the Security service in violation of articles 7, 8 and 14 of the Law on Personal Data Protection. They force university and college teachers to reveal personal data of student protesters and threaten them with expulsion from higher education institutions.

Ukrainian courts have demonstrated their complete lack of independence from the executive and the president. By an “order” of Kiev state administration and in violation of the constitutional norms, they have curtailed the right to peaceful assembly in the city without providing a legal justification for such a decision.

On December 19th 2013, the constitutional majority in parliament effectively replaced the judiciary by passing a law “On eliminating negative consequences, preventing prosecution and punishing people in connection with events taking place during peaceful assemblies”. The law guarantees freedom from criminal prosecution to all participants of peaceful assemblies and protest actions. The courts, however, continue to ignore the law; as of December 2013, many protesters remained in detention.

On January 16th 2014, parliament adopted a number of repressive laws in a hasty procedure that violated the procedural code, the constitution and certain decisions of the Constitutional Court of Ukraine. Regardless of the violations, the president signed the laws and made them effective on January 17th. The laws significantly reduce the scope of human rights and freedoms guaranteed by the Constitution of Ukraine (which is directly forbidden in part 3 article 22 of the Constitution), and enshrined in international treaties to which Ukraine is

a party, such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights. All these laws are intended to strengthen and legitimise an ugly symbiosis of a criminal-police state, whose citizens are suppressed by the authorities for any critical comment, thought, or statement; for free movement and peaceful assemblies. In other words, the laws adopted with numerous violations and in direct violation of the Constitution seek to legalise repressions.

In accordance with the principles, laid down in the decisions of the European Court of Human Rights, state authorities and state officials should carry positive and procedural commitments.

In particular, this concerns establishing precise and clear rules, defined in the special law on peaceful assemblies, which has not so far been approved by parliament. At the same time, however, the so-called “January 16 laws” introduced an additional article 110-1 to the Criminal Code of Ukraine, which establishes criminal liability for very loosely defined “extremist activity” (including “extremist” comments in the internet and social networks).

Because of the state’s complete failure to meet its commitments in the protection of the citizens’ rights and freedoms, the Ukrainian people rely directly on the constitutional provisions. The realisation of this right, however, is obstructed by courts, whose direct responsibility should be to ensure its full implementation.

Moreover, first-tier courts have been engaged in an unacceptable practice of turning the victims of state violence into perpetrators. In their decisions they tend to resort to an outrageously disproportionate punishing measure of preventive detention.

Although courts of appeal have been partly able to redeem the situation, profes-

sional conduct of some of the first-tier judges raises doubts about their commitment to justice as one of the basic constitutional premises. A judicial system which should be based on a subtle understanding of justice consistently undermines it by turning the victims into criminals.

The violence committed by “Berkut” took place in violation of a constitutional norm allowing law enforcement officials to refuse carrying out a criminal order. This was the result of yet another violation - the unlawful actions of the law enforcement authorities who disregarded article 29 of a special law on policing by authorising law enforcement activity at night time.

It is worth emphasising that the introduction of the so-called “laws of January 16” guarantees impunity to police and “law enforcement” officials responsible for carrying out the brutal dispersal of the peaceful protesters in the Maidan. The fact that this sort of an “indulgence letter” was provided to the perpetrators by members of the pro-government parliamentary parties and the president proves - for me - that the unlawful orders of a clampdown came from most senior state officials.

Thus, the actions of the president of Ukraine and state authorities of all branches of power - legislative, executive and even judiciary - subvert article 5 of the Constitution of Ukraine declaring the Ukrainian people as the bearer of sovereignty and the sole source of power in the country.

In critical conditions, the people are allowed to act according to the principle of direct democracy and defend their rights in a peaceful protest, relying exclusively on direct application of the constitutional norms and the provisions of Ukraine’s international treaties.

A peaceful protest lasted until the adoption of the so-called “laws” on January 16th,

which effectively crushed the existence of freedom of peaceful assembly in the country as such. This led to a new form of confrontation.

The people of a nation has a right to rebellion* under the circumstances when it is otherwise impossible to abolish a government - a government which will not voluntarily resign, which adopts anti-constitutional laws, which ignores the principle enshrined in article 19 of the Constitution of Ukraine, which manipulates the country’s courts and law enforcement services, and which commits daily violations of constitutional and international treaties provisions.

It is a legitimate right of the people which - although not directly proclaimed by the Constitution - can be explained and justified by a number of existing constitutional norms (in the Constitution of Lithuania, for example, this right is directly acknowledged). It is a right advocated in the works of the famous philosopher John Locke and mentioned in various international documents.

In accordance with the Universal Declaration of Human Rights (a binding international treaty for Ukraine, according to article 9 of the Constitution): “ it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

But the legitimate actions of the protesters were met with even more oppression on the part of the government, including violence that left several people dead, beatings and persecution.

Why is all this happening? The person who currently holds office of the President of Ukraine is a criminal, twice convicted of violent crimes against personal property.

The political elite in modern Ukraine does

* *author’s emphasis*

not feature descendants of the aristocracy, who were subject to systematic extermination at all periods of the nation's history. Instead, the country gave birth to a genetically defective elite - comprising of party bureaucracy with hereditary riches, on the one hand, and business elite with largely illegally accumulated wealth, on the other. To put it simpler, the country is ruled by thieves and party functionaries. But in this particular case, we have to deal with ordinary criminal thugs of the lowest rung.

It is a difficult and painful question why the Ukrainians had to elect this particular person as their president. Regardless of the fact that the elections were to a great extent rigged, one has to admit that Viktor Yanukovich has a large electoral base. Some saw in him a "strong hand", a "simple lad like us" or indeed a "person who knew suffering".

Soviet prison system was meant to cripple and destroy people. It was especially damaging for those who already had rather shaky moral principles. Prison may not necessarily kill a human but it does kill humaneness. Prison lives by its own rules, laws and habits. Those do not include respect for human dignity, rights and freedoms. In fact, there are no rights and freedoms in prison.

When a prisoner goes back to normal life, he tends - unconsciously or otherwise - to apply the same rules that exist behind bars in free life.

Such people live by the right of force, by the right of a "big boss"; it is as if they have a microchip of discrimination placed under their skin - it is a mechanism dictating to humiliate the weak, to intimidate, to bully; requiring to annihilate a strong and principled opponent to be able to intimidate the weak, to suppress them and oppress their will. **The complete disregard for val-**

ues and rights is the matrix of a criminal.*

A characteristic recent episode is the vile attack on the journalist Tetyana Chornovil, famous for her exposure of corruption among Ukraine's highest criminals-in-office, such as the president, prime-minister and the interior minister. She was attacked at night on the Kyiv-Boryspil motorway and violently beaten. It is worth paying a special attention to the official cynicism and the complete lack of professionalism in the police actions - after the attack they opened an investigation on the grounds of "hooliganism", a criminal code article which mainly deals with public order violations. While the victim remained in intensive care, with medically confirmed serious to severe injuries, the authorities gave in to the pressure on the part of the media and human rights defenders and reclassified the crime. If we take into account the time of the crime, its details, the victim's professional and oppositional activity, and the lack of transparency in the police investigation, we may come to a conclusion that the attack can be qualified as a contracted attempted murder. The authorities in the meantime are trying to present the crime as a banal road accident gone wrong.

An avalanche of human rights abuse is getting worse and more horrifying. After the beatings, violence and torture by the police, the authorities failed to prevent the deaths of least five people. "Berkut" continues to persecute people and torture them with brutality and cynicism. There is ghastly video footage of many episodes available online; Ukrainians who can't remain indifferent try to document the crimes by collecting evidence and video materials.

Laws are for "suckers", not for "big shots". The "suckers" are we, ordinary Ukrainians, as has been well demonstrated by the so-called "laws" of January 16th. And as for "big shots",

* *author's emphasis*

they know no laws and may completely ignore them. Hence, the president's actions are absolutely logical and predictable within his mindset. All other branches of power act correspondingly - in a conscious or unconscious hierarchical imitation of the "big boss".

The president's inner circle contains personalities with an easily recognisable criminal past; one may even get an impression that the **rampant gangsterism** of the early 90s is **returning** to plague our country as it did at the beginning of its independence. The bandits grew muscles, they sharpened their fangs, **they have caught Ukrainians unprepared for such a huge amnesty and the criminals' ascension to big and small thrones.**

"Berkut's savage attack against the peaceful protesters can be also seen in this light. In the criminal world the allegiance - and especially of those lower in the hierarchy - must be tied in blood. It is a mutual bloody cover-up, which makes the subordinates more obedient, more submissive, more dependable. It also makes it easier to turn them into scapegoats and hold responsible for everything.

In Christian church believers partake of the blood of Christ from the priest's hands; Ukrainian officials "partook" of the blood of victims from the hands of their "big boss".

The perverse culture of total "circular cover-up" reveals itself in the alleged resignations of some minor government officials and investigations against certain representatives of the state, whose names and official positions remain unknown. It is an unacceptable fact, considering these people's public role and status.

The Ukrainian people are fighting against this system by:

- **establishing the principle of direct democracy;**
- **conducting peaceful protests to defend**

their human rights and freedoms;

- **defending Ukraine's European choice;**
- **demanding the resignation and court trials of state officials whose actions violate the Constitution of Ukraine;**

- aiming to change not only the government but mainly the whole political system; to achieve a new quality and essence of state reforms and state officials.

It is necessary to emphasise that perhaps for the first time in the history of Ukrainian confrontations, Euromaidan does not simply raise the most pressing and immediate question of changing the government. The Euromaidan movement involves the work of analysts, independent experts, various professionals, small and medium size business entrepreneurs, scholars and artists, who on their own initiative develop projects of a total change and reload of the current political system that has completely discredited and practically destroyed itself. Political system transformation should become the most important task for a new people's government in the future.

One of the main issues here is the lustration. Many analysts argue that, unlike Germany, the Czech Republic, Poland and Lithuania, Ukraine has been fatally slow with starting the process of lustration. **As a result, independent Ukraine has admitted into its government elite former communist party officials and members of secret services who used to work for and maintain the repressive system of the Soviet power. One can't but agree.**

The opposition that came to power in 2004 wasted the country's chance for lustration, provided by the Orange revolution. It was a chance to lustrate the officials responsible for systematic violations of electoral rights, freedom of thought and freedom of speech in

Ukraine. This failure had a number of negative consequences, which can be illustrated by the following example.

Serhiy Kivalov, then head of the Central election commission whose negative role during the elections was recognised by the Supreme Court of Ukraine, is currently head of the parliamentary committee on the rule of law and justice. He is in charge of legal issues and the provision of legal education, which is an utter nonsense, considering the accusations against Kivalov as a state official whose duty was to ensure a fair and transparent election but who instead got involved in a massive electoral fraud.

It is then of utmost importance to ensure that this time a law on lustration will be implemented to prevent those officials, who by their anti-constitutional acts or complacent passivity caused systematic violations of human rights and freedoms in the country, from serving in all branches of state power, including local government, educational and scientific institutions, courts and bar, armed forces and other military units, tax and customs authorities and other state institutions with quasi-judicial functions.

Of no less importance is the issue of individual re-accreditation of all judges, state officials, and members of law enforcement agencies, which could allow to identify those people who have no moral right to occupy their positions or be engaged in similar professional activities.

Systematic changes will be required in almost all spheres of public life to avoid the possibility of systematic violations of human rights and freedoms in the future. This is a project that many independent analysts and experts have been working on. It is a project for everyone who cares for Ukraine's future, who feels personally responsible for the quality of life, quality of people, quality of the state in our country.

About the Author:

Larysa Denysenko is writer and lawyer. Her literary career began in 2002 with the victory at the literary contest 'Crowning the Word'. Larysa Denysenko is the author of 12 books for adults and 3 books for children. She was born in 1973 in Kyiv. She graduated from the law faculty of Taras Shevchenko Kyiv National University, passed a law draft course at the Justice Department of the Netherlands. She is one of the attorneys who represent the human rights in European Court of Human Rights (Strasbourg). She worked for the Justice Department of Ukraine as a scientific consultant in specialized parliamentary committee, managed the national department of 'Transparency International'. Several years she combined her legal practice with work at nation-wide 1+1 Channel, where she is the author and the host of culturological program 'Document +'.

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