

A word to colleagues: on occasion of the 14th Congress of Judges

My name is Larysa Golnyk. I'm a judge. But since April 2015, I'm suspended. It means that I do not administer justice, but the state keeps paying me quite a lot of money for me to simply show up at the court-house every day. I think it is, quite frankly, an unreasonable waste of taxpayer money. Yet, unfortunately, there are many judges like me.

For an even longer period of time, I have carried the burden of untruthful accusations, criminal proceedings initiated against me, persecution of my "native" Oktyabrsk (that's the name it still bears) district court in the town of Poltava. And complete lack of understanding from most of my colleagues.

In May 2014, I received a case that has marked a watershed in my life – and that of my close ones. The mayor of Poltava, Mr. Oleksandr Mamay, was prosecuted for a corruption offence. He was charged with concealing a conflict of interests when voting for allocating some land plots for his step-daughter. He was facing a fine – a rather petty one, given the multi-million assets that he likes to boast about. That, and the dubious "fame" of what we call in Ukrainian a "corruption" – a corrupt official. The latter prospect was obviously not to Mr. Mamay's liking. Because the next election was looming, and he was reluctant to lose his position.

I made a conscious effort to prevent any informal contacts with the mayor's representative in court, Mr. Oleksandr Kovzhoga. So he was desperate enough to shout at me, with witnesses present: "If you don't want to [sort it out] in a good way, you'll regret!" I could already guess what the second option was.

The Ukrainian law foresees that such category of cases is tried with the offender present in court. During the nine month, I saw Mayor Mamay at court hearings only twice. Both times he was brought there forcibly: as a delivery to court and an administrative arrest. Every time he left the court premises after his precious health had suddenly worsened. In other situations, the mayor never complained of his well-being. Accidentally, the scheduled court hearings coincided with the mayor's sick leaves, duty trips and vacations – which the official signed for himself. Even when they lasted but for a day. My attempt to impose a fine on the wayward local leader came to naught: my court order was cancelled by a colleague from the appellate court in Poltava region.

Immediately after the first court hearing – which the mayor ignored too – Mr. Mamay started to give the media condescending comments regarding the process, started to offend me personally and the judiciary in general. He publicly released my mobile phone number, my home address and other confidential information without my consent.

Starting from July 2014, Mr. Mamay and Kovzhoga sent complaints about the crimes that I had allegedly committed to the Prosecutor General and to the regional Prosecutors office in Poltava. They wrote complaints to the High Qualification Commission of Judges of Ukraine and the High Council of Justice. These documents were copied to the head of Oktyabrsk district court, Mr. Oleksandr Strukov, who in turn made a thorough effort to alert me of them. In effect, I was exposed to pressure, both overt and covert, as a way to sideline the intractable judge from the case. I persevered. After he realised I cannot be defeated with libel and threats, Mr. Mamay sent another representative to me: his former deputy, Mr. Dmytro Trykhna. He informed me that the mayor was ready to appear in court provided that he knew in advance what the decision would be. The case was to be closed due to the statute of limitations (the term had indeed expired) and – most crucially – I was not supposed to rule whether he was guilty of violating the law. Had I accepted the proposed terms, I would have received a "reward" and some improvement of living conditions.

Only my decisive disagreement foiled the plan. On 26 January 2015, Mr. Mamay called a press conference and claimed that judge Golnyk extorted 5 thousand dollars from him for closing the case. The criminal proceeding (based on the mayor's statement) was introduced to the electronic registry by

the regional prosecutors office, whose employees knew all too well what was really happening. Within this short period of time, several criminal proceedings were launched against me.

The charges were as absurd as a “fraud committed by a group of persons” – that’s how Mr. Kovzhoga (a former deputy mayor and now an activist pretending to fight corruption and organized crime) qualified my husband’s purchase of an old steel garage from our neighbour. As time passed, cases against me were closed, but with no particular rush.

Apart from revenge, they had to serve as a discrediting factor in my judge dossier’s review by the evaluating institutions: High Qualification Commission of Judges, Verkhovna Rada and now the High Council of Justice.

My insistent demand to bring the real culprit, and not a middleman, to justice infuriated the leadership of the prosecutors office. The written statements and complaints sent to General Prosecutors Office in Kyiv were sent back to Poltava for a further “review”. Only the interference of the Rada’s Anti-Corruption Committee helped break this vicious circle. Now the criminal proceeding, with all the offences committed by Mamay and his accomplices, is investigated by NABU. I understand what difficulties NABU detectives are now facing in finishing the case which was intentionally destroyed for the past two years. I hope they will succeed.

Back in 2014, I first addressed the bodies of judge self-governance for support. I had expected my colleagues to confront the mayor and explain that pressuring judges is unacceptable. Especially, coming from a local official. Then I urged the judge congress of the Oktyabrsk district court to voice an opinion regarding Mr. Mamay’s bribe accusations against me. That was in vain. Appeals to the Council of Judges were also futile, even when I most needed protection from the court president, who branded me a “violator of labour discipline”. You see, attending the Rada Anti-Corruption Committee upon an official invitation cost me two days in what was registered as “absenteeism”.

On-the-job training at the seminar on “Justice, Law and Society” (organized by the well-know Aspen Institute) cost me another 3 days of “absenteeism”.

“Ungrounded reasons” for my absence at the court included my visits to the prosecutors’ office and the National Police, to a court expert and even to the regional department of the State Judicial Administration. They started to pay me the judge remuneration “in proportion to the time worked”. In other words, I was put on an hourly wage. Which is an original novelty. I suspect I am the only judge in Ukraine to be punished in such a way. At least in Poltava region, for sure.

However, I address the Judge Congress and the whole judge community at large not to complain of my bad luck. For a long time I’ve believed that it is enough for a judge to simply do their work honestly and to adhere to the common moral norms in their everyday life. It appears that I was wrong. After having experienced the roles of a defendant, a claimant, and a complaint, I discovered how “hermetic” the law-enforcement system of Ukraine remains. How sealed off it is from the problems of ordinary people. How deformed it is with corruption.

As a qualified lawyer and a judge, I cannot attain the truth. What can one expect for the ordinary citizens who do not enjoy any special status and do not have legal training? I had to encounter incredible indifference and sometimes hostility from many officials whose duty it is to guard the Law. By the way, Mamay’s case, which eventually ended up in the Reshetylivsk district court, was closed exactly same way that I was offered 5 thousand dollars for. And what is curious is that no-one asked the Head of that court, Mr. Leonid Berkuta, a question. This “legal professional” was subjected to no ostracism. Because nobody expected anything else from him. His behaviour surprised no-one.

I, however, created problems for the system. By having taken on a mayor, a court head, a fake corruption fight who is in fact a middleman between criminals (both white collar ones and the gang

type) and corrupt investigators, prosecutors and judges. A law-enforcement employee once told me: "It would be much easier for all of us if you simply had taken that money from Mamay".

The degradation of the institutions which are supposed to fight crime is not only disgusting. It also poses real threat to the future of Ukraine's statehood. When visiting some court hearings of my fellow "colleagues", I can't help getting terrified. They are not afraid of violating procedural norms in "fat" cases, even when there are media cameras pointed at them. They don't fear prison cells either: they indulge in their impunity, let alone any basic decency.

Almost every day we learn about another judge acquitting a criminal, "punishing" a corrupt official with a petty fine, blocking investigative actions, violating the law or disrupting public order. After the Revolution of Dignity the society gave the judicial community several chances to recover: laws on "Cleansing the Authorities", on "Recovering the Trust to the Judiciary in Ukraine". We have not used those opportunities.

Worse still, courts often are an obstacle to changes in the country by blocking the reform. And some judges carry out their direct responsibilities only under attentive external control exercised by the public, mass media, politicians and other authorities. This control – my colleagues usually cry about pressure in this type of situations – will only keep on intensifying.

If judges don't start to change and undergo cleansing, many will have to keep trembling in apprehension of popular lustration or takeover of court-houses by the disgruntled folk. If we do not meet the expectations of the society, the public will decide for us.

Just as it had happened in the notorious Nasirov case. It is time to realise: a judge cannot remain a clerk in administering justice, let alone bent over in the "what should I do, master?" pose. The judge's job requires not only professional knowledge, but also dignity, honour and valour. Judges should realise their own high social mission. The judge's obligation is to be a moral authority not only on paper, but also in essence.

The judicial self-governance bodies must react sternly to slightest signs of condescension and lack of integrity in their midst. To show zero tolerance to those who smear the title of justice defenders. Judges' collegiality should not become a blood oath for all, and should not grant protection to criminals wearing judges' robes. We should listen to justified complaints from the public, journalist investigations. We should initiate checks of unworthy representatives before the High Council of Justice and their expulsion from our ranks, covered in shame.

We should not hide from the people in the depth of our cosy offices, but to communicate with the public day by day, to listen to their opinion. In close interaction with other branches of power, judges should use their knowledge and experience not for preserving the system riddled with corruption tumours but to build a new structure of the judicial bodies, development of honest judicial practices and unity of its decisions. We should inform the society about deficiencies in legislation and propose ways to improve it. We should initiate the changes and drive them forward.

Only in this way, and unfortunately not too soon, can we get a chance to recover the trust to the judicial system of Ukraine.

PS. If some of the participants of the Judges' Congress do not understand my words, I suggest that they exit the October Palace, where the event is held, and slowly walk along the Alley of the Heavenly Hundred Heroes. Up and down – all the way to the House of Trade Unions. To look at the portraits of the fallen protesters.

Ukraine has changed. Understand this.