

December 16, 2004 3:12 p.m. EST

WORLD NEWS

Q&A: How Judicial Power Has Changed in the Ukraine

By **TIM ANNETT**
 THE WALL STREET JOURNAL ONLINE
 December 16, 2004 3:12 p.m.

Two weeks ago, Ukrainians felt the earth move beneath their feet.

By invalidating the disputed presidential runoff election and scheduling a new vote for Dec. 26, Ukraine's Supreme Court handed the opposition candidacy of Victor Yushchenko a major victory and displayed the kind of independence that many demonstrating on the streets of Kiev doubted the judiciary possessed.



Michael Maya

But those familiar with the efforts of the American Bar Association's Central European and Eurasian Law Initiative (or "Ceeli") might have seen it coming. Active in Ukraine on and off since 1992, the year after the Ukraine officially broke away from the Soviet Union and became an independent country, Ceeli has assisted the movement toward judicial reform. Prior to the recent election, which most observers fully expected to be troubled, the group traveled across Ukraine training judges on the complexities of the country's election laws and worked with judges to assemble a "benchbook" -- a sort of legal handbook that judges more accustomed to hearing criminal complaints could refer to when adjudicating election-

related disputes.


The Wall Street Journal Online spoke with Ceeli Deputy Director Michael Maya, based in Washington, D.C., about his group's activities in the Ukraine, the history of the country's judiciary, and what the implications of the Supreme Court's decision might be beyond the ballot box.

What does this decision, along with the expansion of parliamentary powers in the decision's wake, mean for the power of the judiciary in the Ukraine?

I don't think that anything that has happened in the last few weeks expands the power of the judiciary in the formal sense. On paper, judicial power is essentially unchanged. But psychically, that's an entirely different story.

The fact that the Supreme Court issued this landmark decision may change the opinion that average citizens have of judges throughout the country and the Supreme Court in particular. But perhaps more importantly, politicians and the elite who observed the bold and independent behavior of Ukrainian judges . . . may begin to properly fear the courts as a true and independent arbiter of justice, and not just another institution that can be bought, corrupted or intimidated.

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That's all important, because in all or certainly most of the countries in the former Soviet Union, the political and business elite that are running things are basically fearless. They know that, in most cases, they can manipulate and subvert the judicial process, either through bribes or intimidation. These developments must send fear through the hearts of a lot of politicians and oligarchs in Ukraine.

Can you tell us a little about how the judiciary is structured in Ukraine?

In broad strokes, it's not unlike what you see in the United States, where you have trial courts, appellate courts, and a Supreme Court. However, in Ukraine you also have a constitutional court, which we don't have here, which has exclusive jurisdiction over constitutional cases and matters. Here in the United States, trial and appellate courts -- and of course the Supreme Court -- can render decisions on constitutional matters. That's not the case in Ukraine.

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Are the foundations of law drawn from a combination of old Soviet laws and the current Ukrainian system?

Yes, it is certainly a combination of old Soviet-style traditions and laws on the one hand, and new laws that are uniquely Ukrainian on the other, some of which have a distinct Western influence, particularly commercial legislation. To their credit, the Ukrainians have revised many of their key laws, which, predictably, are far more progressive and in keeping with international standards than they were during Soviet times. When it comes to the current Ukrainian court system, it is not a radical departure from the basic setup that existed during Soviet times. But the basic setup was largely sensible. The real problem with the legal system in Ukraine today is more a function of lack of true judicial independence, fairly serious and widespread corruption and lack of enforcement of laws and judicial decisions. Structurally, the court system is largely sound.

Leading up to the election, was there a sense of urgency? Were some of the legal difficulties of the election anticipated?

They most certainly were, although I have to say that the level of fraud in this election exceeded most people's worst fears. You could frame [the training of judges] as a prophylactic -- why not get out ahead of the troubles and make sure that the judges were properly trained to adjudicate election-related disputes in case something ugly and nefarious happened? And as it turns out, there was a lot of ugliness. I think that, as a result of that training, we had 700 judges throughout Ukraine who felt a lot more confident in dealing with election-related disputes ..., particularly the five Supreme Court Judges with whom Ceeli worked very closely in conducting the trainings.

Also, the fact that these judges had a judicial benchbook and a separate commentary on the presidential-election law that CEELI helped prepare certainly aided the cause and provided them with reference materials that could be relied upon in handling election-related cases thoroughly and professionally. These judges had essentially been prepped for all the various problems that eventually arose.

It is worth singling out the leadership of the Deputy Chairman of the Supreme Court, Justice [Anatoly] Yarema, who was involved in our training and was also very supportive of Ceeli's work in the run up to the election. At his request, we sent copies of the benchbook to courts throughout Ukraine. In the end, virtually every courthouse in Ukraine had at least one copy of the benchbook. Judge Yarema was the senior judge involved in the Supreme Court decision and he was the one who went before the Ukrainian public to announce the decision invalidating the election.

How did Ceeli's judicial training work?

With USAID support, Ceeli assembled a team of judges, including at least one Supreme Court judge, to more fully master the election laws and then train other judges in cities throughout Ukraine. The team conducted

workshops for 50-70 judges at a time, usually for one to two days. In addition to the Supreme Court trainers, Ceeli staff attorney Yevhen Radchenko served as a trainer. Yevhen is highly respected, and is one of the premier election lawyers in Ukraine.

The trainers would go through any number of exercises, and by the end of the training, the judges had a solid understanding of the presidential election law. If you haven't been trained on a particular law, you, as a judge, often don't have a lot of confidence in handling cases involving that law. It's not like we were training them on the criminal law, which many judges deal with every day and can handle with confidence. With the election law, by definition, this is not something that they are asked to deal with very often. This training was therefore a source of confidence for these judges.

Is there any sort of vestigial influence over the courts from the Kremlin?

It's hard to say. My inclination is to say that the Kremlin is influential on a political level, but not on a judicial level. Of course, political influence can ultimately trickle down to the judges through Ukrainian politicians who are in contact with the Kremlin. In this particular case, it obviously didn't work if it was tried, as the Supreme Court stood firm. But I wouldn't think that the Kremlin has direct contact with Ukrainian judges.

Do you think that the involvement of your group and some of the other nongovernmental organizations provided a check against electoral tampering?

There's no question that Western observers and NGOs had a positive and protective effect. We know that Ukrainians were well trained to identify and report violations on account of assistance provided by Ceeli and other Western organizations -- and that they did in fact report countless violations. But on the other hand, look at all the mischief and mayhem that nevertheless took place. It's extraordinary how brazen some of the violations were. It was either maladroitness or pure hubris on the part of the mischief makers. We have the Ukrainian Supreme Court to thank for invalidating a hijacked election. And let us also give credit to Ukraine's leadership for respecting the court's decision even though they might not have liked the result. That is also a triumph.

What's on Ceeli's agenda going forward?

In the last year or so [Ceeli] has opened offices in Morocco, Jordan and Bahrain, all staffed with at least one American lawyer. Also, we are starting to run a large Iraq legal-reform initiative out of our Amman, Jordan, office because it is simply too dicey having expats in Iraq right now.

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