



Independent journalist investigation

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The materials presented in the independent journalist investigation are based exclusively on documents, articles in mass media and speeches by officials of "The All-Ukrainian Network of People Living with HIV/AIDS" Charitable Organisation.

Part 1.

GOOD INTENTIONS.

In May this year, a number of printed mass media and web sites published presentation materials of "The All-Ukrainian Network of People Living with HIV/AIDS" Charitable

Organisation about the opening in Kyiv of the non-state, **non-profit-making** medical centre "100% Life" whose founder and member is the All-Ukrainian Network of People Living with HIV.

The centre is positioned by the senior officials of the All-Ukrainian Network as "a unique project of evolution of the patient community that will provide an alternative in receiving services, international treatment protocols, state-of-the-art drugs, and, most importantly, there'll be no stigma and discrimination towards all patients, irrespective of their status".

The Network's senior officials – head of the coordination council of "The All-Ukrainian Network of People Living with HIV/AIDS" Dmytro Sherembey, head of the Network's policy and advocacy department (as of the date when the news was published at network.org.ua – author's note) Vitaly Tkachuk and others stressed that the Centre **was a non-profit-making** one, saying that "profit **won't be accumulated in someone's pocket**, it will be re-invested in medical services, in expansion, since the owner of this centre is "The All-Ukrainian Network of People Living with HIV" Charitable Organisation".

Funds for it were allocated by the Global Fund to Fight AIDS, Tuberculosis and Malaria and Expertise France 5% Initiative; equipment for the centre was contributed by Elena Pinchuk Foundation.

As stated in an article at the web site WWW.AFEW.ORG, "According to estimates by the Network's head (head of the coordination council of the All-Ukrainian Network of PLWH Dmytro Sherembey – author's note), 50,000 USD invested in the clinic will become several millions in 20 years. At the same time, money spent at the clinic by a patient will become a service for somebody who also wants to live **rather than the owner's profit**. Thus, by providing primary-level medical services, the centre will receive financing from the state based on the "money follows the patient" principle. Also, the centre can provide a number of diagnostic and medical services at rates that will later be determined by the state for the secondary level. This money will be used to develop the medical establishment.

The pilot clinic was opened in Poltava in the autumn of 2016, and this year the medical centres in Kyiv, Zaporizhzhya, Lviv, Chernigiv and Zhytomyr will receive their first patients.

The first such centre abroad will be set up in Moldova – they have liberal laws. Georgia and Kazakhstan are also interested, says head of the coordination council of the All-Ukrainian Network of PLWH Dmytro Sherembey.

The good, altruistic objectives of the newly-created Centre and their scale have aroused genuine interest, attracted attention and made us turn to the origins – the legal basis of this centre and, first of all, the Articles of Association of the Medical Centre "100% Life".

And here, first questions and unexpected answers came up.

Question one: Is this organisation really a non-profit-making one? A view through the prism of Ukraine's laws.

clause 133.4.1 of the Tax Code of Ukraine defines the requirements an organisation should meet to get the status of a non-profit-making one:

A non-profit-making organisation is one "whose constituent documents prohibit distribution of income (profit) received or its part among the organisation's establishers, members, employees (except for their labour remuneration, charging of single social contribution), members of its management bodies and other persons related to them".

So what is behind the attempt to deceive the Ukrainian and international community, senior government and municipal officials?

Is it an intention to conceal concrete natural persons' enrichment plans behind the declared non-profit-making status?

Answer one: Overview of the Articles of Association of the Medical Centre "100% Life".

Distribution of income into private pockets is described in the most sincere way in section 12 of the Articles of Association titled "Procedure for payment of dividends to the Company's members".

Yet the subject of profit-making runs through the entire Articles of Association.

Section 1 "General Provisions" has the message: "For doing entrepreneurial activity and getting profit";

Section 2 "Rights and Obligations of the Company's Members" declares:

"The Company's members have the right to take part in distribution of the Company's profit and get their share of dividends".

Right here, the categories of "pockets" are given into which profit received should be distributed. "Members of the Company can be legal and natural persons that are Ukraine's residents, non-resident legal persons, foreign nationals, stateless persons that have been admitted to the Company in accordance with the established procedure and comply with the provisions of these Articles of Association".

That is, a structure was built using the Global Fund's money and officially registered in Ukraine which is intended, according to its Articles of Association, to bring profit into private pockets.

While the Global Fund's money accumulated from donors, first of all, US taxpayers, are provided for the state of Ukraine, not for private pockets.

Perhaps, I'm being too naive, but I want to believe this.

Participating in the opening of the Centre "100% Life" in Kyiv were, in particular, state officials – first deputy head of Kyiv City State Administration Mykola Povoroznyk, Director General of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine" Volodymyr Kurpita and UNAIDS Director Jacek Tyszko.

They all became hostages of and unwitting participators in the untruths told by the senior officials of the PLWH Network.

Unfortunately, a web site created as part of the US Government and the Global Fund cooperation initiative / Leadership, Management and Governance Project helped to spread the lies.

The web site of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine".

The article is titled "The first **non-profit-making** Medical Centre "100% Life" has been opened in Kyiv".

An excerpt from it: "The medical centre is a **non-profit-making** establishment. Some of the medical services for patients will be guaranteed by the state as provided for by the medical reform. All money received from services provided for a fee (for example, certain tests) will be used to develop services for patients".

And what are these services for a fee that are timidly referred to at the web site of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine" as "(for example, certain tests)"?

First, let me cite clause 3.1 of the Articles of Association: "**The Company is a healthcare institution**"

And put here a number of the provisions of Article 4 of the Articles of Association regarding the subject of the Company's activity:

- activity of insurance agents and brokers;

- collection, processing and/or disposal of production waste and secondary resources;

- pecuniary and financial mediation;

- wholesale trade for fee or based on contract;

- providing the services of saunas, facial rooms and massage rooms;

- doing foreign economic and other activities not prohibited by the existing legislation.

This makes me assume that the "healthcare" declared by the Company can be gradually substituted with the more profitable areas of activity, with money going into private pockets.

Part 2.

You can get an idea of the existing nature of income distribution at the medical centre "100% Life" based on information about the centre's activity in Poltava.

According to an article placed on the web site WWW.AFEW.ORG, "the Poltava clinic was opened in the autumn of 2016". "The Poltava clinic became profitable as early as six months after opening. Narcology has turned out to be in the highest demand, says Yaroslav Blyakharsky, head of the social entrepreneurship division of the PLWH Network".

The PLWH Network providently doesn't make a detailed report on the results of the Centre's financial activity in Poltava available to Ukraine's general public.

Not surprisingly.

The Articles of Association of the Centre established by "the open and transparent" Charitable Organisation "The All-Ukrainian Network of PLWH" that only declares good objectives contains section 13 "Commercial Secret and Confidential Information".

Part 3. Questions to be answered.

According to the information provided in mass media, the Poltava centre reached the breakeven point in half a year. And then – profit. It's clear that money had been invested earlier that precede profit.

There're questions once again: What amount of money? Who financed the creation of the centre in Poltava? Who's a member of this establishment in Poltava?

At the time of state registration of the Articles of Association of the Centers "100% Life" in Poltava and Kyiv (before the new edition of the Law of Ukraine "On Limited Liability and Additional Liability Companies" came into effect), the old edition of the Law was in force whose Article 143 said that "the Articles of Association of a limited liability company should contain data on the amount of its authorised capital and **each** member's share in it..."

And if in the Articles of Association of the Centers "100% Life", versions of 2017 and 2018, **only**

the share of the Network is stated (2,000 UAH), can we say that there's only one member of the Centers in Poltava and Kyiv, namely the Network?

Which held on its own, unilaterally, so-called "general meetings of members"?

Or there're other legal and natural persons, and the Network violated Ukraine's legislation by having not stated in its Articles of Association signed by its officials the shares of other members?

Ukraine's general public is awaiting answers to these questions.

It would also be helpful to get an answer to the question of how the establishment's profit has been used, what dividends have been paid and to whom. (Reaching the breakeven point in half a year is superprofit by the international standards.)

Ukraine's general public still remains in the dark about this.

Perhaps, Ukraine's tax authorities are able to find answers to these questions.

One more aspect of the company's activity. Ukraine's legislation declares that a company's articles of association determines the minimum amount of the company's property that secures its creditors' interests.

It should be noted that the Company's authorised capital provided by "The All-Ukrainian Network of PLWH" is still 2,000 UAH (less than 80 USD).

And although profit, according to the information, was received, the authorised capital hasn't been increased since the date when the Poltava center was registered in 2017.

Given the above, it can be said that neither pecuniary humanitarian gratuitous aid from the Global Fund, nor the cost of the expensive equipment contributed by Elena Pinchuk Foundation to the medical company "100% Life", nor the contribution by Expertise France 5% Initiative weren't engaged by the establishers and members and weren't involved in the formation of the authorised capital of the above-mentioned medical company.

Also, nothing can be said about re-investment of dividends in the authorised capital.

Thus, having not provided conditions for involving the additional sources of the formation of the authorised capital of the company "100% Life", the establishers and members in the two years the Company has existed haven't made any attempt to transfer in good faith sufficient money on an annual basis to the Company's reserve fund.

For reference:

- The reserve fund was set up with the aim of forming financial reserves so that unforeseen expenses could be covered.

- Formation of an enterprise's reserve fund is a legislative requirement.

- The amount of the reserve fund should be at least 25% of the amount of the authorised capital, according to the legislation.

- The amount of annual transfers to the reserve fund, according to Ukraine's regulatory framework, should be at least 5% of net profit.

Summing up, the reserve fund of the Limited Liability Company "Medical Center "100% Life" set up to reduce the risks associated with doing business should be the ridiculous amount of about

20 USD.

That's the explicitly risky business set up by the establishers and members, first of all, by the PLWH Network, using, inter alia, the Global Fund's money.

In accordance with the Law of Ukraine "On Limited Liability and Additional Liability Companies", the Company is liable for its obligations with all the property it possesses.

And there're once again questions to be answered.

So what property does the Company "100% Life" have in Poltava and Kyiv, and what property belongs to its establisher, the PLWH Network?

The question is not an inane one, given that Section 5 of the Articles of Association "Foreign Economic Activity" reads: "The Company has the right to get foreign currency credits from foreign investors". And credits are usually given on a security and repaid with interest.

And one more question: If the Centre in 2018 again underwent the procedure of state registration with a legal address in Kyiv, what status does the Poltava establishment with the same name have? Who's its owner now?

Answers to these questions aren't known to Ukraine's general public. So, naturally, they are to be examined.

Part 4.

The Global Fund and the PLWH Network's commercial activity

The issue of financing by the Global Fund of the commercial components of the grant assistance for the PLWH Network should be a separate subject.

It should be noted that if grant proposals to the Global Fund are publicly discussed in some way or another, funds for implementation of the Network's commercial projects still aren't disclosed to the general public.

It's known that proposals for obtaining financing from the Global Fund for Ukraine are approved in writing in the name of the state of Ukraine by a Vice Prime Minister of Ukraine.

Before that, they're approved by the National Council to Control TB and HIV/AIDS with the Cabinet of Ministers of Ukraine.

How much money raised from donor countries and intended for the state of Ukraine has the Global Fund invested in the Network's commercial activity?

These questions were publicly re-addressed to the Secretariat of the National Council whose functions are performed by the Ministry of Health of Ukraine and to the Ministry of Health of Ukraine itself as a participant in the process.

According to the response (attached hereto), the Global Fund in 2018-2019 alone is to grant 242,496 USD for establishing and developing the medical centre "100% Life".

The money is to be provided under the Global Fund's work plan entitled "Implementation of a new model of HIV and TB prevention at the community level".

In connection with the aforesaid, some key issues regarding profitability of a business project should be clarified.

Start-up money invested by donors in a business project are to bring income and profit.

To illustrate this, let's turn back to the article at WWW.AFEW.ORG (material 5).

"According to estimates by Network's head (head of the coordination council of "The All-Ukrainian Network of People Living with HIV/AIDS" Dmytro Sherembey – author's note), 50,000 USD invested in a clinic will become 1,000,000 USD in 20 years".

That is, it confirms what D. Sherembey counts for, in this case – money in the amount of 242,496 USD donated by taxpayers of the donor countries, transferred to the Global Fund and granted by the latter to the Network's business project, and this money both today and in the short or longer term, directly or indirectly are involved in accumulating profit.

And this profit in the form of dividends must not go into the pockets of private individuals in a country being a humanitarian aid recipient.

Some history.

The Global Fund previously invested money in the PLWH Network's commercial operations.

The PLWH Network already ran commercial projects using the Global Fund's money.

I'd like to cite an official report by the Office of the Inspector General of the Global Fund to Fight

AIDS, Tuberculosis and Malaria ("Audit of grants provided by the Global Fund for Ukraine", GF-OГI-10-016 of 3 August 2012).

The All-Ukrainian Network of People Living with HIV/AIDS

"149. The Network initiated a number of **profitable** projects through three grant agreements with the Centre for Social Entrepreneurship Development (98% of which belongs to the Network). Thanks to the three grant agreements with the Centre for Social Entrepreneurship Development, the Network initiated a number of **profitable**

projects. They include setting up a cafe, a car wash, trade in parquet and leasing a pond for 20 years (the only remaining project). The total financing of these projects was 900,000 UAH (**approximately 113,000 USD**).

But in part (detailed information isn't available – author's note) due to the crisis in Ukraine in 2009, the cafe, parquet manufacture workshop and car wash were closed down.

150. Such projects should have generated profit, but at this social enterprise the situation was different. The Office of the Inspector General noted that projects were suspended after a certain period of time on a regular basis, and the company every year accumulated losses, having used about half of its capital. Primary assessment of the benefits of these business projects turned out to be unsatisfactory".

And once again, questions arise.

According to the Report by the Office of the Inspector General, the pond still was an object of commerce at the time of the inspection. What has become of it? Who does it belong to? What income did this object of commerce bring? How has this income been used?

As regards the cafe, car wash and trade in parquet, the Office of the Inspector General doesn't go into details about what became of them.

But these commercial projects have the material component, namely equipment, premises etc.

that must have been the PLWH Network's property.

They were either completely neglected or sold. If they were sold, to who, for what amount of money (compared to that invested by the Global Fund), who owns them now and how has the money been used by the PLWH Network?

It is obvious that in this project "100% Life" the PLWH Network as the founder, the member and a non-governmental organisation that declares openness and transparency, instead of making public its achievements with pride and detailed financial results in all the areas of its activity, tried to conceal all information in the mists of commercial secret and confidentiality.

It can be assumed that the reason for the information shroud is the possibility of distribution of profit into private pockets provided for in the Articles of Association of "100% Life".

It is believed that interested persons and organisations won't have difficulty getting through this shroud – in full compliance with Ukraine's legislation and in the interests of the state of Ukraine.

There're still questions to the Chairman of the Board, Board members and the Executive Director of the Global Fund.

Had the Global Fund's officials got familiarised with the constituent documents of the commercial project "100% Life" of the PLWH Network before investing money in the commercial projects of the Network of People Living with HIV/AIDS in Ukraine? At least just to know into whose private pockets it's planned to put, directly or indirectly, money of US and other countries' taxpayers that is transferred to the Global Fund and is directly involved in the formation of profit and dividends.

We put the same questions to the country's top officials, taking account of "attraction of budget funds" declared in section 4 of the Articles of Association as a subject of the Company's activity.

In other words, to whose private pockets?

We ask the same questions to the top officials of Ukraine's oblasts and cities regarding state and municipal funds that can be invested in the planned creation and activity of such centres in oblasts and go into private pockets.

But it's unlikely that these will only be the pockets of all those 240,000 people with AIDS in Ukraine who need direct financial support and of whom the senior officials of "The All-Ukrainian Network of People Living with HIV" tell so much.

And what's much more real: Will we see among dividend recipients over the course of time the well-familiar surnames of the senior officials of the PLWH Network, the Ministry of Health of Ukraine, officials of the Cabinet of Ministers of Ukraine, senior officials of the administrative bodies of Ukraine's oblasts and cities who favour or turn a blind eye on this?

Isn't there a real risk of transforming the Global Fund projects, charitable donations from donors from different countries, borrowings, financial transfers from the state and local budgets of Ukraine into profanation and outright discredit of intentions, due to the demonstrated "free style" of international aid implementation?

I have no intention to treat the provisions of the Articles of Association of the commercial project "100% Life" of the PLWH Network as planning for criminal money traffic through the Global fund.

To sum up, in order to make impossible by anyone and anytime of a such treatment of the activity of the commercial project "100% Life" of the PLWH Network, it will be appropriate to address public officials and senior officials of non - governmental organisations who do decision making.

Based on the aforesaid, we call on:

- the Donors of the Global Fund, first of all, the United States, to put their high attention towards the Global Fund's initiatives regarding the maintenance of the commercial projects of the Working plan of the Global Fund named "Establishing the new model of preventing of the HIV/AIDS and TB on the level of communities" in the countries receiving the humanitarian aid in order to reduce operational, programme and management risks;

- the Global Fund to maximize the efficacy of the monitoring of the maintenance of the commercial projects and programs in order to put into the action the Working plan of the Global Fund named "Establishing the new model of preventing of the HIV/AIDS and TB on the level of communities";

- at the meeting of the Global Fund Board to pay attention to the issue of implementation of commercial projects and programs of the PLWH Network in Ukraine in pursuance of the Global Fund working plan entitled "Implementation of a new model of HIV and TB prevention at the community level";

- the Global Fund to withdraw the money invested in the commercial project "100% Life" of the PLWH Network and then officially require that changes be introduced in the Articles of Association of the Medical Centre as a health establishment;

- to take the decision about providing badly needed grant assistance for Ukraine in the provision of bedaquiline and delamanid for the necessary number of treatment courses - in order to contain multidrug-resistant TB.

and to take action against the Network, a main recipient of the Global Fund's money in Ukraine, for violating the Code of Conduct for Recipients of Global Fund Resources;

- Acting Minister of Health of Ukraine Ms Ulana Suprun to turn at last her attention to the

commercial activity and intentions of a main recipient of the Global Fund - "The All-Ukrainian Network of People Living with HIV/AIDS" non - governmental organisation whose senior managers were appointed by her to the high government positions of Director General of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine" and deputy Minister of Health on European integration-related issues who's responsible for purchasing drugs.

But Ukraine is the only country with a high TB burden in the world that doesn't purchase neither bedaquiline nor delamanid, these state-of-the-art drugs to which the causative agent of TB has no resistance yet, and thus, is becoming increasingly dangerous to its neighbours.

(To be more precise, at the expense of charitable international projects run by PATH (USAID) and "Doctors Without Borders", Ukraine has bedaquiline for about 400 courses of treatment for the entire 42-million population and 7 thousand patients who already need it.)

- the Director General of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine" to make it impossible to compromise initiatives by the US Government that put effort into establishing and supporting the web site of the Centre for Public Health and to make sure that deliberately untrue information isn't placed at this media resource of the state institution.

- "The All-Ukrainian Network of People Living with HIV/AIDS" Charitable Organisation to report in detail to the general public, including at the web site of the Ministry of Health of Ukraine, about spending of the money received from the Global Fund and other foreign and domestic donors and earned as a result of implementation of the profitable business project "100% Life" in Poltava and Kyiv, as well as about the commercial property and money received and spent for the said business purposes previously, in particular, according to the report by the Office of the Inspector General of the Global Fund.

- the mass media which by mistake, in contravention of Ukraine's legislation, covered the activity of the Centre as a non-profit-making one to make a denial;

the relevant law enforcement agencies, state financial control and monitoring bodies, State audit office, tax enforcement organs

to review, in accordance with Ukraine's legislation, the materials that are submitted and to inform the general public about the review results;

- oblast governors and city mayors to bear in mind when receiving applications for money from the PLWH Network and the Centre "100% Life" that the Articles of Association of the Centre provide for distribution of profit into its members' and establishers' pockets;

There's no doubt that it's unfair when enrichment of certain persons is planned at the expense of gratuitous charitable donor aid provided for the entire population of Ukraine who'll get access to profit.

P.S. It is of great concern that the management and control bodies of the Global Fund turn a blind eye and don't react to even those **actions with signs of corruption** at the main recipients in Ukraine that have been officially recorded, including those concerning money granted by the Global Fund, and have resulted in a loss of more than 10 million UAH.

These facts are set out in the AUDIT REPORT based on the results of an internal audit by the Ministry of Health of Ukraine of the State Institution "Centre for Public Health with the Ministry of Health of Ukraine" No. 13-15/06 of 8 September 2017.

Also of great concern is that the management and control bodies of the Global Fund don't react to the aforesaid flagrant violations of the Code of Conduct for Recipients of Global Fund Resources by the main recipients in Ukraine, the All-Ukrainian Network of People Living with HIV/AIDS and the State Institution "Centre for Public Health with the Ministry of Health of Ukraine".

According to the Code of Conduct:

"3.2.3. Besides, recipients shouldn't be involved in embezzlement, theft, misappropriation or misuse of the Global Fund's resources as defined in Annex I to this Code".

Also of great concern is that the senior officials (including Dmytro Sherembey as deputy head) of the Ukrainian National Council who direct and coordinate its activities, as well as the Commission on Oversight turn a blind eye and don't react to the aforementioned facts. They aren't mentioned in any of the National Council's documents.

So, in the absence of adequate reaction both from the Global Fund and inside the country amid the persistent epidemic threat, I have to appeal to the international community, first and foremost to the donors of the Global Fund, for proper reaction and support.

Igor Gorbasenko, journalist, member of the National Union of Ukraine's Journalists, member of the National Council on TB and HIV/AIDS Control with the Cabinet of Ministers in Ukraine in 2008-2018.

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[Annexes](#)