Evaluation Report

on

Chapters I-IV of the JSRSAP:

Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges; Increasing Competence of Judiciary; Increasing Accountability of Judiciary; Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions.

Areas of Intervention 1.1, 2.1, 2.2, 3.1, 4.1

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National Expert

October 2019
Kyiv

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EXPERTISE FRANCE

PRAVO-JUSTICE

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INTRODUCTION

The Report was prepared as a part of the overall JSRSAP[1] evaluation exercise by the team of PJ experts with the support of the project team and concerns the results of an assessment carried out by Reda Moliene,[2] Marina Naumovska,[3] acting as international experts and Olena Ovcharenko[4] acting as a national expert. The assessment has been conducted in accordance with the tailored evaluation area-specific methodology.[5]

The Report has benefited from the extensive co-operation with the High Council of Justice, Council of Judges, High Qualification Commission of Judges, State Judicial Administration, National School of Judges, courts and other bodies of the judicial system.

The key points and important findings are highlighted (underlined) in the text. Recommendations are developed and formulated (in bold) on the basis of relevant findings and deliberations, as well recapitulated at the end of the Report accordingly.

1 The parts of the Action Plan under consideration are attached to this report. See Annex III.

2 **Reda Moliene**, international expert, possesses an extensive experience of working for approximately 20 years in Lithuanian Judiciary, namely Supreme Administrative Court, Constitutional Court, Supreme Court, in different positions (Judicial Assistant, Adviser to the President of the Court, Chief of Staff). For the past six years she held the position of the Head of the National Courts Administration in Lithuania. R. Moliene led different initiatives and projects on developing the effectiveness of judicial system, among which court re-mapping reform (merging of 49 local courts into 12); introducing witness and victim support system in courts; developing performance indicators; drafting new version of Law on Courts, etc. She has been working as international expert in Ukraine from the beginning of Justice Reform in 2015. She has an experience of expert activities in EU projects on institutional capacity building, judicial selection, appointment and performance evaluation, court management in Ukraine, North Macedonia, Moldova and Armenia.

3 **Marina Naumovska-Milevska** has been involved in justice sector reform projects for more than 20 years, both at international and national level. She was Assistant (Deputy) Minister of Justice and Team Leader of the Inter-Ministerial Committee for the reform of the Macedonian judiciary, responsible for drafting strategic documents and monitoring its implementation. She has been working under the framework of international projects with the EU, World Bank, Council of Europe, OSCE, UNDP and other international organizations as key expert in Albania, Armenia, Azerbaijan, Georgia, Kosovo, Moldova, Montenegro, Portugal, etc. Her experience covers support of judicial reforms in harmonizing judicial legislation, improving efficiency within the judiciary and conducting assessments and analysis. She was responsible for defining HR policies, designing court performance indicators, identifying training needs and implementing court surveys. Ms Naumovska-Milevska has a vast experience in institutionalizing training and strengthening capacities of various members of the legal professions. She is CoE trainer in judicial ethics, training methodology, court time management tools, judicial statistics and cyberjustice tools.

4 **Olena Ovcharenko**, national expert, is an Associate Professor in Law at the Yaroslav the Wise National Law University of Kharkiv. She teaches on topics of operation of the judiciary and law enforcement agencies, on organization of the bar and legal liability of judges. Olena Ovcharenko holds PhD in law and her research concerns the problems of judiciary and status of judges. She has more than 10 years of expert experience in different international projects and initiatives, namely, USAID Project (expert on judiciary, status of judges, accountability of judges; assessment of legal acts and regulations and developing recommendations on their improvement), CoE's Project on Strengthening the System of Judicial Accountability in Ukraine, Project of Ukrainian Helsinki Human Rights Union on Issues of Transitional Justice in Ukraine, PRAVO-Justice project. She has produced more than 100 publications on the issues of access to justice, judicial reform and legal liability of judges.

5 See Annex I, for the assessment-specific activities matrix.

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ABBREVIATIONS

APC	Administrative Procedure Code
Canadian Project	Support to Judicial Reform in Ukraine Project of the Commissioner's Office for Federal Judicial Affairs of Canada
CC	Constitutional Court of Ukraine
CCJE	Consultative Council of Judges of Europe
CEPEJ	European Commission for the Efficiency of Justice
CoE	Council of Europe
CoJ	Council of Judges
CPC	Civil Procedure Code
ECHR	European Court of Human Rights
EU	European Union
EUAM	European Union Advisory Mission for Ukraine
EUD	European Union Delegation to Ukraine
JSRSAP/Strategy	Justice Sector Reform Strategy and Action Plan of Ukraine for 2015-2020
HCJ	High Council of Justice of Ukraine
HACC	High Anti-Corruption Court
HCIP	High Court on Intellectual Property
HQCJ	High Qualification Commission of Judges of Ukraine
IAC	International Advisory Council under the High Council of Justice
Judiciary/Judicial System	System of courts, self-governance and governance institutions
Law on HCJ	Law on the High Council of Justice (2016)
Law on Judiciary	Law on Judiciary and Status of Judges (2016 version)
Law on Fair Trial	Law on Ensuring the Right to a Fair Trial (2015)
MT	JSRSAP monitoring tool
NABU	National Anti-Corruption Bureau of Ukraine
NAPCU	National Agency for Prevention of Corruption of Ukraine
NSJ	National School of Judges of Ukraine
PIC	Public Integrity Council
PJ	EU funded Project Support to Justice-related Reforms in Ukraine (PRAVO-JUSTICE)
SAPO	Specialized Anti-corruption Prosecutor's Office
SBI	State Bureau of Investigation
SC	Supreme Court of Ukraine
SJA	State Judicial Administration of Ukraine
SJGB	Single Judicial Governance Body
UJITS	Unified Judicial Information Telecommunication System
USAID	United States Agency for International Development, "New Justice Program"
Venice Commission	**European Commission for Democracy through Law (CoE's advisory body on constitutional matters)**

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BASELINE

Overall state of affairs

Professional and impartial judges, fair process, clear and reasoned decision, good service are the most important expectations of the persons who submit their disputes concerning their civil rights to a court, those who are being brought to a court as an accused person or those who appear before a court as a witness.

These key principles of independent and accountable judiciary have been lacking in Ukraine. As most other post-communist countries, Ukraine inherited a low legal culture marked by subordination of all branches of powers to political leadership, nepotism in selection and appointment of judges, legally unjustified decisions, perception of courts as powerful institution of punishment which do not necessarily serve justice and protect human rights. As a result, ordinary people could no longer hope for a fair judicial process. According to a survey conducted by USAID in 2015,[6] only 5% of Ukraine's population trusted Ukrainian courts. It was probably the lowest rate among all the countries of the former Soviet Union.

The degradation of the judiciary arguably became one of the key factors that led to the Revolution of Dignity of 2013-2014. These social and political upheavals exacerbated the most visible, obvious, grave and complex problems and shortcomings in judiciary, that were also encountered in the process of development of the Strategy:[7]

- Fragmented and weak judiciary governance system leading to the political dependence of the judiciary;
- Lack of effective instruments for the protection of judicial independence as an essential condition for a fair trial;
- Lack of transparent and objective procedures of judicial appointment and promotion ensuring professional judicial corpus and, instead, existence of some unclear, vague, formally described, although usually ignored, process surrounded by rumours and marked by signs of nepotism and corruption;
- Deficit of the accountability of judges in the form of performance evaluation, duty to declare assets and interests, promotion of norms and standards of ethics, effective disciplinary proceedings. Disciplinary liability usually was nothing more than merely the instrument of getting rid of "disloyal" judges;
- Absence of effective measures for the prevention of corruption in judiciary;
- Lack of institutional capacities and instruments of effective performance management, and absence of service quality monitoring;
- Weak competence improvement and training system in respect of correspondence of training programs to the real needs of judiciary, institutional capacities and methods used;
- Absence of effective court system with overlapping jurisdictions, lack of uniformity of practice, absence of efficient cassation, etc.

The Revolution of Dignity reset the political power and set the goal of attaining a higher public trust in judiciary as one of the key steps in implementing the rule of law in Ukraine. This has led to the changes in the most important areas of judicial system which addressed

6 https://newjustice.org.ua/wp-content/uploads/2018/05/2015_FAIR_July_Public_Survey_Lustration__ENG.pdf
7 http://sudovareforma.org/en/institutes/strategy/

the abovementioned weaknesses and defects. Overall, these goals regarding the reform of judiciary are reflected in the first four chapters of the JSRSAP. They were subsequently embodied in the relevant legislation.

Chapter I. Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges

One of the crucial aspects of building an independent and effective judiciary is a clear and efficient institutional set-up of the system, especially of the central judiciary governance bodies, impacting formation of judicial corpus, career of judges, setting strategic goals and ensuring independence of judges.

During the period of 2010-2014 Ukraine lacked effective judicial governance able to ensure judicial independence as a key prerequisite for a fair trial and effective protection of people's rights. The governance of judiciary was fragmented and weak, which rendered the judiciary politically dependant.

As stated in the Strategy, the "[i]nsufficient independence of the judiciary from the executive and legislative branches, including by reason of the existing constitutional provisions" has significantly hampered the administration of justice.

For this reason, the first chapter of the JSRSAP is aimed at increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges, in particular by improving the institutional set-up of judiciary governance.

One of the first pieces of legislation addressing the most important aspects of judiciary and its ability to ensure the rule of law was the Law on Ensuring the Right to a Fair Trial adopted by Verkhovna Rada in February 2015. This law clarified and bolstered the guarantees of judges' independence and immunity by better defining their rights and duties.

In June 2016, the Verkhovna Rada voted on amendments to the Constitution of Ukraine in part concerning the administration of justice. The key goal of these changes was to remove political influences on judges and to strengthen their autonomy. The same month the new law "On the Judiciary and Status of Judges" was adopted. The goal of this law was to expand the updated constitutional underpinnings of the system of justice. It established a comprehensive reshape of the system by removing political influences in the process of selection of judges, introducing a concept monitoring of the judges' lifestyle, establishing for the first time a judge's duty to submit a declaration of family ties and a declaration of integrity and involving the public through the creation of the Public Integrity Council. The law also provided for the establishment of new courts – the High Anti-Corruption Court and the High Court for Intellectual Property.

After the Amendments to the Constitution and the new version of the Law on Judiciary and Status of Judges had come into force, particular changes in the status and competence of the judiciary governance and self-governance institutions were introduced. These changes concerned the set-up of judicial governance and status of the newly established High Council of Justice with wide range of constitutional powers. Its predecessor – Вища рада юстиції, had very limited powers, in particular:

- proposing to the President of Ukraine regarding the appointment of judges to positions or their dismissal from office;
- considering the disciplinary cases of the judges of the Supreme Court of Ukraine and judges of the Higher specialized courts;

- considering complaints about the decision to bring (and refuse to apply) to the disciplinary liability of judges of appellate and local courts as well as prosecutors.

Chapter II. Increasing Competence of Judiciary

The initial catalyst for changing the system of selection, appointment, training and evaluation of judges was the abovementioned widespread public distrust in the judiciary, and the general assumption that judges are not qualified, are prone to pressure or bribe-taking, and therefore do not serve the rule of law. This context warranted the creation of a more transparent and technocratic system of the selection and evaluation of judges. The civil society oversight was institutionalised with the creation of the Public Integrity Council (PIC), acting alongside with other judiciary governance bodies in the judiciary selection and evaluation. This is an important achievement of the civil society in Ukraine.

In 2014 the Ukrainian judiciary legislation did not provide for an adequate career development system for judges, as required by European standards. Some principles for the selection of judges of the courts of appeal and cassation were formally provided for by Articles 73, 75 of the Law of Ukraine “On Judiciary and Status of Judges” (2010). However, the disadvantages of this system of selection of judges consisted in the lack of an automated system for verification of results of examinations performed by candidates, lack of a thorough and comprehensive integrity check, as well as too wide discretionary powers of the High Qualification Commission of Judges of Ukraine (HQCJ) in determining the results of selection. There was no detailed procedure which would comply with the principles of transparency, publicity and proportionality. Judges as well as people outside the judiciary perceived competitions held by the HQCJ as closed and non-transparent and therefore resulting in nepotism and corruptive actions in appointment procedures.

Moreover, the Law of Ukraine “On Judicial System and Status of Judges” adopted in 2010 abolished the Institute of Judicial Qualification Assessment. The formal basis for such a decision was the inconsistency of this institute with the fundamental principle of judicial independence. This led to a situation where during the whole judicial career no performance assessments were carried out and no effective checks of the results were executed. The only way of challenging the legitimacy of certain actions of a judge was to lodge a disciplinary complaint against this judge.

This was accompanied by the lack of comprehensive and practice-oriented system of judicial training and qualifications development.

Chapter III. Increasing Accountability of Judiciary

Ukraine was not an exception among other post-soviet countries in respect of the failure to ensure effective accountability of judiciary through application of agreed standards on professional ethics, disciplinary liability, introducing systematic approach to prevention of corruption in judiciary and respecting judicial independence at the same time. Particular rules and practices started developing after 2002, but more substantive changes could be observed after 2010.

On the 24 October 2002 the Congress of Judges adopted the Code of Judicial Ethics. This Code was significantly amended in 2013. Nonetheless, lack of consistent and uniform practice of interpretation and application of norms of ethics has become an obstacle for effective implementation of unified ethical behavior culture in judiciary and effective prevention of conflicts of interests and unethical actions.

From 2010 the system of disciplinary liability of judges has been developing more consistently. In July 2010 the Law on Judiciary and Status of Judges provided a new institutional set-up for disciplinary liability of judges: two-level centralized institutional review was established with respective competence given to the HQCJ and the former High Council of Justice (Вища рада юстиції).

An important prerequisite for reforming the system of legal liability of judges was the judgment of the European Court of Human Rights (ECHR) in the case of *Oleksandr Volkov v. Ukraine* of 9 January 2013,[8] where the Court found unlawful the dismissal of a judge of the Supreme Court of Ukraine Oleksandr Volkov from office for breach of oath. The decision identified 18 systemic issues that Ukraine was required to address as part of the Judicial Disciplinary Liability Institute reform, including: the combination by a member of the HCJ of the role and powers of "a prosecutor" and "a judge"; the possibility of holding the mandate of a member of the HCJ and the Member of Verkhovna Rada at the same time; the absence of a procedure for removal of an HCJ member whose impartiality is in doubt; absence of limitation period for disciplinary action against judge; lack of clear criteria and procedure for bringing judges to disciplinary proceedings; excessively wide discretion of the disciplinary body to interpret the concept of "breach of oath"; etc.

The second precondition for the reform was the Revolution of Dignity, during which people had demanded that the authorities set up a fair system of justice. Following demands of civil society to have more transparent and effective accountability of judges and after amendments to the Constitution entered into force in 2016, substantive changes to the institutional set-up and procedures and more systematic approach to measures of prevention of corruption in judiciary were re-enforced: obligatory integrity check of acting judges, more substantive practices of management of conflicts of interests, procedures of application of disciplinary liability, etc.

Chapter IV. Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions

The Strategic Plan of the Judiciary for 2013-2015, approved by the XIth Congress of Judges of Ukraine, stated the following mission of the Judicial System of Ukraine: to protect rights, freedoms and legitimate interests of persons and citizens, to protect rights and legitimate interests of legal entities as well as interests of the state through the timely, effective and fair resolution of legal disputes on the basis of the rule of law. The stated mission was entirely in accordance with European concepts and principles.

The Venice Commission, in its Report on the Rule of Law, states that the principle of legal certainty is essential to the confidence in the judicial system and the rule of law. Legal certainty is also essential to productive business arrangements and development, and to economic progress. It is therefore required that the courts, especially the highest courts, establish mechanisms to avoid conflicts and ensure the coherence of their case-law.[9] The importance and indispensable character of a coherent case-law for the principle of the rule of law is clearly echoed in the jurisprudence of the ECHR.[10]

8 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}

9 Report on the Rule of Law. The European Commission for Democracy through Law. Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e

10 See for example, Beian v. Romania, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83822%22]}

A well-organized court system features clear-cut jurisdictions and powers, proper procedural regulation, developed coherent court practice, recognized authority of the highest judicial institution empowered to conduct review in cassation and to ensure uniformity of interpretation and application of law.

At the period when judicial reform was planned huge gaps with respect to abovementioned organizational and regulatory aspects of Ukrainian court system were revealed: ineffective court map with a large number of small first instance courts which were sometimes not capable of administering justice due to various reasons (lack of judges, small number of judges without particular specialization, lack of financial resources, etc.); cumbersome four-tier court system with cross-cutting powers (for example, high-specialized courts and the Supreme Court) and jurisdictional disputes; outdated procedural codes (for example, Code of Administrative Offences Procedure was essentially a relic of the Soviet past with only minor amendments), lack of legal culture and absence of understanding of concept of alternative dispute resolution, misuse of concepts of case-law and judicial precedent, etc.

All these shortcomings affected the quality of judicial activities and length of the proceedings, and resulted in violations of procedural rights as often confirmed by the ECHR. This led to the negative perception of judiciary by Ukrainian society. Therefore, the judicial reform had to tackle these shortcomings as one of the priority areas.

ADEQUACY OF JSRSAP AND ITS PARAMETERS

Overall assessment

Analysis of structure of the Strategy leads to an overall conclusion that it covers all major aspects of judiciary quite comprehensively.

Another important positive feature of its structure is the comprehensiveness of areas of intervention and relevance of the outcomes to those areas in general.

At the same time, experts would like to draw attention to certain issues and shortcomings which may require consideration in future, when drafting a similar policy document on judiciary:[11]

1. Areas of intervention **should focus on crucial challenges: independence, accountability and effectiveness of judiciary.**
2. Having in mind still low public trust in judiciary, a very important aspect, which should be taken into account, is **the need to address demands and expectations of people**. Therefore, expectations of people should be indicated specifically, even considering a separate part of the strategy on people-oriented justice aspects which could, for example, cover such areas as: **participatory administration of justice both by promoting system of citizens' participation in judicial process** (dispute resolution or criminal proceedings) as juries and lay-judges and **development of alternative dispute resolution culture; user-friendly and efficient court performance and services** by using user satisfaction and other surveys to measure performance of judicial institutions, introducing Client Service Standards and/or other quality management systems with special focus on support of vulnerable groups (victim/witness); **expanding citizens' role in the development of and control over efficient performance and accountability of judiciary** by facilitating efficient reporting on judiciary's performance, involving representatives of civil society in judiciary's governance bodies, etc.
3. Chapters in the policy document **should follow the logic of the areas of intervention without, however, overlapping in their targets**. For example, two very complex areas, in particular judiciary governance (including legal and organizational framework of institutional set-up, legal and institutional instruments for safeguarding judicial independence, distribution of powers and competences, institutional cooperation and communication, strategic planning and management) and formation of judicial corpus (including selection/appointment procedures, career system, judicial performance evaluation) were merged into one chapter. This created some inconsistency and confusion. Moreover, all important aspects of judicial career system were not completely covered by the first chapter and were included in the second one as well. Moreover, some actions and outcomes overlap in both chapters, for example, the outcome *All cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis* in Chapter I is further replicated by the outcome *Competitions based on clear, transparent and objective criteria and procedures held in all cases of filling particular post* in the Chapter II. Therefore, it is recommended to strictly separate **these two blocks: streamlining judiciary governance and developing transparent and objective system of appointment and career of judges**, including judicial training system, which is in its task inseparable from judicial career (now it is included in a separate chapter, which lacks any logic).

[11] See in more detail bellow analysis of adequacy of separate chapters.

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4. When planning the optimization of a court map and activities as well as development of procedural rules and uniform court practice, which is undoubtedly very important prerequisite for well-functioning justice system, it is recommended **to focus more** on the **conceptual aspects and to leave the specific procedural rules to be drafted in the course of the implementation of strategic goals**.
5. In some cases separation of outcomes that are more likely to reflect actions and are intertwined as regards their nature and content with other outcomes (for example, 3 outcomes (32-34) on formation of pool of trainers in the National School of Judges (NSJ)) appears artificial and leads to lack of clarity in the structure of the strategic document. It is **suggested formulating fewer, less detailed and rather general outcomes comprising several aspects of the same issue to be addressed by the strategy.**
6. Furthermore, certain outcomes virtually replicate respective outputs, for example, outcome "implemented institute of judicial dossier" replicates output "system of judicial dossier in place". Therefore, it is recommended to **separate more clearly outputs and outcomes**.
7. There are also separately indicated outcomes which are in principle absolutely corresponding and therefore replicate each other, as for example, "Institutionalization of principle of functional (personal, procedural) independence of judge dealing with particular case from other judges" and "Functional immunity of judges regulated in clear and foreseeable manner". It is recommended **to reduce outcomes in number, but to develop them in their "weight" and impact on the system** in the new circle of planning.

Chapter I. Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges

The areas of intervention of Chapter I cover quite comprehensively all three major aspects of its overall goal: strengthening the independence; streamlining the governance and improving the appointment. Though, when it comes to the actions, appointment and career system is not directly reflected in Chapter I.

Chapter I refers to actions on increasing balance of duties and powers, development of strategic planning, improving budget management and developing capacities. These actions are targeted at a more effective judiciary governance institutional set-up and institutional capacity building. Judicial appointment and career system as such do not fall within the scope of this Chapter. However, outputs and outcomes have aspects of development of judicial appointment and career system (for example, such outcomes as: all cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis; transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures, etc). This creates some inconsistencies in the logic of the chain: aim-action-outputs-outcomes.

In the experts' opinion, having in mind the complexity and huge scope of both areas, judiciary governance (including legal and organizational framework of institutional set-up, legal and institutional instruments for safeguarding judicial independence, distribution of powers and competences, institutional cooperation and communication, strategic planning and management) and formation of judicial corpus (including selection/appointment procedures, career system, judicial performance evaluation), **these two areas (streamlining judiciary**

governance and developing transparent and objective system of appointment and career of judges) should be separated. Moreover, it is necessary to avoid an overlap with other areas of intervention of the strategy, taking into account, that the second chapter of the JSRSAP is dedicated to the increase of competence of judiciary, including linkage between performance standards and career of judges, etc.

Furthermore, it should be noted, that separation of some outcomes seems to be artificial and meaningless. It burdens action plan with some redundant complexity. For example, outcome "Judiciary governance system granted with clear-cut powers for guaranteeing independence of judges, supporting activities of courts and judges and representing their interests, including, powers to represent judicial branch as a whole" and outcome "Judicial governance bodies clearly mandated and exercising their task to protect independence of judiciary (structural independence) and judges (functional independence)" are completely inseparable as they cannot be performed or evaluated separately. **It would be advisable to formulate fewer but more complex and conceptual actions and outcomes to be achieved**.

Chapter II. Increasing Competence of Judiciary

It was already mentioned that in Chapter I, which should by its nature and scope deal primarily with institutional set-up, certain outputs and outcomes also covered aspects related to development of judicial appointment and career system. However, in the experts' opinion, it is Chapter II, aimed at increased competence of judiciary, that **should be focusing on all appointment, career, evaluation and training issues**. That would be more logical, consistent and comprehensive.

With regard to action 2.1.1. "Development of performance standards and evaluation system with linkages to careers of judges and courts staff", it is noted that integration of judges and court staff into one set of outcomes creates some confusion and results in lack of clear links between relevant outputs and outcomes. For example, one outcome refers to the competition based on clear, transparent and objective criteria and procedures held in all cases of filling particular post. It seems that this outcome by its scope (having also in mind wide scope of area of intervention) comprises both competition to judicial and non-judicial office. At the same time, among the outputs only one output related to this outcome could be found and it concerns only the review of written rule for appointment to a judicial post, re-assignments (transfer to another court) and promotions developed on basis of pilot experience, with clear, transparent and objective criteria and procedures. Therefore, it is recommended to **distinguish outputs and outcomes more clearly**.

Furthermore, it should be noted that in some cases separation of outcomes that are more likely to reflect actions and are intertwined as regards their nature and content with other outcomes seems to be artificial. It leads to lack of clarity in the structure of the strategic document. It is **suggested formulating fewer, less detailed and more general outcomes, comprising several aspects of the same issue to be addressed by a policy document.**

Chapter III. Increasing Accountability of Judiciary

Actions foreseen in these areas of intervention correspond to the aim of the intervention: both development of disciplinary and ethical framework and specific anti-corruption internal and external oversight mechanism are particularly targeted at increase of accountability of judiciary.

In respect of setting up a chain of action-output-outcome, several remarks are to be made. Action 3.1.3 “Development of internal and external oversight mechanism to combat and prevent corruption” is supported by 7 outputs of different nature (regulatory measures on inspectors, declarations of assets, judicial immunities; institutionalization of judicial dossier, random allocation of cases, public oversight board under SJGB. However, when it comes to outcomes relevant to these outputs, certain lack of consolidation and coherence between the outcomes and outputs exists. For example, output № 6 on institutionalization of random case allocation system does not result in any of the outcomes. The outcome “mixture of discussion-based and incentive/repression-based approaches of disciplinary oversight” would definitely result from action 3.1.2 “Development of disciplinary framework”. Also, some outcomes practically replicate respective outputs, for example, the outcome “implemented institute of judicial dossier” replicates the output “system of judicial dossier in place”.

There are also separately indicated outputs which are in principle absolutely corresponding and therefore duplicate each other. In particular, this applies to “Institutionalization of principle of functional (personal, procedural) independence of judge dealing with particular case from other judges” and “Functional immunity of judges regulated in clear and foreseeable manner”.

As for the preceding chapters, it is **recommended to reduce the number of outcomes and to develop them in their “weight” and impact on the system in a new circle of planning**.

Chapter IV. Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions

The attempt to address separately the issue of the map and jurisdictional structure of court system, procedural aspects that affect the quality and length of procedures as key to the access to court and promotion of alternative dispute resolution (ADR) is absolutely adequate and justified, taking into consideration the abovementioned shortcomings and their effect on public trust in the judiciary.

With regard to the structure of this chapter some gaps in its logic and inconsistencies in its design of goals and actions could be observed. For example, action 4.1.1 on ‘Optimization of courts network, management of court resources’ encompass not only re-mapping of the court system, clear-cutting jurisdictions, but also comprises “review of regulatory framework of ADRs” which seems somewhat out of scope of this action. Moreover, some outcomes of abovementioned action could hardly be associated with it. In particular, this applies to “improved requirements for procedures for appeal and cassation complaint”. Action 4.1.2 results in outcomes which seem to be too detailed, overlapping and of minor importance. Some of them are to be considered more as specific procedural aspects or legal provisions (“ability for party to withdraw or discontinue appeal at any stage”) than as stand-alone outcomes.

When planning the optimization of a court map and relevant activities, as well as development of procedural rules and a uniform court practice, which are undoubtedly very important prerequisites for a well-functioning justice system, it would be recommended **to focus more on conceptual aspects and to leave specific procedural rules to be drafted in the course of the implementation of strategic goals**.

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ACCURACY OF MONITORING OF AND REPORTING ON JSRSAP IMPLEMENTATION

This chapter covers the assessment of accuracy of maintaining the monitoring tool specifically designed for the policy instrument under consideration with regard to the outputs defined in the JSRSAP five intervention areas:

- 1.1 Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance
- 2.1 Increased Competence through Improved Career and Performance Management
- 2.2 Increased Competence through Improved Professional Training System
- 3.1 Accountability through Improved Ethical and Disciplinary Framework
- 4.1 Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions

In general, it could be concluded that the authorities (institutions) concerned understand and use the monitoring tool correctly and the level of accuracy is fairly high. However, having in mind that these intervention areas cover wide scope of outputs, the experts tried to identify patterns or examples marked by inconsistencies.

The accuracy of reporting is the highest as regards the outputs dealing with legislative improvements. In those cases, the outputs dealing with legislative changes follow the same set of steps (comparative analysis, concept, drafting law, adopting law) which seems much clearer and therefore easier for the authorities to follow and to justify the achievement of the output (which is usually the adopted law). For example, the output “Revision of the legal framework, including amendments to the Constitution of Ukraine on judicial governance set-up” of the action 1.1.1. “Increasing balance of duties and powers in judiciary governance” was planned to be fulfilled by performing comparative analysis of relevant legislation, developing concept of amendments, drafting and then adopting relevant legislation. The monitoring tool reports that it has been achieved by 2017 in its entirety: all steps had been taken till 2016 up to drafting and the adoption, and entry into force took place in 2017. This corresponds to the actual situation and is justified with the changes introduced in the Constitution and new version of the Law on Judiciary in 2016.

However, experts want to draw the attention to the fact that steps designed to achieve the output are often standard for legislative process: analysis, concept, draft legislation, adopted legislation.Though, for some goals to be considered as achieved, this standard procedure is not enough. It is especially important to introduce some nuanced indicators for a more comprehensive evaluation of the state of affairs after legislative changes with regard to some initiatives which have effect only when they are implemented in practice. For example, the abovementioned action 1.1.1. “Increasing balance of duties and powers in judiciary governance” could be considered as achieved not just with the adoption of the regulatory instruments providing for a more balanced system, but only when those instruments are effective in practice.

In Chapter II, action 2.1.1 „Development of performance standards and evaluation system with linkages to careers of all judges and courts staff“ was planned to be implemented with an output „Court Performance Evaluation Framework (CPE) approved, harmonising performance standards for all courts. Staff assigned to apply CPE“. In the monitoring tool it is reported, that this has been achieved entirely in 2017 by implementing all planned steps:

analysis, review of indicators of effectiveness of judicial performance, development of the concept of the evaluation of effectiveness, implementation of unified standards of the quality. Here, the experts would draw attention to two important aspects. First of all, the action, output and measures planned are not synchronized in their content (or at least it is not clear what was the intention): the action is targeted at evaluation system regarding judges and court staff performance; output is described as court performance evaluation framework and finally the activities/measures focus on application of unified performance quality standards. Therefore, when there is a gap in precise description of measures to be implemented and lack of direct correspondence with the action, it can create difficulties for reporting bodies in evaluating the progress accurately. This was the case with this particular action. Secondly, the experts find the progress reporting inaccurate: the action was reported as achieved by 100 %, however, the experts find that the action was achieved no more than by 25-40 % regarding the existence of performance management system.[12]

In action "2.2.1 Development of initial training (IT) system" secondary legislation, together with the programme and curricula, was also quoted as an indicator of achievement which is a comprehensive justification. At the same time, for evaluation of achievements it would be very helpful if some information about the initial training programme was available as a reference to the last Report of the NSJ where all the data justifying the output "2. Review of requirements for the term of preparation, experience, professionalism, integrity of the candidate for the position of judge" could be found. Therefore, it would be advisable to make references not only to the legislation (in justification/commenting part), but also to some examples of application of this legislation (how it works in practice).

Action 2.1.1. "Development of performance standards and evaluation system with linkages to careers of all judges and courts staff" presents several inaccuracies. Though it has to be acknowledged that efforts and improvements were made in this regard, in the experts' view, the extensive list of achievements seems to be somewhat overwhelming and inaccurate. Namely one could not say that the system is put in place by developing concept, surveys and analysis. Along these lines, the experts would like to make a reference to the recommendations made in the part on attainment of the outcomes presented in the area of intervention "2.1 Increased Competence though Improved Career and Performance Management", in particular parts 6, 7 and 8, and part 20 of this Report. Moreover, the authorities reported that by approving the framework of court performance appraisal system: "Court performance appraisal system; standards, criteria, indicators and methods" (Council of Judges (CoJ) Decision No. 28 02.04.2015) they have actually achieved the output "Pilot implementation of the new efficiency management system in courts". The justification made for the achievement of this output, in the experts' view, is not accurate. The adoption of the regulation or framework documents (as it is in this case) cannot be regarded as the implemented pilot efficiency management system which should already be operational as an output is formulated.

In action 3.1.1. "Improving ethical standards" the steps taken to attain the outputs seem to be accurately presented, however they are not sufficient to consider that some aims are fully achieved. For example, the authorities report as fully achieved the output "Ensure the proper functioning of the Ethics Committee" by noting a decision of the CoJ for the establishment of the Working Group. However, it is doubtful that a mere decision to establish a WG could be considered as sufficient for proper functioning of the Ethics Committee.

Action 3.1.2. "Improving disciplinary standards" does not seem to be accurately presented. For example, the authorities report that the output "Ensure the proper functioning of the

[12] See further analysis of outcomes 15-20.

electronic complaint system for judges" is fully achieved. However, the electronic complaint system for judges has not yet been put in place. The authorities justify the achievement of the output by noting the "Order of the Chairman of the State Judicial Administration of Ukraine (SJA) dated 27 July 2018, which approved the Technical specification of the Unified Judicial Information Telecommunication System (UJITS)". In the experts' opinion, this alone could not be considered as full achievement of the output.

In action 4.1.1. "Optimizing the court system and managing the court resource base" the reporting was very ambitious. In several outputs no justification for the achievement of the output has been provided. As previously suggested, making many efforts and even, as in most cases, introducing legislation does not necessarily mean that the output was achieved. The experts would like to draw the attention to the recommendation made by experts in relation to the ADR and court mapping in parts 22 and 24 of this Report especially in relation to the achievement of the outputs "Review of the legal framework on the organization of courts. Optimization of the court system" and "Revision of the regulatory framework on alternative dispute resolution methods".

Therefore, it is concluded that with regard to the majority of outputs the authorities accurately assess their level of achievement. However, often the sources of verification or justifications are missing or are inadequate. It should also be noted that the steps in the monitoring tool for many outputs are the same as the stages of legislative improvement process and therefore are not applicable to those outputs which are not dealing with regulatory amendments.

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ATTAINMENT OF RELEVANT JSRSAP OUTCOMES

Chapter I. Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges

Area of Intervention 1.1 Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance

Part 1. Judicial governance system

1. Optimized number of judiciary governance bodies with clear separation of powers between each body and with one body at the pinnacle of all judiciary policy development and implementation

The 2016 amendments to the Constitution and the Law on Judiciary have introduced a new approach to the division of powers between the judicial governance bodies. According to Article 127 of the Law on Judiciary, the organizational forms of judicial self-governance in Ukraine shall be implemented through: 1) meetings of judges in courts; 2) Council of Judges of Ukraine; 3) Congress of Judges of Ukraine. Governance is executed by the HCJ, HQCJ, NSJ, SJA as well.

In 2017, the High Council of Justice (Вища рада юстиції) was reorganized into the High Council of Justice (Вища рада правосуддя) (HCJ). It became a new constitutional body established in accordance with the transitional provisions on justice of the Constitution of Ukraine, the transitional provisions of the Law on Judiciary as well as with the transitional provisions of the Law on the High Council of Justice, that came into force on 5 January 2017. With establishment of the HCJ, the competence to appoint and to remove judges was transferred from the Ukrainian Parliament (Verkhovna Rada) to the HCJ.

Since 2017 the HCJ has received a number of new powers, placing it at the pinnacle of the judiciary governance system, including the mandate to guarantee authority and independence of justice; to appoint and remove judges; to execute all disciplinary proceedings against judges of all courts; to define judiciary policy strategic planning; to agree on the number of judges in courts; to communicate on behalf of the whole judiciary; to suspend the power of a judge accused of crimes to deliver justice; to represent the judiciary in the budgeting process etc. Moreover, the independence of judiciary is further strengthened by the composition of the HCJ, with majority of its members being judges.

The Law on Judiciary resulted in redistribution of powers between the HQCJ and the HCJ, the new constitutional body. It is worth noting that the reform of judicial system introduced a new term into Ukrainian legislation to characterize activities of the HQCJ and HCJ, namely, judicial governance. The Strategy itself does not specify the meaning of this term. At the same time in Part 1, Article 92 of the Law on Judiciary, the HQCJ is defined as a state body of judicial governance which operates on a permanent basis in the justice system of Ukraine. **HQCJ** is responsible for selecting candidates to judicial positions, holding of qualification assessment of judges, organizing and updating register of vacant positions of judges, initiating, proclaiming and running all the competitions on the positions of judges, transferring judges from one court to another, ensuring maintenance of judicial dossiers and dossiers of judicial candidate. The **HCJ** is a collective, independent constitutional body of state power and judicial governance which operates in Ukraine on a permanent basis to ensure the independence of the judiciary, its functioning on the basis of responsibility, accountability to society, formation of a fair and

highly professional judges' corpus, compliance with the norms of the Constitution and laws of Ukraine, as well as professional ethics in the activities of judges and prosecutors. "The purpose of judicial governance is to create and ensure for judicial authorities such conditions of operation in which the activity of the court will be transparent, justice will be fair and in compliance with the Constitution of Ukraine and laws, and judges as the human essence of the judiciary will meet the high standards of professionalism and integrity."[13]

The **CoJ**, which operates on the basis of Article 130-1 of the Constitution of Ukraine, as a supreme body of judicial self-governance between the Congress of Judges of Ukraine (Article 133 of the Law on Judiciary) acts to protect the professional interests of judges and to resolve issues of internal court activity. The CoJ is elected by the Congress of Judges of Ukraine. It is empowered to develop and provide measures to ensure independence of courts and judges, improvement of organizational support for operation of the courts, to consider the issues related to legal protection of judges and their social security, and to exercise control over the prevention of conflicts of interests.

According to Article 104 of the Law on Judiciary, the **NSJ** is a state institution with a special status in the justice system established under the HQCJ. The **NSJ** provides training for judicial candidates, basic and advanced training for judges, including those appointed to administrative positions in courts, and for court staff. It also conducts surveys on improving the judiciary, on status of judges and justice administration, and provides methodological guidelines for courts, HQCJ, HCJ.

The **SJA** is a state body in the justice system that provides organizational and financial support to the judiciary within the scope of its statutory powers (Article 152 of the Law on Judiciary). The SJA is accountable to the HCJ and has territorial departments throughout Ukraine. The SJA's scope of competence includes, in particular preparation of judiciary's budget requests; ensuring information and regulatory support of court operation and operation of the Unified Judicial Telecommunication Information System; development of proposals for the improvement of the organization of courts activities; collection and analysis of court statistics; maintaining efficient case management and archiving practices; ensuring operation of the Service of Court Security, etc. Given the competence of the SJA, it is difficult to clearly define it as a body of judicial self-governance. However, its competence is closely connected to judicial governance. In the course of the judicial reform of 2016, the SJA changed its subordination: till 2016 it reported exclusively to the CoJ, and as of 2016 the HCJ has received broad functions coordinating the activities of the SJA.

This new judiciary governance institutional set-up should be considered as providing for less fragmented and more structured governance system with separate institutions granted a clear mandate of particular powers. Regulatory basis allows to separate more clearly powers of different institutions. The constitutional basis for governance "pyramid" at the pinnacle of which a constitutional body HCJ is foreseen as having a power and responsibility of leadership and coordination of governance has established legal background for a clear institutional set-up. It is observed that the regulatory framework for judicial self-governance and representation of the judiciary in judicial governance bodies is in line with European standards.[14]

Having said that, it should be also mentioned, that apart from a regulatory basis and institutional set-up, *de facto* optimized separation of powers, effective performance and collaboration of all these institutions is crucial. In this respect some issues can be indicated as re-

[13] Article of prof. O.V. Kurganskyi (Odessa Law School) "On Judicial Governance".http://dspace.onua.edu.ua/bitstream/handle/11300/9887/KURHANSKYI%20152-154.pdf?sequence=1&isAllowed=y

[14] CCJE Opinion 1 (2001)

quiring improvements to ensure effective cooperation, communication, accountability of all players of judicial governance mechanism. Analysis of the overall system, leads to the conclusion that *de facto* functioning of governance system in respect of appropriate representation of judiciary cannot be considered entirely satisfactory. Therefore, the goal is considered achieved only partially (50 %). This is owing to objective reasons (complicated governance system with excessive number of bodies) as well as subjective factors (lack of leadership,[15] of effective coordination and cooperation, and the competitive approach among the institutions). These aspects will be elaborated further in the analysis of the following outcomes.[16]

Moreover, **further steps in strengthening institutional leadership, especially with regard to setting the goals for the judiciary, strategic planning, budgeting procedures, ensuring clear accountability of SJA and effective coordination of its activities for ensuring proper infrastructure and services to courts have to be taken**. Best practices of streamlining organization of disciplinary proceedings (allowing members of the HCJ to focus not only on this function, but also to consider strategic issues related to judiciary as a whole), capacity building in leadership, management skills and communication would be essential in this respect.

2. Judiciary governance system granted with clear-cut powers for guaranteeing independence of judges, supporting activities of courts and judges and representing their interests, including powers to represent judicial branch as a whole

3. Judicial governance bodies with clear mandate and exercising their task to protect independence of judiciary (structural independence) and judges (functional independence)[17]

According to the Constitution and the Law on HCJ, this independent constitutional body of public authority and judicial governance is empowered to guarantee independence of the judiciary and its functioning on the grounds of responsibility and accountability before the society. Constitutional duty to protect judicial independence is performed by taking measures, prescribed by law, in individual situations, and by monitoring and collection of information and delivering annual report on judicial independence.

Granting the HCJ the power to provide binding opinions on draft laws on the establishment, reorganization or liquidation of courts, functioning of the judicial system and the status of judges should be considered as a positive step in strengthening judicial governance and representing interests of judiciary. Thus, in accordance with European standards and practices,[18] the Ukrainian judiciary received an effective tool for the evaluation of draft laws that are directly related to the functioning of the judicial system. Since 2017, the HCJ has considered several bills and rendered various decisions. For example, in November 2018, the HCJ approved an advisory opinion on the draft Law of Ukraine "On Amendments to the Law of Ukraine" On Judiciary and Status of Judges", submitted for consideration by the Verkhovna Rada of Ukraine under the legislative initiative of the Cabinet of Ministers of Ukraine. In fact, the draft bill provided for a reduction of judicial remuneration. The HCJ did not support

15 Prof. Mykola Onishchuk, the Chairman of the NSJ: "As it comes to subjective aspects of judicial governance, the leaders and members of judicial governance sometimes lack leadership competencies, a strategic approach, resistance to some political influences. These aspects have become an obstacle to an effective reform."; Pravo-Justice experts' meeting with M. Onishchuk on 16 July 2019.

16 See outcomes 2, 3 bellow.

17 These two outcomes as being inseparable (both dealing with institutional set-up and state of affairs of their performance in respect of safeguarding judicial independence and representing interests of judiciary) are evaluated jointly.

18 According to the Opinion No 10 (2007) of the Consultative Council of Judges of Europe, all draft laws concerning the status of judges, the administration of justice, procedural laws and, more generally, any draft law which may influence the judiciary, its independence, or may limit the guarantees of access to justice, should be considered by Parliament only after obtaining the opinion of the Judicial Council of the country.

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the draft law for the reason that it contradicted the Constitution of Ukraine and restricted the existing guarantees for judges and would therefore negatively affect their independence and the authority of justice. The draft law was not approved.

It is important that the constitutional changes have established regulatory preconditions for the effective safeguarding of judicial independence. It is clearly provided that the independence and integrity of a judge are guaranteed by the Constitution and laws of Ukraine; influencing the judge in any way is forbidden. For the first time guarantees for ensuring the functional immunity of judges have been defined at the constitutional level. According to Part 1, Article 58 of the Constitution, a judge may not be detained or kept under custody or arrest without consent of the High Council of Justice before a sentence is passed by a court, with the exception of a detention of a judge during or immediately after committing a grave or an especially grave crime. Until 30 September 2016, the power to remove judge's immunity rested with the Verkhovna Rada of Ukraine which rendered the process politicised, slow and marked by negative publicity. In response to the criticism of European experts and following European standards, this function was granted to the HCJ as an independent and impartial body of judicial power with majority of judges in its composition.

Furthermore, Article 129 of the Constitution of Ukraine embedded the fundamental principle of independence of judges and liability for disrespect to the court. Safeguards to ensure this principle are also enshrined in the Law on Judiciary as well as in procedural legislation. For the first time, the status of a judge was embedded at the constitutional level. It is now envisaged that a judge cannot be held liable for a court decision adopted by him or her, except for having committed a crime or a disciplinary offense (Article 126). This rule fully complies with the established European standard. In particular, Recommendation of the Committee of Ministers of the Council of Europe on Judges: Independence, Efficiency and Responsibilities (2010)[19] envisages that "the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in cases of malice".

The HCJ, executing its power to ensure the authority of justice and the independence of judges, received 312 requests from judges in 2017 and 436 requests in 2018. In 2017 and 2018, 125 and 317 requests were considered respectively, and the HCJ took measures in 57 and 73 cases respectively. The law provides the HCJ with effective mechanisms to respond to judges' requests concerning illegal interference with their activities (Article 73 of the Law on HCJ). HCJ maintains and publishes on its official website a register of judges' notices on interference with their activity; submits to the relevant bodies or officials an application on the identification and prosecution of persons, who have committed acts that violate the guarantees of independence of judges or undermine the authority of justice; submits a motion for the dismissal of a judge from an administrative position in case of his or her failure to comply with the decision of the HCJ to the meeting of the respective court; requests the prosecutor's office and law enforcement agencies to provide information on the disclosure and investigation of crimes committed against the court, judges and their families, and employees of the court; etc..

HCJ's competence to ensure independence of judges allows it to take these measures both on its own initiative and at the request of the judge, courts, bodies and institutions of the justice system. In addition, relevant authority or official is required to examine HCJ's request to take measures to ensure the independence of judges within ten days, unless otherwise provided by law.

[19] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805afb78

The HCJ maintains a register of judges' reports of interference with their activities on its official website.[20] This registry is updated promptly. The HCJ's activities in this area can be assessed positively as attempts to protect legitimate interests of judges.

An analysis of the work of the HCJ to protect judges from unlawful interference shows that the forms of undue influence on the court are very diverse. Based on the general classification of negative influence on the judiciary in general and on particular judges, it is possible to distinguish external and internal factors of influence. The former include a variety of manifestations of undue pressure on the court and attempts by various officials to persuade the court to give a favourable decision. External factors can further be divided into state (attempts of civil servants and other officials to influence the court decision) and public (public intervention through media and other forms in the activity of the judiciary). The most common forms of interference with the activities of judges that violate the guarantees of judicial independence are, for example, registering false information about judge's committing a crime under Article 375 of the Criminal Code of Ukraine (making a deliberately unlawful judicial decision) in the Unified Register of Pre-trial Investigations as a means of pressure on a judge; threats and psychological pressure on the judge to give a decision; transfer of funds to the judge's accounts; delaying pre-trial investigation of criminal proceedings against judges; abuse of the right to apply to the HCJ with disciplinary complaints against a judge; etc.

Since this mandate was given to the HCJ, two annual reports on the State of Independence of Judges were published. The first report was announced and published in 2018 (for the year 2017).[21] The report addressed the main elements of judicial independence, indicated international standards on protection of judicial independence, and explained the new constitutional role of the HCJ in this respect. This was the first comprehensive document on the state of affairs of judicial independence in Ukraine.

In 2019 the second annual report (for the year 2018) was published.[22] This Report reflected the positive changes, negative incidents and situations, and gave further recommendations. The first part deals with positive aspects of judicial reforms regarding their impact on protection of judicial independence (for example, establishment of the High Anti-Corruption Court, ensuring the principle of majority of judges elected by their peers in the composition of the HCJ, development of the communication of judiciary, etc.). Further, situations considered to amount to a risk of or a breach of judicial independence encountered and criteria for establishment of accidents jeopardizing judicial (institutional and functional) independence are indicated. Finally, conclusions and recommendations, both for legislative amendments (regarding more accurate regulation of the procedure of opening criminal proceedings against a judge, etc.) and organizational measures (court security, communication with media, etc.) are formulated. There have been instances of law enforcement agencies prosecuting judges in an illegal manner in order to blackmail and incline judges to give decisions of certain content. In order to eradicate this practice, it is necessary to strengthen liability of officials of the prosecutor's office, National Anti-Corruption Bureau of Ukraine (NABU), the National Police of Ukraine, and other state authorities for unduly influencing judges. A very negative factor is that, according to the HCJ, the facts of apparent interference with the activities of judges are investigated too slowly by law enforcement agencies.

20 http://www.vru.gov.ua/add_text/203

21 http://www.vru.gov.ua/content/file/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0_%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_%D0%B7%D0%B0_2017_%D1%80%D1%96%D0%BA_.pdf

22 http://www.vru.gov.ua/content/file/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0_%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_%D0%B7%D0%B0_2018_%D1%80%D1%96%D0%BA.pdf

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Encountering challenges, problems, issues and their open discussion by the HCJ should be considered an indicator of development of an effective system of institutional protection of judicial independence. This must be followed by a subsequent measuring of the progress (comparing data of current period with previous years).

At the same time, it **is crucial not only to indicate challenges in protection of judicial independence, but also to address the issue of accountability of judiciary**. These two dimensions of independence and accountability are inseparable in modern concept of effective judiciary. They are prerequisite conditions for public trust in judiciary. These concepts are permanently emphasized by European organizations working in the field of developing standards of judicial performance.[23] Therefore, **the idea of expanding the scope of annual report on the state of judicial independence, presented by the HCJ, with the reporting on the state of affairs and challenges in respect of performance of courts should be further discussed**: statistics on workload, backlogs, length of proceedings, disciplinary proceedings against judges, major projects implemented, etc. This should be done in a comprehensive manner: with public consultations and discussions; submitting examples, overview of the most important high-profile cases, analysis of reasons behind the cases, process of which took more than five years, etc.

Another very important instrument of ensuring independent functioning of the judiciary and representation of its interests is the HCJ's participation in the budgetary process regarding the financial provision of the judiciary. The HCJ was granted this new budget-related competence during the 2016 judicial reform. According to Part 16 of Article 3 of the Law on HCJ, the HCJ participates in determining the expenditures of the State Budget of Ukraine for the maintenance of courts, bodies and institutions of the justice system in accordance with the Budget Code of Ukraine. Thus, according to Part 3 of Article 33 of the Budget Code of Ukraine, the HCJ submits proposals to the Cabinet of Ministers of Ukraine before March 1 of the year preceding the planned one concerning the priority tasks of financial security of the judiciary and its independence. These tasks, in line with budget legislation, determine the main priorities for funding of the courts for the next 3 years and are taken into account when drafting and approving the Budget Declaration, which is a medium-term budgetary planning document that defines the budgetary framework and indicators of the state budget.

This extremely important authority enables the HCJ to actively defend the judiciary's proposals for its financing in the process of programming the State Budget, to cooperate with the Cabinet of Ministers of Ukraine, which plays a key role in the allocation of State Budget expenditures, to obtain budgetary appropriations and to cover all current appropriations strategic needs of the judiciary. Prior to the judicial reform of 2016, the HCJ did not have adequate powers which led to arbitrary reduction of judiciary's expenditures by the Cabinet of Ministers or the Verkhovna Rada of Ukraine during the preparation and adoption of the State Budget. The judiciary did not have effective tools to influence this situation which led to the systematic lack of funds and the courts' inability to meet their financial and organizational needs. However, there is a lot to be done in terms of making this function substantial. Due to the current scope of engagement of the HCJ and the limited capacities of its Secretariat in handling budgetary issues concerning the whole judicial system, the budget-related competence remains predominantly formal.

[23] See, for example ENCJ's Sofia Declaration 2013 On judicial independence and accountability; ENCJ's Report On Independence, Accountability and Quality of Judiciary 2018-2019. https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/GA%2019/ENCJ%20IAQ%20report%202018-2019%20adopted%207%20June%202019%20final-july.pdf

It has to be noted that, in general, functions of representation of judiciary's interests, support of the activities of courts and judges have been performed by several other governance bodies in accordance with the field of their competence. According to the Law on Judiciary, the HQCJ has rather limited powers to represent the judiciary as a whole, however it has the competence to liaise with foreign institutions and projects of international technical assistance. HCJ is endowed with similar powers of international cooperation (Part 2 of Article 3 of the Law on HCJ). The Chief Justice of the Supreme Court (SC) has some authority over the representation of the judiciary. Thus, according to the Law on Judiciary, the President of the SC represents the court as a public authority and a system of courts of general jurisdiction in relations with other state bodies, local self-government bodies, individuals and legal entities, as well as with judicial bodies of others. However, in practice the task of representing the interests of the judicial system allocated to the President of the SC is quite limited and is rather of ceremonial nature.

The main burden on the representation of the judges' interests rests with the CoJ, which is the supreme body of judicial self-governance when the Congress of Judges is not in session. During the Reform, the CoJ has lost a number of its powers in the sphere of the administration of the judicial system, in particular concerning the harmonization of normative acts regulating the organization of the judiciary, representation of the judiciary in the budget process, and supervising the activity of the SJA. All these organizational and managerial powers were transferred to the HCJ. To date, the CoJ has the following powers: it develops and organizes implementation of measures to ensure the independence of courts and judges; considers issues of social protection of judges and their families, makes appropriate decisions on these issues; supervises the management of conflicts of interests in the activity of judges. In the period the CoJ has taken particular actions that should be evaluated positively, for example:

- in 2018, the CoJ considered over 250 appeals from judges on issues related to judicial independence, to which the CoJ responded within its competence. Most appeals concerned remuneration, interference with the administration of justice, violation of requirements for distribution of cases, etc.
- the decision of the CoJ of 19 November 2018 No. 78 recognized that the legislative initiatives on reduction of judicial salaries is an encroachment on the independence of judges and is inadmissible in a democratic society. In addition, by the above decision, the CoJ upheld the position of the Plenum of the Supreme Court, expressed in the Decision of 16 November 2018, regarding the inadmissibility of suspension in 2019 of the provisions of subparagraph 3 of Section 24 of Section XII "Final and Transitional Provisions" of the Law on Judiciary. In this way, the CoJ, together with other judicial authorities, ensured that the Verkhovna Rada of Ukraine did not decide on the reduction of judges' remuneration in 2019;
- On 2 July 2018, the CoJ adopted decision No. 40 on certain issues of organizing the work of investigative judges during off-hours. In particular, the aforementioned decision stipulates that the remuneration of judges and employees of court apparatus engaged in off-duty work (weekends and holidays) shall be made in accordance with the provisions of the Labor Code of Ukraine. In this way, the CoJ has resolved an important and outstanding problem with the proper remuneration of judges and court staff;
- In June 2019, the CoJ participated in a joint statement of leaders of judicial governance on the situation in the judicial system, emphasizing the catastrophic shortage of judges in local and appellate courts. This statement accelerated the start of competitions for posts of local and appellate courts which were announced within one or two months after its publication.

At the same time, the Chairman of the CoJ Bogdan Monich notes that "the role of the CoJ as the supreme body of judicial self-government in the period between congresses of judges has been significantly weakened in recent years. Today, there is a need to return certain powers to it. The idea of allocating it a role in the procedures of appointment of judges to administrative positions should be discussed. In addition, it would be worth giving it the role of providing advisory opinions on legislative initiatives and the relevant legislation on issues that fall within the competence of the CoJ."[24]

If the CoJ is to be deprived of influence on the administrative processes in the judicial system, then its representative and communication competences are to be strengthened. For example, judges often address the CoJ when conflicts arise in the courts. The CoJ is forced to intervene and has previously done so successfully, but unfortunately it is deprived of effective powers in this area. As B. Monich, the Chairman of the CoJ, also points: "The HCJ is the constitutional body for disciplinary proceedings of judges and safeguarding the independence of judiciary. This competence is very complex and requires a lot of efforts and resources. As it comes with everyday judges' activities, threats to their independence, incidents of external pressure or interference with judicial activities, judges refer these issues to the CoJ as the body of self-governance primarily representing their interests. However, formally the CoJ has no power to deal with these cases. At the same time, the HCJ is overloaded and it is therefore difficult for judges to expect effective investigation of these situations and prompt reaction from the HCJ. Similarly, courts usually address issues and challenges to the CoJ regarding the management of resources, both human and financial/material. However, the CoJ has no formal power to effectively respond and supervise the SJA. At the same time SJA's Head is participating in the meetings of the CoJ and Congresses of Judges, answers questions and reports (because at those the most questions from courts are discussed), though being accountable to the HCJ."[25]

Taking into account what has been said, analysis of the overall system as a mechanism, leads to the conclusion, that *de facto* functioning of governance system in respect of appropriate representation of judiciary cannot be considered as being absolutely satisfactory. It is caused both by objective reasons (complicated governance system with excessive number of bodies) and subjective factors (lack of leadership,[26] effective coordination and cooperation, competitive approach of institutions).

It must be noted that the constitutional status of the HCJ gives it power and **competence to represent the interests of judiciary in general**, i.e. apart from or alongside the particular functions specifically listed in legislation. This **perception ought to be further promoted as granting not formalistic, but a real and effective representation of judiciary in relations with other branches of power, safeguarding judicial independence, facilitating accountability of judiciary and ensuring effective collaboration of all players of judiciary's governance mechanism**. In this regard, a critical approach should be applied to a possible re-distribution of powers between the HCJ and the CoJ. This approach should take into account the complex competence of the HCJ which has been assigned to it by law (disciplinary proceedings, appointment of judges, etc.) and has resulted in a large number of disciplinary cases, lack of judges and the need to streamline procedures of filling va-

24 Meeting of B. Monich with PRAVO-Justice expert R. Moliene on 15 July 2019.

25 Meeting of B. Monich and members of CoJ with PRAVO-Justice experts on 14 November 2019.

26 Prof. Mykola Onishchuk, the Chairman of the NSJ: "As regards the subjective aspects of judicial governance, leaders and members of judicial governance sometimes lack leadership competencies, a strategic approach and resistance to some political influences. These aspects have become an obstacle for an effective reform."; Pravo-Justice experts' meeting with M. Onishchuk on 16 July 2019.

cancies of judges, solving issues of transfer of judges, etc. This approach should also take into account that the CoJ, a self-governance body primarily aimed at representing interests and needs of judiciary, is perceived by judges as the primary body to be addressed with all important questions of administration of courts, communication activities, training needs, staffing issues, fair distribution of recourses, etc.

It must be noted, that some important steps to facilitate coordination in judicial governance have already been taken. A good example of attempt to coordinate developments of judiciary with the support of international donor organisations is the establishment of the International Advisory Council (IAC) under the HCJ (HCJ's decision of 13 June 2017, No. 1548/0 / 15-17). It is a permanent collegial advisory body which facilitates the establishment of links between national bodies and institutions of the justice system with foreign and international organizations; provides advisory, expert, technical support to the HCJ, to the bodies and institutions of the justice system regarding their activities, in order to use the best international expertise to fulfil the goals and objectives of judicial reform envisaged by the Strategy; ensures that the public and the international community are informed about the state of implementation of judicial reform, the activities of the judiciary and related legal institutions in Ukraine; etc. A member of the IAC may be a representative of a national, foreign, international institution or organization that cooperates with national authorities and institutions of the justice system, provides expert, advisory, technical or material assistance for the development of the judiciary in Ukraine. The IAC provides an opportunity to discuss challenges of judicial system of Ukraine in executing reforms, to agree on joint actions and ensure more targeted donor support, to coordinate activities of different bodies. Activities of this institution are related to the most important areas of judicial reform[27] and can help to facilitate progress.

Another example of facilitation of joint efforts of all players of judicial governance is a multilateral Memorandum on the interaction and cooperation of representatives of the justice system of Ukraine signed by the HCJ, the SC, the HQCJ, the SJA, the NSJ, the CoJ on the initiative of the HCJ on 27 April 2018. The Memorandum states that the main forms of cooperation of representatives of the justice system of Ukraine are: management meetings, prompt exchange of information, materials and documents; creation of committees, working groups, commissions for specific areas and issues; having round tables, conferences. The Memorandum emphasizes the mutual responsibility of all judicial authorities to implement joint decisions and to support each other's initiatives.

One more example as positive attempt of HCJ to facilitate dialogue and joint efforts for developments in judiciary is the establishment of Advisory Board of Presidents of Courts and the Communication Committee in 2016. The latter includes representatives of all judiciary governance/self-governance institutions, and heads of courts. These bodies serve as an important platform for discussing the problems of the judicial system and its strategic tasks.

It can be stated that there is a considerable progress in achievement of objectives of the Strategy in terms of empowering the judiciary authorities with the representation of the judicial branch (60 % for both abovementioned outcomes). At the same time, a more accurate **distribution of competences, enhancement of the cooperation, coordination of activities of all institutions of governance and self-governance of judiciary, as well as streamlining leadership in judicial governance ought to be advanced further**.

[27] For example, see the minutes of the last IAC's meeting on 11 September 2019.

4. Relevance of SJGB analysed in detail by merging the powers of HCJ, HQCJ and CoJ, structure of such constitutional body defined in accordance with its functions.

As it was already mentioned, significant number of bodies of self-governance/governance of judiciary sometimes create additional obstacles to effective functioning of governance system. It is inevitable that bodies with similar and sometimes partially overlapping powers get into competition, focusing on establishing/strengthening their role and power in the system, arguing about their competence and responsibilities, etc.

In Ukraine at least 6 bodies of judiciary self-governance/governance (HCJ, HQCJ, SJA, NSJ, Congress of Judges, CoJ) can be identified. It is difficult to make an accurate and clear-cut division of powers between all these institutions because some of them have similar functions with different mandates. As it was mentioned, for example HCJ, as the constitutional body, is formally empowered with the duty to protect judicial independence. At the same time, CoJ as the self-governance institution, composed of judiciary's representatives elected by their peers, is mandated to represent interests of judges and to consider issues related to legal protection and independence of judges (Par. 8, Article 133 of the Law on Judiciary).

HQCJ, HCJ and NSJ are participating with particular mandates in different stages of judicial reset, which is taking more than 4 years already. Judicial appointment is handled by the HQCJ, but with participation of HCJ at the final stage. This procedure has been criticized for being time-consuming, complex and for creating potential speculations on transparency.[28] Strategic planning and budgetary tasks are carried out by the SJA, with presumed albeit not always functional leadership of HCJ. Courts have been complaining about not being made aware of principles and criteria of budget distribution inside the system. The SJA argues that it has been preapproved by the HCJ (which therefore has to take responsibility for the final decision). At the same time, the HCJ declares that in fact the SJA, empowered by the law to ensure material, technical, financial support to courts and actually possessing all necessary resources for budget planning (at the moment HCJ has one person for strategic planning) is accountable for proper distribution of resources.

These examples show that, still featuring some fragmentized aspects, the system of judicial governance and self-governance is not always facilitating effective administration of judicial system and implementation of necessary reforms. Moreover, the representatives of above-mentioned institutions admit that effective joint actions, representation of interests of judiciary, co-working, unanimous communication with public and media sometimes is an issue.

In 2010, experts from the Venice Commission made the following observations when reviewing the Law on the Judiciary (version of 2010): "The bill under discussion lays down a very complex organization of the system of judicial self-government - such a complex one that sometimes it is confusing. Some similar or even identical functions are assigned to the powers of up to three bodies - meetings of judges, conferences of judges and the Council of Judges of Ukraine, and the decisions of each of these bodies are binding… Moreover, while prima facie the whole system seems to be extremely democratic, the existence of a number of bodies with similar or even identical functions is eroding the authority of each such body. In such circumstances, it will be necessary to ensure that the system, which is perceived as very democratic, does not in practice give rise to very weak institutions whose decisions will be abolished by much more powerful entities in the state."[29]

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[28] See more about judicial re-set further in Part 3 of Chapter I.

[29] Joint opinion on the Law on the Judicial System and Status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe. Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)026-e

Therefore, **there are reasons to consider whether it would be effective to re-shape the whole system of judicial governance by merging powers of some existing bodies** and empowering the HCJ which is dominated by judges and is tasked with safeguarding judicial independence, and forming judicial corpus, including selection, appointment, evaluation, training of judges. As it was already stated, some steps towards this kind of a mechanism have been already taken by expanding HCJ's powers during the 2016 judicial reform, bringing it closer to the model of an independent, powerful and authoritative judiciary leader. At the same time, the HQCJ and other bodies of judicial self-government envisaged by the Constitution still operate in Ukraine. It should be emphasized separately that the HQCJ and the HCJ are very busy today. Thus, as of 1 August 2019, the HQCJ has evaluated only half of the judges subject to the evaluation procedure. In July-August 2019, the HQCJ announced several large-scale competitions for court positions, including local and appellate courts. Other procedures initiated by the HQCJ are also pending.[30] Therefore, liquidation of this body should be considered in the context of abovementioned processes.

Therefore, it can be stated that the outcome of the optimization of the judicial governance bodies, including by creating a single body with joint powers of several institutions has been achieved partially (50 %), in particular in part concerning the determination of the powers of the HCJ at the constitutional level.

The idea of making judicial governance more effective, powers and competences more concentrated to avoid overlap or gaps, has been discussed recently in various events and expert reports, based on the analysis of practices and standards in EU and other countries.[31] Here, the experience and models of EU countries could be taken into account. For example, Portuguese High Council for the Judiciary (**Conselho Superior da Magistratura),** Spanish General Council for the Judiciary (**Consejo general del Poder Judicial**) **are mandated with judicial appointments, career issues, disciplinary proceedings, submitting legal opinions on draft legislation.**[32] The Law on HCJ allows it to create bodies for the exercise of its powers within its structure, and the list of these powers is not exhaustive in the Constitution of Ukraine. Therefore, **the integration of the HQCJ into the HCJ seems logical and consistent. It will allow to merge powers of selection and appointment of judges into one institution (HCJ) in accordance with recommendations of European institutions working in the field of judicial independence and the rule of law**. One of the key aspects here would be the composition of such body. Its majority should consist of judges, elected by their peers. Provided this body meets the requirement of its majority being judges, it could be considered an adequate instrument to exercise judicial self-governance.

Also, more accurate separation of powers between the HCJ and CoJ, if CoJ's is still being considered as separate body, could be discussed. The leadership potential of the CoJ as the highest body of judicial self-government, the activity of which is envisaged by the Constitution of Ukraine, could be also facilitated. It is obvious that the CoJ has the intentions and resources to more actively defend the interests of the judiciary and individual judges. However, due to the legislation on the judiciary, the CoJ is deprived of real tools to influence the situation. Therefore, **expansion of CoJ's powers in the area of representation and protection**

30 See more in the Part 5 of the First Chapter.

31 For example, Expert Assessment Report on Evaluation and Selection of Judges of Ukraine, November 2018 (PRAVO-Justice); discussions of experts of Round-table on Selection of Judicial Candidates to the Supreme Court and High Anti-Corruption Court: Good Practices Lessons Learned and Prospects, Kyiv, June 25, 2019 (organized by USAID, PRAVO-Justice, CoE's.

32 See more about the composition and competence of judicial councils of different EU member states at the website of the European Network of Councils for Judiciary (ENCJ). https://www.encj.eu/members

of the judiciary's interests could be considered, while allowing the HCJ to focus on constitutional powers of leading the governance, enhancing strategic planning, facilitating reforms, ensuring accountability and independence of judiciary, performing disciplinary proceedings and developing practices, executing formation of judicial corpus.

Part 2. Composition of Judicial governance bodies

5. Majority of decision-makers in each judiciary governance body elected by their peers (other judges)
6. More transparent representation quota and procedures for nomination of delegates to Congress of Judges
7. Cross representation of judiciary and other key justice sector stakeholder members (prosecutors, lawyers etc.) in composition of their respective independent governance bodies
8. Enhanced requirements, including ethical ones, for members of judiciary governance bodies[33]

As it was stated in the Resolution on the functioning of democratic institutions in Ukraine, adopted by the General Assembly of the Council of Europe in 2012, "the composition of the High Council of Justice is contrary to the principle of separation of powers and also undermines the independence of the judiciary; therefore, the Assembly requests the adoption of amendments to the relevant laws that effectively remove the representatives of the Verkhovna Rada, the President of Ukraine and the prosecutors from membership in the High Council of Justice. Pending the adoption of these amendments, these three institutions should appoint non-political members to the High Council of Justice."[34]

Similar comments were made by the Venice Commission: "... the composition of the High Council of Justice of Ukraine still does not correspond to European standards because out of 20 members only three are judges elected by their peers... In the current composition [of the HCJ] one judge is an *ex officio* member (Chief Justice of the Supreme Court of Ukraine), and some members appointed by the President and the Verkhovna Rada are either *de facto* judges or former judges, but this is not legally binding until. Together with the Minister of Justice and the Prosecutor General, 50% of members are either appointed by the executive or legislative. Therefore the High Council of Justice cannot be said to consist of a substantial part of judges."[35]

This issue was the subject of a hearing at the European Court of Human Rights (*Oleksandr Volkov v. Ukraine*),[36] in which the Court drew attention to the fact that judges should neither be elected by the Parliament nor by the President of Ukraine. Judges ought to be elected by the judges themselves. Furthermore, in the Court's view, members of the HCJ should carry

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33 These 4 outcomes have been analyzed jointly as closely interrelated: having the common goal of making the composition of judicial governance bodies in compliance with the European standards, ensuring fair representation of judges, effective representation of public and enhanced requirements to members.

34 Resolution 1862 (2012) of the General Assembly of Council of Europe on the functioning of democratic institutions in Ukraine. https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18068&lang=en

35 Joint opinion on the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010). https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)029-e

36 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}

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out their functions on a full-time basis since working and receiving salary outside the HCJ makes them dependent on their primary employer and may lead to the violation of the independence and impartiality requirement within the meaning of Article 6 § 1 of the Convention.

In order to solve this problem, amendments to Article 131 of the Constitution of Ukraine were adopted in 2016. In fact, these amendments were preceded by other steps to improve the selection and status of members of the High Council of Justice (Вища рада юстиції). The composition of this body was re-formed after the entry into force of the Law on Fair Trial, which introduced significant adjustments to the formation of this constitutional body.

Firstly, the High Council of Justice (Вища рада юстиції) became a permanent collegiate body (prior to that, its members combined their functions with another job which was their main employment). Secondly, the competitive bases for the election of members on the basis of the principles of the rule of law, transparency and publicity, political neutrality were introduced. Also, requirements for the members of High Council of Justice (Вища рада юстиції) were strengthened: according to Article 6 of the abovementioned Law (in its 2015 edition), a judge shall be appointed a member from among the judges with no less than fifteen years of service as a judge or the judges in retirement; members are subject to the requirements and restrictions laid down by anti-corruption legislation and the ethical standards established for a judge. Fourth, the procedure for selection of members by the Verkhovna Rada of Ukraine, the President of Ukraine, and other entities were improved.

However, these issues were finally resolved during the 2016 judicial reform. Thus, the membership of the reformed High Council of Justice (Вища рада правосуддя) was changed, the term of office was shortened, the requirements for the competence, length of service and political neutrality for its members were increased:

- The HCJ is composed of twenty-one members, of whom ten are elected by the Congress of Judges of Ukraine from among judges or retired judges, two by the President of Ukraine, two by the Verkhovna Rada of Ukraine, and two by the Congress of Advocates of Ukraine, two are elected by the National Conference of Prosecutors, and another two are elected by the Congress of representatives of higher legal education and scientific institutions. The Chief Justice of the Supreme Court is a member of the HCJ *ex officio*.
- Members of the HCJ are elected (appointed) for a term of four years. The same person may not hold the office for two consecutive terms.
- A citizen of Ukraine, not less than thirty-five years of age, who is fluent in the state language, has a law degree and professional experience in the field of law of at least fifteen years, and meets the criterion of political neutrality can be elected to the post of a member of the HCJ.
- Members of the HCJ, in their activities and beyond, must adhere to the ethical standards established for the judge (Articles 5 and 6 of the Law on the High Council of Justice).

Thus, the composition of the HCJ has changed in accordance with European standards: it is composed of at least 50% of judges, elected by their peers (including an ex officio member from the Supreme Court); the process of selection of HCJ members has been significantly improved to strengthen independence and political neutrality of its members. However, according to NGOs and independent observers, elements of political pressure on HCJ's members have persisted despite the reform efforts.

Similarly, during 2015-2016, the changes in the composition of the HQCJ took place. The Law on Fair Trial changed the composition and procedure of forming the HQCJ, although it should be noted that these changes were not significant. Firstly, the term of office of the

HQCJ members was increased from three to four years. Secondly, the Minister of Justice was excluded from the nomination of the members, instead the Congress of Advocates was entitled to elect two members. Thirdly, the composition of the HQCJ was increased from 11 to 16 members. Fourthly, more detailed and transparent procedures for the selection of members were introduced. Finally, it was determined that the HQCJ shall operate within two chambers - a qualification and a disciplinary one.

With these amendments the composition of the HQCJ (in total 16 members) meets the abovementioned European standards which require that at least half of the institution shall consist of judges elected be their peers: 8 members (judges or retired judges) are elected by the Congress of Judges of Ukraine, 2 members are elected by the Congress of Representatives of law schools and scientific institutions; 2 members – by the Congress of Advocates of Ukraine; 2 members – by the Commissioner of the Verkhovna Rada of Ukraine for Human Rights; 2 members (not judges) – by the Head of the SJA. Also, wider representation of other professions is ensured by having representatives of advocates, law professors, and persons appointed by Ombudsman and SJA.

At the same time, criticism from the public concerning the activities of the HQCJ is mostly related to ignoring of Public Integrity Council's[37] negative conclusions about judges in the process of qualification re-assessment and selection procedures, as well as the accusation of dishonesty of some members. It is indisputable that the bodies with power to select judges and decide on their integrity should consist of persons who have a flawless reputation and whose assets do not raise any issues. In this respect the procedures of selection of members of the HQCJ should be improved to ensure that persons appointed by respective institutions meet the highest requirements of integrity.

The CoJ, as the highest judicial self-governance institution outside the sessions of the Congress of Judges consists solely of judges elected by their peers: 1) eleven judges of local general courts; 2) four judges of local administrative courts; 3) four judges of local commercial courts; 4) four judges of the courts of appeal for civil, criminal cases and cases on administrative offences; 5) two judges of administrative courts of appeal; 6) two judges of the commercial courts of appeal; 7) one judge from each high specialized court; 8) four judges of the Supreme Court. It is worth noting that in the course of the judicial reform in 2016, a balance was reached in the representation of judges from different courts in the CoJ. Before the reform, the composition of this body did not provide for proportional representation of judges of general courts, which had a numerical advantage in the judicial system compared with judges of administrative and commercial courts.

It is worth noting that, although the HCJ and HQCJ formally consist of members elected by judges and elected/appointed by other institutions and professional communities, the composition of these bodies has been criticized as *de facto* not representing civil society in view of the nature and procedure of appointments (politization of appointments, representatives represent only professional communities, etc.). **Based on the practices of European countries, it is recommended to consider the possibility of real and genuine involvement of civil society representatives in composing judiciary governance bodies. The role of the representatives of civil society alongside with representatives of professional communities (advocates, prosecutors, academics) in composing the HQCJ and HCJ should be expanded to ensure a real impact on the processes of selection and evaluation of judges**. Therefore, in the further stages of judicial reform, amendments

[37] See more in the Part 4 of the First Chapter.

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to the regulation on the composition of judiciary governance bodies and the procedure of their formation to ensure wide representation of public in these institutions, both in respect of the profile of representatives (different professions, social backgrounds) and the manner of their selection/election, could be considered. For an effective representation, the ratio of these representatives should be close to 50 percent, while following the European standards regarding the necessary majority of judges, should be ensured.

It is worth noting that the Law of Ukraine on the High Anticorruption Court provided for the formation of the Public Council of International Experts (PCIE)[38] which assists the HQCJ during competitions for the vacant posts of judges of the specialized anti-corruption courts. The work of the PCIE during the selection of judges of the Anti-Corruption Court in 2018-2019 was highly appreciated by the Ukrainian public. The PCIE consisted of 6 well-known foreign lawyers of impeccable reputation. All of them had experience of anti-corruption activities in their countries of origin and were recommended by international organizations. They were assisting the HQCJ in evaluation of candidates' integrity (the lawfulness of the sources of origin of the property of the candidate or his/her family; conformity of the candidate's lifestyle to his/her status and the declared income). It is worth noting that PCIE's exacting attitude, its efficiency and objectivity have been emphasized both by HQCJ and other state bodies and the public. Given the successful experience of the PCIE, the idea of establishment of a similar body within the HCJ for selection of members to judicial governance bodies could be further discussed.

In view of the above, it can be stated that the objectives of the Strategy concerning the improved composition of bodies responsible for the formation of the judicial corps with respect to the quota of judges, cross representation of other professions, more proportionate representation of courts in the CoJ were in general fulfilled, i.e. outcomes 5, 6, 7 were achieved (100 %). With regard to the enhancement of requirements for the members of these bodies (outcome 8), the level of achievement would be considered as partial (50 %), **as further improvements in terms of more effective *de facto* representation of public, and procedures allowing to genuinely ensure that only persons meeting the highest standards of integrity and political neutrality would be elected/nominated as members of respective bodies should be introduced.**

Part 3. Governance of court staff

9. Governance system of courts staff in place

Article 155 of the Law on Judiciary provides that the organizational support of the functioning of courts shall be ensured by court staff headed by Chief of Staff. The regulation on court staff shall be drafted on the basis of the standard regulation on the court staff and shall be approved by the meeting of judges of the respective court. The standard regulation on the court staff shall be approved by the SJA in consultation with the HCJ. The chief of staff of the local court and his/her deputy shall be appointed upon the approval of the Chief Judge of a relevant court and can be dismissed by the head of the respective territorial department of the SJA. The chiefs of staff of the courts of appeal, the high specialized court, the SC and their deputies shall be appointed upon approval of the Chief Judge of the relevant court and can be dismissed from the office by the Chairperson of the SJA. The structure and staff structure of local courts shall be approved by the relevant territorial department of the SJA in consultation with chief judge; for court staff of courts of appeal and high specialized courts, it

[38] See more in the Part 4 of the Chapter I.

shall be approved by the SJA in consultation with the chief judge within the funding allocated for the respective court.

It follows that the Law on Judiciary has established a legal basis for a more comprehensive and systematic regulation and organization of court staff. Here the SJA has been assigned a particularly important role with regard to the management of court staff which is composed of civil servants (they are a part of the general system of state service), employees serving on the basis of labor contracts, and judicial assistants belonging to patronal service (they are excluded from general civil service and are not recruited on the basis of an open competition, but are selected/nominated by judges themselves).

Efficient management of court staff must ensure the balance of the workload for judges (this is related mostly to the judicial assistants), effective management of cases: registration, distribution, court recordings, prompt submission of summons, management of data in the information system, etc. and providing to court users with services of good quality.

Therefore, it is important to establish an effective system of particular management measures: deciding on the number of court staff based on objective criteria (workload); recruiting qualified court staff; providing trainings; executing performance management with regular evaluation; ensuring merits-based career; adopting model job descriptions and rules of procedure; developing client service principles; building leadership skills among the chiefs of staff.

In the interviews with the representatives of courts, CoJ, HCJ, the lack of abovementioned measures and of systematic approach to the management of courts staff has been constantly emphasized. In the interview with SJA representatives, no particular systematic measures have been indicated, except adoption of model structures of courts and ensuring the appropriate number of judicial assistants. According to the SJA, the number of judicial assistants is sufficient (there are more assistant than judges at the moment).[39] Number of supporting staff depends on the workload, additional duties of the judge (being a member of self-governance body, etc.). This possibility with regard to judicial assistants can sometimes create inconsistencies in workloads and put judges in unequal situation (judge's business may change, for instance when the judge ceased to be engaged in any additional duties related to self-governance, but the additional assistant remains employed as assistants cannot be employed temporarily).

According to the latest data (2016 cycle) from the CEPEJ data base, the number of non-judge staff per judge is 3.79. This shows a slight decrease from 2012 when this number was 5.23 non-judge staff per judge. However, given that the European average is 3.87 non-judge staff per judge, it seems that the ratio of judge and non-judge staff in Ukraine is very close to the European average. At the same time, the number of non-judge staff should not only be seen in correlation with the number of judges, but also the competencies of non-judge staff, the number of cases, procedural aspects, etc.

CoJ is working on the development of the model job descriptions and rules of procedure for court staff. Also, there is a strong will to adopt client service standards and guidelines for support of vulnerable groups of court proceedings.

[39] Meeting of PJ experts with the L. Gyzatulina, Deputy Head of the SJA; O. Slonyckij, Head of the Information and Statistics Department; A. Polishchuk, Head of the Information and Statistics Department; V. Pastuchova, acting Head of Press-Office; N. Mokareva, chief specialist in international relations; O. Ignatchenko, Head of the International Relations, in the framework of the MTE on 16 July 2019.

Therefore, it has to be stated that some positive steps in developing court staff management system have been taken, however the outcome could be considered as only partially achieved (50 %).

It is recommended to **further work on effective system of abovementioned particular management measures, especially on the following: performance management with regular evaluation; adopting model job descriptions and rules of procedure; developing client-oriented service principles; building leadership competences of chiefs of staff**.

Part 4. Objectiveness and transparency of judicial career system

10. Transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures

The issue of internal review of professional suitability in recent Ukrainian context has to be considered from two perspectives: as a unique one-time re-assessment of qualification of over 5,500 existing judges (vetting),[40] and a regular performance evaluation which is a process of a different nature.[41] The idea of the systemic judiciary reset combined, on the one hand, an obligatory one-off evaluation ("qualification re-assessment") of the existing judges to confirm their fitness to continue to exercise their judicial duties and, on the other hand, completely new way of selecting, appointing and promoting the career of judges together with the system of regular performance evaluation. It had become a flagship for a vision of new and "clean" judiciary, capable of effectively ensuring the right to a fair trial as one of the key aspects of the rule of law.

New procedures of qualification re-assessment were established in February 2015 with the entry into force of the Law on a Fair Trial. According to the final and transitional provisions of this Law, the HQCJ shall perform the initial evaluation of judges' qualification in order to define whether they are capable of administering justice in relevant courts starting from judges of the Supreme Court of Ukraine and the high specialized courts. It was established that if the results of the initial qualification evaluation have not confirmed judge's ability to administer justice in the relevant court, the judge shall be dismissed from the administration of justice and sent for training to the NSJ which would be followed by a repeated qualification evaluation. If the repeated qualification evaluation fails to establish the judge's ability to administer justice in the relevant court, this shall serve as a basis for the HQCJ's recommendation that the HCJ proposes to dismiss the judge on the grounds of violation of oath.

A particularly important aspect of assessment of judges in Ukraine is a very active involvement of civil society, which was one of public's expectations and demands, but also serves as an instrument for raising public trust in judiciary. The PIC is an institution composed of representatives of human-rights public associations, legal scholars, attorneys, journalists who are renowned professionals in their area, have solid reputation and meet the political impartiality and integrity requirement. PIC was established with a view to assist the HQCJ in determining compliance of the candidate for a judicial position with the professional ethics and integrity criteria. The PIC provides the HQCJ with information or opinions in this respect.

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40 For the purpose of this report qualification re-assessment and initial qualification evaluation/assessment as called in the Law are used as synonymous terms, describing unique once-performed obligatory procedure of checking the ability of acting judges to perform their functions in respect of their professionalism and integrity, which can also be described as vetting.

41 Regular performance evaluation is not considered to fall into the scope of this area of intervention. It is related to Chapter II of the JSRSAP (Increasing Competence of Judiciary). Therefore, this aspect will be covered in the context of Area of Intervention 2.1 Increased Competence through Improved Career and Performance Management.

The PIC is not authorised to check whether the (legal or other professional) competence criterion is met. Its opinions are not binding for the HQCJ. However, if the PIC in its opinion finds that the candidate does not meet the professional ethics and integrity criteria, the HQCJ may decide to override the PIC veto request by way of the qualified majority of at least 11 votes of HQCJ Members out of the total 16 Members.

The procedure for the initial qualification assessment of judges was introduced in stages. The decision of the HQCJ dated 28 January 2016 announced the conduct of the initial qualification evaluation of judges who applied to the Commission with applications for recommendation for lifetime appointment. The list included 100 judges of local courts of general jurisdiction, whose powers expired in 2015, and set a timetable for their evaluation from 17 February to 31 March 2016 inclusive. On 22 March 2016, the Commission decided to conduct in April-June 2016 the initial qualification of judges of appellate courts, and approved the list of judges to be evaluated, the timetable for the initial qualification and the list of tasks for anonymous written testing. The results of the judges' initial qualification evaluation as of 9 June 2016 are available on the website of the HQCJ.[42] An analysis of this data indicates that only 60% of judges passed the evaluation at first attempt, and 5% failed not confirm their ability to administer justice. A significant number of judges (13%) were dismissed before the start or during the evaluation process on the grounds of their right for voluntary retirement (in accordance with Article 120 of the Law on Judiciary).

The main problem of abovementioned legislation from 2015 was that it did not provide for a clearly defined mechanism for dismissing judges. In addition, during 2015-2016, judges and judicial self-governance bodies vigorously opposed the initial qualification, which was reflected, in particular, in the prolonged disagreement in the CoJ on the rules of procedure and methodology, with the delay by the HQCJ of initiating appropriate procedures. Law enforcement agencies also provided information on judges quite slowly and selectively. During 2015-2017, close to 2,470 judges were dismissed following their own resignation, not wanting to undergo a qualification evaluation process. This amounted to approximately 28% of the total number of judges at the time of commencement of evaluation procedures.

In 2016, a new wording of the Law on Judiciary came into force, Article 83 of which stipulates that the qualification assessment is conducted by the HQCJ in order to determine the ability of a judge (candidate for a judge) to administer justice in the relevant court according to the criteria established by law. Qualification assessment criteria are: (1) competence (professional, personal, social, etc.); (2) professional ethics; (3) integrity. The procedure and system of evaluation of judges in this process are specified in detail in the Regulation of the HQCJ dated 13 October 2016 (as amended), the Regulation on the procedure and methodology of qualification evaluation, indicators of compliance with the criteria for qualification evaluation and the means of their establishment, approved by the decision of the HQCJ dated 3 November 2016 and the Procedure for conducting the examination and the method of establishing its results in the procedure of qualification evaluation, approved by the decision of the HQCJ on 4 November2016 (hereinafter – the Regulations).

Qualification assessment includes the following steps: 1) passing the exam (consists of multiple-choice testing and case study); 2) investigation of the file and interview (part 1 of Article 85 of the Law of Ukraine on Judiciary and Status of Judges). According to Article 81 of the Law, the qualification evaluation procedure is also applied in the competition for the position of a judge of the court of appeal, the high specialized court and the Supreme Court.

[42] http://vkksu.gov.ua/en/news/rieultati-pierwinnogo-kwalifikacijnogo-ociniuwannia-suddiw-stanom-na-9-tchierwnia- 2016-term-infographic

For each of the stages and for the examination stage, the HQCJ as a whole determines the minimum marks. If the judge did not score the minimum admissible mark for passing the anonymous written test, he/she is not allowed to perform the practical task. However, failure to obtain the minimum score on the practical task did not prevent the judge from entering the next stage of evaluation, if he/she scored the minimum mark for the entire stage (which is set at 50% of the maximum score). If a judge does not obtain the minimum score on the results of the examination stage, he/she shall cease to participate in the assessment and shall be declared ineligible and dismissed.

According to the law, the HQCJ has the right to introduce testing in order to check personal moral and psychological qualities, general abilities, as well as to use other means of establishing the judge's compliance with the criteria of qualification assessment (Part 3 of Article 85 of the Law). The HQCJ has exercised this right: testing of personal moral and psychological qualities and general abilities is carried out for the evaluation of personal, social competence, professional ethics and integrity of a judge. Testing consists of taking psychological tests and being interviewed by a psychologist.

At the next stage the dossier (statistics of judge's performance, professional development activities, conclusion of the psychological tests of the judge, the lifestyle, assets of the judge and his or her family members, etc.) is examined and an interview is carried out.

Here a very important institute, the Judicial Dossier, has to be separately noted. It was introduced by the Law on Fair Trial in 2015 and provides systemic record keeping: (a) copies of all official decisions made by authorized persons during his/her entire period of office; (b) information on the effectiveness of the judicial proceedings; (c) information on disciplinary proceedings, compliance with ethical and anti-corruption criteria. During 2015-2016, the HQCJ was able to form a database of judges from all regions. Public access to the contents of the judge's file provides public oversight of the activities of judges. According to the same principle, the dossier of the candidate for the position of a judge is formed. The formation and maintenance of the judge's file (or the file of the candidate for the position of judge) are carried out in an automated system.

An equally important component of the judge's file is information gathered from monitoring the lifestyle of a judge by authorized law enforcement agencies. Such monitoring may be carried out at the request of the HQCJ or HCJ or in cases specified by law. The NABU is obliged to send relevant information on the results of the monitoring immediately after its completion, but not later than 30 days after receiving the relevant request. These results can also be used to assess the judge's compliance with the rules of judicial ethics. According to the procedure, the HQCJ receives information on the income of judges and their family members over the last 5 years, information on available movable and immovable property of the judge and his relatives and on travels abroad. This allows the HQCJ to carry out a thorough review of the financial status of the judge (or the candidate for the position of judge) and to establish whether the judge's lifestyle and property are consistent with his/her official income.43 Such a system of checking the financial status of a judge is new and unprecedented for Ukraine.

At this stage, if the PIC submits negative opinion on integrity and/or judicial ethics of a judge, the decision on the suitability of the judge to the position can be taken only if no less than 11 members of the HQCJ vote in favour of such a decision.

43 At the initial stages of the judges' evaluation process, the materials received from the anti-corruption bodies (NABU, NAPCU) were incomplete, contained errors, and were delayed. Only on 19 July 2016, the Head of the HQCJ Sergey Koziakov and the NABU Director Artem Sytnik signed a memorandum of cooperation, subsequently to which the cooperation between these two bodies was established.

The HQCJ rules have established a 1,000 points system for the final ranking of candidates based on the assessment of the following substantive competences and skills:

- 300 points for legal professional competences and skills, of which 90 points for legal knowledge, 120 points for legal professional skills, 80 points for quality of the performance (based on the professional experience as a judge, lawyer etc.) and 10 points for the development of professional competence (training, capacity building);
- 100 points for personal competences;
- 100 points for social competences;
- 250 points for professional ethics, including 100 points for "moral-psychological" characteristics, and 150 points for "other relevant characteristics";
- 250 points for "conscientiousness, honesty, morality", of which 100 points for integrity ("dobrochesnist"), and 150 points for "other relevant characteristics".

The "professional ethics" block is assessed both on the basis of the results of psychological testing and the examination of the dossier and interview, whereby the HQCJ examines such indicators as: understanding and following the rules and norms, commitment to the obligations, discipline, respect to others. Similarly, the integrity (*"dobrochesnist"*) block is evaluated on the basis of the psychological testing indicators of integrity (*"dobrochesnist"*), and on the basis of the information of the dossier and interview. Thus the "professional ethics" and integrity (*"dobrochesnist"*) blocks are evaluated on the basis of psychological testing results for up to 200 points. Additional 300 points for both these criteria are allocated on the basis of other materials, including the PIC opinion. Overall, the scoring system gives a substantial weight to the "soft" characteristics of professional ethics and integrity.

As of 1 January 2019, the qualification evaluation was completed with respect to 1,771 judges. Of these, 92% or 1,627 judges were confirmed in their positions, while 8% or 144 judges were found inappropriate for their positions. In addition, with respect to 360 judges, the HQCJ initiated the interview process but failed to reach a final decision.

Consequently, the absolute majority of judges, following the outcome of the qualification assessment, were able to confirm their relevance to the post. Judges who have successfully passed the qualification evaluation are entitled to a higher judicial remuneration provided for in Article 135 Law on Judiciary. In December 2018, the Constitutional Court of Ukraine found that it was unconstitutional to reduce the salaries of judges who did not pass the qualification assessment from 15 to 10 minimum salaries.

The following advantages of the Judicial Qualification Assessment procedure can be noted:

- Comprehensiveness and complexity of procedures and methodologies of the assessment;
- High level of transparency and publicity (published judicial dossiers, live stream of interviews, daily public updates on procedures).
- Involvement of the civil society by involving the PIC into the procedure.
- High level of technocracy in the assessment, in which not only the legal knowledge and skills, but also their social competences and psychological abilities are assessed on the basis of the established criteria and procedures;
- Substantial impact of the method of psychological testing similar to the methods already applied, albeit to a lesser scope and extent, in some EU countries; the tests provide a good base to receive a thorough expert assessment of the personality;
- Comprehensive integrity check.

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The disadvantages of the qualification assessment process, which require further improvement, are the following:

– Procedures are complicated and very long. Judges' evaluation procedures began in 2016. As of 1 September 2019, only about half of the judges have been evaluated.
– Absence of a well-defined system of criteria for the evaluation of judges which leads to a very wide discretion of the HQCJ at the stage of "examination of the judge's file". It is advisable to **develop an objective scale for the judges' evaluation by making more detailed recommendations for the distribution of scores by such indicators as professional competence, personal and social competence, professional ethics and integrity**. This will serve as a clear reference point for the members of the HQCJ in determining the results of the evaluation of a judge (or a candidate for the position of judge).
– The indicators determined on the **basis of psychological tests should be evaluated on the basis of the conclusions and results of such tests provided by a psychologist, without influence of the subjective opinion of the HQCJ members.**
– It is worth **discussing the overall score of professional ethics and "dobrochesnist"** as a total of 500 points. It is important to underline the distinction, first of all, between the integrity and other characteristics, comprising *"dobrochesnist"* (which is open to interpretations, and can lead to some obscurity and misuse of the concept), and, secondly, the distinction between the integrity / *"dobrochesnist"* as a block on the one hand, and professional ethics as a block on the other hand (because the later sometimes is understood and interpreted as being the element of *"dobrochesnist"*). In addition to reducing the overall proportion of these substantive criteria, a consideration could be given to further clarifying the *"dobrochesnist"* criterion to distinguish it from professional ethics.

Special attention **should be paid to the introduction of a regular evaluation procedure for judges**. The Law on the Judiciary has introduced a regular evaluation of a judge in order to identify the judge's individual needs for improvement and to facilitate professional development (Article 90). Regular evaluation of the judge is carried out by: (1) teachers (trainers) of the NSJ based on the results obtained from the questionnaire completed by the judge; (2) other judges of the relevant court through questioning; (3) the judge himself/herself by completing a self-assessment questionnaire; (4) public associations by independently evaluating the work of a judge in court sessions.

As of 1 September 2019, the regulatory framework for the introduction of regular evaluation was not approved, although drafts of the relevant provisions were developed and discussed in the judiciary in 2016 and 2019.

Therefore, it can be stated that the outcome of the Strategy on establishing transparent mechanisms for reviewing professional suitability using objective criteria and applying fair procedures have been largely accomplished (75 %). From 2015 to 2019, the HQCJ achieved significant results in conducting a large-scale campaign for the qualification evaluation of the judicial corpus. At the same time, it is **recommended to take steps as soon as possible to complete the procedures for the qualification assessment of judges of general courts, and to improve procedures as noted above. Judicial governance bodies should take steps to develop and adopt regulations on the regular evaluation of judges**.

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11. All cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis[44]

The new wording of the Constitution of Ukraine in 2016 (Article 128) enshrines two basic principles with regard to the appointment of judges: (a) the permanent appointment of judges to positions without probation or reapproval; (b) an exclusively competitive procedure for the replacement of judicial office.

The procedure for the selection of judges is regulated in detail by the Law on Judiciary and by-laws of the HQCJ (Regulation on the procedure of passing the qualification examination and methodology of assessment of its results, approved by the decision of the HQCJ 10 April 2017, Regulation on the competition for vacant judicial positions, adopted by the HQCJ on 2 August 2016, etc). It is worth noting that the Law on Judiciary distinguishes 2 different procedures: selection of candidates for judicial positions in accordance with Article 70 of the Law which extends to judges of local courts, and a special procedure for appointment of a judge of a court of appeal, high specialized court and the Supreme Court which is conducted in accordance with Article 81 of this Law.

Selection of candidates for the position of judges of local courts is a complex, multi-stage procedure involving several bodies within the judiciary: announcement by the HQCJ of the selection of candidates for the position of judge; submission by the persons, who have expressed their intention to become a judge, to the HQCJ of a statement and documents on compliance with the requirements; checking of documents and allowing candidates, who meet the requirements, to participate in a competition; examination; integrity check; initial training; qualification examination after initial training; competition for vacant judicial position on the basis of the rating of the candidates; submitting a recommendation to the HCJ regarding the appointment of a candidate; adoption of the HCJ's decision; decree of the President of Ukraine on appointment to a position of a judge. It should be noted that the procedure for selecting candidates for the position of judge of local courts excludes such stages as psychological testing, interviewing and examination of the judge's file during the interview.

The first selection for local courts judges was announced by the HQCJ on 3 April 2017. From 17 April to 16 May 2017, 5,336 individuals submitted an application and documents to participate in the selection. After the verification of compliance with the statutory requirements of the candidate, the HQCJ allowed 4,935 persons to participate in the selection. In addition, 603 candidates were admitted to the selection according to the transitional provisions of the Law on Judiciary (candidates who were enrolled in the reserve for vacant positions of judges before the Law entered into force). Anonymous testing to verify legal knowledge and command of the state official language was performed for 4,128 candidates. According to the results of computer-based assessment test, 700 candidates with the best results were admitted to the personal and psychological qualities test which was successfully passed by 692 candidates.

From 6 March to 17 April 2018, a special examination was conducted for candidates for judicial office with a minimum of three years of experience as judicial assistants. As a result, 286 candidates were retained and sent for special two-month training at the NSJ. Candidates for the judicial office, who have not worked as judicial assistants for at least three years, partici-

[44] This outcome is replicated further by the outcome 22 *"Competitions based on clear, transparent and objective criteria and procedures held in all cases of filling particular post"* (Chapter II of the JSRSAP). Therefore, the conclusions, including the level of achievement of the goal to set transparent and objective system of selection of judges and recommendations made in this part should be considered as entirely applicable to the outcome 22.

pated in special training at the NSJ from August 2018 to May 2019, as the result of which 369 candidates were retained. The first qualification examination in the selection process was conducted on 29-31 October 2018. Testing was monitored by representatives of international community and Ukrainian NGOs. As a result of the qualification examination, 656 candidates for judicial office were selected to the positions in local general courts, 272 were selected for local commercial courts and 328 for administrative courts.

On 2 July 2019, the HQCJ announced a competition for 505 vacant judicial positions in local general courts. On 9 August 2019, following the competitive selection announced on 2 July 2019, the HQCJ sent to the HCJ a recommendation on the appointment of 467 judges. Also, in early August 2019, the HQCJ announced a competition for more than 90 positions of local courts of commercial and administrative jurisdiction, which is currently ongoing.

In assessing the effectiveness of the competitive selection of judges, the following positive points should be noted:

- during 2016-2019 the HQCJ demonstrated significant progress in improving the organization of competitive procedures of judges, in particular, these procedures are characterized as comprehensive, transparent, based on objective testing. The results of all stages of the competition procedures are published on the official website of the HQCJ, participants can receive comprehensive information on the course of competitions on this website;
- the HQCJ demonstrates impressive results in working with test and practical task (case study) developments; the list of questions is constantly updated and is accessible to candidates for judicial office;
- Regulations of the HQCJ determine all stages of the competition in detail and in a consistent manner;
- the training of judicial candidates is organized at the highest level: the training program is comprehensive; the NSJ recruits the best teachers, mainly judges and retired judges; candidates are provided with the opportunity to conduct both classroom training and internships in the courts under the guidance of experienced mentor judges; according to the results of training, effective testing of the candidates' knowledge is carried out in the form of tests, surveys, questionnaires;
- the criteria for determining the winners of the competition for the position of a judge of a local court are clear and understandable, namely: the candidate for the position of a judge who has received a larger arithmetic score on the results of the qualification exam wins. The assessment is formed by compiling the results of a written anonymous test (maximum grade is 90 points) and of a practical task that consists in writing a draft judgment (maximum grade is 120 points). Persons who score less than 75% of points on the results of the qualification exam are dismissed from the competition by the decision of the HQCJ. It should be noted that the evaluation of the results of anonymous testing is computer-based, without human involvement. Regarding the evaluation of the practical tasks, each of them is depersonalized and verified by three members of the HQCJ. Thus, the determination of the results of the qualification assessment, on which the success of the candidate for the position of judge, is made in a transparent and fair manner, it is maximally automated and organised in a manner that eliminates the subjective human factor as much as possible.

The disadvantages of the local court judges' selection process, which should be addressed, are as follows:

– its complexity and length (taking into account the special training of judges at the NSJ, this procedure takes from 1.5 to 2.5 years), unpredictability (the judges never know when one stage is completed and the next stage of selection begins). Thus, as of the beginning of 2019, 14 local courts did not administer justice in Ukraine due to the lack of judges or powers of judges, in 154 courts the number of judges was less than 60 percent of the full-time staff. As a result, the access to justice for citizens is restricted. The judiciary has repeatedly drawn attention to the issue;
– unlike competitions before the appellate, higher specialized courts and the Supreme Court, the files of candidates for the position of judges are not published on the official website of the HQCJ, which may be attributed to the shortcomings of this competitive procedure. This approach is probably conditioned by the massiveness of these procedures and the lack of resources. It is also worth noting that the PIC does not pay much attention to competitions to local courts.

The Law on Judiciary provides special procedure for the appointment of a judge of the court of appeal, the high specialized court and the Supreme Court, which significantly differs from the procedure of selecting judges of local courts.

According to Article 81 of the Law on Judiciary, a person who meets the requirements for candidates for judicial office and meets one of the requirements set out in Articles 28, 33 and 38 of this Law (having no less than 7 years of practice as an academic or lawyer) may participate alongside with judges in the competition to the SC, a higher specialized court and an appellate court. The selection procedure is conducted in the form of a qualification evaluation. The HQCJ announces a competition, accepts documents from candidates, holds a special examination of candidates, conducts qualification re-assessment, holds psychological testing of candidates, organizes interviews with judges, determines the results of the competition, and passes a decision on the recommendation of a candidate to be appointed to the judicial position or re-evaluated in terms of his or her suitability to continue to exercise the judicial duties. The HCJ considers the HQCJ recommendations on the appointment of candidates for a judicial position and forwards its submission on the appointment of the judge to the President of Ukraine. The President of Ukraine appoints the judge on the basis and within the scope of the HCJ submission. The President of Ukraine may not check the compliance with the statutory eligibility requirements of the candidates.

Starting from November 2016 the HQCJ held a selection process for 120 positions of a judge in the new SC. The new approach and procedures involved two stages: the assessment of legal professional skills and competences in Stage 1, and the assessment of social and psychological skills and competences with an additional assessment of legal professional skills in Stage 2. Stage 1 involved two distinct procedures: multiple choice test questions (MCTQs; anonymous testing) and case studies. Stage 2 included three distinct procedures: psychological testing, examination of evidence provided by various third parties (law enforcement authorities, civil society etc) in the candidate's dossier, and the interview with each candidate with the participation of the Public Integrity Council. Interviews were transmitted online and later broadcasted in full or in part by various third parties. More than fifty candidates, who had received negative opinions of the PIC, were excluded from the competition. As a result, 118 candidates were selected and appointed to the new SC out of the initial 651 candidates that were allowed to take part in the competition. On 15 December 2017, the new SC, which for the first time in Ukraine was formed on the basis of open and

public competition, began its work. The competition for the SC has been commended by international experts, including those of the CoE. However, the public has raised a number of claims as regards the conduct and results of this competition, in particular because many negative conclusions of the PIC were overcome by the HQCJ.

On 2 August 2018, the HQCJ announced on its website a competition for the vacancy of 78 remaining judges of the SC. In total, the HQCJ received 659 applications. After thorough examination of the documents, in particular the requirement of the length of service, the Commission admitted 566 candidates to the competition. On 12 November 2018, 525 participants showed up for anonymous written testing. According to the results of testing, 317 participants were admitted to the practical task. Two days later, on 14 November 2018, for 5.5 hours, the candidates wrote the text of the model court decision based on a model court case in accordance with the specialization of the court. In doing so, they were allowed to use the laws, codes, plenary decisions and decisions of the ECHR. It was successfully drafted by 235 candidates. These candidates have undergone psychological testing. 235 participants were admitted to the second stage-examination of the dossier and interview. The HQCJ received 71 opinions from the PIC which were taken into account during the interviews. In total, the interviews lasted for 21 days, including 15 interviews in the collegial composition, with the participation of representatives of the PIC and 6 in Plenary. The results of the examination of dossier and interview revealed that 46 candidates out of 235 failed to confirm their ability to hold the position of a judge of the Supreme Court. In respect of 39 of them, negative opinions from the PIC were received. Thus, during the final stage of the competition, the HQCJ considered 55% of the total number of opinions provided by the PIC. It also found 7 candidates, whose integrity was not contested by the public, to be unsuitable for the position of a judge and discontinued their participation in the selection process.

As a result, the 78 winners of the competition included 54 judges (69%), 14 academics (18%), 7 practising lawyers (9%), 3 persons with combined experience (4%). Thus, the Commission recommended the appointment of nearly 30% of candidates who have not previously served as judges. In addition, in March 2019, the HCJ decided to reject the submission to the President of Ukraine for the appointment of three winners of the competition to the SC.

On 2 August 2018, the HQCJ announced a contest to the High Anti-Corruption Court, which lasted about six months. 343 candidates applied. While the pre-final ranking was 71. Among the 39 winners (27 for the Supreme Anti-Corruption Court and 12 for the Court of Appeals), 19 were judges, 4 academics, 12 practising lawyers and 4 candidates with combined experience. The largest number of winners, 16 persons were aged between 30 and 39, 9 between 40 to 49, and two between 60 to 63. A special feature of this competition was the participation of the PCIE, which assessed the integrity of the candidates and the conformity of their income with their lifestyle. Six members were selected by the HQCJ from a list offered by international organizations with which Ukraine cooperates in the field of preventing and combating corruption.

The PCIE meetings were broadcasted online. The PCIE held six meetings during a month (December 27 to January 28) and expressed doubts about the unfairness of 49 candidates. Three of them subsequently withdrew from the competition themselves, 39 did not receive the required number of votes from the members of the HQCJ and the PCIE, and only 7 proceeded to the following stage. The PCIE had access to all candidate files, received information about each of them (including their family members) from NABU and actively corresponded with the applicants. The secretariat, including with the assistance of translators and lawyers, supported the PCIE. Communication with the candidates at a joint meeting of

the HQCJ and PCIE was resembled an interrogation rather than a discussion. The international team, in particular, showed a tough approach. Quite often, during the announcement of information about one of the candidates, they resorted to evaluation phrases such as “this is a difficult case” or “I am not ready to discuss this candidate”, etc.

It is worth noting that the public, in particular, the PIC, gave a rather negative assessment of the results of the second contest to the Supreme Court, emphasizing the persistence of the members of the HQCJ in ignoring the negative conclusions of the PIC and their successful attempts to “bring” their people to the Supreme Court. In contrast, the competition to the High Anticorruption Court did not raise such comments from the public, receiving mostly positive evaluations from experts.

On 30 September 2018 HQCJ announced a competition to fill 21 positions of judges within the High Court on Intellectual Property (HIPC). As on the 1 September 2019 the procedure was still in process.

From 2014 to 2019, there was no substitution of posts in the courts of appeal. This led to a situation where a large number of vacancies were created in these courts, which negatively affected the quality of the administration of justice. According to court statistics, over 4 million cases were pending before courts of appeal and local courts during 2018. Only 2/3 of the practicing judges are currently qualified to administer justice. This situation increases backlogs and adversely affects the promptness and quality of proceedings. On 9 August 2019 the HQCJ announced a competition for the recruitment of 346 vacant posts of judges in the courts of appeal.

Accordingly, as in a case of qualification re-assessment, as an overall achievement it should be emphasized that the current selection procedures led to a completely new approach to assessing judges’ qualification in comparison to the one that had existed before and had caused great public distrust in judiciary. New procedures feature very specific and important aspects which were already indicated above but should nonetheless be underlined. They include comprehensiveness and complexities of procedures and methodologies of the candidate assessment; involvement of the civil society; high level of technocracy, etc.

The procedure for transfer of judges is defined in Article 82 of the Law on Judiciary. A judge may be transferred, including temporarily by secondment, to a post of judge to another court by the HQCJ in the manner prescribed by law. Unlike the legislation that was in force until 2016, the vast majority of judges’ transfer should be executed solely on the basis of a competitive selection process. Instances of reorganization, liquidation or termination of work of a court, as well as sanctioning of a judge in the framework of disciplinary proceedings represent exceptions to this rule. The procedure for conducting the competition for the position of a judge is defined in detail by the normative acts of the HQCJ.

However, from 2014 to July 2019, the transfer of judges from one court to another, including owing to family circumstances did not occur because the HQCJ was focusing on the procedures of qualification evaluation and selection of judges. This caused dissatisfaction with the judges who repeatedly asked the HQCJ to resolve the issue. On 1 August 2019, the HQCJ announced a competition for substitution by transfer of 220 vacant posts of judges in local courts. The competition will be conducted by determining the ranking of judges who have applied for vacancy in each individual court. The ranking will be determined by comparing the points that the judges have received as a result of the qualification evaluation.

In view of the above, it can be concluded that the outcome of establishing objective, merits-based system of selection, appointment of judges and developing a fair procedure for the transfer of judges has been largely achieved (75 %).

At the same time some important aspects, which require further improvement of the procedure, have to be taken into account. These aspects follow from the results of the selection process to the Supreme Court in 2017 and 2019 and the experience of selection to the High Anti-Corruption Courts[45] and are the following: **less time-consuming procedure which would allow a faster assessment, selection and appointment of judges; a more effective participation of civil society representatives in the procedure; clarification of the existing rules regulating the selection approaches and procedures, including the improvement of clarity and foreseeability of scoring, professional ethics and integrity assessment, the obligation to take a reasoned decision in each and every case**. Some of improvements can and need to be done in short-term perspective in order to ensure the finalisation of judicial reset in a more transparent and effective way, for instance developing, publishing and applying together with the PIC a unified objective evaluation criteria for ethics and integrity similar to the criteria developed with the PCIE; developing standardized scoring sheets and clear rules on how a case study, psychological testing, interview and dossier review results will be transferred into numerical scores and applied to each competency; consolidating practice of well-reasoned opinions substantiating each decision to nominate or reject a candidate, especially for candidates with a negative PIC opinion; developing common rules on conflicts of interests for HCJ, HQCJ and PIC members to protect the integrity of processes. It would be also recommended for the HQCJ to monitor the situation in the courts and announce vacancies in the courts more promptly as well as to use the institute of secondment of judges more promptly, taking into account the real needs of the courts.

12. Lifetime appointment to a judicial post is guaranteed with short or no probationary period

Lifetime appointment of the judge is one of safeguards of judicial independence, diminishing judge's vulnerability to unlawful influence or pressure which is inherent in a temporary judge's office. This was emphasized in a number of reports of Venice Commission, CEPEJ and other organizations.

Unfortunately, there are enough cases in Ukraine when a judge has been unable to execute duties for a long time due to reasons beyond his/her control. Before the reform lifetime election of a judge by the Parliament was foreseen after the end of the first 5-year term of service. According to the Law on Judiciary, a judge whose 5-year term of office has expired could be recommended by the HCJ, on his/her application, for lifetime appointment by the Verkhovna Rada, unless it is precluded by circumstances stipulated by law. Cases when judges were not elected occurred continuously during 1996–2016. Parliament's decisions to refuse a permanent appointment of a judge, as a rule had political connotations and did not contain proper justification.

Foreign experts, having analysed the national procedure, repeatedly noted the excessive politicization of the Verkhovna Rada of Ukraine in the process of staffing of the judiciary and emphasized that the broad powers of the Ukrainian Parliament violated the principle of independence of judges. In 2010 the functions of the Verkhovna Rada were reduced to the ceremonial approval of decisions of the judicial authorities (the HCJ and the SC). However, in 2015, amendments to the Rules of Procedure of the Verkhovna Rada stipulated that the verification of the grounds and circumstances of the dismissal of judges after expiration of 5-year

[45] On 25 June 2019, the USAID New Justice Program together with EU "Pravo–Justice" Project supported the HQCJ in conducting a lessons learned roundtable to review good practices and lessons learned from the process of selecting judges for the Supreme Court and High Anti-Corruption Court and identify areas for improving judicial selection and qualifications evaluation processes. The discussion resulted in particular findings, comments, recommendations.

term should be carried out at the Plenary Session of the Parliament. This was against all existing international standards for the independence of judges and resulted in no judges being elected indefinitely during 2014-2016. By law, if a judge was not dismissed for any reason, he or she could not administer justice from the day following the expiration of his/her term. During that time, close to 1000 judges appeared in the judiciary, with a 5-year term of office. The Supreme Court, on the claim of one of these judges, recognized the Verkhovna Rada's inaction violated the rights of judges. It stated that the statutory procedure for the election of a judge for an indefinite period did not contain formally specified imperative time prescriptions for the Verkhovna Rada to consider application on the appointment of a judge. At the same time, a person applying for his/her appointment as a permanent judge has the right to expect from the authorized body to consider the submission of the HCJ within a reasonable time.

Amendments to the Ukrainian Constitution that were adopted in 2016 abolished the previously existing probationary period for judges and the Parliament's powers to appoint judges for life. Instead, the Constitution establishes that a judge is appointed to office by the President following the submission by the HCJ (Article 128) and that a judge shall "hold an office for an unlimited term" (Article 126). In accordance with the transitional provisions of the Law on Judiciary, materials and recommendations of the HCJ on the permanent appointment of judges, in respect of which the Verkhovna Rada had not taken a decision on the day this Law came into force, shall be forwarded to the HCJ. An analysis of the HCJ's process shows its compliance with international standards as regards the criteria of impartiality, publicity and motivation of the Council's decision (in particular, the distribution of materials regarding the permanent appointment of five-year judges is carried out by automated system of case distribution; preliminary review of the candidate's materials is performed by a member of the Council; if there are any circumstances that may affect public confidence in the court, the candidate is heard in the public session of the Council; refusal to submit the decision concerning permanent appointment must be motivated and must contain references to grounds specified by law).

According to the HCJ, over 800 submissions on the permanent appointment of five-year judges were processed in 2016-2017. The nominations for the appointment of those judges who successfully passed the review in the HCJ were submitted to the President of Ukraine for issuing a decree on their permanent appointment. In 2017, the mandate of 527 judges expired, and in 2018 that of 347 judges expired. The permanent appointment of these judges was solved by the HCJ without delays and unjustified refusals.

Therefore, it can be stated that the goal of the Reform for the implementation of the Institute of Lifetime Appointment of Judges is fulfilled (100 %).

Part 5. Diminishing of political influence on career of judges

13. Safeguards in place against any possibilities of political influence over the procedure of judges' appointment and dismissal, holding the judges liable for the legitimate exercise of their functions

14. No role of political forces in transfer of judges (reassignments to particular post)[46]

One of the safeguards against political influence is the establishment of a clear list of grounds, and transparent procedure for dismissing judges from office and termination of their powers. This issue is settled by Part 6 of Article 126 of the Constitution of Ukraine, by the Law on Judiciary and other legislation. Prior to the 2016 judicial reform, a judge was dismissed by

[46] Both outcomes are analyzed together as they both refer to diminishing of political influence on judicial career and performance.

the same body that elected or appointed him/her. It was the President of Ukraine for judges appointed for the first time for a term of 5 years and the Verkhovna Rada of Ukraine for judges elected indefinitely. There were situations where the Parliament significantly delayed examination of the HCJ's submission to dismiss judges for breach of oath. As the result of the Reform, the power to dismiss judges was concentrated in the HCJ, which can be considered a significant achievement as the procedure for dismissing judges became operational and significantly simplified. The element of political influence on judges in the process of their dismissal was also diminished.

The termination of office of a judge, as foreseen in the Part 6 of Article 126 of the Constitution, is a new institution that emerged in the course of judicial reform in 2016. According to the Law on Judiciary, termination of the judge's powers is the basis for termination of the judge's employment relationship with the respective court, as ordered by the presiding judge. No other statement is required. Previously, relevant facts had to be certified by the HCJ, and it had to make a submission to the body that elected or appointed the judge (to the President of Ukraine or the Verkhovna Rada). This took time and created considerable inconvenience, although according to the Law on Judiciary the powers of a judge ceased when the relevant legal facts occurred (for example, when the judge turned sixty-five years old or when a verdict against a judge for committing a crime entered into force). Therefore, simplifying the procedure for the termination of the powers of judges diminishes the bureaucratization and risk of political influence over the relevant procedure.

Another important aspect of safeguarding judges from external interference is the effective practical mechanism for prosecution of attempts to interfere with and guarantees to eliminate political influence on the appointment procedure, on the selection, transfer and dismissal of judges and on application of disciplinary measures to a judge. In the course of the 2016 judicial reform, legal liability for interfering with the administration of justice was strengthened and was introduced, for instance, for failure to comply with the lawful requirements of the HCJ (Part 1, Articles 188-32 of the Code of Administrative Offenses), failure to respond to a submission by the HCJ on the identification and prosecution of persons who have committed an offence, and for violating the guarantees of independence of judges or undermining the authority of justice. The Criminal Code of Ukraine (Article 376) establishes criminal liability for interfering with activities of the judiciary. According to the statistics, 37 criminal proceedings were initiated under Article 376 of the Criminal Code of Ukraine in 2016, 107 were initiated in 2017 and 196 in 2018. In three years only 7 criminal proceedings reached the indictment stage. Although the Criminal Code of Ukraine provides for a few more articles aimed at protecting judges from undue influence, their application is similarly not effective enough. For example, in the period from 2014 to 2018 only 5 indictments were issued under Article 377 "Threat of or violence against a judge, judge or jury", although information about serious threats or violent actions against judges appeared quite often in media. In this regard, further **attempts to ensure effective application of liability for unlawful interference with judicial activities** would be very important.

Removal of the President of Ukraine and the Verkhovna Rada of Ukraine from the processes of appointment, election, transfer and dismissal of judges is another very important achievement of judicial reform. Prior to the judicial reform the Verkhovna Rada of Ukraine considered formation of judicial corpus in committees, and thereafter in plenary, cases of rejection of submissions by judicial authorities regarding the appointment or dismissal of judges were not uncommon. The analysis of the implementation of the function of the President of Ukraine and the Verkhovna Rada of Ukraine in respect of the judiciary in 2010-2016 shows the high politicization of election and dismissal of judges and of the process of holding the

judges accountable. There were situations where, due to the lack of political agreement, the election and dismissal of judges was significantly delayed by the Parliament, which caused problems in the judicial system. There were also cases of unreasonable refusal by the Parliament to elect judges despite the existence of a positive recommendation, or *vice versa*, a reluctance to dismiss a judge if there was a corresponding recommendation of the HCJ.

According to the Venice Commission, "the Parliament is not a proper body for the election of judges. If a political body is competent to elect judges, there is a risk that political considerations will overcome the candidate's competences". Even though the recommendation is given by a judicial authority, parliament as a political body is "undoubtedly much more immersed in political games, and the appointment of judges can lead to political bidding in parliament in which every member wants to have his/her own judge".[47]

This approach, that the Parliamentary session, where MPs without legal background are making a decision, is not a proper forum for the consideration of questions of fact and law, the assessment of evidence and the legal qualification of the facts, has been also reflected by the ECHR in the case of *Oleksandr Volkov v. Ukraine* (2013).[48]

In the course of the 2016 judicial reform, the following measures were taken to depoliticize procedures and to ensure the independence of judges:

(1) decisions on formation and liquidation of courts are made exclusively by law; a draft of such law is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultation with the HCJ;

(2) the appointment of judges is made indefinitely by the President of Ukraine solely on the basis of competitive selection in accordance with the submission of a judicial governance body, namely the HCJ;

(3) decisions to terminate the powers of judges are made automatically, on the basis of appropriate legal circumstances;

(4) abolishing of the institute of the "first appointment of a judge for a term of 5 years", which was essentially a probationary period;

(5) the participation of the Verkhovna Rada of Ukraine in the election, transfer, dismissal of judges and the requirement that it consents to arrest of a judge are completely abolished;

(6) the political neutrality of the bodies responsible for the professional career of a judge, namely the HCJ and the HQCJ is ensured.

These changes allow to conclude, that significant progress in diminishing political influence on appointment, career and activities of judges has been achieved. At the same time, there exist instances when judges who have passed all selection or qualification assessment procedures and whose candidacy was submitted by the HQCJ for appointment, have not been appointed or transferred and no comprehensive justification was given for the refusal to do so or when their appointment/transfer is pending for several months. In view of these instances, further development of consistent and transparent practices of these procedures must be facilitated. Therefore, it can be stated that the outcomes of the Strategy to reduce external interference in the administration of justice through elimination of political influence on the appointment, dismissal and transfer procedures can be considered as achieved to considerable extent (both by 60 %).

47 Venice Commission's Report on Judicial Appointments (2007). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282007%29028-e

48 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}

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Chapter II. Increasing Competence of Judiciary

Area of Intervention 2.1 Increased Competence though Improved Career and Performance Management

Area of Intervention 2.2 Increased Competence though Improved Professional Training System

Part 6. Performance management system in judiciary

15. Targets redefined for the whole judiciary/separate jurisdiction, particular court, judge, members of courts staff
16. Quantitative and qualitative, inter-linked and comparable, set of performance criteria in place for all judges, courts and judiciary self-governance bodies to control and measure performance, taking into account wider strategic frameworks
17. Merits and score-based career and performance management system[49]

Effective performance of judiciary as the system, where resources are used efficiently, recruitment is based on objective criteria, career depends on quality of performance, targets of performance are set and applied systematically can be achieved when a comprehensive performance management system is implemented.

When analysing relevant experience of Ukrainian judiciary during the judicial reform, some positive steps should be emphasized. First of all, the implementation of qualification re-assessment procedures and new approach to the selection of candidates to judicial positions is without a doubt a significant achievement in building objective, transparent, comprehensive system of formation of judicial corpus. This progress has to be facilitated by further steps on establishing system of regular performance evaluation.

In 2016 the CoJ approved a list of basic indicators of the courts performance to be used for analysing their activities every six months and every year by all courts, with the publication of these indicators on the websites of respective courts. However, progress is still needed in order to implement these goals. It has to be admitted that comprehensive identification and use of these indicators directly depends on valid, permanently updated, comprehensive, objective, comparable statistics, which taking into consideration the extensive character of the judicial system of Ukraine, can be collected only by having unified, well-functioning in all courts information system and clear rules of filing data into the system. In this respect the lack of such operational system has to be noted: although the development of Unified Judicial Information and Telecommunication System (UJITS) is provided by the Law on Judiciary and is foreseen by procedural codes as an instrument of e-services in court proceedings, it was not launched on 1 January 2019 as foreseen by the Law. The launching was postponed till March, but in March the SJA announced that the system was not ready. State Enterprise, which is in charge of the development of the system in collaboration with the HCJ and the SJA, is conducting the revision of the concept of UJITS implementation and is auditing the system to eliminate all inaccuracies.[50]

With regard to the management of the court staff performance, particular gaps can be observed. The problem of personnel support of the court apparatus during the period of judicial reform is quite acute in Ukraine. First, there is no strategic plan to improve the staffing of

[49] All these three outcomes are evaluated jointly as being inseparable elements of performance management system.

[50] The situation was presented at the IAC's 5th meeting on 11 September 2019.

courts. Despite the fact that the court staff, especially the assistants of judges, perform the crucial function of organizational support for the work of judges, facilitate the proper administration of justice, no one at the state level is concerned with the problem of providing the courts with highly qualified personnel or approaches this issue in a systematic manner.

To date, the SJA has not ensured the adoption of all regulations concerning the organization of work of the court apparatus. For example, the Standard Regulation on the Court Apparatus was approved by the Order of the SJA on 8 February 2019, although the need for updating this standard has existed for several years. Due to the fact that no one has made calculations on the efficiency of the court staff, there is still no standard staffing formula, although the need for approval of such document is urgent.

As it was already mentioned, in the course of interviews with the representatives of courts, the CoJ, the HCJ, the lack of systematic approach to the management of courts staff has been constantly emphasized. Performance standards, client-oriented service quality as well as the development of competence models of courts staff have been permanently (starting from 2016) stressed as being key priorities of the CoJ.[51] Model job descriptions of court staff are out of date. The latest version was approved by the SJA in 2005. Since then, the civil service and judiciary legislation has been comprehensively updated several times. Given the implementation of the E-Court project, there is a great need to adjust the functional responsibilities of court staff. The CoJ is working on the development of the model job descriptions and rules of procedure for court staff, but it has to be significantly supported by the SJA. Moreover, this process must be a part of an overall strategy/concept/model of court staff career development.

Therefore, it has to be concluded that despite some successful attempts to establish separate components of effective performance management system, for example, enhanced system of qualification assessment and selection of judges, some initiatives on more objective calculation of workload, the adopted measures do not suffice for the achievement of the goal to create a performance management system in courts characterised by such crucial elements as definition of clear targets/tasks for the whole judiciary and all its elements; establishment of quantitative and qualitative, inter-linked and comparable performance criteria for all judges, courts and judiciary self-governance bodies; merits and score-based career in respect of court staff. Thus, the abovementioned outcomes of the Strategy are considered to be achieved to a rather low extent (25 %).

It is recommended to further work on developing an effective performance management system encompassing: targets to be achieved individually and institutionally; regular performance evaluation; model job descriptions and rules of procedure; developing client service principles; monitoring tools; building leadership competences of chiefs of staff.

18. Accessible and consistent practice of judiciary governance bodies in career and performance management matters

19. Optimized number of judicial governance bodies in charge of performance management[52]

As it was concluded above, the goal of having the comprehensive and consistent performance management system in courts, encompassing such crucial elements as: definition of clear targets/tasks for whole judiciary and all its elements; establishment of quantitative

[51] Interview with O. Tkachuk, Chairman of the CoJ, Zakon I Biznes. No 16 http://zib.com.ua/ua/132692-golova_rsu_oleg_tkachuk_vrazhennya_gromadyan_pro_sudovu_sist.html

[52] Both outcomes are inseparable as being related to performance management system, therefore, they are covered together.

and qualitative, inter-linked and comparable performance criteria for all judges, courts and judiciary self-governance bodies; merits and score-based career in respect of court staff, has not been achieved.

It has to be mentioned that a very important part of any management system, encompassing tasks, goals, indicators, measurement tools, is the monitoring mechanism. In respect of Ukrainian courts, no comprehensive regulation and mechanism to assess and control activities of the courts (without intervening with administration of justice by these courts) has been introduced. There exists no internal audit system and/or administrative control of performance of courts allowing to establish and promote good practices and react to management problems and shortcomings in courts.[53] Without any kind of consistent monitoring mechanisms any performance management initiatives would be of merely declarative nature. This issue has been constantly emphasized and discussed in various meetings.[54] The importance of monitoring of courts activities is acknowledged in European judiciaries. This approach is also promoted by the EU Commission (there is a special tool for EU Member States Scoreboard)[55] and the CoE (CEPEJ's evaluation of judicial systems).[56]

Therefore, it is impossible to talk about consistent practice of judiciary governance bodies in performance management matters and, consequently, about fulfilment of the outcomes (they could be considered as being achieved no more than to a minimum extent – 15 %). Also, it has already been mentioned that several institutions are involved on the basis of legally binding regulations (the HCJ and the SJA) or *de facto* (the CoJ) in the development of different tools for performance management. For example, the SJA is responsible for drafting model job descriptions, suggesting comprehensive system of case load indicators, etc.; the CoJ is trying to develop some guidelines for court staff performance and client service. At the same time, there is lack of strategic approach to these developments, lack of coordination of these activities with clear powers and responsibilities of each body.[57] It would be **recommended to develop conceptual approach to the leading role, coordination mechanisms of all bodies involved** for **creating a system of performance management with clear workload indicators, performance targets, standardized processes, quality management, monitoring, etc. which serves as a basis for the development of all judicial system** (including any kind of changes in this, as for example, judicial re-mapping, etc.).

Part 7. Performance management tools

20. Harmonized and automated business processes, using research and analysis and risk management tools in all career and performance management matters

This issue has been partially evaluated in the previous part, when assessing the achievement of outcomes related to the implementation of performance management system. Therefore, the previous conclusion to the effect that the performance management system cannot yet be regarded as being implemented in court system applies with regard to current outcome.

53 In Lithuania, for example, there is a system of internal audits of courts (concerning their financial, managerial activities), performed by the National Courts Administration in centralized way. Alongside, according to the Art. 104 of the Law on Courts, the system of supervision of administrative activities of courts is established. It is regulated by the Regulation, adopted by the Council of Judges. The supervision covers wide range of court activities and court leadership's responsibilities, including case management, client service quality, effectiveness of performance of the court, organization of qualification development of judges and court staff, etc. In other European countries (Portugal, Poland, Romania and others) other types of monitoring systems established.

54 On 14 November 2019 in the meeting of Pravo-Justice experts and CoJ, B. Monich, the Chairman of the CoJ, emphasized that CoJ is expected to solve critical situations in court management, but is not empowered to do so and has no instruments (regulations, guidelines).

55 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en

56 https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems

57 See more on the delineation of powers of governance and self-governance bodies in the analysis of outcomes 1-4.

Additionally, it should be noted that judiciary has been permanently discussing and making some attempts of implementation of standardized business processes: business process analysis was conducted in the HQCJ and the HCJ,[58] some aspects of such analysis can be identified in the activity of the SJA with respect to case management in courts. Also, it is important to note that comprehensive statistics is gathered with regard to the workload of judges and courts, length of proceedings, etc. At the same time, the statistics is not sufficiently analysed and used in strategic decisions and management. So, separate elements of performance management and implementation of business process approach can be detected. However, there is a lack of systemic approach in this area, including lack of all elements that have been already mentioned previously: analysis, monitoring, identifying good practices and shortcomings to be addressed, etc. Therefore, outcome is not considered to be achieved to a sufficient extent (40 %) and further **developments of business process analysis and implementation of standardized procedures and risk management tools are required**.

21. User satisfaction surveys used regularly by judiciary governance bodies and courts to measure and improve performance management system

One of widely used and effective tools for evaluation of the quality of courts activities through the whole procedure starting from front-desk service and finishing with the delivery of court judgment is user-satisfaction surveys.

During February – May 2019 the USAID conducted three surveys of justice sector personnel regarding the judicial independence and accountability, combatting corruption, administration of justice, access to justice and public trust and confidence in the judiciary. These are three separate surveys for a specific group of respondents including legal professionals participated in court proceedings who are not court employees (advocates and prosecutors), court staff (not judges) and jurors. Three surveys were conducted nationwide in Ukraine, except for occupied Crimea and parts of Donetsk and Luhansk Oblast that are outside of Ukraine's government control. Survey of advocates and prosecutors engaged 400 respondents and was conducted by New Justice for the fourth time since October 2016 (Program start). Survey of court staff is the second New Justice program survey and engaged 1,029 respondents. Survey of jurors is first time ever survey of this group in Ukraine and had 407 respondents. These surveys have revealed very important aspects to be taken into consideration, for example: 1) 72% of respondents among advocates and prosecutors admitted that according to their experience of participating in court proceedings in the last 24 months judicial decisions were properly motivated and clear; 2) same as advocates and prosecutors, the trust of court staff in the judiciary and other government branches increased (82% in 2019 against 60% in November 2017); 3) jurors demonstrate full sympathy to courts and satisfaction with court performance: over 90% of them admit that judicial decisions are properly motivated, clear, lawful and fair.[59]

Another important round of sociological surveys was executed by the Ukrainian Centre of economic-political research of Oleksandr Razumkov on the request of CoE in the spring 2019.[60] 118 locations were selected, including 51 villages, and in total 2,016 respondents were questioned. It was found that majority (55%) of citizens receive the information about the courts from mass media. 22,8% get some impression about courts activities from friends and family members. The surveys asked some very specific questions regarding particular

58 These activities were performed by consultancy companies with the support of USAID.
59 https://newjustice.org.ua/wp-content/uploads/2019/07/NJ_2019_Surveys_Results_July_2019_ENG.pdf
60 https://rm.coe.int/report-razumkov-final/16809537f0

aspects of court activities, perception of corruption, level of participation of civil society in judicial business, perception of level of judicial independence, etc.

Management of courts, court performance, planning of developments, establishing standards for services, communication strategy are the initiatives which have to implemented if the clients' needs, expectations of parties, opinion and demands of public are to be taken into account. The results of the abovementioned surveys reveal specific aspects which can be considered in indicating possible areas of improvement, indications for strategic issues, communication directions, etc. It must be, however, noted that, firstly, these surveys are not standardized and institutionalized, and secondly, they have not been used consistently. Therefore, the outcome is considered to be partially achieved (50 %) and it would be recommended to **further develop effective instruments, such as abovementioned surveys of different target groups, by institutionalizing them, executing them regularly and using for initiatives on improvements** of performance. The CEPEJ quality of justice tools[61] can serve as guidelines and templates in tailoring the most adequate Ukrainian model.

Part 8. Increasing competence and career

22. Competitions based on clear, transparent and objective criteria and procedures held in *all* cases of filling particular post

This outcome replicates outcome No 11 *All cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis* of the Part. 4 which was examined extensively previously. Therefore, the conclusions, including the level of achievement of the goal to set transparent and objective system of selection of judges as being largely achieved, and recommendations made in the abovementioned parts of the analysis are entirely applicable to the current outcome.

At the same time, considering this outcome as addressing not only judicial career, but also recruitment and career of court staff, some issues should be noted, especially with regard to the special category of court employees, namely judicial assistants (legal clerks), who in contrast to some other court officials (for example, court secretaries) do not fall under regular civil service system. They belong to so called "patronal service" ("patronatna sluzhba"). It means that these officials who are performing very important functions in courts, in particular preparation of case materials, drafting judgments and other procedural documents, are recruited on the basis of the personal selection by the relevant judge. They do not have to participate in the competition to the office, neither do special requirements of public service apply to them. On the one hand, this system is justified by the special duties and status of these officials, they work in a team with a judge on the basis of mutual trust. On the other hand, it creates certain risks such as nepotism, corruption, lack of accountability, etc.

Therefore, the outcome targeted at establishment of the system of competition-based appointment and career in courts could be considered as achieved in its entirety with regard to judges. This does not apply to court employees and especially judicial assistants. Thus, overall achievement could be assessed to not more than 75 %.

[61] Measuring the quality of justice – (12/2016)
Handbook for conducting satisfaction surveys aimed at Court users in the Council of Europe's member States – (12/2016)
Checklist for court coaching in the framework of customer satisfaction surveys among court users – (12/2013)
Checklist for promoting the quality of justice and the courts

23. Qualifying certification system of judges and of their regular assessment in place, introducing statutory requirement of increasing competence as one of main criteria for promotion

Special attention should be paid to the introduction of a **regular evaluation procedure** for judges. The Law on the Judiciary has introduced a regular evaluation of a judge in order to identify the judge's individual needs for improvement and to facilitate his/her professional development (Article 90). Regular evaluation of the judge is carried out by: (1) teachers (trainers) of the NSJ on the basis of the results following from a questionnaire completed by a judge; (2) other judges of the relevant court through questioning; (3) the judge himself/herself by completing a self-assessment questionnaire; (4) public associations by independently evaluating the work of a judge in court sessions.

As of 1 September 2019, the regulatory framework for the introduction of regular evaluation was not approved, although drafts of the relevant provisions were developed and discussed in the judiciary in 2016 and 2019. It can be concluded that some basis for introducing regular assessment of judges is established. Therefore, this outcome is considered to be achieved by 25 %.

Part 9. Training and career linkage

24. Efficient mechanism for scrutinizing information about judicial candidate from the point of view of experience, competence, integrity and other qualities

These issues have been fully explored in previous parts, in particular, when analysing the achievement of the outcome No 10 on objective and transparent appointment to judicial posts. As it has been already stated selection of candidates for the position of judges of local courts is a complex, multi-stage procedure involving several bodies within the judiciary, including: examination; integrity check; initial training; qualification examination after initial training; competition for vacant judicial position on the basis of the rating of the candidates; etc.

The task of introducing effective mechanisms for examining information about a candidate for judicial office in terms of integrity and other qualities can be considered largely achieved:

1) the procedure and instruments for assessing the results of the qualification examination of candidates are specified in the Regulation on Passing the qualification examination and the method of evaluation of candidates for the position of judge, approved by the decision of the HQCJ on 3 October 2018;
2) integrity check of the candidate is determined on the basis of a special examination of the candidate, organized by the NSJ by sending requests to the NAPC, NABU, the Ministry of Justice, other state bodies and institutions. According to Part 4 of Article 74 of the Law on Judiciary, in case of receiving information that shows that a candidate does not meet the requirements established by this Law, the HQCJ makes a reasoned decision to terminate the participation of a candidate for a position of judge in the selection process. It should be noted that with regard to the candidates for the positions of judges of high specialized courts, courts of appeal, SC, the Law provides for a more thorough analysis of the integrity of the candidates, which includes a thorough examination of their dossier, examination of the information of the PIC, as well as a deeper analysis of the past professional activity. Thorough study of their previous biographies is not conducted for candidates to a local court. This can be considered as a disadvantage of the procedure for selecting candidates for a judge of local courts. Undoubtedly, such a study will take

up the time and additional resources of the currently overloaded HQCJ. Though in the mid-term perspective it is recommended to extend the criteria for assessing the integrity of candidates of higher courts to candidates in local court judges.

3) unlike competitions before the appellate courts, higher specialized courts and the SC, the files of candidates for local court judges are not published on the official website of the HQCJ, which may be attributed to the shortcomings of this competitive procedure. It would be **recommended to consider introducing publication of the files of candidates to local courts**;
4) review of age and professional requirements for judicial candidates is much more comprehensive than before the reform, since the Constitution of Ukraine, as amended in 2016, strengthened the requirements for judges: "A citizen of Ukraine, not younger than thirty and not older than sixty-five years old, who has a law degree and at least five years of professional activity in the area of law, is professionally competent, honest and speaks the state language, may be appointed as a judge. The law may stipulate additional requirements for a judge" (Part 3 of Article 127). Before the 2016 amendments, the minimum age of a candidate for the post of judge was 25 years, and there were no requirements for his competence and integrity.

Therefore, having in mind positive aspects, such as comprehensiveness, objectivity, transparency of the newly established mechanism of selection of candidates to judicial office, the outcome of having efficient mechanism of examination of candidate integrity and professionalism is considered achieved (90 %). At the same time, the abovementioned recommendations have to be taken into consideration.

25. Institutionalized linkages between initial training and judicial appointments systems

This outcome has been fully achieved by establishing particular procedures that have been successfully implemented in practice by the NSJ.

The initial training of candidates for the position of judge is fully regulated by Article 77 of the Law on Judiciary. It includes theoretical and practical training of a candidate in the NSJ; the program, curriculum and procedure for initial training of candidates for the position of judge are approved by the HQCJ on the recommendation of the NSJ; its term is 12 months (unless otherwise determined by the decision of the HQCJ) at the expense of the State Budget of Ukraine; for the period of the candidate's preparation, the work place is retained, the allowance in the amount of the salary of the assistant judge of the local court is paid.

The indispensable link between the initial training of the candidate and his/her further appointment is ensured by the obligation of this preparation, as well as the responsibility of the candidate in case of his/her failure in the training. In the case of violation of the initial training procedure, which entailed his/her expulsion, termination of such training, unsuccessful completion of it by the candidate, he/she is obliged to reimburse the funds spent on his/her training (Part 7 of Article 77 of the Law on Judiciary).

After the training the NSJ sends materials (candidate's dossier) on the candidates who have been trained to the HQCJ for the qualification examination. The results of candidate's qualification examination after initial training and all the material collected during training (opinions of trainers on the candidate, the information about his/her level of participation, professional qualities, etc.) are taken into account during the competition. Though, there are situations, when candidates with a very high rating are not appointed or their appointment is pending for unreasonable period of time.

Thus, the link between the initial training system and appointment of judges has been in principle institutionalized and regulated with some abovementioned challenges regarding appointment procedures, which leads to the conclusion that the outcome has been achieved by 75 %.

Part 10. NSJ institutional capacities

26. NSJ and judiciary fully capable of developing initial training curricula autonomously from other justice sector actors and donors

According to the Article 104 of the Law on Judiciary the NSJ is a state institution with a special status within the system of justice which ensures training of highly qualified personnel for the system of justice and conduct research and scientific activity. The NSJ is established under the HQCJ and performs its activity in line with this Law and the statute approved by the HQCJ. It is chaired by the rector who shall be appointed to and dismissed from the office by the HQCJ. The NSJ shall: 1) perform initial training of judicial candidates; 2) train judges, including those who were elected to administrative positions in courts; 3) perform regular periodic training of judges aimed at improving their level of qualification; 4) conduct training courses as determined by qualification or disciplinary body to develop the qualification of judges who are suspended from administering justice; 5) train court administration staff and improve their professionalism; 6) conduct research in the field of improving the judiciary, the status of judges and judicial proceedings; 7) study international experience of court organization and operation; and 8) provide scientific and methodological support to the functioning of courts, the HQCJ and HCJ.

It must be noted that during the judicial reform, when a lot of new challenges and functions have appeared (new qualification re-assessment system, huge amount of newly appointed judges with specific training needs to newly established courts, changes in the system of initial training, urgent needs of methodological assistance in developing examination programs, tasks and evaluation methodology, etc.), the NSJ has proved its institutional capacities in adjusting to new challenges, promptly addressing all new tasks and duties, mobilizing the best professionals and effectively working with international partners and donor organisations.

With regard to the initial training program development, the outcome has been fully achieved (100 %), since the NSJ proved capable to develop comprehensive initial training curricula for different target groups, taking into consideration special needs of particular jurisdictions and courts, and the experience of newly appointed judges.[62]

27. Information management system (IS) of NSJ interoperable with those of the judiciary governance bodies and high educational institutions (HEIs)

This outcome has not yet been achieved (the achievement level is up to 25 %) due to the fact that the Unified Judicial Information and Telecommunication System (UJITS), which should connect all judicial institutions, including judicial governance and self-governance bodies, has not yet been launched, and the e-interaction between judicial bodies, including issue of interoperability of the NSJ's IS with that of other bodies is still not sufficient. At the same time, the NSJ is actively working on developing its business processes and their replication in information system. Nonetheless, **these aspects require further developments**.

62 More details see bellow analysis of outcomes 29-31 on initial training.

Part.11. Initial training methodology and trainers

28. Required initial training period extended

The outcome has been achieved (100 %), because the period of initial training in the NSJ has been extended compared to the previous version of the Law on Judiciary. According to the Par. 3 Article 77 of the Law, the initial training now lasts 12 months for those with no prior experience in the judiciary, and it can be reduced to 3-4 months based on the candidate's previous experience.

29. Initial training of judges and other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonized

Initial training programme has several specializations for administrative, general and economic jurisdictions, and it takes place in the NSJ in Kyiv and its regional offices (in Kharkiv, Odesa, Chernivtsi, Lviv, Dnipro).

Although memorandums for cooperation was signed with National Academy of the Public Prosecutor's Office and Academy of Advocacy, there have been no real attempts to implement harmonized and joint training courses. In some individual curricula similar topics are included, however not many actions are taken for integrating them in joint curricula and trainings.

Therefore, this outcome is only partially achieved (50 %). It would be recommended to strengthen the cooperation of the training institutions through organization of joint courses on topics of mutual relevance.

30. Problem-based approach to teaching

New interactive forms of learning are ensured by improving training methodology through ToT's trainings provided to trainers. The practical work is based on improving problem solving skills by working on case studies, simulations and moot courts exercises. According to the NSJ's latest report, in 2018 six methodological trainings were conducted, which were attended by 130 trainers, majority of whom were judges.

Furthermore, the NSJ has developed and the HQCJ has approved the methodical recommendations for conducting practical assignments (role plays) to be used in the course for the candidates for the position of judge (approved by the Order of the Rector of the NSJ of 21 December 2018), which is the legal ground for interactive methods in training methodology.

The examinations are also conducted in different forms. The purpose of the initial training is not longer to enhance and deepen the theoretical knowledge of the students, but to develop judge craft skills as well as other relevant capacities for judicial work, in particular: fair procedural behaviour, communication skills, psychological adaptation to the profession of the judge, stress resistance, etc. The feedback on the initial training from the students and teachers is only positive, and the best evidence of its success is the high level of success of the NJS's graduates during the competitive selection of judges. Thus, the outcome is considered fully achieved (100 %).

31. Key initial training subjects include methods of interpretation of law, burden and formalized standards of proof in various types of process, case-law as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology

The NSJ's training portfolio is of wide range. The NSJ has developed and the HQCJ has approved a number of normative acts that regulate the organization and the content of initial training of candidates for judges, in particular:

- Procedure for passing initial training by candidates for the position of judge (approved by the decision of the HQCJ of 12 February 2018);
- Program of initial training of candidates for the position of judge (approved by the decision of the HQCJ of 13 July 2018);
- Regulations on internships and mentoring of candidates for the position of judge (approved by the Order of the Rector of the NSJ from 02 August 2018); etc.

The initial training programme includes following topics: methods of interpretation of law, burden of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology, which are key skills necessary to prepare a candidate judge for his future position as a judge.

It can be concluded that the outcome, aimed at developing comprehensive initial training curricula and aimed at providing future judge with judge craft skills and competences is fully achieved (100 %).

32. Permanent pool of trainers, including trainers from regions, fully and regularly mobilized

33. Experienced legal practitioners, including Supreme Court and other higher courts judges, European and international counterparts, among regular trainers

34. Improved process and conditions of involving professional judges as trainers at NSJ[63]

The NSJ has created and is constantly updating the Register of teachers/trainers, majority of whom are experienced judges from all regions. Also, other professionals are involved, taking into account special training needs: forensic experts, psychologists, experts on communication, management, leadership, etc. The requirements for their qualifications and abilities to adjust to new training methods and to address specific needs of judges, and their high expectations are very high. Teachers/trainers are evaluated by the trainees and only those, who are evaluated by the best scores, are allowed to perform trainings.

Trainers are involved not only in training activities, but also actively participate in development of training curricula and materials. A significant achievement of the NSJ during the period of the judicial reform was the establishment of the Test Centre, the main tasks of which are: (a) preparation of draft programs of examinations/evaluation of judges (candidates for the post of judge); (b) drafting procedures for the formation and use of test materials (test questions, practical tasks, model court cases, etc.) for examinations/evaluation of judges (candidates for the position of judge), reviewing, testing tasks, and submitting them to the HQCJ; (c) preparing criteria for evaluating the results of examination. The Test Centre is a structural unit of the NSJ. The Centre's special assignment is to develop and validate the tests and practical tasks used in the qualification assessment of judges and competitions.

The scientific and methodological support of the NSJ is also well organized. NSJ teachers/trainers develop a large number of textbooks on topics that are important and necessary for judges. Several European Court of Human Rights case-law manuals for the assistants

63 All three outcomes are closely intertwining and therefore, they are covered together.

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of judges have been developed. Here, the capacity of the NSJ to effectively cooperate with international partners should be emphasized. It allows to develop and publish a lot of useful materials with the support of international technical assistance projects and donors. Electronic copies of manuals and practice guides are available on the official website of the NSJ.[64]

As for improvement of conditions of involving professional judges as trainers at the NSJ, one could say that experienced judges are eager and motivated to share knowledge with peers and future judges. Moreover, the NSJ creates incentives or privileges/benefits to attract the best judges to act as trainers. Moreover, the legislation motivates judges too by introducing incentives for judges/trainers in the form of reduced workload, career advancements and participation to international conferences.

Abovementioned developments allow to conclude that the outcomes aimed at creation of pool of high-level trainers are achieved in full (each of all 3 outcomes – 100%).

Part 12. Continuous training and performance management

35. Continuous training participation as one of key parameters in judiciary performance management system

In case of advanced training, the NSJ trainers are required to evaluate each trainee by filling a standardized questionnaire. This system stimulates trainees to play an active role during the training. After some trainings, trainees are tested for their knowledge. This testing system has been developed by the NSJ teachers/trainers and is standardized. This allows to get information which is important (and should be used) in the course of qualification assessment and for regular evaluation and competitions to judicial office. At the same time, in view of lack of consistent performance management system in courts, results of testing after training sessions cannot be properly used for evaluation of performance. Therefore, it can be concluded that without a comprehensive judiciary performance management system (only separate elements of it are introduced), this outcome cannot be considered entirely achieved. The attempts to introduce tools for stimulating active participation of judges in qualification development could be assessed in this context as having achieved 50 % of the outcome.

Part 13. Continuous training methodology

36. Individualized approach to continuous training applied

37. Key continuous training subjects include methods of interpretation of law, burden and formalized standards of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology, strategic planning, budget and financial management, M&E, PR/communication

38. Continuous training courses for judges and other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonized

39. Regular internships, traineeships and study visits at ECHR, ECJ and EU MS judiciary bodies[65]

According to Article 89 of the Law on Judiciary, a judge is obliged to undergo training at the NSJ at least every three years (at least 40 academic hours). Part 3 of Article 89 of the Law states that the NSJ shall provide training for judges to improve their knowledge, skills and

64 http://www.nsj.gov.ua/en/science/prints/

65 All four outcomes (36-39) are intertwining, therefore, they are covered together.

abilities depending on the experience, level and specialization, taking into account their individual needs. Particular categories of continuous training are: training to maintain qualifications; periodic training of judges in order to improve their skills; training of judges elected to administrative positions; training courses determined by the disciplinary body to improve the qualifications of judges who are temporarily suspended from administering justice; additional training based on the results of qualification and regular evaluation of judges. Specific types of trainings and organisation of these activities are regulated by the Regulations on training and periodic training of judges at the NSJ, approved by the Order of the NSJ of 1 February 2016, as well as by Chapter 3 of Section IV of the Regulation of the NSJ, approved by the Order of the NSJ.

The NSJ develops different curricula, covering wide range of topics, allowing not only to develop legal knowledge of national legislation, courts practices, but also to develop social, personal competences and skills, which are extremely important for judges and courts' presidents, including, for example, stress resistance, leading court proceedings, time management, leadership, etc. The NSJ identifies topics for training based on a comprehensive training needs assessment process. The NSJ has also developed a standardized 2-week curriculum, consisting of 10 modules for newly appointed judges. Furthermore, it organized special training for judges of the SC (in November 2017 and May 2019), appointed to the positions as a result of the competition, as well as training for newly appointed judges of the High Anticorruption Court (March 2019). For this, special training programs were developed.

The NSJ has developed and published a calendar plan for distance learning of judges which is regularly updated. The NSJ's distance learning system allows judges to upgrade their skills without leaving their workplace, on a dedicated online platform that is accessible only to judges and court staff. The content of courses provided in this system is very diverse and covers wide range of issues relevant for judges, starting from the case law of the ECHR to lectures on particular national legislation. The strategic goal of the NSJ is to create an information and communication system "Electronic School" which would allow to further develop modern approach to remote learning. In addition, there are Calendar plans for the training of judges in regions. Accordingly, the judge may choose the qualification course that either he or she is interested in or is needed in the region.

Since 2016 classes at the NSJ are held in the form of interactive trainings demanding active involvement from participants. The interactive form of learning encompasses the following interactive methods: mini-lectures, participants' presentations, tests, work in pairs, group work, brainstorming, case studies, role-play, discussions, debates. Teachers/trainers have developed detailed methodical instructions on how to apply each of the forms of interactive work with students/trainees.

Abovementioned developments allow to assess the achievement of the outcomes 36 and 37 in their entire scope and to the full extent (by 100%).

Unfortunately, due to the lack of funds, there are not many opportunities (though there were some initiatives using donor support) to develop a system of internships and study visits at the ECHR and other European judicial institutions, however this should not be seen as a drawback in terms of training quality. Therefore, the outcome 39 is considered to be achieved partially (50%).

With respect to harmonized continuous training courses for all the members of the legal profession (judges, prosecutors, lawyers etc.), although there were not many joint trainings in the addressed period, efforts were made to have the same approach when dealing with

topics relevant for all the members of the legal community. Therefore, the outcome 38 could be considered being achieved partially (50%).

Based on what has been said, it can be stated that the goals of the Reform to comprehensively strengthen the continuous training system of judges are achieved. Further improvements are possible by increasing joint trainings wherever possible.

Chapter III. Increasing Accountability of Judiciary

Area of Intervention 3.1 Accountability through Improved Ethical and Disciplinary Framework

Part 14. Ethical standards and judicial independence in law and practice

40. Ethics framework for judges and courts staff with clear and foreseeable substantive requirements, publicly accessible and consistent practice in their application

The Code of Judicial Ethics was adopted in 2002 and the last time substantially amended in 2013, therefore could be considered as outdated. At the same time, it is very important that the CoJ is permanently developing the practices on interpretation and application of the Code. Considerable piece of work has been done in developing Commentary to the Code. It was adopted by the CoJ on 4 February 2016.[66] It should be noted particularly that the Commentary provides not only interpretation of norms, but also gives references to respective European standards and is illustrated by particular cases.

It is also important that the CoJ pays much attention to the development of ethical standards, rules and practices of management of conflicts of interests and to raising the awareness of judges and public on these issues. The CoJ has a separate Committee on Judicial Ethics, Corruption Prevention and Management of Conflicts of Interests (hereinafter in this Part referred to as the Committee). The activities of Committee are regulated by the Regulation, which was approved by the decision of the CoJ on 4 February 2016 (as amended on 1 March 2019). The purpose of the Committee's activity is to implement, on the basis of the principle of self-regulation of the judiciary, measures aimed at ensuring ethical standards, preventing corruption, resolving conflicts of interest. Committee is empowered with preparation of draft explanations, recommendations and advisory conclusions on the application and interpretation of rules of judicial ethics, of draft legislation in the field of corruption prevention and legislation on conflict of interests in the activity of judges and jurors in the administration of justice; development of educational materials for judges and jurors on the application of the Code of Judicial Ethics, observance of ethical norms and principles, development and approval of a typical Anti-Corruption Program of the CoJ; etc.

The Committee works closely with presidents of courts, judges, the NSJ, donor organizations on developing training programs, organizing workshops, conferences and round-table discussions on abovementioned issues. A guidebook for judges on how to recognize a potential conflict of interests in judicial performance, how to prevent or manage it in typical situations should be pointed as a good example of attempts to raise awareness of management of conflicts of interests.[67] In 2017, the Committee conducted a series of regional practical exercises for judges (Kharkiv, Lutsk, Khmelnytsky, Poltava, Kyiv, Dnipropetrovsk). The members of the Committee, in cooperation with the NSJ, participated in the development of training courses: "Disciplinary Responsibility of a Judge", "Enforcement of Anti-Corruption Legislation", "Judicial Ethics", "Rules of Conduct for a Judicial Officer". During 2018, the Committee, with the support of the Canadian Project, held several advisory meetings with judges in Khmelnytsky,

66 http://rsu.gov.ua/uploads/article/komentar-kodeksusuddivskoietiki-edd47ed191.pdf
67 http://rsu.gov.ua/uploads/article/posibnikosoblivosti-konfliktu-in-de7be4c810.pdf

Ivano-Frankivsk, Ivano-Frankivsk Transcarpathian and Chernivtsi regions. The Committee is also working on a proposal to develop a separate training for judges on the implementation of anti-corruption legislation by judges, in particular when it comes to gifts offered to judges.

According to the CoJ, as of 10 December 2018 the Committee received 166 requests from judges, of which 70 requested consultations regarding the presence or absence of a conflict of interest, 35 reported a real or potential conflict of interest, 20 contested the behavior of subjects of conflict of interest.

It is important to note that the Code of Judicial Ethics applies to judges, but does not apply to court staff. At the same time, a large number of persons, including civil servants and assistants of judges belong to the patronage service. By Decision No. 33 of 6 February 2009, the CoJ approved the Rules of Conduct of a Court Officer. These Rules establish standards of integrity and appropriate conduct for court employees based on personal, professional and organizational ethics. During 2015-2018 Ukraine has undergone significant changes in the legislation governing the status of civil servants and court staff. In 2018, a new regulation on judicial assistants was approved. However, the Rules of Conduct of a Court Officer were not updated. It is obvious that the **development and adoption of a new revision of the ethical standards of conduct of court employees is extremely relevant**.

Abovementioned actions demonstrate a will and commitment of judiciary to develop regulation on judicial ethics and to implement effectively. The adherence to high standards of judicial ethics by judges and bodies of judicial self-government is one effective way of enhancing the authority of the judiciary in the society. Therefore, it can be stated that the goal of the Strategy to improve the existing ethical rules of the judge's behavior and raise awareness of them among judges has been achieved to a considerable extent (75%).

It would be recommended in **a short-term perspective to monitor and update the Code of Judicial Ethics and to proceed with developing practice and raising awareness of it** by publishing examples of good practice as well as the instances perceived as raising an issue of ethics. The CoJ should step up its work in clarifying the provisions of the Code of Judicial Ethics and in resolving conflicts of interest in the judiciary.

It is recommended to **improve the manner in which the CoJ interacts with the NAPC and the National Police of Ukraine in ensuring that judges comply with anti-corruption legislation**. With respect to court staff, it is important to take into account the difference in the status of civil servants of the courts, "technical" staff, working on the basis of labor contracts and assistants of judges, belonging to the patronal service. It is **recommended to develop a new version of the Rules of Conduct of a Court Officer** accordingly.

41. Institutionalization of principle of functional (personal, procedural) independence of judge dealing with particular case from other judges

According to the concept of functional immunity in European countries, a judge is under special legal protection while performing his/her direct duty which is the administration of justice. This concept also concerns the special procedure of authorization by a court or bodies of judicial self-governance to apply criminal, administrative or disciplinary liability to a judge. An offense committed by a judge outside his or her professional activity should be prosecuted on a general basis without any exceptions or restrictions. The idea of □□ functional immunity is clearly expressed in the provisions of the legislation aimed at defending the legal position of a judge during the administration of justice (judicial indemnity). Such judicial independence is guaranteed both by principle of fair trial and by the relevant legislation in the majority of European states. The rule of judicial indemnity can be considered as the reflection of functional

immunity, extending to all offenses committed by judges during the administration of justice. In some European countries such immunity is reflected in special legislation. For example, in Estonia, when a judge commits a criminal offense while performing his/her judicial duties, the Prosecutor General appeals to the SC which decides that judicial proceedings can take place only with the consent of the President of the Republic in accordance with the Criminal Code and the Criminal Procedure Code.

A similar approach is applied in the current Ukrainian legislation. According to Article 126 of the Constitution and Part 2 of Article 49 of the Law on Judiciary, a judge detained for suspicion of committing an act entailing criminal or administrative liability shall be immediately released after the personal identification, except in the following circumstances: (a) if the HCJ agrees to the judge's detention; (b) detention of a judge during or immediately after the commitment of a serious crime, if such detention is necessary to prevent the crime, its consequences or to preserve the evidence of that crime. A disadvantage of this model of judicial immunity is that detention of a judge at the place of the offense is possible for the commitment of a crime related to the administration of justice and any other. According to Articles 207-212 of the Criminal Procedure Code, the detention of a person while committing a crime or immediately thereafter is executed without qualification of its severity. Immediate detention may create a potential threat to the principle of the independence of judges by putting pressure on a judge and forcing him/her to make a particular decision.

An important component of a judge's functional immunity is the independence of the judge as not being held liable for the opinion expressed by him or her in the administration of justice, or for the decision taken, provided that the judgment of the court which has entered into force does not establish the judge's guilt for a criminal act. This idea was realized: (a) in Part 4 of Article 126 of the Constitution, according to which "a judge may not be held liable for the judgment rendered by him, except for committing a crime or disciplinary misconduct, "and (b) in Part 2 of Art 106 of the Law on Judiciary, according to which quashing or modifying a judgment does not entail disciplinary liability of the judge who participated in its adoption, except in cases where the violation was committed due to intentional failure to comply with the rules of law or improper treatment of official duties. This approach may distort the essence of judicial independence since "a judge is dependent on the superior court which is a Soviet approach to the organization of justice, in which the courts of higher instance act, so to speak, not only as judges for assessment of judgments, but also de facto as judges of the actions of the judge of the lower instance himself/herself in terms of disciplinary nature".[68]

Based on the above it could be concluded, that the outcome on institutionalization of functional immunity has been partially achieved (50%). Though further **development of legislation and practices regarding judge's liability for misconduct committed in the course of the performance of judicial duties of the administration of justice should be considered**.

42. Institutionalization of duty of impartiality of judge

Impartiality is determined by the ECHR as both a *subjective* approach, which takes into account personal convictions or interests of a particular judge in a given case, and an *objective* test, which requires ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.[69]

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[68] Кузнецова И. С. Иммунитеты и ответственность как элементы конституционно-правового статуса судьи : дис. канд. юрид. наук. Москва, 2010. 188 с. С.14.

[69] See for example Piersack case, judgment of 1 October 1982, Series A 53, para. 30, De Cubber case, judgment of 26 October 1984, Series A 86, para. 24, Demicoli case, judgment of 27 August 1991, Series A 210, para. 40, Sainte-Marie case, judgment of 16 December 1992, Series A 253-A, para. 34.

In the CCJE's Opinion No 3 "On the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality" it is stated, that "[j]udges should, in all circumstances, act impartially, to ensure that there can be no legitimate reason for citizens to suspect any partiality. In this regard, impartiality should be apparent in the exercise of both the judge's judicial functions and his or her other activities."[70]

The CCJE further in its Opinion elaborates on impartiality by referring to the following aspects: a) impartiality and conduct of judges in the exercise of their judicial functions – judges should exercise their duties without any favouritism, display of prejudice or bias; they should not reach their decisions by taking into consideration anything which falls outside the application of the rules of law; as long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute or which could influence the fairness of the proceedings; they should show the consideration due to all persons (parties, witnesses, counsel, for example) with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions; b) impartiality and extra-judicial conduct of judges – judges should not be isolated from the society and should therefore remain generally free to engage in the extra-professional activities of their choice; however, such activities may jeopardise their impartiality or sometimes even their independence – a reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties; judges should conduct themselves in a respectable way in their private life; the CCJE encourages the establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge, the presence of such bodies or persons could encourage discussion within the judiciary on the content and significance of ethical rules; judges should show restraint in the exercise of public political activity; c) impartiality and other professional activities of judges - the specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power, this requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner.

The Law on Judiciary refers to the impartiality in the context of judicial independence. Part 3 Article 6 of the said Law states that "[i]nterference with the administration of justice, influence on court or judges in any manner, contempt of court or judges, collection, storage, use and dissemination of information orally, in writing or otherwise, with the purpose to discredit court or influence the impartiality of the court, calls to non-enforcement of court decisions are prohibited and entail liability stipulated by the law".

The Law further does not explicitly establish any provisions, referring to the conditions and criteria to be followed with regard to the impartiality of judges. At the same time, this concept is implemented through different institutes, such as incompatibility rule which is enshrined in Article 54 of the Law on Judiciary and provides that "[h]olding a position of a judge shall be incompatible with holding a position in any other body of state power, the body of local self-government and a representative mandate. Occupying the position of a judge is also incompatible with the effective prohibition to hold office for such a person who is subject to the purification of the government in the manner stipulated by the Law of Ukraine "On Purifica-

[70] CCJE (2002) Op. N° 3; https://rm.coe.int/16807475bb

tion of the Government. [...] A judge may not combine his/her activities with entrepreneurial activities, legal practice, hold any other paid positions, perform other paid work (except for teaching, research or creative activities), or be a member of the governing body or a supervisory board in a company or organization that is aimed at making profit."

According Article 10 or the Code of Judicial Ethics of the CoJ "a judge shall discharge his/her judicial duties impartially and without bias and refrain from any conduct, actions, or statements that may raise doubts as to the equal status of judges, assessors, and jurors in the administration of justice."

Procedural laws provide for specific institutes that ensure independence and impartiality of judges such as self-recusal and recusal.

In light to that, Article 15 of the Code of Judicial Ethics further elaborates: "Impartial consideration of cases is the principal duty of a judge. A judge has a right to self-recusal in cases provided for by procedural law, if there is bias towards one of the parties and if a judge has personal knowledge of evidence or facts which may influence the outcome of the case. A judge shall not abuse the right to self-recusal. A judge shall recuse himself/herself if it is impossible for him/her to make an objective judgment in a case."

Taking into account the content of this principle explained in the documents of the ECHR, CCJE and other bodies, forming the practice of standards and principles of judicial activities, systematic analysis of Ukrainian legal regulation on judicial ethics (part of which are requirements related to the impartiality), management of conflicts of interests, disciplinary liability for breach of elements comprising the concept of impartiality, such as incompatibility, procedural safeguards (for example, the institute of recusal), organizational measures, such as automated case distribution, institutional set-up with the CoJ empowered with the consultative competence on judicial ethics, management of conflicts of interests, the HCJ having the constitutional power of applying disciplinary liability for judges, including for a breach of norms of judicial ethics, it can be concluded that the outcome of institutionalization of principle of impartiality has been fully achieved (100%).

43. Accessible, reasoned and consistent practice in judiciary ethical and disciplinary matters

These issues are covered by analysis of outcomes on ethics framework, publicly accessible and consistent practice and disciplinary practices (outcomes Nos. 40 to 50 accordingly).

As it is already mentioned, the CoJ is permanently developing the practices on interpretation and application of the Code of Judicial Ethics. Considerable piece of work has been done in developing the Commentary of the Code. It was adopted by the CoJ on 4 February 2016.71 It should be noted particularly that the Commentary provides not only interpretation of norms, but also gives references to respective European standards and is illustrated by particular cases. It is also important that the CoJ pays much attention to development of ethical standards, rules and practices of management of conflicts of interests and to raising the awareness of judges and public of these issues. It is suggested continuing in this positive direction and developing practice of interpretation of ethical rules, raising awareness of judges by discussing important issues, organizing targeted trainings, sharing good practices with judiciary of other countries, publishing actualities in this area.

With regard to the HCJ's practice, it has been noted that there is a lack of published sources (any overviews, reports or other documents, indicating some principles of proceedings,

71 http://rsu.gov.ua/uploads/article/komentar-kodeksusuddivskoietiki-edd47ed191.pdf

criteria for applying disciplinary liability). For example, on the website of HCJ, there is some operational information about scheduled hearings, announced recent decisions, search of all decisions, but there are no commentaries, reviews, etc. In addition, there are HCJ's decisions in which judges receive different and disproportionate sentences for the same offenses. Such examples are particularly striking since different judges have been subject to different disciplinary sanctions for committing the same acts: some have been dismissed while others were not. Therefore, it is recommended for the HCJ to formulate **consistent approaches in disciplinary practice, in particular regarding the imposition of disciplinary penalties for similar offenses. In case of a change in previous practice, the HCJ must substantiate its decisions** in detail. It is advisable that the HCJ **generalize its own disciplinary practice which should be regularly published on the HCJ's official website**. This will, first of all, have a **preventative effect** on judges who will be able to familiarize themselves with the relevant legal positions of the HCJ (judges **should be aware of cases, acts or omissions, for committing of which they could possibly be dismissed**), and secondly, it will **promote uniformity of practice of the various disciplinary chambers** of the HCJ on applying disciplinary liability. This will have long-term positive effects of ensuring the principles of legal certainty, proportionality and independence of judges.

Therefore, in general, while the progress in this area can be noted, this particular outcome cannot be considered as fully achieved (50 %), since practice in judicial ethics and discipline is constantly evolving like a living organism.

44. Delineation in practice of ethical requirements (positive principles of conduct) from disciplinary rules (negative prohibitions)

This outcome is closely related to the issues of practices of interpretation of rules of ethics and disciplinary practices as well as the level of cooperation of two bodies, empowered to interpret and apply rules of ethics and discipline, i.e. the CoJ and the HCJ accordingly.

From the perspective of the level of development of practices of ethics and discipline, it should be further concluded that positive steps as regards adequate interpretations of positive conduct and negative prohibitions have been taken. However, the outcome is not fully achieved (50 %). There is **a need to both develop those practices and draw distinctions between them and to facilitate the dialogue between the CoJ and HCJ in this respect**.

Part 15. Application of disciplinary liability

45. Clarification in practice of systemic or serious breaches of ethical requirements, giving rise to disciplinary responsibility

The grounds for disciplinary liability of a judge in case of violation of the Code of Judicial Ethics are defined in subparagraph 3 of Part 1 of Article 106 of the Law on Judiciary, i.e. when the conduct of a judge disgraces the status of judge or undermines the authority of justice, in particular on issues of morality, integrity, incorruptibility, incompatibility of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, disrespect to other judges, lawyers, experts, witnesses or parties.

According to the HCJ's member Larisa Shvetsova,[72] for the period from 2017 to 5 September 2019, the HCJ adopted 384 decisions on bringing judges to disciplinary liability, 129 of them concerned violation of the abovementioned provision of the Law in Judiciary.

[72] http://www.vru.gov.ua/news/5327

The issue of some disproportionality of sanctions which can be applied for violations of judicial ethics should be noted. According to Par.1 of Article 109 of the Law on Judiciary, disciplinary sanction may be applied to judges in the form of: 1) warning; 2) reprimand with deprivation of the right to receive additional payments to the salary of a judge within one month; 3) severe reprimand with deprivation of the right to receive supplements to the salary of a judge within three months; 4) submission of a temporary (one to six months) suspension from administering justice with the deprivation of the right to receive additional payments to the salary of a judge and the mandatory referral of a judge to the NSJ for training and further qualification assessment to confirm the judge's ability to administer justice in the relevant court; 5) submission of transfer of a judge to a lower court; 6) a motion to dismiss a judge from office.

At the same time, the first three listed disciplinary sanctions cannot be applied in the case of the offenses which disgrace the status of judge or undermine the authority of justice, in particular on the issues of morality, integrity, incorruptibility, incompatibility of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, disrespect to other judges, lawyers, experts, witnesses or parties (Par. 3 of Article 109 of the Law on Judiciary). As violations of the judge's ethics by a judge can be of different nature and consequences – from disrespectful communication with the parties of the process, vulgar selfies on Facebook account, consuming alcohol in the workplace to attempts to avoid liability for drunk driving by referring to high status of a judge, etc., they must be addressed with some degree of flexibility. In addition, the proportionality of sanctioning applied to a judge is a generally recognized standard of disciplinary responsibility (paras. 182 and 183 of the judgment of the European Court of Human Rights in *Oleksandr Volkov v. Ukraine*).

Therefore, the Strategy's outcome on the practice concerning systemic or serious breaches of ethical requirements entailing disciplinary responsibility is essentially achieved (75%), although **amendments to Par. 3 of Article 109 of the Law on Judiciary which would grant the HCJ the right to apply any kind of disciplinary action, not just the most severe ones in case of violations of different kind of ethical rules, should be considered**.

46. Mixture of discussion-based and incentive/repression-based approaches in disciplinary oversight.

While ethics and professional conduct are guaranteed by a disciplinary system. However, the two concepts – ethics and professional conduct, on the one hand, and disciplinary responsibility, on the other hand – are different. The CCJE pleads in favor of this distinction. In that light the CCJE Magna Carta of European Judges, Article 18 states "deontological principles, distinguished from disciplinary rules, shall guide the actions of judges". The type of behavior that is likely to be harmful to the reputation of justice and, more seriously, to those subject to trial, has to be flagrantly serious to justify disciplinary proceedings. In other words, the difference does not really concern the nature of misconduct but rather its seriousness. Professional conduct or ethics refers to prevention, whereas disciplinary proceedings constitute a sanction.

According CCJE Opinion 3[73] it is desirable to establish one or more bodies or persons within the judiciary to advise judges confronted with a problem related to professional ethics or compatibility of non-judicial activities with their status.

Therefore, the focus should be on prevention rather than on repression and sanction. In case of Ukraine it seems that the main focus is still put on repression and imposing disciplinary

[73] "On the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality"

sanctions implemented through the HCJ, while the advisory role of the Ethics Committee within the CoJ is rather limited. Evidently, one has to acknowledge the efforts made by the CoJ, but having in mind the enormous number of complaints against judges it seems that their work should be further enhanced. Therefore, this outcome is partially achieved (50 %) and it should be seen in relation to outcome 44.[74]

47. Revised limitation period for bringing judge to disciplinary liability

In its judgment in *Oleksandr Volkov v. Ukraine*[75] case, the ECHR emphasized that national law did not provide for any time limits related to the procedure for dismissing a judge for violation of oath. The Court noted that such an indefinite approach to disciplinary cases against judges seriously threatens the principle of legal certainty (para. 139).

Now the term for bringing judge to disciplinary liability is established in Part 11 Article 110 of the Law on Judiciary. It states that a disciplinary sanction shall be imposed on a judge not later than three years after the offense, excluding the time of temporary incapacity to work or vacation, or conducting relevant disciplinary proceedings. The exception is foreseen in Part 12 for those cases, where a decision of the ECHR has found the facts which may constitute grounds for imposing a disciplinary sanction on a judge. In those cases, the period shall be calculated starting from the date when such decision of the European Court of Human Rights becomes final. The expiration of the term stipulated by the law for imposing a disciplinary sanction on a judge constitutes the ground for refusal to open the case (Part 2 Article 45 of the Law on HCJ).

These provisions allow to acknowledge the achievement of this outcome to a considerable extent (75 %) in view of the attempts to regulate one of the main aspects of fair system of disciplinary liability. However, this limitation period is quite long. For example, according to the labor law of Ukraine, disciplinary sanction is applied by the employer immediately after the misdemeanor was found, but not later than one month from the day of its discovery (Article 148 of the Labor Code of Ukraine). Article 49 of the Criminal Code of Ukraine provides for a limitation period of up to 3 years for committing a crime of small gravity, punishable by restraint of liberty. It should also be noted that the absence of the term limiting the duration of disciplinary proceedings unreasonably extends the term of holding the judge liable and contradicts the principle of legal certainty.

The differentiation of the limitation period of disciplinary action for a variety of offenses could be also considered. Limitation period of 6 months from the date when the judge was found to have committed the offense and 1-3 years from the day of committing the act could be considered. Also, it would be **suggested to improve the regulation with respect to a stricter regulation of terms of investigation of the case** since the absence of a deadline for the duration of the proceedings, which is excluded from the term of liability to be imposed, creates the risk of undermining the guarantee of fair disciplinary proceedings in due time.

48. Scope and extent of *mens rea* (intention, negligence etc.) and considerations of prejudice caused defined for disciplinary liability purposes (with clarification of the need for cumulative or separate consideration)

Development of interpretation of *mens rea* is the object of disciplinary practice. Therefore, the conclusions and recommendations (while analyzing practical application of disciplinary liability) with regard to the lack of consistent and clear practices and the **need to develop**

74 See more in analysis of disciplinary practices, delineation of positive conduct and negative prohibitions and other related outcomes.

75 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}

these practices and to raise awareness of them is applicable to this outcome, the progress of which therefore could be evaluated at no more than 50 %.

49. Clear, foreseeable and applicable grounds for disciplinary liability, including those giving rise to dismissal

The Law on Judiciary, in its Article 106, establishes exhaustive set of grounds for disciplinary liability. According to the Law, there are 19 grounds (with some "sub-grounds") when the judge may be brought to disciplinary liability. These include: 1) intentional or caused by negligence: a) illegal denial of access to justice (including illegal refusal to consider a claim, an appeal, cassation claim, etc. on its merits) or other substantial violation of the norms of procedural law in the course of administering justice prevented participants of the process from exercising their procedural rights granted to them and fulfilling their procedural duties, or caused violation of the rules regarding the jurisdiction or composition of the court; b) failure to specify in the court decision the reasons for sustaining or rejecting arguments of the parties on the merits of a dispute; c) violation of the principles of publicity and openness of a trial; […] 2) unreasonable delay or failure to take measures for consideration of an application, complaint or case within a timeline established by law, delays in drafting a reasoned court decision, untimely submission of a copy of the court decision by a judge to be entered into the Unified State Registry of Court Decisions; 3) the conduct of a judge disgraces the status of judge or undermines the authority of justice, in particular, on the issues of morality, integrity, incorruptibility, congruence of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, disrespect to other judges, lawyers, experts, witnesses or other court process participants; […] 9) failure to submit or untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance in the manner stipulated by law in the field of preventing corruption; […] 12) judicial misconduct including expenditures by the judge or members of his/her family in excess of the income of the judge and his/her family; inconsistency between the judge's lifestyle and his/her declared income; failure by the judge to confirm the legality of the source of the property; […] 19) submission of knowingly inaccurate (including incomplete) statements in the declaration of judicial integrity.

On the one hand, this approach could be recognized as a progressive one since it requires that disciplinary liability is applied to judges strictly on the basis of a ground directly provided by law. Therefore, the outcome of clear regulation of grounds for dismissal is considered to be largely achieved (75%).

On the other hand, analysis of the content and the system of norms establishing the grounds for liability militates for development of the regulatory framework in this regard. First of all, the grounds are of different nature: some of them are specified and detailed (for example, untimely submission of a copy of court decision by a judge to be entered into the Unified State Registry of Court Decisions, failure to submit or untimely submission of a declaration, etc.), while others are of general character formulated as principles (for example, the judge's lifestyle does not correspond to the income declared, the conduct of a judge disgraces the status of judge or undermines the authority of justice, in particular, on the issues of morality, integrity, incorruptibility, congruence of the lifestyle of a judge with his/her status). This can lead to some issues of prompt interpretation and application of the disciplinary liability: in some cases, the interpretation would be very clear and strict since the ground is very accurately determined (failure to submit decision for registry on time), other situations would demand very extensive and even sophisticated interpretation (as for example, a judge disgraces the status of judge on the issue of morality). Also, it should be noted, that such a ground as "the conduct

of a judge disgraces the status of judge or undermines the authority of justice, in particular, on the issues of morality, integrity, incorruptibility, congruence of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, disrespect to other judges, lawyers, experts, witnesses or other court process participants" could be regarded as encompassing all other grounds established by law. Therefore, its interpretation could be also debated.

A possible way for **improvement is providing for the procedural misconduct of a judge as a general ground for disciplinary liability**. It is obvious that intentional misconduct or negligence of the judge has to be the object of the liability as in the case of other professionals. However, it **has to be properly balanced with the procedural rules and functional independence**. Establishing particular situations in the process of administration of justice as directly constituting the ground for disciplinary liability usually cause misunderstanding and misuse of these norms by the parties. For instance, parties challenge courts decisions in disciplinary proceedings claiming that the decisions resulted from "negligent failure to specify in a court decision the reasons for sustaining or rejecting arguments of the parties on the merits of a dispute". This kind of ground can be and is very often interpreted intentionally or due to its incomprehension as the alternative way to challenge as unjustified the decision of the court by the party that has lost the appeal/cassation.[76] Therefore, it would be **recommended to review the abovementioned regulation with regard to the disciplinary liability on the ground of procedural misconduct**. This ground could be formulated as a general provision, for example providing for disciplinary liability for the "intentional or caused by negligence breach of rules and principles of justice administration which undermines the authority of justice".

50. Dismissal as disciplinary sanction in law and practice; enlarged list of other disciplinary sanctions

The list of disciplinary sanctions is established in Article 109 of the Law. The list has been expanded comparing to the one established in previous regulation. Part 1 of Article 109 states that the following sanctions may be imposed on judges:

1) admonition;
2) reprimand – with deprivation of the right to receive bonuses to judicial salary for one month;
3) severe reprimand – with depriving of the right to receive bonuses to judicial salary during three months;
4) motion to temporarily (from one to six months) suspend a judge from the administration of justice – with deprivation of the right to receive bonuses to judicial salary and compulsory referral of a judge to the NSJ to take a training course determined by the body which conducts disciplinary proceedings against judges and further qualification evaluation to confirm the judge's ability to administer justice in the respective court;
5) motion to transfer a judge to a court of a lower level;
6) motion to dismiss a judge from the office.

According to Part 6 of Article 126 of the Constitution of Ukraine, grounds for dismissal of a judge are: 1) inability to exercise duties due to health condition; 2) violation of incompatibility requirements; 3) committing a serious disciplinary misconduct, gross or systematic neglect

[76] This was also emphasized by judges in the interview conducted by the SCO "Institute of Researches of Humanitarian Sciences". Analytical Report "Disciplinary Liability of Judges: Practice of the High Council of Justice 2017-2018 and Problematic Issues", 2019, New Justice Program.

of duties which is incompatible with the status of a judge or revealed his/her unsuitability for the position; 4) submitting an application for resignation or dismissal on his/her motion; 5) disagreement on transfer to another court in case of liquidation or reorganization of the court in which the judge holds office; 6) breach of the obligation to confirm the legality of the source of the property.

The judge's violation of the duty to confirm the lawfulness of the source of the property may be ascertained: (1) within the framework of disciplinary proceedings by the HCJ; (2) within the scope of the qualification assessment by the HQCJ; (3) by the court when considering the relevant case (Part 2 of Article 118 of the Law on Judiciary). The decision to dismiss a judge shall be adopted by the HCJ in accordance with the procedure established by the Law on the HCJ (Part 2 of Article 112).

Part 8 of Article 109 of the Law on Judiciary provides specific grounds, on which the most severe disciplinary sanction, namely dismissal from the office can be imposed. These grounds include: judge commits a serious disciplinary offense, gross or systematic neglect of duties which is incompatible with the status of a judge or which has revealed that he/she is unsuitable for the position he/she occupies; a judge violates the obligation to confirm the legality of the source of property.

Furthermore, in Part 9 Art. 109 of the Law on Judiciary, situations regarded as a serious disciplinary offense, gross or systematic neglect of duties are described, i.e.: a judge has behaved in a way which disgraces the title of a judge or undermines the authority of justice, including the issues of morality, compatibility of the judge's lifestyle with his/her status, compliance with other ethical norms and standards of conduct which ensure public trust in court; a judge has committed a disciplinary offense while already having a pending disciplinary sanction on his/her record; a fact of judge's dishonest conduct was found, including a judge or his/her family members making expenses which exceed the legal income; incompatibility of the level of life of a judge with the declared income was found; using the status of a judge to obtain illegal benefits; a judge was found guilty by a court of committing a corruption offense or corruption-related offense; a judge did not confirm his/her ability to administer justice in the relevant court; a judge deliberately failed to submit a declaration of integrity or declaration of family relations within the established deadline or deliberately declared inaccurate (including incomplete) information; a judge committed other gross violation of law which undermines public trust in court.

Abovementioned regulation, establishing the exhaustive list of disciplinary sanctions and clear separate grounds for dismissal as disciplinary sanction allows to conclude that in respect of regulatory framework the outcome of improving system of disciplinary sanctioning has been achieved by 100 %, but taking into consideration the pending issues of practical application of disciplinary sanctions (see below), the overall achievement should be assessed at a slightly lower level (85%).

At the same time, some comments with regard to the practical application of this regulation should be noted. The analysis of the practice of the disciplinary authorities for 2015-2018 provides that in order to dismiss a judge, his/her misconduct should be characterized by gross violation of the law or committing procedural actions (making procedural decisions) which are not provided by law, for example: failure to comply with the rules of jurisdiction; the imposition of an overly lenient sentence in a criminal case which has gained a widespread public resonance; adopting judgments contradicting the established practice of the ECHR; deliberately delaying the terms of the case; breach of the secrecy of the meeting room; failure to comply with the provisions of the Constitution of Ukraine, the Convention when choosing

a preventive measure in the form of detention of a participant of mass protests in February 2014; securing a claim in a manner not provided for by the procedural norms of Ukraine, which has had grave consequences; adopting an unreasoned court decision; violating rules of criminal procedural law which has led to negative consequences and appears to violate the fundamental right to liberty; etc.

An analysis of the HCJ practice shows that the essential features of a judge's misconduct incompatible with his/her subsequent tenure of the judge's office are: (a) the intent of the judge to commit a disciplinary offense; (b) flagrant violation of procedural law, misapplication of substantive law or other illegal acts of a judge, which clearly testify dishonesty and lack of impartiality in the administration of justice; (c) the systematic nature of the judge's misconduct; (d) adverse effects directly attributable to the judge's actions include material breach of the rights and legitimate interests of a person, several persons, a group of persons or the State resulting from the judge's decision; consequences of irreversible nature; lack of public confidence in the court resulting from the judge's misconduct; (e) a judge's failure to comply with the requirements of incompatibility, a breach of the requirements of judicial ethics or anti-corruption law.

With regard to the HCJ's practice, it should be noted that there is a lack of published sources (any overviews, reports or other documents, indicating some principles of proceedings, criteria for applying disciplinary liability). For example, on the HCJ's website, there is some operational information of scheduled hearings, announced recent decisions, search of all decisions, but there are no commentaries, reviews, etc. In addition, there are HCJ's decisions in which judges receive different and disproportionate sentences for the same offenses. Such examples are particularly striking since different judges have been subject to different disciplinary sanctions for committing the same acts: some have been dismissed while others were not.

Therefore, it is recommended for the HCJ to formulate c**onsistent approaches in disciplinary practice, in particular regarding the imposition of disciplinary penalties for similar offenses**. In **case of a change in previous practice, the HCJ must substantiate its decisions** in detail. It is advisable that the HCJ **generalize its own disciplinary practice and publish it regularly on the HCJ's official website**. This will, first of all, have a **preventative effect** on judges who will be able to familiarize themselves with the relevant legal positions of the HCJ (judges **should be aware of cases, acts or omissions, for committing of which they could possibly be dismissed**), and secondly, will **promote uniformity of practice of the various disciplinary chambers** of the HCJ on applying disciplinary liability. This will have long-term positive effects in terms of ensuring the principles of legal certainty, proportionality and independence of judges.

51. Exhaustive list of clear-cut grounds enabling establishment of judge's breach of oath

It has to be noted that the wording of the provisions on the ground for dismissal of a judge for committing a serious disciplinary misconduct, gross or systematic neglect of duties that is incompatible with the status of a judge or has revealed his/her unsuitability for the position held has replaced the provision on the dismissal of a judge for breach of oath. This step is aimed at ensuring the principle of legal certainty in formulating the grounds for the disciplinary liability of the judge, and was taken in response to the recommendations of the Venice Commission. The ECHR gave its assessment of the category of "oath violation" in its judgment in the case of *Oleksandr Volkov v. Ukraine*.[77] In particular, the Court noted that Ukraine lacks principles and practices that would accurately and consistently interpret the notion of "violation of oath

[77] https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}

of a judge" as a ground for dismissal (par. 180), and proper procedural safeguards to prevent arbitrary application of the relevant substantive law rules when dismissing a judge on this ground.

The Law on Judiciary does not contain clear criteria for distinction between a disciplinary misconduct of a judge which is not incompatible with further service, on the one hand, and a misdemeanor that should result in a judge's dismissal, on the other hand. These criteria are set in the practice of the HCJ. As it is, the systematic interpretation of the provisions of the Law enables to conclude that the values and principles embedded in judicial oath, which is provided in Article 57 of the Law ("to administer justice objectively, fairly, impartially, independently, justly and in a highly qualified manner in the name of Ukraine, guided by the rule of law principle, obeying only the law, to perform duties and exercise powers of a judge honestly and in good faith and to observe ethical principles and rules of conduct of a judge, not to perform any action that discredit the title of a judge or undermine the authority of justice") are those, the breach of which constitutes grounds for disciplinary liability, established in the parts 8, 9 of Article 109 of the Law.

In view of the above it can be concluded that the outcome has been achieved in full (100%).

Part 16. Institutional set-up for career and disciplinary matters

52. One judicial governance body to examine all disciplinary cases

After the High Council of Justice (Вища рада юстиції), which had the power to consider the disciplinary cases only of the judges of the Supreme Court of Ukraine and judges of the higher specialized courts (other disciplinary cases were examined by the HQCJ), was reorganized into the High Council of Justice (Вища рада правосуддя) (the HCJ), according the Law on the HCJ, which came into force on 5 January 2017, the HCJ became the only body competent to consider disciplinary cases brought against any judge in Ukraine.

This change in institutional set-up for disciplinary matters allows to conclude that the outcome of concentrating powers of bringing judges to disciplinary liability in one body is fully achieved (100 %).

At the same time, various risks and challenges have to be taken into account to ensure proper execution of this mandate. The number of complaints/cases "inherited" by the HCJ from the HQCJ on January 2017 was 12,283. In 2017, the HCJ received 15,626 complaints concerning judicial discipline, in 2018 it received 20,546 complaints.[78] In 2018 the Disciplinary Chambers and Members of the HCJ handled 19,641 disciplinary complaints (10,769 of them – „inherited" from HQCJ): 13,598 were rejected by Members of the HCJ; 139 were rejected by the decisions of the Disciplinary Chambers; 453 decisions to open disciplinary proceedings were adopted; 170 decisions to apply disciplinary liability on judges were taken. This is a large number of complaints, and majority of them are unsubstantiated. Very often complaint system is misused by lawyers to prolong the case processing time. Dealing with this workload can create an obstacle, preventing members of the HCJ from dedicating enough time and attention to opened proceedings and to focus on analysis and development of consistent disciplinary practices. To prevent a deluge of ungrounded, unmeritorious and frivolous complaints, a filter should be introduced which would reduce the number of cases and therefore improve the efficiency of work within the HCJ disciplinary chambers. Therefore, it is **recommended to both amend the regulation and improve organization**

[78] http://www.vru.gov.ua/statistics/100

of investigation of materials and proceedings in order to facilitate disciplinary oversight. Here, **effective use of institute of inspectors could be one of the key solutions**.[79]

53. Optimized number of judicial governance bodies in charge of career, performance management and disciplinary liability matters

This outcome is covered in the analysis of Part 1 of Chapter I concerning the institutional set-up of judiciary governance.

It was concluded that a new judiciary governance institutional set-up should be considered as establishing a less fragmented, more structured governance system with separate institutions granted with clear mandate of particular powers. Regulatory basis allows to clearly separate powers of different institutions. Moreover, it is very important that the constitutional basis for governance "pyramid" at the pinnacle of which a constitutional body HCJ is foreseen as having a power and responsibility of leadership and coordination of governance has established legal background for clear and effective institutional set-up.

At the same time, there are reasons to consider whether it would be effective to re-shape the whole system of judicial governance by merging powers of some existing bodies and empowering the HCJ, a body which is dominated by judges, safeguards judicial independence, forms judicial corpus, including through selection, appointment, evaluation, training of judges. The idea of **making judicial governance more effective and powers and competences more concentrated to avoid overlap or gaps** has been discussed recently at various events and expert reports, based on the analysis of practices and standards in EU and other countries. Also, **more accurate separation of powers between the HCJ and CoJ, if CoJ's is still being considered as separate body, could be discussed**. The leadership potential of the CoJ as the highest body of judicial self-government, the activity of which is envisaged by the Constitution of Ukraine, could be also facilitated.

Therefore, it can be stated that the institutional set-up allows to execute effectively judicial career issues, performance management, disciplinary proceedings, which leads to the conclusion that the goal was achieved at a sufficient level (75 %) although further **developments should be discussed as mentioned above**.

It should also be noted that the meaning of the term "optimized" as regards the number of institutions could be subjective and therefore irrelevant. It is more important that the delineation of powers and competencies among these institutions is clear and the procedures of operation are made efficient and transparent.[80]

54. Liability established for inspectors for non-performance of duties, avoidance of appropriate response to potential or actual offenses

The legal status of disciplinary inspectors is provided by the Law on the HCJ. According to the Article 28, inspectors shall be appointed to and dismissed from the office by the Chairman of the HCJ upon a proposal of the relevant member of the HCJ. The inspectors are not civil servants; their status shall be established by this Law. The inspectors shall act on the basis of instructions from the members of the HCJ and in accordance with the regulatory documents defining the functioning of the HCJ. In particular, on the instructions of a member of the HCJ, the inspector shall: 1) pre-analyze case files that have been referred to a member of the HCJ based on the results of the automated case allocation; 2) collect information,

[79] More about Inspectors see in analysis of outcome No 54 on status and liability of Inspectors.

[80] The Strategy uses the term "optimized" on several occasions and this comment applies in all those cases.

documents, other materials, if necessary; 3) submit proposals and prepare draft opinions on issues that are within the competence of a member of the HCJ; 4) perform other tasks within the powers of a member of the HCJ specified by this Law.

Acting in their capacity, inspectors are bound to respect the rules of judicial ethics; not disclose and not use classified information or information that came to their knowledge except for the purpose of executing their powers; follow the requirements and comply with restrictions set forth by anti-corruption legislation, including the obligation to submit, in accordance with the procedure established by law, declaration of a person authorized to exercise the functions of central or local government (Part 1-8 Article 28 of the Law on the HCJ).

On 15 August 2017 HCJ adopted the Decision on the approval of the Regulation on the Inspector of the HCJ. This Regulation establishes duties of the inspectors and establishes provision on their liability for non-compliance with duties and restrictions and for failing to respond appropriately to potential or actual offenses (Par. 3.6).

The problematic aspect remains the determination of the procedural status of a disciplinary inspector, who is deprived of any independence today. The HCJ's Regulation on the Inspector details powers and responsibilities of inspectors, but they are all formulated in the form of "pre-drafts", "pre-studies", "pre-analyzes", "prepares draft decisions", "prepares proposals". Article 44 of the Law on HCJ establishes grounds for rejecting the complaint without opening the procedure (without signature or indicating the name of the "accused" judge etc.) which could be assessed by legally educated inspectors. Still, according to the legislation, the final decision at all stages of the disciplinary proceedings must be taken a HCJ's member, because the Law does not provide the disciplinary inspector with the right to make any decision in disciplinary proceedings. At the same time, due to the extreme workload of the HCJ, which results in prolonged disciplinary procedures and therefore creates a risk of pressure on the judge who is held in this situation for a long time, **granting disciplinary inspectors with independent procedural status in disciplinary proceedings could be considered**.

Part 1 Article 28 of the Law on HCJ provides that the Inspectorate Service of the HCJ shall employ persons who obtained a complete university education in law and who have at least five years of professional experience in law. Should a retired judge be appointed to the position of the inspector of the HCJ, that judge shall continue enjoying his/her right to pension or lifetime financial support, as well as other guarantees under the Law on Judiciary. The legislation gives a ground for qualified and experienced persons to be employed. This should be **facilitated by certain practice of the competitive selection procedure for the posts of disciplinary inspectors and by testing of candidates on knowledge of the law on the judiciary and the disciplinary practice**.

Strengthening the procedural status of disciplinary inspector should **include granting him/her authority to pre-verify a complaint concerning the conduct of judges** in accordance with Article 43 of the Law on HCJ. The disciplinary inspector must determine the fate of the complaint against the judge's actions, in particular whether there exist grounds for opening a disciplinary case or for refusing to open a disciplinary case. The final decision to open a disciplinary case must be made by the HCJ's Disciplinary Chamber based on the opinion of the disciplinary inspector (Article 46 of the Law). In order to ensure a unified approach to the activities of inspectors, it would be **necessary to develop uniform criteria for assessing a complaint about the misconduct of a judge, based on the requirements of the Law and the existing practice of the HCJ. Standardizing the work of inspectors would minimize corruption risks in their activities**. An important element of improving the work of **inspectors is to provide them with access to electronic databases and registries**.

For a full and timely investigation of disciplinary misconduct of judges, disciplinary inspectors must have automated access to the judge's files, as well as to electronic databases of court proceedings and court records. Access to the necessary materials for the disciplinary inspector can be provided by the staff of the State Security Service of Ukraine and other agencies that administer the relevant databases. Implementing such an approach requires legislative changes, but it will make disciplinary action impartial and prompt, eliminating unnecessary bureaucratic obstacles.

Therefore, it can be stated that the implementation of the goal of the Strategy on regulating the status and responsibility of disciplinary inspectors has been partially achieved (50 %). The legal status and procedural role of inspectors could be improved as mentioned above.

55. Dedicated continuous training curricula for (regular) study visits of judicial inspectors to EU MS to share best practices

Alongside the adequate regulatory framework and efficient organization of the service of inspectors, improvement of qualifications of these officials is one of crucial aspects of effective support to the facilitation of disciplinary proceedings and development of consistent practices.

According to the information provided by the HCJ, there are no continuous training curricula and continuous trainings provided for inspectors, except of some ad hoc events on sharing disciplinary practices and training activities led by judges and HCJ members, where some of inspectors could participate. Two study visits to Romania and one international two-day seminar in Ukraine were organized with the support of USAID in 2018.

Therefore, it can be concluded that the level of achievement of the outcome on the improvement of qualification of judicial inspectors is not sufficient (50 %). It would be recommended to **develop special training curricula for inspectors by the NSJ and facilitate exchange of best European practices** in forms of international workshops. Also, the **internal (on-the-job-training) training activities and events on sharing practices (when inspectors or members of the HCJ act as lecturers) should be facilitated**.

Part 17. Disciplinary procedure

56. One set of procedures for all disciplinary cases

57. Full guarantees of fairness of proceedings in disciplinary cases before judiciary governance bodies[81]

Disciplinary proceedings are regulated by the Law on Judiciary, the Law on the HCJ and the Rules of Procedure of the HCJ. The adjudication of any disciplinary case against a judge is conducted on the basis of competitiveness, independence and impartiality. These principles are ensured by a number of clearly prescribed procedural rules.

The issue, however, is the absence of clearly defined deadlines in the first stage of disciplinary proceedings (preliminary examination and examination of a disciplinary complaint). Until the recent amendments to the HCJ's Regulation (June 2019), the period for preliminary examination and examination of the disciplinary complaint was 45 days; today the period is defined as 'reasonable time'. The Disciplinary Chamber shall consider the disciplinary case within 90 days from its opening. This term may be extended by the Disciplinary Chamber for not more than 30 days in exceptional cases (Part 13 of Article 49 of the Law on HCJ).

[81] Both outcomes are inter-related and therefore are analysed together.

Such uncertainty with the time frame of disciplinary proceedings leads to excessive delays and evasion of disciplinary liability by judges, since disciplinary sanction can be applied to a judge within the three-year time-limit from the date of the offense. It would be **suggested to amend the regulation to introduce stricter regulation of the time-limits for investigation of a case**, because absence of a deadline for a process , the duration of which is excluded from the period of limitation for liability to be imposed, creates a risk of inconsistency with the guarantee of fair disciplinary proceedings in due time.

In practice, questions arise regarding the forms of implementation of the principle of publicity when disciplinary action is brought against a judge. In many countries it is considered that the procedure for disciplinary proceedings against a judge should, for the most part, be confidential. If the principle of the presumption of innocence is applied to a judge, his or her image should not be publicly disrupted until the due process has been completed. In addition, disclosure of information about the prosecution of a judge in such proceedings may, in certain cases, contradict the principles of the presumption of innocence, the secrecy of the meeting room and the current legislation on personal data protection. Also, the unjustified extension of the publicity of disciplinary proceedings against a judge under certain conditions undermines the integrity of the judiciary, violates the principle of the security of judges and can be used as an instrument of undue influence on the court. At the same time, decisions to impose disciplinary sanctions on judges are made public.

According to the Part 1 of Article 49 of the Law on HCJ, consideration of a disciplinary case takes place in an open meeting of the HCJ Disciplinary Chamber, with the participation of the judge, appellant and their representatives. Taking into account the abovementioned arguments, **a possibility in some cases to hold the disciplinary proceedings against a judge in closed sessions is considered**. This applies to cases where an open trial may lead to the disclosure of a secret protected by law, first of all, the secrecy of the trial or the privacy of the persons concerned. In this aspect, the formulation of Part 2, 3 Article 49 of the mentioned Law is quite correct. According to it, the consideration of a disciplinary case in a closed session of the HCJ Disciplinary Chamber takes place in exceptional cases and in the presence of the grounds specified by law for holding closed court sessions. At the reasoned request of the judge, the Chamber may also decide to hear a disciplinary case in closed session if it is necessary to ensure the independence of the judge. It also seems appropriate **to consider opening disciplinary proceedings against a judge at a closed session of the HCJ**. The unjustified disclosure of information about a judge's misconduct, which has not yet been confirmed by objective data, adversely affects his/her reputation and, in general, the authority of the judiciary. Though, the publication of information about the opening of a disciplinary case against a judge on the official web site of the HCJ and in other sources is not prohibited by international standards.

An important element of due process in a disciplinary case against a judge is the reasoning in the decisions of the body that imposes disciplinary sanctions on judges. A study of the reasoning in the decisions of the HCJ showed that, as a whole, it supports its decisions by proper arguments. Often, however, decisions lack analysis of mens rea element of responsibility and contain insufficient argumentation as to the basis that constitutes the nature of the wrongdoing. Therefore, HCJ would be advised **to improve the standard of reasoning and substantiation of its decisions in disciplinary proceedings**. The HCJ should provide strong arguments for qualifying any wrongdoing by a judge and applying disciplinary sanctions to judges, taking into account the individual circumstances of the judge and the circumstances of the case.

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Therefore, the progress in establishing consistent system of procedures for all disciplinary cases which would guarantee fairness of proceedings in disciplinary cases can be noted as the partial achievement of relevant goals of the Strategy (both outcomes – 50 %), but **further developments of regulation and practices concerning timeline, publicity and other procedural aspects should be facilitated**.

58. Application of proportionality principle in ruling whether and what disciplinary sanction is to be imposed

The Law on Judiciary, in its Article 106, establishes exhaustive set of grounds for disciplinary liability. According to the Law, there are 19 grounds (with some "sub-grounds") when the judge may be brought to disciplinary liability. These include: 1) intentional or caused by negligence: a) illegal denial of access to justice (including illegal refusal to consider a claim, an appeal, cassation claim, etc. on its merits) or other substantial violation of the norms of procedural law in the course of administering justice prevented participants of the process from exercising their procedural rights granted to them and fulfilling their procedural duties, or caused violation of the rules regarding the jurisdiction or composition of the court; b) failure to specify in the court decision the reasons for sustaining or rejecting arguments of the parties on the merits of a dispute; c) violation of the principles of publicity and openness of a trial; […] 2) unreasonable delay or failure to take measures for consideration of an application, complaint or case within a timeline established by law, delays in drafting a reasoned court decision, untimely submission of a copy of the court decision by a judge to be entered into the Unified State Registry of Court Decisions; 3) the conduct of a judge disgraces the status of judge or undermines the authority of justice, in particular, on the issues of morality, integrity, incorruptibility, congruence of the lifestyle of a judge with his/her status, compliance with other norms of judicial ethics and standards of conduct which ensure public trust in court, disrespect to other judges, lawyers, experts, witnesses or other court process participants; […] 9) failure to submit or untimely submission of a declaration of a person authorized to perform the functions of the state or local self-governance in the manner stipulated by law in the field of preventing corruption; […] 12) judicial misconduct including expenditures by the judge or members of his/her family in excess of the income of the judge and his/her family; inconsistency between the judge's lifestyle and his/her declared income; failure by the judge to confirm the legality of the source of the property; […] 19) submission of knowingly inaccurate (including incomplete) statements in the declaration of judicial integrity.

It was already concluded that this approach could be recognized as a progressive one as it allows to apply disciplinary liability to judges strictly on the basis of the grounds directly provided by the law. At the same time, it has to be emphasized once more that the list of these grounds is excessive, and the grounds are formulated in a variable manner which can lead to misinterpretation and misapplication of these grounds (especially, when some of them could be considered as encompassing others).[82]

In addition, today some types of disciplinary misconduct are defined in such a way that the same act may have dual and sometimes triple qualifications, for example, breach of time limits can be also qualified as breach of human rights (right to a fair trial). Therefore, the HCJ should develop and approve clear rules for the qualification of judges' disciplinary misconduct. In addition, there is a need to ensure that such disciplinary sanction is proportionate to the misconduct committed, for instance, providing for dismissal of a judge for committing a serious disciplinary offense. According to Article 6 of the Law of Ukraine on Advocacy a

[82] See more in the analysis of the outcome 49 on the grounds for disciplinary liability.

person who is dismissed from office of a judge, prosecutor, investigator, notary, from public service or service in local self-government bodies for violation of oath, committing a corruption offense may not be an advocate within three years after the dismissal. It appears that according to the Ukrainian legislation, the negative consequences of such an act are more severe than the punishment for a serious crime under the Criminal Code of Ukraine. This approach can hardly be considered justified.

Thus, it can be stated that the implementation of the task of the Strategy for application of proportionality of sanctioning for disciplinary offences has been partially achieved (50 %). Further **developments in practice and reconsideration of list of ground for disciplinary liability would be recommended**.

59. Mechanism in place to prevent judge under disciplinary investigation from administering justice

Par. 5 Article 109 of the Law on Judiciary stipulates that, where the decision to impose a disciplinary sanction on a judge does not allow the judge to administer justice in a relevant court, the judge shall be suspended from administering justice in this court starting from the day the decision on imposing a disciplinary sanction was adopted.

According the Article 62 of the Law on HCJ, there are three grounds for the suspension of a judge from the administration of justice by the HCJ: 1) due to facing criminal charges; 2) when undergoing a qualification assessment; 3) as a matter of a disciplinary sanction.

Part 2 of the Article 62 states that a judge is considered to be suspended starting from the date of adoption of the decision by the Disciplinary Chamber on a disciplinary sanction in the form of a motion to dismiss the judge from the office, without the HCJ adopting a separate decision. The suspension of the judge on other grounds is not permitted (Part 3 Article 62).

Abovementioned legal provisions establish minimum safeguards to prevent a judge, who has been subject of a disciplinary sanction forbidding the judge to administer justice in a relevant court to continue exercising his/her direct judicial functions. In this regard the outcome has been achieved in full (100 %).

From the perspective of the judge's guarantees and rights within disciplinary procedure, suspension as only disciplinary action in case of the most serious disciplinary offences fully corresponds to the practice of the most European countries. As it is stated in the Report of the ENCJ 2014-2105 "On Disciplinary Proceedings and Liability of Judges", "suspension, not as a disciplinary action, but as a precautionary and temporary measure for the duration of the investigation into the allegation against the judge should only be considered in the most exceptional and serious of circumstances, and only where if the judge were not suspended it is anticipated that the integrity and/or independence of the judge may be compromised." A judge cannot be transferred, suspended or removed from judicial office unless it is provided for by law and by a decision adopted in the proper disciplinary procedure, the grounds for suspension shall be clearly defined and based upon established standards of judicial conduct and a judge may only be removed from judicial office for gross incompetence or conduct that is manifestly contrary to the standards of independence, impartiality and integrity of the judiciary. Suspension as a precautionary and temporary measure during the investigation into the allegation against the judge can be adopted in most of the European jurisdictions.[83]

[83] ENCJ Report 2014-2015 Minimum Judicial Standards V "Disciplinary proceedings and liability of Judges". https://www.encj.eu/images/stories/pdf/GA/Hague/encj_report_minimum_standards_v_adopted_ga_june_2015.pdf

Therefore, the possibility to establish legal rules for suspension of judicial authority **not only after the disciplinary proceedings have been finished with a disciplinary sanction imposed, but also, in exceptional cases, in the course of the proceedings and just after the opening of the procedure, when a disciplinary body (the HCJ) after preliminary investigation detects proofs of possible serious violations of judicial duties which may lead to the disciplinary sanction in the form of a bar to administer justice** could be further discussed. This possibility could be regarded as an important safeguard both of the right to a fair trial and judicial independence, as has already been mentioned, "in the most exceptional and serious of circumstances, and only where if the judge were not suspended it is anticipated that the integrity and/or independence of the judge may be compromised".

60. Right to appeal against decision of disciplinary body

According to the Part 1 Article 51 of the Law on HCJ, the judge against whom the Disciplinary Chamber adopts a decision within a disciplinary case shall have the right to appeal the decision to the HCJ. The complainant has the right to appeal against such a decision of the Chamber with the appropriate permission of the Disciplinary Chamber. The complaint is heard at a plenary session of the HCJ following the rules of disciplinary proceedings.

Further judicial review of the relevant decisions is substantially limited by law. According to Part 1 of Article 35 of the Law on HCJ, a decision of the HCJ can be appealed to the SC within 30 days from the day of its adoption and is examined according to the procedure established by the procedural law. The decision of the HCJ, adopted as a result of examination of the appeal against the decision of the Disciplinary Chamber, is subject to appeal within the limits established by law, namely it can be appealed on the following grounds: (a) the composition of the HCJ was not empowered to adopt the decision; (b) the decision was not signed by any of the HCJ members who participated in its adoption; (c) the judge was not properly informed of the HCJ meeting; (d) the decision does not contain references to the grounds for disciplinary responsibility of the judge and the reasons for relevant conclusions (Par. 1, Article 52). Such cases are assigned to the Supreme Administrative Court of Cassation, and their appeal is reviewed by the Grand Chamber of the SC.

Restrictions on the judicial protection of the judge's rights in disciplinary actions do not meet the international standards of independence of judges, according to which a judge has the right to appeal against decisions holding him/her liable, including disciplinary action. The limitation of the judge's right to appeal the HCJ decisions restricts the constitutional guarantee, according to which all decisions of the authorities may be appealed. In addition, the establishment of such jurisdictional restrictions has repeatedly been declared unconstitutional and inconsistent with the rule of law by the Constitutional Court. The ECHR states that a state cannot without justification remove civil cases from the jurisdiction of the courts, since this is contrary to the principle of the rule of law in a democratic society and Article 6 of the Convention.

The Constitutional Court of Ukraine found invalid the provisions of certain legislative acts which in one way or another restricted the possibility of judicial appeal of decisions and actions of officials in a number of cases (for example, *Ustymenko case* No. 18 / 203-97 of 30 October 1997[84] declared unconstitutional the provisions of Part 4 of Article 12 of the Law on the Prosecutor's Office regarding the possibility of appealing the decision taken by the prosecutor before a court only in cases prescribed by the law).

[84] Рішення Конституційного Суду України у справі щодо офіційного тлумачення статей 3, 23, 31, 47, 48 Закону України «Про інформацію» та статті 12 Закону України «Про прокуратуру» від 30.10.1997р., № 18/203–97. http://www.ccu.gov.ua/docs-search?page=2

The effectiveness of judicial appeals against HCJ's decisions in administrative proceedings is also questionable. When a court reverses a decision of the HCJ adopted on the basis of a complaint against a decision of the Disciplinary Chamber, the HCJ re-examines the relevant disciplinary case and in practice rarely makes decisions in favor of a judge. At the same time, it should be noted that the decisions of the HCJ Disciplinary Chambers are often changed or reversed when they were reviewed in plenary by the HCJ. Today this mechanism for reviewing decisions on disciplinary action against judges seems to be more effective than appealing against such decisions.

Abovementioned remarks lead to the conclusion, that the outcome of establishing effective procedure of appeal against disciplinary decisions is not entirely achieved (75 %), as restriction of the judge's right to judicial protection cannot be considered legitimate. It is **suggested to exclude the grounds for appeal of the HCJ's decision adopted after consideration of the appeal against the decision of its Disciplinary Chamber**. These decisions should be reviewed in accordance with the general principles and procedure provided by the Code of Administrative Procedure of Ukraine.

Part 18. Anti-corruption oversight mechanisms

61. Optimized institutional framework on internal anti-corruption oversight, its competences balanced

The 2016 judicial reform provided for several tools to monitor the conduct of a judge, including: (a) the institute of disciplinary responsibility of the judge, including details of the grounds for dismissal of the judge; (b) duty to submit annual declarations of integrity and ties that allow to monitor the judge's actions in the performance of his or her duties, including ensuring that the judge is impartial; (c) submission by the judges of annual assets declarations; (d) control over the conduct of a judge by the CoJ (in respect of compliance with the Code of Judicial Ethics and Rules on Conflict of Interests), the HQCJ (with respect to the declarations of integrity and family ties and the accuracy of data in them), the HCJ (in respect of disciplinary oversight), anti-corruption bodies (NAPCU, NABU); (e) institute for monitoring the lifestyle of a judge by anti-corruption bodies; (e) the institute of the judge's dossier which collects all the data on the professional activity of the judge; (g) public oversight of the judge (activities of the PIC and regular evaluation of judges by public organizations); (g) the introduction of the UJTIS in the future will allow for a more centralized information on all aspects of the professional work of the judge, since the functionality of this system will provide records of absolutely all procedural actions of the judge, containing quantitative and qualitative indicators of the results of his/her work.

All of these innovations are aimed at increasing the level of personal responsibility of judges, and of transparency and accountability of the judiciary. The introduction of this institutional, regulatory and organizational system provides for comprehensive control over the conduct of judges, compliance of their activities with the Code of Judicial Ethics, anti-corruption legislation, and allows judicial governance bodies to take prompt measures against judges who violate the law.

The category of judicial integrity was introduced into the legislation on judiciary in 2015 (the Law on Fair Trial), but the content of this concept was developed later in the by-laws regulating grounds and procedures for the qualification assessment of judges. Thus, the Regulation on the Procedure and Methodology of Qualification Assessment, adopted by the resolution of the HQCJ on 3 November 2016, states that the judge's compliance with the criterion of integrity is evaluated (established) according to the following indicators: living

expenses and property of the judge and his/her family members correspond to the declared income; the lifestyle of a judge and his or her family members corresponds to the declared income; compliance of the judge's behavior with other requirements of the legislation in the field of prevention of corruption; the presence of the facts of holding a judge accountable for misdemeanors or offenses testifying judge's dishonesty; other data. These indicators are evaluated on the basis of the interview and examination of the information contained in the judge's dossier, for example, information provided by the central bodies of the state anti-corruption policy, state financial control and other state bodies; declarations of the judge's family relations and declarations of integrity of the judge.

According to Article 18 of the Judicial Ethics Code, a judge must be aware of his property interests and take reasonable steps to be aware of the property interests of his/her family members. Article 19 of the Code stipulates that the judge must take into account that his/her family, social relationships or any other relationship and any interference by public authorities should not interfere with the judge's conduct or court decisions. For the first time, the duty to submit declarations of assets of a person authorized to perform the functions of state or local authority was provided for by the Law of Ukraine "On Prevention of Corruption" of 14 October 2014. The first declarations were submitted by judges in paper for the court, with a copy of the declaration to the tax authorities. The duty of civil servants and other officials to file electronic declarations appeared in 2016. The procedure for submitting assets declaration by a judge is specified by anti-corruption legislation. The NAPCU published relevant instructions on its official website, as well as approved the Procedure for carrying out control and full verification of the declaration of a person authorized to perform the functions of state or local self-government, clarification on the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures and a number of other acts.[85]

The 2016 judicial reform also mandated a judge to submit a declaration of family ties annually by February 1st, which is published on the official website of the HCJ (Articles 61, 62 of the Law on Judiciary). In this declaration any person with whom the judge has family relations, if a person has been or were holding a position in certain (listed in the Law) public office during the last five years must be indicated. The Declaration of Integrity includes judge's statement of the correspondence of the standard of living to the assets and income; absence of corruption offenses; absence of grounds for disciplinary action; honest performance of the duties of a judge and commitment to the oath; the absence of prohibitions specified in Lustration laws. Failure to submit declarations or failure to submit them in time or declaring deliberately false (including incomplete) information result in disciplinary liability.

Abovementioned analysis of the duties of judges with regard to observing the integrity requirements and of the regulatory framework and institutional set-up allows to conclude that the regulatory and institutional system with clearly empowered bodies (the CoJ in respect of compliance with the Code of Judicial Ethics and Rules on Conflict of Interests, the HQCJ with respect to the declarations of integrity and family ties and the accuracy of data in them, the HCJ in respect of disciplinary oversight, special anti-corruption bodies NAPCU and NABU in respect of compliance with special requirements of anti-corruption legislation) is sufficiently optimized and effective. Therefore, the outcome is considered to be achieved in full (100 %) and is in line with CCJE Opinion No.21 (2018) Preventing Corruption Among Judges.

[85] See https://nazk.gov.ua/uk/departament-perevirky-deklaratsij-ta-monitoryngu-sposobu-zhyttya/pravove-zabezpechennya/

62. Annual asset, income and expenditure declarations of all judges accessible online

Judicial declarations of integrity and family ties are published on the website of the HQCJ.[86] It is worth noting that the search of these declarations is user-friendly, allowing to promptly find declarations of any judge for several years (including scanned paper copies if declarations were submitted in paper).

With regard to the asset, income and expenditure declarations, although the public access is ensured, the website of the NAPCU is not simple in use: a person, who has to submit declaration, goes to the link on registration of declarations https://portal.nazk.gov.ua/login, using his/her e-signature; filled declarations are published on the web-site of the NAPC, but they do not have a direct link with their official site; they are published on a special platform. To see someone's declaration, a person has to go to the special platform https://public.nazk.gov.ua/ (this is the register of declarations) or just use the google search by the full name and surname of the person whose declaration is searched for.

Therefore, the outcome of publishing declarations of judges is considered to be achieved (100 %), but it would be **recommended for the NAPCU to develop a more user-friendly access to asset, income and expenditure declarations**.

63. Regular monitoring/verification of asset, income and expenditure declarations of prosecutors by judicial inspectors and National Agency for Prevention of Corruption; judges holding management positions subject to compulsory full examination; declarations of other judges examined randomly, or in response to relevant communications

In order to ensure the efficiency of the declaration, it is also important to monitor the accuracy of the information provided by the judge. This function is assigned to the NAPCU. According to Article 48 of the Law on Prevention of Corruption, the NAPCU conducts the following types of control regarding the declarations submitted by the subjects of declaration: 1) regarding the timely submission; 2) regarding the correctness and completeness of the filling; 3) logical and arithmetic control.

A full review of the declarations is carried out with regard to a number of officials holding specific positions, including all judges. It is important that not only the income of the judge, but also the income of his or her family members are subject to declaration. Full verification of the declaration is to find out the accuracy of the declared information, the accuracy of the declared assets and signs of illegal enrichment. It may be carried out during the period of the activities of relevant official and also within three years after termination of such activity (Article 50 of the Law of Ukraine "On Prevention of Corruption").

The legislation also provides for such an institution as monitoring the lifestyle of a judge (Article 59 of the Law on Judiciary). The lifestyle of a judge may be monitored by the NAPCU at the request of the HQCJ, the HCJ and in other cases specified by law. Information obtained from the judge's lifestyle monitoring is included in the judge's dossier.

A judge's violation of the rules of declaration may cause disciplinary, administrative and criminal liability. Pursuant to Article 106 of the Law on Judiciary a judge may be held disciplinarily responsible for failure to notify or late notification of the CoJ on the actual or potential conflict of interests; failure to submit or late submission of a declaration in accordance with the procedure established by the legislation in the field of preventing corruption; providing

[86] https://vkksu.gov.ua/ua/dieklaracii-rodinnich-zwiazkiw-suddi-ta-dobrotchiesnosti-suddi/

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deliberately false information in the declaration or deliberate failure to provide information specified by law; establishment of inconsistency of the judge's standard of living with declared income; failure to submit or submit in time declarations of integrity and family ties. Some of these violations are grounds for dismissal of a judge.

Therefore, it can be concluded that the outcome on regular monitoring of declarations has been fully achieved (100 %).

64. Fully implemented institute of "judicial dossier" which allows to accumulate information about professional activity of each judge

The content and effectiveness of the Judge Dossier Institute have already been explored in previous parts.[87]

Par. 4 Article 85 of the Law on Judiciary provides exhaustive list of documents, information, materials to be collected at the dossier of a judge, for example, materials related to judge's career and any documents attached thereto; copies of all decisions regarding the judge adopted by the HQCJ, HCJ and judicial self-government bodies, President of Ukraine or other bodies which made relevant decisions; information on the results of qualification evaluation of the judge and regular evaluation of the judge during his/her term in the office; information about the judge's election (appointment) to bodies of judicial self-governance, the HQCJ, the HCJ; information on the efficiency of judge's performance (total number of cases considered; the number of cancelled court decisions and the reasons for their cancellation; average duration of the preparation of the text of reasoned decision; workload compared with other judges in the respective court, etc.); information on the compliance by a judge with the criterion of integrity, in particular, whether the expenditures and property of the judge and members of his/her family correspond to the income declared, including copies of relevant declarations submitted by the judge under this Law and anti-corruption legislation; etc.

The procedures of collecting information and management of dossier are further specified in the Rules of Formation and Management of Judicial Dossier, adopted by the HQCJ on 15 November 2016. It can be concluded that the legal basis for comprehensive approach to the institute of judicial dossier was established during the judicial reform. Further it has been considerably developed by the practices of the HQCJ as a source of comprehensive information on judge's performance, his/her integrity and compliance with requirements of judicial ethics, all legal proceedings held against judge, information about any misconducts or offences, etc. Also, a very important aspect of this institute of monitoring of judicial performance and corruption prevention is the public access to the dossiers at the website of the HQCJ.[88]

Therefore, the outcome of implementation of institute of judicial dossier is fully achieved (100%).

65. Generic standardized data on results of integrity checks, including information on bringing criminal actions against judges

The outcome has been achieved (100 %). All relevant data related to judge's integrity (declarations, results of checks in the course of qualification assessment, PIC's opinions, etc.), behavior (disciplinary actions, criminal proceedings, complaints against judge, etc.) is collected and recorded in the judicial dossier.[89]

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87 See outcome No. 10 "Transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures" outcome No 61 "Optimized institutional framework on internal anti-corruption oversight, its competences balanced".

88 https://drive.google.com/drive/folders/1ts4QBc969NSb0BfIwRhSevUVXD8tNyWr

89 See more on judicial dossier in the analysis of the outcome No 64.

Part 19. Combating the corruption

66. Effective mechanism for investigating cases, hearing individual complaints for disciplinary cases and application of anti-corruption measures within judiciary

67. Practical and effective investigation mechanisms of corruption and other serious disciplinary offences committed by judges[90]

An analysis of law enforcement practices shows that most of the offenses committed by judges in the exercise of their powers are in one way or another related to corruption. At the same time, scientific studies record a significant level of concealment of corruption offenses, significant difficulties encountered by law enforcement agencies in their detection, termination and prevention. Failure by a judge to comply with anti-corruption laws is to commit a corruption offense or crime punishable with (a) disciplinary sanction imposed by the HCJ; (b) administrative punishment in accordance with the procedure stipulated by the Code of Administrative Offenses; (c) prosecution of a judge.

Proceedings against judge can be initiated in different ways: disciplinary action against a judge taken by the HCJ on the basis of a complaint concerning the judge's misconduct, or on the initiative of a member of the Council, who became aware of the judge's illegal actions; bringing a judge to disciplinary responsibility by imposing administrative penalties for committing a corruption-related administrative offense; on the initiative of specially authorized bodies in the sphere of combating corruption, both disciplinary and criminal proceedings against a judge may be initiated, as well as proceedings punishable by an administrative penalty; on the initiative of public associations, their members or authorized representatives, as well as individual citizens, disciplinary, administrative offense and criminal proceedings against a judge may be initiated; on the basis of information from the CoJ on the facts of abuse by judges revealed in the course of exercising this Council's powers to resolve conflicts of interest or to apply the provisions of the Code of Judicial Ethics, disciplinary, administrative offence and criminal proceedings against a judge may be instituted.

Collection and/or investigation of anti-corruption legislation violations, committed by a judge is vested in specially authorized law enforcement agencies – NAPCU, NABU, SBI, SAPO, HACC. When exercising their powers – the HQCJ on qualification evaluation or selection of judges, and the HCJ on imposing disciplinary penalties on the latter for committing corruption-related offenses – these bodies also act as part of anti-corruption institutional system. Assessment of the content of the judge's declaration of a person authorized to perform state functions is now within the competence of the NAPCU. The same agency is empowered to monitor the judge's lifestyle. In case of detection of corruption or corruption-related offenses, the NAPCU approves a substantiated opinion which is sent to specially authorized entities in the field of combating corruption (Part 3 of Article 12 of the Law of Ukraine "On Prevention of Corruption"), i.e. Prosecutor's Offices, the NABU. Neither the HCJ nor the HQCJ belong to these entities. That is why in case of possible corruption or corruption-related offenses committed by a judge, detected in the performance of the HQCJ or the HCJ, these bodies cannot investigate those cases themselves, but have to refer them to the competent law enforcement authorities.

Authorized entities in the field of anti-corruption have broad competence to identify and document facts of dishonesty by a judge, which are used as evidence in court proceedings. In accordance with anti-corruption laws, these bodies are entitled: to carry out operational and

[90] These two outcomes are covered together as both are related to corruption offence investigation and prevention mechanisms.

investigative activities (NABU, State Security Service); to investigate criminal proceedings in cases of corruption offenses, including joint investigative teams (NABU, Specialized Anti-Corruption Prosecutor's Office); to request and receive, in the manner prescribed by law, the information necessary for fulfilling the duties of NABU, including property, income, expenditures, financial obligations of the persons; to have direct access to automated information systems, registers and databases, held by state or local government bodies (NABU, NAPCU); to submit to state bodies proposals and recommendations for elimination of corruption risks (NABU); to coordinate activities on the identification of corruption risks in governmental bodies and implementation of measures for their elimination, including preparation and implementation of anti-corruption programs (NAPCU); to control and check declarations of persons authorized to perform the functions of the state and local self-government bodies, to store and publish such declarations, to monitor the way of life of the persons authorized to perform the functions of the state and local self-government bodies (NAPC); to receive statements of individuals and legal entities about violation of the Law of Ukraine "On Prevention of Corruption", to conduct the verification of possible facts of violation (NAPC); to initiate an official investigation, take measures to prosecute persons guilty of corruption or corruption-related offenses, send to other specially authorized entities in the field of combating corruption evidence of the facts of such offenses; etc.

The above powers of specialized anti-corruption law enforcement agencies are quite broad, and therefore they should be applied to judges, taking into account the principle of judicial independence and integrity, without exceeding the legal limits. The main task of specialized anti-corruption bodies is to investigate corruption offenses committed by the various entities to which the judges belong. Judges may be held liable for committing corruption or corruption-related crimes indicated in the Criminal Code, such as: bribery of an employee of an enterprise, institution or organization (Article 354); abuse of power or office (Article 364); acceptance of an offer, promise or receipt of undue benefit by an official (Article 368); abuse of influence (Article 369-2); etc. There are three groups of corruption-related criminal offenses: crimes that amount to "corruption" owing to the method by which they are committed and crimes committed through abuse of office; crimes which are defined by the law as corrupt in content; specific crimes within the jurisdiction of NABU (Articles 206-2, 209, 211, 366-1 of the Criminal Code).

The effectiveness of investigating corruption offenses largely depends on the effective cooperation of anti-corruption bodies. Formally, such cooperation exists. Thus, Article 19-2 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" establishes legal forms of interaction of the NABU with other state bodies. The NABU may conclude agreements (memorandums) on cooperation and information exchange with state bodies. The HQCJ and the HCJ have signed such memorandum with NABU. At the same time, a serious problem is the lack of access of judiciary bodies, which assess judges and execute disciplinary proceedings, to state registers which are accessed by anti-corruption bodies in accordance with the legislation regulating their status.

A rather serious problem is the effectiveness of the application of sanctions provided by the Ukrainian legislation for violation of anti-corruption regulation. Despite the existence of the necessary mechanisms and powers, there are only a few precedents of punishing judges for such offences. The low level of effectiveness of the sub-institute of criminal liability of a judge is confirmed by the following data. According to the Specialized Anti-Corruption Prosecutor's Office, in 2016 its prosecutors conducted procedural supervision on 280 criminal proceedings, 39 of which concerned corruption of judges. In 47 criminal cases the indictments were submitted to the court. The Special Prosecutor's Office estimates the results of the judicial

review of corruption cases in 2016 as unsatisfactory: only 9 cases have resulted in a sentence. Of the 18 criminal proceedings in the first half of year 2016, none were considered by the court.

The situation has changed somewhat since the anti-corruption bodies started functioning. According to the NABU's report of for the first half of 2019, 2 judges were informed of suspicion of having committed a crime and 4 indictments were sent to court. In the second half of 2018, judges composed 10% among the persons whose unlawful enrichment and declaring of false information was investigated by the NABU. In total, during this period the NABU sent 61 indictments to court, 12 of them related to the accusations of judges. During the first half of 2018, the NABU sent 227 indictments to court, 22 of which related to the illegal activities of judges. The SBI began its proceedings in November 2018. As of 1 March 2019, the SBI instituted 5,794 criminal proceedings, 202 of which concerned judges.

In view of the above it must be concluded that the effectiveness of law enforcement agencies aimed at bringing judges to criminal responsibility for corruption is extremely low. This is caused by objective reasons (complexity of evidence in cases of judges' crimes, insufficiency of relevant and accessible evidence) and subjective reasons (low level of professionalism of law enforcement officers, high level of professional training of judges which allows them to defend themselves against the accusations effectively). At the same time, the small number of indictments against judges indicates that a significant number of charges against them are not substantiated and are not based on real facts.

During 2015-2019, there were only a few cases of disciplinary action against judges for corruption offenses. Even in situations where the NAPCU, as the central executive body with a special status that provides for the formation and implementation of the state's anti-corruption policy, appeals to the HCJ with regard to the judge's failure to report, the HCJ re-evaluates the situation itself and does not take into account the preliminary findings of the NAPC,[91] although according to Part 2 Article 12 of the Law of Ukraine On Combating Corruption, findings of NAPC should already be considered as a ground for a particular form of liability.

It is also worth noting that during the initial qualification assessment and selection of judges to the higher courts in 2016-2018, the PIC found many examples of judges incorrectly declaring their property and property of their family members and of obvious discrepancies between judge's lifestyle and his/her income, which was reflected in negative conclusions of the PIC[92]). However, a significant number of negative PIC opinions against judges were overcome by the HQCJ during two contests to the SC and qualification re-assessment.

Over the course of several months in 2019, there has also been a diverse practice by the HCJ regarding rejection of the request of the HQCJ for the dismissal of judges who did not pass the qualification assessment on the criterion of integrity. Some requests have been granted by the HCJ and the judges were dismissed, other requests were rejected on the basis of the lack of reasoning in the decisions of the HQCJ.

At the same time, there are several examples of punishment of dishonest judges. By the decision of the Third Disciplinary Chamber of the HCJ of 9 January 2019 № 27 / 3dp / 15-19, Judge of the Supreme Commercial Court I. Plyushka was sanctioned in the form temporary (six months) suspension from administering justice with deprivation of the right to receive additional payments to the salary of a judge and obligatory anti-corruption and judicial ethics

[91] For example, the decision of the HCJ (the Third Disciplinary Chamber) dated 4 October 2017 in the case No. 3125 / 3dp15-17 "On the refusal to open a disciplinary case against a judge of the High Specialized Court of Ukraine for civil and criminal cases O. V. Kadetova".

[92] Relevant information is available on the official website of the PIC https://grd.gov.ua/about/conclusions

trainings in the NSJ, followed by a qualification assessment to confirm the judge's ability to administer justice in the appropriate court. The disciplinary case against this judge was opened on the basis of the decision of the NAPCU, according to which the judge provided incomplete and incorrect information in his declaration in 2015. In particular, the NAPCU audit revealed that the judge did not put information about the real estate object (land plot with a total area of 0.1 ha in the city of Kyiv) which belongs to the family member of the declarant (wife).

The vast majority of judges concerning whom dismissal decisions were adopted by the HQCJ in 2012-2016 continue to work in the courts. For example, in 2012 the HQCJ dismissed 23 judges, 18 of whom were charged with corruption offenses. Of these, 13 judges continue to perform their duties today. In 2013, this Commission adopted 26 decisions to dismiss 11 judges, of whom: 8 continue to work, one was dismissed due to the entry into force of the indictment against him and another one was dismissed. In 2014, the HQCJ dismissed 35 judges, one of whom was convicted. In 2015, this Commission satisfied 12 submissions by the Prosecutor General of Ukraine on the removal of judges in corruption cases. Such a large number of decisions regarding the removal of judges from office are related to the cases of judges who made unlawful decisions in cases of participants of the revolutionary events of 2013-2014. At the beginning of 2017, 4 judges on this list were dismissed on the grounds of violation of oath or entry into force of guilty verdicts, one resigned, one is on the wanted list and two are under investigation.[93]

Therefore, it can be stated that goals of the Strategy on ensuring effective and efficient investigation of corruption and other serious offenses committed by judges have been partially achieved (both by 50 %): established regulatory and institutional preconditions for controlling the ratio of official income and expenditures of judges, the work of anti-corruption bodies (NABU, NAPC, SAP, SBI). Some powers to prevent and eliminate the corruption offenses of judges have also been given to the bodies of judiciary – the HCJ and the HQCJ. At the same time, the effectiveness of the use of instruments for preventing and combating corruption in the judicial system of Ukraine remains relatively low. It could be recommended **for the HCJ and the HQCJ to strengthen and intensify cooperation with anti-corruption law enforcement agencies in the prevention and investigation of corruption offenses among judges**.

68. Functional immunity of judges regulated in clear and foreseeable manner

This outcome has already been covered under the outcome 41 "Institutionalization of principle of functional independence" of the Part 11 (partially achieved). The same conclusion applies here (50%) and, therefore, the outcome is not analyzed separately here.

69. Streamlined system of authorization of the bodies responsible for forming the judicial corpus for application of restrictive measures related to limitation of freedom of a judge, excluding the cases of detention in flagrante delicto while committing a grave or special grave crime against life and health of a person

In 2016, in the course of judicial reform, all powers with the effect of bringing judges to justice, including the sanctioning of restrictions on the personal liberty of a judge in criminal proceedings, were transferred to the HCJ.

According to the provisions of Article 126 of the Constitution of Ukraine, Part 1, Article 49 of the Law on Judiciary a judge may not be detained or arrested without the consent of the HCJ until a verdict of guilty is rendered except when a judge is detained during or immediately

93 Relevant information is available on the official website of the PIC https://grd.gov.ua/about/conclusions

after committing a grave or especially grave crime. A judge may not be brought to liability for the court decision adopted by him/her except for committing a crime or disciplinary offense.

A judge detained on suspicion of having committed an act entailing criminal or administrative liability shall be released immediately after his/her identity has been confirmed, except: 1) if the HCJ gave its consent to detain a judge with regard to such act; 2) a judge was detained during or immediately after committing a grave or especially grave crime if such detention is necessary to prevent a crime, to avoid or prevent implications of a crime or to ensure the preservation of evidence of this crime. A judge may be notified of suspicion of having committed a criminal offense only by the Prosecutor General or his/her Deputy (Part 3, 4 Article 49 of the said Law).

Examining the practical aspects of applying such precautionary measures as detention and arrest to judges leads to the conclusion that the main problem in resolving these issues is the justification. Law on Judiciary and Article 482 of the Criminal Procedure Code give a judge double protection in terms of deprivation of his/her liberty: a decision on judge's detention must be made by 2 bodies – the HCJ, which removes the judge's immunity, and the investigating judge. The Criminal Procedure Code establishes rather strict requirements for the validity of the respective decision of the investigating judge (Articles 177, 178, 183, 193, 194). The duty to prove existence of reasonable suspicion of the suspect or accused having committed a criminal offense is sufficient reason to believe that there is at least one of the risks provided for in Article 177 of the Code as indicated by the investigator (prosecutor). Moreover, the burden of proof to show that any milder precautionary measures than detention will not suffice to prevent the risk (or risks) indicated in the request rests with the accusing side.

The need for reasoning of the HCJ's decision is evidenced by the legal positions of the ECHR in its judgments, according to which reasoning of the judgment shows the parties that they have been heard and provides public control over the administration of justice. Such an approach is implemented in the HCJ's Regulation, pursuant to which, when considering an application for consent to arrest, detain or hold a judge in custody, the HCJ is entitled to hear any person or to examine any material relevant to the solution of the issue under consideration. The HCJ expressed its position on this issue in its decision of 16 January 2017. Having systematically interpreted the provisions of the Constitution of Ukraine and the Criminal Procedure Code of Ukraine, it found that the application to a judge of a preventive measure in the form of detention or house arrest, including also in cases where a judge is apprehended during or immediately after committing a grave or particularly grave crime, prior to his/her conviction by a court without the consent of the HCJ is a gross violation of the constitutional safeguards of immunity of judges. Investigating judges (courts) were advised to "strictly follow the procedure for criminal prosecution of a judge, detention and imposition of a preventive measure under Article 482 of the Criminal Procedure Code. Subsequently, the HCJ's Regulation was amended to ensure the principle of the inevitability of criminal liability of a judge.

According to Part 2 of Article 59 of the Law on HCJ the consideration of such a submission is carried out by the HCJ without the judge being present. If necessary, the HCJ may summon the judge for clarification. It would be **recommended, following the international standards on the protection of judicial independence, for the HCJ to summon the judge in each case**, which will allow him to secure his/her right to a fair hearing. If the judge is duly notified that his/her immunity will be considered the HCJ may held the hearing without his or her presence. According to Article 61 of the Law on HCJ, decision of the Council to grant consent to judge's detention, to detain or to arrest him/her may be appealed in accordance with the procedure established by the criminal procedural legislation.

Therefore, it can be stated that the outcome of the Strategy on transferring the right to give consent for taking preventive measures against a judge to the bodies responsible for forming the judicial corpus and bringing judges to disciplinary responsibility was achieved (90 %). It could be recommended that the HCJ, when deciding whether to impose restrictive measures against judges, **should strike a reasonable balance between such principles as the inevitability of punishment and the presumption of innocence as important components of the right to a fair trial; and that the HCJ publish detailed statistical information on decisions giving consent to the detention or arrest of a judge, decisions on the temporary suspension of a judge from the administration of justice, decisions on bringing judges to disciplinary responsibility on the official website. It is desirable that such information be systematized** and accompanied by analytical summaries/conclusions.

Part 20. Performance management

70. Effective internal oversight mechanism carrying out planned, results-oriented, audits of activities of judges and courts

71. Mixture of discussion-based and incentive/repression-based approaches in performance management system

72. Risk management integrated and used as judiciary governance and management tool94

The goal of the Strategy on establishment of consistent mechanism of performance management in courts has been covered in the analysis of outcomes No 15-17. Conclusions and recommendations are relevant to current outcomes as well, in particular the conclusion that despite some successful attempts to establish separate components of effective performance management system, for example enhanced system of qualification assessment and selection of judges and some initiatives contributing to an objective calculation of workload, these attempts are not sufficient for the achievement of the goal of having the performance management system in courts encompassing such crucial elements as: definition of clear targets/tasks for whole judiciary and all its elements; establishment of quantitative and qualitative, inter-linked and comparable performance criteria for all judges, courts and judiciary self-governance bodies; introducing monitoring system; merits and score-based career in respect of court staff. Furthermore, it has to be noted that most of the achievements are predominantly focused on performance evaluations of judges and minor improvements in the court staff evaluations, and it is hard to talk about performance management system as being put in place. Without having a performance management system, one cannot speak about the concept of it and particular elements, such as risk assessment, audits, etc.

Therefore, the abovementioned outcomes of the Strategy cannot be considered as achieved only to a minimum extent (all three by 15 %).

It is strongly recommended to work on developing effective performance management system encompassing the following elements: targets to be achieved individually and institutionally; risk management; regular performance evaluation/monitoring; model job descriptions and rules of procedure; client service principles; leadership competences of chiefs of staff; monitoring rules.

94 All these outcomes are part of performance management system, thus the progress of all of them is evaluated jointly.

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Chapter IV. Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions

Area of Intervention 4.1 Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions

Part 21. Delineation of jurisdictions

73. Clear-cut criteria and mechanisms for delineation of administrative, commercial and general (civil and criminal) jurisdictions

During the 2016 judicial reform, a radical restructuring of the judicial system took place. Until 2016, a four-tier system of courts was operating in Ukraine, which was based on the principles of territoriality, specialization and instance. According to Article 26 of the Law on Judiciary, in the wording of 2010, in the system of courts of general jurisdiction, courts of appeal reviewed appeals against the local courts judgments in civil, criminal, commercial, administrative cases and cases concerning administrative offenses. In some categories of cases foreseen by procedural laws, courts of appeal acted as courts of first instance.

Courts of appeal for civil and criminal cases, as well as for administrative offenses, were formed in accordance with the decree of the President of Ukraine in the jurisdictional territories - districts of appeal which coincided with the boundaries of administrative units. The specialized courts were formed in accordance with the Presidential Decree in jurisdictional districts of appeal, each district covering several administrative units. The cassation review was performed by courts of two levels: the higher specialized courts and the Supreme Court of Ukraine. The highest specialized courts were the Supreme Specialized Court of Ukraine for Civil and Criminal Cases, the Supreme Commercial Court of Ukraine and the Supreme Administrative Court of Ukraine. These courts acted as courts of the highest instance, but were also competent to conduct analysis of court statistics and practice as well as to provide methodological assistance to the lower courts on the interpretation of norms of the Constitution and laws.

The Supreme Court of Ukraine acted as the supreme judicial authority in the system of courts of general jurisdiction, which ensured the uniformity of case law. The procedural law provided for a rather complicated procedure for admission of a cassation appeal to the Supreme Court of Ukraine. As a result, this Court considered a very small number of cases. Higher specialized courts had a large workload because the legislation did not impose any restrictions on the appeal that could be submitted to them. The role of the main cassation instance was performed by the higher specialized courts. The Supreme Court of Ukraine carried out the so-called “repeated” cassation review aimed at ensuring the uniformity of court practice, in particular it: (a) reviewed cases on grounds of unequal application of the same provisions of substantive law by the higher courts; (b) reviewed cases of the violation of Ukraine’s international obligations, when this breach of obligations was established by an international judicial authority whose jurisdiction is recognized by Ukraine. Decisions of the Supreme Court of Ukraine were binding on lower courts. The legal positions set out in the rulings of the Supreme Court of Ukraine were of quasi-precedent character.

The Plenum of the Supreme Court of Ukraine also had rather important procedural functions. The Plenum of the Supreme Court of Ukraine consisted of all judges of the Court. It provided, among other things, opinions on draft legislative acts concerning the judiciary, the status of judges, the enforcement of judgments and other issues related to the functioning of the judicial system of Ukraine. It also possessed the power to submit an appeal to the

Constitutional Court of Ukraine on the constitutionality of laws and other legal acts, as well as on the official interpretation of the Constitution and laws of Ukraine. Due to the complexity of procedural legislation, in the period of 2010-2016 the Supreme Court of Ukraine considered no more than 2% of the total number of cases that were submitted annually to the judicial system. The relationship between the Supreme Court and the higher specialized courts was also quite complex, as the latter were very reluctant to grant permission to review their decisions by the Supreme Court. In addition, quite serious public claims were made about the motivation of court decisions, including those of cassation courts. The practice of the higher specialized courts was also marked by considerable contradictions.

These, as well as other reasons, were driving the adoption of the Law on Judiciary of 2 June 2016. Judicial Reform of 2016 changed the structure of the system of courts of general jurisdiction, which was given a three-tier structure: first instance courts consisting of district courts (civil and criminal jurisdiction), district administrative courts and district commercial courts; Courts of Appeal, consisting of Courts of Appeal (civil and criminal jurisdiction), Administrative Courts of Appeal and Commercial Courts of Appeal; and the Supreme Court. The new Supreme Court has become the highest judicial body which acts as a court of cassation and ensures the uniformity of case law. The Supreme Court was established on the basis of the higher specialized courts and the Supreme Court of Ukraine through their reorganization. Selection of judges of the Supreme Court was carried out through open competition in two stages: in 2016-2017 and in 2018-2019. The Supreme Court consists of the following bodies: the Grand Chamber of the Supreme Court, the Administrative Court of Cassation, the Commercial Court of Cassation, the Criminal Court of Cassation, the Civil Court of Cassation.

The analysis of the new structure of the judicial system shows, that functions and powers of the courts of first instance and appellate courts have not changed significantly. Judicial reform has changed only the principle of jurisdiction of local courts and appellate courts which under the current law does not necessarily have to coincide with the state's administrative structure. The most significant change was the cassation review which is assigned to a single SC with some new additional competence. According to the Par. 1 Article 36 of the Law on Judiciary, the SC: 1) administers justice as cassation instance, and as the first instance or an appeal court in exceptional cases prescribed by procedural laws; 2) performs analysis of court statistics and overview of court practice; 3) submits opinions on draft laws which are related to judiciary, court activities, status of judges, etc.; 4) submits requests on the constitutionality of laws and other legal acts to the Constitutional Court; 5) ensures uniform interpretation of laws by courts.

With regard to other powers, the Supreme Court Plenum, *inter alia*, approves the budget request of the Supreme Court, for the purpose of uniform application of law, summarizes the practice of applying substantive and procedural laws, systematizes and ensures the publication of legal positions of the Supreme Court, provides clarification of the advisory nature on application of the law (Article 46 of the Law on Judiciary).

The new three-tier structure of the judiciary should be assessed positively. Each unit of the new judiciary has one function which is either the hearing in first instance, review on appeal or cassation review. The structure of the judiciary is simple and understandable to citizens. The ECHR distinguishes between the functions and tasks of courts of appeal and cassation: if the appeal review is regarded as the minimum standard of appeal, the cassation review is traditionally considered extraordinary in view of the special nature of the court of cassation which has powers related solely to matters of law. It may be noted that the SC, as a court of

cassation under the current Ukrainian legislation, is endowed with effective instruments for ensuring the uniformity of the case law.

One of the most significant innovations in the judicial structure is the creation of two unique specialized courts: the High Court on Intellectual Property and the High Anti-Corruption Court. The Constitution and Law on Judiciary do not define the jurisdiction of these courts, as it must be established by procedural law.

The establishment of the HACC was driven by the urgent need to overcome corruption. The HACC became the last necessary link in the system of anti-corruption bodies of Ukraine (NABU, NAPCU, SAPO) and was positively evaluated by international organizations in the field of combating corruption.

The Law of Ukraine "On the High Anti-Corruption Court" was adopted on 7 June 2018. It defines the legal status and powers of this court. In particular, the judges of the HACC have additional requirements as regards their competence and integrity. The Law also envisages a special competition for the position of the judge of this court, with the participation of the PCIE which is entitled to assess the integrity of the candidates. Judges of the HACC are provided with additional guarantees of personal security, as well as special, enhanced conditions for monitoring their integrity. The HACC is entitled to handle criminal proceedings regarding corruption offenses envisaged in the Criminal Code of Ukraine, in particular three groups of criminal offenses: 1) offences related to corruption because of the manner in which they are committed (abuse of official powers, etc.); 2) corruption offences which are directly envisaged by law as such; 3) other offences, investigation of which falls under the competence of the NABU.

As it was already mentioned in the analysis of the new procedures of selection of judges, the competition to the HACC lasted from August 2018 to March 2019. The course and results of this competition received a positive assessment from both international and Ukrainian observers. Judges of the HACC were appointed in April 2019, and the court began its activity on 5 September 2019.

As regards the HCIP, the competition for the posts of judges of this court is still ongoing. In addition, no legislation has been adopted to determine the jurisdiction of this court and the organizational foundations of its operation. Given that Ukraine has serious problems with the protection of intellectual property rights, the start of the work of the HCIP is necessary and long-awaited. Acceleration of the organization of all necessary procedures for ensuring the functioning of the HCIP is important. This requires the consolidated efforts of all relevant bodies.

One of the areas of judicial reform in 2016 was the change of the rules for determining the jurisdiction of the courts. Under the new rules, the jurisdiction between general, commercial and administrative courts is differentiated depending, first and foremost, on the subject-matter of the dispute and not on the status of the parties. In order to prevent litigation and "duplication" of civil, commercial and administrative cases, the concept of "derivative claims" is introduced. The concept allows to combine derivative claims with primary ones, even if derivative claims on their own fall under different rules of jurisdiction. The procedural codes also include a number of mechanisms that should prevent the manipulation of jurisdiction. For example, a case taken by a court must be heard by the court even if, in the course of the proceedings it appears that the case falls under jurisdiction of another court, except where due to changes in the composition of the defendants the case belongs to the exclusive jurisdiction of another court. Also, jurisdictional disputes between courts are not allowed.

For the first time procedural law provided rules for resolving conflicts of jurisdiction. This competence is assigned to the SC. In accordance with procedural law, a case is subject to referral to the Grand Chamber of the SC in all cases where a party to the case appeals against a judgment on grounds of violation of the rules of jurisdiction. It should be emphasized that this category of cases comprises a significant part of cases before the Grand Chamber of the SC. For example, in 2018, the Grand Chamber received 1,769 cassation complaints, 1,467 of which (83%) were made on the ground of violation of the rules of jurisdiction.

A significant shortcoming of Ukrainian law is that in case of breach of the rules of jurisdiction, the court cannot take the application for consideration and refer it to the court entitled to examine such categories of cases. The court must refuse to take the application. This decision can be appealed. Violation of the rules of jurisdiction is a compulsory ground for annulment of the decision, regardless of the arguments of the cassation appeal. Such rigid rules for determining the jurisdiction of a court raise issues regarding access to court. This is especially striking if the plaintiff has gone through all instances, has spent time and money, and the court of cassation decides that the case has been handled by wrong court and therefore annuls all previous decisions, although the essence of the claim may be well founded. In order to remedy this situation, the judge should be given the right to refer the case to a proper court, including to a court of another jurisdiction. The possibility of refusing to open proceedings on the ground that the case is not within the jurisdiction of the court should be eliminated, as this impedes access to justice. The judge himself/herself may decide which jurisdiction the case belongs to and refer it to the proper court. The Grand Chamber of the SC should be empowered to evaluate the substance of the judgment taken in breach of the rules of jurisdiction and to uphold it if the decision is substantially fair and substantive.

Given the above, it can be stated that the judicial reform of 2016 significantly changed the judicial system by introducing three-tier judicial system, simplifying its structure, improving the powers of the court of cassation, streamlining the rules of jurisdiction allowing to separate more clearly different jurisdictions and to facilitate the procedure regarding multiple claims belonging to different jurisdictions, and creating new specialized courts following the current needs of society and urgent challenges. Such institutional changes are in line with international standards aimed at ensuring the principles of accessibility, efficiency and fairness of justice.

Therefore, it can be stated that the implementation of the goals of the Strategy on reviewing the structure of the judicial system of Ukraine as a whole by defining clear criteria and mechanisms for delimitation of jurisdictions of administrative, commercial, criminal courts have been achieved (90 %). It is advisable to facilitate the formation of the HCIP and adoption of legislation to govern this; to continue working to **improve the rules on the delimitation of the jurisdiction**, in particular, giving an opportunity for the court to accept the law suit which does not fall under jurisdiction of this courts and to submit it to the court, according to rules of jurisdiction, instead of refusing to accept the law suit for consideration and returning it to the plaintiff. Also, the **possibility to enhance rules and practice of the SC in case of consideration of the case handled by the lower courts violating the rules of jurisdiction** (removing the possibility of abolishing such a judgment automatically without substantial revision of the case, but only in cases when such a violation of jurisdiction could cause a violation of procedural rights and principles and could lead to unfair process) should be discussed.

Part 22. Optimization of court system and workload in courts

74. Courts network optimized after careful gap analysis and impact assessment, with interests of efficiency and fairness duly taken into account

75. Consolidation of courts at various levels (in particular, creation of inter-district courts, consolidation of appeal regions)[95]

According to Part 2 of Article 125 of the Constitution of Ukraine as amended in 2016, a court is formed, reorganized and liquidated by a law, the draft of which is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultation with the HCJ. Transitional Provisions of the Constitution stipulate that before the introduction of the new administrative and territorial structure of Ukraine in accordance with the amendments to the Constitution of Ukraine on decentralization of power, but no later than 31 December 2017, the formation, reorganization and liquidation of the courts Ukraine on the basis and in accordance with the procedure established by law will take place. According to Part 5 Article 16-1 of the Transitional Provisions in case of reorganization or liquidation of individual courts formed before the Law of Ukraine "On Amendments to the Constitution of Ukraine (concerning Justice)" enters into force, judges of such courts have the right to apply for resignation or to participate in the competition for another position of a judge in the manner prescribed by law. According to Article 117 of the Law on Judiciary, refusal to transfer to another court (including evasion of execution of the transfer decision) in case of liquidation or reorganization of the court in which the judge holds office is a ground for dismissal of a judge by a decision of the HCJ.

It has to be once again noted that during the judicial reform of 2016, most of the powers of the President of Ukraine concerning the judiciary were transferred to other bodies.

The procedures for establishment and liquidation of courts are determined by the Article 19 of the Law on Judiciary. According to the said provision, a court is established and liquidated by law; draft law on the establishment and liquidation of a court shall be submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultations with the HCJ; the location, territorial jurisdiction and status of a court shall be determined taking into account the principles of territoriality, specialization and instance hierarchy; change of the court system defined by this Law, the need to improve access to justice, the need to optimize government expenditures or changes in the administrative and territorial structure shall serve as a basis for the establishment or liquidation of a court; a court may be established through the establishment of a new court or reorganization (merger or division) of courts. These provisions should be assessed positively, as they minimize the politicization of the process of formation and liquidation of courts, and also ensure the maximum involvement of the judiciary in this process.

A generally accepted principle of building a judicial system is the territorial proximity of the court. This principle means that courts should be located geographically close to the routes of communication, in convenient places and buildings for free access by interested persons (parties to the case, third parties, witnesses, etc.) and the public. Another important aspect of the territorial structure of the judicial system, which can significantly affect access to a court, is the convenience of locating courts in the state. This means that there should not be an excessive concentration of courts in a certain territory and at the same time there should be no territories in which no courts exist at all.

In the course of the judicial reform in 2016, in addition to the substantial reformation of the cassation instance, a decision was made to reorganize the courts of first and appeal in-

[95] These two outcomes are analyzed together as inseparable: consolidation of courts is a part of optimization of courts network.

stances, stipulating the need to implement the principles of accessibility of justice and the territorial approximation of the courts. In accordance with Articles 21, 26 of the Law on Judiciary, local general courts are district courts which are established in one or more districts of the cities, in cities, or in regional districts. Local commercial courts are district commercial courts. The local administrative courts are district administrative courts and other courts determined by procedural law. In the system of courts of general jurisdiction, courts of appeal for consideration of civil and criminal cases and cases of administrative offenses are courts established in the appellate circuits. Courts of appeal for consideration of commercial cases and courts of appeal for consideration of administrative cases are accordingly appellate commercial courts and appellate administrative courts in respective appellate circuits.

It is worth noting that the process of court reorganization under Ukrainian law is quite complicated and involves several steps and a number of organizational measures. The SJA should appoint a temporary acting judge, as well as a commission for the reorganization (liquidation) of a state body. This commission should organize and conduct a set of measures for state registration of a new court, inventory of material assets, archival fund, record keeping, court cases, etc.

The process of court reorganization began with the courts of appeal. The Presidential Decree No. 452/2017 of 29 December 2017 “On the liquidation of courts of appeal and the formation of courts of appeal in appellate districts” abolished the existing appellate courts and instead established appellate courts in appellate districts (circuits). The Order of the SJA of 31 July 2018 No. 373 “On determining the number of judges of appellate courts formed in appellate districts” determined the full number of judges in appellate courts. In August 2017, the HCJ made a submission to the President of Ukraine on the transfer of 389 judges from liquidated courts of appeal. On 28 September 2018, the President of Ukraine approved Decrees “On the Transfer of Judges” No. 297/2018, 296/2018, 295/2018, pursuant to which judges from the courts of appeal that were liquidated were transferred to new courts of appeal.

Pursuant to Part 6 of Article 147 of the Law on Judiciary, in case of liquidation of a court and establishment of a new court in that territory, the liquidated court shall suspend the administration of justice from the date of publication of the announcement of the chairman of the newly formed court about the beginning of the functioning of the newly formed court in the newspaper “Voice of Ukraine”. On 3 October 2018, the announcement of the commencement of appeal courts was published in the newspaper. In assessing the results of the reorganization of the courts of appeal, it should be noted that no significant changes in the network of these courts have taken place. Thus, in the process of reorganization, instead of the two courts of appeal in Kyiv - the Court of Appeal of the Kyiv region and the Court of Appeal of Kyiv – a single Kyiv Court of Appeal was formed which combined the territorial jurisdiction of the two previous courts. In addition, the Sevastopol Commercial Court of Appeal and the Sevastopol Administrative Court of Appeal were abolished.

Most of the problems with the reorganization of the courts of appeals arose as regards the transfer of judges. First, only judges who had passed qualification assessment were transferred to the newly established courts. Therefore, some judges could not be successfully transferred due to reasons that did not depend on them. Secondly, names of some judges simply “disappeared” from the text of the Presidential Decree for unknown reasons, although decision of the HCJ on their transfer was made in summer 2018. The decision on the transfer of the rest of the judges of appellate courts was made by the HCJ in 2019. Throughout this period, judges who were not transferred to the newly created courts of

appeal were not entitled to administer justice, which made a significant imbalance in the work of these courts, which already experienced a considerable lack of judicial staff.

Thus, it can be stated that the process of reorganization of the courts of appeal in Ukraine as of 1 October 2019 was completed. However, neither the authors of the judicial reform, nor the representatives of the SJA or the HCJ provided a clear and consistent justification for its feasibility. It can be concluded that this process was of a purely technical nature, but it required considerable human, information and financial resources. Moreover, the decrease in the number of judges in individual courts, which was caused by delays in their transfer to newly created courts, had a negative impact on the effectiveness of the administration of justice in these courts.

On 29 December 2017, the President of Ukraine adopted several Decrees on the liquidation and formation of local general courts, on the reorganization of local general courts, on the liquidation of the local commercial courts and the formation of the district commercial courts. These documents envisage the liquidation or reorganization of more than 650 pre-existing local general courts and the formation of approximately 280 relevant district general courts. In other words, the number of local general courts in accordance with these changes should be reduced by more than 2 times.

The trend in Europe in respect of organization/mapping of court system reflects a new concept of the access to justice considered not only as an easily accessible physical location of a court, but as the right of persons to judicial decisions of a good quality which are delivered promptly. This requires some consolidation of small local courts in order to have a considerable number of judges, and to be able to introduce specialization, to more effectively use financial, material and human resources, to establish standardized approach to client service and organization of activities, to ensure uniformity of practice, to develop more systematically and use e-tools and information systems. Therefore, in the past 10 years number of judicial re-mapping initiatives were taken across Europe: for example, reforms on merging local courts were implemented in the Netherlands, Estonia, Portugal, Sweden, Norway, Lithuania, Latvia.

At the same time, it has to be also mentioned that this kind of initiatives are very sensitive as they impact a large number of people working in these courts as well as court clients. These initiatives are very complex in the scope of changes (regulatory, organizational, recourse management, communication, etc.). Thus, only a well prepared and professionally driven reform, based on comprehensive analysis paper (analysis of geographic, demographic aspects, workload of courts, risks, etc.) and complex work plan with all important aspects covered (actions regarding necessary regulatory amendments, organizational issues, distribution of recourses, plan of procedures of transfer of judges, internal and external communication strategy, awareness campaigns, etc.) can minimize risks such as resistance and negative impact.

The decision to reorganize the local courts in Ukraine has received mostly negative assessment by experts and Ukrainian judiciary, as it was not very profoundly prepared. It is considered that the definition of judicial districts, other than the administrative-territorial division of the state, is contrary to the principle of accessibility of justice because it is inconvenient and unclear for citizens.

The XIVth Extraordinary Congress of Judges of Ukraine, which took place on 13 November 2017, addressed the President of Ukraine with a proposal to postpone the beginning of the formation of a network of local district courts in order to prevent restrictions on access to justice during the formation, reorganization and liquidation of individual local courts. Some

judicial institutions have also publicly noted inconsistencies of the process of court consolidation, for instance uneven consolidation. For example, in Kharkiv, a city with a population of approximately 1.5 million, the reform calls for the unification of all local courts, whereas in Odessa, where the population is smaller, not all local courts have been enlarged. In addition, it is unclear how the issue of automatic allocation of cases will be resolved if the court, after enlargement, is territorially located in different premises which are 50, 100 or more kilometers away from its previous location, as no relevant amendments to the respective Regulation governing this procedure have been made.

Moreover, consolidation requires good centralized informational system to be operative in order to secure the right of access to justice after the reform. In this respect, significant shortcomings are encountered, as the UJTIS is still under development. Finally, it has to be stated that the preparation for reform was not sufficient: there is no comprehensive analysis papers neither a work plan which are required for a separate complex project. This has led to quite a chaotic process accompanied by the lack of feasibility, resistance of judiciary, negative assessment by internal and external experts and, therefore, can hardly be evaluated as successful.

Despite the official statements of the SJA and the HCJ to the contrary, we did not observe the feasibility and lawfulness of the process of consolidation of local courts, which is the main link of the judicial system and should be territorially accessible to citizens. Therefore, the prospects of completing the reorganization of first instance courts should be carefully evaluated, substantiated and, if necessary, this decision may still be revised, given that the reorganization process for these courts as of 1 October 2019 has not reached its final stage. Judicial governance bodies, namely the HCJ and the SJA, and experts should be involved in resolving the issue of reorganization of local courts. Judges' opinions on the prospects for local courts consolidation should also be carefully considered.

Therefore, it can be stated that the level of the achievement of goals of the optimization of court system, based on gap analysis and consolidation of certain elements of this system at the appropriate levels (in particular, the creation of inter-district courts, the enlargement of appellate districts) is not sufficient (both achieved by 25 %). It is advisable **to carry out a thorough audit of the process of reorganization of local courts in order to determine the future prospects of this process and to facilitate improvement of such process by development of thorough analysis of all important indicators (geographic, demographic conditions, statistics on workload, backlogs, number of judges and staff) and comprehensive work plan (regulatory, organizational, resource management actions, deadlines, responsible bodies, risk management measures, internal and external communication strategy, etc.)**.

76. Increased use of court fees and other paid services to cover expenses of the justice sector; higher court fee rates in property and other types of civil litigation, while retaining adequate degree of access to justice

According to Article 1 of the Law of Ukraine "On Court Fee" a court fee is a fee charged for the submission of application and complaints to the court, for the issuance of documents by the courts, as well as for the specific court decisions provided for by this Law. Court fees are included in legal costs.

According to the case-law of the ECHR and the CoE's standards, judicial fees are an essential element of access to justice, the size of which must be reasonable and should not prevent the exercise of that right (Article 6 of the Convention, Recommendation R (81) 7 of the Committee of Ministers to the Member States on Ways to Facilitate Access to Justice

of 14 May 1981). In the judgment in the case of *Creuse v. Poland*, the ECHR states that the payment of legal costs should not impede access to court in such a way as to jeopardize the substance of this right, and should pursue a legitimate aim. At the same time, according to the European Court of Justice, the court fee is a kind of restrictive measure that prevents unjustified and ungrounded actions and the overload of courts. The Constitutional Court of Ukraine expressed the view that the payment of court fees for appeals to the court, as well as for the issuance of documents by courts is an integral part of access to justice, which is an element of a person's right to judicial protection guaranteed by Article 55 of the Constitution of Ukraine.

The legislative fixing of court expenses is aimed at: firstly, reimbursement to the state of the expenses incurred for the maintenance of the judicial system and its activity (this is the compensatory function of the institute of judicial expenses), secondly, it imposes certain costs on those who seek protection from the court, which is designed to discipline individuals and legal entities from filing unsubstantiated statements and petitions in court.[96] Most European countries have already renounced the concept that court fees are the main source of direct funding for the judiciary. It is the state's responsibility to ensure the proper conditions for ensuring the access to justice and the functioning of the courts, so the latter should not be passed on to citizens.

Regarding the proportionality of court fees (rates of court fees are set out in Article 4 of the Law of Ukraine "On Judicial Fee"), it is important in estimating them to have in mind that in 2019 the minimum wage in Ukraine is set at UAH 4,173, and the average wage is close to UAH 10,000. For submitting a claim on property rights, a court fee for legal entity would be equal to 1.5 percent of the cost of the claim, but not less than 1 subsistence level and no more than 350 subsistence minimums, that is from 1,921 to 672,350 UAH. If a similar claim is submitted by an individual or a private entrepreneur, then he or she pays 1 percent of the cost of the claim, but not less than 0.4 and no more than 5 subsistence minimums. A non-pecuniary claim is subject to a court fee of 1 subsistence level for legal entity and 0,4 – for individual.

The appeal to the courts of appeal and cassation costs more. Thus, when submitting an appeal in connection with the newly discovered circumstances, 150 percent of the rate payable when submitting a claim is paid, and 200 percent of the rate – for an appeal to court of cassation. Procedural legislation also provides for a mechanism for charging the costs of court fees to the losing party (for example, Part 1 of Article 141 of the CPC).

It is worth noting that the legislation provides for several instruments to ensure the financial accessibility of justice by introducing categories of court cases for which no court fees are paid, as well as giving the judge a right to postpone payment, reduce its amount or release a person from payment. The grounds for the court to take the abovementioned actions are related to the financial situation and property status of the party. The justification of the related circumstances which testify the inability or difficulty in payment of court fees in the amounts prescribed by law and within the time limits rests with the interested party. For example, the SC by decision of 4 July 2018 in civil case No. 686/114/16-c (cassation proceedings No. 61-16723sv18) annulled the decision of the court of appeal which denied the application for reduction of the court fee. In referring the case to the court of appeal, the SC proceeded from the fact that the provisions of the CPC and the Law of Ukraine "On Court Fee" did not contain an exhaustive and clearly defined list of documents that could be considered as

[96] Дем'як В. Судовий збір в контексті доступу до правосуддя. URL: https://protocol.ua/ru/sudoviy_zbir_v_konteksti_dostupu_do_pravosuddya/

confirming the status of property. In each case, the court establishes the ability of a person to pay the court fee on the basis of the evidence about financial status submitted by him/her. At the same time, the grounds for refusing such motions by the court should be sufficiently substantiated.

According to the SJA, the share of income from court fees in the budget of the judiciary ranges from 20 to 25%. These payments are allocated to the special fund of the judiciary budget (part 1 of Article 9 of the Law of Ukraine "On Judicial Fee"), and the right to distribute them between the courts is vested in the SJA as the main administrator of the budgetary funds of the courts. Traditionally, the largest amounts of court fees come from claimants who apply to commercial courts, since these courts resolve disputes between business entities. Funds collected by courts of general and administrative jurisdiction would not be sufficient for the maintenance of these courts, since many plaintiffs of these courts exempted from paying court fees. The legislation provides for a centralized distribution of collected court fees between all courts in Ukraine, depending on their needs, and regardless of the amount of revenue they collect. Prior to the introduction of the court fee (2011), the Ukrainian judicial system had significant problems with financial support for all major areas of activity. The level of provision for the need for financial resources did not exceed 30%. There were difficulties in providing the court with supplies (paper, stamps, envelopes, etc.), services, and the overall condition of the courts, premises, computers and office equipment was critical. The use of court fees since its introduction solely for the needs of the judicial system has increased the level of financing the needs of the judicial system, which in 2013 reached 46.8%. According to the SJA, this made it possible for courts of general jurisdiction to make timely and full payments for consumed utilities and energy, to avoid problems with providing the courts with supplies. The source also manages to provide the courts with video conferencing systems, other technical means necessary for the administration of justice.

The SJA distributes funds collected as court fees on the basis of general provisions of the budget legislation. Courts are not made aware of the principles of this distribution. At times one court receives less money to meet its needs than another. In order to prevent such situations, it is **necessary to develop and approve a transparent mechanism for the distribution of funds collected to the special fund of the judicial system's budget in the form of court fees. Such a normative act should include criteria for determining the needs of the courts, their priorities and a fair procedure for distributing the special fund of the budget of the judiciary between the courts**.

Therefore, it can be stated that the outcome on strengthening the role of court fees as the main source of financing of the judicial system and increasing the rate of court fees in property and other disputes while ensuring an adequate level of access to justice was largely achieved (90 %). It is **advisable to define clearer criteria at the legislative level that entitle a person to payment of reduced court fees or exemption from their payment, taking into account person's financial situation**.

77. Optimized administrative staffing of courts depending on workload of judges

In accordance with Par. 1.6. of the European Charter on the Status of Judges, the state must provide judges with all the means necessary for the proper performance of their tasks, and in particular to hear cases within a reasonable time. In addition, in accordance with the Recommendations on the Effective Implementation of the Basic Principles on the Independence of the Judiciary (adopted by United Nations Economic and Social Council resolution 1989/60 and approved by UN General Assembly resolution 44/162 of 15 December 1889): each Member State must provide appropriate means which would enable the judicial au-

thorities to perform their functions properly; the term of office of judges, their independence, security, appropriate remuneration, conditions of service, pensions and retirement age must be duly guaranteed by law; the state must pay particular attention to the need to provide certain resources necessary for the functioning of the judicial system, given the appointment of a sufficient number of judges, the provision of the necessary personnel and equipment to the courts, and the provision of judges with a decent level of personal security, pensions and wages.

Most of the powers over the management of the human resources of the courts are concentrated in two judicial bodies, in particular the HCJ and the SJA. These bodies are responsible for the proper organizational and financial support of the courts and for maintaining high standards of justice.

The maximum number of judges of the SC is set by the Law on Judiciary, whereas the number of judges in other courts is determined by the decisions of the judicial governance bodies. According to Part 4 Article 126, Article 133 of the Law on Judiciary, the tasks of judicial self-government shall include participation in determining the needs of staffing, financial, logistical and other support of courts and exercising control over the organization of the courts. According to Part 6 of Article 19 of the Law on Judiciary, the number of judges in a court is determined by the SJA in consultation with the HCJ taking into account the judicial burden and within the limits of expenditures specified in the State Budget of Ukraine for the maintenance of courts and the remuneration of judges. Establishing a sufficient number of judges in the courts is a generally recognized element of access to justice. The number of judges in the courts should be sufficient to ensure that cases are handled within a reasonable time[97] and following standards of fairness, independence and efficiency.

Regarding the process of determining the number of judges, first of all, the analysis of the Ukrainian legislation has shown that there is no specific methodology for determining the optimal number of judges in courts. The relevant decisions are made on the basis of the analysis of operational statistics provided by the courts, and a number of subjective factors. For these reasons, the number of judges in some courts is optimal and corresponds to caseload, and in some courts a significant shortage of judges and excessive workload are recorded. Secondly, during 2015-2019, certain courts in Ukraine lacked judges authorized to administer justice. This is due to the processes of dismissal of judges in the course of judicial reform and their qualification assessment. As of early 2019, according to the information of the HQCJ, 16 first instance courts are not able to administer justice. In 123 courts less than 50% of full-time judges are working. This situation can only be assessed negatively in terms of ensuring the availability, fairness and effectiveness of judicial protection.

The Decision of the 15th regular Congress of Judges of Ukraine of 7 March 2018 draw attention of the SJA and the HCJ to the problem of reducing the actual number of judges working in the courts that are liquidated/reorganized. It also submitted a proposal to develop and approve the Procedure for preparation, consideration and approval of indicators and methodology for determining the number of judges in courts.

In August 2017, the SJA determined the number of judges in local courts and appellate courts. In December 2017, the President of Ukraine identified a new map of courts by issuing relevant decrees and the question regarding the determination of the new number of courts arose. On 31 July 2018, the HCJ approved the number of appellate judges. In preparing this decision, the SJA took into account the workload of judges. The staffing was

97 Article 6, ECHR

provisional and took into account the ongoing process of qualification assessment of judges and the reorganization of the court system.

In 2019, the number of judges in courts was reviewed. Decisions of the HCJ of 18 April 2019 established for 2019 the temporary number of judges in appellate courts and district courts. At the same time, these decisions state that there is no agreed position between the SJA and the courts regarding the number of judges in the respective courts. Courts of appeal state that the SJA calculated the number of judges without taking into account the categories and complexity of cases, the current workload per judge using the methodology for determining the maximum number of judges in the courts based on 2015 figures. By decision of the HCJ of 16 May 2019, a working group was set up to consider the number of judges in courts. The Orders of the SJA of 25 April 2019 Nos. 417, 418, 419, 420 approved agreed maximum number of judges in courts, actually reducing number of full-time judicial positions by 688, except in district administrative courts where 45 full-time judicial positions were added.

At present, according to various estimates about 2 000 judges are lacking in Ukraine for the proper functioning of the judicial system. At the beginning of 2019, with the total number of 7 200 judges, only 2 151 judges remained after qualification evaluation. As of 1 April 2019, out of 5 285 judges, only 4 128 were authorized to administer justice. In other words, more than 1 000 of judges have been suspended, and for various reasons they are not appointed indefinitely after a five-year term. The Decision of the 16th Extraordinary Congress of Judges of Ukraine from 19-20 December 2018 determined: “To recognize as those in need of immediate resolution the issue of ensuring the guarantees of independence of judges […] as well as other measures providing the administration of justice, in particular as regards: security of courts; protection of the life, health and property of judges and their families; regulation of staffing of judges and workload; reorganization and liquidation of courts of Ukraine; financial support of judges.” The Congress of Judges decided to call the HCJ, the SJA, the SC, the HQCJ, the NSJ for coordination of relevant activities for the sake of organizational unity of the functioning of the judiciary.

Determining the number of judges in courts is a matter of strategic importance for the judiciary. **The SJA, together with the HCJ, as judicial governing bodies, should constantly take measures aimed at determining the optimal number of judges in courts, promptly adjusting that number to the needs of justice and making appropriate management decisions at reasonable time**. Situations where individual courts do not have judges or a sufficient number of judges to administer justice at a proper level cannot be tolerated. The responsibility for conducting the selection of judges and executing qualification assessment rests with the HQCJ, which must coordinate its efforts with other bodies of judicial administration, in particular the HCJ and the SJA.

As for determining the number of employees of the court apparatus depending on the number of judges and the workload on the court, this issue is within the competence of the HCJ and the SJA. According to Article 3 of the Law on the High Council of Justice, the HCJ, on the submission of the SJA, agrees, among other things, model provision on the court apparatus, standards of personnel, financial, logistical and other support of the courts. Thus, on 8 February 2019 the SJA approved Model provisions on court apparatus where main functions of the apparatus and status of chief of administration are established.[98] At the same time, it has to be noted that standards on staff, financial and material-technical

[98] https://zakon.rada.gov.ua/rada/show/v0131750-19

support are not yet adopted. This problem requires an urgent solution since the financing of the courts and the proper organization of their work depend directly on the adoption of these standards and regulations. In 2017-2019, court reorganization procedures were conducted without these regulations, and the SJA instructed the courts during their re-organization to approve the actual number of court apparatus employees at the time of reorganization. During a meeting at the SJA on 12 September 2019, it was reported by the representatives of the SJA that there were actual calculations of the ratio of the number of court apparatus staff to the number of judges. However, in various courts this ratio may be different: in small court one judge can account for 5-6 employees, in courts with a large number of judges, one judge should account for 3.1-3.2 court staff. Unfortunately, these calculations are not approved at the regulatory level.

In order to unify the approach to determining the structure and staffing of the courts, the SJA by its Order No. 469 of 14 September 2018 established a working group to develop a model structure of courts. As a result of the work of this group, the Model Appeal Court Apparatus structure has already been submitted for approval by the SJA to the HCJ.

The number of judicial assistants is determined by the decision of the CoJ. In 2018, the CoJ decided to increase the number of assistants in view of the judges' heavy workload. In particular, it was found that the chief judge and the deputy chief judge may have an additional assistant. The optimum number of court assistants and staff is an important prerequisite for the efficient organization of the courts. According to the Head of the SJA Z. Kholodniuk, in November 2019 the quantitative need for judges and staff of the unit may be revised. According to him, the process of collecting data on the workload on judges and calculating the relevant coefficients is currently being completed. After that, the SJA will analyze the data and review the need for the number of judges and staff of the courts. Subsequently, on the basis of these standards, the limiting number of judges will be re-calculated and, accordingly, the need for the staff of the apparatus will be recalculated in relation to the number of judges. It is recommended that the HCJ and the SJA develop and approve a methodology for determining the number of judges in courts which should reflect the criteria for calculating the optimal number of judges in courts as well as the terms within which the optimal number of full-time positions of judges is calculated. **The CoJ together with the SJA must consolidate their efforts aimed at developing and approving model standards for the workload of judges, taking into account the requirements of new procedural legislation and other objective factors**.

Thus, it can be stated that the goal on improving the efficiency of court staff management by optimizing the number of judges in courts and administrative positions depending on the workload was partially achieved (50 %). It is **recommended that the HCJ and the SJA develop and approve a methodology for determining the number of judges in courts** which should reflect the criteria for calculating the optimal number of judges in the courts as well as the terms within which the optimal number of full-time positions of judges is calculated. The **CoJ together with the SJA must consolidate their efforts aimed at developing and approving model standards for the workload of judges**, taking into account the requirements of new procedural legislation and other objective factors. The **SJA must approve the calculations of the model number of the staff of the court apparatus**, taking into account the number of judges of the court, the workload, as well as the court instance and specialization; to develop and approve the Model Staffing and Model of the Court Apparatus, on the basis of which new staffing lists for the local courts will be agreed.

78. Problem of temporary workload fluctuations due to unforeseeable increase of cases in a court and staff turnover addressed through the mechanism of seconding judges to other courts in place

In 2014, Ukraine was first faced with a situation where, due to the loss of control over part of its territories, it was necessary to promptly resolve the issue of transfer of government officials for work to the territories controlled by the Government. This revealed a number of gaps in legal regulation, as there was no mechanism for a swift and effective solution to this issue at that time. It was only with the introduction of Article 55 of the Law on Judiciary that the procedure of secondment as a temporary transfer of a judge to another court of the same level and specialization was established. The statutory regulation of the secondment of judges is enforced by other laws as well as the decision of the HCJ of 24 January 2017 № 54/0 / 15-17 "On approval of the Rules of secondment of a judge to another court of the same level and specialization (as temporary transfer)" and other regulations of the HCJ and the HQCJ.

The grounds for the secondment of a judge in accordance with Article 55 of the Law on Judiciary are the impossibility of administering justice and an excessive level of workload in the respective court, termination of the work of the court. An obligatory condition for a judge's secondment to administer justice is the judge's consent and that the term of appointment does not exceed one year. According to the HCJ, during 2017 it considered 85 submissions on secondment and adopted 80 decisions to submit the proposal on secondment to the President of Ukraine. In 2018, 48 cases were submitted to the HCJ. In most cases, judges are seconded to the local general courts.

For Ukraine, this institute of "business trips" of judges has become an important tool in addressing the issue of the administration of justice in courts in connection with the war situation in the Donbass, as well as the issue of shortage of judges in some local courts which has developed through ongoing judicial reform. Therefore, it should be stated that the outcome of the Strategy on using the mechanism of seconding judges to other courts for solving problems of temporary fluctuations of workload has been achieved (100 %). At the same time, the decision on secondment depends solely on the HCJ, which often delays the resolution of this issue with the result that there is shortage of judges in certain courts and an excessive number of judges in other courts. It would be **recommended to use the institute of secondment of judges more promptly taking into account the real needs of the courts** and public interest.

It must be noted that the importance of judicial irremovability in connection with the principle of judicial independence recognized in international instruments[99] may be outweighed by important reasons connected to the best functioning of the judicial offices as a public interest. According to the ENCJ, "judicial irremovability should be understood and applied in accordance with the public interest or the public service of justice, the aims of professional evaluation, and the human resource policy regarding the judiciary. In any case the principle of irremovability renders it imperative that the grounds for transfer of judges be clearly established and that a mandatory transfer be decided by means of transparent proceedings conducted by an independent body or authority without any external influences and whose decisions are subject to challenge or review. This helps to prevent the authorities from having the power to transfer a judge against his/her will as a means of threatening judicial autonomy and decision-making independence".[100]

[99] UN Basic Principles on the Independence of the Judiciary, adopted in 1985; Recommendation No. R (94)12 of the Committee of Ministers of the Council of Europe to Member States on the independence, efficiency and role of judges, and the European Charter on the Statute for Judges

[100] ENCJ 2012-2013 Report on Minimum Standards regarding evaluation of professional performance and irremovability of members of the judiciary, pp. 19-20.

Part 23. Effective resolution of cases

79. Mechanisms in place to ensure timely resolution of disputes and counteract abuse of procedural rights through imposing effective procedural restrictions on liable parties for failure (without good reason) to demonstrate 'best effort', to provide evidence or for concealment of evidence etc.

Prior to the judicial reform of 2016, the problem of abuse of procedural rights was very acute, as the courts had no effective safeguards against the abuse by the participants of the proceedings. The novelties in this area will be further analyzed based the example of the CPC which contains rules similar to those in other procedural codes.

According to Article 44 of the CPC, parties and their representatives must exercise their procedural rights in good faith; abuse of procedural rights is prohibited. Depending on the particular circumstances, the court may find abuse of procedural rights contrary to the goal of civil justice, in particular: submitting a claim which was already considered by the court; submitting several claims of same nature and subject-matter or acting in any other manner with the aim to manipulate the automatic distribution of cases among judges; submitting a claim which is obviously without a ground; etc.

The Administrative Court of Cassation within the SC (judgment of 13 March 2019 in case No. 814/218/14) gave a rather accurate definition of the term "abuse of procedural rights", stating that this was a form of deliberate, dishonest actions of the participants of the process expressed in acts commensurate with the consequences to which they may give rise; use of the granted rights contrary to their purpose in order to limit the exercise of or restricting the rights of other participants in the proceedings; obstruction of proper and timely consideration and resolution of cases; unreasonable overload of court work. Based on the particular circumstances of the case, the court may find that a participant of the proceedings has abused the procedural rights by committing other similar actions aimed at unreasonably delaying or obstructing the consideration of the case or the enforcement of the judgment. The abuse of procedural rights is not manifested in specific actions only, it also includes actions aimed at delaying the hearing of the case and creating obstacles for other participants in the process.

The new procedural law provides for several instruments to prevent abuse of procedural rights. According to Part 4 of Article 44 of the CPC the court is obliged to take measures to prevent abuse of procedural rights. In the event of abuse of procedural rights by a party to the trial, the court shall apply to it the measures specified in this Code. These measures are returning or leaving without consideration a complaint, statement, petition if their submission contains evidence of abuse of law (Part 3 of Article 44 of the CPC); taking into account the fact of abuse of procedural rights in the distribution of trial costs (Article 141 of the CPC); issuing a separate decision regarding the procedural behavior of lawyer or prosecutor and submitting it to the authority which applies disciplinary liability (Article 262 of the CPC); imposing a fine (Article 148 of the CPC) up to three subsistence minimums in cases of failure to present demanded evidences, abuse of procedural rights, failure to execute procedural obligations, etc. In case of repeated or systematic non-performance of procedural obligations, repeated abuse of procedural rights, repeated or systematic failure to submit evidence required by a court without valid reasons or without their notification, the fine can be increased.

Another form of court response to a violation by the parties may be application of provisions of the laws, establishing liability for contempt of court.

Procedural laws of 2017 have established new rules of evidence which increase the liability of the parties for the exercise of their procedural rights and at the same time prevent them

from possible abuse. First, according to Article 81 of the CPC, each party must prove the circumstances to which he/she refers as the basis of his/her claims or objections. Secondly, according to Article 81 of the CPC, the court may not collect evidence pertaining to the subject matter of the dispute on its own initiative. It can only order that the evidence is produced if the court has doubts about the parties' faithful exercise of their procedural rights or fulfillment of their obligations regarding the evidence and in other cases provided by the Code. Thirdly, there are very strict rules for presentation of evidence, in the event of failure of which the party may lose the opportunity to present evidence in court. The evidence is submitted with the statement of claim; the court shall determine the time limits for the submission of evidence. Other parties are required to provide all available evidence, together with the statement of claim or the written explanation of the third party. Evidence not submitted within the statutory or court deadline shall not be admitted for consideration by the court, unless the party submitting them has substantiated the impossibility of their submission within the specified period for reasons beyond its control (Article 83 of the CPC).

The above provisions and rules of procedural law indicate an increase in the liability of the parties to the case for the unfair use of their procedural rights. They also impose effective procedural restrictions on the parties for non-compliance (without good reason) with the principle of "best efforts". The implementation of such approaches in the procedural legislation should be assessed positively.

Therefore, it can be stated that the outcome on the introduction of mechanisms for ensuring the effective settlement of disputes and counteracting abuse of procedural rights by imposing effective procedural restrictions on parties for non-compliance to demonstrate best efforts, failure to provide evidence, etc., has been fully achieved (100 %).

80. Improved regulation on obligatory preparatory stage in any type of proceedings, excluding certain types of proceedings where such a stage is irrelevant for effective protection of rights for time reasons (e.g. proceedings related to election process)

Procedural norms as a rule provide for the preparatory stage as a safeguard of comprehensive civil, commercial, administrative procedure. Though, procedural codes provide for exceptions in case of simplified proceedings[101] and discretion of judges in deciding that the case is of small claim. Thus, in principle, the outcome has been achieved (100 %).

At the same time, it should be noted that judges have been discussing that, for example, in commercial cases preparatory stage should not be required as a rule. Also, **some further developments of criteria for judge in using his/her discretion when deciding on the procedure of particular case should be considered**.

81. Procedural rules promoting efficiency, including fast-track procedures for small and uncontested claims, (some) administrative offences and misdemeanors

Procedural laws of 2017 contain sufficient prerequisites for the consideration of particular categories of cases under the simplified summary procedure. Thus, according to Part 4 of Article 19 Civil Procedure Code simplified procedure is applied in case of: small claims (they are defined by the cost of the claim and a nature of claim, assessment of which is a discretionary power of a judge), court orders on permits to bring the child to one of the parents abroad; other cases where the fast procedure is the priority. It should be noted that the Code gives quite wide discretionary power to a court on application of simplified procedure.

101 More on rules on simplified proceedings see bellow outcome No 81.

The Code also defines another category of cases that can be dealt with in summary proceedings. Pursuant to Part 2 of Article 274 of the Civil Procedure Code, any proceedings referred to the jurisdiction of a court may be considered in the order of summary proceedings, except for the cases specified in part four of this Article. At the same time, the court is given fairly wide discretionary powers to decide whether to refer a case to be considered in the simplified procedure (a matter of small complexity). Thus, according to Part 3 of Article 274 of the CPC, there are 8 criteria for attributing a case to the summary procedure category: 1) the cost of the claim; 2) the importance of the case to the parties; 3) the plaintiff's chosen method of supporting his/her claim; 4) the category and complexity of the case; 5) the volume and nature of the evidence in the case, including whether it is necessary to appoint forensic examination, call witnesses, etc.; 6) the number of parties and other participants in the case; 7) whether the consideration of the case is of considerable public interest; 8) the parties' opinion on the possibility to consider the case under the rules of summary proceedings.

Part 4 of the Article 274 determines categories of cases which cannot be considered in summary proceedings, for example: family disputes; privatization of state real estate; etc. The law does not explicitly oblige a court of first instance to take such a procedural action as "classifying a case in the category of small claim". At the stage of initiation of the proceedings, the court may decide to hear the case in summary proceedings. At this stage the court indicates in its ruling which procedural rules – general or summary proceedings – will be applied (Part 2 of Article 187 CPC).

According to the Part 2 of Article 279 of the CPC, the consideration of the case in substance in the simplified procedure begins with the opening of the first session or 30 days from the date of the opening of the case, if such a session is not held. The period between the opening of the summary proceedings and delivery of the judgment shall not exceed 60 days (Article 275). The case is considered according to the rules for the consideration of cases at first instance. The court may hear the case in summary court proceedings without informing the parties on the materials available in the case, if either parties to the proceedings has not requested otherwise. At the request of one of the parties or on the court's own initiative, the case shall be heard in court with parties being notified or summoned.

According to Part 3 of Article 389 of the CPC decisions are not subject to cassation appeal in minor cases, with certain exceptions, established by law, as for example: appeal in cassation concerns a matter of law which is fundamental for the formation of a uniform law enforcement practice; the case is of considerable public interest or of exceptional importance to the party filing the cassation appeal.

An administrative case provides for an institute of cases of minor complexity (minor cases). According to the Administrative Procedure Code, such a case is an administrative case in which the nature of the dispute, the subject-matter of the evidence and the composition of the participants do not require preparatory proceedings and/or a court hearing to establish its circumstances in a complete and comprehensive manner. The APC identifies 11 categories of minor cases (Part 6 of Article 12), among which are disputes on civil service; access to information; pensions and social benefits; departure to the occupied territories; etc. At the substantiated request of the plaintiff, any other case may be considered under the rules of summary proceedings, except for those that are imperatively excluded from the summary procedure (Part 4 of Article 257 of the APC).

Similar provisions related to the simplified procedures are established in the Commercial Procedure Code. It also gives quite wide discretionary power to a judge to decide on the rules of procedure of a particular case. The Commercial Procedure Code determines cate-

gories of cases which cannot be handled in summary proceedings, i.e.: bankruptcy; intellectual property; privatization of state property, etc.

The presence of institutes of simplified procedure in the procedural legislation of Ukraine should be assessed positively and lead to the conclusion that the goal of promoting efficiency, including simplified, fast-track procedures has been partially achieved (50 %). However, there is no publicly available statistics on the proportion of court cases in summary proceedings. It is therefore difficult to assess the scope of application of these civil and administrative justice institutes. It may be **recommended that, in the course of improving the statistical reporting of the courts, a separate subdivision be introduced, namely cases decided by courts in summary proceedings**.

82. Administrative offences (strict liability offences) and misdemeanors dealt with by way of simplified procedural arrangements, while providing minimum guarantees requisite for “fairness of criminal proceedings”

The procedure of administrative offenses is standardized by the Code of Administrative Offenses, which was adopted in 1984. On the whole, it can be noted that the administrative liability procedure is quite archaic and does not fully comply with CoE’s standards. Thus, the ECHR, in its judgment in the case of Gurepka v. Ukraine of 6 September 2005, noted significant shortcomings in the procedure for imposing administrative penalties. The Court also stated that an administrative offense case can be classified as criminal if severe sanctions (in particular, administrative arrest) are applied. This means that the administrative prosecution procedure should meet the standards of fair trial enshrined in Article 6 of the Convention. The latter are described in the Recommendation of the Committee of Ministers of the Council of Ministers of 13 February 1991 on administrative penalties and should include the following: the person is informed in advance about the charges against him/her; sufficient time to prepare for defense, depending on the complexity of the case and the severity of the sanction that may be applied; the opportunity to express opinion and arguments against charges; the administrative act on the application of sanctions contains the reasons on which it is based.

The shortcomings of the administrative offences procedure include the following: a large number of subjects entitled to report on administrative offenses, contradictory wording of their powers and lack of a defined order of interaction between them; violation of the principle of legal certainty in the formulation of grounds for administrative liability; a large number of entities which are entitled to apply administrative penalties and which are not judicial bodies; simplified nature of the procedure of imposition of administrative penalties, which does not fully ensure the procedural rights of persons who are subject to the decision on the application of administrative penalties, in particular the right to presumption of innocence, the right to defend oneself, the right to judicial appeal; violation of the principle of proportionality in the formulation of types of administrative penalties at the level of the law and their application by authorized bodies and officials.

The most significant reform of the administrative offense procedure took place in 2014, when the Code was amended by a separate Chapter 13-A containing the provisions on sanctioning offences of corruption character. The entity authorized to draw an administrative report on corruption offenses is the Security Service of Ukraine. The administrative offense case shall be considered within fifteen days from the date of receipt by the body (official) competent to consider the case of the protocol on the administrative offense and the case file (Part 1 of Article 277 of the Code of Administrative Offences). The bodies empowered to hear cases on these offenses are courts (Art. 221). The types of penalties imposed for committing such offenses are predominantly fines and deprivation of the right to occupy certain

positions or engage in certain activities for a definite term. Practice of application of the mentioned provisions testifies to their rather low efficiency due to short limitation periods, lack of the principle of legal certainty in formulating the basis for administrative liability for corruption offenses and shortcomings of the procedure of imposition of administrative sanctions.

In the course of the 2016 judicial reform, no significant changes were made to the procedure for dealing with administrative offenses, no relevant draft laws were developed and considered by the Verkhovna Rada of Ukraine. Therefore, it must be stated, that the outcome of facilitating the procedure for administrative offences and misdemeanors has not been fully achieved (50 %), because of the lack of comprehensive updated regulation and consistent practice. It is **recommended to develop and adopt new legislation on the procedure of administrative liability that meets the standards of Article 6 of the Convention in further stages of the judicial reform**.

83. Improved criminal procedure legislation to implement the procedure, depending on the extent of the offense.

The need to introduce simplified procedures in the criminal procedure legislation of Ukraine has been discussed for several years. From 2012 the institute of criminal offenses, which was borrowed from the legislation of EU countries, was introduced, but the development of this institute was very lengthy, since it was necessary to amend the Criminal Code of Ukraine. This process was followed by a very broad public discussion. Only in 2018 the concept of criminal offenses was implemented in the legislation.

The Law of Ukraine “On Amendments to Certain Legislative Acts on Simplifying Pre-trial Investigation of Certain Categories of Criminal Offenses” was adopted on 22 November 22 2018. It shall enter into force on 1 January 2020.

The law defines criminal offense as an act (act or omission) punishable by a fine not exceeding three thousand minimum incomes of citizens or other punishment not related to imprisonment. In fact, the legislator reclassified the crimes of minor gravity into the category of misdemeanors, justifying such division by the degree of public danger of crimes of small gravity in comparison with the crimes of medium gravity, serious and especially serious crimes.

Other changes to the Criminal Code concern certain features related to the institute of criminal misconduct, in particular, the consolidation of the requirement that persons convicted of a misdemeanor be recognized as having no criminal record after serving their sentence.

A pre-trial investigation is not permitted before or without entry of the case in the Unified Register of Pre-Trial Investigation. However, in an urgent case an inspection of the scene may be conducted, explanations collected, medical examination conducted, a specialist’s opinion obtained and indications of technical devices and equipment having the functions of video or photo and means of committing a criminal offense, things and documents directly objected to a criminal offense taken. The pre-trial investigation must be completed within 72 hours from the date of notification to the person of suspicion, within 20 days if the suspect does not admit guilt or the case requires additional investigative actions, and within one month if the person filed a request for an examination. If necessary, additional investigative and investigative actions may be extended by the prosecutor for up to thirty days.

A person may be detained without the order of the investigating judge only if he/she: refuses to fulfill or resists the lawful order of an authorized official to terminate the criminal offense; is trying to leave the scene of the criminal offense; is intoxicated and may cause harm to himself/herself or others. Pre-trial detention of a person shall take place no more than three hours after the person was taken into custody.

The investigator is obliged, no later than 72 hours from the moment of detention of the person, to submit to the prosecutor all collected materials of the inquiry together with the notification of the suspicion, of which he immediately informs the suspect, his defense counsel, legal representative, the victim. The prosecutor is obliged not later than 3 days after the receipt of the inquiry materials together with the notification of the suspicion, and in case of detention of the person, within 24 hours, to take one of the following actions: 1) to decide on the closure of criminal proceedings, and in case of detention of a person to immediately release the detained person; 2) return the criminal proceedings to the investigator with written instructions on the conduct of procedural actions with the simultaneous extension of the term of inquiry up to one month and to release the detained person (in case of detention of a person); 3) to apply to the court with an indictment, a petition for the use of compulsory measures of medical character, or about the release from criminal liability; 4) in case of establishing signs of crime, to initiate criminal proceedings for conducting pre-trial investigation.

The court shall appoint a trial within five days upon receipt of the indictment charging the person with a criminal offense and in case of detention of the person immediately after its receipt. If the accused does not dispute the circumstances established during the inquiry and agrees with the consideration of the indictment, the court shall consider the indictment for committing a criminal offense without a court hearing and in the absence of participants.

The mere fact of adoption of legislation introducing the simplified procedure for criminal proceedings and the new institute of criminal offenses is a significant achievement of judicial reform. However, today it is difficult to evaluate the effectiveness of the Ukrainian legislation on criminal offenses, since there is no practice of its application. Therefore, the outcome targeted at improvement at legislative level is considered to be achieved, but in the absence of the practice of its application its effectiveness cannot be evaluated. Thus, overall achievement could not be considered as absolute (75 %).

Part 24. Promoting ADR

84. Sound regulatory basis in place to apply means of alternative dispute resolution, including mediation, arbitration and conciliation; enhancement of list of categories of cases to be resolved by arbitrators or to be considered by courts in simplified proceedings; effective procedural mechanisms in place to prevent consideration of cases in absence of litigation between parties

Mediation has become one of the most popular alternative ways to resolve disputes in European countries. A formal definition of conciliation is given in Article 1 of the Model Law of the United Nations Commission on International Trade Law (UNCITRAL) 2002 on International Commercial Conciliation Procedures, according to which concilliation is a procedure that may be called conciliatory, mediatory, or referred to by an expression of similar meaning within which parties request a third party (the mediator) to assist them in seeking to reach amicable settlement of their dispute arising out of or in connection with a contractual or other legal relationship. The mediator does not have the authority to order or coordinate the parties in the dispute resolution process.

During the last CEPEJ plenary session, 13-14 June 2019, two important mediation documents were adopted, namely: the European Mediation Legislation Handbook and the Guide for the Development and Monitoring of Mediator Training Programs. These documents are aimed at improving and developing the functioning of the judicial systems and promoting mediation in respective countries.

Implementation of the Mediation Institute has been discussed in Ukraine for a long time. Most scholars and practitioners have a positive opinion of this institute and the prospects for its implementation. However, the legal framework for mediation is currently insufficient, the relevant law has not been adopted, the status of the mediator has not been determined. This is a major obstacle to the implementation of this institute. Back in 2013, the Draft Law No. 2425a-1 "On Mediation" was registered in the Verkhovna Rada, but in 2014 the bill was withdrawn. In 2015-2019, several draft laws on mediation were registered in Verkhovna Rada, but they are still pending. Currently, there are two bills providing legal bases and the procedure for mediation as an out-of-court conflict resolution procedure, mediation principles, mediator status pending in the Verkhovna Rada. According to these drafts, mediation could be applied in any conflict, including civil, family, labor, commercial, administrative or in cases of criminal or minor offenses. Mediation could take place in the event of a conflict, either before the court, the arbitral tribunal or during the court or arbitration proceedings; be conducted with the mutual consent of the parties on the basis of the principles of voluntary participation, self-determination and equality of rights of the parties, independence and impartiality, neutrality of the mediator and confidentiality of information. This progress on drafting legal basis for mediation can be evaluated positively. A negative factor is the fact that the law has not been adopted.

In accordance with the procedural law of 2017, a new institute of amicable dispute resolution with the participation of a judge has been introduced. The legislator, in the new version of the procedural codes (for example, Articles 201-2015 of the CPC), gave judges the opportunity to mediate between the parties of the conflict, and provided a direction for the parties to change the vector from absolute confrontation to peaceful negotiations. The settlement of the dispute with the participation of the judge is carried out with the consent of the parties before the start of the trial and is a separate procedure that suspends the hearing of the case. The settlement of the dispute takes the form of joint and/or closed meetings. Joint meetings are held with the participation of all parties, their representatives and the judge. Private meetings are held on the initiative of a judge with each of the parties separately. At the beginning of the first joint dispute resolution meeting the judge explains to the parties the purpose of the procedure, the conduct of the procedure, the rights and obligations of the parties. The judge may offer the parties a possible way of amicable resolution of a dispute. During the settlement of the dispute, the judge has no right to provide the parties with legal advice and recommendations, to evaluate the evidence in the case. Information received from either party, as well as the judge during the settlement of the dispute, is confidential. The current legislation also sets clear deadlines for such settlement – up to 30 days. The result of a successful settlement of a dispute involving a judge is the conclusion of amicable settlement between the parties, the plaintiff's petition to leave the claim without consideration or the defendant's recognition of the claim.

Also, it should be emphasized that mediation is not possible in administrative cases, which by their dispute nature are similar to civil cases. At present, the peaceful dispute resolution institute involving a judge is not used frequently enough. This might be caused by the novelty of the said procedural institute, lack of mediation skills of judges as well as the unwillingness of the parties to resort to peaceful settlement of the conflict.

According to the Law of Ukraine of 11 May 2004 "On Arbitration Courts", an arbitral tribunal is a non-state independent body formed by agreement or appropriate decision of interested individuals and/or legal entities in accordance with the procedure established by this Law for disputes arising from civil and commercial legal relations. The jurisdiction of arbitral tribunals extends to all civil and commercial legal relationships (exceptions include legal dispute involving state and local government bodies, their officials); arbitral tribunals are formed and operate on the principles of voluntariness, independence, competitiveness, legality, arbitra-

tion, binding force of their decisions to the parties, etc.; the composition of the arbitral tribunal may be formed by election; arbitrators may only be persons with the appropriate qualifications, knowledge, experience, business and moral qualities necessary to resolve the dispute, and in the event of a single dispute settlement, the arbitrator of a permanent arbitral tribunal must have a law degree. In Ukraine, permanent arbitral tribunals and arbitral tribunals can be established and operate to resolve a particular dispute (ad hoc courts). The Law of Ukraine "On Arbitration Courts" sets out the procedure of formation and procedure of consideration of cases by an arbitral tribunal. The decision of the arbitral tribunal which is not voluntarily enforced shall be enforced in accordance with the procedure established by the Law of Ukraine "On Enforcement Proceedings". The decision of the arbitral tribunal is final and can be appealed only in accordance with Article 51 of the Law of Ukraine "On Arbitration Courts".

It can be stated that the legal basis for the functioning of arbitration in Ukraine is sufficiently developed. No significant changes were made to the legislation on arbitration during the 2016 judicial reform. At the same time, the activity of arbitration courts slowed down during this period; the number of appeals to arbitration courts has decreased significantly; the image of these non-state courts has significantly deteriorated due to the influence of subjective and objective circumstances. In particular, the reduction of the role of arbitration was facilitated by numerous corruption scandals, the high cost of services of the respective courts, the limitation of the jurisdiction of these courts by the legislative amendments and the SC decisions.

A very thorough study of the activity of arbitration courts in Ukraine was carried out by the NGO DE JURE Foundation with the assistance of the New Justice Project in December 2018. The report found that as of 1 December 2018, 515 arbitration courts were registered in Ukraine, 21 of which were suspended. The report also found that courts, for various reasons, often overturn decisions of arbitral tribunals, which also does not contribute to a positive image of the latter. The Report identifies the factors that hamper the development of arbitral tribunals, in particular: "negative" court practice - high rate of abolished decisions of arbitration tribunals, gaps in legal regulation of these courts, lack of information on arbitrary tribunals, etc.[102]

Further development of arbitration tribunals **requires improvement of legislation governing their activities, state support, increasing requirements for arbiters, as well as taking measures to develop their positive image in society**. It is also worth considering the involvement of reputable foreign experts in the work of arbitration tribunals in Ukraine, which will help to increase the level of confidence in these tribunals.

The above analysis of the regulatory framework and practices of alternative dispute resolution leads to the conclusion that some positive steps can be observed, but alternative dispute resolution lacks both legal basis, organizational tools and public awareness for more significant progress. Therefore, the outcome could not be considered as achieved to a significant extent (25%).

It is recommended to **develop further mediation and other ADRs in all types of process, which would have positive impact both on court's workload (the workload of the courts of first instance would be affected directly, also, agreements on peaceful settlement would prevent appeals thus reducing workload of appeal courts) and on people's perception of courts as not the only ultimate way to solve a dispute. It would also promote legal culture. Compulsory attempt of pre-litigation settlement in certain categories of cases (mandatory pre-requisite for taking legal action) could also been considered**.

[102] Шепель Т. П., Чагін С. М., Колотило М. М., Болтушкіна О. В., Мустафаєва М. Д., Харченко Н. М. Третейські суди в Україні: стан розвитку, статистика, практика та перспективи. Київ, 2018. 52 с. URL: https://newjustice.org.ua/wp-content/uploads/2019/02/New_Justice_Analytical_Report_Arbitration_Courts_in_Ukraine_UKR.pdf

Part. 25. Effective appeal

85. Improved requirements for procedures for appeal and cassation complaints

The use of filters for access to court with respect to appeal and/or cassation is a common practice in EU countries. EU member states' Supreme Courts hear on average less than 1% of all cases. The prevailing approach is that the dispute should be resolved in a court of first instance. The appellate court corrects the errors, and the cassation examines only fundamental issues of interpretation and application of laws.

According to the Convention, anyone found guilty of a criminal offense by a court is entitled to review by a higher court the sentence. The realization of this right, including the grounds on which it may be exercised, is governed by law. Thus, the exercise of the right to appeal according to the Convention is may be subject to certain restrictions. Recommendation of the Committee of Ministers of the CoE "On the introduction and improvement of the functioning of systems and procedures of civil and commercial appeals" dated (7 February 1995) contains standards regarding the procedure for appealing court decisions and limiting the relevant right in civil proceedings, to prevent any abuse of the appeal system. According to its Article 1, there should be an opportunity to control any decision of a lower court by a higher court. If it is considered appropriate to provide for some exceptions to this principle, they must be based on the law and comply with the general principles of justice. Article 3 of this document establishes possible restrictions on the right of appeal: (a) to exclude a number of categories of cases, such as small claims; (b) to introduce a request for a court's permission to submit a complaint; (c) to set specific time limits for the exercise of the right of appeal; (d) to postpone the exercise of the right to appeal certain interlocutory matters pending the submission of the main complaint in the main proceedings. According to Article 7 of the Recommendation, when considering the possibility of taking measures concerning the court of cassation, states should take into account that cases have already been heard in 2 other courts (paragraph b of Article 7), that complaints should be in the case which "deserves" to be handled the third time as being unique and of utmost importance, such as those that would promote a uniform interpretation of law. Their circle should also be limited to complaints about matters of law that are relevant to the whole society. The appellant should be required to provide justification as to why his/her case will contribute to the achievement of such goals (Article 7).

In the judgment of the ECHR of 5 April 2018 in the case of *Zubac v. Croatia*[103] the criteria for applying legislative restrictions on access to the Supreme Court were named.

The Constitution of Ukraine establishes an unconditional right to appeal against a court decision and restricts the right to a cassation review to cases clearly defined by law (par. 8 of Part 2 of Article 129). The previous wording of the Constitution of Ukraine did not contain such restrictions on cassation review of court decisions.

An analysis of the procedural law of 2017 shows that the right to appeal has certain formal prerequisites, the enforcement of which is binding on a person who intends to apply to a higher court. These prerequisites are typical of all procedural codes. First, the law defines a specific form of complaint which must contain all the elements and details provided by law as well as the justification for its submission, that is, the reasons why the complainant considers the court's decision illegal or unjustified. Absence of these prerequisites serves as a basis for dismissal of appeal or cassation complaints. Secondly, the law defines the time-frame for filing the complaint. Only if there are valid reasons for not appealing within the time

[103] https://laweuro.com/?p=8165

limits set by law and the appellant submits evidence to the court, the court can reopen the term for the appeal or cassation. In addition, the decision of the court of first instance cannot be appealed to the court of cassation without its appeal. Third, payment of court fees, which are higher than when submitting a claim to the court of first instance (150% of the amount of the court fee for appeal and 200% of this amount in case of cassation) is mandatory when submitting an appeal and cassation appeal. The financial element is a significant deterrent to the initiation of court proceedings in appellate and cassation courts.

However, the main, meaningful filter for appeals and cassation appeals is the imposition of restrictions on the right to initiate the relevant proceedings. For the court of appeal, such restrictions are insignificant and apply to rulings that are not subject to appeal separately from a court decision. For example, in civil proceedings, the parties to the case as well as persons who did not participate if the court resolved their rights, freedoms, interests and (or) responsibilities have the right to appeal the decision of the court of first instance. With regard to court rulings, the law establishes an exclusive list of such rulings that can be challenged, for example (Part 1 of Article 353 of the CPC): court orders; on ensuring submission of evidences; interim measures for guaranteeing claim; refusal to open the case; on assignment of expertise; distribution of procedural costs; etc. Similar rules are laid down in other procedural codes. However, the judicial reform of 2016 did not bring any significant innovations into these rules of appeal against court decisions.

The right to appeal to the court of cassation was more substantially restricted. First, only a limited number of court decisions, the list of which is explicitly defined by law (Part 1 of Article 389 of the CPC), can be appealed in cassation. The procedural law determines that the grounds of cassation appeal are incorrect application of the rules of substantive law or violation of procedural law.

In civil proceedings following cases are not subject to cassation appeal:

1) decisions of the first instance court which according to the law are subject to the review by the SC in appeal procedure;
2) cases on small claims (with some exceptions prescribed by the law). In civil and commercial process small claim cases are those in which the cost of the claim does not exceed 100 subsistence minimums (up to UAH 176200) as well as cases with the claim cost up to 500 subsistence allowances (currently 881000 UAH), which are recognized by the court as of insignificant complexity.

In addition, the CPC sets additional preconditions for refusing to open a cassation proceeding, i.e. when the appeal is ungrounded (Article 394 of the CPC). According to Part 4 of Article 394 of the CPC, where the claim does not exceed 500 subsistence minimums and also in case of an appeal against an interlocutory decision (except for a decision which terminates a case), the court may declare the cassation appeal unfounded and refuse to open the cassation proceedings if the ruling of the SC on interpretation of particular legal provisions has already been adopted or if correct interpretation of relevant legal provisions is obvious and does not require any further elaborations.

In its two years (2018-2019), the SC has already developed certain approaches to identifying cases that resolve a fundamental legal problem or have a significant public interest. Thus, in civil proceedings, minor cases may be entitled to cassation review if they relate, for example, family disputes, privatization of state real estate (only residential stock). In commercial proceedings following minor cases can be subject to cassation review: opening of bankruptcy case; protection of intellectual property rights; corporate disputes; market

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competition disputes. In administrative proceedings following disputes can be subject to cassation review: admission to and dismissal from civil service; abuse of power in respect of the right to information; lawfulness of legal normative acts; foreigners' and stateless persons' stay in Ukraine; etc.

Such restrictions on the right to cassation review of a court decision are not provided in the criminal process, which is explained by the specifics of this type of judicial proceedings, which address important issues of limitation of human rights and freedoms, imprisonment and other types of punishment. Thus, according to Article 422 of the Criminal Procedure Code rulings of the court of first instance on the application or refusal to apply compulsory measures of medical character after their review on appeal and the decisions of the court of appeal issued in relation to these court decisions may be appealed in cassation. Orders of the court of first instance after their review on appeal as well as decisions of the court of appeal may be appealed in cassation if they hinder further criminal proceedings, except in cases provided for by the Code. Objections to other rulings may be included in the cassation appeal against a court decision following the outcome of an appeal. Decisions of the investigating judge after their review on appeal and the respective court of appeal decisions are not subject to review in cassation.

In view of the above, it can be stated that the procedural law of 2016 introduced some procedural filters for cassation review of court decisions. Some of the categories of procedural law, such as "public interest" or "fundamental legal problem" are of evaluative nature and require further interpretation by the SC. There may also be some misunderstanding of the mechanism of action of procedural filters by the legal community. However, the implementation of these mechanisms is a recognized European practice. Due to the fact that the SC deals with a very large number of cases (from 80 to 100 thousand cases per year), it is **recommended considering introduction of additional procedural filters for cassation review**.

Therefore, it can be stated that the Strategy's task in improving requirements for appeal and cassation complaints, including introduction of procedural filters for judicial review, has been largely achieved (90 %). It is recommended **to continue work on improving the procedural filters for cassation review of court decisions**.

86. Time-limit for appeal calculated from notification of decision on merits (in its full or partial form)

According to the Part 2 Article 395 of Criminal Procedure Code, an appeal may be filed against: 1) a sentence or order for the application or refusal to apply compulsory measures of medical or educational character within thirty days from the day of their announcement; 2) other rulings of the court of first instance within seven days from the date of its announcement; 3) the decision of the investigating judge within five days from the date of its announcement. For a person in custody, the time period for lodging an appeal shall be calculated from the moment the copy of the judgment is served on him/her (Part. 3 of Article 395). If the decision or verdict of the court or decision of the investigating judge was adopted without summoning the person appealing it, the appeal period for such person shall be calculated from the day of receipt of the relevant decision.

In civil procedure the term for appeal (fifteen days) is also counted from the moment of the announcement of the decision in the court procedure (Article 354 of the CPC). The same principle applies in commercial and administrative procedure.

Therefore, it can be stated that the outcome on applying the rule of calculation the time-limit for appeal from notification of decision on merits has been fully achieved (100 %).

87. In criminal proceedings the decision of the jury cannot be appealed

As it has been already elaborated in this report, the general principle of fair trial enshrined in Article 2 of Protocol No 7 of the Convention guarantees a convicted person the right to have the conviction or sentence reviewed by a higher court. Therefore, the first instance court's verdict, adopted by a judge and/or jury must be subject to judicial review. Exceptions from this rule must be sufficiently justified. The criteria of the subject (judge and/or jury), having power to adopt particular verdict in the first instance criminal court, would be hardly considered as sufficient justification for restriction of appeal.

According Ukrainian procedural law, verdict of the jury in criminal cases are appealed according to general rules. No exceptions or restrictions. It is regulated by Chapter 31 (on appeal procedure in the court) of the Criminal Procedure Code of Ukraine.

Therefore, it must be concluded that the outcome on imposing restriction on the appeal of judgments in criminal cases adopted by jury has not been achieved (0 %). Though, this situation is justified in respect of procedural guarantees.

88. Ability for party to withdraw or discontinue appeal at any stage

In criminal proceedings the right to withdraw the appeal is envisaged. Although it has some restrictions. According to the Article 403 of the Criminal Procedure Code, a person who has filed an appeal shall have the right to withdraw it before the appeal is completed. The representative of suspect, accused or of victim may refuse to appeal only with the consent of the suspect, accused or victim respectively.

In civil proceedings the appeal may not be withdrawn if the plaintiff is represented by a representative assigned by law (for example, if the plaintiff is a minor or he/she is incapacitated) and the court finds that the withdrawal of the appeal is contrary to the interests of the plaintiff (Article 206 of the CPC).

In administrative procedure the court has a discretion to resolve this question (Article 303 of the Code of Administrative Procedure).

On the basis of abovementioned legal provisions, it can be concluded that the outcome on introducing procedural right of the party to withdraw the appeal has been fully achieved (100%).

89. On appeal in civil and administrative process, higher stamp duty and court fees than at 1st instance

As it has been already stated in the analysis of outcome No 76 on increased use of court fees, the court fee in the appeal and cassation costs more than the lawsuit to the first instance court: when submitting an appeal in connection with the newly discovered circumstances, 150 percent of the rate payable when submitting a claim is paid, and 200 percent of the rate is paid for an appeal to court of cassation.

Also, as it was mentioned, legislation provides for several instruments to ensure the financial accessibility of justice by introducing categories of court cases for which no court fees are paid, as well as giving the judge a right to postpone payment, reduce its amount or release a person from payment. The grounds for the court to take the abovementioned actions are related to the financial situation and property status of the party.

Therefore, it can be stated that the aim of creating the balance between the need to impose adequate court fees, which allows financing the needs of courts, the need to prevent parties in using court services, especially applying to the whole judicial chain without justified reasons and the duty of the state to ensure access to courts has been achieved (100 %).

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90. Reduced rights of 3rd parties in all types of process, including victim in criminal process, to intervene on appeal

According to the Article 363 of the CPC, in the civil procedure the parties to the case have the right to join the appeal filed by the person on whose side they acted. Persons who have not participated in the case may also join the appeal if the court has decided on their rights, freedoms, interests and (or) responsibilities. An application to join an appeal may be filed prior to the commencement of the case before the court of appeal. In Article 367 of the CPC, limits of consideration of the case by the court of appeal are established, for example, evidence which has not been submitted to the court of first instance shall be admitted by the court only in exceptional cases, if the participant of the case provided proof of impossibility of their submission to the court of first instance for reasons beyond his/her control; the court of appeal shall not accept or consider claims and grounds of claim that were not the subject of consideration in the court of first instance.

In criminal proceedings the appeal is restricted to the participants of the process in so far as it concerns their interests (with some exceptions, for example, prosecutor). According to Article 393 of the Criminal Procedure Code, the appeal may be filed by: the suspect, the accused, his/her legal representative or defense counsel; the legal representative, the defense counsel of the minor or the minor who is subject of the compulsory measure of educational character in part concerning the interests of the minor; the legal representative and the defense counsel of the person who is subject of the compulsory measures of medical nature; the prosecutor; the victim or his/her legal representative in so far as the appeal concerns the interests of the victim, but within the claim stated by them in the court of first instance; a civil claimant, his or her representative or legal representative in part related to the settlement of a civil claim; etc. A very important restriction, which is essential procedural guarantee of the accused person, is established in Part.4 of Article 404 of the Code: court of appeal shall not have the right to hear charges which have not been raised in the court of first instance.

Therefore, it can be concluded, that the goal on reducing (with relevant justification) rights of 3rd parties in all types of process, including victim in criminal process, to intervene on appeal has been achieved (100 %).

91. The possibility for returning of the case to the court of lower level in case of cancellation of the decision of the lower court is restricted by exceptional circumstances when it cannot be solved in appeal or cassation

92. In case of reversal of lower decision, no remittals to lower court as a matter of principle[104]

As the Supreme Court Judge D. Luspenyk points out, almost all the changes made to the procedural codes regarding the review of court decisions were aimed primarily at ensuring the principle of the finality of judicial decisions, also referred to as *res judicata*, which is considered as an element of legal certainty. According to this principle, neither party has the right to a review of the final and binding decision of a court solely for the purpose of a retrial and obtaining a new decision. The jurisdiction of the higher courts to review cases should be used to correct judicial errors and misconduct and not to conduct a new trial. The review of the case cannot be regarded as a disguised appeal, and the mere possibility of having two views on the subject does not warrant a retrial. Deviation from this principle is possible only

[104] These two outcomes are analyzed together as they are inseparable and both aim to establish the principle of legal certainty with regard to court practice by restricting the review of final court decisions and the remittals to lower courts after the abolishment of the decision.

when it is caused by independent and newly established circumstances. A cassation review should not replace review on appeal.

The institute of reviewing court decisions in view of newly discovered or exceptional circumstances is found in all procedural codes (Articles 423-429 of the CPC). In fact, this institute is an exceptional way of reviewing a judgment that has already entered into force. Thus, according to Article 423 of the CPC, court decision or court order which ends the proceedings in a case may be revised, after their entry into force, in view of newly discovered or exceptional circumstances. The grounds for review of the judgment on the basis of the newly discovered circumstances are:

1) discovery of circumstances which are decisive for the case and have not been considered by the court before and which have not and could not have been known to the person who is applying for review when the case was examined;
2) establishment in criminal cases of the fact of false expert conclusions, false paper or electronic documents and witness statements or interpretation which have led to the adoption of an unlawful judgment in the case subject to the request for review;
3) quashing of the court decision on the basis of which the judgment subject to the request for review was adopted.

The grounds for review of the judgment on the basis of exceptional circumstances are:

1) a law or other legal act which was applied in the case has been found unconstitutional by the Constitutional Court of Ukraine;
2) a judgment in the case has been found to violate international duties and obligations of Ukraine by an international court, jurisdiction of which is recognized by Ukraine;
3) a judge was found guilty by a final verdict of the court for committing a crime which resulted in the court decision.

When reviewing a judgment in view of newly discovered or exceptional circumstances, the court cannot go beyond the requirements that were the subject of consideration and examine other claims or other grounds of claim. Request for review on the grounds of the finding, by an international judicial authority whose jurisdiction is recognized by Ukraine, of a violation by Ukraine of its international obligations when adopting the judgment in the case shall be filed with the SC and heard before the Grand Chamber. In other cases, the decision is reviewed by the court which delivered the final decision in the case. In the court of first instance the case is considered in the order of simplified proceedings with notification of the participants of the case.

As a result of reviewing a judgment in view of newly discovered or exceptional circumstances, the court may: 1) refuse to grant review of the judgment on newly discovered or exceptional circumstances and leave the relevant court decision in force; 2) satisfy the application for review, abolish the respective court decision and adopt a new decision or amend the decision; 3) abolish the judgment and close or dismiss the case. As a result of the review of the judgment in view of newly discovered or exceptional circumstances, the Supreme Court may also cancel the judgment in whole or in part and refer the case to the first instance or appellate court for reconsideration.

It should be noted that reviews of judgments because of newly discovered or exceptional circumstances represent a very small share of the case-law. In 2018, the Grand Chamber of the SC received 8 applications for judicial review in light of newly discovered circumstances, which is less than 1% of the total cases of the Grand Chamber. Accordingly, 132 applications

for review because of exceptional circumstances or 5% of the total admission to the Grand Chamber were received.

In view of the above, it can be stated that the institute of review of court decisions in light of newly discovered or exceptional circumstances has the proper legislative regulation. Therefore, it can be stated that outcomes have been achieved (both by 100 %). At the same time, it should be noted that there is **a need to generalize the case law of this category of cases**, because on this matter only old and outdated resolutions of the Plenum of the SC can be found.

93. Exceptional nature of review at 3rd instance in all types of process

The topic of cassation filters has been already addressed in detail in the analysis of the outcome No 85 on improved requirements on the appeal and cassation. It has been already stated that the procedural law of 2016 introduced some procedural filters for cassation review of court decisions. This is related to the new concept of the powers of the SC in Ukrainian judiciary.

As it was already mentioned in the course of this report, the most significant change during the judicial reform was the establishment of the new SC, which according to the Par. 1 Article 36 of the Law on Judiciary, 1) administers justice as cassation instance and as the first instance and an appeal court in exceptional cases prescribed by procedural laws; 2) performs analysis of court statistics and overview of court practice; 3) submits opinions on draft laws which are related to judiciary, court activities, status of judges, etc.; 4) submits requests on the constitutionality of laws and other legal acts to the Constitutional Court; 5) ensures uniform interpretation of laws by courts. The SC, as a court of cassation under the current Ukrainian legislation, is endowed with some instruments for ensuring the uniformity of the case law, which only partially reflects the concept of cassation, as it has been developed European judicial systems, i.e. as extraordinary judicial review, limiting its powers solely to matters of law.

Therefore, it can be stated that the Strategy's outcome of making the review at the 3rd instance court of a more exception nature has been partially achieved (50%). It is **recommended considering introduction of additional procedural filters for cassation review**.

CONCLUSIONS

First of all, it has to mentioned that the analysis and assessment covers the period of 2015-2019 September. The latest changes in legislation regulating institutional set-up of judiciary,[105] procedural changes, new concept directions for developments in judiciary[106] were not analysed. First of all, considering the complexity of recent decisions, this would require a separate analysis. Secondly, the analysis was aimed at evaluating impact of implemented actions during the reform. It is difficult to assess recent legislative changes and conceptual ideas as they are not yet being implemented. At the same time, it should be noted that some of the findings and recommendations of this analysis correspond with possible developments and ideas proposed by the Commission on Legal Reforms, for example, optimization of judicial governance by reducing number of institutions; facilitating the procedure of disciplinary liability of judges, etc.

There has been certain progress in terms of attainment of outcomes envisaged by JSRSAP for the areas tackled by the assessment and the report and in the overall substantial reform in the relevant areas of intervention of Chapters I-IV of the JSRSAP. The overall score in the following areas of intervention concerning judiciary is 64 %:

- 1.1 Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance – 70 %
- 2.1 Increased Competence through Improved Career and Performance Management – 33 %
- 2.2 Increased Competence through Improved Professional Training System – 81 %
- 3.1 Accountability through Improved Ethical and Disciplinary Framework – 67 %
- 4.1 Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions – 71%.

The highest level of achievement of the goals could be indicated in the area of intervention 2.2. Increased Competence through Improved Professional Training System, where almost all outcomes are considered to be completely achieved or their achievement is sufficient to amount to 81% of overall achievement. Considerable progress should be emphasized in some directions of areas of intervention 1.1. Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judicial Governance (in respect of legal framework of composition and competences of institutions), 3.1 Increased Accountability through Improved Ethical and Disciplinary Framework (in respect of anti-corruption oversight mechanisms especially) and 4.1 Increased Efficiency through Streamlines Jurisdictions (in respect of establishing three-tier court system with defined jurisdiction and promoting new concept of cassation following effective practices of other European countries and new procedural rules based on concept of more effective and timely resolution of cases). In the above said spheres the level of achievement could be estimated up to 90 – 100 %, whereas overall average level of achievement in these areas of intervention is between 67 – 71 %. The lowest level of achievement was encountered in the area of intervention 2.1 Increased Competence through Improved Career and performance Management (33 %) because of the lack of systemic approach to the management in courts.[107]

To ensure enhancement of the reforms and their advancement in the justice sector of Ukraine, in particular, improving relevant framework and its steering mechanisms, the assessment suggest the following:

[105] For example, the Law "On Amending Certain Laws of Ukraine Regarding Activity of Judicial Governance Bodies" (draft No 1008).
[106] Concept discussed in WG of the Commission for Legal Reforms under Presidential Office on 18 November. https://sud.ua/ru/news/publication/154855
[107] Outcomes, their group-specific scoring details are given in the left column of the attached evaluation matrix.

SHORT-TERM RECOMMENDATIONS

(within the period up to the end of 2020)

Institutional set-up

1. Having constitutional basis for governance "pyramid" at the pinnacle of which a constitutional body the HCJ is foreseen with power and responsibility of leadership and coordination of governance and established legal background for clear and effective institutional set-up of judicial governance system. Further efforts should be **focused/ focusing on the effective performance and collaboration of all governance/ self-governance bodies in practice**: strengthening **HCJ's leadership**, especially with regard to setting-up the goals for the judiciary, strategic planning, budgeting procedures, ensuring clear accountability of the SJA and effective coordination of its activities for ensuring proper infrastructure and services to courts.
2. The perception of constitutional status of the HCJ providing for power and competence to represent the interests of judiciary in general, i.e. apart or alongside with particular functions specifically listed in legislation, has to be further promoted as granting **not formalistic, but real and effective representation of judiciary in relations with other powers, safeguarding judicial independence, facilitating accountability of judiciary and ensuring effective collaboration of all players of judiciary's governance mechanism**. Thus, the leadership and coordinative role of this constitutional body has to be further developed and institutional capacities strengthened.
3. **Integration of the HQCJ into the HCJ seems logical and consistent by merging of powers of selection and appointment of judges into one institution (HCJ), at the same time taking into account recommendations of European institutions, working in a field of judicial independence and the rule of law**. One of the key aspects here would be the composition of such body – the majority should consist of judges, elected by their peers. If this body would meet this requirement, it could be considered as adequate instrument to exercise judicial self-governance with majority of judges in the composition.
4. **A more accurate separation of powers between the HCJ and CoJ, if CoJ's** is conceived as separate body, should be discussed. The leadership potential of the CoJ as the highest body of judicial self-government, the activity of which is envisaged by the Constitution of Ukraine, could be also **facilitated**. It could be considered to **expand the powers of the CoJ in the area of representation and protection of the interests of the judiciary**, while allowing the **HCJ to focus on constitutional powers of leading the governance, ensuring accountability and independence of judiciary, performing disciplinary proceedings and developing practices**, executing formation of judicial corpus.
5. **CoJ's role and activities on developing judicial ethics rules and practices, management of conflicts, also representative** (here it would be strongly recommended for all bodies, deciding on any issue related to judiciary, to formally and informally consult with the CoJ as the body with a genuine insight and directly reflecting practices, needs and expectations of judiciary) **and communication directions of activity should be strengthened**.

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Judicial Independence and Accountability

6. Encountering challenges, problems of judiciary, issues for discussion openly by the HCJ should be considered to be an indication of development of effective system of institutional protection of judicial independence, which has to be followed **with the perspective of measuring the progress** of promoting judicial independence (comparing data of current period with previous years).
7. It is crucial not only to indicate challenges in protection of judicial independence, but also to **address the issue of accountability of judiciary** as these **two dimensions of independence and accountability are inseparable** in modern concept of effective judiciary and are prerequisite for public trust in judiciary. **Expanding the scope of annual report on the state of judicial independence**, presented by the HCJ, with the reporting on the state of affairs and challenges in respect of performance of courts (statistics on workload, backlogs, length of proceedings, disciplinary proceedings against judges, major projects implemented, examples, overview of the most important high-profile cases, analysis of reasons behind the cases which took more than 5 years to examine, etc.) in comprehensive manner (with public consultations and discussions) should be considered.
8. It would be recommended in a short-term perspective to **monitor and update the Code of Judicial Ethics and to proceed with developing practice and raising awareness** of it by publishing both examples of good practice and situations perceived as raising an issue of ethics. The CoJ should step up its work in clarifying the provisions of the Code of Judicial Ethics and in resolving conflicts of interest in the judiciary.
9. It is recommended for the HCJ to formulate **consistent approaches in disciplinary practice**, in particular regarding the imposition of disciplinary penalties for similar offenses. In case of a change in previous practice, the HCJ must substantiate its decisions in detail. It is advisable that the HCJ **generalize its own disciplinary practice, which should be regularly published** on the HCJ's official website.
10. From the perspective of the level of development of practices of **ethics and discipline**, there is a need to develop those practices, to draw the distinction between **them and to facilitate the dialogue between the CoJ and the HCJ** in this respect.
11. For the purpose of reducing length of disciplinary proceedings, handling huge workload more effectively, ensuring better quality and more consistent disciplinary practices it is recommended to both amend the regulation and improve organization of investigation of materials and proceedings, including **more effective use of institute of inspectors**:
    a) strengthening the procedural status of a disciplinary inspector, granting the inspector an **authority to pre-verify a complaint** concerning the conduct of judges;
    b) in order to ensure a unified approach to the activities of inspectors, it would be necessary to develop **uniform criteria for assessing a complaint** about the misconduct of a judge, based on the requirements of the Law and the existing practice of the HCJ. Standardizing the work of inspectors would minimize corruption risks in their activities;
    c) an important element of improving the work of inspectors is to provide them with **access to electronic databases and registries**;

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d) developing **training curricula for inspectors**, facilitating exchange of the best European practices in the form of international workshops and promoting internal training activities and events on sharing practices (when inspectors or members of the HCJ act as lecturers).

12. With regard to **disciplinary practices**, it seems appropriate to recommend:
    a) to consider **opening disciplinary proceedings against a judge at a closed session** of the HCJ for the reason of protection of reputation of a judge and, in general, the authority of the judiciary;
    b) to **improve the practice of reasoning of the decisions** of the HCJ on imposing disciplinary sanctions on judges.
13. It is recommended for the **NAPCU to develop a more user-friendly access to asset, income and expenditure declarations**.
14. It is recommended for the HCJ and the HQCJ to strengthen and **intensify cooperation with anti-corruption law enforcement agencies in the prevention and investigation of corruption offenses** among judges.
15. It may be recommended that the HCJ, when deciding **whether to impose restrictive measures against judges, should strike a reasonable balance** between such principles as the inevitability of punishment and the presumption of innocence as important components of the right to a fair trial; **to publish** on the official website **detailed statistical information** on decisions giving consent to detain or arrest a judge, decisions on the temporary suspension of a judge from the administration of justice, decisions on bringing judges to disciplinary responsibility. It is desirable that such information be systematized and accompanied by analytical summaries/conclusions.

Judicial Appointment and Career System

16. It is recommended to take steps as soon as possible **to finalise judicial reset in a more transparent and effective way**, i.e.: developing, publishing and applying together with the PIC unified **objective assessment criteria for ethics and integrity similar to criteria developed with the PCIE**; developing standardized scoring sheets and clear rules on how case study, psychological testing, interview and dossier review results will be transferred into numerical scores and applied to each competency; consolidating practice of **well-reasoned decisions** to nominate or reject a candidate, especially for candidates with a negative PIC opinion; developing common rules on conflicts of interests for HCJ, HQCJ, and PIC members to protect the integrity of processes.
17. It is recommended for the HQCJ to **monitor the situation in courts and announce vacancies in courts more promptly** as well as to use the institute of secondment of judges more promptly, taking into account the real needs of the courts and European standards.

Performance Management and Administration

18. It is advisable to carry out a **thorough audit of the process of reorganization of local courts** in order to determine the future prospects of this process and to facilitate improvement of such process by development of **thorough analysis** of all important indicators (geographic, demographic conditions, statistics on workload, backlogs, number of judges and staff) and **comprehensive work plan** (regulatory, organizational, resource management actions, deadlines, responsible bodies, risk management measures, internal and external communication strategy, etc.).

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19. It is recommended that the HCJ and the SJA develop and approve a **methodology for determining the number of judges in courts** which should reflect the criteria for calculating the optimal number of judges in the courts as well as the terms within which the optimal number of full-time positions of judges is calculated. The CoJ together with the SJA must consolidate their efforts aimed at **developing and approving model standards for the workload of judges**, taking into account the requirements of new procedural legislation and other objective factors. The SJA must approve the **calculations of the model number of the staff of the court apparatus**, taking into account the number of judges of the court, the workload, as well as the instance and specialization of the court; to develop and approve the Model Staffing and Model of the Court Apparatus, on the basis of which new staffing lists for the local courts will be agreed.

LONGER-TERM RECOMMENDATIONS

(within the next full-fledged policy cycle)

General Recommendations on Development of Strategic Documents for Judiciary

20. **Areas of intervention** in strategic document on judicial reform should **address crucial challenges: independence, accountability and effectiveness of judiciary.**
21. Having in mind still low public trust in judiciary, in future, strategic documents on judiciary **special focus should be given to demands and expectations of people**, possibly dedicating **separate part of the strategy on people-oriented justice** aspects: participatory administration of justice both by promoting system of citizens' participation in judicial process as juries and lay-judges and development of alternative dispute resolution culture; user-friendly and efficient court performance and services by using user satisfaction and other surveys to measure performance of judicial institutions, introducing Client Service Standards and/or other quality management systems, putting special focus on support to vulnerable groups (victim/witness); expanding citizens' role in developments and control over efficient performance and accountability of judiciary by facilitating efficient reporting on judiciary's performance, involving representatives of civil society in judiciary's governance bodies, etc.
22. Chapters should follow the logic of the areas of intervention, while not overlapping in their targets. It is recommended **to strictly separate complex challenges into different chapters** as for example, streamlining judiciary governance and developing transparent and objective system of appointment and career of judges (including judicial training system, which is in its task inseparable from judicial career).
23. To avoid the overlap and replication of outcomes, which creates the risk of losing the priorities, it is suggested formulating **fewer, less detailed and more general outcomes** which would comprise several aspects of the same issue to be addressed by the strategy and focus on more conceptual aspects, and leaving detailed legal provisions, procedural rules to be drafted and specific actions to be taken in the course of the implementation of strategic goals.

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Institutional Set-Up

24. It is suggested considering **integration of the HQCJ into the HCJ by merging powers of selection and appointment of judges into one institution (HCJ)**, at the same time taking into account recommendations of European institutions working in a field of judicial independence and the rule of law, for example, as to the composition of such body – the majority should consist of judges elected by their peers.
25. Based on the practices of European countries, it is recommended to consider **real and genuine involvement of civil society representatives in the composition of judiciary governance bodies**. The role of the representatives of civil society alongside with representatives of professional communities (advocates, prosecutors, academics) should be expanded so that it has a real impact on, first of all, the processes of selection and evaluation of judges. Therefore, in the further stages of judicial reform amendments to the regulation on the composition and procedure of forming judiciary governance bodies with the aim of ensuring wide representation of public in these institutions – both in respect of the profile of representatives (different professions, social backgrounds) and the manner of their selection/election should be considered.

Judicial Independence and Accountability

26. It would be suggested to **amend the disciplinary proceedings regulation** on the following aspects:
    a) a stricter regulation of the **time-limits for the investigation of a case** to ensure legal certainty;
    b) excluding the existing grounds for appeal of the HCJ's decision adopted as a result of consideration of the appeal against the decision of its Disciplinary Chamber. **HCJ's decisions should be reviewed in accordance with the general principles** and procedure provided by the Code of Administrative Procedure of Ukraine;
    c) amending the Law on Judiciary to grant the **HCJ the right to apply any kind of disciplinary action**, not only the most severe ones in case of violations of different kind of ethical rules, should be considered.
    d) **reviewing the regulation with regard to the disciplinary liability on the ground of procedural misconduct** of a judge. It is obvious that intentional misconduct or negligence of the judge has to be the object of the liability as in the case of other professionals. However, the need to ensure accountability must be properly balanced with the procedural rules and functional independence to avoid misunderstanding and misuse of these norms by parties to the proceedings.
    e) establishing legal **rules for suspension of judicial authority not only after the disciplinary proceedings have been finished** with imposed disciplinary sanction, but also, **in exceptional cases, already in the course of the proceedings**, in particular after opening of the procedure if a disciplinary body (HCJ) after preliminary investigation detects proofs of possible serious violations of judicial duties which may entail a disciplinary sanction in the form of a bar to administer justice.
27. It is recommended to develop a **new version of the Rules of Conduct of a Court Officer**, taking into account the difference in the status between civil servants of the courts, "technical" staff working on the basis of labour contracts, on the one hand, and assistants of judges, belonging to the patronal service, on the other hand.

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Judicial Appointment and Career System

28. Having in mind the low estimation of judicial integrity and the perception of corruption in judiciary by the society, it is recommended to **extend the criteria for assessing the level of integrity check of candidates of higher courts to candidates in local court judges** and to consider introducing publication of the files of candidates to local courts as it is done in case of candidates to higher courts.
29. Judicial governance bodies should take steps to **develop and adopt regulations on the regular evaluation of judges** as very important part of the system of accountability of judiciary.
30. It is suggested discussing **less time-consuming procedure allowing to assess, select, appoint judges faster** (without compromising the quality and comprehensiveness) and promoting more effective participation of civil society representatives in the procedure (by, for example, including them into the composition of respective bodies)

Performance Management and Administration

31. It is strongly recommended to work on **developing a comprehensive and effective performance management system** encompassing: targets to be achieved individually and institutionally; performance indicators; risk management; regular performance evaluation; model job descriptions and rules of procedure; client-oriented service principles; leadership competences of chiefs of staff; monitoring rules; institutionalizing public and court client surveys and integrating their use into the system.
32. It would be recommended for the **HCJ**, as the highest constitutional judicial governance body, to take a **more active coordination and leading role** in development of the system of performance management and further developments of business process analysis and implementation of standardized procedures and risk management tools are required.
33. It would be recommended to develop **a system of performance management with clear workload indicators, performance targets, standardized processes, quality management,** etc. which serves as a basis for the development of all judicial system. One of the **crucial elements of this system would be monitoring**, in particular comprehensive regulation and mechanism to assess and control activities of the courts (without intervention with justice administration area) such as internal audit system and/or administrative supervision of performance of courts, which **would allow to establish and promote good practices and react to management problems and shortcomings in courts**.

Streamlining Jurisdictions and Court Process

34. It is important to continue working to **improve the rules and practices on the delimitation of the jurisdiction**, for example, providing the court with a competence to accept the law suit which does not fall within its jurisdiction and to refer the law suit to the appropriate court according to the rules of jurisdiction, instead of obliging the court to refuse to accept the application for consideration and to return the claim to the plaintiff.
35. It is recommended to further **develop regulation and practices on accelerating court proceedings**: use of **institute of small claim** and fast-track court procedures; promotion of procedural cooperation concept for **facilitation of preparatory stage** and further process. For this, it is important to have relevant statistics on the proportion

of court cases in summary proceedings. It may therefore be recommended that in the course of improving the statistical reporting of the courts a separate category covering the cases decided in summary proceedings be introduced.

36. It is advisable to define **clearer criteria at the legislative level that entitle a person to a reduction of the amount of court fees** or relief from this payment taking into account person's financial situation.
37. Further **development of arbitration tribunals** requires improvement of legislation governing their activities, providing state support, increasing requirements for arbiters as well as taking measures to develop their positive image in society. It is also worth considering the involve reputable foreign experts in the work of arbitration tribunals in Ukraine, which will help to increase the level of confidence in these tribunals.
38. It is recommended to **develop further mediation and other ADRs in all types of process**, which would have positive impact on court's workload (the workload of the courts of first instance would be affected directly, also peaceful settlement of disputes would prevent appeals thus reducing workload of appeal courts) and on people's perception of courts as not the only ultimate way to solve dispute as well as would promote legal culture. Compulsory attempt of pre-litigation settlement in certain categories of cases (mandatory pre-requisite for taking legal action) could also been considered.
39. Although the institute of review of court decisions in light of newly discovered or exceptional circumstances has the proper legislative regulation, there is a need to **generalize the case law of this category of cases**, because on this matter only old and outdated resolutions of the Plenum of the SC can be found.
40. Due to the fact that the SC deals with a very large number of cases, it is recommended considering in the future **introduction of additional procedural filters for cassation review**, taking into account the best European practices in this regard.

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ANNEX I ASSESSMENT-SPECIFIC MATRIX

Methodology/assessment-specific activities identification matrix1

ASSESSMENT PACKAGE N1

Chapter I. Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges

Area of Intervention 1.1 Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance

Outcomes to be addressed[2]	Desk research[3]	Third-party reports	Panel discussions[4]	Interviews[5]	Surveys[6 7]	Data analysis	Other methods[8]	Comments	Level of Implementation[9] 70 %
Part 1. Judicial governance system									
1. Optimized number of judiciary governance bodies with clear separation of powers of each body and one body at the pinnacle of all judiciary policy development and implementation	1	2	1-3						50 %
2. Judiciary governance system granted with clear-cut powers for guaranteeing independence of judges, supporting activities of courts and judges and representing their interests, including powers to represent judicial branch as a whole									60 %
3. Judicial governance bodies with clear mandate and exercising their task to protect independence of judiciary (structural independence) and judges (functional independence)									60 %
4. Relevance of SJGB analyzed in detail by merging the powers of HCJ, HCQ and CoJ, structure of such constitutional body defined in accordance with its functions									50 %
Part 2. Composition of judicial governance bodies									
5. Majority of decision-makers in each judiciary governance body elected by their peers (other judges)	1			1		3			100 %
6. More transparent representation quota and procedures for nomination of delegates to Congress of Judges									100 %
7. Cross representation of judiciary and other key justice sector stakeholder members (prosecutors, lawyers etc.) in composition of their respective independent governance bodies									100 %
8. Enhanced requirements, including ethical ones, for members of judiciary governance bodies									50 %
Part 3. Governance of court staff									
9. Governance system of courts staff in place	1			1-3	3[10]				50 %

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Part 4. Objectiveness and transparency of judicial career system									
10. Transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures	1	2	1						75 %
11. All cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis									75 %
12. Lifetime appointment to a judicial post is guaranteed with short or no probationary period									100 %
Part 5. Diminishing of political influence on career of judges									
13. Safeguards in place against any possibilities of political influence over the procedure of judges' appointment and dismissal, holding the judges liable for the legitimate exercise of their functions	1		1-3						60 %
14. No role of political forces in transfer of judges (reassignments to particular post)									60 %

Chapter II. Increasing Competence of Judiciary

Area of Intervention 2.1 Increased Competence though Improved Career and Performance Management

Outcomes to be addressed	Desk research	Third-party reports	Panel discussions	Interviews	Surveys	Data analysis	Other methods	Comments	Level of Implementation 33 %
Part 6. Performance management system in judiciary									
15. Targets redefined for whole judiciary/separate jurisdiction, particular court, judge, members of courts staff		1		1-3	3[11]	3			25 %
16. Quantitative and qualitative, inter-linked and comparable set of performance criteria in place for all judges, courts and judiciary self-governance bodies to control and measure performance, taking into account wider strategic frameworks									25 %
17. Merits and score-based career and performance management system									25 %
18. Accessible and consistent practice of judiciary governance bodies in career and performance management matters									15 %
19. Optimized number of judicial governance bodies in charge of performance management									15 %

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Part 7. Performance management tools									
20. Harmonized and automated business processes, using research and analysis and risk management tools in all career and performance management matters		1		1-3	3[12]	3			40 %
21. User satisfaction surveys used regularly by judiciary governance bodies and courts to measure and improve performance management system									50 %
Part 8. Increasing competence and career									
22. Competitions based on clear, transparent and objective criteria and procedures held in all cases of filling particular post		1		1-3	3[13]				75 %
23. 'Qualifying certification' system of judges and of their regular assessment in place, introducing statutory requirement of increasing competence as one of the main criteria for promotion									25 %

Area of Intervention 2.2 Increased Competence though Improved Professional Training System

Outcomes to be addressed	Desk research	Third-party reports	Panel discussions	Interviews	Surveys	Data analysis	Other methods	Comments	Level of Implementation 81 %
Part 9. Training and career linkage									
24. Efficient mechanism for scrutinizing information about judicial candidate from the point of view of experience, competence, integrity and other qualities	1			1					90 %
25. Institutionalized linkages between initial training and judicial appointments systems									75 %
Part 10. NSJ institutional capacities									
26. NSJ and judiciary fully capable of developing initial training curricula autonomously from other justice sector actors and donors				1		3			100 %
27. Information management system (IS) of NSJ interoperable with those of the judiciary governance bodies and high educational institutions (HEIs)									25 %

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Part 11. Initial training methodology and trainers									
28. Required initial training period extended				1		3			100 %
29. Initial training courses of judges and other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonized									50 %
30. Problem-based approach to teaching									100 %
31. Key initial training subjects include methods of interpretation of law, burden and formalized standards of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology									100 %
32. Permanent pool of trainers, including trainers from regions, fully and regularly mobilized									100 %
33. Experienced legal practitioners, including Supreme Court and other higher courts judges, European and international counterparts, among regular trainers									100 %
34. Improved process and conditions of involving professional judges as trainers at NSJ									100 %
Part 12. Continuous training and performance management									
35. Continuous training participation as one of key parameters in judiciary performance management system				1		3			50 %
Part 13. Continuous training methodology									
36. Individualized approach to continuous training applied				1		3			100 %
37. Key continuous training subjects include methods of interpretation of law, burden and formalized standards of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology, strategic planning, budget and financial management, M&E, PR/communication									100 %
38. Continuous training courses for judges and other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonized									50 %
39. Regular internships, traineeships and study visits at ECHR, ECJ and EU MS judiciary bodies									50 %

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Chapter III. Increasing Accountability of Judiciary

Area of Intervention 3.1 Increased Accountability through Improved Ethical and Disciplinary Framework + Action 2.1.2 Development of internal oversight mechanisms (inspectors)

Outcomes to be addressed	Desk research	Third-party reports	Panel discussions	Interviews	Surveys	Data analysis	Other methods	Comments	Level of Implementation 67 %
Part 14. Ethical standards and judicial independence in law and practice									
40. Ethics framework for judges and courts staff with clear and foreseeable substantive requirements, publicly accessible and consistent practice in their application	1-2	2	1-3	1					75 %
41. Institutionalization of principle of functional (personal, procedural) independence of judge dealing with particular case from other judges									50 %
42. Institutionalization of duty of impartiality of judge									100 %
43. Accessible, reasoned, and consistent practice in judiciary ethical and disciplinary matters									50 %
44. Delineation in practice of ethical requirements (positive principles of conduct) from disciplinary rules (negative prohibitions)									50 %
Part 15. Application of disciplinary liability									
45. Clarification in practice of systemic or serious breaches of ethical requirements, giving rise to disciplinary responsibility	1-2	2	1-3	1					75 %
46. Mixture of discussion-based and incentive/repression-based approaches in disciplinary oversight									50 %
47. Revised limitation period for bringing judge to disciplinary liability									75 %
48. Scope and extent of mens rea (intention, negligence etc.) and considerations of prejudice caused defined for disciplinary liability purposes (with clarification of the need for cumulative or separate consideration)									50 %
49. Clear, foreseeable and applicable grounds for disciplinary liability, including giving rise to dismissal									75 %
50. Dismissal as disciplinary sanction in law and practice; extended list of other disciplinary sanctions									85 %
51. Exhaustive list of clear-cut grounds establishing judge's breach of oath									100 %

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Part 16. Institutional set-up for career and disciplinary matters									
52. One judicial governance body to examine all disciplinary cases									100 %
53. Optimized number of judicial governance bodies in charge of career, performance management and disciplinary liability matters									75 %
54. Liability established for inspectors for non-performance of duties, avoidance of appropriate response to potential or actual offenses									50 %
55. Dedicated continuous training curricula for and regular study visits of judicial inspectors to EU MS to share best practices	1-2	2		1		3			50 %
Part 17. Disciplinary procedure									
56. One set of procedures for all disciplinary cases	1-2		1-3			3			50 %
57. Full guarantees of fairness of proceedings in disciplinary cases before judiciary governance bodies									50 %
58. Application of proportionality principle in ruling whether and what disciplinary sanction is to be imposed									50 %
59. Mechanism in place to prevent judge under disciplinary investigation from bringing ordinary court proceedings									100 %
60. Right to appeal against decision of disciplinary body									75 %
Part 18. Anti-corruption oversight mechanisms									
61. Optimized institutional framework on internal anti-corruption oversight, its competences balanced									100 %
62. Annual asset, income and expenditure declarations of all judges accessible online									100 %
63. Regular monitoring/verification of asset, income and expenditure declarations of prosecutors by judicial inspectors and National Agency for Prevention of Corruption; judges holding management positions subject to compulsory full examination; declarations of other judges examined randomly or in response to relevant communications									100 %
64. Fully implemented institute of "judicial dossier" which allows to accumulate information about professional activity of each judge									100 %
65. Generic standardized data on results of integrity checks, including information on bringing criminal actions against judges	2-3	2	1-3			3			100 %

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Part 19. Combating the corruption									
66. Effective mechanism for investigating cases, hearing individual complaints for disciplinary cases and application of anti-corruption measures within judiciary;									50 %
67. Practical and effective investigation mechanisms of corruption and other serious disciplinary offences committed by judges									50 %
68. Functional immunity of judges regulated in clear and foreseeable manner[1]									50 %
69. Streamlined system of authorization of the bodies responsible for forming the judicial corpus for application of restrictive measures related to limitation of freedom of a judge, excluding the cases of detention in flagrante delicto while committing a grave or specially grave crime against life and health of a person	2-3	2	1-3			3			90 %
Part 20. Performance management									
70. Effective internal oversight mechanism carrying out planned, results-oriented, audits of activities of judges and courts									15 %
71. Mixture of discussion-based and incentive/repression-based approaches in performance management system									15 %
72. Risk management integrated and used as judiciary governance and management tool	1			1-3	3[14]	3			15 %

Chapter IV. Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions

Area of Intervention 4.1 Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions

Outcomes to be addressed	Desk research	Third-party reports	Panel discussions	Interviews	Surveys	Data analysis	Other methods	Comments	Level of Implementation 71 %
Part 21. Delineation of jurisdictions									
73. Clear-cut criteria and mechanisms for delineation of administrative, commercial and general (civil and criminal) jurisdictions	2		1-3						90 %
Part 22. Optimization of court system and workload in courts									
74. Courts network optimized after careful gap analysis and impact assessment, with interests of efficiency and fairness duly taken into account	1			1	3[15]	3			25 %

75. Consolidation of courts at various levels (in particular, creation of inter-district courts, consolidation of appeal regions)	1			1	3[15]	3			25 %
76. Increased use of court fees and other paid services to cover expenses of the justice sector; higher court fee rates in property and other types of civil litigation, while retaining adequate degree of access to justice									90 %
77. Optimized administrative staffing of courts depending on workload of judges									50 %
78. Problem of temporary workload fluctuations due to unforeseeable increase of cases in the court and staff turnover addressed through the mechanism of seconding judges to other courts in place									100 %
Part 23. Effective resolution of cases									
79. Mechanisms in place to ensure timely resolution of disputes and counteract abuse of procedural rights through imposing effective procedural restrictions on liable parties for failure (without good reason) to demonstrate 'best effort', to provide evidence or for concealment of evidence etc.									100 %
80. Improved regulation on obligatory preparatory stage in any type of proceedings, excluding certain types of proceedings where such a stage is irrelevant for effective protection of rights for time reasons (e.g. proceedings related to election process)									100 %
81. Procedural rules promoting efficiency, including fast-track procedures for small and uncontested claims, (some) administrative offences and misdemeanors									50 %
82. Administrative offences (strict liability offences) and misdemeanors dealt with by way of simplified procedural arrangements, while providing minimum guarantees requisite for 'fairness of criminal proceedings'									50 %
83. Improved criminal procedure legislation to implement the procedure, depending on the extent of the offense.	1-3		1-3		3[16]	3			75 %
Part 24. Promoting ADR									
84. Sound regulatory basis in place to apply means of alternative dispute resolution, including mediation, arbitration and conciliation; enhancement of list of categories of cases to be resolved by arbitrators or to be considered by courts in simplified proceedings; effective procedural mechanisms in place to prevent consideration of cases in absence of litigation between parties	2		1-3						25 %

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Part 25. Effective appeal									
85. Improved requirements for procedures for appeal and cassation complaints									90 %
86. Time-limit for appeal calculated from notification of decision on merits (in its full or partial form)									100 %
87. In criminal proceedings the decision of the jury cannot be appealed									0 %
88. Ability for party to withdraw or discontinue appeal at any stage									100 %
89. On appeal in civil and administrative process, higher stamp duty and court fees than at 1st instance									100 %
90. Reduced rights of 3rd parties in all types of process, including victim in criminal process, to intervene on appeal									100 %
91.The possibility for returning the case to the court of lower level in case of cancellation of the decision of the lower court is restricted by exceptional circumstances when it cannot be solved in appeal or cassation									100 %
92. In case of reversal of lower decision, no remittals to lower court as a matter of principle									100 %
93. Exceptional nature of review at 3rd instance in all types of process	1-3					1-3			50 %
Overall average attainment of outcomes in listed areas of intervention									64 %

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ANNEX II LIST OF REPORTS, PUBLICATIONS AND OTHER DOCUMENTS REVIEWED

1. Progress Review Methodology of the Justice Sector Reform in Ukraine, Guide & Matrices, Council of Europe, December 2016.
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4. HCJ's Annual Report on Status of Judicial Independence for years 2017 and 2018. https://hcj.gov.ua/page/shchorichna-dopovid-pro-stan-zabezpechennya-nezalezhnosti-suddiv-v-ukrayini
5. Oleksandr Volkov v. Ukraine (2013). https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115871%22]}
6. Joint opinion on the Law on the judicial system and the status of judges and amendments to the Law on the High Council of Justice of Ukraine by the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe. https://www.venice.coe.int/webforms/documents/default.aspx?country=47&year=all&other=true
7. Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission in July 2015 endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015). https://www.venice.coe.int/webforms/documents/
8. Pravo-Justice expert Assessment Report on Evaluation and Selection of Judges in Ukraine, 2018. https://www.pravojustice.eu/storage/app/uploads/public/5c0/fcd/a31/5c0fcda3162ea473697034.pdf
9. Opinion on the Procedure for Selection and Appointment of Judges to the Supreme Court in Ukraine with the Focus on its Compliance with the Standards of the Council of Europe. October 2017-Febtuary 2018. Support to the Implementation of the Judicial Reform in Ukraine. URL: https://www.coe.int/en/web/kyiv/-/opinion-of-the-council-of-europe-on-the-procedure-of-selection-of-judges-to-the-supreme-court
10. Reforms in Ukraine after Revolution of Dignity. What was done, why not more and what to do next. Strategic Advisory Group for Support of Ukrainian Reforms. By Pavlo Kukhta, Ivan Miklos. 177 p.
11. HQCJ's Annual Report 2015. https://vkksu.gov.ua/userfiles/zwit.pdf
12. HQCJ's Annual Report 2016. https://vkksu.gov.ua/userfiles/zvit2016.pdf
13. HQCJ's Annual Report 2017. https://vkksu.gov.ua/userfiles/zvit2017.pdf
14. HQCJ's Annual Report 2018. https://vkksu.gov.ua/userfiles/zvit2018.pdf
15. Звіт Ради суддів України про виконання завдань органів суддівського самоврядування у період з вересня 2015 року по лютий 2018 року: затверджено на засіданні Ради суддів України 5 березня 2018 р. Офіційний веб-сайт Ради суддів України. URL: https://court.gov.ua/userfiles/file/DSA/2018_DSA_docs/ZVIT_RSU.pdf
16. Annual Reports on the activities of the NSJ for years 2016, 2017, 2018. Official website of the NSJ http://nsj.gov.ua/ua.

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17. Інформація Ради суддів України про виконання завдань органів суддівського самоврядування щодо забезпечення незалежності суддів і судів, організаційного та фінансового забезпечення діяльності судів; виконання рішень позачергового XV з'їзду суддів України від 7 березня 2018 р. «Про стан здійснення правосуддя в умовах судової реформи у 2017 р.». Офіційний веб-сайт Ради суддів України. URL:
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19. Особливості конфлікту інтересів у діяльності судді та рекомендації щодо його запобігання і врегулювання у типових ситуаціях: Посібник на допомогу судді. http://rsu.gov.ua/uploads/article/posibnikosoblivosti-konfliktu-in-de7be4c810.pdf
20. Commentary of the Code of Judicial Ethics. http://www.rsu.gov.ua/en/documents
21. Оцінка судової реформи в Україні за період з 2014 до 2018 року та відповідність реформи стандартам та рекомендаціям Ради Європи: консолідований документ. Проект Ради Європи «Підтримка впровадженню судової реформи в Україні». 2019. https://rm.coe.int/assessment-consolidated-ukr/168094dfe7
22. Панасюк В'ячеслав. Судова влада: кроки до реальної трансформації. ГО «Центр розвитку права». URL: http://lawcentre.org.ua/sudova-vlada-kroky-do-realnoji-transformatsiji/
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24. Report on the Rule of Law. The European Commission for Democracy through Law. Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e
25. Joint opinion on the Law on the Judicial System and Status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe. Adopted by the Venice Commission (Venice, 15-16 October 2010). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)026-e
26. Resolution 1862 (2012) of the General Assembly of Council of Europe on the functioning of democratic institutions in Ukraine. https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18068&lang=en
27. ENCJ's Report On Independence, Accountability and Quality of Judiciary 2018-2019.
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29. CCJE Opinion No 3 (2002) on ethics and liability of judges. https://www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta
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34. OSCE ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, June 2010,
35. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities
36. Report of 2012-2013 of the European Network of Councils for the Judiciary (ENCJ) on Minimum Standards regarding Evaluation of Professional Performance and Irremovability of Members of the Judiciary. https://www.encj.eu/articles/124
37. ENCJ Dublin Declaration on Minimum Standards for selection and appointment of judges (2012) https://www.encj.eu/articles/97
38. OSCE/ODIHR Kyiv Recommendations. https://www.venice.coe.int/webforms/documents/
39. OSCE/ODIHR Assessment of the Performance Evaluation of Judges in Moldova (2014). https://www.venice.coe.int/webforms/documents/
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1 MTE is carried out under an implementation plan and uniform methodology, taking into account the PRM parameters and indicative methods, itemizing the JSRSAP Outcome indicators. The package/area specific sets of assessment methods and schedule are to be construed by the relevant STE(s) based on thematic particularities. They will be agreed with the MTE lead expert and PJ key-experts. The range of the assessment methods (activities) to be proposed for each of the blocks would include (desk) research, panel conclusions, analysis of third-party reports (including of domestic and international monitoring mechanisms), structured or semi-structured interviews, surveys, administrative / statistical and other data collection and processing methods. Moreover, the assessment exercises will specifically engage the Regional Justice Reform Councils (RJRCs) already established under the Project, to get a more localized bottom-up view of the reform results. Assessment-related activities will be designed and carried out as the substantial thematic (including C.1) activities of PJ. See MTE memorandum. Table to be used as a basis for developing relevant assessment (activities) plan.

2 Outcomes envisaged in the relevant box of the JSRSAP to be tackled are specified. Where necessary, basic parameters outlined. Outcomes have been grouped, taking into account actions for particular outputs envisaged in JSRSAP's and methods to be applied for evaluation of certain group of outputs.

3 For every method (desk research, third-party reports, pane discussions, etc.), where it is used, relevant responsible experts identified: ISTE I = 1; ISTE II = 2, NSTE = 3 (see the relevant ToR). In some activities all experts have been identified as relevant to be involved (for example, in some panel discussions, etc.). Therefore, in some activities all three experts are put as "1-3".

4 Could be advanced to focus groups, where necessary. To be specified. RJRCs to be specifically indicated,

5 Respondents to be specified in a footnote.

6 Categories (service users, general public) to be specified.

7 Consolidated surveys will be used (for several topics, if the target group is the same).

8 To be outlined.

9 Experts estimate level of attainment of the outcome (based on the assessment/evaluation results) in %. To be filled upon completion of the evaluation for each outcome assessed.

10 Court staff & administration /electronic format (e-mails)

11 Judicial governance /electronic format (e-mails)

12 Judicial governance /electronic format (e-mails).

13 Judicial governance /electronic format (e-mails).

14 Curt staff&administration /electronic format (e-mails)

15 Judes&court staff /electronic format (e-mails)

16 Judes&court staff /electronic format (e-mails)

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ANNEX III EXTRACT FROMS JSRSAP

Chapter 1

Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges

Action		Implementation Deadline			Performance Criteria		
		End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
					Area of Intervention 1.1 **Increased Independence through Balance between Legitimacy and Efficiency in Institutional Set-Up of Judiciary Governance**		
1.1.1	Increasing balance of duties and powers in judiciary governance				1. Reviewed regulatory framework, including constitutional amendments, on judiciary governance institutional set-up	Parliament, High Council of Justice (HCJ), Singe Judiciary Governance Body (SJGB), Congress of Judges, SC, HSCs,, SJAMOJ/ Decisions, statutes and rules amended	- Judicial governance bodies clearly mandated and exercising their task to protect independence of judiciary (structural independence) and judges (functional independence) - Optimised number of judiciary governance bodies with clear separation of powers of each body and one body at pinnacle of all judiciary policy development and implementation; - Relevance of SJGB analysed in details by merging the powers of HCJ, HCQ and CJ, structure of such constitutional body defined in accordance with its functions - Majority of decision-makers in each judiciary governance body elected by their peers (other judges) - Judiciary governance system granted with clear-cut powers for guaranteeing independence of judges, supporting activities of courts and judges and representing their interests, including, powers to represent judicial branch as a whole - More transparent representation quota and procedures for nomination of delegates to Congress of Judges - Governance system of courts staff in place - Enhanced requirements, including ethical ones, for members of judiciary governance bodies - Cross representation of judiciary and other key justice sector stakeholder members (prosecutors, lawyers etc.) in composition of their respective independent governance bodies - Safeguards in place against any possibilities of political influence over the procedure of judges' appointment and dismissal, holding the judges liable for the legitimate exercise of their functions - No role of political forces in transfer of judges (reassignments to particular post) - Transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures - All cases of appointment or transfer to particular judicial post are held upon merits-based criteria and competition basis - Lifetime appointment to a judicial post is guaranteed with short or no probationary period
					2. Reviewed regulatory framework to foster more inclusive representation of judiciary within independent governance bodies of other justice sector institutions	Parliament HCJ, HQC, SJA, CJ, , HSCs , MOJ, / Decisions, statutes and rules amended	
					3. Reviewed regulatory framework and procedures on judicial appointments and dismissals, with stringent limits placed on influence by other branches of power than judiciary	Parliament, HCJ, HQC, SJA, CJ, HSCs , MOJ, / Decisions, statutes and rules amended, reports rulebooks, practice guides	
					Area of Intervention 1.2 **Increased Independence and Transparency through Strategic Planning, Regulatory Development, Budget and Financial Management, PR/Communication**		
1.2.1	Development of strategic planning and regulatory development capacities				1. SJGB Strategic Planning and Regulatory Development Committee fully operational	SJGB, (HCJ, HQC, CJ), SJA / Decision, reports	- System is in place which associates judiciary expenditure with declared objectives of courts and justice sector - Mission statements, objectives and performance targets are made an integral part of annual judiciary budgeting process; courts expenditure plans are linked to commitments of meeting specific objectives and measurable targets - Internal and external monitoring and evaluation (M&E) mechanisms and review reports attest satisfactory degree of implementation of Judiciary Chapter of Justice Sector Reform Strategy (JSRS), including adequate degree of budget and financial resources to effectively promote independence, accountability and competence of courts and judges - Judiciary provides regular and constructive inputs for major policy and regulatory initiatives related to justice sector reform - Use of statistics and evidence-based approach in all judiciary policy and regulatory initiatives - Complex quantitative and qualitative M&E methodologies applied in internal review of implementation of all judiciary policies
					2. Dedicated staff assigned at SJGB/SJA to deal with strategic planning and regulatory development issues	SJGB (HCJ, HQC, CJ), SJA / Decisions, contracts, job descriptions, placement plans, trainings	
					3. Practice guides and training modules on strategic planning and regulatory development developed, disseminated and updated regularly	NSJ, SJGB (HCJ, HQC, CJ), SJA, HSCs / Decisions, publications and reports	
					4. Judiciary Annual Reports developed and disseminated	SJGB (HCJ, HQC, CJ), SJA, HSCs / Decisions, reports	

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1.2.2	Development of budget and financial management capacities				1. SJGB Budget and Financial Management Committee fully operational	SJGB (HCJ, HQC, CJ) / Decision, Reports	- System is in place which associates judiciary expenditure with declared objectives of courts and justice sector - Mission statements, objectives and performance targets are made an integral part of annual judiciary budgeting process; courts expenditure plans are linked to commitments of meeting specific objectives and measurable targets - Financial planning and funding of courts based on the unified methodology - Financial owners perform efficiently their duties of financial planning and funding of courts, oversight of effective use of budget funds - Optimised staffing of courts in place through development and implementation of the workload standards for the judges and court staff; mechanism of seconding the judges to other courts in place; effective planning and distribution of salary fund among courts on the basis of the stipulated number of judges and court staff - Ensured participation of the independent judiciary at all stages of budgeting- - Unification of courts' budgeting system (one budget for all courts) - Program budgeting and performance-based budgeting methodologies with non-financial performance indicators applied in judiciary budget formulation and implementation processes - More active use of e-justice tools, information systems, research and analysis and evidence-based approach in justification of budgetary needs; - Increase in effectiveness of collection of court fees to be used to budget the courts - Increased quality of public financial management (PFM) by judiciary, substantial reduction of arrears of courts to utilities, postal, forensic, legal and other service providers, - Single public procurement process in place based on harmonised needs assessment of all courts - Court fee proceeds used increasingly as core sources to cover judiciary budgetary needs and resources; - increased court fee rates in pecuniary litigation, while retaining the affordability of justice for low-income individuals
					2. Reviewed regulatory framework of judiciary participation at all stages of the budget process	HCJ, HQC, SJA, MOJ / Reviewed regulatory framework	
					3. Dedicated staff assigned at SJGB/SJA to deal with budget and financial management issues	SJGB (HCJ, HQC, CJ), SJA / Decisions, contracts, job descriptions, placement plans, trainings	
					4. Dedicated finance units (under auspices of regional (appellate) courts or SJA regional departments) fully operational, in charge of formulation of budgetary requests and deserving all courts within appellate region	SJA / Decisions, contracts, job descriptions, placement plans, trainings	
					5. Practice guides and training modules on budget and financial management developed, disseminated and updated regularly	NSJ, SJA / Decisions, trainings, publications	
					6. Operational pay terminals in all courts	SJA / Decisions, hardware and software in place, trainings, manuals, review reports	
1.2.3	Development of PR/communication capacities				1. SGGB Communication Committee fully operational	SJGB (HCJ, HQC, CJ)/ Decision, reports	- Internal communication channels among judiciary governance bodies, between judiciary governance bodies and courts, and between judiciary/courts and judges/staff formalised and used regularly; mechanism for handling regulatory and governance issues among judiciary governance bodies in place - External communication channels between judiciary/courts and other State/non-State actors in justice sector formalised and used regularly; consistent response of judiciary governance bodies on behalf of corporation to any attempts at interference with independence, and promote interests of corporation - Clear, foreseeable and applicable conditions on public access and participation at SJGB hearings, timely prior announcement of meeting agendas, public nature of SJGB decisions - Career and performance management system of judiciary containing incentives for judges to more frequently enter into contact with public by way of writing articles, conducting research, visiting educational establishments, and engaging in other socio-educational activities - User satisfaction surveys used regularly by judiciary governance bodies and courts to measure and improve quality of services - Regular exchanges with European judiciary governance bodies and other international counterparts
					2. Press centre at SJGB fully operational	SJGB (HCJ, HQC, CJ)/ Decisions, contracts, job descriptions, placement plans, trainings	
					3. Press units (officers) in all appellate regions	SJGB (HCJ, HQC, CJ)/ Decisions, contracts, job descriptions, placement plans, trainings	
					4. Practice guides and training modules on PR/ communication developed, disseminated and updated regularly	NSJ / Decisions, trainings, publications	
					5. Written rules of procedure drafted and applied by SJGB in all matters	SJGB (HCJ, HQC, CJ)/ Decisions, practice guides	
					6. Regular study visits of schoolchildren, students and other groups organised at courts	SJGB (HCJ, HQC, CJ), Courts / Decisions, reports	
					7. Press releases/briefings at courts following examination of high-profile cases	SJGB (HCJ, HQC, CJ), Courts / Decisions, reports	
					8. European and international cooperation network fully operational	SJGB (HCJ, HQC, CJ), Courts / Decisions, MOUs, conferences, traineeships	

Chapter 2
Increasing Competence of Judiciary

Action		Implementation Deadline			Performance Criteria		
		End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
					Area of Intervention 2.1 **Increased Competence though Improved Career and Performance Management**		
2.1.1	Development of performance standards and evaluation system with linkages to careers of all judges and courts staff				1. Court Performance Evaluation Framework (CPE) approved, harmonising performance standards for all courts. Staff assigned to apply CPE	SJGB (HCJ, HQC, CJ), HSCs / Decisions, reports, practice guides, contracts, job descriptions, placement plans, trainings	- Targets redefined for whole judiciary/separate jurisdiction, particular court, judge, members of courts staff - Quantitative and qualitative, inter-linked and comparable, set of performance criteria in place for all judges, courts and judiciary self-governance bodies to control and measure performance, taking into account wider strategic frameworks - Merits and score-based career and performance management system - 'Qualifying certification' system of judges and of their regular assessment in place, introducing statutory requirement of increasing competence as one of main criteria for promotion - Competitions based on clear, transparent and objective criteria and procedures held in all cases of filling particular post - Optimised number of judicial governance bodies in charge of career, performance management and disciplinary liability matters - Harmonised and automated business processes, using research and analysis and risk management tools in all career and performance management matters - Accessible and consistent practice of judiciary governance bodies in career and performance management matters - User satisfaction surveys used regularly by judiciary governance bodies and courts to measure and improve performance management system
					2. Reviewed quality policy and expanded performance standards under CPE	SJGB (HCJ, HQC, CJ), HSCs / Decisions, reports rulebooks, practice guides	
					3. Reviewed job descriptions and policies for filing all positions in each court by reference to CPE	SJGB (HCJ, HQC, CJ), HSCs / Decisions, reports rulebooks, practice guides	
					4. Piloting of new performance management system in all courts	SJGB (HCJ, HQC, CJ), HSCs / Decisions, reports	
					5. Reviewed written rules for appointments (to each judicial post), re-assignments (transfers to another court) and promotions developed on basis of pilot experience, with clear, transparent and objective criteria and procedures	SJGB (HCJ, HQC, CJ), MOJ, Parliament, HSCs / Decisions, statutes and rules amended, reports rulebooks, practice guides	
					6. Research and analysis, risk assessment reports produced on basis of statistics by use of new HR software	CJ, HQC, HSCs / Reports	
					7. User satisfaction surveys conducted regularly in all courts as part of new performance management system	CJ, HCJ,HQC, HSCs / Decisions, Reports	
					8. Practice guides and training modules on performance management system developed, disseminated and updated regularly	NSJ, CJ, HCJ, HQC, HSCs / Decisions, trainings, publications	
2.1.2	Development of internal oversight mechanisms				1. Reviewed regulatory framework on role and powers of judicial inspectors	HCJ, HQC, MOJ, Parliament / Decisions, statutes and rules amended	- Effective internal oversight mechanism carrying out planned, results-oriented, audits of activities of judges and courts, - Mixture of discussion-based and incentive/repression-based approaches in performance management system - Risk management integrated and used as judiciary governance and management tool
					2. Mediators fully operational, charged with resolving disputes within courts and among courts staff	CJ, HCJ, HQC, HSCs / Decisions, reports, rulebooks, practice guides	
					3. Risk assessment reports produced regularly, recommending improvements in judiciary governance and management	CJ, HCJ, HQC. High Courts / Decisions, reports	
					Area of Intervention 2.2 **Increased Competence though Improved Professional Training System**		
2.2.1	Development of initial training (IT) system				1. Reviewed statutory role of National School of Justice (NSJ) as part of judiciary and sole provider of initial training.	NSJ, CJ, HCJ, HQC, MOJ, Parliament / Decisions, statutes and rules amended	- Required IT period extended - Efficient mechanism for scrutinising information about judicial candidate from point of view of experience, competence, integrity and other qualities - NSJ and judiciary fully capable of developing initial training curricula autonomously from other justice sector actors and donors - Problem-based approach to teaching
					2. Requirements for length of training, experience, competence, integrity and other conditions for becoming judicial candidate reviewed	NSJ, HQC, MOJ, Parliament / Decisions, statutes and rules amended	

2.2.1					3. Separate IT curricula, including distance learning courses, developed, updated regularly and placed in electronic libraries	NSJ, HQC / Decisions, reports, publications	- Key initial training subjects include methods of interpretation of law, burden and formalised standards of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology - Initial training courses of judges other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonised - Institutionalised linkages between initial training and judicial appointments systems - Permanent pool of trainers, including trainers from regions, fully and regularly mobilised - Experienced legal practitioners, including Supreme Court and other higher courts judges, European and international counterparts, among regular trainers - Improved process and conditions of involving professional judges as a trainers at NSJ.
					4. Training needs, capacity and quality assessment mechanisms in place and used, including automated tools	NSJ, HQC / Decisions, practice guides, software in place, trainings	
					5. Trainer selection and preparation system, including training of trainers (TOT) approach, in place and applied	NSJ, HQC / Decisions, MOUs, practice guides, software in place, trainings	
2.2.2	Development of continuing training (CT) system				1. Mandatory CT period diversified for judges and court staff depending on their roles and experience.	NSJ, CJ, HCJ, MOJ, Parliament / Decisions, statutes and rules amended	- Continuous training participation as one of key parameters in judiciary performance management system - Individualised approach to CT applied - Key continuous training subjects include methods of interpretation of law, burden and formalised standards of proof in various types of process, jurisprudence as source of law, reasoning of decisions, oratory skills, professional ethics and disciplinary matters, information technologies, psychology, strategic planning, budget and financial management, M&E, PR/communication - Continuous training courses of judges other legal professionals (prosecutors, lawyers etc.) approximated, some curricula and courses harmonised - Regular internships, traineeships and study visits at ECHR, ECJ and EU MS judiciary bodies - Information management system (IS) of NSJ interoperable with those of the judiciary governance bodies and high educational institutions (HEIs)
					2. Separate CT curricula, including distance learning courses, developed, updated regularly and placed in electronic libraries	NSJ, CJ / Decisions, reports, publications	
					3. European and international cooperation network fully operational, including cooperation agreements with EU judiciary bodies	NSJ, CJ / Decisions, MOUs, conferences, traineeships	
					Area of Intervention 2.3 **Greater Uniformity of Practice**		
2.3.1	Development of research and analysis tools to facilitate uniformity of practice				1. Research and analysis units at SC, HSCs and appellate courts fully operational, to replace 'scientific councils'	SC, HSCs, Appeal Courts / Decisions, contracts, job descriptions, placement plans, trainings	- Constant flow of feedback between courts' research and analysis units, NSJ and HEIs; jurisprudential and legislative developments taking place as suggested in research papers, gap analysis and impact assessment reports - User-friendly keyword-based search tools on court websites allowing to look for jurisprudence and legislation, with linkages to SC and other higher courts' practice under that legislation - Regular use of online forum of judges (set up under SJA information technology network) and other online resources by judiciary, allowing to exchange views on case-law, interpretation of law, information and materials on trainings, conferences, seminars - Binding nature of CC, SC, HAC and HSCs case-law confirmed in decisions of lower courts i - Decisions of all courts must comply with ECHR practice appropriate categories of cases.
					2. Agreements for cooperative relationships between courts and NALS) and legal HEIs foreseeing initiatives facilitating exchange of research into jurisprudence	SC, HSCs, Appeal Courts, NSJ,NALS HEIs / MOUs, decisions, reports	
					3. Research and analysis papers produced regularly, identifying gaps between statute and practice and making recommendations for improvements	SC, HSCs, Appeal Courts, NSJ, NALS, HEIs / Publications, reports	
					4. Reviewed regulatory framework on publicity of court decisions and persuasive/ binding nature of ECHR, Constitutional Court (CC), Supreme Court (SC) and other Higher Specialised Courts' jurisprudence	CC, SC, HAC, MOJ, Parliament, HSCs, / Decisions, statutes and rules amended	
					5. Courts intranet and websites, electronic courts case-law databases and search engines, fully operational	CJ, HCJ, MOJ / Decisions, hardware and software in place, trainings, manuals, review reports	
					6. Procedural regulatory framework updated regularly to adjust procedural law in civil/commercial, administrative and criminal matters (including appeals system) to foster greater uniformity of practice	SC, HSCs, Appeal Courts, MOJ, Parliament / Decisions, statutes and rules amended	

Chapter 3
Increasing Accountability of Judiciary

Action		Implementation Deadline			Performance Criteria		
		End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
					Area of Intervention 3.1 **Increased Accountability through Improved Ethical and Disciplinary Framework**		
3.1.1	Development of ethical framework				1. SJGB Ethics Committee fully operational	SJGB (HCJ, HQC, CJ) / Decision, reports	- Ethics framework for judges and courts staff with clear and foreseeable substantive requirements, publicly accessible and consistent practice in their application - Institutionalisation of principle of functional (personal, procedural) independence of judge dealing with particular case from other judges - Institutionalisation of duty of impartiality of judge - Delineation in practice of ethical requirements (positive principles of conduct) from disciplinary rules (negative prohibitions) - Clarification in practice of systemic or serious breaches of ethical requirements, giving rise to disciplinary responsibility
					2. Dedicated staff assigned at SJGB/CJ to deal with ethics issues	SJGB (HCJ, HQC, CJ) / Decisions, contracts, job descriptions, placement plans, trainings	
					3. Code of Judicial Ethics annotated and updated regularly	SJGB (HCJ, HQC, CJ), SC, HSCs / Decisions	
					4. Rules of Conduct of Courts Staff annotated and updated regularly	SJGB (HCJ, HQC, CJ), SJA, SC, HSCs / Decisions	
					5. Practice guides and training module on ethical framework of judges and courts staff developed, disseminated and updated regularly	NSJ, CJ, SJA / Decisions, trainings, publications	
3.1.2	Development of disciplinary framework				1. Dedicated staff assigned to deal with disciplinary issues	SJGB (HCJ, HQC, CJ), HQC, SJA / Decisions, contracts, job descriptions, placement plans, trainings	- One judicial governance body to examine all disciplinary cases; optimised number of judicial governance bodies in charge of career, performance management and disciplinary liability matters - Clear, foreseeable and applicable grounds for disciplinary liability, including giving rise to dismissal - Revised limitation period for bringing judge to disciplinary liability - Accessible, reasoned, and consistent practice in judiciary ethical and disciplinary matters - Scope and extent of mens rea (intention, negligence etc.) and considerations of prejudice caused defined for disciplinary liability purposes (with clarification of need for cumulative or separate consideration) - Dismissal as disciplinary sanction in law and practice; enlarged list of other disciplinary sanctions - Application of proportionality principle in ruling whether and what disciplinary sanction is to be imposed - One set of procedures for all disciplinary cases - Full guarantees of fairness of proceedings in disciplinary cases before judiciary governance bodies; - Mechanism in place to prevent judge under disciplinary investigation from bringing ordinary court proceedings - Right to appeal against decision of disciplinary body
					2. Reviewed regulatory framework on substantive disciplinary rules, procedures and competent bodies to examine disciplinary cases	SJGB (HCJ, HQC, CJ), MOJ, Parliament, HSCs / Decisions, statutes and rules amended	
					3. Practice guide and training module on disciplinary framework developed, disseminated and updated regularly	NSJ, SJGB (HCJ, HQC, CJ), HQC / Decisions, trainings, publications	
					4. Online system for filing complaints against judges fully operational	SJGB (HCJ, HQC, CJ) / Decisions, software in place, trainings, manuals, review reports	
					5. Statistics on disciplinary cases published and analysed in Judiciary Annual Reports	SJGB (HCJ, HQC, CJ) / Reports	

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3.1.3	Development of internal and external oversight mechanisms to combat and prevent corruption				1. Regulatory framework in place on role and powers of judicial inspectors,	SJGB (HCJ, HQC, CJ), MOJ, Parliament / Decisions, statutes and rules amended	- Optimised institutional framework on internal anti-corruption oversight, its competences balanced - Liability established for inspectors for non-performance of duties, avoidance of appropriate response to potential or actual offenses, - Effective mechanism for investigating cases, hearing individual complaints for disciplinary cases and application of anti-corruption measures within judiciary; - practical and effective investigation mechanisms of corruption and other serious disciplinary offences committed by judges - Mixture of discussion-based and incentive/repression-based approaches in disciplinary oversight - Annual asset, income and expenditure declarations of all judges accessible online - Regular monitoring/verification of asset, income and expenditure declarations of prosecutors by judicial inspectors and National Agency for Prevention of Corruption; judges holding management positions subject to compulsory full examination; declarations of other judges examined randomly, or in response to relevant communications - Generic standardised data on results of integrity checks, including information on bringing criminal actions against judges, - Dedicated continuous training curricula for and regular study visits of judicial inspectors to EU MS, to share best practices - Functional immunity of judges regulated in clear and foreseeable manner - Exhaustive list of clear-cut grounds enabling establishment of judge's breach of oath - Streamlined system of authorisation of the bodies responsible for forming the judicial corps for application of restrictive measures related to limitation of freedom of a judge, excluding the cases of detention in flagante delicto while committing a grave or special grave crime against life and health of a person - Fully implemented institute of "judicial dossier", which allows to accumulate information about professional activity of each judge.
					2. System of "judge's dossier" in place, accumulating information about judge's professional activities	SJGB (HCJ, HQC, CJ), MOJ, Parliament, NGOs /Decisions, statutes and rules amended	
					3. Reviewed regulatory framework on procedure and mechanism of conduct by inspectors of annual integrity checks	SJGB (HCJ, HQC, CJ), MOJ, Parliament, HQC, HSCs / Decisions, statutes and rules amended	
					4. Reviewed regulatory framework on annual asset, income and expenditure declarations of all judges, and their monitoring/verification	SJGB (HCJ, HQC, CJ), MOJ, Parliament, HQC, HSCs / Decisions, statutes and rules amended, practice guides	
					5. Reviewed regulatory framework on judicial immunities	SJGB (HCJ, HQC, CJ), MOJ, Parliament, HQC, HSCs / Decisions, statutes and rules amended	
					6. Institutionalisation of random case assignment, while taking into account needs of specialisation if judges	SJGB (HCJ, HQC, CJ), MOJ, Parliament / Decisions, statutes and rules amended	
					7. Civilian Oversight Board of SJGB (HCJ, HQC, CJ), fully operational	SJGB (HCJ, HQC, CJ), MOJ, Parliament, CSOs / Decisions, statutes and rules amended	

Chapter 4

Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions

Action		Implementation Deadline			Performance Criteria		
		End of 2016	End of 2018	End of 2020	Measures/Outputs	Responsible Body / Means	Outcomes
					Area of Intervention 4.1 **Increased Efficiency through Streamlined Horizontal and Vertical Jurisdictions**		
4.1.1	Optimisation of courts network, management of court resources and streamlining of jurisdictions				1. Reviewed procedural regulatory framework in all types of process, promoting efficiency in case handling. New courts network in place. Court fees reviewed.	SJGB (HCJ, HQC, CJ), SC, HSCs, MOJ, Parliament / Decisions, statutes and rules amended	- Clear-cut criteria and mechanisms for delineation of administrative, commercial and general (civil and criminal) jurisdictions - Courts network optimised after careful gap analysis and impact assessment, with interests of efficiency and fairness duly taken into account; - consolidation of courts at various levels (in particular, creation of inter-district courts, consolidation of appeal regions) - Increased use of court fees and other paid services to cover expenses of the justice sector; higher court fee rates in property and other types of civil litigation, while retaining adequate degree of access to justice; - Optimised administrative staffing of courts depending on workload of judges - Problem of temporary workload fluctuations due to unforeseeable increase of cases in the court and staff turnover through the Mechanism of seconding judges to other courts in place - Improved regulation on obligatory preparatory stage in any type of proceedings, excluding certain types of proceedings where such a stage is irrelevant for effective protection of rights for time reasons (e.g. proceedings related to election process) - Procedural rules promoting efficiency, including fast-track procedures for small and uncontested claims, (some) administrative offences and misdemeanours - Administrative offences (strict liability offences) and misdemeanours dealt with by way of simplified procedural arrangements, while providing minimum guarantees requisite for 'fairness of criminal proceedings' - Mechanisms in place to ensure timely resolution of disputes and counteract abuse of procedural rights through imposing effective procedural restrictions on liable parties for failure (without good reason) to demonstrate 'best effort', provide or conceal evidence etc. - Sound regulatory basis in place to apply means of alternative dispute resolution, including mediation, arbitration and conciliation; enhancement of list of categories of cases to be resolved by arbitrators or to be considered by courts in simplified proceedings; effective procedural mechanisms in place to prevent consideration of cases in absence of litigation between parties - In criminal proceedings the decision of the jury can not be appealed. - Improved the requirements for procedures for appeal and cassation complaints. - Improved criminal procedure legislation to implement the procedure, depending on the extent of the offense. - The possibility of failure in case of cancellation of the decision of the lower court, the case for returning to the court of lower level than in exceptional circumstances when it can not be solved appeal or cassation, particularly because of serious procedural violations at the lower level.
					2. Reviewed regulatory framework on jurisdictional competences	SJGB (HCJ, HQC, CJ),SC, HSCs, MOJ, Parliament / Decisions, statutes and rules amended	
					3. Reviewed regulatory framework on organisation of courts. Courts network optimised	SJGB (HCJ, HQC, CJ), SC, HSCs, MOJ, Parliament / Decisions, statutes and rules amended, budgetary provisions made, new, organigrammes, job descriptions and placement plans prepared and implemented	
					4. Reviewed HRM rules of courts, introduce secondment to other courts	SJA, CJ / Rules amended, practice guides, trainings	
					5. Reviewed regulatory framework on ADRs	MOJ, Parliament / Statutes and rules amended	

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4.1.2	Development of system of review of judicial decisions to improve accessibility and efficiency of justice, promote uniformity of practice and better reasoning of court decisions				1. Reviewed regulatory framework on role of rules of court and judicial practice in admissibility of and examination of case at all instances	SC, HSCs, Appeal Courts, MOJ, Parliament / Decisions, statutes and rules amended	- Time-limit for appeal calculated from notification of decision on merits (in its full or partial form); - Ability for party to withdraw or discontinue appeal at any stage - On appeal in civil and administrative process, higher stamp duty and court fees than at 1st instance - Reduced rights of 3rd parties in all types of process, including victim in criminal process, to intervene on appeal - In case of reversal of lower decision, no remittals to lower court as matter of principle; new - Exceptional nature of review at 3rd instance in all types of process
					2. Reviewed regulatory framework on statutory exclusions from appeal and admissibility of appeals (at 2nd and 3rd instance) in civil/commercial and administrative disputes. Clarification of distinction of scope of review on points of fact and points of law in statute, practice and theory, including questions of ex officio powers of higher court and exercise of judicial discretion	SC, HSCs, Appeal Courts, MOJ, Parliament / Decisions, statutes amended	
					3. Reviewed regulatory framework on reconsideration (review) of cases in all types of proceedings	SC, HSCs, Appeal Courts, MOJ, Parliament / Decisions, statutes and rules amended	
					4. Reviewed regulatory framework on legal grounds for appeal in criminal process	SC, HSCs, Appeal Courts, MOJ, Parliament / Decisions, statutes amended	
					Area of Intervention 4.2 **Increased Efficiency and Accessibility of Courts through improved Socio-Economic Conditions and Court Facilities**		
4.2.1	Development of socio-economic conditions at judiciary				1. Reviewed regulatory framework on privileges, other professional guarantees, and social protection of judiciary and courts staff	SJGB (HCJ, HQC, CJ), MOJ, Parliament, SC, HSCs /Decisions, statutes and rules amended	- Judiciary and courts staff are reasonably remunerated and protected through salary, benefits, and insurance plans established by law, depending on their role, experience and other clear and objective criteria - Judiciary and courts staff are able to perform their functions in secure environment, and are entitled together with their families to be protected by State - Effective mechanisms in place to complain about failure of State to honour its obligations to judiciary and courts staff
4.2.2	Development of accessibility and of court facilities for users of court services				1. Improved facilities and estate at courts	SJA, SJGB (HCJ, HQC, CJ), MOJ / Decisions, feasibility studies, procurement conducted	- User satisfaction surveys used as key factors in deciding on any infrastructure developments in courts - Projections for required facilities of courts and their foreseen structure and type supported by evidence from studies and reflected in relevant policies - Functional model of court premises in compliance with the level, specialisation and location, developed Pilot projects on equipment of court premises in accordance with the developed functional model implemented - Greater employment of public-private partnerships in provision of all services to courts - Greater competition between various service providers
					2. Reviewed regulatory framework on public-private partnerships (PPPs) in provision of services to courts.	SJA, SJGB (HCJ, HQC, CJ), MOJ, Parliament / Decisions, statutes and rules amended, MOUs, reports	
					Area of Intervention 4.3 **Increased Efficiency through Use of Information Systems**		
4.3.1	Improvement in use of information systems (IS) for greater delivery of e-justice services				1. Courts' management information system (MIS), including electronic case management system, fully operational	CJ, HCJ, SJA, HQC, NSJ, Courts/ Decisions, MOUs, feasibility study, Implementation Master Plan, hardware and software in place, trainings, manuals, review reports	- Full electronic management of all institutional functions - Full electronic case management and tracking (before higher review instances), e-notification, e-summons, e-trial (in some cases), e-payment, random case assignment, audio or video recording of all hearings, internal jurisprudence data-base information system, legislative data-base information system - Fully licenced electronic case management system, incorporating personal data protection (PDP) - Developed and approved the action plans for salvation of the system data, and in the case of emergencies. - Interoperability of IS with those of other State and non-State actors - User-friendly websites of courts with search engines allowing to link search for legislation with search for practice of SC and other higher courts under that legislation - Automated or on-line systems for measuring user satisfaction

Evaluation Report

on

Chapters I-IV of the JSRSAP:

Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges; Increasing Competence of Judiciary; Increasing Accountability of Judiciary; Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions.

Areas of Intervention 1.1, 2.1, 2.2, 3.1, 4.1

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