



COMBATING CORRUPTION AND STRENGTHENING RULE OF LAW IN UKRAINE

UNDER THE MILLENNIUM CHALLENGE CORPORATION'S
THRESHOLD COUNTRY PROGRAM

FINAL REPORT

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Ivano-Frankivsk court staff unloaded 142 computer work stations to automate the Ivano-Frankivsk City Court and the Ivano-Frankivsk Oblast Court of Appeals in November 2008.

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A staff member of the Ivano-Frankivsk Oblast Court of Appeals demonstrates the newly installed Case Management System in December 2008.

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ACRONYMS

AOJ	Academy of Judges of Ukraine
APO	authorized public officials
CMS	case management system
COJ	Council of Judges
ECHR	European Court of Human Rights
GOU	Government of Ukraine
HAC	High Administrative Court
HCJ	High Council of Justice
HQC	High Qualifications Commission of Judges
IT	information technology
LAN	local area network
MCC	Millennium Challenge Corporation
MOJ	Ministry of Justice
OSCE	Organization for Security and Cooperation in Europe
RQC	Regional Qualifications Commission
SJA	State Judicial Administration
TOT	train the trainer
TSJA	Territorial State Judicial Administration
UROL	USAID's Combating Corruption and Strengthening Rule of Law Project in Ukraine
UROL MCC	USAID's Combating Corruption and Strengthening Rule of Law Project in Ukraine under the Millennium Challenge Corporation's Threshold Country Program

EXECUTIVE SUMMARY

USAID's Combating Corruption and Strengthening Rule of Law Project in Ukraine under the Millennium Challenge Corporation's Threshold Country Program (UROL MCC) was a 29-month, \$5.5 million task order under the Rule of Law Indefinite Quantity Contract that addressed three judicial components of the Government of Ukraine's (GOU) Threshold Country Program. These components (1) expanded a national registry of court decisions and instituted the use of random case assignment while developing a national court automation strategy (Component 2.1), (2) improved the effectiveness and efficiency of judicial testing and judicial discipline (Component 2.2), and (3) trained administrative court judges and created an operating system for administrative courts in the regions (Component 2.4). (Component 2.3 on enforcing judicial decisions and Component 2.5 on eliminating corruption within the notary system were covered by a separate USAID-administered cooperative agreement carried out by Ukraine's Commercial Law Center.) USAID's work under these three components contributed to improved transparency and accountability in Ukraine's judiciary, thereby limiting opportunities for corruption.

Originally, the UROL MCC project was planned for 24 months and focused on registry and case assignment, judicial testing and discipline, and assistance to administrative courts. During a five-month extension, the project team focused on developing a national court automation strategy, strengthening the judicial testing mechanism, and expanding mechanisms for judicial discipline to expand the project's concrete results and further ensure sustainability.

Component 2.1 Registry and Case Assignment and Developing a National Court Automation Strategy

To create greater public trust and confidence in a more transparent and fair judicial process, Component 2.1 was designed to enable seven pilot courts to (1) assign cases on a random basis, and (2) upload their decisions electronically to Ukraine's Unified Registry of Court Decisions (www.reyestr.court.gov.ua). In addition, the project was required to develop a strategy to deliver these court automation functions to all courts nationwide and to build the capacity of the State Judicial Administration to implement this strategy. (The SJA is responsible for providing material, logistic, and administrative support to Ukraine's courts.)

For the pilot project, the UROL MCC team developed random case assignment and electronic upload capabilities within four general jurisdiction courts and two administrative courts. (The status of the seventh pilot court is described below.) The pilot project delivered hardware and software and trained 562 court personnel to use this equipment. During the extension period, the UROL MCC team established and equipped three training centers at the three Territorial State Judicial Administration (TSJA) offices in Donetsk, Ivano-Frankivsk, and Kharkiv (the three oblasts where the pilot courts were located). Each TSJA training center was equipped with 10 laptops, a multimedia projector and screen, a multifunction printer/scanner/fax, and a wireless network switch. In addition, UROL MCC trained 59 SJA and TSJA representatives in strategic planning, the basics of project management, information technology

UROL MCC Pilot Courts

1. District Court, City of Ivano-Frankivsk
2. Petrovskiy District Court, City of Donetsk
3. Ivano-Frankivsk Oblast Court of Appeals
4. Donetsk Oblast Court of Appeals
5. Kharkiv District Administrative Court
6. Kharkiv Appellate Administrative Court

issues, and computer use to better enable them to implement a national court automation strategy.

To respond to the different needs of pilot courts within the project's budget and time frame, UROL MCC offered courts two options to incorporate random case assignment and electronic upload capabilities: dedicated modules or a full case management system. For the first option, project vendor Softline designed two open-source, automated modules that could either be used in a stand-alone configuration or be integrated with an existing software system. When integrated with existing software, the open-source modules could draw data from the system, avoiding the need for staff to enter data twice. This data entry efficiency is an improvement over earlier products developed by the SJA. Two courts — the District Court of the City of Ivano-Frankivsk and the Petrovskiy District Court of the City of Donetsk — had pre-existing, functional case management systems that they did not want to replace to accommodate the random case assignment and electronic uploading capabilities. As a result, the project team installed the dedicated modules in these courts. Because these modules are open source, the courts paid no license fee and have the capacity to upgrade their systems as needed.



Judges participate in the first training class for judges of the Pecherskiy District Court of the City of Kyiv on the Theta Case Management System in August 2008.

For the second option, UROL MCC supported the implementation of case management systems (CMS) in four of the pilot courts. The use of CMS was suggested by the Pilot Court Advisory Group, composed of key stakeholders and end-users convened by project staff to participate in the development of software solutions. For two courts (the court of appeals in Ivano-Frankivsk Oblast and in Donetsk Oblast), UROL MCC vendor Theta supplied a full CMS. This CMS both enabled random case assignment and electronic uploading and ensured that making the switch to automation was worth the court staff's time and effort. Because CMS automate all stages of case disposition — not only the beginning and the end of the process — they enhance benefits gained from the time required to train court staff, migrate existing cases to the CMS, and maintain such systems. After installing the Theta system, the Ivano-Frankivsk Oblast Court of Appeals reported that the time required to register a case has been reduced from 17 to 6 minutes, while the time needed to prepare statistical reports for the SJA has been decreased from two weeks to two hours. Additionally,

More Bang for the Buck

Going beyond random case assignment and electronic posting of decisions, Theta's case management system capabilities include:

- Case initiation
- Case opening
- Case statistical cards
- Additional case tracking
- Electronic production of semi-annual statistical reports
- Electronic case dockets
- Electronic court calendars
- Electronic version of judge's case decisions and orders
- Form generation
- Reports (standard and ad hoc)
- Case file tracking
- Transaction logs
- Conversion of cases
- Electronic storage of court decisions and orders in court database
- Court record archive

automation has eliminated 87 written logs as well as registration and statistical cards, saving the court almost 98 kilograms of paper. Finally, the automated random case assignment module saved the chief judge and his two deputies, who had previously assigned cases manually, two hours per day that they can now use for overall court management and completing their judicial functions. Cases processed in the court during the first half of 2009 rose 22 percent compared to the same period in 2008 (from 1,303 to 1,587).

For two pilot courts — Kharkiv District Administrative Court and Kharkiv Appellate Administrative Court — in January 2009 UROL MCC staff helped implement CMS software developed by vendor Yurtech and endorsed by the High Administrative Court (HAC). Project staff also provided court staff with hardware and implementation advice related to training and developing the rollout plan. These two administrative courts saw immediate results. In the first four months of 2009, the total number of cases handled by the Kharkiv Appellate Administrative Court increased by more than 480 percent as compared to the same period last year: from 1,460 in 2008 to 7,041 in 2009. Additionally, the average number of cases processed per judge per month increased by 420 percent (from 47 in April 2008 to 198 in April 2009), and the time it takes to register a case decreased by more than half, from 15 to 7 minutes.

CMS Serves More Users in Kharkiv

“We have registered 45,000 cases as of September 1, 2009, compared to 11,000 cases in the same time frame last year.”

—*Katherina Danilova, Chief of Staff, Kharkiv Administrative Court of Appeals*

The seventh pilot court — Pecherskiy District Court of Kyiv — originally chose the full CMS option offered by UROL MCC. However, in January 2009, UROL MCC suspended CMS in the court after its electrical infrastructure was deemed inadequate to support the power needs of the computers that run the software. UROL MCC redistributed 101 computers from Pecherskiy court to the Kharkiv administrative courts and cancelled all software licenses in Pecherskiy.

To achieve the second goal under Component 2.1 — drafting a national strategy for court automation — the UROL MCC team engaged short-term experts and convened a working group. The working group was chaired by the head of the Court Automation Committee of the Council of Judges of Ukraine, Justice Stanislav Schotka, and included representatives from courts of all levels and jurisdictions, the SJA, the Council of Judges (COJ), the Council of Europe’s Transparency and Efficiency Project, the Canada-Ukraine Judicial Cooperation Project, and the UROL MCC project. In July 2009, this group approved a draft strategy, which addresses hardware and software needs, equipment maintenance, ongoing technical support, funding, and implementation risks. The UROL MCC team submitted the draft to the SJA for further approval by the COJ and other government institutions in accordance with Ukrainian law. In follow-up meetings, top officials from both the COJ and the SJA expressed their readiness to have the strategy approved. To date, the strategy has passed SJA review and is now being considered by the State Informatization Committee. It is expected that the COJ will vote on the draft during its next meeting in late October or early November 2009. The content of the draft strategy represents a departure from the ad hoc approach the SJA has historically used with respect to automation, and paves the way for unified standards for case management systems.

Component 2.2 Strengthening Judicial Testing and Expanding Mechanisms for Judicial Discipline

Judicial testing. In Ukraine, multiple agencies share responsibility for testing judge-candidates before they take the bench. With little opportunity to refine the legislation governing the selection process, UROL MCC worked with stakeholders — including the Council of Judges, the High Qualifications Commission of Judges (HQC), the High Council of Justice (HCJ), the Academy of Judges of Ukraine (AOJ), and the Regional Qualifications Commissions (RQCs) of general jurisdiction courts — to identify and issue recommendations for regulations to govern judicial testing. On April 4, 2008, the HQC approved these regulations, thereby establishing the structure and objectives for a revised approach to judicial testing. UROL MCC staff and testing methodology expert Leonid Sereda then worked with AOJ test developers to complete and pilot the first version of a new test in Donetsk in June 2008. However, this pilot uncovered vulnerabilities in the new test’s scoring methods, and it failed to properly test candidates’ qualifications to perform as judges. To correct these and other, identified shortcomings, UROL MCC supported the development of written criteria for selecting test developers as well as for preparing, conducting, and evaluating the test.



Twenty-three applicants took the first standardized test for judicial candidates in Donetsk in June 2008.

Before a second, revised pilot test could be conducted, an April 2009 UROL-funded study tour to the Netherlands revealed the need for stakeholders to reconvene to identify the core competencies on which to test judicial candidates. Such competencies include not only legal knowledge but also the skills and abilities needed to be an effective judge. After a two-day consensus building seminar in Sevastopol in July 2009, stakeholders agreed on 95 judicial competencies tailored to the Ukrainian context. Seminar participants included representatives from the Verkhovna Rada (parliamentary) Committee on the Judiciary, the Presidential Secretariat, the Ministry of Justice (MOJ), the SJA, the HCJ, the HQC, TSJA departments, and RQCs.

Based on the outcomes of the Sevastopol seminar, UROL MCC expert Charles Ericksen refined a Framework of Judicial Competencies and Qualities and presented it to a working group of judicial testing stakeholders. He also prepared a reference manual for test evaluators and administrators to guide them in evaluating case studies, maintaining the integrity of test content, storing the test, and reporting test results. These materials have been delivered to counterparts for their review and feedback.

Judicial discipline. In Ukraine, existing judicial codes of conduct, regulations, and legislation do not clearly define judicial misconduct. Instead, approximately 550 public officials are authorized to receive citizen complaints concerning judicial misconduct, and they determine whether those complaints warrant review by a Regional Qualifications Commission. To meet the contract

objective of establishing an effective and transparent disciplinary procedure, the UROL MCC team mapped judicial selection and disciplinary procedures and designed a streamlined judicial misconduct complaint form. Three courts and four state agencies piloted the revised form and procedures for submitting complaints of judicial misconduct. The pilot tests revealed that the new Judicial Misconduct Petition Form (Annex B) is user friendly and enables petitioners to file their complaints completely and quickly. In February 2009, the heads of the RQCs and the chair of the HQC agreed to recommend approval of the form to the Council of Judges, marking an important milestone toward its widespread use.

During the five-month extension period, UROL MCC staff worked to establish uniform practices among Ukrainian government agencies in processing complaints of judicial misconduct, and to increase public and stakeholder awareness about the revised forms and procedures. Specifically, the project team engaged the MOJ, the SJA, and the Verkhovna Rada Committee on the Judiciary in examining and aligning their internal, administrative regulations for handling complaints, and generated consensus among counterparts to proceed with reform, maintain statistical information, and track complaint processing through a unified database. In addition, UROL MCC staff also provided hardware/software to the public officials authorized to handle judicial complaints to enable them to better collect forms and monitor related data. The equipment provided will allow for the development of a database in the future to promote even greater transparency in complaint processing.

Component 2.4 Support for Administrative Courts

In 2005, Ukraine adopted its Administrative Adjudication Code, creating a new system of administrative courts and a new set of procedures governing the decision-making of those courts. A growing number of adverse decisions before the European Court of Human Rights (ECHR) regarding Ukrainian administrative cases created a sense of urgency for a new approach to administrative justice in the country. UROL MCC therefore provided targeted training and resource materials to administrative judges to enable them to carry out their new duties effectively. Project staff trained 247 administrative court judges and personnel on administrative law, ECHR case law, and specialized topics related to tax law and social benefits. The project team further published and disseminated a comprehensive body of resource materials to administrative courts, including 3,000 copies of the Administrative Law Resource Manual. These materials were used to create 36 reference libraries in the Supreme Court of Ukraine, the High Administrative Court, and all established administrative courts.



Participants in a seminar on Administrative Justice attend a live court hearing at the High Administrative Court in April 2008.

In parallel to Component 2.1, UROL MCC staff incorporated two administrative courts in Kharkiv into its pilot project, providing them the capability to randomly assign cases and electronically upload their decisions to the national registry. Supplementing Component 2.1, Component 2.4 allowed case data to be transferred between the district and appellate

administrative courts in Kharkiv through the same open-source module that performs the electronic upload function to the national registry. Accordingly, the SJA incorporated this capability into its national plan for court automation.

PROJECT ACTIVITIES AND ACHIEVEMENTS

Component 2.1 Registry and Case Assignment and Developing a National Court Automation Strategy

Under this component, the UROL MCC project implemented various tools to create greater public confidence in a more transparent and fair judicial process. By supporting implementation of Ukraine's national registry, the project helped ensure that Ukrainian courts can provide convenient, searchable databases of court decisions to facilitate broad public and government access. In implementing random assignment of cases in pilot courts, the project created a transparent, automated platform that prevents unscrupulous parties — be they attorneys, court officials, or judges — from manipulating the case-assignment process to favor any given party. To achieve this objective, the project implemented systems that assigned cases based on judge availability (and work load) and qualifications, the complexity of the case to be assigned, and whether a given judge was recently assigned a case.

By supporting the SJA's creation of a national strategy to automate court functions, the project encouraged the agency to work with Ukraine's courts to define the functional requirements for court automation. In addition, the project further built SJA capacity to provide technical support for the information management systems used by the courts through a series of trainings that will help them implement the national strategy in the future. In the near term, with USAID approval, the core UROL project will continue some UROL MCC court automation activities under Task 2.1 of the UROL work plan (Court Administration and Case Management Improved). (Separately from its collaboration with the MCC, USAID is also implementing a Combating Corruption and Strengthening Rule of Law project, known as UROL, that focuses in part on improving court operation and administration, including case management, and on clarifying critical qualifications and responsibilities for court functions.)

National registry. Ukraine's Unified Registry of Court Decisions was mandated by the 2005 Law On Access to Court Decisions. By 2007, the registry was to have become fully operational, housing all of Ukraine's court decisions for public review. Several factors prevented Ukraine from achieving this milestone, including (1) the large number of decisions to be included, (2) the manner in which paper copies of court decisions must be mailed to the Information Court Systems (responsible for implementing and maintaining the registry), (3) the lack of SJA budget support for personnel, computer equipment, computer software, and telecommunications services needed to upload the decisions, and (4) an unrealistic timeframe for creating the searchable registry. UROL MCC staff discussed such factors in monthly meetings with a Pilot Court Advisory Group convened to garner stakeholder buy-in for project activities. To support the registry's effectiveness, UROL MCC staff made 11 substantive recommendations that would make its content easier to find and more useful for legal researchers. The project team also completed a limited review of the registry's IT platform, which resulted in the purchase of approximately \$70,000 worth of equipment to enhance the SJA's ability to receive and store data. Project staff further recommended amendments to the Law on Access to Court Decisions to improve policies and practices that have proven impractical; follow-up action on these amendments will be absorbed under the core USAID-funded UROL project.

Pilot project. UROL MCC's pilot court program enabled six beneficiary courts to assign cases randomly and to upload court decisions electronically to the national registry. In addition, it delivered full case management systems (CMS) to four pilot courts, allowing them to fully realize the advantages of automation in increased productivity, better access to case information by both court staff and parties, and reduced time to complete statistical reporting (see Table 3: Key Pilot Court Survey Results).

In 2007, the Pilot Court Advisory Group identified court selection criteria, such as geographic diversity, court size, court type, court experience/expertise with automation, staff support for the pilot, adequacy of facilities, and commitment of available mentors. After selecting pilot participants, UROL MCC staff conducted initial technological surveys, inventoried IT equipment, and analyzed infrastructure to determine the hardware upgrades needed by the pilot courts. In addition, UROL MCC staff conducted planning sessions with each court to identify needs for staff training, address the need to convert existing cases, and share best practices across pilot courts (related to issues like IT backup processes). Following local tenders, the selected local service providers installed local area networks (LANs) in each pilot court and upgraded Internet access. Competitively selected subcontractor Navigator LTD procured required hardware, while three other providers furnished software, user support, and training in conjunction with UROL MCC staff. Pilot court staff received hands-on training in the new case management systems in a mobile lab. Following training, UROL MCC staff distributed the mobile lab's laptop computers among the pilot courts for use by court administrators and chief judges, thereby enabling them to access to court records even as they move within the court building.

All IT companies selected by UROL MCC to design software for the project were identified through competitive tenders. Theta provided the full CMS to two pilot courts, including maintenance and user support for a three-year period. Softline developed the open-source case assignment and upload modules used by two pilot courts and delivered to the SJA for broader rollout to other courts. The company Yurtech, which supported the administrative courts in Kharkiv, was independently selected by those courts because court staff were familiar with the systems Yurtech had installed in commercial courts through earlier USAID assistance. UROL MCC supported Kharkiv's courts with hardware and advice to ensure effective implementation of the CMS. However, UROL MCC did not fund the development of software or its installation in Kharkiv's administrative courts.

National court automation strategy. UROL MCC collaborated with other projects funded by Canadian and European donors to provide the SJA with sufficient tools, information, and support



In September 2009, representatives of UROL MCC's training vendor conducted train-the-trainer sessions for court staff at the Donetsk Territorial Department of the SJA on how to use newly installed software.

to enable them to develop a comprehensive court automation strategy that comports with international best practices and builds on lessons learned in the pilot courts. These efforts were concentrated in two working meetings. The first, in May 2009, brought together the SJA, COJ, the Council of Europe, and the Canada-Ukraine Judicial Cooperation Project with court staff to develop a comprehensive, prioritized list of functional requirements for automation that meets the needs of the courts. This meeting also resulted in the formation of a separate working group of court users of technology, who began to draft components of a court information technology strategy for the courts of Ukraine. The second meeting, in July 2009, convened the working group to approve and finalize the strategy. Key sections of the draft strategy address hardware and software needs, equipment maintenance and ongoing technical support, funding, and implementation risks. The strategy was submitted to the SJA for further approval by the COJ and other government institutions in accordance with Ukrainian law.

Some challenges facing this draft strategy can be seen in the involvement of three vendors (Theta, Softline, and Yurtech) in providing software for the pilot court program. This reflects the broader diversity in Ukraine’s judicial system, which has at least five case management systems in use across the country. By calling for the development of data and reporting standards that would allow different CMS to exchange information, the draft strategy seeks to integrate existing systems toward an unified automated solution. Creating a unified CMS would also require changes to the relationships between the SJA and the courts: historically, courts have seen the SJA as exerting more “control” than “support.” In addition, better collaboration between the SJA and the High Administrative Court would alleviate some of the resource constraints that could impede implementation of a five-year strategy. During the pilot court program, UROL MCC made significant efforts to keep the SJA at the negotiating table. During the extension, the project secured the SJA’s cooperation to develop a national court automation strategy that incrementally closes the gap between Ukraine’s pervasively under-equipped courthouses and the methods of administering justice in the 21st century.

Finally, the UROL MCC team delivered training and equipment to SJA representatives to develop their operational capacities to manage IT projects, manage data, provide quality assurance, and other topics (see textbox above). In addition, the project created training centers in TSJA offices in Donetsk, Ivano-Frankivsk, and Kharkiv that can provide ongoing basic computer classes to court staff. The number of personnel trained reflects better-than-anticipated interest from TSJA branches, 24 of whom participated in trainings related to court automation topics.

Capacity-Building Courses for SJA	
During its five-month extension, the UROL MCC team built SJA capacity to implement court automation through the following programs, which trained 59 people.	
July 29	Information Technology and Business Process Alignment
July 29	An Enterprise Approach to the Development of Technology and Data Architectures
July 30	Development of Data Governance Policies and Data Standards
July 30	Software Quality Assurance Policies and Procedures Workshop
Sep. 7-11	IT Project Management and Implementation
Sep. 14	Creating a Software Development Procedures Regulation
Sep. 15	Developing Software Design and Programming Style Guidelines
Sep. 16	Managing Outside Vendors and Conducting Contract Negotiations
Sep. 21	TOT in Computer Usage Training for Donetsk TSJA

SUCCESS STORY

Automation Improves Efficiency, Transparency of Ukrainian Courts

Automated case management system reduces paperwork and decreases potential for corruption in Ukrainian Courts.



Photo: Sarah Watson, Chemonics International

Nadiya Lushchak, chief of staff of the Ivano-Frankivsk Oblast Court of Appeals, believes that the new case system will have important benefits for citizens. "The work of the court will become more organized and transparent," she said.

Installed with the help of the Millennium Challenge Corporation—funded, USAID-administered Ukraine Rule of Law Project, a new case management system is part of MCC and USAID efforts to increase transparency in the Ukrainian judicial system.

Nadiya Lushchak, chief of staff of the Ivano-Frankivsk Oblast Court of Appeals, knows how to manage a court. But a caseload that has nearly doubled since 2002 left the judges and administrators in her court overburdened with paperwork. Court staff were not reaching their full potential as they struggled to process and decide cases in a timely fashion.

In late 2008, public launches of new, automated case management systems in Ivano-Frankivsk and Donetsk introduced citizens to improved courts. The new system has drastically increased productivity and transparency. In the paper-based system, it took 17 minutes to register a case; with the new system, it takes just six. Previously, statistical reports took more than two weeks to compile manually; now they can be generated automatically in about 30 minutes.

However, the system not only saves time for court staff, it also enables citizens to access information on the status of their case through a central office in the court (information previously available only after visiting multiple offices). In addition, automated courts can now send electronic copies of court decisions to the Unified Registry of Court Decisions, where they are displayed via Internet. Before, it often took six months for decisions to be manually uploaded from paper copies. Through the Internet, judges in automated courts can also access court decisions from the entire country for greater predictability and uniformity in court decisions.

The MCC-funded, USAID-implemented Ukraine Rule of Law Project provided the hardware, software, and infrastructure that runs the case management system as well as a random case assignment module, both installed in the courts mentioned above. This module will provide an open and transparent case assignment process, which will in turn reduce accusations of corruption and unfairness in the assignment process.

As Ukraine seeks to improve the efficiency and accessibility of its judicial system, the automated courts can serve as a model demonstrating adherence to their ultimate mandate: to serve the public. Lushchak expects that the court staff will now have the time to "think about what they are doing and how to improve what they are doing."

Component 2.2 Strengthening Judicial Testing and Expanding Mechanisms for Judicial Discipline

Under this component, the UROL MCC project sought to establish procedures that would promote integrity in the appointment of judges and accountability during their tenure. By introducing an objective judicial examination for judges of first appointment, UROL MCC sought to advance competitive judicial selection, enable the most qualified candidates to fill judicial vacancies, and reduce opportunities for corruption to taint the process. By refining procedures for submitting complaints about judicial misconduct, the UROL MCC project sought to increase judicial accountability while making the process of judicial discipline more accessible and comprehensible to citizens.

Judicial testing. Completing a validated judicial examination proved elusive for UROL MCC within the project’s 29-month timeframe, given unclear responsibility for moving the process forward, pending legislation that jeopardizes the status of the AOJ, and a re-examination of relevant judicial competencies. The project did make progress in introducing stakeholders to instrument validation, testing methodology, secure administration, and the integration of testing and content expertise in test design. Additionally, project staff supported the drafting of a body of manuals, instructions, and regulations that has greatly improved transparency in the testing process. Work on judicial testing — specifically the completion of a second pilot test — will (with USAID approval) be absorbed under the core UROL task order as part of Task 1.2 (Selection, Ethics, and Discipline of Judges Strengthened).

Ukraine’s 2007 draft Regulation on Competitive Judicial Selection called for a judicial examination that ensures equal opportunity and competitive selection of judicial candidates. In early 2007, the Organization for Security and Cooperation in Europe (OSCE) and the core UROL project funded a pilot judicial examination administered by the Academy of Judges. As part of the pilot, UROL academic experts evaluated test questions written by AOJ subject-matter experts and reviewed by the Supreme Court. The exam — composed of 40 multiple-choice questions from a pool of 790 questions covering 11 areas of law — was administered to 80 candidates. However, experts expressed concern that the test did not ensure equal opportunity for candidates since each was not asked the same set of 40 test questions. Afterwards, the UROL MCC team convened a Working Group on Judicial Testing and Competencies Development composed of HQC member Justice Ihor Samsin, AOJ expert Tetyana Fuley, HCJ expert Lyudmila Skomoroha, and UROL MCC testing methodology expert Leonid Sereda (the latter was included on the advice of UROL MCC staff to evaluate test construction and methodology).

In April 2008, an HQC resolution vested authority to develop and conduct judicial testing in the AOJ. This Regulation on Judicial Testing also established that the judicial examination should include 100 multiple-choice questions. Working from these directions, the stakeholder working group reviewed and re-wrote 100 of the 790 original test questions, now covering 10 areas of law, guided by the advice of Mr. Sereda. In doing so, working group members focused on preparing multiple-choice questions that tested judicial qualifications rather than solely knowledge of law. They also developed criteria for evaluating essay questions.

Ten Most Important Judicial Competencies

1. Professionalism
2. Fairness
3. Integrity
4. Responsibility
5. Objectivity
6. Impartiality
7. Decisiveness/ Decision-making skills
8. Morality
9. Adherence to principles
10. Writing ability

In June 2008, the new test was piloted for 26 candidates in Donetsk. In this instance, each candidate answered the same 100 questions arranged in a different order and wrote an essay based on a case study. However, only three candidates passed. While the UROL MCC testing expert found the multiple-choice methodology to be effective, he suggested that the threshold for passing the test (correct responses to at least 60 percent of the questions) was too high. Mr. Sereda also concluded that the pilot's format and content were not properly publicized to candidates in a manner that enabled them to prepare for the test. Further, this test still failed to assess candidates' competence to correctly interpret and apply knowledge to evaluate legal disputes. The question of competencies arose again during an April 2009 study tour on judicial testing to the Netherlands, after which UROL MCC's focus shifted from conducting a second pilot test to incorporating the agreed-upon competencies into a revised judicial examination process.

Following a July 2009 seminar in Sevastopol that produced a draft list of 95 judicial competencies, UROL MCC expert Charles Ericksen helped organize these competencies into a draft Framework of Judicial Competencies and Qualities. UROL MCC's stakeholder working group determined that the framework competencies should be tested both through written exam questions and oral interviews. An August 2009 seminar with the heads of all the RQCs helped identify 10 of the most important competencies (see text box below) that need to be incorporated into the judicial examination. Currently, the working group is analyzing and further defining these 10 competencies to determine the most effective means of measuring them (i.e., written exam or oral interview). Once guidelines on verbal interviews are developed, these competencies will be incorporated into the judicial examination.

Following the August seminar, UROL MCC testing expert Mr. Sereda developed recommendations for the authors of judicial test questions. Using Mr. Sereda's guidelines, test authors developed 300 test questions covering 10 fields of law, creating a pool of questions from which future tests can be generated. Concurrently, UROL MCC expert Mr. Ericksen drafted a reference manual covering (1) case-study evaluation methodology, (2) test administration, (3) maintaining the integrity of test content, and (4) test results reporting. The project presented the draft manual to the working group and collected feedback on revisions. With USAID approval, the core UROL project will support ongoing work for judicial testing during the period covered by its final work plan.

In Fall 2008, UROL MCC commissioned terms of reference for automating the judicial exam, both to follow modern best practices and to minimize the possibility of human manipulation in the administration and scoring of the exam. The lack of a testing facility and ongoing delays in validating the test caused UROL MCC to suspend work on automating the exam; however, the AOJ retains the terms of reference for future use.

Judicial Testing Outputs and Outcomes

UROL MCC and its judicial testing counterparts produced the following outputs and achieved several outcomes to improve judicial testing in Ukraine:

- April 2008 Regulation on Judicial Testing vests authority for conducting judicial exams in the AOJ
- Pool of 400 test questions created, covering 10 different fields of law, from which future tests can be generated
- Reference manual written covering (1) case-study evaluation methodology, (2) test administration, (3) maintaining integrity of test content, and (4) test result reporting
- Recommendations made for the authors of judicial test questions

Judicial discipline. As with judicial testing, no official body had the clear authority to advance reforms due to the complexity of the legal framework governing judicial discipline. The counterpart originally envisioned for this component — the Judicial Discipline Commission — does not yet exist, pending action by the Verkhovna Rada on the presidential decree calling for its creation. Accordingly, the project team focused on improving administrative procedures that could be transferred to an authoritative disciplinary body once it is established. In this vein, project staff assessed the current disciplinary framework, mapped existing processes, noted common practice and used this information to design a streamlined form that citizens could use to initiate formal disciplinary proceedings against a judge. Further, the project team made several recommendations for improving the regulations that govern judicial discipline and for standardizing the processes Ukrainian authorities use for reviewing, evaluating, and handling judicial misconduct complaints.



During the July 2009 working seminar entitled “Developing Judicial Competencies: Knowledge, Skills, Abilities, and Attitudes for the Highly Effective Judge,” participants brainstormed a list of competencies to better define selection criteria for candidate judges.

Current disciplinary procedure is as follows. Approximately 550 authorized public officials (APOs) may receive petitions (i.e., complaints) regarding judicial misconduct. APOs include the 450 Members of Parliament, the Ombudsman, the Chairman of the Supreme Court, the Minister of Justice, the 27 heads of the Territorial Councils of Judges, and members of the Council of Judges of Ukraine (currently, there are 77 members). Once these officials have received the petitions, they forward them to a RQC along with evidence that they support investigation of the complaint. While the Law on the Status of Judges requires that any action against a judge based on misconduct must be levied within six months of the date the complaint was made, in practice officials can forward petitions to the RQC whenever they see fit. In fact, the law’s provision is often used to dismiss claims that have lingered too long on the desks of APOs. Once the RQC has received a complaint, it has one month to dismiss the claim, levy a sanction, or recommend dismissal of the judge. If RQC review results in a decision to dismiss a judge, the petition and supporting materials are forwarded to the High Council of Justice, whose additional review results in a recommendation to the authority that originally appointed the judge—the President for judges still serving their initial, five-year appointment, or the Verkhovna Rada for those with lifetime appointments.

The standardized form (Annex B) provides clarity on (1) citizen rights and responsibilities, (2) the distinction between a claim of misconduct and an appeal on a judgment in a court case, (3) the information and documentation required to file a complaint, and (4) where to file. Its use is intended to empower citizens and facilitate quick and comprehensive review by the authorized public official. The form’s use moves Ukraine a step forward in rationalizing what remains a convoluted process (see Annex C for a description of the judicial disciplinary process).

The project piloted the new petition and routing processes over a 60-day period in three courts within the Kyiv Appellate Circuit in Kyiv Oblast (the Brovarskiy District Court, the Vyshgorodskiy District Court, and the Kyevo-Svyatoshynskiy District Court). Project monitors answered questions about the form from 102 citizens and conducted a poll to solicit feedback on its design and utility. During the pilot, 383 copies of the Judicial Misconduct Petition Form were distributed (about two per day per court). Of this number, only seven forms were received by the Territorial SJA in Kyiv, and another four were received by the head of the territorial Council of Judges of Kyiv Oblast. Survey respondents almost unanimously found the form user friendly (99 percent) and designed to completely, appropriately, quickly, and correctly catalogue their complaints (100 percent).

Citizens Take Role in Identifying Misconduct

“Is it possible to receive a consultation on the use and completion of the Judicial Misconduct Petition Form and application procedures? Thank you for what you are doing. Please continue your development and improvement of the judicial misconduct process and disciplinary procedures.”

—Yuriy, citizen assisting a friend to identify whether misconduct had occurred and how to respond

In May 2009, the Ministry of Justice posted a slightly revised version of the Judicial Misconduct Petition Form on the “Access Justice” section of its website (<http://www.minjust.gov.ua>). By September 30, 2009, website users downloaded more than 250 forms, and 171 petitions were submitted to the Ministry.

The HQC has recommended the petition form for COJ approval. Should it be approved, the form will — for the first time — provide a specific format and process for submitting the evidentiary information regarding judicial misconduct to the appropriate Regional Qualifications Commission. COJ approval of the form will catalyze its widespread use.

During the extension period, project staff reviewed procedures for processing complaints of judicial misconduct contained within the COJ’s Regulations on the Procedure for Consideration of Petitions from Citizens and Legal Entities (approved on February 6, 2009); the Recommended Guidelines: Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges; and the Standard Regulations for Regional Qualifications Commissions (June 2007). UROL MCC staff also reviewed the internal regulations of the SJA, the MOJ, and the Verkhovna Rada Committee on the Judiciary — all of whom are APOs — and recommended ways to standardize procedures for submitting and conducting an initial review of complaints among these agencies.

The results of this work were presented during a September 2009 working seminar for representatives from all the government bodies involved in the receipt and processing of judicial misconduct complaints: the Ministry of Justice, the Council of Judges, the High Council of Justice, the Verkhovna Rada Committee on the Judiciary, the State Judicial Administration, and the Office of the Ombudsman. The seminar focused on next steps in standardizing nationwide disciplinary procedures and the creation of a single, standard judicial misconduct form. One outcome of this seminar was project partners’ commitment to creating a judicial discipline working group to expand on UROL MCC’s work. Among other things, this group would create a shared database to track disciplinary procedures and begin to automate the disciplinary process. To support automation, the UROL MCC project purchased hardware and software to equip key APOs, the MOJ, the Verkhovna Rada Committee on the Judiciary, the Ombudsman, and the SJA on behalf of the COJ.

SUCCESS STORY

Judicial Testing: The Road to Objective, Merit-Based Judicial Selection

USAID helps Ukrainian judicial institutions implement objective and unified testing system for judicial candidates.



Photo: Tim Bates, Chemonics International

Judicial candidates take the test at regional branch of Academy of Judges in Donetsk during the pilot test in June 2008.

For the first time in Ukraine, new regulations — supported by the MCC-funded, USAID-implemented UROL project, have created the legal basis for merit-based judicial testing.

Ukraine does not use competitive judicial selection standards. Instead, each judicial candidate is required to submit a written essay and appear for an oral examination before a Regional Qualifications Commission, during which commission members question candidates about relevant legal principles, practices, and other issues that may arise. However, no common standards regulate the number and scope of these questions. Under this system, candidates do not receive equal opportunities during the interview, and as a result, Regional Qualification Commissions' decisions are not merit based.

To introduce international standards for judicial selection and to improve the fairness and transparency of the judicial selection process, the High Qualifications Commission (HQC) — jointly with the MCC-sponsored Ukraine Rule of Law Project (UROL) — is working to introduce a unified testing system for judicial candidates. Together with UROL, the HQC created a working group that includes representatives of the Supreme Court, Academy of Judges, State Judicial Administration, and legal academicians. As a result of the efforts of the working group, the HQC approved the Regulations on Testing of Judicial Candidates in April 2008. For the first time in Ukraine, these regulations create the legal basis for judicial testing.

In support of the new regulations, the working group developed a pilot test with guidance from a leading Ukrainian testing expert. The first pilot test was administered in June 2008 at the regional branch of the Academy of Judges in Donetsk; it included 100 multiple choice questions covering 10 areas of law. Twenty-three judge applicants and three volunteers took the first test. The results will be used as part of the current judicial candidate selection process.

Component 2.4 Support for Administrative Courts

Well-trained judges. UROL MCC staff conducted 13 training programs in cooperation with the OSCE, including two train-the-trainer (TOT) sessions, that educated administrative law judges on specific aspects of administrative court systems, concepts of administrative law, and existing procedures for resolving administrative disputes in other European countries. Special subjects, like tax and customs legislation, were also covered. In total, 247 justice sector personnel were trained. Of these, 120 were administrative court judges. Other participants included judges from courts of general jurisdiction who handle administrative cases.

UROL MCC staff provided training and resource materials to assist judges in resolving existing problems of the administrative courts, including interpreting administrative contracts and delimiting jurisdiction between administrative and general jurisdiction courts. These trainings were monitored by a working group representing the major participants in the training process, including the AOJ, the OSCE, the HAC, and the Center for Political and Legal Reforms. In monitoring the training, working group members aimed to identify issues with training effectiveness and to implement changes as necessary. Working group members largely resisted project efforts to use trainers other than judges of the HAC and the Administrative Chamber of the Supreme Court. Nevertheless, UROL MCC staff and experts conducted ongoing training evaluations that generated recommendations for incremental modifications to the curriculum. Collectively, these modifications moved the training curriculum away from rigid, traditional approaches to instruction, and further reflect a slow change occurring within the AOJ. This change is a critical ingredient for sustaining effective training within this local partner.

In December 2008, the administrative training working group approved three significant changes to the training program based on a training effectiveness evaluation completed with help from UROL MCC administrative law expert Howard Fenton. First, a new series of TOT programs introduced the case study method. Second, revised programs established uniform guidelines for written materials (handouts) and oral lectures. Third, they incorporated a question-and-answer period. By expanding the approach to training with Q&A sessions, the scope of the training through case studies, and the variety of trainers through TOT, these changes enhanced the quality of the instruction for administrative court judges.

Administrative Court Resources Developed and/or Disseminated by UROL MCC

- Practice of the European Court of Human Rights. Decisions. Commentaries (50 sets)
- Selected Decisions of the European Court of Human Rights (50 sets)
- Judicial Practice of the European Court of Human Rights: Decisions Regarding Ukraine (100 copies)
- Basics of Administrative Justice and Administrative Law (200 copies)
- Administrative Justice: Problems of Practice (200 copies)
- Compilation of Decisions of the European Court of Human Rights (300 copies)
- Court Practice in Administrative Cases (1,000 copies)
- Conducting Court Hearings Under Administrative Procedure (2,000 copies)
- Guide on the Protection of the Rights, Freedoms, and Legitimate Interests of Citizens in the Administrative Court of Ukraine (3,000 copies)
- Brief Guide on the Protection of the Rights, Freedoms, and Legitimate Interests of Citizens in the Administrative Courts of Ukraine (3,000 copies)
- Administrative Justice of Ukraine: Problems of Theory and Practice, Judge's Bench Book (3,000 copies)
- Report on Administrative Justice in Europe (100 copies + web access through HAC and UROL)

Effective communication. With the goal of electronically transferring case information from the lower to the higher administrative courts, UROL MCC selected a vendor to develop the necessary software application. However, the Kharkiv administrative courts subsequently selected — at their own expense — an automated case management system



In May 2009, administrative judges trained in Kyiv during a project-sponsored training event entitled “Specific Issues of Adjudication of Administrative Cases.”

developed by Yurtech (currently used by all commercial courts in Ukraine) that includes a case information uploading and case data transfer function. UROL MCC accordingly worked with the Kharkiv courts to ensure the proper functioning of the case transfer system, while also working with Yurtech to integrate the random case assignment module into their software. UROL MCC provided a total of 144 computers and three servers to the administrative courts (one server for each court building), and used the project’s mobile training lab to train judges and court staff on the Yurtech software. Additionally, based on the UROL MCC case data transfer module, the SJA developed its own case data transfer solution that is now in use in a number of courts.

PROJECT IMPACT

Component 2.1 Registry and Case Assignment and Developing a National Court Automation Strategy

TABLE 1: END-OF-PROJECT RESULTS UNDER COMPONENT 2.1

Indicator	Target	Actual
Percent of pilot court decisions publicly available on the Internet	25%	26%
Percent of cases in UROL MCC pilot courts randomly assigned by new software	100%	94%
Number of judicial institutions and their branches involved in oversight, implementation, and provision of operational support to court automation strategy	5	7
Number of justice sector personnel trained in oversight, implementation, and operational support to court automation	25	59

Indicator outcomes for the end of the project were explained in the UROL MCC FY 2009 Quarter Four Quarterly Report. The 94 percent reported for random case assignment (see Table 1 above) applies to the quarterly period from July to September 2009, and is the ratio of total cases in all six pilot courts assigned randomly by software against the total number of cases registered in all six courts (36,350:38,633). As earlier reported, this indicator did not reach its 100 percent target because the District Court in Ivano-Frankivsk did not randomly assign cases involving small administrative violations (i.e., traffic violations). The District Court in Ivano-Frankivsk was the last among the pilot courts to begin implementing random case assignment. Since UROL MCC has been able to measure its random case assignment indicator, outcomes have been:

TABLE 2: PERCENT OF CASES RANDOMLY ASSIGNED IN PILOT COURTS BY QUARTER

Oct.-Dec. 2008	Jan.-Mar. 2009	Apr.-June 2009	July-Sep. 2009
35.22%	41.45%	99%	94%

The October to December 2008 figure of 35.22 percent (see Table 2 above) was based on hardware and software installation in four of six pilot courts. The January to March 2009 figure of 41.45 percent in Table 2 was based on random case assignment occurring in five of six pilot courts (excepting the District Court in Ivano-Frankivsk). By the April to June 2009 period, random case assignment was occurring in all pilot courts. During this period, the District Court in Ivano-Frankivsk randomly assigned all of its cases, but the Petrovskiy District Court in Donetsk did not randomly assign criminal cases. From July-September 2009, the Petrovskiy District Court in Donetsk randomly assigned 100 percent of its cases, and as mentioned above, the District Court in Ivano-Frankivsk did not assign a small number of administrative cases randomly. Therefore, all of UROL MCC's pilot courts have demonstrated the capacity to use random case assignment for 100 percent of their cases; they simply need to commit to doing so (see also Table 3 below). Additionally, all have the means to electronically upload decisions to the national registry, and all use some kind of case management system.

Each UROL MCC pilot court can claim improvements to case management, efficiency in administering justice, and court administration. Project-developed modules for random case assignment and electronic upload can be adapted to work with any existing case management

system, which requires courts to input data only once. Also, project-developed modules are open source and can be distributed to all courts without incurring additional licensing costs.

Judges who formerly used computers only for word processing now have access to LANs that allow them to access other court decisions on the Internet, promoting greater uniformity in decisions. IT systems specialists exist in pilot courts to provide in-house technical capacity to operate, maintain, and provide user support for hardware, software, and networks. Table 3 below contains the results of a survey distributed to pilot courts that demonstrates the improvements courts gained from automation (the first number is the pre-automation figure and the second number indicates post-automation improvement).

TABLE 3: KEY PILOT COURT SURVEY RESULTS

Results Area	Indicator	Donetsk Appellate*	Petrovskiy District Court, Donetsk*	Ivano-Frankivsk Appellate*	District Court Ivano-Frankivsk*	Kharkiv Appellate Administrative*	Kharkiv District Administrative*	Average/ total for all pilot courts
Improved Case Management	Percent of cases assigned using random case assignment	0/100	0/100	0/97	0/82	0/100	0/100	0/97 (average)
Efficiency in Administering Justice	Number of physical logs and/or record books maintained by court administrative staff	32/20	23/5	25/5	29/21	24/22	12/6	145/79 (total)
	Hours spent collecting statistical data	80/16	.5/2	80/24	6/40	80/80	24/24	270.5/186 (total)
	Number of electronic reports available to administrative staff and judges	0/5	8/5	0/4	0/10	0/6	0/8	8/38 (total)
Improved Court Administration	Ratio (in percentages) of staff retention	96/96	100/100	96/99	88/98	98/98	92/96	95/98 (average)

* baseline/current

In Table 3 (above), the calculation for random case assignment is an average of the ratios of the listed indicators for each pilot court from July to September 2009 (also reported in the UROL MCC FY 2009 Quarter Four Quarterly Report). If the random case assignment calculation in Table 1 illustrates pilot courts' overall reduced opportunities for corruptive practices, the first line of Table 3 illustrates UROL MCC's impact on the capacity of pilot courts to randomly assign cases.

In addition, as described in the executive summary, UROL MCC solutions have increased the average, monthly number of cases distributed to each judge in the Kharkiv Appellate court, saved the Ivano-Frankivsk Court of Appeals nearly 98 kilograms of paper, and cut the time required to register a case in half. Such benefits could become available to all courts through the implementation of a national court automation strategy.

UROL MCC’s installation of hardware to support the Unified Registry of Court Decisions (www.reyestr.court.gov.ua) has two impacts. First, the registry is now able to upload 15,100 decisions each day (2009), while the 2007 daily rate was only 2,700 decisions. As Table 4 indicates (below), the life-of-project increase in the registry’s capacity is 286 percent.

TABLE 4: INCREASED AVAILABILITY OF COURT DECISIONS ON THE REGISTRY

Total number of decisions available on Web registry as of December 31, 2007	Total number of decisions available on Web registry as of September 30, 2009	Life-of-project Increase
1,239,118	4,789,101	286%

Second, a better-populated registry has resulted in increased compliance with the Law on Access to Court Decisions, which requires all decisions made after January 1, 2006 to be posted on the Web-based database. As depicted in Table 5 below, over the life of the project, the number of decisions available on the registry has increased 76.71 percent.

TABLE 5: INCREASED COMPLIANCE WITH LAW ON ACCESS TO COURT DECISIONS

Percentage of decisions available on the Web registry as of December 31, 2007	Percentage of decisions available on the Web registry as of September 30, 2009	Life-of-project Increase
8.26%	14.6%	76.71%

Component 2.2 Strengthening Judicial Testing and Expanding Mechanisms for Judicial Discipline

TABLE 6: LIFE-OF-PROJECT RESULTS UNDER COMPONENT 2.2

Indicator	Target	Actual
Number of candidate judges undergoing standardized testing	50	23
Number of judges/test administrators trained in evaluation procedures	15	0
Number of written procedures developed to govern test implementation	4	4
Number of standardized documents, guidelines, and regulations developed for judicial discipline bodies	3	4
Number of judicial misconduct petitions form downloads from government Web sites (i.e., HQC, SJA, MOJ, etc.)	200	250

Indicator outcomes under this component for the life of the project were explained in the UROL MCC FY 2009 Quarter Four Quarterly Report. The postponement of the second pilot judicial test to concentrate on defining core competencies made it impossible for UROL MCC to achieve the targets set for the number of judicial candidates tested and test administrators trained. However, the target number of downloaded judicial misconduct petition forms through the Ministry of Justice website was exceeded.

When UROL MCC began, only a minimal legal and regulatory framework existed for judicial appointments based on a merit selection process. Inadvertently or otherwise, this framework tolerated discretionary interpretation of the provisions, resulting in variations in how RQCs vetted candidates. Moreover, no standard objective criteria had been established under which the HQC could objectively assess a candidate’s (1) specific legal knowledge, understanding, and ability to interpret and apply Ukrainian law, and (2) general professional capacity and judicial

demeanor. The project-supported HQC Regulations on Judicial Testing and Regulations on Competitive Judicial Selection take Ukraine one step further toward enacting such criteria, although a Council of Judges resolution will be necessary to make the judicial examination mandatory for judge candidates. Such a resolution has been drafted but not yet approved.

The impact of the delays UROL MCC encountered in conducting a second pilot test is counterbalanced by stakeholders' willingness to integrate testing expertise with judicial expertise in the test development process. Stakeholders are now more aware of and sensitive to the importance of creating and using examination instruments that have been carefully and professionally reviewed and tested. In addition, the reference manual produced by UROL MCC offers written standards and criteria that remove subjectivity from scoring exams and suggests processes for safeguarding test security. The resulting testing process will be much less subject to challenges by disgruntled or unsuccessful applicants. To ensure that rigorous review and evaluation of both the testing instruments and processes continue to be pursued, the primary Ukrainian stakeholders need more education and awareness building; the vehicle for this education is the judicial testing working group.

The Judicial Misconduct Petition Form clarifies both the content and the process for filing a complaint against a judge. It catalogues all essential information pertaining to the claim and is designed to discourage unfounded claims from moving forward. The form has proven easy to use, and, in its modified form, it is in high demand on the Ministry of Justice website. The new judicial discipline working group reflects budding leadership that can continue to reform the judicial discipline process. To do so, UROL MCC recommends the following steps:

- Adopt and implement standardized procedures for the submission, receipt, and registration of misconduct complaints by APOs
- Adopt and implement uniform standards and guidelines for the initial review and processing of complaints by APOs
- Use a standardized process for the transmission of complaints from the APOs to a single office of the State Judicial Administration for registration, tracking and, if necessary, other processing as may be required for the judicial discipline process to begin
- Use standardized procedural forms
- Implement an automated judicial misconduct complaint case management and tracking system that has a database shared and used by all APOs, SJA, and other government institutions involved in judicial discipline.



During a 60-day Judicial Misconduct Petition pilot in the summer of 2008 in the Kyiv Appellate Circuit, citizens had access to the pilot misconduct form and information about where to find assistance when completing the form.

With USAID approval, near-term activities in the areas above will be incorporated into UROL’s final work plan under Task 1.2 (Judicial Selection, Ethics and Discipline Strengthened).

Component 2.4 Support for Administrative Courts

TABLE 7: LIFE-OF-PROJECT RESULTS UNDER COMPONENT 2.4

Indicator	Target	Actual
Number of judges trained on administrative law who report applying the skills they gained in practice	120	120
Percent of administrative court staff who access communication systems at least once a month	100	100

Indicator outcomes under this component for the life of the project were achieved by the end of the original project period, on April 30, 2009, and were explained in the UROL MCC FY 2009 Quarter Four Quarterly Report. The UROL MCC project has made a substantial contribution to the written resources available to the new administrative courts and judges and has helped move the training process for these new judges in a more responsive and contemporary direction. Through creation, translation, or otherwise securing materials on administrative justice in Ukraine and Europe, the project has provided court libraries and individual judges with a significant body of relevant information on how to implement the new Administrative Adjudication Code and support its objective of furthering the rights of citizens in relations with the state. Since administrative law training was absorbed under the UROL task order as of May 2009, adjustments to the curricula and presentation format have been modified to include the use of case studies. While delivering the training, UROL has encountered a number of positive developments that create realistic possibilities for making the case study method a permanent part of the future training process.

To measure effective communication between administrative courts, UROL MCC collected data to determine the number of staff who log into project-supported case management systems at least once a month, as compared to the total number of staff who have access to the system. Data showed that 100 percent of staff within Kharkiv Appellate Administrative Court and the Kharkiv District Administrative Court regularly access project-sponsored systems to exchange e-files between the two courts. Installed systems also give these courts the capability to exchange e-files with the High Administrative Court.

REFLECTIONS AND RECOMMENDATIONS

Leadership trumps technology. Courts must opt to fully utilize their investments in technology; in the end, this is an issue of leadership. UROL MCC engaged leaders among pilot court staff early on — particularly chief judges and court administrators — to design and implement the automated solutions introduced during the pilot. These individuals' leadership and willingness to train court staff on new systems, migrate their existing caseloads, and troubleshoot the new systems was the key ingredient for success in fully automating Ukraine's two largest courts — the Donetsk Oblast Court of Appeals and Ivano-Frankivsk Oblast Court of Appeals — within a short timeframe. UROL MCC also engaged these individuals in drafting the national court automation strategy, where their work defining the functional requirements for case management helped catalyze the leadership the SJA exhibited in the project's final months. Furthermore, signs of rank-and-file leadership bode well for keeping national policies grounded in practical solutions as court reform continues.

If SJA leadership lagged during the pilot project, it blossomed when UROL MCC stepped back from promoting software solutions (which historically the SJA has not prioritized) to focus on strategic planning. During the extension period, the project team encountered notable enthusiasm and extended cooperation from the SJA in building their capacity to collaboratively manage court information technology with the courts as well as with third-party vendors. This newly developed capacity gives implementation of the draft strategy a reasonable chance of success, and positions the SJA to follow through on its mandate for setting court IT standards and monitoring courts' adherence.

Dialogue fosters leadership. Prior to the MCC Threshold Program, GOU agencies' lack of authority over judicial selection and discipline bred lack of cooperation, duplication of efforts, inconsistent practices, and severely delayed responses. UROL MCC brokered dialogue among stakeholders such as the COJ, SJA, MOJ, HQC, HCJ, AOJ, and others focused on finding common solutions to common problems, resulting in progress in several areas. For example, an HQC resolution has assigned judicial testing authority to the AOJ. A streamlined judicial misconduct petition form has been approved by the Ministry of Justice, and recommended by the HQC for COJ approval. Additionally, two multi-stakeholder working groups have formed to increase ownership for reforms and shepherd ongoing work. A newly formed working group on judicial discipline will provide leadership for an efficient, fair, and transparent system for administering judicial discipline. Likewise, a judicial testing working group is taking the lead to incorporate treatment of judicial competencies into the judicial examination.

Keep technology simple and inexpensive. If leadership trumps technology, and technology itself cannot bring transparency to the courts, technological solutions need not be complex or costly. Desktop computing, LANs, and server-based communication and storage are more than adequate for such purposes, especially in the initial stage of automation. Network configuration requirements are met with hard-wired 100MB connections to hubs connected to a central server. Use of Internet protocols supports intra-building networking for courts with multiple locations. The minimum server configuration is a mid-level single processor (expandable to multiple processors) with ample disk storage to support central repositories of court data. Each critical component is protected with surge-protector-enabled, uninterruptable power sources to protect against instability in the electrical system. Project support for the SJA's operation of the Unified Registry of Court Decisions also used this basic configuration, but with additional servers and

disk storage linked together to handle growing workloads and volume fluctuations. Third-party software solutions available to courts, including the SJA's ongoing development of case management software, operate efficiently and effectively with such configurations.

UROL MCC's use of open-source software is a sustainable technology solution for the courts. It can be installed and operated independent of existing systems, or be integrated as necessary. It is simple, inexpensive, easy to support, requires no license fee, and uses industry-standard security for authentication. UROL MCC's modular software can be distributed to any court with access to a computer and appropriate Internet connection. Sustainability prospects for the Theta-designed case management system are questionable, although in the short-term UROL MCC brokered a 40 percent discount on Theta's Lotus licensing fees.

Be flexible in procurement. Original LAN wiring estimates made no allowance for the fact that two pilot courts occupied more than one building. (The Donetsk Court of Appeals occupies three buildings, while the Kharkiv Appellate Administrative Court occupies two.) To control costs, UROL MCC subcontracted LAN wiring to regional service providers who could also most effectively maintain the installed systems. In addition, at the project's start all pilot court judges, judicial assistants, and key court administrative staff were to be given PCs and MS Office 2007. As more judges and court staff positions were approved in the courts, the project moved away from purchasing new PCs if existing hardware could be upgraded. Flexibility in procurement was also maintained by entering indefinite-quantity local subcontracts with fixed-price, sub-task orders for vendors Navigator (hardware) and Theta (software). This arrangement allowed UROL MCC to tailor equipment solutions for each pilot court.



Citizens review project publications during the launch of court automation in the Donetsk pilot court in November 2008.

ANNEX A: SUMMARY OF EQUIPMENT PROCURED FOR LOCAL COUNTERPARTS TO SUPPORT COURT AUTOMATION

BENEFICIARY/LOCATION	ITEM DESCRIPTION
State Judicial Administration	<ul style="list-style-type: none"> • 1 Hard Drive • 1 Firewall • 1 Multifunction Unit • 1 Tape Storage Library • 1 Router • 2 Servers • 6 Scanners • 9 Workstations • 10 UPS
Donetsk Oblast Court of Appeals	<ul style="list-style-type: none"> • 3 Servers with Monitors • 163 Workstations • 4 UPS • 1 Wall Cabinet and 2 Floor Cabinets • 528 Software Packages • Mobile Training Lab: 2 Laptops with Software • 2 Printers • 2 External Hard Drives
Petrovskiy District Court of the City of Donetsk	<ul style="list-style-type: none"> • 1 Server with Monitor • 41 Workstations • 1 Floor Cabinet • Mobile Training Lab: 2 Laptops with Software, 1 Printer • 2 Printers
Ivano-Frankivsk City Court	<ul style="list-style-type: none"> • 1 Server with Monitor • 35 Workstations • Mobile Training Lab: 1 Laptop, 1 Printer • 1 Printer
Ivano-Frankivsk Oblast Court of Appeals	<ul style="list-style-type: none"> • 2 Servers with Monitors • 102 Workstations • 206 Software Packages • Mobile Training Lab: 2 Laptops with Software • 2 Printers • 1 External Hard Drive
Kharkiv Circuit Administrative Court	<ul style="list-style-type: none"> • 1 Server with Monitor • 63 Workstations • 1 Floor Cabinet • Mobile Training Lab: 2 Laptops with Software • 1 Printer
Kharkiv Appellate Administrative Court	<ul style="list-style-type: none"> • 2 Servers with Monitors • 81 Workstations • 1 Floor Cabinet • Mobile Training Lab: 1 Laptop with Software • 1 Printer
Pecherskiy District Court of the City of Kyiv	<ul style="list-style-type: none"> • 1 UPS • 1 Wall Cabinet and 1 Floor Cabinet
Territorial SJA Department in Donetsk oblast	<ul style="list-style-type: none"> • 10 Laptops • 1 Projector • 1 Screen • 1 Multifunction Unit • 1 Gateway

BENEFICIARY/LOCATION	ITEM DESCRIPTION
Territorial SJA Department in Ivano-Frankivsk oblast	<ul style="list-style-type: none"> • 10 Laptops • 1 Projector • 1 Multifunction Unit • 1 Gateway
Territorial SJA Department in Kharkiv oblast	<ul style="list-style-type: none"> • 11 Laptops • 1 Projector • 1 Screen • 2 Multifunction Units • 1 Gateway
Ministry of Justice of Ukraine	<ul style="list-style-type: none"> • 7 Workstations • 7 UPS • 3 Multifunction Units



The chief administrator of the Donetsk Oblast Court of Appeals looks on while the project delivers hardware in support of court automation in August 2008.

ANNEX B: JUDICIAL MISCONDUCT PETITION FORM

JUDICIAL MISCONDUCT PETITION FORM	
<p>IF YOU HAVE REASONS TO BELIEVE THAT A JUDGE OF GENERAL JURISDICTION COURT HAS MISBEHAVED, THEN THIS FORM PROVIDES THE BEST POSSIBLE OPTION FOR COMMUNICATING THAT THE COUNCIL OF JUSTICE OF UKRAINE WANTS TO BE INFORMED ABOUT ALL CASES OF JUDGES IMPROPERLY BEHAVING SO IT COULD CORRECT THE PROBLEM IN A TIMELY AND EFFICIENT WAY.</p> <p><i>THIS PETITION FORM IS NOT AN APPEAL AGAINST JUDICIAL DECISION BROUGHT UNDER THE APPEAL OR CASSATION PROCEDURE; THIS PETITION FORM SHALL APPLY SOLELY TO JUDGE'S IMPROPER CONDUCT</i></p>	
<p>Please read the Form's content carefully and provide all necessary information as required. Use only this Form for each individual complaint you are going to lodge.</p> <p>Lodging several petitions about one and the same case to various officials will only lead to a waste of time and have no effect on results of your petition review. If you have documentary evidence to support the facts stated in your Petition Form, please add these to this Form (the documents should be inserted in the middle section of the Form). Having completed the Form please deliver the Form and the accompanying documents either by mail or in person to the office of the Authorized Public Official and/or, to allow for prompt reaction, to the territorial office of the State Judicial Administration of Ukraine of Kyiv Oblast.</p> <p>For addresses of these officials and institutions authorized to accept your Petition please see overleaf of the FORM. You will be notified about your Petition review progress by regular or electronic mail.</p>	
<p>PLEASE PROVIDE INFORMATION ABOUT YOURSELF: SECOND NAME: _____</p> <p>FIRST NAME: _____ STREET NAME AND NUMBER: _____</p> <p>CITY: _____ REGION: _____</p> <p>PHONE: () _____ E-MAIL ADDRESS: _____</p>	
<p>INFORMATION ABOUT THE JUDGE: SECOND NAME: _____</p> <p>FIRST NAME: _____ COURT NAME: _____</p> <p>CITY: _____ REGION: _____</p>	
<p>DATE OF THE INCIDENT YOU WITNESSED: (DD/MM/YY) _____</p>	
<p>WAS IT RELATED TO SPECIFIC CASE? <input type="checkbox"/> NO <input type="checkbox"/> YES (IF YES, PLEASE PROVIDE THE DOCKET NO.): _____</p>	
<p>CASE TYPE (PLEASE SELECT): <input type="checkbox"/> CIVIL <input type="checkbox"/> CRIMINAL <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> ADMINISTRATIVE VIOLATION</p>	
<p>YOUR STANDING IN THE CASE: <input type="checkbox"/> PARTY TO THE CASE <input type="checkbox"/> COMPLAINANT <input type="checkbox"/> DEFENDANT <input type="checkbox"/> COUNSEL <input type="checkbox"/> WITNESS <input type="checkbox"/> OTHER (PLEASE SPECIFY) _____</p>	
<p>IF THE INCIDENT WAS NOT RELATED TO ANY SPECIFIC CASE, PLEASE SPECIFY WHEN AND HOW DID YOU RUN INTO PROBLEMS WITH JUDGE'S BEHAVIOUR: _____</p>	
<p>IMPORTANT: WHEN DID THE INCIDENT HAPPEN AND WHEN DID YOU BECOME AWARE OF IT (DD/MM/YY)? _____</p>	
<p>WAS IT RELATED TO YOU PERSONALLY? <input type="checkbox"/> NO <input type="checkbox"/> YES IF YES, HOW CAME YOU HAD BECOME AWARE OF IT? _____</p>	
<p>Do not fill in this section. It is solely reserved to be filled in by SJA's territorial office.</p> <p>Date of receipt: (DD/MM/YY) _____ Docket No.: _____</p> <p>Petition No. _____</p> <p>Received by: <input type="checkbox"/> mail <input type="checkbox"/> personal delivery by the Complainant Date: (DD/MM/YY) _____</p> <p>By: Second name: _____ Signature: _____</p>	

Please describe the case of judicial misconduct: Why do you believe that the judge behaved improperly? *Cases of judicial misconduct may include, e.g., the following: judge's brutal behavior at the proceedings in case; judge's biased and/or prejudiced attitude towards proceedings participants; disclosure of top secret, military secret, commercial secret, official secret or banking secret information by the judge; disclosure by the judge of information offending privacy of individual citizens or other information that may have become known to him/her throughout case consideration in closed judicial session; any other actions of the judge incompatible with his/her status etc.*

If possible, please provide names and/or positions of other individuals related to the incident. If other individuals witnessed the incident without being involved in it, please provide detailed information about them in the "Evidence" section. Please also provide all available documents and other evidence in support to the presented circumstances to facilitate prompt review of the statements.

If in the need for more space to present the above information, please use additional sheets and insert them inside the form.

WHAT EVIDENCE IN SUPPORT OF THE FACTS STATED IN THE PETITION DO YOU HAVE?

WITNESS 1: SECOND NAME: _____ FIRST NAME: _____

ADDRESS: _____ CITY: _____ PHONE NO.: _____

WITNESS 2: SECOND NAME: _____ FIRST NAME: _____

ADDRESS: _____ CITY: _____ PHONE NO.: _____

WITNESS 3: SECOND NAME: _____ FIRST NAME: _____

ADDRESS: _____ CITY: _____ PHONE NO.: _____

PLEASE LIST ALL THE DOCUMENTS OR OTHER EVIDENCE PROVIDED. MAKE COPIES OF THE DOCUMENTS AND ATTACH THEM HERETO. NO ORIGINAL DOCUMENTS, PLEASE! KEEP YOUR ORIGINALS!

DO YOU BELIEVE THAT IN THE CASE DESCRIBED BY YOU THE JUDGE VIOLATED SOME SPECIFIC PIECE OF LEGISLATION AND/OR NORMS OF CONDUCT?

NO YES IF YES, PLEASE ELABORATE: _____

I HEREBY CERTIFY ALL THE INFORMATION PROVIDED IN THIS PETITION FORM TO BE TRUE AND THAT THE INFORMATION ABOUT CIVIL LIABILITY UNDER ARTICLE 277 OF THE CIVIL CODE OF UKRAINE FOR DISSEMINATION OF FALSE STATEMENTS HAS BEEN MADE KNOWN TO ME.

YOU MUST SIGN THIS PETITION FORM! NO PETITION SHALL BE PROCESSED WITHOUT YOUR SIGNATURE!

SIGNATURE OF COMPLAINANT _____ DATE: _____

FOR OFFICIAL USE ONLY

AUTHORIZED REVIEW PUBLIC OFFICIAL: _____

(FIRST, SECOND NAME, PATRONYMIC)

POSITION _____

(PEOPLE'S DEPUTY OF UKRAINE; MINISTER OF JUSTICE OF UKRAINE; CHAIR OF THE SUPREME COURT OF UKRAINE ETC.)

STATEMENTS MADE IN THE JUDICIAL MISCONDUCT PETITION HAVE BEEN REVIEWED FOR THE FOLLOWING :

THE JUDICIAL MISCONDUCT PETITION FORM AND ALL ATTACHED EVIDENCE HAVE BEEN THOROUGHLY REVIEWED.

AT LEAST, ONE OF THE JUDGES REFERRED TO IN THE APPEAL IS THE ACTING JUDGE.

APPLICANT INTERVIEW :

DATE OF INTERVIEW : _____ NAME OF INTERVIEW OFFICER : _____

RESULTS : _____

WITNESS INTERVIEW :

WITNESS 1: SECOND NAME: _____ FIRST NAME: _____

DATE OF INTERVIEW: _____ NAME OF INTERVIEW OFFICER: _____

RESULTS: _____

WITNESS 2: SECOND NAME: _____ FIRST NAME: _____

DATE OF INTERVIEW: _____ NAME OF INTERVIEW OFFICER: _____

RESULTS: _____

WITNESS 3: SECOND NAME: _____ FIRST NAME: _____

DATE OF INTERVIEW: _____ NAME OF INTERVIEW OFFICER: _____

RESULTS: _____

THE BELOW EVIDENCE AND ADDITIONAL DOCUMENTS HAVE BEEN ADDITIONALLY OBTAINED :

1. _____ 4. _____

2. _____ 5. _____

3. _____ 6. _____

After a careful review of the allegations and evidence of this petition, and after interviewing all the additional witnesses and consideration of any additional evidence related to this petition, please describe the merits of this case and determine if the allegations should be forwarded to the appropriate Regional Qualifications Commission for initiation of formal disciplinary proceedings. If necessary, use additional pages.

AUTHORIZED REVIEW DECISION

HAVING REVIEWED THE ALLEGATIONS AND ALL THE ATTACHED EVIDENCE REFERRED TO IN THE JUDICIAL MISCONDUCT PETITION FILED BY _____ AND CARRIED OUT INTERVIEWS WITH THE COMPLAINANT AND WITNESSED, I HEREBY DECIDE TO TRANSMIT ALL MATERIALS TO THE JUDICIAL QUALIFICATION COMMISSION OF KYIV APPELLATE CIRCULE FOR:

INITIATE FORMAL DISCIPLINARY PROCEEDINGS AGAINST THE JUDGE _____

(SECOND NAME, FIRST NAME, PATRONYMIC OF THE JUDGE; COURT NAME)

DISMISS THE INITIATION OF DISCIPLINARY PROCEEDINGS AGAINST THE JUDGE/CLOSE THE JUDICIAL MISCONDUCT PETITION

SIGNATURE OF AUTHORIZED OFFICIAL: _____ DATE: _____

FOR OFFICIAL USE ONLY

AUTHORIZED PETITION REVIEW OFFICER: _____

(FIRST, SECOND NAME, PATRONYMIC)

POSITION _____

(PEOPLE'S DEPUTY OF UKRAINE; MINISTER OF JUSTICE OF UKRAINE; CHAIR OF THE SUPREME COURT OF UKRAINE ETC.)

THIS JUDICIAL MISCONDUCT PETITION HAS BEEN TRANSMITTED BY AUTHORISED PUBLIC OFFICIAL

to Territorial SJA Office _____

at _____ for:

Further transfer to Judicial Qualification Commission for General Jurisdiction Judges for initiation of formal disciplinary proceedings;

Filing a dismissal of the judicial misconduct Petition Form.

I HEREBY CERTIFY THIS PETITION FORM AND ALL ANNEXES TO IT TO MAKE THE COMPLETE STATEMENT OF FACTS TO THE ABOVE EFFECT RECEIVED BY ME AS OF (DATE): _____

I FURTHER CERTIFY THAT I DO NOT HAVE ANY ADDITIONAL EVIDENCE IN MY POSSESSION AND THAT THIS PETITION FORM AND ANNEXES TO IT HAVE NOT BEEN ALTERED IN ANY WAY BY EITHER ME OR ON MY REQUEST.

SIGNATURE OF AUTHORISED PUBLIC OFFICIAL: _____ DATE: (DD/MM/YY) _____

JUDICIAL MISCONDUCT PETITION FILING GUIDELINES

If you have reasons to believe you have witnessed a judicial misconduct, please fill in this Petition Form and mail (forward) together with any annexes (evidence) for prompt response to the territorial State Judicial Administration of Ukraine of Kyiv Oblast of the following address:

16 Kominterna St., 01032, Kyiv
Chairperson's Name: Guennadiy Ivanovich Trihyb

You can also mail your Petition or deliver it in person to the following authorized officials at your discretion:

People's deputies of Ukraine
5 Hrushevskoho St., 01008 Kyiv

Obmudsperson
21/8 Institutska St., 01008 Kyiv

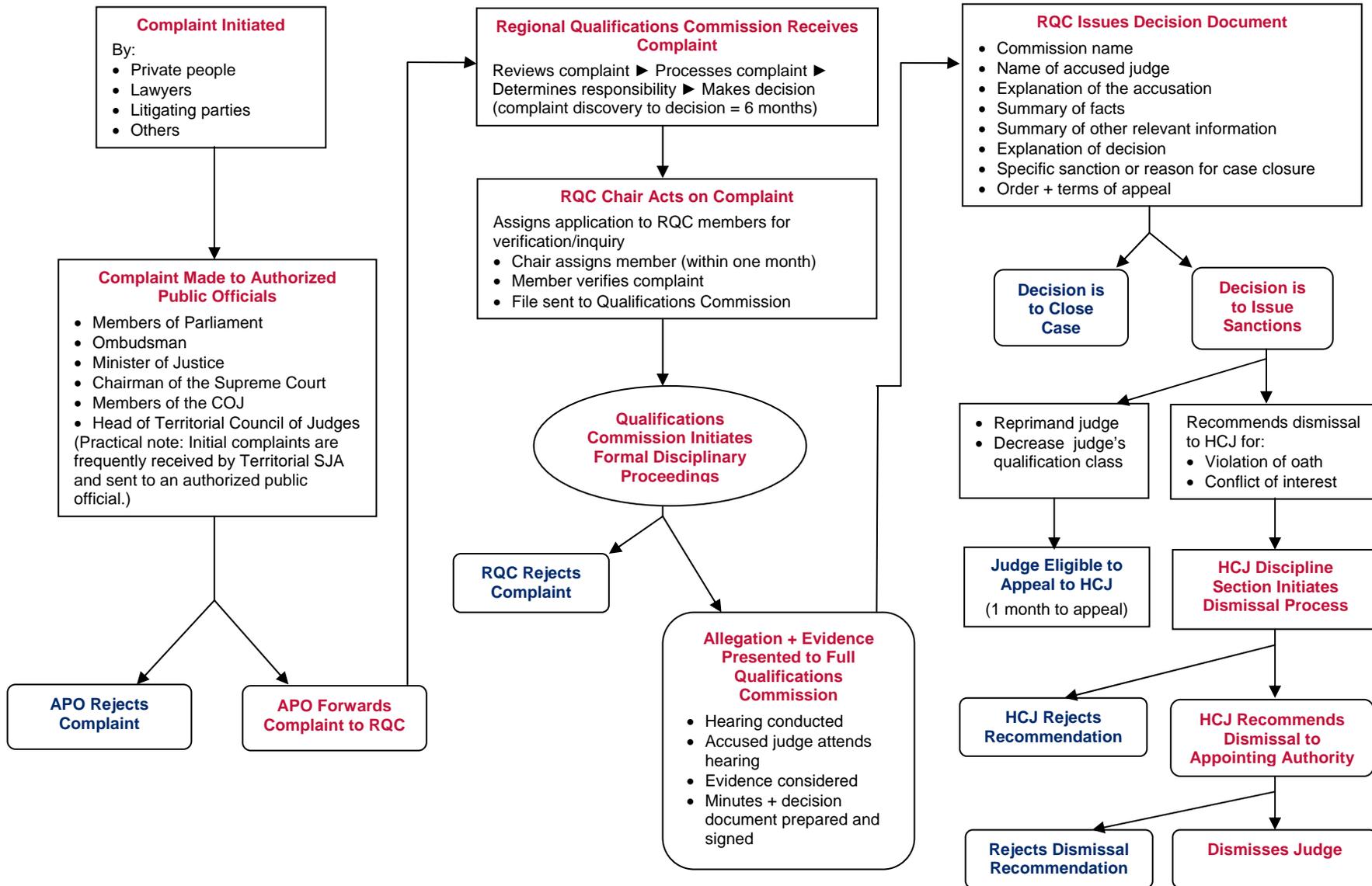
Chair of the Supreme Court of Ukraine
4 P. Otyka St., 01024 Kyiv

Minister of Justice of Ukraine
13 Horodetskoho St., 01001 Kyiv

Members of the Council of Judges of Ukraine
18/5 Lypska St., 01021 Kyiv

The Council of Judges of Ukraine wishes to thank you for your cooperation on improving work of judges and courts in Ukraine.

ANNEX C: DISCIPLINARY PROCESS FOR JUDGES OF GENERAL JURISDICTION



U.S. Agency for International Development

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