



COMBATING CORRUPTION AND STRENGTHENING RULE OF LAW IN UKRAINE

ASSESSMENT OF JUDICIAL SELECTION AND DISCIPLINARY PROCESSES

**A Task Order under the Rule of Law IQC
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Assessment of Judicial Selection and Disciplinary Processes

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I. BACKGROUND

Ukraine is a country of approximately forty-six million people located in Eastern Europe. It is a republic with twenty-four provinces (oblasts), one autonomous republic (Crimea) and two municipalities with oblast status (Kyiv, Sevastopol). Its capital is Kyiv (Kyiv). Ukraine last gained its independence in 1991 with the collapse of the Soviet Union. From the time of independence until 2004, the country had a “hybrid” form of government that included both authoritarian and democratic elements. In 2004, the Supreme Court overturned the results of a presidential election following what has been described as the “Orange Revolution,” a largely peaceful mass protest of the 2004 election results. A reformist president was elected in the subsequent election. The resulting governments since then have achieved some limited reforms, but much remains to be done, including enactment of major judicial reform legislation.

Ukraine’s legal framework is anchored in its post-Soviet Constitution adopted on June 28, 1996. The Constitution provides for the separation of powers among the executive, legislative and judicial branches of the government, and guarantees the independence of the judiciary. It establishes a republican form of government with elements of both presidential and parliamentary models. Constitutional amendments in late 2004 moved the structure more toward a parliamentary system, but had no direct impact on the judiciary.¹

The country’s legal system is grounded in the civil law tradition. While judicial precedent is not formally recognized, observers have noted some quasi-precedential practices. New codes have been adopted in recent years to further define the legal infrastructure. Included among these are a Criminal Code, a Civil Code, Commercial Code, Civil Procedure Code, and Code of Administrative Adjudication. However, procedural codes that govern criminal and commercial practice are largely amended versions of old laws that do not fully meet expected standards. The American Bar Association has noted that “[g]enerally, the legal framework of Ukraine is in a state of flux, and constant legal changes result in inconsistencies and contradictions between the various laws that are adopted.”²

The courts of general jurisdiction of Ukraine are headed by the Supreme Court of Ukraine with ultimate appellate jurisdiction for civil and criminal cases and extraordinary appellate jurisdiction for commercial and administrative matters. The Supreme Court is also charged with ensuring uniform application of the laws by courts of general jurisdiction. There are over ninety sitting Supreme Court justices assigned to four chambers (civil, criminal, commercial, administrative) and a military panel. The Supreme Court does not have jurisdiction over Constitutional issues and interpretation. That jurisdiction rests with the Constitutional Court of Ukraine, a body of eighteen justices.

The courts in Ukraine are organized according to territoriality and specialization, including general courts (courts of general jurisdiction), specialized commercial and administrative courts and military courts. The local general courts are first instance courts for all civil and most criminal and administrative offense cases. There are over 600 local general courts and about 4000 local general court judges. In each oblast, there are appellate general courts with appellate jurisdiction over local general court decisions and first instance criminal jurisdiction for the most serious crimes. The 2002 Law on the Judiciary established a Court of Appeals of Ukraine and a Court of Cassation of Ukraine, but these courts are not as yet operational. In addition, there are specialized administrative and commercial courts, organized with local courts, regional appellate courts and the High Administrative Court and High Commercial Court for further appellate

¹ Judicial Reform Index for Ukraine, Vol. II, ABA/CEELI, December 2005 (hereinafter “JRI-Uk”); The World Factbook, Ukraine, CIA, August 2007.

² JRI-Uk at p 6. This resource also includes a brief history of the judiciary at pp 6 – 7.

review. There are approximately 1000 judges in the commercial court system, while many judges in the more recently operational administrative court system remain to be appointed.³

The judiciary in Ukraine is administered by an array of institutions, each of which has seemingly distinct functions, but which result in considerable overlap. The Constitution mandates judicial self-governance bodies that at present are the Congress of Judges of Ukraine and its executive arm, the Council of Judges of Ukraine. The Congress and Council are empowered to issue decisions that are mandatory for all judges in the country.

Of more administrative significance on a day-to-day basis, the **State Judicial Administration (SJA)** acts as a centralized administrative institution for the judiciary. While there is some confusion over whether or not the SJA is an executive or quasi-independent entity, it is responsible for the organizational, financial management, technical and logistical support required for meaningful administration of justice in Ukraine and works closely with the Council of Judges in meeting administration of justice objectives. It is headquartered in Kyiv (SJA Central Office) and has 27 territorial offices.

The **SJA** plays a critical role in both the judicial selection and judicial disciplinary processes. The other two institutions that are critical to the judicial selection and judicial disciplinary processes are the **High Council of Justice (HCJ)** and the **High Qualification Commission of Judges (HQC) and its thirteen regional and specialized units**. It is the functioning of these three institutions to meet judicial selection and judicial disciplinary objectives that is at the core of this Assessment Report and Recommendations.⁴

II. PROJECT DESCRIPTION

There are presently two related rule of law projects administered by Chemonics International Inc. in Ukraine. The first is the Ukraine Rule of Law Project (UROL) with the overall goals of increasing transparency and accountability in the Judiciary and adoption of policy and legislative reforms in rule of law and anti-corruption. The second is the Millennium Challenge Corporation Threshold Contract (MCC) designed to assist the Government of Ukraine (GOU) in combating corruption and strengthening the rule of law. While there is obvious conceptual overlap, it appears that tasks to meet specific objectives are administratively divided under one Chemonics overall chief of party with a deputy chief of party for each project. Internal coordination seems to avoid conflict and promote cooperative work.

The MCC contract in Component 2.2 is directed at improving the judicial selection and disciplinary processes. The assessment that is the subject of this Report is intended to assist Chemonics and GOU counterparts in meeting this overall objective. It is part of a larger effort to provide technical assistance to GOU counterparts targeted at developing improved (reformed), transparent and accountable judicial selection and disciplinary processes. Assessment results and subsequent recommendations may also be of use to the UROL Project in meeting its goals.

An important focus of both the UROL and MCC projects in Ukraine is the integration of information technology (IT) applications into the judicial selection and judicial disciplinary processes to improve the institutional administrative capacity of counterpart institutions. To this end, the MCC project encompasses and funds specific activities related to improved functioning of the judicial disciplinary process, including a large IT integration component. The recently-renewed UROL project includes tasks related to both the judicial selection and disciplinary

³ JRI-Uk at pp 7 – 9.

⁴ See detailed discussion of these institutions in Report sections that follow.

processes, with funding for IT integration elements specifically targeted at the judicial selection process.

III. ASSESSMENT OBJECTIVE, METHODOLOGY, AND LIMITATIONS

Objective

The specific objective of this Assessment is to try to define the judicial selection and disciplinary processes as they presently function and develop a set of recommendations aimed at making each process function better. Then, based on the recommendations, provide an outline of a project design to improve the effectiveness and efficiency of each process using project and counterpart resources.

Methodology

The assessment was designed to include four basic components:

- initial research
- two fieldwork visits to Ukraine
- preparation of materials based on results of initial visit, and
- preparation of Assessment Report and Recommendations, including a Project Design Outline.

To complete the assessment, develop the recommendations, and outline project initiatives, the consultant made use of researched materials, materials provided by the project staff, interviews with counterpart personnel, and extensive discussions with project staff. Initially, there was a search of relevant material that was publicly available, followed by specific requests for information from project staff. Based on the information developed and provided and consultations with project staff, an initial fieldwork visit was planned and an agenda developed. The initial visit lasted five days (August 13 to 17, 2007) and resulted in a series of interviews that were originally planned plus additional interviews and meetings that were scheduled during the course of the visit.

Following the initial visit, the consultant prepared a memorandum outlining initial results and, more importantly, presenting a list of follow-up tasks that would further develop the results of the initial visit and lay the foundation for the second visit scheduled in late September. The follow-up tasks were reviewed with project staff as part of the initial visit exit briefing, and project management determined priorities and specific assignments. The Memorandum was followed by a format/protocol document for completing the follow-up tasks. In the period between the initial visit and the second visit, project staff completed a significant number of the specific tasks. Most of the remaining tasks were completed as part of the second visit fieldwork and immediately following the second visit.

The second visit took place from September 24 to 29, 2007. An agenda was prepared in collaboration with project staff, including a significant block of time for internal discussions and review of documents and materials. Also included was a roundtable discussion with counterpart representatives to brief them on assessment progress and initial results and recommendations. Finally, there were further internal consultations to provide initial analysis and discuss potential findings and recommendations.

Following the second visit, the consultant prepared a draft of this Assessment Report and Recommendations that included specific recommendations for project initiatives. This draft

Report and Recommendations was submitted to project management and staff for their review and comment. Based on that review and comment and some additional staff fieldwork, this final Assessment Report and Recommendations was prepared, including development of a Project Design Outline (See Appendix A) based on the assessment recommendations.

This consultancy was designed to provide a practical assessment of the existing judicial selection and disciplinary processes. To meet assessment objectives, fieldwork included extensive interviews in Kyiv, a counterpart roundtable, and a defined set of tasks to be completed by the consultant and project staff. In addition to this Report, interim work product was developed by project staff working with this consultant and an outside IT consultant. (See Appendix B) The Tables that connect each institution and its specific process activities to the legal framework are particularly useful guides to each process and its present legal and regulatory foundation. (See Appendices C, D, and E) In addition, a graphic flow chart was prepared for each process. (See Appendices F, G, and H)

Limitations

1. Legal Framework

This assessment has focused on defining the judicial selection and disciplinary processes as they are presently functioning for the courts of general jurisdiction. This includes a basic understanding of the legal framework that underlies each process. That having been said, there has been much analysis in other documents regarding the need for fundamental legal reform to address some of the most pressing systemic needs. Further, there has been considerable discussion, both inside and outside the project, about the likelihood that fundamental legal reform can or will take place in the present political environment. But with or without legal reform, there are significant elements of each process that are very susceptible to administrative reforms.

The assessment that underlies this Report focused primarily on judicial selection and disciplinary procedures and practices that pertain to courts of general jurisdiction. While passing reference is made to administrative, commercial and military courts (specialized courts) and the procedures and practices have many similarities, this Report does not cover those entities. There is also no detailed assessment of the procedures and practices that pertain to selection and discipline of Supreme Court justices and judges of the Constitutional Court. It bears noting, however, that many of the recommendations are applicable to improved effectiveness and efficiency in administering the selection and disciplinary process for specialized courts and the highest national courts.

For purposes of this assessment, it is assumed that the legal framework as presently constituted will continue to be applicable for the foreseeable future. However, in developing recommendations for reform of the practical elements of the processes, there has been an attempt to ensure that recommended procedural reforms will be sustainable with or without reform of the legal framework. Of course, for the recommended procedural reforms to be sustainable, reform of the legal framework must leave intact the institutions presently responsible for administering the judicial selection and disciplinary processes.

2. Political

Political considerations are always an unpredictable element in assessing public institutions and recommending sustainable institutional reform. This is surely so in the present unsettled political environment in Ukraine where major reform efforts seem to be largely on hold pending political developments.

3. Other Institutions

While this assessment and the resulting recommendations focus on the three institutions most critical to the judicial selection and disciplinary processes, other public institutions inevitably impact on the capacity of the GOU to meet its initial obligations in realizing project objectives and in GOU capacity to sustain initial reforms developed with project resources. Most obvious is the impact of those institutions responsible for providing GOU budget resources and allocating those resources once provided.

Of perhaps equal importance to budgetary concerns is the overall GOU commitment to establishing and implementing judicial selection and disciplinary reforms and development of the policies and practices that will promote judicial reform. The Ministry of Justice, the Congress of Judges and Council of Judges, and the National Commission for Strengthening Democracy and Establishing the Rule of Law are all institutional players in this process. However, the present assessment does not evaluate their policy role, except to the extent that present policy and practice directly impact on the judicial selection and disciplinary processes.

4. Resources

An effort has been made to assess existing human and material resources, including IT resources, presently available to administer the judicial selection and disciplinary processes in the three target institutions. In developing recommendations and in producing the project design outline, available MCC and UROL project resources have been taken into consideration. Inevitably both counterpart and project resource limitations will require an incremental approach to suggested reforms and will have a significant impact on reform sustainability. To better understand the extent to which counterpart contributions can play a meaningful role in the reform process, reference should be made to existing and projected institutional budget figures, not available for this assessment.

IV. COUNTERPART INSTITUTIONS

High Council of Justice (HCJ)

The HCJ is a constitutionally mandated institution⁵ with a very significant role in the judicial selection process and a lesser role in the judicial disciplinary processes. Its composition, appointment procedures, organization, and specific responsibilities are contained in the Law on the High Council of Justice (1998). The HCJ is composed of 20 members appointed by a cross-section of public and quasi-public institutions for a term of six years. The Chairman of the Supreme Court, the Minister of Justice and the Procurator General are ex-officio members. Only a limited number of its members are judges or other judicial personnel. It has its own Secretariat, the structure and staff of which is to be approved by the HCJ itself. Present staff numbers 105, all of whom are located at the HCJ offices in Kyiv.

In addition to the law itself, the HCJ has a written set of internal regulations adopted in February 2006. These regulations cover organizational issues and procedural issues, including matters directly related to the selection and dismissal of judges.⁶

High Qualifications Commission (HQC)

⁵ Constitution, Art 31; Law on the High Council of Justice.

⁶ Only the index of the regulations is available in English to date. These regulations should be carefully examined as procedures and practices are modified to meet institutional reform objectives relating to the judicial selection and judicial disciplinary processes.

The HQC is the highest of the qualifications commissions in Ukraine. As a targeted project counterpart, it is important to note that it actually functions as but one institutional component of the fourteen permanent and specialized qualification commissions, ten of which are designated as Regional Qualification Commissions located at appellate circuit centers. It has some additional authority outlined in the Law on the Judiciary that established the HQC and the other qualification commissions in 2002. While each qualification commission has designated responsibilities and authority, all are entities with no formal offices and no staff. They are fully dependent on the SJA for administrative and logistical support.

The closest thing to an ordered set of internal regulations that controls the qualifications commission elements of the judicial selection process is the Resolution of the Council of Judges of Ukraine No. 35 (January 27, 2006), “Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to Other Courts, and Dismissal of Judges” (hereinafter “Guidelines”). Unfortunately, the document itself is denominated as “Recommended Guidelines,” leaving open the question of their force of law. At the least, the HQC and Regional Qualification Commissions use them as internal regulations to define their role in the selection process and some aspects of the disciplinary process, and to guide both commission members and SJA personnel in meeting process requirements.⁷ The Law on the Judiciary also specifically grants qualifications commissions the authority to obtain necessary information from public and private institutions and private citizens.⁸

The qualifications commissions are the institutional cornerstone of both the judicial selection and judicial disciplinary processes. That they have been legislatively created⁹ but operate without fixed offices and appropriate support personnel is a critical weakness that has a broad impact on the efficiency and effectiveness of both processes. Members of the HQC and the Regional Qualifications Commissions are appointed by a cross-section of public institutions and serve voluntarily for a term of 3 years. The HQC has thirteen members and the Regional Commissions have 11 members, among whom a simple majority on each commission is judges.

State Judicial Administration (SJA)

The SJA has a broad role in overall administration of justice in the Ukraine. It operates to provide the administrative and logistical support to the elements of the judiciary. Of most relevance, SJA personnel operate as the support staff that administers both the judicial selection and disciplinary processes. In this role, it functions to handle and organize paper flow and maintain whatever databases (manual and electronic) are routinely maintained. To meet its overall responsibilities, it has a staff of 130 in the headquarters office (Central Office) in Kyiv and over 500 in its 27 territorial offices. In each of the 27 territorial offices, 1 – 2 individuals are designated to provide staff support to the Regional Qualifications Commissions. There is a Department of Organizational Support for the qualifications commissions in the Central Office that functions as a Secretariat for the HQC. The SJA Chairman is appointed and removed by the President based on a recommendation of the Prime Minister and with the consent of the Council of Judges.

Many of the practices and procedures that require increased efficiency and effectiveness within the purview of the present projects are SJA practices and procedures. Fieldwork visits to SJA

⁷ In addition, there is a very recently adopted “model regulation” similar to the HCJ regulations that deals primarily with internal organizational issues. As with the HCJ regulations, the “model regulation” should be carefully examined as procedures and practices are modified to meet institutional reform objectives relating to the judicial selection and judicial disciplinary processes.

⁸ Law on the Judiciary, Art 77, Sec 2.

⁹ Law on the Judiciary, Art 73-76.

offices in Kyiv and discussions with SJA personnel suggest a willingness to work with project personnel and resources to improve present practices and procedures utilizing existing personnel.

V. JUDICIAL SELECTION PROCESS

Description

First Appointment

The judicial selection process is two- tiered and can result in a lifetime (until age 65) appointment. The initial or “first time” appointment of judges follows a procedure resulting in a five-year appointment by the President of Ukraine. At the completion of the initial appointment, a judge is eligible to apply for appointment for an “unlimited period of time.” This second appointment is theoretically initiated by the Chairman of the Supreme Court for courts of general jurisdiction and requires an “election” by the Parliament (Verkhovna Rada) upon the recommendation of the High Qualifications Commission.

The initial selection process begins when an individual seeking a judicial position learns of a judicial vacancy of interest or when an individual decides to attempt to pre-qualify for judicial selection in the absence of a specific vacancy. The actual means by which potential candidates learn of a pending vacancy is varied and unclear, since there is no required public announcement. It appears that at least some of those who want to know find out through contact with judiciary officials with some role in the selection process. Others apparently learn of vacancies by closely following changes in the status of sitting judges, and still others learn by accident. Some potential candidates for judicial appointment apply for entry into the selection process without reference to a specific vacancy.

[It bears noting in this context that the concept of judicial vacancy is a bit misleading, since there are a significant number of unfilled vacancies all the time, only some of which are authorized to be filled. It is those authorized to be filled that actually are the focus of the judicial selection process, so use of the term “vacancy” in this Report refers specifically to those authorized to be filled. For the most part, funded vacancies that are created by transfer or promotion of a sitting judge, dismissal and retirement are reported to be routinely filled, giving those with an interest in filling judicial vacancies routine sources of vacancy information in the absence of public announcement.]

Once a vacancy becomes known to potential candidates, there seems to be an unwritten but widely practiced effort on the part of potential candidates to obtain informal encouragement from members of the applicable Regional Qualifications Commission, sitting judges, and others of potential influence. This appears to have a significant impact on whether or not a potential candidate will follow through on the formal aspects of the process. While there is some disagreement among those interviewed in the course of this assessment about the extent to which inside influence is key to judicial selection, few suggest that such influence does not play an important role.

The first formal step in the judicial selection process is initiated by a potential candidate with the filing of an “application” requesting the Chairman of the Regional Qualifications Commission for the applicable Appellate District to recommend the candidate to fill a specific designated judicial vacancy. This document is generally accompanied by another “application” consenting to the verification of information provided as part of the application process, as well as consent to collection and use of necessary confidential information. As an alternative and in the absence of

a specific vacancy, a candidate can apply to the Chair of the Regional Qualifications Commission for qualification testing and an opinion of overall qualification for judicial appointment.¹⁰

Submission of the application of the candidate initiates the formal selection process and begins a period of time (15 days¹¹) during which the candidate must submit the initial application materials to the Territorial SJA. (See Decree of the President of Ukraine No. 697/2004, June 30, 2004, as amended [hereinafter Presidential Decree], which details, among other things, the documents that must be submitted throughout the application process.) The Territorial SJA has thirty-five days from the submission of the candidate's application to complete the processing of the application and forward the application and all required materials to the Regional Qualifications Commission.¹² Articles 7, 8, and 13 of the Presidential Decree contain a list of required documents and verifications which must be completed by the Territorial SJA at various stages throughout the application procedure.¹³ It is somewhat unclear exactly what has to be submitted when, but the list of materials is clear and is eventually verified as complete by the Central SJA Office before the qualifications commission recommendation is forwarded to the Chairman of the Supreme Court.

In the course of submitting the application, the candidate is given a topic for what the Presidential Decree specifies as "a library research paper on jurisprudence issues" ("referat"). The candidate gets the topic from a list of topics prepared and periodically updated by the Chair of each of the Regional Qualifications Commissions.¹⁴ This written paper is submitted with the other materials to the Regional Qualifications Commission for review and is considered to be the written portion of the "qualification examination." A written critique of this paper is required as part of the file to be forwarded from the Regional Qualifications Commission with their recommendation.

To complete the Regional Qualifications Commission part of the selection process, each candidate who has completed the application process and completed the written paper is required to appear in person for the oral portion of the qualification examination. This is conducted as an interview before the full Regional Qualifications Commission, and provides each commission member the opportunity to question the candidate about his/her knowledge of relevant legal principles and practice and whatever other issues may arise in the course of the interview. (Re the qualification examination, see further discussion below in the Selection Process Analysis Section.)

When all of the candidates who have submitted completed applications have been interviewed, the full Regional Qualifications Commission completes its review of the candidates' qualifications and test results and determines which of the candidates are qualified for a general jurisdiction judicial position. From this group, the Regional Qualifications Commission

¹⁰ This procedure amounts to a rudimentary pre-qualification system. The procedure is approved as part of Resolution No. 35 of the Council of Judges (January 27, 2006) that provides "recommended guidelines" for the "Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges." It could form the initial core of a true pre-qualification regimen that eventually could include the integration of standardized testing and specific fitness criteria.

¹¹ Decree of the President of Ukraine No. 697/2004, June 30, 2004, as amended, (hereinafter Presidential Decree), Art 7. Also in accordance with the recommended guidelines for the "Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges," Council of Judges Resolution No. 35, January 27, 2006, Sec 1.3.5 (hereinafter "Guidelines").

¹² Presidential Decree, Art 10.

¹³ It bears noting that the Guidelines have some variation in the list of required documents, but the differences are minimal, and SJA personnel make reference to the Presidential Decree as definitive. The Guidelines also contain significantly more detail with regard to the specifications of the documents themselves than does the Presidential Decree. See Guidelines Sec 1.5. There is also a list of documents prepared by the SJA that we were told is given to each applicant by the Territorial SJA office.

¹⁴ There appear to be no standards that control or guide this procedure in general or from one qualifications commission to another. The same can be said for the oral "examination" conducted later in the selection process. See also, JRI-Uk at pp 16-17.

determines which of the candidates to recommend for the specific existing vacancy. Once this determination is made, a formal recommendation decision is prepared and forwarded along with the entire candidate file to the SJA Territorial Office for further processing.

Those candidates deemed qualified for a general jurisdiction judicial position, but not recommended for the specific vacancy are entered by the Territorial SJA on the “staff reserve list.”¹⁵ This list also contains the names of those individuals who applied to the Chair of the Regional Qualifications Commission for qualification testing and an opinion of overall qualification for judicial appointment in the absence of a specific vacancy and were deemed qualified following the testing and interview process. A candidate remains on the reserve list for three years, unless he/she withdraws from the list earlier.¹⁶ While the reserve list seems like a routine procedure for creating a pool of pre-qualified candidates for use when there is a specific vacancy, it does not seem to work that way. Different individuals interviewed during the field work had differing views on the significance of the reserve list, but no one suggested that it served as a true pre-qualification process. At most, it serves to give candidates on the list a head start in completing the application process when there is a specific vacancy.¹⁷ (Re the reserve list, see further discussion below in Selection Process Analysis.)

For the candidate selected by the Regional Qualifications Commission for recommendation, the selection process continues. Following preparation of the written recommendation decision by the Regional Qualifications Commission, the Commission forwards the recommendation and full application file of the candidate to the SJA Territorial Office for completion of the file (administrative processing) and transmittal to the SJA Central Office. The Territorial SJA has three days to accomplish this processing.¹⁸ The Central Office of the SJA is required to ensure that the file is complete and correct (verify the correctness) and take whatever “corrective measures” are necessary to address file shortcomings.¹⁹ Within 10 days of receipt of the recommendation and file, the Central Office of the SJA is to transmit the file, recommendation decision, and cover letter to the Chairman of the Supreme Court.

The Chairman of the Supreme Court then has 10 days to review the file and submit the petition for appointment to the High Council of Justice.²⁰ Neither the Presidential Decree nor the Guidelines offers any guidance as to either the purpose of this step in the selection process or the procedure that is supposed to be followed. Further, there is nothing said about what happens if the Chairman of the Supreme Court decides not to submit the petition to the H CJ in a timely fashion or not at all. From the fieldwork, this seems to be little more than a protocol step, offering the Chairman of the Supreme Court a purely symbolic opportunity to participate in the initial judicial selection process.²¹

¹⁵ Guidelines, Sec 1.4.2.

¹⁶ Guidelines, Sec 1.4.2.

¹⁷ According to the Guidelines, Sec 1.4.2, a candidate deemed unqualified for a judgeship, must wait one year to apply again and take the qualification examination again. A candidate who fails to pass the qualification exam a second time must wait two years before applying again. As with the reserve list, successful examination results are valid for three years.

¹⁸ Presidential Decree, Art 12, including a list of file contents. The Guidelines, Sec 1.6, provides a detailed list outlining the content of the file and additional material to be submitted by the candidate. Unfortunately, the lists are not the same.

¹⁹ Presidential Decree, Art 13. As with many of the steps in the process, little guidance exists as to what the Central Office of the SJA is actually supposed to do other than look at the file contents and again verify that everything is in order. Corrective measures are not spelled out, although Guidelines Sec 1.6.7 touches on the subject.

²⁰ Presidential Decree, Art 13-1.

²¹ If this is actually nothing more than a protocol step, some limited project technical assistance to the Supreme Court to develop a quick administrative procedure to manage this step could at least reduce the time required.

The next step in the initial judicial selection process – review of the recommended candidate by the HCJ - is important, can (and sometimes does) result in rejection of the candidate, and has no specified administrative timeframe. The HCJ is empowered to receive the recommendation of the qualifications commissions, review the recommendation and relevant materials and then submit an appointment petition to the President of Ukraine for the formal initial appointment of a judge.²² The Law on the High Council of Justice lists the minimum documents that are to be in the file for its review, all of which seem to be covered by earlier lists used in developing the candidate's file in the first place.²³ The law then provides limited detail as to the procedure that is to follow receipt of the recommendation and file, although there are some internal regulations that seem to guide aspects of the procedure.

As described during the fieldwork, the HCJ Judicial Selection Section²⁴ does a preliminary review of the recommendation and file (and may include a candidate interview). A member of the Section prepares and presents a report on the candidate to the full HCJ, including a recommendation from the Judicial Selection Section. The HCJ then formally interviews the candidate and reviews the candidate's qualifications. The full HCJ considers the candidate's file with or without a positive recommendation from the Selection Section.²⁵ At the conclusion of this procedure, an open vote is taken by the full HCJ with a majority of the constitutional membership of the HCJ required for approval of the candidate.²⁶ If the qualifications recommendation is approved, the HCJ prepares an appointment petition for the signature of the Chairman of the HCJ. When signed, the HCJ appointment petition is transmitted to the President of Ukraine through the Presidential Secretariat. If the candidate is rejected, his file is returned to the Territorial Qualifications Commission.

The Presidential Decree²⁷ details the procedure to be followed by the Presidential Secretariat upon receipt of the HCJ appointment petition and the file. Overall, the Presidential Secretariat is charged with a preliminary review of the appointment petition, a review that includes a procedure for a "special verification of the data submitted by nominees." While the substance of the special verification is not fully specified, it is to be conducted with the participation of the State Tax Administration, the Ministry of Internal Affairs and the Security Service of Ukraine, and is intended to authenticate previously submitted data, authenticity of income information previously provided, and ensure that there are no outstanding complaints against the candidate that would violate judiciary requirements or indicate corrupt activities. The candidate must be notified of the results of the special verification and be given the opportunity to request clarifications and provide explanations orally or in writing. The special verification is supposed to be completed in one month.

If the preliminary review and special verification results do not disqualify the candidate and the file is complete, a draft appointment decree is prepared for the signature of the President of Ukraine. The judicial selection process for first appointment is completed when the President signs the formal appointment decree naming the new judge to fill the existing vacancy. Of practical importance, there is no specified timeframe for preparation of the formal appointment

²² Law on the High Council of Justice, Part IV, Chapter 1, Art 29.

²³ This list is, however, the only place requiring a written review of the referat, although that review seems to be a part of accepted qualifications commission practice.

²⁴ There is an HCJ Selection Section and an HCJ Disciplinary Section. Law on the High Council of Justice, Part III, Chapter 1, Art 19.

²⁵ This procedure is presently carried out with hard copies of all documents prepared for each member of the HCJ. The HCJ has expressed a desire to automate this process.

²⁶ Law on the High Council of Justice, Part IV, Chapter 1, Art 29.

²⁷ Presidential Decree, Arts 15, 15-1, 15-2.

decree and its signature by the President. This can, and apparently does, create unnecessary delays at the conclusion of the already lengthy initial appointment process.²⁸

Lifetime Appointment

The initial appointment of general jurisdiction judges is for a fixed term of five years, at the conclusion of which the judge is eligible to apply for a lifetime appointment by the Parliament.²⁹ The procedure fortunately is not quite as complex as that for the first time appointment, although elements of the procedure require detailed preparation of supporting materials.

There are two significant institutional differences – the lifetime appointment is made by the Parliament (Verkhovna Rada), not the President, and there is no institutional involvement of the HCJ in the process.³⁰ Many of the details of the procedure are outlined in Section 2 of the Guidelines that includes a requirement that Territorial SJA Offices and specialized courts prepare a list by August of every year of all of the judges whose five-year initial appointment will expire in the upcoming year. This list is to be presented to the SJA Human Resources Division that is then charged with preparing an annual Work Plan on Certification of Judges by the HQC.³¹ This list and Work Plan signal the administrative commencement of the lifetime appointment process each year.

For each candidate judge, the process³² begins with a notice from the Territorial SJA that the judge must decide whether or not to apply for a lifetime appointment and prepare the necessary documents. The candidate judge is then required to apply to the Territorial SJA at least 5 months before expiration of his/her initial appointment. The required documentation for general jurisdiction judges is then to be prepared and executed by the Territorial SJA within 30 days of receipt of the application. Guidelines Sec 2.3.4 contains a list of the materials that must be in each candidate judge's file, most items of which seem to be updates of materials submitted for the initial appointment. Territorial SJA work concludes with preparation of the candidate judge's file and verification of its content.³³

In addition to file preparation, the Territorial SJA may verify any information received from citizens³⁴ in include that material in the file. It is further noted in the Guidelines Sec 2.3.6 that materials from judicial sources, qualification commissions and others shall be provided to Territorial SJA Offices, as necessary, to “compile a high-quality and comprehensive package of documents....”³⁵

²⁸ See JRI-Uk at p 17.

²⁹ The term “appointment for an unlimited period of time” is frequently used in translations. Neither term is completely correct, as there is a mandatory judicial retirement age of 65.

³⁰ Law on the Status of Judges, Art 8, Sec 8; Law on the Judiciary, Art 60, Sec 4; Law on the Procedure for Electing and Dismissing a Professional Judge by the Verhovna Rada of Ukraine. See also Guidelines, Sec 2.

³¹ The Guidelines contain more detail about the Work Plan and its use. Project personnel should review in detail the actual development and utilization of the Work Plan, as it represents the type of administrative planning and programming that should be encouraged throughout the judicial selection process.

³² The Guidelines, Sec 2.3, details the procedure for preparing and executing documents related to lifetime appointment.

³³ The Guidelines in Sec 2.4 contain a different procedure for the lifetime appointment of judges who have completed their initial appointment, but are not sitting as judges when they apply for lifetime appointment. This procedure includes an examination requirement.

³⁴ The Territorial SJA apparently may publish notice of the application for lifetime appointment in the mass media, but the Central SJA is required to do so. Presumably this notice is to give the public the opportunity to comment with reference to the judge's character and performance as a judge during his/her initial appointment. See Guidelines Sec 2.3.4 listing among necessary documents a proof of announcement in the local media. It is unclear what happens to any commentary, beyond the note in Guidelines Sec 2.3.5 about verification of citizens' information noted above.

³⁵ The Guidelines suggest a comprehensive application and information development procedure well suited to meaningful evaluation of candidates for lifetime judicial appointment. This assessment did not test whether or not

Guidelines Sec 2.6 details the requirements for execution of the documents required for application for a lifetime appointment. The required documents outlined in this section are extensive and include a reference for the candidate judge from the chairman of the court where the judge is employed and a quality and performance report signed by the chairman of the court and approved by the chief executive of the Territorial SJA. Taken as a whole, the required documents evidence a seriousness of purpose and a meaningful procedure for evaluating the wisdom of a specific lifetime judicial appointment.

Under the Guidelines, the Territorial SJA must forward the application and all supporting materials to the Central SJA Office no later than four months before the expiration of the judge's initial appointment. The Central SJA Office is tasked with ensuring that deadlines are met, materials are checked for completeness and accuracy, and any necessary corrections are made.³⁶ In addition, the Central SJA Office must publish notice of the application for lifetime appointment in the mass media, generally the newspaper "Golos Ukrainy," within 5 days of receipt of the candidate judge's application.³⁷

According to Guidelines Sec 2.7.5, when all of the pre-requisites have been satisfied and the candidate file completed, the Central SJA Office submits the file and materials for the candidates for lifetime appointment to the Chairman of the Supreme Court within three months before expiration of the judge's initial appointment. The file is to include a draft HQC decision (appointment petition) to consider the candidate for lifetime appointment. The file, all supporting documentation, and a drafted appointment petition are then transmitted by the Chairman of the Supreme Court to the HQC within two-and-a-half months of the expiration of the judge's initial appointment for further processing and consideration. It does not appear either in the Guidelines or from fieldwork interviews that the Chairman of the Supreme Court has any significant substantive role in the process. Rather, as with the initial appointment, the Chairman of the Supreme Court seems to play a symbolic role, if any role at all.³⁸ The Supreme Court receives the file and materials again, after review by the HQC for what appears to be another symbolic gesture.

The High Qualifications Commission is charged with substantively reviewing the file and materials for each candidate judge. The HQC conducts an interview of the candidate judge that also serves as an attestation. Then the HQC, based on its review of all materials presented and the interview,³⁹ has seven days to forward its recommendation decision to the Chairman of the Supreme Court, including a qualification certification report. It bears noting that if the HQC decides not to recommend a candidate judge for lifetime appointment, the file is forwarded to the HCJ and then the Secretariat of the President (appointing authority) for processing of the judge's dismissal.

The SJA Central Office is responsible for final preparation of the materials for submission of the recommendation to the Supreme Court for transmission to the Parliament. The Supreme Court then has one month to forward a formal proposal to the Parliament for its consideration. The

practice conforms to the Guidelines requirements. Any technical support to this component of the judicial selection process should begin with such an inquiry.

³⁶ Guidelines, Sec 2.7.2.

³⁷ Guidelines, Sec 2.7.3

³⁸ Project staff fieldwork verified that in practice the Central SJA Office submits the file, materials and petition directly to the HQC, bypassing this initial pass through to the Supreme Court, despite the requirements of Guidelines Sec 2.7.5 and 2.7.6.

³⁹ Guidelines, Sec 2.7.9 states that the HQC may request the Central SJA to check comments about the judges performance submitted by citizens and others.

Supreme Court petition for lifetime appointment is to be accompanied by the HQC recommendation and the complete file that has been compiled by the Central SJA.

The Parliament (Verkhovna Rada) is responsible for considering the recommendation and file documents for lifetime appointment, gathering whatever additional materials it deems relevant and making the decision to accept or reject the recommendation.⁴⁰ The procedure in the Parliament begins with referral of the recommendation and accompanying documents to the parliamentary Committee on the Judiciary for review and special verification. This procedure includes ensuring that the file is complete and correct, verification of the submitted documents, and verification of the performance of the judge during his/her initial appointment. Also included in the procedure is an interview of the candidate judge.

Article 5 of the Law on the Procedure for Nominating and Dismissing a Professional Judge by the Verkhovna Rada goes into extensive detail about this component of the appointment procedure. It appears from the legal framework that the procedure permits a review and verification of all of the elements related to character, qualifications, and performance of the candidate judge. While these concerns associated with a lifetime judicial appointment are surely relevant, the timeframe for completing this review is only one month (although it can be extended for up to two months by the Committee) with little guidance on priorities or consistent procedural standards. It looks on paper like a largely political process, in which the candidate judge can be an active participant, but in which consistent application of meaningful standards is not required.

The result of the procedure in the Committee is a recommendation decision. The Committee discusses each candidate judge separately and is supposed to announce its decision at the end of the discussion directly to the candidate judge. A Committee decision to reject the HQC/Supreme Court recommendation does **not** prevent the Parliament from considering the appointment in its plenary session. The actual procedure for this consideration is unclear and seems open to political manipulation in favor of those connected to powerful legislative interests.

To complete the lifetime appointment process, the Committee on the Judiciary forwards its list of recommended candidate judges to the Parliament as a whole for consideration in a plenary session. A member of the Committee on the Judiciary reports on each candidate judge separately to the plenary session, including both positive and negative considerations. It appears that the candidate judge may be present throughout this procedure and questioned about matters raised in the oral report. At the conclusion of consideration by the plenary session, a vote is taken with 226 votes (majority of all parliamentary members plus one) required for ratification of the candidate judge. The vote is recorded in the Verkhovna Rada minutes and a draft resolution of lifetime appointment is prepared for the signature of the Chairman of the Verkhovna Rada that finalizes the lifetime appointment.

If the plenary session requires more information or doubts are expressed requiring additional verification of facts, the Parliament can send the recommendation back to the Committee on the Judiciary for verification of newly discovered (during plenary consideration) facts. The Committee can use both the HQC and the HCJ for assistance in this process. The Committee then determines whether or not the candidate judge should again be recommended to the full Parliament. If so, then the matter is returned to the plenary session with the new information. A second rejection by the Parliament is final.

Selection Process Analysis

⁴⁰ This process is largely controlled by the Law on the Procedure for Nominating and Dismissing a Professional Judge by the Verkhovna Rada.

There are many elements of the judicial selection process that are problematic and can be addressed without the need for major legislative change. This Report focuses on the administrative procedures and practices that are at the core of the process. If significant institutional reform can be achieved to improve administrative practices and procedures, the overall process should work more efficiently and effectively, whether or not there is significant legislative reform. Below in detail are elements of the process that are most problematic and most susceptible to reform through targeted project initiatives.

1. Informal Initiation of the Selection Process

Initiation of the judicial selection process is very confused at best. In interviews and discussions with project staff, no good reason was advanced by anyone for the absence of a clear, transparent, and easy application process. However, while no good reason for present procedure was advanced, the poor reasons were more readily articulated and can be distilled into a practice that simply favors insiders and fosters manipulation of the ensuing selection process. Further, since there seemed to be little interest in clarifying the initial steps, there was a clear impression left that informal practice is preferred to fixed procedure.

While this may be the preference, it should not be the practice. Initiation of any process as important as the selection of judges should not be left to chance nor seen as a fertile field for impunity. This is particularly so when the procedure and practice are relatively easy to fix. At present, the lack of clarity in the initiation procedures leads to a general belief, whether true or not, that the selection process is for insiders and that seeking influence is not only permitted but essential. Even public officials interviewed seemed to suggest that it was frequently known from the outset which of the candidates was favored by whom and that this frequently had a controlling impact on the eventual outcome.

To begin to bring consistency and transparency to the judicial selection process, the first and easiest reform to initiate is **timely and public announcement of all judicial vacancies that are to be filled**. There should be no mystery to this procedure. The information is available, as are the means to make the information public in a timely manner. [Note that public notice is already a part of the lifetime appointment process.] But public announcement is only a start. To be effective, the public announcement must include **fixed application timeframes** and **public disclosure of the names of all applicants for a specific vacancy at the conclusion of the fixed application deadline**.

These latter two measures go hand-in-hand to ensure a minimum level of transparency and to prevent last minute entry of favored candidates. All applicants should know on the closing date for applications against whom they are competing, and the public and monitoring agencies should have the information necessary to review candidate suitability and to determine linkages to sources of improper influence before the process moves forward rather than after actual appointment. Further, the identification of the vacancy announcement (generally a vacancy announcement number), and the timely identification of all applicants for that vacancy become the fixed data from which an electronic database and vacancy/candidate tracking system is generated.

2. Pre-Qualification Procedures

As indicated above, there is a procedure by which a candidate for a judgeship can attempt to pre-qualify. While in general this is a good idea and could provide a more ordered procedure for judicial selection, in practice in Ukraine it simply does not seem to amount to much. On the upside, since there is a procedure by which pre-qualification is legally and administratively possible, there is a foundation for assisting counterparts in developing meaningful pre-

qualification procedures that could constructively transform the random selection initiation procedures presently in place.

The principal shortcoming of the present pre-qualification alternative is that it seems to have little impact on the outcome of the selection process. Although it may provide an early “test” of judicial qualification for candidates wondering about their individual qualifications, successfully taking the “qualification examination” in the absence of a specific vacancy results in little more than a figurative vote of confidence. This is so because a pre-qualified candidate apparently has to go through the entire qualification process again when applying for a specific vacancy, even though successful pre-qualification results in a place on the reserve list. There were varying estimates of the numbers of people who apply for pre-qualification, but in any event the numbers were not high.

In general, pre-qualification procedures work best when they are mandatory and serve to create a pool of pre-qualified candidates from which actual selection must be made. Pre-qualification procedures vary, but most have some form of minimum requirements that must be satisfied to apply for a judgeship and an element of objective testing. Some include successful completion of required training or proven directly relevant practical experience. The most contentious issue is whether or not the process should result in a fixed pre-ranking of candidates or simply a set of pre-qualification criteria that must be met to enter the pool of qualified candidates. It is safe to say that the present alternative in Ukraine does not meet sufficient standards to be of much value in the overall selection process.

To both increase the standards and the potential impact of pre-qualification procedures, project efforts are presently underway to develop a standardized test for judges. This would surely be a positive development, but the test by itself will not solve many pre-qualification problems unless there is a solid regulatory framework for administering the test and constructively using the results. Further, since there are no absolutes or fixed models, the judiciary must decide for itself both the role that pre-qualification testing should play in the selection process and whether or not meaningful pre-qualification is a desired end.

There is nothing invalid about a selection process that does not include pre-qualification procedures and relies instead on vacancy driven application and qualification procedures. But if pre-qualification of candidates is a desired policy, the applicable procedures and practices should result in a pre-qualified pool of candidates from which selection for specific vacancies is required.

3. Lack of Examination Standards

At present, all candidates for initial judicial appointment are administered a “qualification examination” that consists of a written essay and an oral interview. The “examination” for general jurisdiction judges is administered by the Regional Qualifications Commissions, which means that SJA Territorial Office personnel are largely responsible for testing arrangements. Each of the ten Regional Qualification Commissions has its own testing methodology that is subject to change as commission leadership and membership change.

The written portion of the exam is an essay written on the candidates own time on a topic selected from a list generally prepared by the Chair of the Regional Commission. There are no written standards or criteria for either the development of the topics themselves or the selection of the topic for each candidate. Further, since the candidate prepares the essay on his own time and there are no controls over the procedure, there is no guarantee that the candidate actually prepares the essay himself/herself. Repeated reference to essays prepared by others or available over the Internet suggests that at least there is a perception that the written essay tests little more than a candidate’s ingenuity. Once submitted, the written tests are then evaluated by a member of the Regional Qualifications Commission and available to other commission members for evaluation.

However, as with the test topics, there are no written standards or criteria to guide the evaluation process.

The oral interview that serves as the second portion of the qualifications examination suffers from many of the same problems. In this procedure, the candidate appears before the members of the Regional Qualification Commission and is subject to questioning on an unrestricted range of legal topics that apparently may or may not have anything to do with the vacancy to be filled. Further, there are no written guidelines, standards or criteria with regard to the topics, the manner in which the interview is to be conducted, or the means used to evaluate candidate performance.

Few would question the inclusion of a meaningful examination procedure in the judicial selection process. Whether used in pre-qualification of candidates or as part of selection to fill a specific vacancy without reference to pre-qualification, it is the validity of the examination itself that lends credibility to the testing procedure. Further, in a unified judiciary such as that in Ukraine, the testing procedure and practice should not vary from one region to another and should not be dependent on the priorities and prejudices of individual committee members.

Although there are ongoing efforts to develop and pilot a **standardized written examination** for judicial candidates, work should begin immediately to develop a meaningful **framework for testing**, initially determining the role of testing in the selection process, then the means by which tests are to be administered (whether a new standardized written test or the written and oral test presently given) and evaluated. **Written guidelines, standards and criteria** should be developed and required for use in all regions. These written guidelines, standards and criteria should be published, giving a measure of transparency and credibility to the process.

At a minimum, if a written test is to be used, it should be subject to rigorous validation and administered with the level of security required to prevent fraud and promote fairness. Much the same can be said for oral testing. While it is certainly valid for those responsible for judicial selection to test the capacity of judicial candidates to answer relevant questions in an interview setting, this procedure should be controlled by required guidelines and standards applicable throughout the system. While this type of testing can, and perhaps should be, spontaneous, it should not be random. Development and use of **standardized oral examination formats** in the present examination structure would at least add a measure of consistency to the oral examination procedure.

4. Reserve List

The reserve list has been mentioned at various places in this Report and was a part of just about every discussion or interview regarding the judicial selection process. There is agreement that in each region there is a reserve list of candidates who have been determined to be qualified for a judgeship but not yet selected to fill a specific vacancy. Beyond that, there is almost no agreement about the practical utility of the reserve list in the selection process or the impact that being on the reserve list has on an individual candidacy. In fact, it is this disagreement and lack of clarity that are the most significant features of the reserve list.

It should go without saying that if there is going to be a list of candidates who are qualified for judicial appointment maintained in each region, the significance and impact of the list should be crystal clear. If the reserve list has no practical utility or impact, it should be eliminated. If it has practical utility and potential impact, the utility and potential impact should be clearly spelled out in written guidelines or regulations that are applicable in all of the regions. Present confusion about the reserve list is harming the credibility of the selection process, even among those who administer the process. This should not be allowed to continue.

At its best, the reserve list is simply a pre-qualification list that could have a decisive role in a well-ordered selection process. This can only come to pass if there is a meaningful pre-selection procedure that results in a list of pre-qualified candidates from which specific vacancies must be filled. At a minimum, **a reserve list with standards and guidelines for its use** can serve as a list of those who, for a specified period of time, are deemed to have completed all of the application requirements for judicial selection, subject to periodic updates. This latter use can take on added significance as the application procedures become more automated.

5. **General Absence of Forms, Checklists, Standards, Criteria, and Procedural Guidelines**

Repetitive processes that begin with some type of application, submission of supporting materials, review of those materials, and transmission of those materials to a deciding authority are extremely susceptible to improvement through the use of standardized forms, checklists, standards, criteria, and routine procedures (guidelines). The absence of these tools from the judicial selection process in Ukraine is a major contributing factor to reduced effectiveness and efficiency. There is nothing so complicated about the judicial selection process that cannot accommodate the introduction of consistent practice and procedure.

Taking the introduction of forms and checklists first, **a single application form** for all judicial applicants should be designed and implemented without delay. Everyone wanting to become a judge under present law should fill out a single form that has all the elements presently covered by up to three documents required to initiate the selection process – application to fill a specific vacancy, consent to verification of information, and if desired, a request for pre-qualification determination. There should be no exceptions to use of the form. Then **a single checklist of required file materials** should be developed and implemented that includes space for acknowledgement of receipt of each item and certification of verification. The application form and checklist should become the first items in every candidate file. Then as written guidelines, standards and criteria are developed, additional forms and checklists that meet procedural needs can be developed and implemented.

In previous sections, the absence of written guidelines, standards and criteria has been noted. [This is not to diminish the importance of the Council of Judges “Guidelines” mentioned throughout the discussion of the selection process, but rather to suggest that these “guidelines” are more in the nature of regulations than specific procedural and practice guidelines to facilitate selection process administration.] Without transparent guidelines, standards and criteria, there can be no internal or public confidence in the integrity or consistency of the selection process. Too much is left to chance.

With present understanding of the specific steps involved in the selection process, development of the **written procedural guidelines, standards and criteria** applicable to each step is possible. As these guidelines, standards and criteria are developed and implemented, the integration of forms and checklists into the procedural steps is relatively easy to accomplish technically. But it is very hard to introduce forms and checklists first and then develop the procedures to support them. When procedures are clear, such as with the initial step of the formal application process, immediate introduction of forms can be extremely useful.

In Ukraine, the development and implementation of a **judicial selection process manual** for use by all personnel involved would be one way of combining guidelines, standards, criteria, forms and checklists into one readily accessible resource. More than anything else, the selection process needs the type of clear and transparent administrative “handbook” that such a manual would represent.

It bears noting, as well, that forms, checklists, standards, criteria, and procedural guidelines are the necessary foundation for the integration of IT applications into the judicial selection process. Even development of an initial and reliable applicant database would be difficult to do without some type of application form from which consistent data can be retrieved and entered into the database.

There is one other issue related to forms, checklists, standards, criteria and procedural guidelines that cannot be overlooked – who has the authority to implement and require use of the defined procedures and tools. This is an issue that needs to be resolved as soon as possible, as it impacts not only on introduction of newly-defined procedures and tools, but on the integration of IT applications to assist process administration. This subject is discussed in more detail below in the “Systemic Problems” section of this Report.

6. Multiple Verifications

Related to the absence of forms, standards, criteria, regulations and guidelines is the problem of multiple verification of the same information. Surely stemming in part from the lack of a solid administrative foundation and perhaps stemming from cultural institutional mistrust (see “Systemic Problems” section of this Report), there is a veritable cascade of repetitive verification of the same material scattered throughout the judicial selection process. These multiple verifications are time-consuming and administratively unnecessary. Worse, they frequently lead to more errors than they prevent.

While there is little that can initially overcome inter-institutional mistrust, there is much that can be done to develop an administrative foundation that should greatly reduce the **need** for multiple verifications. In short, **the introduction of both certified checklists and IT databases that include verification fields will go a long way toward reducing the need for multiple verifications, if procedural guidelines are developed requiring acceptance of properly certified prior verification in lieu of multiple verifications.**

The key to reducing the perceived need for multiple verifications is introduction of certified verification checklists that require identification of the individual performing the initial verification, source of the verification information, certification that the verification information has been received from the source, date of verification and signature. If procedural guidelines and standards protect the integrity of the files, an initial verification of this sort should meet reasonable verification standards throughout the process. Both integrity of the files and confidence in the verification process will be enhanced by implementation of candidate/vacancy tracking software.

7. Absence of Electronic Database and Tracking System

Virtually all data collection, documents, statistics and information processing is done manually in the judicial selection process. Candidate files are maintained and transferred from one institution to another in hardcopy and distributed in hardcopy to individuals in the process who need to review file content. Some data is recorded on Microsoft Word documents that can be periodically updated or edited and hardcopies produced, but there appears to be no systematic integration of IT applications in the judicial selection process by any of the institutions involved, although the HCJ seems the closest to developing and implementing some such applications using a tracking software (“Step”) and project-provided hardware upgrades.⁴¹

⁴¹ The HCJ seems very interested in fully automating its candidate evaluation and open ballot voting procedures through development of a system in which their conference room has a computer station for each member and all files are scanned and available in electronic format for review and evaluation. Presumably, if each member had a

Initially, the focus should be on designing and implementing a **basic electronic candidate/vacancy database and tracking system**. Development of the system will require some initial technical and counterpart decisions about how best to organize data entry, but whatever system is designed should be able at a minimum to provide real time information about the status of each candidate's application and the status of each vacancy in the process of being filled. This will require relatively easy access to hardware (computer terminals) for data entry, preferably by each individual responsible for performing a specific step in the selection process, the individual capacity to use the necessary software, and sufficient secure internet access to permit data transmittal and sharing.

Once the fundamental database is established and being routinely maintained, and all candidates and vacancies being tracked in real time, additional software can be developed to facilitate use of forms and checklists, pre-qualification certification and candidate ranking, and perhaps most importantly dissemination of collected information both internally and to the public, as time and resources permit. Elements of the candidate database should eventually become part of a lifetime appointment database and the original software augmented to include the capacity to track the lifetime appointment process, judicial career progress, retirement and dismissal.

While IT applications are often seen as stand alone solutions to administrative problems, it is worth repeating that the development and introduction of forms, checklists, standards, criteria, and procedural guidelines are the necessary foundation for the integration of IT applications into the judicial selection process. **From a project planning perspective, the implementation of the foundation must be seen as the initial steps in designing and implementing automated solutions.**

VI. JUDICIAL DISCIPLINARY PROCESS

Description

The judicial disciplinary process is in its totality a process designed to internally adjudicate whether or not judges have violated specified norms of conduct. Unfortunately, in Ukraine, the norms themselves are general in nature, sometimes conflicting and subject to very disparate interpretation.

To begin with, there is no single judicial code of conduct in Ukraine.⁴² While this is not uncommon in developing countries, it can create both substantive and procedural confusion as the administration of the judicial disciplinary process is improved. At present, there seems to be an unspecified, but logical, disciplinary offense for violation of the law by a judge in the course of consideration of cases. Further, and more specific, Article 5 of the Law on the Status of Judges prohibits a judge from belonging to a political party or trade union, taking part in political activity, representing clients, holding other paid positions, or performing other paid work, except for scientific, teaching and creative work. This is essentially a conflict of interest provision that covers a lot of undefined ground. Next, Article 6 of the Law on the Status of Judges enumerates a lengthy list of requirements and prohibitions for judges that relate to their official conduct, again without much in the way of definitions of terms. This article covers the broad requirement that

computer connected to an internal network, relatively simple computer voting software could be developed. **However, in the absence of basic databases and a meaningful tracking system for the judicial selection process, the HCJ evaluation and voting software and scanning capability should be a relatively low priority for utilization of project IT resources.**

⁴² There is a recently-adopted Judicial Code of Ethics that is advisory in nature. Further, there has been no integration of the Code of Ethics into the judicial disciplinary process. There are differing views on the wisdom of such integration, but in Ukraine, it has not been done to date.

judges observe the Constitution and laws of Ukraine, and provide complete, comprehensive and objective consideration of cases. In addition, the same article requires avoidance of activities prohibited in Article 5, and requires maintenance of official discipline and order in the work of the court, as well as prohibiting acts that defame the judiciary or cause doubt about a judge's objectivity, impartiality and independence. Finally, Article 6 prohibits a wide range of information disclosures of such things as state and financial secrets, personal citizen information, and the content of closed proceedings.

Article 32 of the Law on the Status of Judges sets out the applicable penalties for disciplinary violations:

- reprimand, or
- reduction of qualification class.

These are the only two penalties that can result directly from the initial disciplinary process, and there appear to be no standards or guidelines to control application of sanctions for specific offenses, although there is language suggesting that the sanction must be commensurate with the nature of the misconduct, and take into account individual circumstances, prior conduct of the judge, and degree of guilt.⁴³

To complete the “normative” foundation for prohibited judicial conduct, the Law on the Status of Judges provides for potential dismissal of a judge for violation of conflict of interest rules (“incompatibility” of official duties with other activities) and a catch all in Article 15.1 that can result in the dismissal of the offending judge – violation of the judicial oath.⁴⁴ To say the least, the general nature of the oath and the single penalty⁴⁵ associated with its violation leaves this provision of the law open to substantial abuse. It bears noting as well that elements of the Article 5 and 6 prohibitions and requirements, if violated, would amount to concurrent violation of the oath. Dismissal, when determined to be warranted, is actually implemented by the body which either appointed or elected the offending judge.

The disciplinary process is generally initiated by a “complaint” that is filed in written form with either one of the public officials authorized by law to receive complaints or with the territorial SJA on behalf of the Regional Qualifications Commissions that in turn forward the complaints to one of the authorized public officials. There is no specific form or format for the initial complaint, but it must be in writing and identify the complainant, be signed by the complainant, and contain some evidentiary information. **There is a legal requirement that the entire process from discovery of the alleged misconduct of the judge by the complainant through determination of the appropriate disciplinary sanction for culpable judges be completed in 6 months.**⁴⁶

By law,⁴⁷ the authority to initiate disciplinary proceedings against general jurisdiction judges rests with the following public officials:

⁴³ See JRI-Uk p 53, and the citations contained therein. See also Law on the High Council of Justice, Art 42.

⁴⁴ The oath is found in Article 10 of the Law on the Status of Judges: “I solemnly swear to honestly and diligently perform the responsibilities of the judge, administer justice abiding only to the law, be objective and just.” (unofficial translation)

⁴⁵ It is unclear whether or not violation of some element of the oath can result in something less than dismissal.

⁴⁶ Art. 100, Law on the Judiciary. This is a problematic timeframe because the discovery by the complainant (when the misconduct is “revealed”) is very difficult to define with precision and even more difficult to document. Further, the establishment of timeframes with reference to months or a month leaves important deadlines open to interpretation.

⁴⁷ Art. 97, Law on the Judiciary. Art 34 of the Law on the Status of Judges creates some confusion about the initiation of disciplinary proceedings, but those interviewed and project staff seem to agree that the Law on the Judiciary supersedes the Law on the Status of Judges, at least on this point.

- Members of Parliament
- Ombudsman
- Head (Chairman) of the Supreme Court
- Minister of Justice
- Head of Territorial Council of Judges
- Members of the Council of Judges of Ukraine

In reality, these public officials are authorized to **receive** complaints and apply to the Regional Qualifications Commission for formal initiation of disciplinary proceedings. Further, in practice many of the initial complaints are presented to the territorial SJA, which in turn generally forwards them to the territorial Council of Judges for the initial review. Both the diverse nature of those authorized to receive complaints and the lack of any written procedures or guidance as to what the receiving official is supposed to do upon receipt of the complaint results in what can at best be described as a confusing and inconsistent procedure for what should be a routine and consistent procedure.

What is clear is that not all complaints received by the authorized officials result in applications for initiation of formal proceedings. Apparently, this initial procedure serves as an informal and uncontrolled filtering process that is probably useful in diminishing the number of insignificant or unsubstantiated complaints that make it to the qualifications commissions. However, since there are no complaint forms, procedural guidance, standards for review, or standardized result forms related to this procedure, it remains open to unfettered abuse and enormous inconsistency.

Based on the results of whatever review procedure the authorized public official chooses, the initial complaint may be rejected⁴⁸ or forwarded to the appropriate Regional Qualifications Commission as an application to initiate formal disciplinary proceedings. There is no form for this application, but HQC officials said that it is done by letter and generally contains the opinion of the authorized public official and whatever information/evidence the public official has to support the allegations in the complaint.

Once received by the Regional Qualifications Commission, the Chairman of the Commission has one month to assign the application to initiate formal disciplinary proceedings to a member of the commission for “verification” of the allegations. According to officials interviewed, this verification generally takes the form of an inquiry conducted by the commission member himself/herself, although the member may request assistance from the local Council of Judges. For the most part this verification is a document review, although there is no prohibition against witness interviews or an interview with the accused judge.⁴⁹ Of perhaps most significance for this assessment, there are no written guidelines, standards or criteria applicable to the verification process. This problem is exacerbated by the diverse membership of the qualifications commissions and the essentially voluntary nature of commission service.

Once the verification/inquiry is completed, the case file is forwarded to the full Regional Qualifications Commission for review and decision within one month⁵⁰. Initially, the full Commission determines if the application to initiate formal disciplinary proceedings should be granted. If rejected, the accused judge is notified and the case is closed. If granted, the case moves to what is essentially a hearing in which evidence is presented to the full Commission.

⁴⁸ There does not seem to be any prohibition against filing the same initial complaint with another authorized public official and hoping for a better result.

⁴⁹ There appears to be no formal requirement of notice to the accused at any time in the process, except of a decision to reject the application.

⁵⁰ As with the judicial selection process, timeframes expressed in months are problematic.

Both the judge and complaining party are requested to participate, but not required to do so. As with other stages in the process, there are no written guidelines, standards or criteria to regulate the procedure.

Once the fact-finding procedure is completed, the Regional Qualifications Commission by open majority vote determines the culpability of the accused judge and the appropriate sanction where culpability is determined. The Commission may reject the allegations and terminate the proceedings as a first option. If the judge is determined to have committed the alleged misconduct subject to discipline, the Commission then determines which of the two sanctions (reprimand or reduction of qualifications class) is applicable. The Regional Qualifications Commission then prepares signed minutes of the meeting in which the disciplinary decisions were made and a decision document signed by the Chair of the Regional Qualifications Commission.

Regional Qualifications Commission disciplinary decisions are written, and are required to contain the following information (the law⁵¹ presents specific requirements for the decision document):

- Identification of the specific Regional Qualifications Commission
- Name of the accused judge
- Summary of the facts
- Summary of other relevant information
- Explanation of the accused judge
- Explanation of the decision
- Specific sanction or reason for case closure
- Order and terms of appeal

While the background of the case is set forth, followed by some statement of evidentiary conclusions, the required explanation of the final decision itself has no set standards nor is there any indication of a required standard of proof. There is also no required indication of those members who supported the decision. If the Commission finds that the accused judge is not culpable, the disciplinary case is closed. What then happens to the file and supporting materials is unclear. There is no prohibition of public distribution of the decisions, but public access and distribution is not routine, not required, and not the subject of any specific guidance.⁵²

The disciplinary decision document is processed by the SJA, and imposed sanctions are executed administratively by the SJA. **[It is noteworthy that the law mandates expungement of the record after one year, if the judge is not subject to another sanction within that period of time.⁵³ This latter provision of the law seems overly generous, without standards or criteria, and surely open to question as a matter of public policy in serious cases.]** The judge found culpable has one month to appeal the decision to the HCJ, which can conduct its own review, hear

⁵¹ Law on the Judiciary, Art 100.

⁵² The consultant had access to a very limited number of actual decisions, so the conclusions herein are based on legal requirements, a limited sampling, and discussion with counterpart and project personnel. It would be worth considering a more extensive review of actual decisions to develop a standard format for disciplinary decisions. (See Recommendations in this Report related to a judicial disciplinary process manual.) It also bears noting that the UROL project is assisting the HQC in publishing a limited number of disciplinary decisions.

⁵³ Law on the Status of Judges, Art 36.2. The required expungement of disciplinary records raises questions about the long-term viability of databases for maintaining disciplinary histories of judges, sharing disciplinary records with elements of the selection process (most notably as they relate to lifetime appointment), and the legal foundation for publication of judicial disciplinary decisions. This provision of the law should be reviewed by local attorneys and a legal opinion drafted as to its potential impact on project initiatives.

from the judge, and affirm, reverse, or modify the decision of the Regional Qualifications Commission.⁵⁴

Beyond the two sanctions permitted by law, the Regional Qualifications Commission may decide that the accused judge has committed misconduct requiring dismissal.⁵⁵ In this case, the decision document and supporting files, including a recommendation of dismissal, are forwarded to the High Council of Justice by the Regional Qualifications Commission. This procedure has the potential for resolving serious cases with the serious sanction of dismissal, but moves the disciplinary process from the qualifications commissions to the HCJ for a decision, essentially moving the disciplinary case at this critical juncture to an institution that to this point has had no role in the process. There appears to be no return to the qualifications commissions if the HCJ decides against dismissal, raising the possibility that some serious cases result in no sanction at all.

The HCJ is charged with reviewing the dismissal recommendation from the Regional Qualifications Commission and determining if a recommendation of dismissal to the authority that originally appointed or elected the judge is warranted.⁵⁶ There does not appear to be a specified procedure for this review process, except in cases involving the judicial hierarchy that originate in the HCJ,⁵⁷ although the internal procedure seems to be completed by the HCJ Discipline Section and then reviewed and voted on by the entire HCJ by different majorities depending on the underlying allegations resulting in the dismissal. As noted above, if the HCJ rejects the dismissal recommendation, the case appears to be closed, resulting in no disciplinary action at all. If dismissal is recommended by the HCJ, affirming the recommendation of the Regional Qualifications Commission, the dismissal recommendation goes to the appointing or electing authority – the President for judges still serving their initial appointment and the Parliament for those with lifetime appointments.⁵⁸ The recommendation is accompanied by a dismissal petition signed by the Chair of the HCJ.

Throughout the disciplinary process in the Regional Qualifications Commissions, the administrative procedures are carried out by employees of the SJA who are specifically assigned in the Territorial SJA Offices and the SJA Central Office to provide administrative support to qualifications commission activities.

Disciplinary Process Analysis

As with the judicial selection process, there are many elements of the judicial disciplinary process that are problematic and can be addressed without the need for major legislative change. If significant institutional reform can be achieved to improve administrative practices and procedures at the core of the disciplinary process, the overall process should work more

⁵⁴ Law on the High Council of Justice, Arts 45, 46. Project staff fieldwork verified that there actually have been few appeals (13 appeals in total in 2006). The Deputy Chair of the HCJ went so far as to say that the HCJ does not consider appeals.

⁵⁵ The Law on the Status of Judges provides for potential dismissal of a judge for violation of conflict of interest rules (incompatibility of official duties with other activities) and a catch all in Article 15.1 that can result in the dismissal of the offending judge – violation of the judicial oath.

⁵⁶ There appears to be other means for the HCJ to generate dismissal cases directly that allows the HCJ on its own initiative to initiate dismissal proceedings. See Law on the High Council of Justice, Arts 30, 31, and 32. There is another direct initiation of dismissal procedure for those cases in which the allegation against the judge is conflict of interest (non-combination of jobs). See Law on the High Council of Justice, Arts 33 – 36. No mention is made in the HCJ Law of procedures associated with dismissal based on a violation of the oath of office.

⁵⁷ See Law on the High Council of Justice, Chapter 4 – Disciplinary Proceeding Involving Judges of the Supreme Court of Ukraine and Highest Specialized Courts.

⁵⁸ This can lead to further proceedings before the appointing/electing authorities and court appeals. See, Law on the Election and Removal of Judges, Arts 19 – 24; JRI-Uk at pp 53-54.

efficiently and effectively, whether or not there is significant legislative reform. Below in detail are elements of the process that are most problematic and most susceptible to reform through targeted project initiatives. Many of the administrative issues in the disciplinary process are similar to those found in the selection process and will provide opportunities for designing solutions applicable to both processes or at the least readily replicable.

1. Complaint Filing Procedure

Without significant changes in the law, truly bringing order to the disciplinary process will be extremely difficult. A process that separates the complaining party from the institutions authorized to formally address the complaint is broken at the outset. This is not to say that it cannot be partially fixed. However, it is to say that legislative change removing the “filter” of public officials as the only authorized agents of the complaining party is necessary to allow structuring of a complaint initiation procedure that provides the consistency, transparency, and fairness that should be the principal features of any judicial disciplinary process.

The procedure in place for filing complaints has the appearance of a free-for-all in which anyone for any reason can seek a public official of his/her choosing to vent dissatisfaction with judicial conduct, whether the conduct should be the subject of disciplinary proceedings or not. The very nature of the public officials authorized to seek formal initiation of disciplinary proceedings raises serious questions about the objectivity of the process. Perhaps a case could be made that the Minister of Justice and/or the Ombudsman could have constructive roles in the procedure and actually act as meaningful substantive filters to direct only true disciplinary complaints to the Regional Qualifications Commissions. But it is hard to see how the Chairman of the Supreme Court, members of Parliament, and the various elements of the Council of Judges can or should constructively participate in the process at this important stage.

To make matters worse, there are no procedural guidelines, standards, criteria, forms, checklists, or other tools in use to bring order to the procedure. It does not take too much imagination to realize the enormous potential for abuse that results from present practice. It is certain that some significant quantity of unwarranted complaints either do not enter the formal disciplinary process or are resolved informally through authorized public official action or intervention. However, without standards or criteria to guide the procedure, it is impossible to tell how many complaints that should have been formally processed are “filtered out” prematurely and contrary to the intent of the disciplinary process as a whole.

Since no disciplinary process can be expected to provide consistent, transparent and fair results if the complaint filing procedure is seriously flawed, **a significant effort should be made to reform this procedure, even without desired changes in the law. To begin this reform effort, a new procedure needs to be developed for delivery and processing of complaints by authorized officials.** That procedure should include a **standard complaint form** distributed to all authorized public officials, along with the **written guidance and procedural checklist necessary to utilize the form** and order the process. Further, **written standards and criteria for evaluating complaints** should be developed, along with user friendly **evaluation forms**, and distributed to all authorized public officials. Finally, a **transmittal form** should be developed by which the authorized public official requests the Regional Qualifications Commission to initiate formal disciplinary proceedings, to which is attached all of the underlying documentation required by the newly-developed procedural guidelines. Finally, the guidelines should require that each complaint form indicate whether or not the public official forwarded the matter to the Regional Qualifications Commission or not, and a file maintained for a specified period of time by each public official of all complaints received but not forwarded.

The necessity for these fundamental reforms cannot be emphasized enough, if any degree of institutional and public confidence in the process is to be expected. The difficulty will be in determining how to entice/require the diverse authorized public officials to accept a new procedure susceptible to increased transparency to replace the uncontrolled present structure.

2. Process Timeframe Issues

Related to the confused initiation of the disciplinary complaint procedures are issues related to imprecise and unrealistic timeframes imposed by law, the most serious of which is the requirement that the disciplinary process be completed in six months, from discovery of the alleged misconduct through determination of appropriate sanctions for proven misconduct. (See footnote 43 above.) Efforts to reform the complaint filing process should include in whatever procedural guidelines, forms and checklists are developed **a means by which the initiation date of the imposed timeframe is established at the outset by the complainant.** If this is not done routinely at the time the complaint is filed, the rest of the process is put in peril by later claims that the timeframe has expired or by realization that it is about to expire based on evidence uncovered during the verification procedure.

3. General Absence of Forms, Checklists, Standards, Criteria, and Procedural Guidelines

Everything said above about the absence of forms, checklists, standards, criteria and procedural guidelines with respect to the judicial selection process is applicable to the judicial disciplinary process. As noted above, repetitive processes that begin with some type of application (in this case a complaint), submission of supporting materials, review of those materials, and transmission of those materials to a deciding authority are extremely susceptible to improvement through the use of standardized forms, checklists, standards, criteria, and routine procedures (guidelines). The absence of these tools from the judicial disciplinary process in Ukraine is a major contributing factor to reduced effectiveness and efficiency. The judicial disciplinary process, like the judicial selection process, can accommodate the introduction of consistent practice and procedure.

The complaint filing discussion above outlines an essential place to start, but it would only be a start. With present understanding of the specific steps involved in the disciplinary process, development of the **written procedural guidelines, standards and criteria** applicable to each step is possible. As these guidelines, standards and criteria are developed and implemented, the integration of **forms and checklists** into the procedural steps is relatively easy to accomplish technically. For example, there is a critical need to develop the criteria for an initial filtering of complaints that are forwarded to the Regional Qualifications Commissions from the authorized public officials. Developing a filtering procedure to at least prioritize cases for consideration requires a fixed procedure for receipt of forwarded complaints and a set of evaluation criteria. Forms and checklists are then developed as the tools provided to operational personnel to meet their procedural responsibilities.

In this context, one element of the disciplinary process that requires special attention is the lack of sanctions criteria and standards for their application. Perhaps in no other element of a disciplinary process is consistency as critical to the integrity of the process. Similarly situated judges found culpable with respect to relatively similar misconduct should receive the same sanction from all qualifications commissions. Development of a set of **written procedural guidelines, standards and forms applicable to the imposition of sanctions** would meet this critical objective.

As with the selection process, the development and implementation of a **judicial disciplinary process manual** for use by all personnel involved would be one way of combining guidelines, standards, criteria, forms and checklists into one readily accessible resource. Implementing forms, checklists, standards, criteria, and procedural guidelines are the necessary foundation for the integration of IT applications into the judicial disciplinary process. Development of an initial and reliable complaint database and fundamental case tracking system will be difficult to do without an ordered process that begins with a complaint and follows prescribed procedural steps to resolution.⁵⁹

4. Absence of Electronic Database and Case Tracking System

Fundamental to a well-administered disciplinary process is the institutional capacity to track cases in real time. Designing and implementing the IT software to do this is not technically difficult, if there is sufficient hardware available to permit consistent and regular data entry by those engaged in each step of the disciplinary process. Since virtually all data collection, documents, statistics and information processing is done manually in the judicial disciplinary process, case files are maintained and passed throughout the process in hardcopy and distributed in hardcopy to individuals in the process who need to review file content. To date, there appears to be no systematic integration of IT applications in the judicial disciplinary process by any of the institutions involved, although the Central SJA made reference to a “case tracking system.”⁶⁰

The good news is that some case tracking data appears to be collected and some of it reduced to electronic format. But it is not organized effectively into a database, data entry, and data retrieval system that can provide consistent real time case tracking capacity. Additionally, as noted earlier, confusion in the complaint filing procedure and in process timeframes require technical and counterpart decisions about what event should trigger data entry into a complaint database. Ideally, the system should capture every complaint filed with one of the authorized public officials. However, until that procedure is either eliminated or formalized considerably, it is most likely that the databases will have to be initiated by the presentation of the application for initiation of formal disciplinary proceedings to the Territorial SJA on behalf of the Regional Qualifications Commissions.

Any sophisticated automated “case management system” requires a reliable real time case tracking system. So the initial focus of automating the judicial disciplinary system should be on designing and implementing a basic **electronic complaint database and case tracking system**. When implemented, this initial system should be able at a minimum to provide real time information about the status of each complaint/case entered into the database. The initial system should also be designed to track each case through fulfillment of applied sanctions and through the HCJ processing of dismissal cases. This will require relatively easy access to hardware (computer terminals) for data entry, preferably by each individual responsible for performing a specific step in the disciplinary process, the individual capacity to use the necessary software, and sufficient secure internet access to permit data transmittal and sharing.

The electronic complaint database and case tracking system are at the core of a reliable procedure for collecting and managing specific case information, including the data/evidence gathered during the process of verification of allegations, a **“case management system.”** Once the

⁵⁹ The issue of who has the authority to implement and require use of the newly defined procedures and tools is as critical with respect to disciplinary process reform as it is with respect to selection process reform.

⁶⁰ Project staff fieldwork clarified to a certain extent what the “system” is to which SJA staff referred. The “system” is called “Dilovidstvo,” but it is not used by all SJA departments. When used, it does not capture data in real time, but is periodically updated by designated SJA personnel in the departments in which the system is in use. The “system” should be reviewed carefully by IT technical staff to determine if it has any utility as a source of data for the disciplinary process case tracking system to be developed under project auspices.

fundamental database is established and being routinely maintained, and all cases tracked from complaint through the sanctions and dismissal procedures, it is possible and desirable to develop case management software that permits utilization of the databases for both case preparation and case management functions. **It is a case management system that provides the data storage and data sharing capability that reduces/eliminates the need for duplication of data collection efforts by providing a reliable platform for storage and updating of case information and evidence.**

In addition, the databases can provide the foundation for development of some form of **public access portals** to facilitate dissemination of collected information about disciplinary proceedings to the public. The development and integration any of these more sophisticated applications would be significantly advanced by development of a specialized **judicial disciplinary unit at the SJA**. (See # 6 below.)

As with the introduction of IT applications in the judicial selection process, for **project planning purposes, the implementation of the administrative and procedural foundation must be seen as the initial steps in designing and implementing automated solutions.**

5. Procedures and Standards for Verification of Allegations

Indispensable to any disciplinary system is some means of verifying whether or not allegations contained in a complaint are true or not. Disciplinary systems generally are considered to be administrative processes that have far less rigorous procedural requirements than criminal justice systems. However, there still should be some set of routine procedures and standards that control information gathering and verification of allegations. At present, there are no guidelines, written procedures, or standards for this purpose in use in the judicial disciplinary process in Ukraine.⁶¹

The Regional Qualification Commission Chairman appoints a commission member to verify the allegations before a decision is reached to formally initiate disciplinary proceedings against a judge. Putting aside the fact that Commission members are volunteers, generally with no investigative expertise, and function with no staff trained in gathering or organizing evidence, there should at the least be a set of **written procedural guidelines, standards and forms** applicable to the verification of allegations in disciplinary cases. Initial guidelines and standards should take into account both the limited resources available for the task and the overall timeframe for completion of the disciplinary process. These guidelines would best be developed as a **manual** for required use in all Regional Qualifications Commissions, but experience suggests that a manual of this sort should be tested on a pilot basis before general application. Any such guidelines and standards should provide for sufficiently complete verification of allegations to develop a disciplinary file that can survive scrutiny from the initial proceedings through the remainder of the process and whatever appellate proceedings result.

The long-term solution to this serious problem is development of a support unit with the capacity to provide evidence gathering and organization services on request, particularly in serious or complex cases. (See # 6 below.) But in the short-term, the present situation should not be allowed to continue without a serious effort to do what can be done to bring a measure of reliability and consistency to information gathering procedures. Any effort to develop case management software will require consistent procedures for verification of allegations at a minimum.

6. Judicial Disciplinary Unit in the SJA

⁶¹ See also the critical note in JRI-Uk at p54.

The judicial disciplinary process has a profound impact on the independence and credibility of the judiciary in any country. It is not a process that should be left to generalists or individuals dedicating a portion of their time to process administration. There is a profound need in Ukraine for **development of a staff of professionals trained and equipped** to carry out the support functions of a serious disciplinary system. This can best be accomplished by developing a dedicated **disciplinary administration and support unit in the SJA Central Office** with unit representatives in each of the SJA Territorial Offices. In the short run, such a unit can be expected to provide focused assistance to the Regional Qualification Commissions in carrying out their functions and provide a source of technical assistance in the introduction of new procedures and practices related to filing of complaints and verification of allegations, among other things. In the long term, this unit can become the forerunner of a true office of judicial discipline that would be staffed and equipped to administer the disciplinary process from complaint to sanctions follow-up.

Project efforts to introduce standards and criteria to the disciplinary process and develop an automated support system would be advanced by focusing initial resources on training and equipping a support unit such as that suggested here. That unit could then become the major counterpart with which administrative and procedural reforms would be designed and implemented, including the development of the case tracking software. In addition, as the database and case tracking software is developed and implemented, **the new unit could be trained and equipped to collect disciplinary data and statistics appropriate for public dissemination and function as a resource for public access to appropriate information about disciplinary proceedings.**

Unlike in the judicial selection process where multiple institutions play a significant role, the disciplinary process is largely centered in the qualifications commissions that receive all of their administrative support from the SJA, allowing for a greater likelihood that a dedicated support unit can be established and have an immediate impact.

7. Norms of Conduct Matrix

The absence of a unified code of conduct for judges seriously weakens the substantive component of any judicial disciplinary process. There should be some clear source from which judges can determine the standards of judicial conduct, a definition or explanation of acts which constitute judicial misconduct, and the sanctions applicable to specific misconduct. Since there is no single source in Ukraine from which a judge can obtain this information and which clearly defines judicial misconduct for those asked to determine culpability, a significant pillar of a well-ordered system of judicial discipline is lacking.

While eventual development of a code of conduct containing these elements is desirable, in the absence of such a code, it would be helpful to develop a **norms of conduct matrix** based on existing law, regulations and practice that begins with general principles of judicial conduct and then details the provisions of existing law that give content to each of those principles, including specific prohibitions. This matrix can be expanded to include examples of misconduct and applicable sanctions, either hypothetically or based on actual cases.

It has been noted that many, if not most, complaints filed against judges are simple attempts to alter judicial decisions through non-procedural means.⁶² Part of the reason for this may be a public lack of understanding about what is and is not judicial misconduct subject to sanction through the judicial disciplinary process. **A matrix of the sort suggested can be utilized to educate the public, as well as judges and those administering the disciplinary system.**

⁶² JRI-Uk at pp 65-66.

VII. SYSTEMIC PROBLEMS

Overall Systemic Structure

In the context of this Report, it is tempting to use the word “system” when referring to the processes that result in judicial selection and judicial discipline. But this term better defines the goal than the reality. A “system” implies a well-developed legal framework designed to meet specific substantive objectives and the procedural framework necessary to execute the legal framework. Neither of these elements is present with respect to either the judicial selection process or the judicial disciplinary process. The legal framework for each process needs at a minimum a consolidation of existing law into one cohesive document that clearly outlines the legal requirements of each process and the procedural framework for implementing it. The present mix of laws, decrees, guidelines, and practice does not provide a solid foundation for developing the administrative infrastructure that is required for the processes to operate efficiently and effectively to meet substantive objectives.

While this assessment has not focused on reform of the legal framework, the fieldwork yielded routine legal confusion and conflict in simply trying to define how each process is designed to function. Some of these conflicts have been noted in this Report and been the subject of other commentary and review.

To further define a “system,” there should be an organizational structure that is easily understood with clearly defined functions for each institutional element charged with procedural responsibility. Again, the processes described in this Report fall short. There are simply too many institutional players with poorly defined roles in each process. A most glaring example is the requirement that the Chairman of the Supreme Court file the selection appointment petition with the HCJ for each judicial appointment - this step in the process seems to be little more than a formality presumably requiring the attention of the Chairman of the Supreme Court and Supreme Court staff for a procedure that seems to have no substantive impact on the judicial selection process.⁶³

Authority to Initiate and Implement Regulatory and Administrative Reforms

One serious systemic institutional impediment exists to the regulatory and administrative reforms suggested by the findings in this Report – it remains unclear who is authorized to initiate the desired institutional reforms in the absence of legislative change. Since there is no supreme administrative authority to make changes in procedures and practice and be certain that those changes are implemented, the possibilities are many and varied. The High Council of Justice, as a constitutional body with significant status and well-placed ex officio members, seems like it should be able to act to improve the operations of both the selection and disciplinary processes, yet there authority to do so is unclear. The Congress of Judges, as a judicial governing body acting through the Council of Judges is another potential source. It is this Council that is responsible for the Guidelines, the most complete set of internal regulations presently in use. It is significant that the Guidelines describe procedures for both the qualifications commissions and the SJA, two of the three project counterpart institutions. However, it is doubtful that the HCJ, as a constitutional body would consider itself bound by regulations approved by the Council of Judges, while the reverse might not be true.

⁶³ No one interviewed during the fieldwork could describe any substantive role played by the Supreme Court in the selection process.

It bears noting in this context that at least some of the more specific elements of the judicial selection process are contained in a Presidential Decree. While this clearly has implications for judicial independence, there is at least some precedence for the executive establishing procedures for processes that have a direct impact on the judiciary.

Under any circumstances, it will be incumbent on project personnel, working with cooperating counterpart personnel and others, to determine how best to implement recommended reforms without major legislative changes or specific legislative mandates.

Underdeveloped Administrative Procedures

There are administrative tasks common to both the judicial selection and judicial disciplinary processes. Improvement of the capacity to meet fundamental administrative requirements is a key to constructive project intervention. Among the common fundamental administrative requirements most readily subject to improvement are:

1. reduced reliance on paperwork and improved paper flow
2. integration of forms into the processes
3. production of consistent and regularized documentation and file formats
4. written procedural guidelines, standards and criteria
5. integration of IT applications to meet administrative requirements
6. development of mechanisms to disseminate accurate and appropriate information to the public

Discussions with counterparts, visits to their offices and review of documentation and document flow resulted in an overall impression of administrative requirements that burden the process rather than facilitate it. One important objective of this assessment and the resulting work should be an effort to reverse this equation.

To begin with, virtually all elements of the present administrative function are moved by creation of and forwarding documents and materials in hard copy format. In addition, almost no tasks are reduced to forms, although some sample documents exist in the files but their use is limited. The lack of mandated use of forms for what are essentially routine procedures greatly reduces the likelihood that the documentation utilized in the selection and disciplinary processes will be consistent from file to file and case to case. Given the repetitive “verification” of documentation that seems fundamental to present administrative practice in Ukraine, the lack of mandated regularized formats and the use of forms creates significant work for administrative personnel and propels documentation from one stage of the process to another without clearly presenting by checklist and signature what “verification” has actually been done and by whom.

While it is hardly an original observation, the integration of IT applications into the judicial selection and disciplinary processes is an extremely important step in developing reliable, effective, and efficient administrative procedures. This is not to say that integrating IT applications will automatically result in more effective and efficient selection and disciplinary processes. Rather, if designed and implemented as a critical component of a more complete effort to address administrative shortcomings, such applications hold the promise of rapidly improving the capacity to meet administrative requirements that are fundamental to each process.

IT Integration

The limited integration of information technology applications into the judicial selection and judicial discipline processes is a major impediment to rapid reform of the processes. Increased utilization of IT applications should be a major element of project initiatives to improve the

effectiveness and efficiency of the processes. However, while it is tempting to believe that increased IT integration will solve many existing problem, it would better be viewed as necessary support for an improved administrative framework that is at the heart of institutional reform.⁶⁴

The integration of IT applications into any institutional setting requires sufficient hardware and targeted software, as well as the human resources capable of using the available equipment and the provided software. Each of the counterpart institutions is in the process of providing rudimentary inventories of existing equipment, including computers, scanners, and printers. To date these basic inventories suggest a general availability of desktops, but limited availability of laptops and other equipment. There is very limited internet access in each institution and no internal networks to facilitate intra-institutional or inter-institutional electronic communication.

Project staff has completed a basic survey that is informative about the present state of IT integration into the operations of counterpart institutions (copy attached). However, this survey is basic and does not include inventories of actual hardware and equipment available in each institution to meet the needs of anticipated development of the databases and tracking systems that are essential for initial automation of the judicial selection and disciplinary processes. A first step in the development of these systems is a complete inventory of exiting hardware, software, printers, scanners and internet access points at all components of counterpart institutions that impact on the selection and disciplinary processes. Further, the technical specifications and practical limits of the “case tracking” software mentioned in the survey and elsewhere in this report (“Dilivodstvo” at the SJA, “Step” at the HCJ) need to be reviewed to determine their utility in any real time tracking software to be developed under project auspices.⁶⁵

As for human resources, while a detailed survey will have to await project implementation, the general impression is that limited use is made of existing software to meet specific job-related objectives. Available computers are often used as little more than typewriters, and “databases” are little more than lists maintained as Microsoft Word documents or Excel spreadsheets.

Conceptually, the initial development of candidate/vacancy tracking software for the selection process and case tracking software for the disciplinary system are very similar and can likely work off of similar programming models. It is these tracking systems and the associated databases that become the platform on which more sophisticated IT applications are developed and implemented. **It is important to note that virtually all upgrades of the capacity of the SJA and the qualifications commissions and the HCJ to collect meaningful data in a timely fashion and then share that data in an organized manner start with the development and implementation of the recommended automated databases and tracking systems.**

Further, while much has been said about the need for improved dissemination of information to the public about both selection process and disciplinary process proceedings, the present lack of reliable and timely data collection and data organization makes dissemination of information to

⁶⁴ UROL has procured some requested equipment for the Council of Judges, the High Council of Justice and the High Qualifications Commission to date that can be directed for use in facilitating improved administration of the judicial selection and judicial disciplinary processes, including the facilitating of HCJ and HQC proceedings.

⁶⁵ There have a variety of studies and recommendations done by others regarding the integration of information technology into the judiciary in Ukraine. None is specifically on point regarding development of databases and tracking systems for the judicial selection and judicial disciplinary processes. See Administration of the Courts in Ukraine: an Assessment of the Current Situation and Review of the Legal Framework, Burningham and Steenbeck, Tacis Report May 2007, for some relevant observations. See Needs Assessment and Procurement of IT Equipment for the High Council of Justice, Ivan Sherstyuk, May 2007, for some commentary and observations on the status of development of an automated system at the HCJ to assist in HCJ decision making. See also, Unified Court Information System Concept, SJA 2007; 3-T Limited Reports, undated, Judicial Reform Support Project; Recommendations on Methods to Use the Automated System of “Business Correspondence” for Automation of Business Correspondence of the Court, State Enterprise Court Information Center, 2005.

the public of questionable utility. When the recommended automated databases and tracking systems have been implemented, the counterpart institutions will have the data necessary to inform the public and will have the technical foundation for developing effective mechanisms to ensure routine public dissemination of accurate and appropriate information on selection and disciplinary proceedings.

To facilitate intra and inter-institutional data entry, data transmittal and database sharing, increased access to the internet for personnel in counterpart institutions will be essential. Because of the nature of the information collected and maintained in the judicial selection and judicial discipline processes, secure internet connections will have to be developed with clear rules controlling access, including a means for clear designation of information that should not be publicly available.

Through the use of scanning and expanded availability of hardware and internet access, candidate files and disciplinary files can eventually be shared and transmitted electronically, although it is hard to see how for core processes like judicial selection and discipline paper files can be abandoned anytime in the near future. While the development of automated formats for meetings and decision making by both the HCJ and the HQC can be a long-term goal, expanding existing formats should not be a priority, until automated databases and tracking systems are in place for both the selection and disciplinary processes. Not only is implementation of automated formats for meetings a costly endeavor, it will be of limited reliability until the fundamental data processing and tracking functions are in place.

Training

If improved administrative procedures and practices are the goal, it goes without saying that training personnel to utilize reformed procedures and practices should be an essential component of any project initiative. The assessment that underlies this Report did not focus on personnel capacity to meet increased administrative or substantive demands. Nor did it focus on personnel capacity to integrate even existing IT applications into daily work routines, not to mention the capacity to use more advanced IT applications.

For whatever reasons, it is apparent in the present administration of the judicial selection and disciplinary processes that true administrative reform is not being internally generated. This could be due to a combination of reasons ranging from lack of resources, to the daily pressure of meeting existing requirements, to a lack of knowledge about how to develop new and better practices and procedures. It could also be a function of a natural resistance to new procedures and practices when personnel are comfortable with what they already do and how they do it. Under any circumstances, project initiatives that will result in altered, and hopefully improved, practices and procedures will need a strong training component to both instruct personnel about how to apply new procedures and give them the confidence that new procedures and practices will be of individual benefit in meeting job responsibilities.

Inter-institutional Coordination

During fieldwork interviews and generally in response to questions about the need for multiple verifications of the same material by each institution through which a file or documents passed, there emerged a sense of an inter-institutional mistrust that at times extended to distrust of the quality of the work product among different units in the same institution. While not nearly enough work has been done to make too much of this observation, the consultant observation was confirmed by project staff in subsequent discussions.

If this proves to be a system-wide problem, gaining full benefit from project initiatives, such as use of forms and checklists to reduce paperwork and provide consistency throughout each process and use of integrated IT applications will require training modules that address inter and intra-institutional trust. Using checklists as an example, checklists that ensure consistent verification procedures and identify the individual responsible for a particular verification procedure **should** eliminate (or at least reduce) the need for repeated verification of the same documents and materials that seems to be the practice in both the selection and disciplinary processes. But it will only do so if the entity receiving the signed checklist has confidence in the work product of the initial verification.

Much the same can be said for tracking software that requires each data entry point to rely to a certain extent on the accuracy of each previous data entry. Inter-institutional distrust can retard efforts to promote the use of IT applications across the spectrum of activities that are central to both the selection and disciplinary processes.

VIII. PROGRAMMING ALTERNATIVES

As noted earlier in this Report, the single greatest impediment to meaningful reform of the judicial selection and judicial disciplinary processes is that the three public institutions most involved (HCJ, HQC and Regional Qualifications Commissions, and the SJA) lack the fundamental administrative and organizational structures to effectively meet their responsibilities. This means that to target project resources on upper end system development and training is likely to have minimal impact because the systems developed and the individuals trained will be rooted in a largely dysfunctional structure. There are enough problems in these processes in Ukraine that early project focus on the fundamentals can hardly miss a worthy target.

There are essentially four project design alternatives likely to produce some constructive progress within the context of this project:

- Training-Based Initiatives – this requires identification of training initiatives most likely to result in improved administrative capacity and organizational structure for counterpart institutions, and then development of curricula and implementation of training of selected personnel. This type of initiative could include support of one or more training units within relevant institutions or within the judiciary as a whole. This is the easiest type of initiative to design and implement, but is unlikely to result in much sustained improvement unless the underlying administrative and organizational issues noted above are addressed. Also, generally unpredictable personnel assignments and routine turnover in counterpart institutions makes this a somewhat risky avenue for investment of too much project resources, unless it is accompanied by administrative assurances that trained personnel will remain in place for an extended period of time.
- Pilot Projects – this requires identification of a jurisdiction or jurisdictions in which the project would locate process-based pilot projects designed to establish a fully-functioning administrative and organizational infrastructure for judicial selection and/or discipline. It would have as its overall objective the development of replicable models for implementation in other jurisdictions. This design has the advantage of being able to focus on the systemic issues and should result in a replicable work product that has been tested in the “laboratory” of the pilot project. It also bears noting that virtually any of the systemic problems can begin to be addressed through development and implementation of more focused pilot projects that target limited resources on a specific set of problems while providing a laboratory in which to test the viability of specific project initiatives and refine methodologies.

- Single-Element Systemic Initiatives – this would require identification of a problematic element of the judicial selection and/or judicial disciplinary process on which to focus project resources. For example, in both the selection and disciplinary processes, the initiation and initial stages of each process is problematic. Beginning each process poorly results in further problems throughout each process. This type of initiative would attempt to use project resources to significantly improve one important aspect of each process, e.g. the initiation and initial application/complaint procedures. This approach has the advantage, if successful, of leaving at least something fixed across the board or at least to a significant level in multiple jurisdictions. It has the disadvantage of only focusing on one element of each process.
- Institution-Focused Initiatives – this type of initiative focuses project resources on developing increased operational capacity within one institutional component of the judicial selection and judicial disciplinary processes, e.g. the Regional Qualification Commissions central to both processes. While this type of initiative has some similarities to a pilot project, it directs significant project resources at only one of the institutional components involved in the processes. In the context of the present project, it has the significant disadvantage of leaving some of the counterpart institutions without anticipated support. On the other hand, institution-focused initiatives can result in the dramatically increased capacity in the selected institution that often proves sustainable and often provides replicable methodologies for implementation in other counterpart institutions.

This review of programming alternatives is not intended to be all inclusive, but rather to provide a programming context in which to consider the specific recommendations set forth below. For this project (using both MCC and UROL resources) it is likely that a mix of the types of initiatives outlined above will eventually be designed and implemented. However, given the timeframe, the resource limitations, and the scope of the targeted institutions and processes, some hard choices will have to be made if overall project goals are to be realized. Design and implementation of a solid set of initiatives with the potential for sustainable impact will likely require selection among the types of initiatives set forth in this section of the Report. The Project Design Outline will attempt to fit recommended project results into the programming alternatives best suited to achieve those results.

IX. RECOMMENDATIONS

Following is a summary list of specific recommendations for the judicial selection and judicial disciplinary processes. Each recommendation has been discussed in the applicable Selection Process Analysis and Disciplinary Process Analysis sections of this Report. Some further comment relevant to the recommendations can be found in the Systemic Problems section. Note that items in bold type in this Recommendations Section correspond to items in bold type in the analysis sections. In addition, attached to this Report is a Project Design Outline that incorporates the recommendations into what is essentially an outline of the suggested means through which project resources and counterpart resources can be utilized to achieve recommended results.

Judicial Selection Process

- 1) Provide technical assistance to the SJA to develop and implement a **procedure for timely public announcement of all judicial vacancies** to be filled. The public vacancy announcements should clearly state opening and closing dates for acceptance of applications to fill a specific vacancy, and should indicate that a list of all applicants will be published immediately after the closing date. The new procedure should be required

for use throughout the country and should clearly prohibit acceptance of any application filed after the published closing date.

- 2) Determine the extent to which pre-qualification of judicial candidates is desired by counterpart institutions and can be implemented without legal reform. At the least, the already permitted application for a determination of qualification should be formalized in conjunction with clarification of the role of the reserve list. Since project resources are already committed to providing technical assistance in the development and piloting of a written qualifications test, a **comprehensive technical assistance plan to design and implement a pre-qualification procedure for judicial candidates** that integrates standardized testing and regulatory clarification of the reserve list into a meaningful pre-qualification reform package should be developed. The plan should include development of a meaningful **framework for testing, written guidelines, standards and criteria for testing, and standardized oral examination formats (if the oral examination is to be continued)**.
- 3) Design and implement forms⁶⁶ and checklists for all points in the process that require fundamental entry of information (forms) and compilation of information (checklists). At a minimum, **standard application forms** should be developed for all candidates either applying for a specific vacancy or seeking qualification review, as well as a **single checklist of required file materials**.
- 4) Provide a technical assistance team to work closely with a **selection process counterpart working group** in the development of a **judicial selection process manual** that includes procedural guidelines, standards, criteria, and applicable forms and checklists for each step in the selection process. The manual should constructively address the problem of multiple verifications of the same information by outlining a procedure that includes **certified verification checklists and IT databases that include verification fields**.
- 5) Provide technical assistance and procurement resources to the SJA for the development and implementation of a **basic electronic candidate/vacancy database and tracking system** for the judicial selection process. This technical assistance should begin with an updated inventory of all hardware and internet access points in counterpart institutions presently available to facilitate integration of IT applications into the selection process, and result in procurement of necessary hardware to support the database development and tracking system. The tracking system should be capable of tracking each candidate's application and the status of each vacancy in the process of being filled in real time.⁶⁷ To do this will require development of secure internet connections between all components of the institutions involved in the selection process and a training plan to ensure that all personnel can effectively use the new automated system.

⁶⁶ The extent to which developing systems accustomed to documenting virtually everything have avoided the creation of basic forms to meet documentary needs is often striking. **All points in the judicial selection and judicial disciplinary processes that require fundamental entry of information should be examined for the development of basic forms and formats to simplify and standardize procedures.** The development of appropriate forms should be a part of any project initiative that is intended to provide technical assistance to reform administrative practices and procedures.

⁶⁷ From discussions with project management, there is limited UROL funding to develop IT applications for the judicial selection process. With funding limitations in mind, the recommended application is limited to a basic database and tracking system and the procurement necessary to support it. Based on these same discussions, there appears to be a greater amount of funding available from the MCC to integrate IT applications into the judicial disciplinary process. Since some of the hardware costs and some of the software design costs will benefit both processes, it is suggested that careful planning of project IT resource allocation will result in maximum benefit from the total resources available for IT integration in both processes.

Judicial Disciplinary Process

- 1) Provide technical assistance to counterpart institutions to **reform the complaint filing procedure**. As a starting point, a new procedure needs to be developed for receipt, processing, and referral of complaints by authorized public officials. That procedure should include a **standard complaint form** distributed to all authorized public officials, along with the **written guidance and procedural checklist necessary to utilize the form** and order the process. Once all complaints are more or less being filed on the standard form with basic information conforming to the required format, **written standards and criteria for evaluating complaints** should be developed, along with a user friendly **evaluation form**, and distributed to all authorized public officials. To complete a more consistent and orderly complaint filing procedure, a **transmittal form** should be developed by which the authorized public official requests the Regional Qualifications Commission to initiate formal disciplinary proceedings. If designed properly and utilized by authorized public officials, all Regional Qualifications Commissions would be receiving requests for initiation of formal disciplinary proceedings that have a similar format and have been evaluated by application of similar standards and criteria. This procedure could be facilitated by development of a **complaint filing manual** to accompany distribution of the forms to authorized public officials.
- 2) In order to emphasize the importance of the task and try to ensure that development and implementation of **uniform criteria for initial review of complaints** is a project priority, it is included as a stand alone recommendation, as well as an element of the previous recommendation. If comprehensive reform of the complaint filing procedure seems beyond reach, at the least there should be a serious effort made to develop and introduce uniform criteria for the initial review of complaints by authorized public officials and **minimum standards for their application**. This could be the first task for the **disciplinary process counterpart working group**, recommended below. Further, criteria of this sort should be a significant element in developing filtering criteria for management of disciplinary process case load.
- 3) Provide a technical assistance team to work closely with a **disciplinary process counterpart working group** in the development of a **judicial disciplinary process manual** that includes procedural guidelines, standards, criteria, and applicable forms and checklists for each step in the selection process. The manual should constructively address the problems created by the limited six month timeframe for completion of the disciplinary process.
- 4) An element of the disciplinary process that requires special attention, with or without development of a manual addressing all steps in the process, is the lack of procedures and standards for verification of allegations. Since this element standing alone is absolutely critical to the integrity of the disciplinary process, technical assistance should be provided to counterpart institutions to develop and implement a set of **written procedural guidelines, standards and forms to regulate the allegation verification procedures** and bring a measure of consistency and credibility to the fact-finding element of the process.
- 5) Another element of the disciplinary process that requires special attention, with or without development of a manual addressing all steps in the process, is the lack of sanctions criteria and standards for their application. As with verification of allegations, this element of the process standing alone is critical to the integrity of the disciplinary process. Since at present, there seems to be little or no guidance available to ensure consistency in the application of sanctions, technical assistance to develop and implement a set of

written procedural guidelines, standards and forms to improve sanctions consistency is specifically recommended.

- 6) Provide technical assistance and procurement resources to the SJA for the development and implementation of a **basic electronic complaint database and case tracking system** for the judicial disciplinary process. This technical assistance should begin with an updated inventory of all hardware and internet access points in counterpart institutions presently available to facilitate integration of IT applications into the disciplinary process, and result in procurement of necessary hardware to support the database development and tracking system.⁶⁸ The tracking system should be capable of tracking each disciplinary complaint in real time from its receipt by the Regional Qualifications Commission through the application and enforcement of sanctions and through the HCJ dismissal procedures, when applicable. To do this will require development of secure internet connections between all components of the institutions involved in the disciplinary process and a training plan to ensure that all personnel can effectively use the new automated system.
- 7) Provide technical assistance and material resources to the SJA in establishing, organizing and equipping a **disciplinary administration and support unit in the SJA Central Office**. As noted above, the disciplinary process requires development of a **staff of professionals trained and equipped to carry out the support functions** of a serious judicial disciplinary system. Institutional development in the SJA of a unit of this sort should be incremental. The first step should be a reorganization of the way the SJA manages disciplinary process functions to designate a select group of individuals to dedicate full-time attention to disciplinary functions. Based on this initial reorganization, a unit infrastructure can be designed and implemented to better organize and focus individuals on specific tasks related to disciplinary system support. Some individuals from this unit should be included in the disciplinary process counterpart working group.
- 8) Provide technical assistance to a team of local attorneys in developing a **norms of conduct matrix** based on existing law, regulations, and practice that unifies in one document the existing standards of judicial conduct, designated judicial misconduct, and applicable sanctions. The matrix might best be organized around a set of agreed-upon general principles of judicial conduct extracted from present law and practice.

ADDITIONAL RECOMMENDATIONS

In addition to the specific recommendations discussed above, there are some additional considerations and recommendations that resulted from the fieldwork and background research, in addition to consultant experience in designing and implementing sustainable institutional reform initiatives.

Although it has already been stated in a variety of ways, the programming focus of this project should be on fundamental development goals. Productive utilization of project resources will be placed in jeopardy if basic administrative procedure and practice concerns are not addressed at the outset. This is to say that late stage development initiatives built on a dysfunctional platform are very likely to fail. As a corollary to this, it is highly recommended that training and equipment procurement focus on development of a corps of trained administrators for each of the counterpart institutions and then equipping them to meet administrative and process management objectives.

⁶⁸ See footnote 67 above re allocation of project resources for IT integration.

To begin to build the inter-institutional bridges that are critical to implementation of the suggested judicial selection and disciplinary process administrative reforms, **it is recommended that three inter-institutional working groups be immediately established under project auspices** – 1) **a working group composed of operational personnel from the counterpart institutions** to begin meeting to develop the guidelines, standards and criteria that should form the foundation of the judicial selection process, 2) **a working group composed of operational personnel from the counterpart institutions** to begin meeting to develop the guidelines, standards and criteria that should form the foundation of the disciplinary process, and 3) **an inter-institutional information technology (IT) working group** composed of technical representatives from each of the counterpart institutions (it may be necessary to hire a technical consultant to represent the HQC in this working group) to begin the process of integrating IT applications in all three institutions and avoiding software development duplication and inconsistencies.

On a very practical level, an initial task of the IT working group should be a complete inventory of available and functioning equipment in each counterpart institution and, as importantly, an assessment of the capacity of personnel in each institution to fully utilize the available software to meet job responsibilities. There is a significant amount of computer equipment presently available in each institution, much of which is pre-loaded with basic applications like Outlook and Excel that many individuals with the equipment and software available to them are unlikely to know how to use. **It is highly recommended that basic job-related training modules be developed to train and encourage personnel to use available IT applications to meet job responsibilities. This is not only extremely cost effective, but provides the necessary foundation for integration of more sophisticated software.**

One last recommendation is that consideration be given to developing project initiatives to **assist the counterpart institutions in effectively describing for the public what role each institution plays in the judicial selection and disciplinary processes and how each meets the responsibilities associated with its role.** Examination of these issues by counterpart institution personnel serves as a good starting point for development of mechanisms to increase institutional capacity to disseminate accurate and appropriate information about the proceedings in each process. The judicial selection and disciplinary processes are often widely misunderstood, and the role of each institution in meeting process objectives is often confused. Better public understanding of these processes is critical to improved public confidence in the judiciary as a whole.

X. CONCLUSION

The judicial selection and the judicial disciplinary processes in Ukraine operate within a legal framework in need of reform. However, this Assessment Report and Recommendations and accompanying Project Design Outline take the legal framework as it is and seek to provide insight into the administrative procedures and practices that drive each process on a day-to-day basis. Based on assessment findings, the Report identifies specific problems susceptible to institutional reform without changes in the legal framework and proposes specific institutional reforms that can be designed and implemented within the existing legal framework.

Often reform of the legal framework results in little actual change because dysfunctional underlying administrative procedures and practices undermine the implementation of the legal reforms. On the other hand, even in the absence of legal reform, improved administrative procedures and practice can result in significant gains in the effectiveness and efficiency of institutional performance to meet institutional objectives. This Report suggests that this is the case with respect to the judicial selection and judicial disciplinary processes in Ukraine.

Assessment of Judicial Selection and Disciplinary Processes

No set of recommendations ever meets all concerns, and few sets of recommendations are fully implemented. However, it is anticipated that a concerted effort to improve elements of the judicial selection and judicial disciplinary processes with the recommended reforms of administrative procedures and practice and the integration of basic IT applications will result in significant improvements in the operational effectiveness and efficiency of the institutions responsible for each process. This should ensure that utilization of project resources will meet primary project objectives – an improved judicial selection process resulting in selection of fully qualified judges and an improved judicial disciplinary process resulting in meaningful discipline of those judges whose misconduct merits discipline.

APPENDIX A: PROJECT DESIGN OUTLINE

I. Project Objectives

A. Institutional Objectives

1. To improve the operational effectiveness and efficiency of the institutions responsible for administration of the **judicial selection process**
2. To improve the operational effectiveness and efficiency of the institutions responsible for administration of the **judicial disciplinary process**

B. Project Result Objectives

1. A judicial selection process that results in the appointment of an increased number of fully qualified judges
2. A judicial disciplinary process that results in meaningful discipline of judges whose misconduct merits administrative discipline

C. Project Resource Objectives

1. Provide technical assistance to identified counterpart institutions to design and implement specific reforms of administrative procedures and practices that will result in improved operational effectiveness and efficiency in the administration of the judicial selection and judicial disciplinary processes
2. Provide targeted material assistance to identified counterpart institutions to support the institutional reform process
3. Provide design and implementation support to identified counterpart institutions for the integration of information technology (IT) applications into the administration of the judicial selection and judicial disciplinary processes

II. Project Infrastructure

A. MCC and UROL Staff

B. Three Counterpart Institutions

1. High Council of Justice (HCJ)
2. High Qualifications Commission (HQC) and Regional Qualifications Commissions (RQC)
3. State Judicial Administration (SJA)

C. Three Project Working Groups

1. Judicial Selection Process Counterpart Working Group
2. Judicial Disciplinary Process Counterpart Working Group
3. Inter-institutional IT Working Group

D. Design and Implementation Subcontractors

E. Other Related Institutions

1. Supreme Court
2. Council of Judges
3. Ministry of Justice
4. Presidential Secretariat
5. National Commission for Strengthening Democracy and Establishing the Rule of Law
6. Council of Europe

III. Project Components

A. Technical Assistance

1. Complete Project Design Outline
2. Develop detailed project design
 - a. specific project initiatives
 - b. implementation plan for each initiative
3. Prepare detailed project workplan
4. Provide required substantive technical expertise to meet workplan objectives

B. Training

1. Identify the elements of the project outline that require training to meet project objectives and fully implement institutional reforms
2. Develop a training plan that provides the specific training necessary to meet project objectives and fully implement institutional reforms
3. Review the job descriptions and the capacity of existing personnel to meet job requirements in counterpart institutions related to new institutional reform practices and procedures
4. Prepare necessary curricula and materials for each element of the training plan and determine resource and logistics needs
5. Implement the training plan
6. Develop and implement basic job-related IT training modules for counterpart institution personnel
7. Develop and implement a training module in the fundamentals of public administration for selected counterpart institution personnel

C. Integration of Information Technology Applications

1. Design and implement a basic Electronic Candidate/Vacancy Database and Tracking System for the Judicial Selection Process

2. Design and Implement a basic Electronic Complaint Database and Case Tracking System for the Judicial Disciplinary Process

D. Procurement

1. Complete inventories of existing materials and IT equipment in counterpart institutions related to specific project initiatives and for which procurement of materials and/or equipment is programmed
2. Prepare lists of needed materials and equipment eligible for project procurement and determine procurement priorities
3. Develop lists of materials and equipment to be purchased using project resources
4. Execute procurements

IV. Specific Judicial Selection Process Initiatives

A. Technical Assistance to Design and Implement to Improved Application and Pre-Qualification Procedures and Practices

1. Review procedures and practices for each counterpart institution that impact on the application and pre-qualification of candidates for judicial appointment
2. Review the regulatory framework and all existing written instructions and guidelines that impact on application and pre-qualification of candidates
3. Define the application and pre-qualification role and objectives for each counterpart institution
4. Prepare required modifications to the regulatory framework to provide for timely public announcement of all judicial vacancies, including specified opening and closing dates for applications for each vacancy
5. Prepare written guidelines and procedures for the implementation of public announcement of judicial vacancies
6. Design and implement a set of standard forms and a checklist of required documentation to cover all candidate applications for initial judicial appointment, and prepare any required modifications to the regulatory framework to mandate their use
7. Based on the detailed review of the applicable regulatory framework for pre-qualification of judicial candidates and the procedures and practices at each counterpart institution, develop a list of pre-qualification procedures that are supported by counterpart institutions and other interested parties
8. Using the list of supported procedures, design and implement a unified pre-qualification procedure for judicial candidates that, at the least, clarifies the status of the reserve list, and prepare any required modifications to the regulatory framework to mandate their use

9. If standardized testing is to be integrated into the unified pre-qualification procedure, develop a framework for testing and written guidelines, standards and criteria for both written and oral testing

B. Development of a Judicial Selection Process Manual

1. Establish a Selection Process Working Group composed of operational personnel from counterpart institutions involved in the judicial selection process
2. Collect and review with the working group all written guidelines, standards, criteria, forms and checklists used by counterpart institutions to administer the judicial selection process
 - a. Determine what guidelines etc. are presently in use and are functioning well to meet selection process administrative requirements
 - b. Develop a list of guidelines etc. that are needed to meet selection process administrative requirements
3. Based on the review with the working group, develop a format and contents list for a judicial selection process manual that will eventually include procedural guidelines, standards, criteria, and applicable forms and checklists for all elements of the judicial selection process (first appointment and lifetime appointment)
4. With the working group, determine priority elements of the contents list and begin to draft priority elements of the judicial selection process manual
5. Develop an implementation model for elements of the judicial selection process manual and begin implementation of priority elements
6. Complete drafting and implementation of all elements of the judicial selection process manual
7. Develop the necessary protocols for counterpart institutions to maximize inter-institutional cooperation to meet judicial selection process objectives

C. Design and Implementation of a Basic Electronic Candidate/Vacancy Database and Tracking System

1. Establish an Inter-institutional Information Technology Working Group composed of technical representatives from each counterpart institution involved in the judicial selection process
2. Review the data collection, data management, and database development practices and procedures for each counterpart institution, including all electronic databases in use in the administration of the judicial selection process
3. Update and complete inventories of existing IT hardware and software in counterpart institutions that are related to specific project initiatives

4. Design a basic Electronic Candidate/Vacancy Database and Tracking System and develop the technical specifications for the system
5. Prepare the terms of reference for selection of an IT programming specialist to complete the design and implementation of the basic Electronic Candidate/Vacancy Database and Tracking System
6. Determine hardware needs for development and implementation of the basic Electronic Candidate/Vacancy Database and Tracking System and complete necessary procurements
7. Review the capacity of present counterpart personnel to meet existing and upgraded data collection, data management, and database development job requirements
8. With the working group, define the necessary data collection, data management and database development objectives for each counterpart institution to utilize and maintain the basic Electronic Candidate/Vacancy Database and Tracking System
9. With the working group, establish and implement the procedures necessary for each counterpart institution to meet its defined data collection, data management, and database development objectives, including necessary internal regulations, and develop written functional manuals for counterpart personnel responsible for utilization and maintenance of the basic Electronic Candidate/Vacancy Database and Tracking System
10. Implement the basic Electronic Candidate/Vacancy Database and Tracking System
11. Develop and implement the protocols for cooperative data collection, data management, and database development and data sharing among the counterpart institutions to facilitate inter-institutional IT cooperation

V. Specific Judicial Disciplinary Process Initiatives

A. Technical Assistance to Design and Implement Improved Complaint Filing Procedures and Practices

1. Review procedures and practices for each counterpart institution that impact on the filing of disciplinary complaints
2. Review the procedures and practices applicable to receipt, processing and referral of disciplinary complaints by authorized public officials
3. Review the regulatory framework and all existing written instructions and guidelines that impact on the filing of disciplinary complaints
4. Define the disciplinary complaint filing role and objectives for each counterpart institution and the authorized public officials

5. Prepare a standard disciplinary complaint form to be distributed to all authorized public officials and the written guidance and procedural checklist necessary to utilize the form
6. Prepare written standards and criteria for evaluating complaints and the necessary supporting materials to facilitate application of the standards and criteria (evaluation forms, transmittal forms)
7. Based on the detailed review of the applicable regulatory framework for filing of disciplinary complaints, prepare necessary modifications to the regulatory framework to provide for required utilization of the standard disciplinary complaint form and other related forms and checklists, and application of evaluation standards and criteria by authorized public officials.

B. Development of a Judicial Disciplinary Process Manual

1. Establish a Disciplinary Process Working Group composed of operational personnel from counterpart institutions involved in the judicial disciplinary process (NOTE: should be different than the Selection Process Working Group.)
2. Collect and review with the working group all written guidelines, standards, criteria, forms and checklists used by counterpart institutions to administer the judicial disciplinary process
 - a. Determine what guidelines etc. are presently in use and are functioning well to meet disciplinary process administrative requirements
 - b. Develop a list of guidelines etc. that are needed to meet disciplinary process administrative requirements
3. Based on the review with the working group, develop a format and contents list for a judicial disciplinary process manual that will eventually include procedural guidelines, standards, criteria, and applicable forms and checklists for all elements of the judicial disciplinary process, including elements related to application of sanctions
4. With the working group, determine priority elements of the contents list and begin to draft priority elements of the judicial disciplinary process manual
5. Develop an implementation model for elements of the judicial disciplinary process manual and begin implementation of priority elements
6. Complete drafting and implementation of all elements of the judicial disciplinary process manual
7. Develop the necessary protocols for counterpart institutions to maximize inter-institutional cooperation to meet judicial disciplinary process objectives

C. Design and Implementation of an Electronic Complaint Database and Case Tracking System for the Judicial Disciplinary Process

Assessment of Judicial Selection and Disciplinary Processes

1. Establish an Inter-institutional Information Technology Working Group composed of technical representatives from each counterpart institution involved in the judicial disciplinary process (NOTE: should be the same IT Working Group established per Sec. IV. C. 1. above)
2. Review the data collection, data management, and database development practices and procedures for each counterpart institution, including all electronic databases in use in the administration of the judicial disciplinary process
3. Update and complete inventories of existing IT hardware and software in counterpart institutions that are related to specific project initiatives
4. Design a basic Electronic Complaint Database and Case Tracking System and develop the technical specifications for the system
5. Prepare the terms of reference for selection of an IT programming specialist to complete the design and implementation of the basic Electronic Complaint Database and Case Tracking System
6. Determine hardware needs for development and implementation of the basic Electronic Complaint Database and Case Tracking System and complete necessary procurements
7. Review the capacity of present counterpart personnel to meet existing and upgraded data collection, data management, and database development job requirements (NOTE: same review conducted per Sec. IV. C. 7. above)
8. With the working group, define the necessary data collection, data management and database development objectives for each counterpart institution to utilize and maintain the basic Electronic Complaint Database and Case Tracking System
9. With the working group, establish and implement the procedures necessary for each counterpart institution to meet its defined data collection, data management, and database development objectives, including necessary internal regulations, and develop written functional manuals for counterpart personnel responsible for utilization and maintenance of the basic Electronic Complaint Database and Case Tracking System
10. Implement the basic Electronic Complaint Database and Case Tracking System
11. Develop and implement the protocols for cooperative data collection, data management, and database development and data sharing among the counterpart institutions to facilitate inter-institutional IT cooperation (NOTE: same protocols developed per Sec IV. C. 11. above)

D. Technical Assistance to Develop and Implement Written Procedures and Standards for Verification of Allegations

1. Review present procedures and practices used by counterpart institutions (Regional HQC's) that relate to the verification of allegations contained in disciplinary complaints

3. Review the regulatory framework and all existing written instructions and guidelines that impact on the verification of allegations contained in disciplinary complaints
4. Define the elements of good allegation verification procedure and practice in the context of administrative processes and prepare a set of verification procedure and practice objectives for counterpart institutions
5. Prepare written procedural guidelines, standards, and forms necessary to meet verification procedure and practice objectives, and prepare any required modifications to the regulatory framework to mandate their use

E. Establishment of a Judicial Disciplinary Unit in the SJA

1. Design a small operational unit within the SJA Central Office with the responsibility and authority to manage the administration of the judicial disciplinary system (Judicial Disciplinary Unit)
2. Review the present organizational and administrative infrastructure of the SJA Central Office and develop a new draft organization chart for the Central Office that includes the organizational infrastructure for a new Judicial Disciplinary Unit
3. Prepare a draft document establishing the Judicial Disciplinary Unit and defining its authority to operate and present it to SJA management for approval
4. Develop the internal regulatory framework (operational procedures) for the Judicial Disciplinary Unit
5. Develop functional job descriptions for each staff position in the Judicial Disciplinary Unit
6. Develop and equip appropriate office space for the Judicial Disciplinary Unit

F. Development of a Draft Norms of Conduct Matrix

1. Establish a group of local attorneys, judges and project staff to review all present laws and regulations that describe in any way existing standards of judicial conduct, designated judicial misconduct, and applicable sanctions, and designate the group to complete tasks 2 – 6 below
2. Based on the review, develop a list of all such provisions of law and regulations by category (standards of conduct, specified misconduct, applicable sanctions) and by content description
3. Draft a list of fundamental principles of judicial conduct for judges in Ukraine with input from judges, lawyers and academics
4. Organize the items from the categorized list of law and regulations into a draft norms of conduct matrix using the fundamental principles and including the applicable sanctions

5. Present the draft matrix to the Council of Judges for discussion and consensus approval
6. Develop educational and training tools based on the norms of conduct matrix for distribution to judges, attorneys, judicial disciplinary process personnel, and the public

VI. Pilot Projects

NOTE: Some components of the outlined project might best be implemented as pilot projects designed to develop and implement a set of reforms in a single or limited number of jurisdictions, test the reforms and implementation methodology, and produce a replicable model for implementation in other jurisdictions or institutions. For those components for which the pilot project programming alternative is selected, there follows a general outline for design and implementation of the pilot project.

A. Selection and Preparation of the Jurisdiction and Counterpart Institutions

1. Select counterpart institutions in representative jurisdictions that are functional, have basic operational and IT infrastructure in place, are logistically convenient, and have management willing to participate as a counterpart in the pilot project
2. Prepare and present a workshop for all participating counterpart institutions in the selected jurisdiction/s to ensure that management and personnel understand the project components to be piloted and the pilot project methodology
3. Provide technical input to each selected counterpart to maximize the benefits of the “laboratory” aspects of pilot projects

B. Plan and Implement Each Pilot Project

1. Select personnel from each of the counterpart institutions in the selected jurisdiction/s to participate in each pilot project
2. Provide targeted technical assistance in planning the scope and methodology of the pilot project and in the specifics of implementing each component of the pilot project in the selected jurisdiction/s, including testing the elements of each pilot project component
3. Complete the implementation of the pilot project components in the selected jurisdiction/s
4. Prepare a report and recommendations for each jurisdiction selected for the pilot project
5. Review pilot project results and make necessary adjustments to implemented reforms in the pilot jurisdiction/s
6. Based on pilot project results and adjustments to implemented reforms, develop replicable project component models for implementation in other jurisdictions

VII. Project Work Product

NOTE: Specific project work product should be identified when a Project Outline is finalized.

APPENDIX B: INFORMATION TECHNOLOGY SURVEY

TABLE 1

N	Question	SJA (Department for Organizational Support of the Work of Qualifications Commissions, Secretariate of the HQCJ)	SJA (Department of Judicial Human Resources - first appointment)	Tteritorial Department of the SJA in the City of Kyiv	High Council of Justice	Comments
1	Does your office have an inventory of existing computers (desktop and laptop), servers, scanners and printers?	No	No	No		
2	If so, could you provide a copy whatever inventory you have?	See Table 2	See Table 2	See Table 2		
3	What percentage of employees have a desk top computer at their work space?	100%	100%	100%		
4	A laptop available to them?	No	No	No		
5	How many internet access locations (computers connected to the internet) are in your offices?	3	1	2		
6	Do all employees have access during working hours?	No	Yes	No		
7	Are you presently using any specific software (including Outlook and Excel) to meet the requirements of the judicial selection process and/or the judicial disciplinary process?	Yes	Yes	Yes		
8	If so, what is the software?	Word, Excel, iExplorer	Word, Excel, iExplorer	Word, Excel, iExplorer		
9	Was it prepared specifically for the judicial selection or disciplinary process?	No	No	No		
	Does your office maintain any databases in electronic format?	Yes	Yes	No		
10	If so what databases and how are they prepared and updated?	By input of source information into the respective forms	By input of source information into the respective forms			

Assessment of Judicial Selection and Disciplinary Processes

N	Question	SJA (Department for Organizational Support of the Work of Qualifications Commissions, Secretariate of the HQCJ)	SJA (Department of Judicial Human Resources - first appointment)	Tteritorial Department of the SJA in the City of Kyiv	High Council of Justice	Comments
11	Does your office have a “case tracking” or “case management” system?	Yes (Dilivodstvo)	No	No		
	If so, is it a computerized system?	Yes				
12	If computerized, how is it maintained and updated?	Is used the client part of the Client-Server system. Updates are carried out by server administrators				
13	Does it provide access to information that is updated daily?	No				
14	If it is not computerized, is there a register of some sort that is regularly updated that provides “case tracking” or “case management” information? (The word “case” in these questions refers to “applicant and/or vacancy” for the judicial selection process and “complaint and/or disciplinary case” for the judicial disciplinary process.)	Yes (Excel file)				
15	Does your office use any electronic forms in administering the judicial selection and/or disciplinary process?	Yes (model form)	Yes (model form)	Yes (model form)		
16	If so, what are they, how are they used, and by whom are they used?	Excel and Word files. Keeping of tables, creation of documents using model forms (see Table 3)	Excel and Word files. Keeping of tables, creation of documents using model forms (see Table 3)	Excel and Word files. Keeping of tables, creation of documents using model forms (see Table 3)		
17	Do you have any manuals, written guidelines, or other written instructions that cover data collection, data entry and data maintenance? This question covers both manual and electronic data collection, entry and maintenance.	Yes (internal orders and decisions, normative acts, Law "on Citizens Applications", etc)	Yes (internal orders and decisions, normative acts, Law "on Citizens Applications", etc)	Yes (internal orders and decisions, normative acts, Law "on Citizens Applications", etc)		
18	• Are there any written regulations or guidance that cover access to information, including internal access and distribution of data and documents, external access by other government institutions, and public access?	Yes	Yes	Yes		

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TABLE 2

N	List of equipment	SJA (Department for Organizational Support of the Work of Qualifications Commissions, Secretariate of the HQCJ)	SJA (Department of Judicial Human Resources - first appointment)	Tteritorial Department of the SJA in the City of Kyiv	High Council of Justice	Comments
1	System unit	Celeron 2GHz / 865G / DDR 256MB / HDD 25Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2003	Celeron 2GHz / 865G / DDR 256MB / HDD 25Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2000	AMD - 1,66; 512 RAM; HDD 80; TFT; MS Windows XP Pro SP2 Rus; MS Office 2003 = 3 шт.		
2	System unit	Celeron 2GHz / 865G / DDR 256MB / HDD 75Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2000		AMD - 1,66; 256 RAM; HDD 80; TFT; MS Windows XP Home Edition SP2 Rus; MS Office XP = 1 шт.		
3	System unit	Celeron 2GHz / 865G / DDR 256MB / HDD 35Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2003		AMD - 1,66; 256 RAM; HDD 80; TFT; MS Windows XP Home Edition SP2 Rus; MS Office 2002 = 1 шт.		
4	System unit	Celeron 2GHz / 865G / DDR 256MB / HDD 35Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2003				
5	System unit	Celeron 2.66GHz / 865G / DDR 512MB / HDD 75Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2007				

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N	List of equipment	SJA (Department for Organizational Support of the Work of Qualifications Commissions, Secretariate of the HQCJ)	SJA (Department of Judicial Human Resources - first appointment)	Tteritorial Department of the SJA in the City of Kyiv	High Council of Justice	Comments
6	System unit	Celeron 1,2GHz / 815 / DDR 128MB / HDD 20Gb / onboard video / LAN 100 /Windows 2000 SP3 / MSOffice 2000				
7	System unit	Celeron 2GHz / 865G / DDR 256MB / HDD 35Gb / onboard video / LAN 100 /Windows XP Pro SP2 / MSOffice 2003				
8	Internet (evaluation scale 1-5)	2		3		
9	Standard software	Word, Excel	Word, Excel	Unified information system of judicial human resources		
10	Specialized software	Dilovodstvo	Unified information system of judicial human resources	Unified information system of judicial human resources		

APPENDIX C: TABLE ON INITIAL JUDICIAL APPOINTMENT

DOCUMENT and LEGAL REFERENCE GUIDE

Requirements to the candidate for the position of a judge

<i>Constitution of Ukraine</i>	<i>Law of Ukraine “On the Judiciary”</i>	<i>Law of Ukraine “On Status of Judges”</i>
<p>Part 2 Article 127</p> <p>A citizen of Ukraine, not younger than the age of twenty-five, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than ten years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.</p>	<p>Part 2 Article 59</p> <p>2. A citizen of Ukraine, not younger than the age of twenty-five, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than ten years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.</p>	<p>Article 7. Right to Occupy the Position of a Judge</p> <p>1. A citizen of Ukraine, not younger than the age of twenty-five, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than ten years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.</p>
<p>Part 3 Article 127</p> <p>Persons with professional training in issues of jurisdiction of specialized courts may be judges of these courts.</p> <p>Part 4 Article 127</p> <p>Additional requirements for certain categories of judges in terms of experience, age and their professional level are established by law.</p>	<p>Part 3 Article 59</p> <p>3. Persons with professional training in issues of jurisdiction of specialized courts, except those mentioned in Part 2 of this Law, may also be judges of these courts. In this case for the position of a judge of a specialized court may be recommended by the respective qualifications commission a citizen of Ukraine no less than 30 years of age, who lives in Ukraine for at least 10 years, has a command of Ukrainian, has higher legal education in the field, related to the activity of the specialized court, and at least five years of work experience. These judges shall administer justice only in panels.</p>	<p>Article 7. Right to Occupy the Position of a Judge</p> <p>2. Unless otherwise established by the law a citizen of Ukraine that reached the age of thirty, who has higher juridical education, and work experience in the legal field of minimum five years, including at least three years as a judge, may become a judge of a court of appeals.</p> <p>3. A citizen of Ukraine that reached the age of thirty, who has higher juridical education and work experience in the legal field of minimum seven years, including at least five years as a judge, may become a judge of a high specialized court.</p>

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<i>Constitution of Ukraine</i>	<i>Law of Ukraine “On the Judiciary”</i>	<i>Law of Ukraine “On Status of Judges”</i>
		<p>4. A citizen of Ukraine that reached the age of thirty-five, who has higher juridical education and work experience in the legal field of minimum ten years, including at least five years as a judge, may become a judge of the Supreme Court of Ukraine.</p>
	<p>Part 4 Article 59</p> <p>4. The following citizens may not qualify as professional judges:</p> <ol style="list-style-type: none"> 1) limited in legal capability or declared legally incapable by decision of the court; 2) suffering from chronic mental or other diseases, which are an obstacle for the performance of the functions of a judge; 3) regarding which criminal proceedings are underway, or which have a valid or current criminal record. <p>5. The procedure for the selection of candidates, their appointment as judges, and additional requirements to certain categories of judges regarding work experience, age and professional level are established by the law.</p> <p>6. The requirements to a professional judge, procedure for protection of professional interests of judges, conditions and procedure for their social protection are established by this Law and the Law on Status of Judges.</p>	<p>Article 5. Requirements to a Judge</p> <p>A judge may not be member of political parties and trade unions, participate in political activities, have the representative mandate, occupy any other payable positions, perform any other payable work except scientific, teaching and artistic.</p> <p>Article. 7</p> <p>7. A person, who has been convicted, limited in legal capability or declared legally incapable by decision of the court, may not qualify as a judge.</p>

<i>Body (person)</i>	<i>Actions and terms</i>	<i>Constitution of</i>	<i>Law of Ukraine</i>	<i>Law of Ukraine</i>	<i>Law of Ukraine</i>	<i>Decree of the President of</i>	<i>Approved by Resolution of the</i>
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Assessment of Judicial Selection and Disciplinary Processes

		<i>Ukraine</i>	<i>On the Judiciary</i>	<i>On Status of Judge</i>	<i>On the High Council of Justice</i>	<i>Ukraine on Rules and Regulations of Procedure of Reviewing Issues and Preparing Materials on Primary Nomination to Professional Judge Position</i>	<i>Board of Judges of Ukraine No. 35 dd. January 27, 2006 Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges (Recommended Guidelines)</i>
Candidate	<u>Submits the application(s)</u>		<p>Article 60</p> <p>3. Any person meeting eligibility requirements for the position of a judge, may apply to the relevant judicial qualification commission to get a recommendation for nomination as a professional judge.</p>	<p>Article 8. Selection of Candidates for Judge’s Positions</p> <p>3. A person meeting eligibility requirements for the position of a judge as defined by Article 7 of this Law, may apply to the relevant judicial qualification commission to pass a qualification exam and get a recommendation for nomination as a professional judge.</p>		<p>4. A person who complies with the requirements to nominee to judge position set out in Part Three, Article 127 of the Constitution of Ukraine (254k/96-VR) (hereinafter, ‘the Nominee’) shall be entitled to apply to relevant Judicial Qualifications Commission requesting its recommendation on nomination to professional judge position by submitting the passport of the citizen of Ukraine or interim certificate of the citizen of Ukraine, as well as written consent to be subjected to special investigations in respect of circumstances mentioned in Part Four, Article 59 of the Law of Ukraine on Judiciary of Ukraine(3018-14), as well as to collection, storage and use of other confidential information as may be necessary conform to requirements set out in Part Two, Article 127 of the Constitution of Ukraine.</p>	<p>1.3.2. A person meeting eligibility requirements for the position of a judge (“the candidate”) as defined by the Constitution of Ukraine, Article 127, Part Three, and Law of Ukraine ‘On the Judicial System in Ukraine’, Article 59, may apply to the relevant judicial qualification commission to pass a qualification exam (Addendum 1/1) and get a recommendation for nomination as a professional judge (Addendum 1/2) by submitting his/her written consent (Addendum 2) to competent authorities to check circumstances listed in the Law of Ukraine ‘On the Judicial System in Ukraine’, Article 59, Part Four, collect, keep and use any other confidential information which is necessary to meet the requirements set forth by the Constitution of Ukraine, Article 127, Part Two.</p>

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<p>The Qualifications Commission of the Judges of the Respective Appellate Circuit</p>	<p><u>Receives the applications, registers, puts its resolution and submits to the territorial SJA</u> (in the course of 3 days)</p> <p><u>Considers the respective application</u> no later than in the course of two months after submission</p> <p><u>Informs the candidate</u> of the exam no later than 10 days before the meeting</p>		<p>Article 61. Procedure for Appointment (Election) of Judge</p> <p>1. The first appointment to the position of a professional judge for the term of five years is done by the President of Ukraine based on the recommendation of the respective Qualifications Commission and the application of the High Council of Justice. All the other judges are elected for life by the Verkhovna Rada of Ukraine on the basis of the recommendation of the High Qualifications Commission and the application of the Head of the Supreme Court of Ukraine (the head of the respective high specialized court).</p>	<p>Article 7. Right to be Appointed as a Judge</p> <p>1. A citizen of Ukraine, not younger than the age of twenty-five, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than ten years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.</p> <p>5. A mandatory requirement for occupying the position of a judge of any court is the passing of the qualifications test. This provision does</p>		<p>4. A person who complies with the requirements to nominee to judge position set out in Part Three, Article 127 of the Constitution of Ukraine (254k/96-VR) (hereinafter, ‘the Nominee’) shall be entitled to apply to relevant Judicial Qualifications Commission requesting its recommendation on nomination to professional judge position, ...</p> <p>In the event of non-performance of the terms and conditions mentioned in Paragraph One hereto, the Judicial Qualifications Commission shall present the nominee with substantiated refutation (at his request, in writing) from accepting the application on recommending him for nomination as a professional judge.</p> <p>3. The verification of nominees to judges’ compliance with legally established requirements, the selection, the carrying out of qualification tests and the recommending of individuals for nomination to judge position shall, under the Law of Ukraine on Judiciary of Ukraine (3018-14), be performed by Judicial Qualifications Commissions.</p>	<p>1.3.2. Upon acceptance of such application either by the judicial qualification commission or by the territorial department of the State Court Administration (“the territorial department”) on behalf of the chairman of the judicial qualification commission, the candidate shall be checked for compliance with the requirements set forth by the Constitution of Ukraine, Article 127, the Law of Ukraine ‘On the Status of Judges’, Articles 5 and 7, and the Law of Ukraine ‘On the Judicial System in Ukraine’, Articles 59, 60 and 61 (based on his/her passport or temporal certificate of Ukrainian citizenship, diploma, a copy of the employment record) and shall be notified of the list of documents to be submitted to the territorial department and shall be given an opportunity to review the list of approximate questions in various branches of law to be asked at the qualification exam.</p> <p>1.3.3. Once the application is filed, dated and endorsed by the chairman of the judicial qualification commission, the qualification commission shall submit such application</p>
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Assessment of Judicial Selection and Disciplinary Processes

			<p>Article 77. Authority of the Qualifications Commission of Judges</p> <p>1. The Qualifications Commission of Judges:</p> <p>1) verifies the compliance of the candidate for the position of a judge with the requirements, established by the law, conducts their attestation and gives the conclusion on the readiness of each candidate to work as a judge; gives conclusions on the dismissal of judges</p> <p>Article 79. The Meeting of the Qualifications Commission of Judges</p> <p>1. The Qualifications Commission of Judges holds its</p>	<p>not apply to the persons, who have sufficient work experience as a judge, and have been out of practice for less than 11 years.</p> <p>Article 8. Selection of Candidates for Judge's Positions</p> <p>1. The selection of candidates for judge's positions is carried out in accordance with the results of the passing of the qualifications test.</p> <p>4. The qualifications tests for the positions of judges are held by the respective qualifications commissions. In case the candidate for the position of a judge fails to pass the qualifications test, the second attempt is allowed no</p>		<p>After the registration of the application, the Judicial Qualifications Commission shall forward it, together with nominee's written consent to special investigations on him, to the relevant territorial Judicial Administration office for preparation of materials mentioned in Cl. 7 hereto within three days.</p> <p>In the event of non-performance of the terms and conditions mentioned in Paragraph One hereto, the Judicial Qualifications Commission shall present the nominee with substantiated refutation (at his request, in writing) from accepting the application on recommending him for nomination as a professional judge.</p> <p>6. Materials on nomination to professional judge position shall be prepared by the State Judicial Administration of Ukraine and territorial offices thereof.</p>	<p>accompanied by the candidate's written consent for special checks to the relevant territorial department within three days thereafter.</p> <p>1.3.4. When the requirements detailed in Paragraph 1.3.2. above are not met, the qualification commission shall provide the candidate with a reasonable waiver to accept his/her application for recommendation for nomination as a professional judge (in writing upon candidate's request).</p>
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			<p>meetings as necessary, but no later than in the course of two months after the submission to the Commission of the respective application.</p> <p>2. The preparation for the meetings of the Qualifications Commission is provided for by the Head of the Commission, or by the Secretary of the Commission. The Head of the Qualifications Commission decides on the time and place of the meeting, the list of issues to be considered, and no later than in ten days before the meeting informs thereof the person, regarding which the issue is going to be considered, the subjects of the application and</p>	<p>earlier than in one year. The results of the passed qualifications test are valid for three years. The persons, which do not agree with the decision of the Qualifications commission, may appeal against it to the High Qualifications Commission of Judges of Ukraine.</p> <p>5. The qualifications commission holds the test, and taking into account its results gives the conclusion on the recommendation for the position of a judge.</p> <p>6. The qualifications commission recommends for the positions of judges the candidates,</p>			
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			<p>the printed media of the respective local rada.</p> <p>Article 82</p> <p>3. The decision (conclusion) of the Qualifications Commission is prepared in writing. In the decision (conclusion) is stated the date and place of the taking of the decision, the composition of the commission, the issues, which had been considered, the reasons for the taking of the decision. The decision (conclusion) is signed by the head and the members of the Commission, which participated in the meeting.</p> <p>4. In case of the existence of a separate opinion, it is prepared in</p>	<p>which showed the best results, in the number, necessary to fill-in all the available vacancies.</p> <p>7. Persons, who have passed the test, but were not recommended for judge's positions because of the lack of vacancies, have to be registered by the qualifications commission as candidates for the newly opened judge's positions in the course of three years, unless they recall their applications in the course of this period.</p> <p>Article 16. Laws on the Qualifications Commissions of Judges</p> <p>The formation of the judicial human resources</p>			
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			<p>writing by the member of the Commission and attached to the case, the Head is to inform thereof in the court of the meeting, however, the content of the opinion is not made public in the course of the meeting.</p> <p>5. The copy of the decision (conclusion) of the qualifications commission in the course of seven days is mailed to the person, under the application of which the issue was considered, and regarding which the decision was taken.</p>	is effectuated via the qualifications commissions of judges.			
Candidate	<u>Submits documents</u> (15 days)					7. The nominee shall, within 15 days as of the day of applying to the Judicial Qualifications Commission, submit to the territorial State Judicial Administration office in the area of location of the court to the position in which he/she has expressed his/her	1.3.5. Within 15 days upon filing the application with the judicial qualification commission, the candidate shall submit the following documents to the territorial department where the court to which the candidate seeks recommendation is located:

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						<p>desire to be recommended the following documents:</p> <ul style="list-style-type: none"> - Copy of passport (pages containing personal data about the nominee) or copy of interim certificate of citizen of Ukraine; - Copy of diploma of higher legal education; - Copy of labor records book (service record card); - Documentary proof of residing in Ukraine for ten years, at least (if applicable); - Personal personnel inventory record and CV; - Four photographs 4x6 cm; - Copy of declaration of income for the previous year. 	<p>passport (pages with candidate’s details) or temporary certificate of Ukrainian citizenship (a copy); university degree in law (a copy); employment record (service record, military card) (a copy); proof of residence in Ukraine for at least ten years (where appropriate); personal evaluation report from the last employer (service); personnel record sheet from HR Division or a CV; four photos 4x6; declaration of income for the last year (a copy).</p>
<p>Territorial Department of the SJA of the Respective Region</p>	<p><u>Preparation of the materials of the candidate: the information is verified (upon request) and the materials are sent to the qualifications commission (no later than in 35 days after the submission by the candidate of the application to the Qualifications Commission of Judges.)</u></p>		<p>Article 86. Provision of the Activity of the Qualifications Commissions of Judges</p> <p>1. The organizational provision of the work of qualifications commissions and the High Qualifications Commission of Judges of Ukraine and their financing is carried out by</p>			<p>6. Materials on nomination to professional judge position shall be prepared by the State Judicial Administration of Ukraine and territorial offices thereof.</p> <p>8. The relevant territorial State Judicial Administration office may, on commission of the Judicial Qualifications Commission, take measures to verify the information contained in the documents submitted by the nominee and to clarify the circumstances mentioned in Part Four, Article 59 of the Law of Ukraine on Judiciary of Ukraine (3018-14).</p>	<p>1.3.6. On behalf of the judicial qualification commission, the territorial department may take steps to check any details in the candidate’s documents and clarify circumstances described in the Law of Ukraine ‘On the Judicial System in Ukraine’, Article 59 (special checks).</p> <p>In case of such assignment, the following documents shall be submitted upon written request of the territorial department and signed by the chief executive of such department:</p> <p style="padding-left: 40px;">written clearance certificate or record of</p>

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			<p>the SJA.</p> <p>2. In order to provide for the organizational support of the High Qualifications Commission of Judges of Ukraine and the qualifications commissions of the specialized courts may be established the Secretariat of the respective Commission. The organizational provision of the work of the other qualifications commissions is performed by the respective territorial departments of the SJA.</p>			<p>In the event of receiving such commission on written request of the territorial State Judicial Administration office, the following documents endorsed by the office head shall be issued:</p> <p>By law enforcement agencies: a written criminal record certificate under the law (pending written consent of the nominee to whom it refers);</p> <p>By tutorship and guardianship agencies: a copy of court decision to recognize the person incapable/not fully capable, or a certificate of absence of any such court decisions;</p> <p>By public health authorities identified by the territorial State Judicial Administration office pending agreement of the Ministry of Health Protection of the Autonomous Republic of Crimea, public health departments with regional, Kyiv and Sevastopol Municipal State Administrations (following medical check): a statement of presence/absence of chronic mental or other disorders able to prevent the nominee from performing in his/her judicial capacities.</p> <p>9. In the event of data in</p>	<p>previous convictions in Ukraine from law enforcement bodies as required by law court decision declaring incapacity or limited capacity or clearance record (a copy) from custody and tutorship agencies;</p> <p>proof of any chronic or any other diseases which may prevent him/her from acting in his/her professional capacity as a judge issued by health authorities;</p> <p>proof of a vacant position at a court (Addendum 6) issued by the SCAU territorial department.</p> <p>1.3.7. Should the candidate fail to submit all the documents listed in Paragraph 1.3.5. above, the territorial department shall notify the candidate thereof and, subject to his/her consent, set a deadline for corrective actions. Should the candidate fail to take corrective measures within the given time, the territorial department shall inform the chairman of the respective judicial qualification commission thereof and shall return the documents to the candidate subject to the chairman's consent.</p> <p>1.3.8. Materials prepared by the territorial department for</p>
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						<p>the submitted documents mentioned in Clause 7 hereto found to be incomplete, the territorial State Judicial Administration office shall notify the nominee to the above effect and establish, in agreement with the latter, a term within which corrective measures should be taken. In the event of the nominee failing to comply with the mentioned requirement within the established term, the territorial State Judicial Administration office shall notify that to the head of the relevant Judicial Qualifications Commission and, pending agreement with the latter, shall return the submitted documents to the nominee.</p> <p>10. Materials on the nominee prepared by the territorial State Judicial Administration office shall be submitted to the Judicial Qualifications Commission 35 days as of the date of nominee's application lodged with the Judicial Qualifications Commission the latest.</p>	<p>the candidate shall be sent to the judicial qualification commission within 35 days upon filing the candidate's application with the judicial qualification commission.</p> <p>1.3.9. The judicial qualification commission shall notify the eligible candidate of the date and time of the qualification exam.</p>
<p>Qualifications Commission of Judges of the Respective</p>	<p><u>Conducts the qualifications test and takes the decision on recommendation (conclusion on rejection – the</u></p>	<p>Part 2 Article 127</p> <p>A citizen of Ukraine, not younger than the</p>	<p>Article 91.</p> <p>Qualifications Test</p> <p>1. The qualifications</p>			<p>11. The nominee found to comply with legally established requirements shall be issued by the Judicial Qualifications Commission a notification stating the date</p>	<p>1.4.1. The qualification commission shall recommend candidates who showed excellent knowledge to be nominated as judges in such number which is required to</p>

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<p>Appellate Circuit</p>	<p><u>repeated test may be taken no sooner than in one year and for the second time – no sooner than in two years)</u></p>	<p>age of twenty-five, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than ten years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.</p>	<p>test is the attestation of a person, which expressed the desire to be recommended for the appointment to the position of a judge for the first time.</p> <p>2. The qualifications test consists of the establishment of the knowledge and the level of professional readiness of the candidate for the position of a judge, the level of his readiness to exercise justice on issues related to the jurisdiction of the respective court.</p> <p>3. After the taking by the candidate of the written test, the interview and asking oral questions, the qualifications commission depending on his</p>			<p>and the time of qualification test to be taken.</p>	<p>fill in the available vacancies. A position of a judge shall be deemed to be vacant in either case:</p> <p>the Decree of the President of Ukraine to increase the number of judges in a specific court or to establish new courts has come into force;</p> <p>an order reassigning a judge to another court or electing a judge has come into force;</p> <p>a judge has been dismissed by the nominating or electing body for reasons set forth by the Constitution of Ukraine, Article 126, Part Five, Paragraphs 1 – 9;</p> <p>a judge deceased.</p> <p>1.4.2. Depending on the exam results, the qualification commission shall conclude (decide):</p> <p>1) whether the candidate has passed the qualification exam and whether he/she is able to work as a judge at a local court.</p> <p>Based on such conclusion (decision), the territorial department shall enter candidate’s name into the staff reserve list (for three years unless the candidate withdraw his/her application earlier) as a candidate for the position of a judge to be nominated for the</p>
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			<p>performance gives the conclusion on the level of readiness of the candidate to work as a judge and the passing of the test, and the recommendation for the appointment of the candidate for the position of a judge or the motivated refuse to give this recommendation. The passing of the qualifications test has to be recorded in minutes, and all the materials of the test are to be archived as official documents. The results of the passed qualifications test are valid in the course of three years.</p> <p>5. The persons, who have passed the qualifications test, but are not</p>				<p>first time to fill in a vacancy and file his/her personal case (including the documents listed above and conclusion (decision) of the judicial qualification commission);</p> <p>2) whether the candidate has passed the qualification exam, whether he/she is able to work as a judge and whether he/she may be recommended to be nominated as a judge of a specific court:</p> <p>This shall be done provided the qualification commission is informed (by the territorial department) of the vacant position of a judge in a specific court;</p> <p>3) not to recommend the candidate to be nominated as a judge.</p> <p>A candidate failed to pass the qualification exam may pass the exam once again at least in a year. Documents required for candidate's nomination as a judge shall be prepared once again before the exam with due consideration of any new information on the candidate available for the period after the first qualification exam. A candidate failed to pass the qualification exam for the second time may pass the exam once again at least two</p>
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			<p>recommended as candidates for the positions of professional judges because of the lack of vacancies, are to be registered by the qualifications commissions as the candidates for the next opened vacancies in the course of three years, in case by that time they do not recall their applications.</p> <p>6. the person, who failed to pass the qualifications test, may be allowed to take it for the second time no earlier than in one year. The documents, required by the procedure for the selection of candidates for the position of a judge before the second passing of the qualifications test are prepared taking into</p>				<p>years later.</p> <p>Successful results of the qualification exam shall be valid for three years.</p> <p>1.4.3. A candidate for whom the judicial qualification commission has made the decision or a candidate applied to resolve any other issue may appeal against such decision by applying to the High Judicial Qualification Commission of Ukraine within fifteen days upon receipt of a copy of such decision provided the candidate disagrees with such decision.</p>
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			<p>account the information on the candidate, which had become available from the time of the taking of the first test.</p> <p>7. The person, who failed to pass the qualifications test for the second time, may be allowed to take it for the third time no earlier than in two years.</p> <p>Article 92. Qualifications Interview</p> <p>1. The qualifications interview consists of the verification of the knowledge of the professional judge, the establishment of the level of professional readiness of the judge, his ability to increase his professional level and</p>				
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			<p>administer justice, including in courts of higher level.</p> <p>3. The qualifications interview is conducted in oral form regarding the main provisions of the main branches of the law, with the simultaneous study of the materials, which apply to the actual administration of justice by the judge and the performance of his professional duties.</p> <p>Article 126. Authority of the SJA</p> <p>1. The SJA:</p> <p>4) keeps statistical and personal records of the data on court human resources, prepares the materials regarding the</p>				
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			appointment of dismissal of the judges;				
Candidate	<u>Has the right to appeal against</u>		<p>Article 83. Appeal Against the Decision of the Qualifications Commission of Judges</p> <p>The person, regarding which the decision was taken by the Qualifications Commission of Judges, or upon the application of which the issue was being considered, in case of disagreement with this decision has the right to appeal against it under the procedure and within the terms, established by this Law.</p> <p>Article 84. Authority of the High Qualifications Commission of Judges of</p>				

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			<p>Ukraine</p> <p>1. The High Qualifications Commission of Judges of Ukraine:</p> <p>5) considers the claims against the decisions (conclusions) of the qualifications commissions;</p>				
<p>Territorial Department of the State Judicial Administration of the Respective Region</p>	<p><u>Receives and sends together with the recommendation to the central office of the SJA</u></p>					<p>12. The territorial State Judicial Administration office shall forward materials with recommendations on the nominee’s nomination to judge position to the State Judicial Administration within three days as of the date of receiving the above documents from the Judicial Qualifications Commission.</p>	<p>1.6.1. Upon receipt of the judicial qualification commission’s conclusion, the territorial department shall send materials accompanied by recommendations to nominate a candidate as a judge to SCAU within three days upon receipt of these papers from the judicial qualification commission. Such papers shall include (in duplicate as required by Paragraph 1.5. above):</p> <ul style="list-style-type: none"> application (Addendum 4); certificate of vacant position at a court to which a candidate is recommended issued by the chairman of such court (Addendum 6); candidate’s application (Addendum 3); personnel record sheet and CV (form P-2 DS); personal evaluation report

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							<p>from the last employer (service); candidate's university degree in law and any addendum thereto (a copy); clearance certificate issued by the Information Center of the Ministry of Internal Affairs; certificate of obligatory preliminary and regular mental examinations; certificate of no drug history; health certificate from a medical institution (Form 086); certificate issued by the custody and tutorship authority confirming that the candidate has not been adjudged incapable or of limited capacity; copy of passport(pages 1, 2, 10, and 11); military card or service record from officer's personal file (a copy); employment record (a copy); summary; review; declaration of income for the last year; photo 3x4 for judge's card, including information detailed in Addendum 7.</p> <p>Furthermore, candidates who worked for law enforcement bodies, Security Service of</p>
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							<p>Ukraine, or tax militia service and candidates who had extended service at the USSR or Ukrainian Armed Forces shall provide a copy of their service record or certificate confirming the period, positions held and grounds for dismissal.</p> <p>Candidates who practice or have practiced as a private notary, attorney-at-law, provide or have provided legal services for a wider community and run their business shall submit taxpayer's certificate from the state tax inspection. Candidates who attended training programs at educational establishments, including preliminary education as full-time students, graduate students, hearers or attendees but whose employment records do not contain any information about dates of enrollment and graduation shall submit certificates to confirm such education.</p> <p>Should a candidate has a degree in law from an unaccredited institution and any diplomas which require nostrification under the Regulation on Acceptance of Foreign Diplomas as approved by Order of the Ministry of</p>
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							<p>Education of Ukraine No. 563 dd. 20.08.2003, such candidate shall submit certificates from such educational institutions.</p> <p>1.6.2. Once a candidate has submitted all these documents, an HR Division of the territorial department shall prepare a candidate's employment history (Addendum 5).</p> <p>1.6.4. A chief executive of SCAU territorial department shall notify the chairman of the court of appeal that materials for nominating a judge for the first time have been sent to SCAU.</p>
<p>The State Judicial Administration (Central Office)</p>	<p><u>Receives, conducts additional verifications and sends to the Supreme Court (high specialized court)</u> (no later than in 10 days)</p>					<p>13. The State Judicial Administration of Ukraine shall verify correctness of execution of the materials and shall take corrective measures as necessary. The materials on nomination to judge position shall be forwarded to the Chair of the Supreme Court of Ukraine or the Chair of the supreme specialized court respectively within 10 days as of the date of their receiving the latest.</p> <p>The materials must include: ~ Nominee's application to recommend him/her for nomination to professional judge position;</p>	<p>1.6.8. SCAU shall then forward such papers either to the Supreme Court of Ukraine or the superior specialized court within 10 days upon receipt. The Chairman of the Supreme Court of Ukraine or the chairman of the superior specialized court shall file the relevant application with the High Council of Justice within 10 days thereafter.</p>

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						<p>Recommendation from the Judicial Qualifications Commission;</p> <p>Copy of passport (pages containing personal data about the nominee) or copy of interim certificate of citizen of Ukraine;</p> <p>Personal personnel inventory record and CV;</p> <p>Copies of diplomas of higher education, academic degrees or academic ranks;</p> <p>Copy of labour records book (service record card);</p> <p>Copy of declaration of income for the previous year;</p> <p>Copy of library research paper on jurisprudence issues and critique to it;</p> <p>Health declaration issued by health care institution.</p>	
The Supreme Court of Ukraine (high specialized court)	<p><u>Receives and sends the application to the High Council of Justice</u></p>					<p>13-1. The Chair of the Supreme Court of Ukraine or the Chair of the supreme specialised court shall review the materials and shall submit a proposal on nomination to judge position based on review results to the Supreme Council of Justice within 10 days the latest.</p>	
The High Council of Justice	<p><u>Considers at the Section and then at the Council, decides and prepares:</u></p> <p>1.The application for first appointment of a</p>	<p>Article 131</p> <p>The High Council of Justice operates in Ukraine, whose</p>	<p>Article 61</p> <p>2. The procedure for the submission of the application on the</p>		<p>Article 27.</p> <p>Deeds of the High Council of Justice</p> <p>The High Council of</p>	<p>14. The Supreme Council of Justice shall motion the proposal on primary nomination of the citizen of Ukraine to judge position as recommended by the Judicial Qualifications Commission to</p>	

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	<p>judge</p> <p>2. The refuse in the submission of the application for the first appointment of a judge</p>	<p>competence comprises:</p> <p>1) forwarding submissions on the appointment of judges to office or on their dismissal from office;</p>	<p>appointment of a judge is established by the Law on the HCJ.</p>		<p>Justice shall adopt the following deeds:</p> <p>1) representation of appointment of judges;</p> <p>2) representation of judges' release from their duties;</p> <p>3) decision of infringement of requirements of non-combination of jobs;</p> <p>4) decision of disciplinary accountability;</p> <p>5) decision on a complaint about a decision of calling to disciplinary account;</p> <p>6) decision of release of a member of the High Council of Justice from his duties in cases provided by Article 18 of this Law.</p> <p>The High Council of</p>	<p>the President of Ukraine.</p> <p>The motion to the above effect shall be made by the Chair of the Supreme Council of Justice.</p>	
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					<p>Justice shall adopt the following procedural deeds:</p> <p>1) decision of a disciplinary proceeding;</p> <p>3) decision of refusal of a nomination;</p> <p>Article 29. Initial nomination of judges</p> <p>The High Council of Justice shall upon recommendation of the qualification commission of judges submit proposals to the President of Ukraine as to the initial appointment of a citizen of Ukraine a judge. Enclosed to the relevant representation of the High Council of Justice shall be:</p>	
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					<p>1) recommendation by the qualification commission;</p> <p>2) personal employment sheet and autobiography of a candidate for a judge;</p> <p>3) copies of diplomas of education, academic degree or status;</p> <p>4) a copy of an essay on legal matters, drawn up by the candidate for a judge;</p> <p>5) review of the essay;</p> <p>6) a copy of the income declaration for the past year.</p> <p>A nominee for a judge shall be considered in person after a report by a member of the</p>	
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					<p>High Council of Justice, acting on a commission from the relevant section conducting preliminary examination of materials relating to the candidate for a judge.</p> <p>A decision on a candidate for a judge shall be taken at a session of the High Council of Justice by show of hands. A proposal of nomination of a candidate for representation to the President of Ukraine shall be considered approved if voted in favor by more than one half of the constitutional membership of the High Council of Justice..</p>		
<p>Secretariat of the President of Ukraine</p>	<p><u>Pre-consideration, special verifications</u> (in the course of one month).</p>	<p>Article 128</p> <p>The first appointment of a professional</p>		<p>Article 9</p> <p>2. The judges, who have passed the selection</p>		<p>15. The preliminary review of the motion on nomination to judge position submitted for consideration of the President of Ukraine by the Supreme</p>	

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	<p><u>Verifies and prepares the draft Decree of the President of Ukraine “On Appointment of Judges”</u></p>	<p>judge to office for a five-year term is made by the President of Ukraine.</p>		<p>process for the first time, are appointed for a term of five years by the President of Ukraine.</p>		<p>Council of Justice shall be given by the Secretariat of the President of Ukraine under the established procedure. Herewith, the special verification of the data submitted by nominees shall be carried out.</p> <p>The data shall be subject to special verification pending written consent of the nominee. In absence of such consent, no such special verification shall be carried out and the issue of nominating such individual to relevant position shall not be considered.</p> <p>The special verification shall be carried out by respective structural unit of the Secretariat of the President of Ukraine with involvement of the State Tax Administration of Ukraine, the Ministry of Internal Affairs of Ukraine and the Security Service of Ukraine on commission of the Chair of the Secretariat of the President of Ukraine within one month.</p> <p>15-1. The special verification shall extend to cover:</p> <ul style="list-style-type: none"> ~ Authenticity of the data about the nominee provided by the latter; ~ Observance of legally established requirements on 	
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						<p>the status of judges, the Judiciary and fight against corruption by the nominee;</p> <p>Authenticity of information about income mentioned in the declaration of income for the previous year.</p> <p>15-2. The Secretariat of the President of Ukraine shall notify the nominee in respect of whom the verification has been carried out about special verification outcomes.</p> <p>Whenever the nominee disagrees with the special verification outcomes, he/she may express his/her comments (explanations) in writing or directly address the State Tax Administration of Ukraine, the Ministry of Internal Affairs of Ukraine or the Security Service of Ukraine requesting clarifications to the issues concerned.</p> <p>16. The primary nomination of a citizen of Ukraine to judge position shall be effectuated by decree of the President of Ukraine.</p> <p>In the event of any circumstances precluding the individual's nomination to professional judge position present, the materials on such individual shall be returned to</p>	
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						the Supreme Council of Justice.	
President of Ukraine	<u>Signing of the Decree</u>					16. The primary nomination of a citizen of Ukraine to judge position shall be effectuated by decree of the President of Ukraine.	
<i>Acquisition of the status of a judge</i>			<p>Article 61</p> <p>3. The person, appointed for the position of a judge, or elected as a judge for life under the requirements of this Law, shall receive the status of a professional judge of the respective level and specialization: judges of local or appellate general or military courts, judges of the Court of Appeals of Ukraine, judges of the Cassation court of Ukraine, judges of local, appellate or high specialized court, or the judges of the Supreme Court of Ukraine.</p>				

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			5. The judge, appointed to a position, shall receive ID of proper form, as established by this Law.				
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APPENDIX D: TABLE ON LIFETIME JUDICIAL APPOINTMENT

DOCUMENT and LEGAL REFERENCE GUIDE

Law of Ukraine «On the Judiciary»

Article 60

1. The selection of candidates for the positions of professional judges is carried out of the number of persons, who meet the requirements, established by Parts 2 and 3 of Article 59 of this Law, based on the results of passing the qualifications test under the requirements of this Law.

The candidate for the position of a judge of a military court also has to serve in the military and have the rank of an officer.

Article 61

7. The procedure for the life appointment or dismissal of the judge by the Verkhovna Rada of Ukraine is established in the Law of Ukraine “On the Procedure for Nominating and Dismissing a Professional Judge by Verkhovna Rada of Ukraine”.

Law of Ukraine “On the Procedure for Nominating and Dismissing a Professional Judge by Verkhovna Rada of Ukraine”

Article 1. Scope of the Law.

This Law shall set forth the procedure for:

- 1) nominating a professional judge (hereinafter, the judge), whose appointment as a judge has expired, by Verkhovna Rada of Ukraine for an unlimited period of time;
- 2) nominating a person, who has been a judge for at least five years but at the time of consideration of his/her candidacy is not a judge, to act as a judge by Verkhovna Rada of Ukraine for an unlimited period of time;
- 3) nominating a judge, who has been elected before by Verkhovna Rada of Ukraine as a judge for an unlimited period of time, as a judge at the court of another level or the court of the same level but with another specialization;
- 4) dismissing a judge, who has been elected for an unlimited period, by Verkhovna Rada of Ukraine.

Article 2. Procedure for nominating a judge for an unlimited period of time.

A nominee judge shall be elected as set forth below:

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- 1) A nominee judge shall apply to the state court administration for an appointment as a judge for an unlimited period of time while the judges of the Supreme Court of Ukraine and judges of specialized courts shall apply to the chairmen of such courts to recommend them to be elected as judges for an unlimited period of time;
- 2) Materials in support of the nominee election as a judge for an unlimited period of time shall be prepared and notified in local mass media, Golos Ukrainy Newsletter and sent to the Higher Judicial Qualification Board of Ukraine;
- 3) Recommendations whether to elect a nominee as a judge for an unlimited period of time shall be given by the Higher Judicial Qualification Board of Ukraine;
- 4) The Chairman of the Supreme Court of Ukraine or the chairman of the respective higher specialized court shall submit materials to Verkhovna Rada of Ukraine to support nominee's election as a judge for an unlimited period of time;
- 5) The Committee of Verkhovna Rada of Ukraine competent to consider election and dismissal of judges elected for an unlimited period of time (hereinafter, the Committee of Verkhovna Rada of Ukraine) shall consider the application to elect the judge for an unlimited period of time, make a decision whether to recommend him/her as such and refer its decision to Verkhovna Rada of Ukraine for approval;
- 6) Verkhovna Rada of Ukraine shall approve the decision to elect a nominee as a judge for an unlimited period of time.

Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges Approved by Resolution of the Board of Judges of Ukraine No. 35 dd. January 27, 2006

2.1.1. Judges shall be elected for an unlimited period of time by Verkhovna Rada of Ukraine upon recommendation of the High Judicial Qualification Commission of Ukraine ("HJQCU") under the Law of Ukraine 'On the Status of Judges', Article 8, Paragraph 8, the Law of Ukraine 'On the Judicial System in Ukraine', Article 60, Paragraph 4, and the Law of Ukraine 'On the Procedure for Electing and Dismissing a Professional Judge by Verkhovna Rada of Ukraine', Paragraph 1 either upon application of the Chairman of the Supreme Court of Ukraine for judges of general courts or by the chairman of the respective superior specialized court.

<i>Institution (person)</i>	<i>Actions and terms</i>	<i>Constitution of Ukraine</i>	<i>Law of Ukraine "On Judiciary"</i>	<i>Law of Ukraine "On Status of Judges"</i>	<i>Law of Ukraine "On High Council of Justice"</i>	<i>Law of Ukraine On the Procedure for Nominating and Dismissing a Professional Judge by Verkhovna Rada of Ukraine</i>	<i>Approved by Resolution of the Board of Judges of Ukraine No. 35 dd. January 27, 2006 Procedure for Considering and Preparing Materials for Nomination or Election of Professional Judges, Reassignment of Judges to other Courts, and Dismissal of Judges (Recommended Guidelines)</i>
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<p>Territorial department of the SJA of the respective region</p>	<p><u>Receives the application from the judge and prepares the documents of the candidate</u></p> <p>=Until August 1 of each year sends to the SJA of Ukraine the lists of judges and the information on possible vacancies</p> <p>=the SJA prepares the work plan for the HQCJU</p> <p>= the HQCJU sends the plan to the territorial commissions</p> <p>= 6 months before the expiration of the term in office, the territorial department informs the judge thereof</p>		<p>Article 126. Authority of the SJA</p> <p>1. The SJA: 4-1) makes public the information regarding the initiation of the life appointment of a judge;</p>				<p>22.1.5. SCAU (SJA) and SCAU territorial departments shall prepare materials on election of judges and dismissal of judges elected for an unlimited period of time at courts of general jurisdiction except for judges of the Supreme Court of Ukraine and superior specialized courts.</p> <p>2.2.2. Territorial departments and specialized courts shall provide SCAU with the list of judges of local courts, courts of appeal, commercial, administrative, military courts, commercial administrative, military courts of appeal whose nomination and qualification class is expired in the upcoming year before the 1st day of August every year. Based on the information provided, SCAU HR Division shall draft a Work Plan on Certification of Judges by the High Judicial Qualification Commission of Ukraine in Connection with their Nomination for an Unlimited Period of Time and Conferment of Qualification Classes. SCAU shall forward the approved HJQCU Work Plan to territorial departments which shall notify chairmen of local courts, courts of appeal, commercial, administrative, or military courts and commercial courts of appeal and military courts of such Work Plan. The approved HJQCU Work Plan shall also be sent to</p>
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							<p>the HR Division of the Supreme Court of Ukraine to take control measures.</p> <p>2.3.2. The territorial department shall notify the judge within 6 months before expiry of his/her nomination on the need to decide whether to apply for election for an unlimited period of time and prepare documents for this purpose.</p> <p>Should the judge decide to exercise his/her right to be elected as a judge for an unlimited period of time, the judge shall apply to the territorial department or the chairman of the court in writing within 5 months before expiry of his/her nomination.</p>
Candidate	Submits the <u>application</u> (no later than 5 months before the expiration of his term in office)		<p>Article 60</p> <p>4. The judge, whose term in office has expired, may apply to be recommended for life appointment, in case there are no legal obstacles to that.</p>	<p>Article 8.</p> <p>Selection of candidates for the positions of judges</p> <p>8. After the expiration of the term in office, the judge, except for the judges of the Constitutional Court of Ukraine, upon his application shall be recommended</p>			<p>2.3.1. Under the Law of Ukraine ‘On the Status of Judges, Article 8, Paragraph 8, Law of Ukraine ‘On the Judicial System in Ukraine’, Article 60, Paragraph 4 and Law of Ukraine ‘On the Procedure for Electing and Dismissing a Professional Judge by Verkhovna Rada of Ukraine’, Paragraph 1, a judge whose nomination expires may be recommended for election as a judge for an unlimited period of time provided there are no hindrances set forth by the Law of Ukraine ‘On the Judicial System in Ukraine’, Article 59, Part Four.</p>

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				for this position for the consecutive term, in case there are no circumstances, established by Articles 37 and 41 of this Law, which give grounds to dismiss this judge from office.			2.3.2. Should the judge decide to exercise his/her right to be elected as a judge for an unlimited period of time, the judge shall apply to the territorial department or the chairman of the court in writing within 5 months before expiry of his/her nomination.
Territorial department of the SJA of the respective region	<u>Prepares the publication</u> (in the course of five days)						2.3.3. Upon receipt of judge's application for election for an unlimited period of time, the territorial department shall announce through local media within five days that preparation of materials for election of such judge for an unlimited period of time have been initiated.
Territorial department of the SJA of the respective region	<u>Prepares the docuemnts</u> (30 days) <u>Sends the documents to the SJA</u>						2.3.4. The territorial department shall prepare and execute materials to decide whether to elect a judge for an unlimited period of time within 30 days. Such documents shall include: - candidate's application made himself/herself in writing (Addendum 8); - application for election as judge for an unlimited period of time (Addendum 9); - proof of citizenship (passport pages 1, 2, 10, and 11) (a copy); - personnel record sheet from

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							<p>HR division (Form P2-DS) and candidate's CV;</p> <ul style="list-style-type: none"> - university degree, academic degree or academic title (a copy); - employment record and any other proofs of employment (a copy); - personal evaluation report from the employer (or last employer) (Addendum 10); - performance report over five years signed by the chairman of the court and chief executive of the territorial department (Addendum 11,11/1); - candidate's employment history based on employment record and other proofs of employment (Addendum 12); - nomination and reassignment resolutions issued by competent authorities (copies); - health certificate from a medical institution including information on his/her professional suitability (Addendum 13); - declaration of income form as approved by the Ministry of Finance of Ukraine for the last year (Addendum 14); - marriage or divorce certificate (for those who changed his/her surname) (a copy); - proof of the last qualification class conferred (a copy); - certificate of candidate's advanced training over the last year (Addendum 15); - judge's personal details to
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							<p>produce a judge's card (first, second name and patronymic written on a separate sheet of paper, a colored photo and a sample of judge's signature) certified and sealed by the chief executive of the territorial department (Addendum 16);</p> <p>- proof (extract or a duly certified copy) of an announcement in local media on preparation of materials for election as a judge for an unlimited period of time (Addendum 17).</p> <p>These documents may include any other materials where appropriate (copies of decisions of qualification commissions of appellate districts, information on the results of applications considered etc.).</p>
	If not a practicing judge		<p>Article 91. Qualifications test</p> <p>4. The qualifications test shall also be taken by persons, who have not been working as judges for over five years.</p>				<p>2.4.1. Under the Law of Ukraine 'On the Judicial System in Ukraine', Article 91, Paragraph 4, a person, who has been a judge for at least five years but does not work in this capacity as of the date of consideration of his/her election, ("the candidate") shall pass the qualification exam i.e. shall complete a written test and answer professional questions if such candidate would like to be elected as a judge.</p> <p>2.4.2. A candidate shall apply to the territorial department in</p>

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							<p>writing to prepare materials to proceed with election. The candidate's application shall be endorsed by the chairman of the court he/she intends to work for.</p> <p>2.4.3. The territorial department shall prepare documents as defined in Section 2, Paragraph 2.3, for a candidate including:</p> <ul style="list-style-type: none"> - a judge's application (Addendum 18); - an application including information on vacant position of a judge, when and why this position is vacant, document date and number; - written summary.
SJA of Ukraine	<p><u>Receives, verifies and sends the prepared documents of the candidate for the position of a judge (no less than in 4 months before the expiration of the term in office of the judge)</u></p> <p><u>Controls the observation of time limits</u></p> <p><u>Makes public the information on the initiation of the life appointment of</u></p>		<p>Article 126</p> <p>4-1. makes public the information on the initiation of the life appointment of judges;</p>			<p>Article 2. Procedure for nominating a judge for an unlimited period of time.</p> <p>A nominee judge shall be elected as set forth below:</p> <p>2) Materials in support of the nominee election as a judge for an unlimited period of time shall be prepared and notified in local mass media, Golos Ukrainy Newsletter and sent to the Higher Judicial Qualification Board of Ukraine;</p> <p>Article 8. Consideration of election of a nominee as a judge for an unlimited period of time by the Higher Judicial</p>	<p>2.7.1. A proposal and the supporting materials for election of judges shall be send by the territorial department to SCAU within the deadlines set by the HJQCU Work Plan but no later than 4 months before expiry of judge's nomination. This period may not be decreased.</p> <p>2.7.2. Under the Law of Ukraine 'On the Procedure for Electing and Dismissing a Professional Judge by Verkhovna Rada of Ukraine', Article 2, Paragraph 2 and HJQCU Work Plan on Certification of Judges by the High Judicial Qualification Commission of Ukraine in Connection with their Nomination for an Unlimited Period of Time and Conferment</p>

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	<p><u>judges in the newspaper Golos Ukrainy</u> (in the course of five days)</p> <p><u>In case there are mistakes, sends inquiries to the territorial department of the SJA for additional processing and elimination of flaws.</u></p> <p><u>Submits applications to the Head of the SCU for the further sending for consideration to the HQCJU (no less than in three months before the expiration of the term in office of the judge)</u></p>					<p>Qualification Board of Ukraine</p> <p>The Higher Judicial Qualification Board of Ukraine shall consider matters with regard to election of a judge for an unlimited period of time within two months before expiry of judge's tenure. The application of the Chairman of the Supreme Court of Ukraine and chairman of the respective higher specialized court accompanied by the recommendation of the Higher Judicial Qualification Board of Ukraine to elect a nominee as a judge for an unlimited period of time shall be filed by chairmen of such courts with Verkhovna Rada of Ukraine within one month upon receipt of conclusions from the Higher Judicial Qualification Board of Ukraine.</p> <p>A people's deputy of Ukraine may attend, receive the respective materials and participate at the meeting of the Higher Judicial Qualification Board of Ukraine considering election of a judge.</p>	<p>of Qualification Classes during Current Year, SCAU shall control the deadlines applicable to judges' materials, check such materials for completeness and accuracy and take any correctional measures where needed.</p> <p>2.7.3. SCAU shall announce initiated election of judges for an unlimited period of time in the Golos Ukrainy Newsletter within five days upon delivery of the respective materials.</p> <p>2.7.4. Should any mistakes, incompleteness or any other defects be revealed in the documents submitted, SCAU shall assign the respective SCAU territorial department to improve and correct mistakes in such documents. Such SCAU assignments shall be executed within 14 days upon request (either verbally, by phone, fax, e-mail or regular mail). While processing materials, SCAU may require any additional documents with regard to the judge where appropriate (measures taken with regard to applications, decisions of the qualification commissions, checks etc.).</p> <p>Any undue delay during document processing or such assignments may be subject to disciplinary measures against</p>
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							<p>any officials involved.</p> <p>2.7.5. SCAU shall prepare materials for judges from various regions through the Ukrainian Court Network within three months before expiry of judge nomination at the latest and submit their proposals to the Chairman of the Supreme Court of Ukraine for further processing by HJQCU.</p> <p>Such proposal shall be accompanied by the following documents for each judge:</p> <ul style="list-style-type: none"> • judge’s application; • candidate’s employment history; • personal evaluation report; • performance and quality report; • proof of nomination or last election as a judge (a copy); • passport (a copy); • proposal with regard to the judge; • draft HJQCU decision to consider the candidate for election as a judge for an unlimited period of time. <p>Such documents may be accompanied by any supplementary documents.</p>
<p>Supreme Court of Ukraine (high specialized court)</p>	<p><u>The materials are sent to the HQCJU for consideration and taking of the</u></p>					<p>Article 4. Persons eligible to apply to Verkhovna Rada of Ukraine to elect and dismiss judges elected for an unlimited period of time</p>	<p>2.7.6. Based on the proposal of the Chairman of the Supreme Court of Ukraine or the chairman of the superior specialized court, such materials</p>

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	<p><u>decision for the recommendation of the judges for life appointment</u> (no less than 2.5 months before the expiration of the term of the judge in office)</p>					<p>The following persons are eligible to apply to Verkhovna Rada of Ukraine to elect and dismiss judges elected for an unlimited period of time:</p> <p>1) Chairman of the Supreme Court of Ukraine – with regard to judges of general courts in the events set forth in Article 1, Subparagraphs 1 – 3, above.</p> <p>2) Chairman of the respective higher specialized court – with regard to judges of the specialized court in the events set forth in Article 1, Subparagraphs 1 – 3, above.</p>	<p>shall be sent within two months and a half before the expiry of judge’s nomination to HJQCU for further processing and considering whether the judge may be elected for an unlimited period of time.</p>
<p>High Qualifications Commission of Judges of Ukraine</p>	<p><u>Considers the application of the Head of the Supreme Court of Ukraine or the head of the respective high specialized court on the life appointment of a judge</u> (no less than 2.5 months before the expiration of the term of the judge in office)</p> <p><u>Verification of applications</u></p>		<p>Article 79. The Meeting of the Qualifications Commission of Judges</p> <p>6. The consideration of the issues, which have to be resolved at the meeting of the QCJU is carried out according to the procedure, established for the work of the QCJU, and the approved Model Regulation of the</p>			<p>Article 6. Requirements to an application for nominating a nominee as a judge for an unlimited period of time</p> <p>The application to elect a nominee as a judge for an unlimited period of time shall specify the level, location, specialization and name of the court where the nominee is employed.</p> <p>Such application shall be accompanied by the nominee’s personal file, including:</p> <p>1) nominee’s written application signed by</p>	<p>2.7.7. According to the HJQCU Work Plan, HJQCU shall consider the proposal of the Chairman of the Supreme Court of Ukraine or the chairman of the superior specialized court with regard to judges to be elected for an unlimited period of time within two months before the expiry of their nomination.</p> <p>2.7.8. The procedure for considering candidates to be elected or reassigned to another court by HJQCU shall be adopted by the HJQCU as set forth by the Law of Ukraine ‘On the Judicial System in Ukraine’, Article 79, Part Six.</p>

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	<p><u>Gives recommendations</u></p> <p><u>Sends the materials to the Head of the Supreme Court of Ukraine or the head of the respective high specialized court and the person, regarding which the issue was considered (in the course of seven days)</u></p>		<p>work of the QCJU, approved by the Head of the SCU, the Council of Judges of Ukraine and the Ministry of Justice.</p> <p>Article 82. Taking of Decisions by the QCJU</p> <p>5. The copy of the decision (conclusion) of the qualifications commission in the course of seven days is mailed to the person, under the application of which the issue was considered, and regarding which the decision was taken.</p>			<p>his/her own hand; 2) decision of the Higher Judicial Qualification Board of Ukraine recommending nominating the nominee as a judge for an unlimited period of time and stating that the nominee meets the eligibility criteria laid down by Art. 127 of the Constitution of Ukraine (254к/96-BP); 3) qualification records (for judges with more than a five-year break in appointment as a judge, such qualification records shall be accompanied by the report stating that the exam has been passed and the nominee is qualified to work as such);</p>	<p>2.7.9. While considering whether to recommend a judge to be elected for an unlimited period of time or reassigned to another court, HJQCU may assign SCAU to check applications with regard to candidate’s work submitted by citizens, public organizations, companies, institutions, any government authorities or local government authorities.</p> <p>2.7.10. Under the Law of Ukraine ‘On the Judicial System in Ukraine’, Article 82, Paragraph 5, the Law of Ukraine ‘On the Procedure for Electing and Dismissing a Professional Judge by Verkhovna Rada of Ukraine’, Article 6, Paragraphs 2 and 3, HJQCU shall send the following documents within seven days to the Chairman of the Supreme Court of Ukraine or the chairman of the superior specialized court and the applying candidate upon consideration of a candidate to be elected as a judge for an unlimited period of time at their meeting: a copy of the decision (conclusion) whether (or not) to recommend the candidate to be elected as a judge for an unlimited period of time and whether the candidate meets the requirements set forth by Article 127 of the Constitution of Ukraine; a qualification</p>
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							certification report (such report shall be accompanied by the exam results and candidate's professional suitability to work as a judge for those judges who has not worked as such for more than five years).
State Judicial Administration of Ukraine	<p><u>Prepares materials for consideration by the Verkhovna Rada</u> (prepares biodata, applications and drafts)</p> <p><u>Sent to the SCU for submission of application to the Verkhovna Rada of Ukraine</u></p>						<p>2.7.11. Having received the HJQCU decision and the qualification attestation report, SCAU shall compile materials for further processing by Verkhovna Rada of Ukraine. For this purpose, SCAU shall prepare:</p> <ul style="list-style-type: none"> - candidate's employment history sealed and signed by the SCAU HR manager for every judge; - proposal to elect a candidate as a judge for an unlimited period of time; - draft decree of Verkhovna Rada of Ukraine. <p>2.7.12. Such proposal accompanied by the materials for every judge shall be sent to the Supreme Court of Ukraine to request Verkhovna Rada of Ukraine to elect judges for an unlimited period of time or to reassign them to any other court (through the election procedure).</p> <p>2.7.13. Such proposal shall be accompanied by the draft decree of Verkhovna Rada of Ukraine and a judge's personal file which incorporates the documents</p>

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							<p>listed below:</p> <ul style="list-style-type: none"> - candidate's application made by himself/herself in writing; - decision (conclusion) to recommend HJQCU to elect the candidate as a judge for an unlimited period of time (a copy); - qualification attestation report (such report shall be accompanied by the exam results and candidate's professional capacity to work as a judge for those judges who has not worked as such for more than five years); - proof of candidate's citizenship (a copy) (passport pages 1, 2, 10, or 11); - candidate's personnel record sheet (Form P2-DS) and CV; - university degree, proof of academic degree or academic title (a copy); - employment record or any other documents to confirm employment (a copy); - personal evaluation report from the employer (or the last employer); - judge's performance report over the last five years signed by the chairman of the court and chief executive of the SCAU territorial department. Such report shall state information on the number of cases examined with breakdown by years and categories; - number of canceled or revised sentences, court decisions,
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							<p>decrees, orders;</p> <ul style="list-style-type: none"> - reasons for such cancellations or revision of such sentences, court decisions or decrees; - number of any disciplinary measures taken against the candidate and number of decisions to take disciplinary measures against the candidate; - candidate's employment history based on his/her employment records or any other documents confirming his/her employment; - decisions of any competent government authorities nominating or reassigning judges (copies); - health certificate from a medical institution, including information on his/her professional suitability; - last year's declaration of income form as approved by the Ministry of Finance of Ukraine.
<p>Supreme Court of Ukraine (high specialized court)</p>	<p><u>Submits application to the Verkhovna Rada of Ukraine</u> (no later than in one month after the submission of the decision of the HJCJU)</p>						<p>2.7.14. The Chairman of the Supreme Court of Ukraine or the chairman of the superior specialized court shall make a proposal to Verkhovna Rada of Ukraine within a month upon delivery of HJCJU conclusion. Such proposal shall be accompanied by HJCJU recommendation to elect a candidate as a judge for an unlimited period of time and any other materials.</p>

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<p>Verkhovna Rada of Ukraine (justice committee)</p>	<p><u>Considers the documents and takes the decision to recommend or reject</u></p>					<p>Article 5. Grounds to consider materials in support of nominating a nominee as a judge for an unlimited period of time</p> <p>Grounds to consider materials in support of nominating a nominee as a judge for an unlimited period of time are listed below:</p> <ul style="list-style-type: none"> - nominee’s personal application; - recommendation from the Higher Judicial Qualification Board of Ukraine; - application of the Chairman of the Supreme Court of Ukraine or chairman of the respective higher specialized court. <p>Article 9. Verification of citizens’ applications and other materials with regard to the activities of a nominee to be elected as a judge for an unlimited period of time by the Committee of Verkhovna Rada of Ukraine</p> <p>The Committee of Verkhovna Rada of Ukraine shall verify whether the nominee judge meets the requirements laid down by Article 127 of the Constitution of Ukraine</p>	
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						<p>(254к/96-BP) and Article 7 of the Law of Ukraine ‘On Status of Judges’ (2862-12) and shall review applications from citizens, public organizations, companies, institutions, government authorities of any level and local self-government bodies (hereinafter, the applications) with regard to the nominee’s activity. Should such application require any further review, the Committee of Verkhovna Rada of Ukraine shall forward such applications to the Supreme Court of Ukraine, respective higher specialized court, Higher Board of Justice, State Court Administration of Ukraine, Board of Judges of Ukraine or to the judicial qualification boards.</p> <p>The term to review such applications and respond to the Committee of Verkhovna Rada of Ukraine shall be defined in accordance with the laws applicable to citizens’ applications.</p> <p>When needed, the Committee of Verkhovna Rada of Ukraine may directly check such applications by assigning its</p>	
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						<p>member to make such check (subject to his/her consent).</p> <p>A nominee to be elected as a judge for an unlimited period of time may study materials of such applications with regard to his/her activity upon request to the Committee of Verkhovna Rada of Ukraine and may study replies to such applications given to the Committee of Verkhovna Rada of Ukraine.</p> <p>The Secretariat of the Committee of Verkhovna Rada of Ukraine shall, within three days upon application, provide people's deputies of Ukraine with lists of nominees to be elected as judges for an unlimited period of time, including their positions, date and time of the meeting of the Committee of Verkhovna Rada of Ukraine, through the Administrative Office of Verkhovna Rada of Ukraine.</p> <p>The authorized representatives of the Supreme Court of Ukraine, higher Board of Justice, Higher Judicial Qualification Board, higher</p>	
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Assessment of Judicial Selection and Disciplinary Processes

						<p>specialized courts, State Court Administration of Ukraine, Board of Judges of Ukraine as well as nominee judges, who must attend such meeting, shall be invited to attend the meeting of the Committee of Verkhovna Rada of Ukraine.</p> <p>Representatives of government authorities, local self-government bodies and the public may be invited to attend the meeting of the Committee of Verkhovna Rada of Ukraine upon request of people's deputies of Ukraine.</p> <p>Those parties listed in paragraph seven of this Article shall be given a three day written notice of the date and time of such meeting.</p> <p>Article 10. Consideration of the application to elect a nominee as a judge for an unlimited period of time at the meeting of the Committee of Verkhovna Rada of Ukraine</p> <p>The Committee of Verkhovna Rada of Ukraine shall consider a nominee's application for election as a</p>	
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						<p>judge for an unlimited period of time within a month upon filing. Should there be any facts which require verification and prevent the Committee from making decision, such term shall be extended by the Committee for no more than two months unless such extension falls on inter-session intervals at Verkhovna Rada of Ukraine.</p> <p>The matter whether to elect a nominee as a judge for an unlimited period of time shall be considered at the meeting of the Committee of Verkhovna Rada of Ukraine collegially and separately with regard to every nominee.</p> <p>Members of the Committee of Verkhovna Rada of Ukraine and invitees may ask the reporter and directly the nominee any questions during the discussion period.</p> <p>The decision of the Committee of Verkhovna Rada of Ukraine whether or not to recommend the nominee for election as a judge for an unlimited period of time shall be read in the presence of the</p>	
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						<p>nominee upon discussion of his/her candidacy and consideration of applications with regard to his/her activity.</p> <p>The decision of the Committee of Verkhovna Rada of Ukraine not to recommend the nominee for election as a judge for an unlimited period of time shall not prevent Verkhovna Rada of Ukraine to consider this matter at its plenary meeting.</p>	
<p>Verkhovna Rada of Ukraine</p>	<p><u>Voting, taking the decision to appoint or reject</u></p>					<p>Article 11. Binding nature of the decision of the Committee of Verkhovna Rada of Ukraine to elect a nominee as a judge for an unlimited period of time by Verkhovna Rada of Ukraine</p> <p>Once the decision whether or not to recommend a nominee for election as a judge for an unlimited period of time is made, the Committee of Verkhovna Rada of Ukraine shall propose to put the election of such judges on agenda of the plenary meeting of Verkhovna Rada of Ukraine.</p> <p>Verkhovna Rada of Ukraine shall elect or refuse in nominating judges for an unlimited period of time at</p>	

						<p>its plenary meeting provided the respective Committee of Verkhovna Rada of Ukraine has given its decision thereto.</p> <p>Article 12. Discussion procedure to elect a nominee as a judge for an unlimited period of time at the plenary meeting of Verkhovna Rada of Ukraine</p> <p>The discussion of the matter whether to elect a nominee as a judge for an unlimited period of time shall start at the plenary meeting of Verkhovna Rada of Ukraine with the report reported by the official appointed by the Committee of Verkhovna Rada of Ukraine.</p> <p>Should a nominee to be elected as a judge for an unlimited period of time was criticized during consideration of his/her candidacy, the reporter shall notify the people's deputies of Ukraine thereof.</p> <p>Any people's deputy of Ukraine may ask the reporter and the nominee to be elected as a judge for an unlimited period of time any questions and express his/her opinion with regard to his/her candidacy.</p>	
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						<p>Should the nominee to be elected as a judge for an unlimited period of time be criticized at the plenary meeting of Verkhovna Rada of Ukraine and this requires any further check by the respective Committee of Verkhovna Rada of Ukraine, Verkhovna Rada shall not proceed to vote with regard to such nominee. Such nominee may be re-considered by Verkhovna Rada of Ukraine provided the Committee has made its decision as required by Article 9 above. The chairman of the respective court, the applicant, may also be asked questions.</p>	
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APPENDIX E: TABLE ON JUDICIAL DISCIPLINARY PROCESS

DOCUMENT and LEGAL REFERENCE GUIDE

Grounds for disciplinary responsibility – disciplinary offence, namely, the violation of:

- the law in the course of consideration of court cases;
- the requirements of Article 5 of the Law “On Status of Judges” (A judge may not belong to political parties and trade unions, take part in some political activity, have a representative mandate, hold some other paid positions, execute other paid work, except for scientific, teaching and creative);
- the obligations, established by Article 6 of the Law “On Status of Judges” (during the realization of justice to observe Constitution and laws of Ukraine, provide complete, comprehensive and objective consideration of cases with the observance of the terms set by a law; to restrain the requirements, foreseen by the article 5 of this Law, official discipline and order of work of court; not to divulge information, which make a state, military, official, commercial and bank secret, secret of deliberative room, information about the personal life of citizens and other information, about which they knew during consideration of business in the judicial meeting, for providing of nondisclosure of which the decision was accepted about the closed judicial meeting; to shut out acts and some actions, that defame the rank of judge and can cause doubting in his objectivity, impartiality and independence).

The judge is terminated by the body which elected or appointed him\her in case of conflict of interests or the judge violated the oath (par. 4, 5, P. 5, Art. 126 of the Constitution of Ukraine).

Besides, the judge shall be dismissed from office by the body which either appointed or elected him in the case of the violation by the judge of the incompatibility requirements or the oath (par. 4, 5 of P. 1 of the Law “On Status of Judges”).

Text of the Oath:

«I solemnly swear to honestly and diligently perform the responsibilities of the judge, administer justice abiding only to the law, be objective and just» (Article 10 of the Law “On Status of Judges”).

<i>Body (person)</i>	<i>Actions and terms</i>	<i>Constitution of Ukraine</i>	<i>Law of Ukraine “On the Judiciary”</i>	<i>Law of Ukraine “On Status of Judges”</i>	<i>Law of Ukraine On the High Council of Justice</i>
<ul style="list-style-type: none"> • Private Persons • Lawyers • Litigating Parties • Others 	<p>Complaint submission</p> <p>Established practice is the following: initial complaints are</p>	Not regulated	Not regulated	Not regulated	Not regulated

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	frequently received by territorial State Judicial Administration (27 territorial offices) and then sent to an authorized public official				
<ul style="list-style-type: none"> • Members of Parliament of Ukraine • the Ombudsman • the Head of the Supreme Court of Ukraine (the head of a high specialized court regarding a judge of the respective specialized court, except for the application on the dismissal of a judge) • the Minister of Justice of Ukraine • the head of the respective council of judges • the members of the Council of Judges of Ukraine 	<p><u>Initiates or rejects</u> the complaint</p>	<p>Par. 3, P.1, Art. 131 The disciplinary procedure with regard to Supreme Court Judges and judges of high specialized courts as well as consideration of complaints about decisions on disciplining judges of appellate and local courts is carried out by High Council of Justice.</p>	<p>Article 97 Disciplinary proceedings against a judge</p> <p>1. The disciplinary proceedings are the procedure for the consideration by the institution, authorized by the law, of an official application, containing information on violations by the judge of the requirements established for his status, his professional duties or the oath of the judge.</p> <p>2. The right to initiate disciplinary proceedings belongs to: Members of Parliament of Ukraine, the Ombudsman, the Head of the Supreme Court of Ukraine (the head of a high specialized court regarding a judge of the respective specialized court, except for the application on the dismissal of a judge), the Minister of Justice of Ukraine, the head of the respective council of judges, and the members of the Council of Judges of Ukraine.</p> <p>3. The abuse of the right, established in Part 2 of this</p>	<p>Article 34 is not used anymore. Preference is given to Article 97 of the Law “On the Judiciary” (Article 34 The reasons for disciplinary proceedings against the judge can be the following:</p> <ul style="list-style-type: none"> - materials can be submitted by the Ministry of Justice of Ukraine and its bodies, based on examination of referrals from the citizens; - materials can be submitted by the Head of corresponding court, by state officials, by the establishments, organizations and self-government bodies; - information, placed in mass media. <p>Referrals and information, that don't contain reasons for disciplinary proceedings, as well as anonymous referrals, cannot cause disciplinary proceedings)</p>	<p>Article 38 The reasons for disciplinary proceedings The reasons for opening the disciplinary proceedings are applications of:</p> <ol style="list-style-type: none"> 1) Member of Parliament of Ukraine; 2) Ombudsman; 3) Member of the Supreme Council of Justice after verification of application. <p>Remark: This article deals with opening disciplinary proceedings against the Head, Deputy head and judges of the Supreme Court of Ukraine and high specialized courts of Ukraine</p>

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			<p>Article is not allowed, namely, the initiation of disciplinary proceedings without sufficient grounds and the use of this right as a way to exercise pressure on the judge connected to the administration of justice.</p> <p>4. The disciplinary proceedings against a judge may not start based on an application or notification, which does not contain information on the availability of evidence of disciplinary violations or the violation of the oath committed by the judge, as well as based on anonymous notification or applications.</p>		
<ul style="list-style-type: none"> • Members of Parliament of Ukraine • the Ombudsman • the Head of the Supreme Court of Ukraine (the head of a high specialized court regarding a judge of the respective specialized court, except for the application on the dismissal of a judge) • the Minister of Justice of Ukraine • the head of the 	<p>In the case of complaint initiation_sends file to one of the Qualifications Commission:</p>		<p>Article 98 Bodies, which carry out the disciplinary proceedings</p> <p>The disciplinary proceedings are carried out by:</p> <ol style="list-style-type: none"> 1) the qualifications commissions of judges – regarding local court judges; 2) the HQCJU – regarding the judges of courts of appeal and the Cassation Court of Ukraine; 3) The HCJ - regarding the judges of the high specialized courts and the SCU. 		

Assessment of Judicial Selection and Disciplinary Processes

<p>respective council of judges the members of the Council of Judges of Ukraine</p>					
<p>Qualifications Commission</p>	<p><u>Reviews</u> compliant and <u>opens</u> disciplinary proceedings</p>		<p>Article 99 Procedure for disciplinary proceedings against a judge 1. the disciplinary proceedings require the conduction of the verification of the data on the existence of grounds for the disciplining of a judge, and the consideration of the disciplinary case and the taking of decision by the body, which conducts the disciplinary proceedings. 2. The HCJ conducts the disciplinary proceedings against the judges of the high specialized courts and the SCU in accordance with the procedure, established by the Law on the HCJ.</p> <p>Article 100. Decision in a disciplinary case against a judge 1. the decision in a disciplinary case of a judge is taken by the majority of vote of the members of the qualifications commission of judges present at the meeting. 2. The decision has to contain the name of the commission, the name, surname and patronymic of</p>	<p>Article 33 Beginning of disciplinary proceedings In case of existence of grounds, the disciplinary proceedings against the judge are initiated by the decision of the respective qualifications commission of judges, the head of the SCU or the heads of high specialized or appeal courts.</p> <p>Article 35 Consideration of a disciplinary case 1. The head of the qualifications commission, or the appointed y him or by decision of the commission member of the commission shall in the course of one month after the submission of information on a disciplinary offence committed by the judge conduct its verification. The verification of information of a disciplinary offence, committed by the head of the qualifications commission, shall be carried out by three commission members. 2. After the completion of the verification, the case materials are submitted to the</p>	<p>Article 39 The disciplinary procedure consists of the following stages: 1) verification of data on disciplinary violation; 2) opening of disciplinary proceedings; 3) consideration of the disciplinary case; 4) decision.</p> <p>Based on the results of the verifications is prepared a conclusion containing the facts and conditions, established in the course of verification, and the respective proposals.</p> <p>Article 40 Verification of information of a disciplinary misdemeanor Information of a disciplinary misdemeanor shall be verified by a member of the High Council of Justice upon commission from the High Council of Justice, its Chairman or Deputy Chairman, by means of obtaining relevant written explanations from the judge and other persons, requesting of and familiarization with materials of court proceedings, obtaining other information from any bodies,</p>

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			<p>the judge who is brought to disciplinary responsibility and his position, the actions, which led to the disciplining, the explanations of the judge and the information, which characterizes him, the motives of the decision with reference to evidence, the information on the disciplinary measures, applied to the judge, or the basis for the closing of the case, as well as the procedure and term for appealing against the decision.</p> <p>3. In case a disciplinary penalty is applied to the judge, is taken into account the nature of the offence, its consequences, the personality of the judge, the degree of his guilt, and the conditions, which influence the selection of the disciplinary penalty.</p> <p>4. In case the commission decides, that there are no grounds to discipline the judge, the commission closes the disciplinary proceedings and informs thereof the interested parties.</p> <p>5. The disciplinary penalty is applied to the judge no later than in six months after the establishment of a disciplinary violation, not taking into account the time of temporary inability to</p>	<p>commission for consideration and taking of the decision in the course of ten days.</p>	<p>organizations, institutions, individuals or public associations.</p> <p>Upon the results of verification, a report shall be drawn up, specifying actual circumstances established in course of verification, along with conclusions and proposals. The judge subject to verification shall get to know the report and the materials.</p> <p>The report and all materials shall be forwarded to the High Council of Justice, to decide on advisability of disciplinary proceeding.</p> <p>Article 41 Commencing of a disciplinary proceeding</p> <p>In presence of grounds for disciplinary proceeding with regard to the Chairman, Deputy Chairman or a judge of the Supreme Court of Ukraine, chairman, deputy chairman or a judge of a highest specialized court, disciplinary proceeding shall be open upon a resolution of the High Council of Justice within ten days from the day of obtaining information about a judge's disciplinary misdemeanor, and in case such information requires verification - within no more than ten days from the completion of verification.</p>
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			work, or the time of vacation of the judge. The filing of a claim against the decision about the disciplining of the judge stops the count of the term of the disciplinary proceeding.		
Qualifications Commission	<u>Considerers</u> the disciplinary case and <u>makes</u> decision		<p>Article 100. Decision in a disciplinary case against a judge</p> <p>1. the decision in a disciplinary case of a judge is taken by the majority of vote of the members of the qualifications commission of judges present at the meeting.</p> <p>2. The decision has to contain the name of the commission, the name, surname and patronymic of the judge who is brought to disciplinary responsibility and his position, the actions, which led to the disciplining, the explanations of the judge and the information, which characterizes him, the motives of the decision with reference to evidence, the</p>	<p>Article 35 Consideration of a disciplinary case</p> <p>3. In case the commission decides, that there are no grounds to discipline the judge, the head of the commission or the commission closes the disciplinary proceedings and informs thereof the interested parties. The decision on the termination of disciplinary proceedings, taken by the head of the qualifications commission, may be reviewed at the request of a member of the commission.</p> <p>4. In the course of consideration of the case, the commission has to hear the explanations of the judge, who was brought to</p>	<p>Article 42 Examination of a disciplinary case and taking a decision</p> <p>The High Council of Justice shall examine a disciplinary case at the nearest session of the High Council of Justice after receipt of the conclusion and verification materials.</p> <p>A decision on a disciplinary case shall be taken in absence of the person involved, by secret ballot, by a majority of constitutional membership of the High Council of Justice, and shall specify the name of the commission, surname, first name, patronymic and position of the judge brought to disciplinary account, circumstances of his disciplinary misdemeanor, the judge's explanations and information</p>

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			<p>information on the disciplinary measures, applied to the judge, or the basis for the closing of the case, as well as the procedure and term for appealing against the decision.</p> <p>3. In case a disciplinary penalty is applied to the judge, is taken into account the nature of the offence, its consequences, the personality of the judge, the degree of his guilt, and the conditions, which influence the selection of the disciplinary penalty.</p> <p>4. In case the commission decides, that there are no grounds to discipline the judge, the commission closes the disciplinary proceedings and informs thereof the interested parties.</p>	<p>disciplinary responsibility. Failure of this judge to appear at the meeting of the commission without a valid reason does not obstruct the consideration of the case. The meetings and its results are formalized in the form of minutes, signed by the head of the commission and the person, which prepared the minutes.</p>	<p>characterizing his personality, motives for the decision taken, with reference to the evidence, disciplinary punishment applied to the judge, or grounds for termination of the proceeding, as well as the procedure and the term of appeal against the decision.</p> <p>In case of imposing a disciplinary punishment, taken into consideration shall be the nature of the disciplinary misdemeanor, its consequences, the judge's personality, his guilt and other circumstances which may influence the accountability. When deciding on a judge's disciplinary accountability, the High Council of Justice shall hear his explanation. Consideration of a disciplinary case in absence of the judge involved shall be allowed only in case of his failure to attend the session of the High Council of Justice without valid reasons.</p>
Qualifications Commission	<u>Applies</u> sanction		<p>Article 100</p> <p>5. The disciplinary penalty is applied to the judge no later than in six months after the establishment of a disciplinary violation, not taking into account the time of temporary inability to work, or the time of vacation of the judge. The filing of a claim against the decision about the disciplining of the</p>	<p>Article 36</p> <p>Terms for the application and removal of the disciplinary penalty</p> <p>1. The disciplinary penalty is applied to the judge no later than in six months after the establishment of a disciplinary violation, not taking into account the time of temporary inability to</p>	<p>Article 43</p> <p>Terms of application of a disciplinary punishment</p> <p>A disciplinary punishment shall be imposed by on a judge the High Council of Justice no later than six months after revealing the misdemeanor, with the exception of the term of temporary disablement or vacation of the judge, but no later</p>

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			<p>judge stops the count of the term of the disciplinary proceeding.</p>	<p>work, or the time of vacation of the judge.</p> <p>Article 32 Types of disciplinary penalties</p> <p>1.The following disciplinary penalties may be imposed against judges:</p> <ul style="list-style-type: none"> - reprimand; - reduction of qualifications class. <p>2. Only one disciplinary penalty may be applied for any of the violations, mentioned in Article 31 of this Law.</p> <p>3. According to the results of the disciplinary proceedings the respective qualifications commission of judges may take the decision on the sending of the recommendation to the HCJ about the dismissal of the judge from his position.</p>	<p>than one year from the misdemeanor.</p>
Accused Judge	<u>Submits</u> an appeal		<p>Article 101 Appeals against the decisions on disciplinary cases against judges</p> <p>1. A judge or the person, mentioned in Part 2 of Article 97 of this Law, may appeal against the decision of the qualifications commission on disciplining a judge to the HCJ no later than in the course of one month after the receipt of the copy of the decision. The</p>	<p>Article 35</p> <p>5. The decisions of the qualifications commission on the disciplining of judges of appellate and local courts may be appealed against to the HCJ in the course of 10 days upon receipt of the copy of the decision of the commission.</p>	

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			<p>appeal is submitted through the qualifications commission which pronounced the decision.</p> <p>2. The qualifications commission of judges no later than in the course of three days after the receipt of the claim sends it together with the disciplinary case materials to the HCJ.</p> <p>3. The judge, disciplined by decision of the HQCJU, or the person, mentioned in Part 2 of Article 97 of this Law, may appeal against the decision in accordance with the procedure, established in Part 1 of this Article. The HQCJU shall no later than in three days after the receipt of this claim send it together with the disciplinary case materials to the HCJ.</p> <p>4. The HCJ considers the claims in accordance with the Law on the HCJ.</p>		
The Discipline Section of the High Council of Justice	<u>Considers</u> appeal and <u>makes</u> decision				<p>Article 46 Consideration of complaints about a decision of calling judges to disciplinary account</p> <p>A complaint about a decision of a qualification commission on the matter of calling to disciplinary account may be lodged to the High Council of Justice no later than one month from the day following the day of handing the relevant decision</p>

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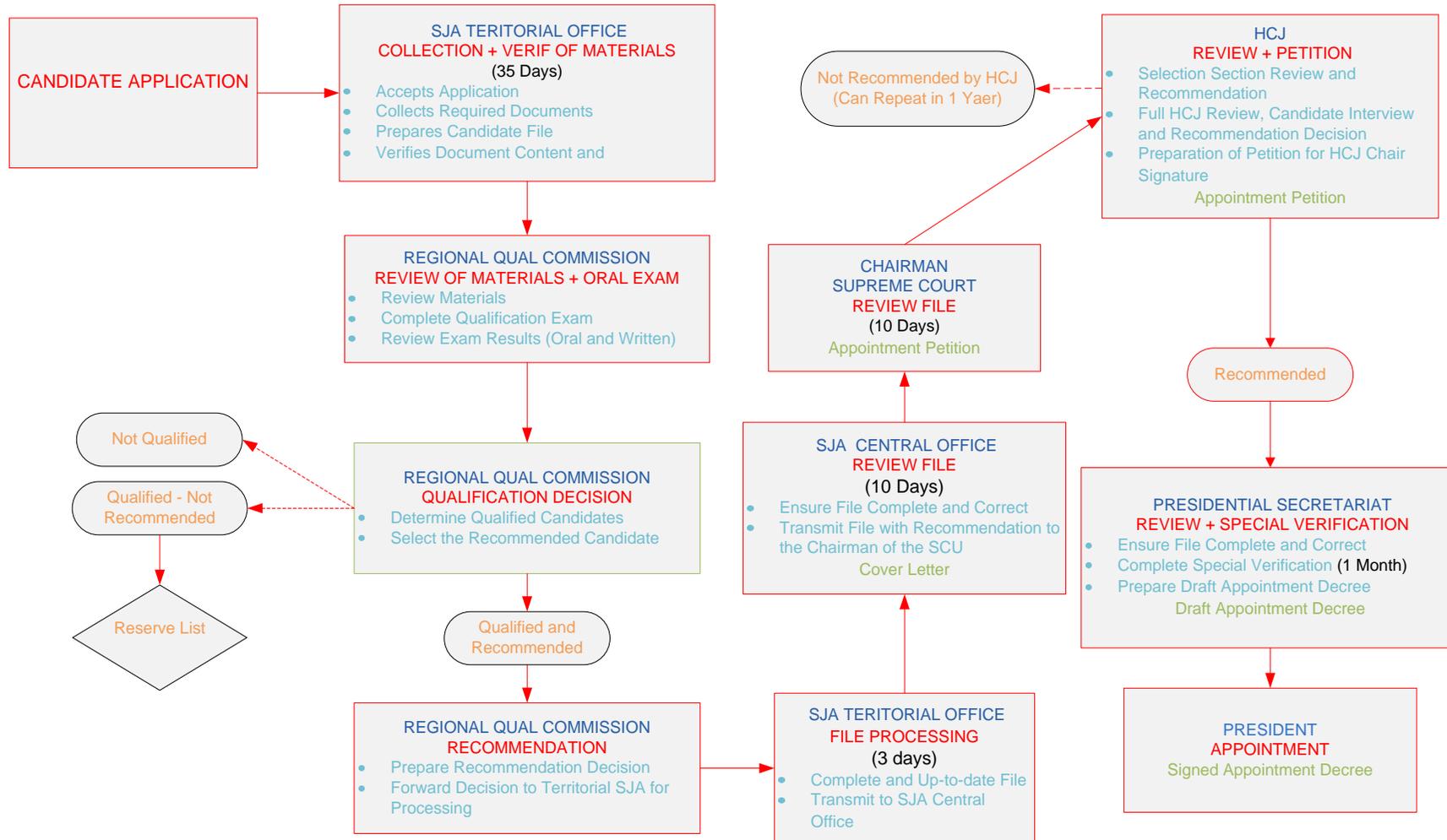
					<p>to the judge.</p> <p>The High Council of Justice may extend the term of lodging a complaint, if it admits that the one-month term has been violated for valid reasons.</p> <p>The High Council of Justice shall consider complaints about decisions of calling judges of courts of appeal and local courts to disciplinary account no later than within one month after their receipt, and in case of the need for additional verification of circumstances and materials of the case - within two months after the complaint.</p> <p>The High Council of Justice shall consider complaints of judges about decisions of qualification commissions as to calling judges to disciplinary account, and, by the results of consideration, shall take a decision upon a report of a member of the disciplinary section of the High Council of Justice.</p> <p>Upon consideration of a judge's complaint, the High Council of Justice may, on sufficient grounds:</p> <ol style="list-style-type: none"> 1) satisfy a judge's complaint, cancel the decision of calling to disciplinary account, and terminate disciplinary proceeding; 2) satisfy the complaint, fully or partially, and change the decision of the body which has imposed
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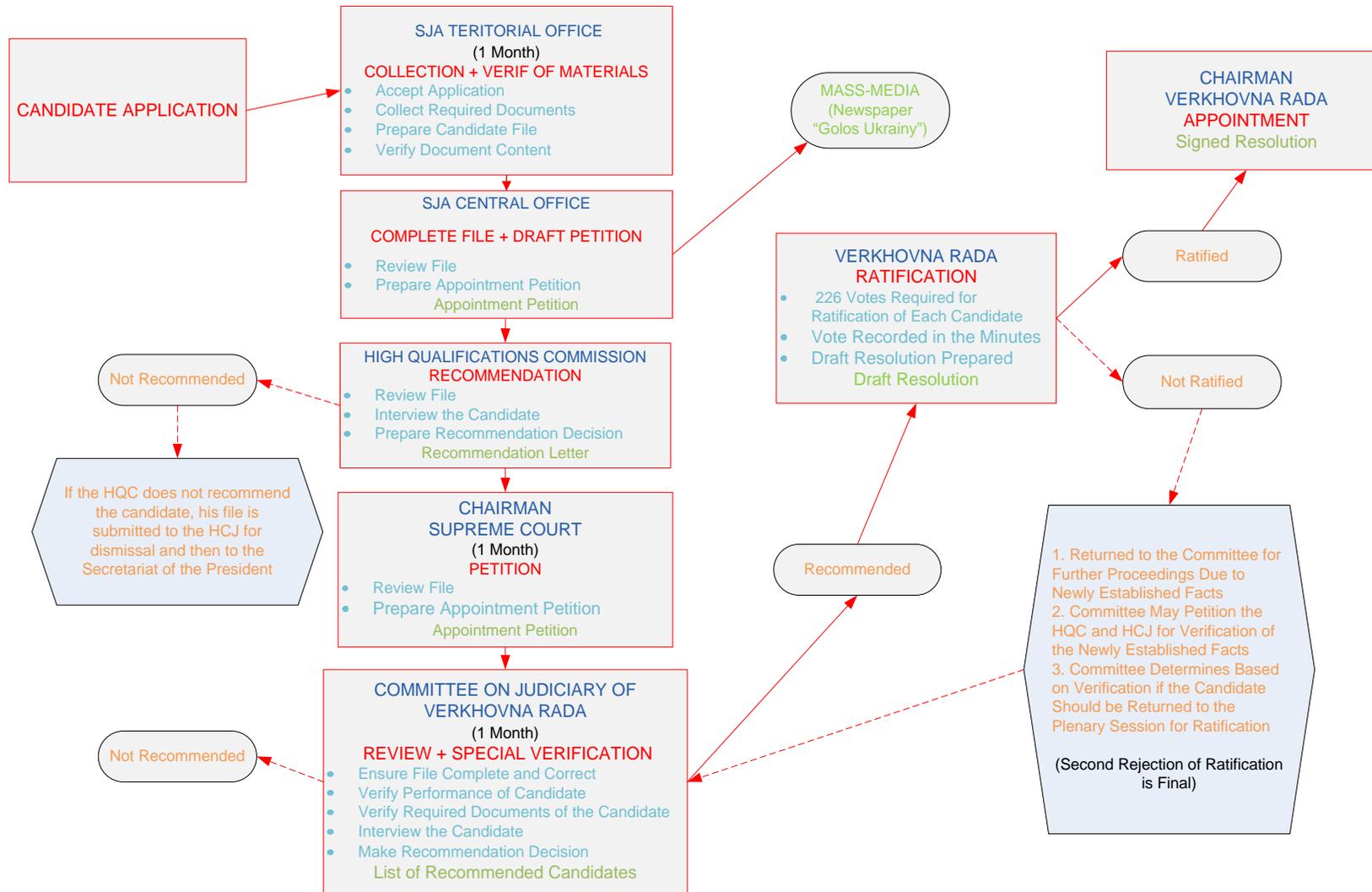
					<p>the disciplinary punishment; 3) leave the complaint unsatisfied, and the decision of the body which has imposed the disciplinary punishment unchanged.</p> <p>When deciding on a judge's disciplinary accountability, the High Council of Justice shall hear his explanation. Consideration of a disciplinary case in absence of the judge involved shall be allowed only in case of his failure to attend the session of the High Council of Justice without valid reasons.</p>
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APPENDIX F: FLOWCHART ON INITIAL JUDICIAL APPOINTMENT

PROCEDURE FOR SELECTION OF GENERAL JURISDICTION JUDGES FIRST APPOINTMENT



APPENDIX G: FLOWCHART ON LIFETIME JUDICIAL APPOINTMENT PROCEDURE FOR SELECTION OF GENERAL JURISDICTION JUDGES LIFETIME APPOINTMENT



APPENDIX H: FLOWCHART ON DISCIPLINARY PROCESSES

