COMBATING CORRUPTION AND STRENGTHENING RULE OF LAW IN UKRAINE

DIAGNOSTIC REPORT ON INCREASING TRANSPARENCY AND ACCOUNTABILITY OF THE JUSTICE SYSTEM

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The purpose of this report is to present a diagnostic review of the transparency and accountability of the justice system, and to identify the most promising quick-impact activities.

There are three fundamental issues concerning the justice system of Ukraine, which not only impact the transparency and accountability of the justice system, but also severely impact the independence, competency, and efficiency of judges, and which have serious implications for all judicial reforms currently being undertaken.

THREE FUNDAMENTAL ISSUES CONCERNING THE TRANSPARENCY AND ACCOUNTABILITY OF THE JUSTICE SYSTEM

1. ADMINISTRATION OF JUSTICE

The Ukrainian judiciary is suffering from its current structure, which is convoluted and dependent primarily upon the executive branch for its administrative, budgetary and personnel decisions, and from the cumbersome organization and jurisdiction of its court system.

Rather than look to the future to develop its judicial system and the court structure, the Government of Ukraine (“GOU”) and those responsible for judicial reform are focusing on the country’s past, the centralized control over the courts, and the power wielded by a few individuals during the Soviet regime. Further, the current state administration does not have sufficient respect for the judiciary to promote its independence. In fact, during most of the meetings, the administration demonstrated contempt for judges.

This view is substantiated by the highly irresponsible, yet widely published remarks by the President of Ukraine to the Verkhovna Rada on May 25, 2006. “Corruption in courts and law enforcement bodies is, in my opinion, critical and represents a huge threat for Ukraine’s national security. We are all responsible for addressing the situation when judicial independence turns into judicial arbitrariness is turning into judicial despotism.” And in mid-June, 2006, the Minister of Justice publicly condemned the courts in his response to a recent survey indicating corruption in the courts.

The current structure of the justice system does not provide for judicial independence. In keeping with the GOU’s intention to create several organizations as well as courts to diffuse power among individuals, the GOU has developed a judicial system with several institutions sharing court administrative responsibilities. The two major bodies, the State Judicial Administration (“SJA”) and the High Council of Justice (“HCJ”) with support by numerous judicial qualification commissions are responsible for the administration, budget and personnel for a majority of the courts.

The SJA is, by law, a central executive body (Law on the Judiciary, Chapter 19, Article 125) which provides for the organizational support of the general jurisdiction courts, other than the Supreme Court, the High Economic Court and the High Administrative Court, each of which has their own administrative and budget office. The SJA is also responsible for the organizational support of the judicial qualification commissions, the judicial self-government authorities i.e. the meetings of judges, the Conference of Judges, the Council of Judges, the Congress of Judges, and the Academy of Judges. Other than consenting to the executive appointment of the Chairman and Deputy Chairman of the SJA and receiving progress reports from the SJA, the judiciary, particularly the Council of Judges, has limited control over the SJA.

The HCJ, defined in the Constitution as a quasi-judicial body, is responsible for organizing the selection, discipline and removal of judges. Unlike other democratic countries where the
membership of the judicial council consists of a majority of judges, the majority of members of the HCJ are not judges. Other than the three members of the HCJ selected by the Congress of Judges, the other members are selected by the President, the Verkhovna Rada, the Congress of Advocates, the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions, and the All-Ukrainian Conference of Employees of the Procuracy. Although members representing the other institutions could be judges, there is no legal mandate that they be. The Chief Justice of the Supreme Court, the Minister of Justice and the Prosecutor General are ex-officio members of the HCJ. Currently, the HCJ consists of five judges, three appointed by the Congress of Judges, one appointed by the President, and the Chief Justice of the Supreme Court.

The absence of judicial control over the SJA and the HCJ is disturbing, particularly in a country where the judiciary has a history of being subordinated to the executive branch and is viewed with distrust and disrespect by the executive branch. There is a legal provision for judicial self-governance; however, it covers only that portion of the internal operations of the courts that are not directly connected with the administration of justice. (See Law on the Judiciary, Chapter 15). Judicial independence continues to remain a novel concept in Ukraine.

2. COURT STRUCTURE

The court structure is complex and cumbersome and, according to the Ukrainian governmental leadership, including many judges, is justified by Ukraine’s Soviet past and its similarity to Germany’s current court structure. In order to decentralize control over the courts, a court structure has been created to diffuse power. Rather than have a simplified, three-tier court structure: trial, appellate and cassation courts with specialized chambers at each level, which is common in many countries, the Ukrainian court structure consists of three-level general jurisdiction courts of which there are 666 local courts, 27 appellate courts and the Supreme Court; four-level economic courts, of which there are 27 local courts, 11 appellate courts, one High Economic Court with the opportunity to appeal to the Supreme Court; and recently-created, four-level administrative courts, of which there will be 27 local courts, 7 appellate courts, one High Administrative Court with the opportunity to appeal to the Supreme Court.

Although funding is needed to desperately improve the court conditions of many of the 666 local general jurisdiction courts as many judges do not even have courtrooms to conduct trials, the GOU must begin constructing 27 local administrative courts as well as the 7 appellate administrative courts. Funding is, however, available when state interests are involved. The newly-renovated High Economic Court in Kyiv and the Economic Court of Appeals in Odessa are in dramatic contrast to other court buildings around the country.

By creating a complex court structure and disseminating power among numerous courts, many observers believe it will be more difficult for judges to become corrupt. Rather than have general jurisdiction courts, each with one court chair, consisting of four chambers, civil, criminal, administrative and economic, it is widely believed that a myriad of courts with numerous court chairs will make it more challenging for external influence to take place.

Yet, there is the opposite view that opportunities for corruption will be increased as the number of courts and court chairs are increased. Further, critics of the current court structure believe it is considerably easier to monitor the behavior of a fewer number of court chairs in order to control corruption. They also believe the current court structure is designed simply to be a full-employment opportunity for legal professionals. They are concerned the creation of a new administrative court structure will be difficult to disband if and when the time is ripe in Ukraine.
to simplify the court system. They refer, as an example, to the opposition by the executive branch to relinquish its present control over the SJA.

Despite the fact that the current court structure is already cumbersome, it may be expanded to allow for the creation of a High Civil Court and High Criminal Court, similar to the High Economic Court and the High Administrative Court. Many observers as well as the Commission for Strengthening Democracy and Rule of Law, which is responsible for determining the necessary judicial reforms, believe the current court structure does not provide fair advantage to civil and criminal complainants who have fewer opportunities for appeal in contrast to the four-tiered structure for economic and administrative complainants.

3. JUDICIAL LEADERSHIP

There is a serious absence of judicial leadership, of progressive judges with forward-thinking visions, and of proactive judges engaged in judicial reform in Ukraine. For a country that has received considerable foreign aid from the U.S. and European countries for more than a decade, it is surprising that among the numerous judges who were interviewed, most of whom were at the Supreme Court, the High Economic Court and the High Administrative Court, they were noticeably passive, even though they expressed their concern about the quality of justice in Ukraine.

It is interesting to note that the Commission for Strengthening Democracy and Rule of Law (hereinafter “Commission”) does not include any active judges as members, although it does have three retired judges out of a total of thirty members. Apparently, one sitting Supreme Court judge attended every meeting of the Commission. It is also disturbing to note that the concentration of Commission members is based in Kyiv with modest representation by individuals in the regions. While many lower courts and all general jurisdiction appellate courts, including the Supreme Court, the HEC and the HAC were provided the draft concept paper with an opportunity to respond, only 70+ courts responded with comments. According to a Supreme Court judge, the Supreme Court will become involved in the judicial reform process at its most crucial stage, during the Verkhovna Rada’s deliberation of the draft laws implementing judicial reforms.

It is curious why judges did not demand that they represent a majority of members on the Commission, since they are intimately familiar with the problems facing the judicial system, and why the Supreme Court, and other high-level courts, did not actively engage in the process of deliberating the necessary judicial reforms? Although the Chief Justice of the Supreme Court wrote a letter to the President of Ukraine in response to his public comments of May 25, 2006, and although the Council of Judges provided a detailed statement to the President outlining their concerns over the draft concept paper, these documents were not widely disseminated to the public. Instead, they were published in the Supreme Court bulletin, the Law and Business weekly, and on the Supreme Court’s website, a futile exercise if judges want public support for their position.

Perhaps judges are passive because of their historical position of being subservient to state administrators rather than as equal partners. Most of the judges in senior positions served in the judiciary during the Soviet era and, unlike judiciaries in similarly-situated countries where younger judges educated in the 1990’s are at the senior level, the recently-educated judges in Ukraine are serving in the lower courts. The vision for reforms of higher-level judges in Ukraine appears to be contained within the confines of their past, which they cannot seem to shed, nor, quite frankly, do they appear interested in changing. Rather than take charge of their status and fate, they seem resigned to accept the will of others while complaining during the process.
Or perhaps they are not proactive because they are complacent with their position. If, as the public believes, they are receiving significant extra-judicial benefits, then they may resist changing the system, particularly as it affects them.

Or perhaps some judges want to speak publicly and acknowledge the ills of the judicial system, but fear the reaction they would receive from their colleagues since there is not a groundswell of support among judges for change.

Or perhaps they are passive because of the lack of leadership roles in the current administration of justice. If given the opportunity to be ultimately responsible for the judicial branch of government, or, at least have a meaningful, decision-making role over the administration, budget and personnel of all courts, perhaps judges would recognize the seriousness of their position and begin to emerge as judicial leaders.

The fight for judicial independence cannot emanate from the executive branch, which clearly resists relinquishing its power over the judicial branch and, furthermore, has self-serving purposes to accommodate in pursuing judicial reforms, nor obviously from foreign donors, but from judges themselves. It is not too dramatic to assert that until Ukrainian judges assume their responsibility to ensure judicial reforms are well-designed to meet the changing needs of the judiciary and are properly implemented, judicial corruption will continue to flourish, and judicial independence will continue to be an illusive aspiration.

RECOMMENDED APPROACHES INCLUDING QUICK-IMPACT ACTIVITIES

1. COMPILE FACTUAL INFORMATION CONCERNING THE JUDICIARY

In order to accurately assess the judiciary and design appropriate reforms that address the root of corruption problems within the judiciary, specific factual information must be obtained and made available to the public and court reformers. Most public opinion surveys upon which judicial sector assessments are partially-based are a result of the responder’s perception and hearsay rather than on factual information. Perhaps not all of the necessary factual information concerning the judiciary is available or has been compiled, but serious attempts should be made to gather in one comprehensive document the facts concerning the judiciary so that an accurate analysis of the judicial system can be made, and court reformers can reliably base their recommendations on the facts rather than on perceptions.

It was noticeably striking during our meetings that several senior judges, even some on the same court, had completely different answers when asked for factual information. One such example was the response to the simple question of how many judges are in Ukraine. The response from Supreme Court judges as well as other judges was surprising in that it ranged from 6,000 to 8,000. Another basic fact is also in dispute. The Chief Justice of the Supreme Court claims that only five percent of all court decisions are appealed. (See Letter from the Chief Justice to the President of Ukraine, dated May 31, 2006). Yet, the State Judicial Administration states that in 2005, more than five percent of lower court decisions were appealed.

In addition to compiling in one document an accurate number of judges and vacancies, as well as the number of cases filed by subject matter per each level of general and specialized court and appealed, there is a myriad of other factual information which is required to ensure an accurate assessment of the judiciary, such as:

- the average caseload per judge per each level of general and specialized courts;
• the percentage of case delay per each level of general and specialized courts;

• the basic salary of judges at each level of general and specialized courts and the value of each fringe benefit for judges at each level of general and specialized courts;

• the number and percentage of judges who are women and who are of ethnicities other than Ukrainian per each level of general and specialized courts, and the number and percentage of court chairs who are women or ethnicities other than Ukrainian per each level of general and specialized courts;

• the number of complaints filed against judges each year, the status of the complainants, the number of judicial discipline proceedings, and the resolution of each complaint and proceeding;

• the level of computerization per each level of general and specialized courts and the number of computers in the possession of and operated by judges and court staff.

• the number of court staff and court staff vacancies per each level of general and specialized courts, and the percentage of court staff per judge per each level of general and specialized courts;

• the average salary of each court staff position per each level of general and specialized courts;

• the number and percentage of civil judgments that are enforced annually;

• the number and percentage of backlog of civil judgments to be enforced;

• the number and percentage of criminal judgments that are enforced annually;

• the number and percentage of backlog of criminal judgments to be enforced; and

• the amount of the judicial budget and the percentage of the GDP the judicial budget represents. It is interesting to note that according to European standards of judicial independence, the annual judicial budget should equal between 2-4% of the country’s GDP.

The State Judicial Administration has significant factual information concerning the judiciary, but only for the lower general jurisdiction and specialized courts. The Supreme Court, the High Economic Court and the High Administrative Court each maintain their own records. Repeated requests to the Supreme Court for factual information met with resistance. Nevertheless, in order to obtain an accurate factual accounting of the entire judicial system, statistics from each of the four institutions must be gathered and compiled into one report.

2. CONDUCT COMPREHENSIVE PUBLIC OPINION SURVEY OF JUDICIARY

According to the Action Plan on the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in line with European Standards in 2006 (hereinafter “Action Plan”), the Commission intends to organize a public opinion survey concerning the efficiency of the courts, the level of corruption in the judiciary, and the quality of legal aid.
Although the Kyiv International Institute of Sociology recently conducted a public opinion survey on “Corruption and Service Provision in the Judicial System of Ukraine” (hereinafter “KIIS Survey”), which offers a comprehensive appraisal of the judicial system, the UROL project could provide substantial assistance to the Commission in designing and conducting its own public opinion survey. The KIIS Survey provided a broad understanding of the public’s dissatisfaction with the courts’ location and the lack of access to justice, the ineffective implementation of judicial decisions, the cumbersome court procedures, the unprofessionalism of the judges, and the corruption of the courts.

In order to truly identify those problems connected with the courts, questions in a public opinion survey must single out judges from other key participants in the justice system, e.g. police, prosecutors, investigators, and defense attorneys. Often the public considers the entire justice system when asked about the judiciary. In many countries, and perhaps in Ukraine, the other key participants are equally as culpable as judges in engaging in corruption, and unless questions in a public opinion survey on judicial corruption are specifically limited to judges, the answers can distort reality.

Further, in order to truly understand the nature and causes of corruption in the judiciary, questions in a public opinion survey must be specifically designed to address not only the instances of bribery but also the extent to which improper external influences, such as political interference, societal pressure, fear of retribution, and fear of safety, are present in judicial decision-making.

Lastly, court users and non-court users, prosecutors, investigators, attorneys, judges and court staff should be interviewed not only with regard to their personal experience with the court system, but also with regard to their perception of the court system. Often the interviewee perceives the courts to be corrupt, yet has no personal experience with judicial corruption. In order to design remedies to effectively address judicial corruption, the survey should elicit as accurately as possible the actual level and extent of corruption, rather than the perception of corruption based on hearsay.

3. CONDUCT A DIAGNOSTIC REVIEW OF THE CURRENT COURT STRUCTURE

While the UROL project will focus on specific activities to reform the judiciary which complement the “Concept For the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in Line with European Standards” and its corresponding Action Plan, a diagnostic review of the current court structure should be undertaken to ensure that the specific judicial reforms implemented by the GOU and UROL will be productive and effective, given the necessity for their application in 768 courts.

In conducting the diagnostic review and determining the correct structure for the court system of Ukraine, historical concerns of Ukraine’s past should be weighed against the present public benefit values. Is the public being well-served, are judges able to be independent, competent and accountable, and is justice being delivered in an efficient and transparent manner by the current complex court structure? Would justice be better served by the creation of an integrated and simplified court structure?

4. DEVELOP A NATIONAL DIALOGUE CONCERNING THE CREATION OF A JUDICIAL ADMINISTRATION STRUCTURE THAT IS ACCOUNTABLE TO THE JUDICIARY

Given that the judges’ role in Ukraine is marginalized by their lack of control over the administration, budget and personnel of the courts; given that active judges were not members of the Commission; and given the importance of the judicial branch rather than the executive branch taking responsibility to ensure that the justice system is transparent and accountable and
that judges are independent, competent, and efficient, the UROL project could work with judges from all levels of courts around the country to support the development of strong demand-side pressure for a more transparent and accountable judicial system. Judges could participate in local, regional and national dialogues to deliberate and determine the most appropriate judicial administrative structure that suits the needs of the judiciary.

The first step is to convince judges of their proper role as decision-makers in the process of determining the correct judicial structure for Ukraine. Some judges stated they did not believe active judges should participate as Commission members since their role, as judges, is not to make the law, but to apply it.

In conducting focus group meetings with judges around the country in collaboration with the National Independent Judges Association, the UROL project can not only demonstrate to judges the appropriateness of their active involvement in determining the necessary judicial reforms for Ukraine, but can also provide best practices from other similarly-situated countries as well as European countries as a basis for comparison and a means to inspire.

A major issue to be presented and discussed is the creation of a judicial administration structure that is accountable to the judicial branch rather than to the executive branch. A senior judge from the High Economic Court has developed a proposal that dramatically transforms the current judicial administration structure. He proposes that the High Council of Justice consists of a majority of judges, chaired by the Minister of Justice, which would have control over the selection, appointment, discipline, training through the Academy of Judges, and removal of all judges, except Supreme Court judges. Further, it would have control over the administration and budget of all courts, including the Supreme Court, by assuming responsibility of the State Judicial Administration. All judicial qualifying commissions would be terminated and in their place a national examination commission and a national disciplinary commission would be established.

The High Economic Court judge has a unique perspective of the judicial system as he has served as a trial court judge, an appellate court judge, a member of the Minister of Justice’s staff and the first Head of the State Judicial Administration. Using his proposal as a basis for discussion, rather than a donor-inspired proposal, judges around the country will be more amenable to the validity of the recommendations set forth therein.

5. ENHANCE THE NATIONAL INDEPENDENT JUDGES ASSOCIATION ROLE IN PROMOTING JUDICIAL INDEPENDENCE

The National Independent Judges Association (“NIJA”), established in 2001, is a voluntary organization with stated goals of, *inter alia*, promoting the independence and prestige of the judiciary, increasing the qualification of judges, and protecting the common interests of its members. Currently, there are 1,500 members of the NIJA, of whom 1% are retired judges, yet there is a high concentration of members from the Donetsk region.

The legal structure of the NIJA is curious. Rather than have just one national judges association with regional offices throughout the country, which is typical in other countries, the NIJA consists of individual members as well as sixteen regional associations, each one a legal entity with its own statute and budget. In keeping with the national psyche of decentralizing control, judges do not want to have one national leader, but prefer local leaders of regional associations over which the national association has no control. According to ABA/CEELI’s Judicial Reform Index for Ukraine of December 2005, neither the NIJA nor the regional associations are well-known, proactive or effective. To counter the criticism heaped upon the NIJA, a competing organization, the Foundation for Support of the Judiciary, has been recently created.
An independent judges association that is progressive and active in Ukraine is crucial, particularly because the judiciary in Ukraine has been marginalized. Further, the current system does not support individual judicial whistle-blowers. Judges who want reform of the judicial system of Ukraine desperately need to speak with a collective voice; otherwise, they will not be heard. According to the Council of Europe, it is essential for judges to have a vital and effective voluntary association that will safeguard the independence of judges and protect their interests (See Council of Europe Recommendation No. R (94) 12, on the Independence, Efficiency and Role of Judges).

Support should be given to the NIJA in developing its membership so that a majority of judges in Ukraine are members. In order to qualify for membership in the International Association of Judges, which helps to expose judges to the standards of judicial professionalism in democratic countries, the NIJA must, among other requirements, represent a majority of judges. Further, and in light of the current judicial reform process in Ukraine, the NIJA must develop into a strong organization that can successfully interject its views during the drafting stages of strategies, concept papers and legislation, which impact the administration of justice, the court system, judicial procedures, and the status of judges.

It is particularly important to support the development of the NIJA since the institution currently representing the judiciary, the Council of Judges, is top heavy with presidents of courts. The NIJA can provide the necessary voice to lower court judges and judges in the region who are progressive and forward-thinking and who want to participate more actively and effectively in the judicial reform process.

6. REQUIRE A DECLARATION OF ASSETS WITH STRICT ENFORCEMENT PROCEDURES

One of the major reform measures essential to reducing corruption in the judiciary is a requirement for judges to file a declaration of assets. Although the Law on Public Service requires that public servants in Ukraine, including court staff, are obliged to file financial disclosure statements, judges have concluded that they are not subject to the Law on Public Service as they are not public servants. Further, the Law on the Status of Judges, which sets forth judicial obligations does not require judges to file a financial disclosure statement.

Judges also believe they are Constitutionally-exempt from filing a financial disclosure statement citing Article 34 of the Constitution which states that “the exercise of these rights [to freely collect, store, use and disseminate information] may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.”

The State Judicial Administration reported that some judges voluntary file a financial disclosure statement, but the contents of each statement are not verified.

Despite judges’ protestations, all judges should report their property and income on an annual basis beginning with their appointment and ending upon their departure. Filing a declaration of assets may deter the acquisition of improper income while serving on the bench. It will clearly force judges to declare their home and major personal possessions, such as an automobile, which could demonstrate that their standard of living exceeds their annual salary and fringe benefits they receive as a judge.
The requirement will be rendered meaningless unless there is strict enforcement procedures as well as strict verification procedures to expose the existence of serious differences between the judges’ declared assets and acquired assets. Some court observers caution, however, that assets can be easily hidden using the names of distant family members or friends.

7. INTRODUCE RANDOM CASE ASSIGNMENT

According to ABA/CEELI’s Judicial Reform Index for Ukraine of December 2005, there is no structure nor are there objective criteria set forth in the law for the assignment of cases in Ukraine. Most court chairs have assumed the responsibility of assigning cases, and do so according to their desired method, objective or subjective. Very few assign cases randomly, and many abuse the process. In many trial and appellate courts, the court chair often permits deputy chairs, who, like the chair have only administrative responsibilities and no caseload, the right to also assign cases.

Rather than take into consideration serious factors such as the expertise of the judge, the workload of the judge, the seniority of the judge, or the complexity of the case, many court chairs and deputy chairs single-handedly determine the outcome of a case by assigning it to certain judges. Abuse of the system thrives, and is one of the major causes of improper influence on the outcome of court cases.

The UROL project could assist in drafting a legal requirement for setting forth strict criteria for the rational assignment of cases, or for random case assignment. Alternatively, the UROL project could assist the Council of Judges and Congress of Judges, which are responsible for the internal operations of the courts, to issue a directive to all courts under its jurisdiction to institute objective criteria or randomness in the assignment of cases.

8. CREATE A PILOT PROJECT IN TWO GENERAL JURISDICTION COURTS OF THE CASE MANAGEMENT SYSTEM IN THE ECONOMIC COURTS

While the USAID Commercial Law Center Project has effectively improved the existing case management system created by and instituted in the economic courts, a companion project by the UROL project would be to identify two general jurisdiction courts and/or the High Administrative Court as pilot courts, in which to implement the same case management system. The current case management system comprises all public documents for each case from the inception of the case filing through the litigation process, including judicial motions, until the final court decision is rendered. All judicial decisions are available for public viewing. Archiving of all files is also electronically stored. Soon, software will be instituted that will provide for the random assignment of cases.

The case management system for the pilot general jurisdiction courts and the High Administrative Court could be tested for its applicability and adapted to the specific court procedures of general jurisdiction courts and administrative courts. Thereafter, given its expected success, the case management system could be extended to other general jurisdiction and administrative courts.

By providing a case management system that allows for the publication of judicial decisions, more transparency will be built into the judicial process. Since judicial decisions are not systematically published in Ukraine, inconsistent applications of the law or indefensible rulings are difficult for the public and press to ascertain. Although not used for establishing precedence, published judicial decisions that are well-reasoned and that properly apply the law to the facts can protect innocent judges while exposing guilty ones.
The publication of judicial decisions, however, without an accurate transcript of the trial is insufficient to provide transparency. To strengthen the impact of exposing those judges who are improperly influenced, transcripts of each trial should be verbatim and provided as part of the record. Otherwise, a clever judge may write a judicial decision that is defensible only because the record is incomplete, documents have been mishandled, and the transcript of the trial is based on the summary of the judge’s self-interest. Although in some courts trial proceedings are audio taped, it is rare for these tapes to be transcribed and included as a material part of the record.

9. SUPPORT IMPLEMENTATION OF THE AMENDMENTS TO THE LAW ON THE JUDICIARY AND THE LAW ON THE STATUS OF JUDGES

The Commission has drafted the final amendments to the Law on the Judiciary and the Law on the Status of Judges, which incorporate the provisions of the “Concept for the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in Line with European Standards”, and its corresponding Action Plan. Once the amendments have been passed by the Verkhovna Rada, the UROL project can begin working with the Commission or other appropriate bodies to assist in implementing the provisions, specifically pertaining to:

- improving the system of selecting, appointing and promoting judges,
- improving the system of disciplining judges,
- developing the Academy of Judges in training judges and court staff, and
- modifying the powers of court chairs.

Other judicial reform projects that can be pursued by the UROL project, are:

- reducing case delay by limiting the jurisdiction of the courts,
- prohibiting ex parte communications,
- developing a computerized court administration/case management system in all general jurisdiction courts,
- developing systemized distribution of laws to all judges,
- supporting publication of judicial decisions,
- developing professional relations between the courts and the press, and
- supporting civil society organizations in educating the public of their legal rights and monitoring the judicial process.

CONCLUSION

It is a bitter pill to swallow that, despite over a decade’s worth of substantial financial and technical assistance to the justice system of Ukraine, there is little evidence of progress. Although there are a myriad of judicial reforms which are essential to create a transparent and accountable justice system, until the judges, themselves, begin to accept their responsibility to improve the justice system, and until the judiciary has more control over its structure, operations and budget, implementing the same judicial reforms as were attempted years ago may suffer the same fate. Thus, in addition to assisting the GOU in implementing the judicial reforms listed above, it is incumbent upon the UROL project to work side-by-side with courts and individuals judges, with the Council of Judges, and the National Independent Judges Association to ensure that judges begin to take responsibility for guaranteeing the independence of the judiciary.