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**UKRAINE RULE OF LAW PROJECT**

## **International Court Excellence Conference**

*June 21 to 22, 2011  
Kyiv Ukraine*

### **CONFERENCE SUMMARY CONCLUSIONS AND RECOMMENDATIONS**

USAID Ukraine Rule of Law Project in close collaboration with a variety of Ukrainian and international partners conducted the first in Europe International Court Excellence Conference with overall purpose to address ways to strengthen independence, transparency and accountability of Ukrainian judiciary in line with international and European standards.

More than 200 participants representing 7 countries attended this Conference. Participants included representatives of Ukrainian national judicial institutions - Supreme Court, Constitutional Court, Council of Judges, State Judicial Administration, National School of Judges, High Council of Justice, High Qualifications Commission of Judges, High Administrative Court, High Economic Court, Ministry of Justice of Ukraine and Verkhovna Rada of Ukraine; judges and court staff from all jurisdictions from more than 20 oblasts of Ukraine; leaders of non-governmental organizations and international donor organizations active in rule of law activities, legal scientists and media.

In addition, representatives of courts and organizations implementing court quality programs in the United States, Singapore, Australia, United Kingdom, Netherlands and Georgia attended this Conference and stimulated awareness regarding court quality, international practices in measuring judicial performance and International Framework for Court Excellence.

USAID Ukraine Rule of Law Project together with its Ukrainian partners presented results of its Citizen Report Card (CRC) surveys, the internal court performance evaluation pilot project and public opinion polls.

Conference participants have together made the following conclusions and recommendations in order to promote court quality in Ukraine:

#### **Keynote Address**

*Judge Tan Siong Thye, Chief District Judge, Subordinate Courts of Singapore*

- The International Framework for Court Excellence (IFCE) enables judiciary at any stage of development to strive for court excellence.
- The IFCE has been acknowledged by judiciaries across different continents as a global standard to measure court excellence. The IFCE provides guidance to judiciary on seven categories to achieve court excellence:

- court management and leadership;
  - court policies;
  - human, material and financial resources;
  - court proceedings;
  - clients needs and satisfaction;
  - affordable and accessible court services;
  - public trust and confidence.
- Capable leadership is vital to judicial reforms and should be implemented on all levels.
  - The ultimate aim of leadership in judicial reform is to strengthen the fabric of our society by enhancing access to justice for all.
  - Servant leadership emphasizes trust and empowerment of leaders at multiple levels of an organization and is motivated by desire to serve others.
  - Leaders should encourage creative inputs from every team member and share information and knowledge with all team members.
  - It is necessary to have a regular dialogue sessions with both the judges and the court administrators
  - Leaders should build trust by example and learn themselves from mistakes.
  - Resistance to change is a common problem facing leaders of judiciaries and every leader should learn how to avoid this resistance.
  - Court-driven ADR is an effective mechanism to decrease court workload and, as an outcome, to improve court services and public satisfaction with court work.
  - It is crucial for every judiciary to command public trust and confidence.

### **Sessions 1: International Framework for Court Excellence**

*Professor Gregory Reinhardt, Executive Director, Australasian Institute of Judicial Administration*

*Valerian Gavasheli, Member, High Council of Justice of Georgia (HCJ), Deputy Chief of the HCJ Judicial Ethics and Disciplinary Proceedings Department*

*Judge Pavlo Hvozdyk, High Civil and Criminal Court, Chair of the Council of Judges for General Courts, Chair of the Court Performance Evaluation Working Group*

*David Vaughn, Chief of Party, USAID Ukraine Rule of Law Project*

- Ukrainian judicial authorities should develop Ukrainian national standards of court excellence based on international and European standards.
- When court excellence standards are in place, it is needed to review them from time to time, revise, improved and add new when necessary.
- The system should be in place for the on-going evaluation of courts compliance with those standards, judicial authorities should report to the public the evaluation results. verify court accordance to those standards and report to the public verification results.
- Ukraine should consider conducting systematic external and internal evaluations of court operation at the same time and discuss results of those evaluations on the national level and meetings of judges identifying areas of improvement and introducing positive changes in court work.
- Court should plan their functions based on public needs contentment, for which feedback from court users is unavoidable.
- Systematic implementation of the latest technology in court operation.

- Consider possibility of implementation of the position of a “speaker-judge” in courts.
- Increasing of the court transparency through increasing of the level of accessibility of every court process to the citizens.

### **Sessions 2 and 3: Internal Evaluation of Court Performance**

*Steve Jacobs, Principal Consultant, Agencia Consulting Ltd., former Inspector, Magistrates’ Courts Inspectorate, United Kingdom*

*Judge Curtis DeClue, Special Master for U.S. Federal Courts and former Presiding Judge for the State of Indiana’s Ninth Judicial Circuit*

*Judge Anatoliy Babiy, Odessa Oblast Court of Appeals, Deputy Chair of the Court Performance Evaluation Working Group*

*Judge Volodymyr Tatarчук, Deputy Chief Judge, Commercial Court of Dnipropetrovsk Oblast, Member of the Court Performance Evaluation Working Group*

*Dr. Pim Albers, Senior Policy Advisor, Judicial System Department Ministry of Justice of the Netherlands, Advisory Member of the International Consortium of Court Excellence*

*Markus Zimmer, Board Member and Founding President of the International Association for Court Administration (IACA)*

*Judge Nadiya Stefaniv, Chief Judge, Ivano-Frankivsk Oblast Court of Appeals*

*Kakha Tsikarishvili, Deputy Chief of Party, USAID/Georgia Judicial Administration and Management Project (JAMR)*

- High court performance standards can be achieved using properly technology instruments keeping balance of different measures – inputs and incomes, as final indicators of success. The key to effective performance management in courts is to create measurable standards.
- Group of expert for internal court performance evaluation should involve more than one judge, one court staff member and one expert-scientist. It will be useful to invite more judges and court staff including retired judges.
- Currently developed methodology for internal court performance evaluation in Ukraine is universal and systematical tool and it has to be in use permanently to view changes dynamic, to monitor the real situation in court and focus on making changes to improve court functions.
- Improving court services is a priority for court system now because the lack of efficiency can paralyze the court system. The challenge is to create and maintain high-performance court system with balance of high quality and efficiency standards in the administration of justice.
- There are negative and positive incentives that can be used to stimulate compliance with performance standards. For example: bonuses, salary reduction etc.
- International practices show that performance standards and measurement systems always consider main five areas for improvement: access to justice, expedition and timeliness, equality, fairness and integrity, judicial independence, public trust and confidence.
- The following recommendations will help to keep timeliness of proceedings:
  - asses the overall length of proceeding;
  - establish time standards;
  - elaborate a typology of cases;

- monitor the duration of procedure;
- use modern technology;
- take specific measurement to take in terms of inactive cases and other important elements.
- Practices in other countries show that there are various systems for internal court performance evaluation. USAID in Georgia together with High Council of Justice of Georgia conducted “Invisible Shoppers” in Court Survey in order to check the compliance with communication standards by judges and court staff. The study revealed that some of the standards are not complied with, while some of them are partly observed and some are fully observed. Georgia High Council of Justice is going to implement this type of survey on regular basis in future. Ukrainian judicial authorities may consider this technique, however, one should be careful about this kind of surveys and always take into the account that it may cause the stress to the court staff.
- The following paragraph is an example of usage internal evaluation for managing court performance. Internal Evaluation of the length of proceedings at the Ivano-Frankivsk Oblast Court of Appeals summed up with the following findings: a) postponement of hearings are mostly due to failure of parties to appear, in absence of confirmation of their due notification, petitions from litigants for postponement of the hearing of the cases; b) main reasons for delay of hearings are judges making appointments for certain hours for all hearings and transportation of convicts to the courts. Based on these findings this court takes the following steps to improve hearing timeliness: a) development of automated system for the scheduling; b) establishing of systems for court’s interaction with the litigants and court’s procedural response to a litigant’s unfounded failure to appear in court; and, c) regular monitoring of the length of appellate proceedings.

#### **Session 4: External Evaluation of Court Performance (Court User Surveys)**

*Dr. Pim Albers, Senior Policy Advisor, Judicial System Department*

*Ministry of Justice of the Netherlands, Advisory Member of the International Consortium of Court Excellence*

*Maryna Ogay, Sociologist and Consultant, USAID Ukraine Rule of Law Project*

*Judge Natalia Okhrimenko, Chief Judge, Chornobayivsky District Court of Cherkasy Oblast, Member of the Court Performance Evaluation Working Group*

*Volodymyr Kupriy, Executive Director, Creative Center CCC*

- Feedback from users, collaboration with users is an important part of court excellence strategy. Court users include citizens who have had dealings with the courts and legal professionals (judges, public prosecutors, and other non judge and non prosecutor staff belonging to the courts and the public prosecution service, lawyers).
- 28 countries of Europe conduct national surveys of court users and 19 countries don’t. Ukraine at the moment is one among 19 nations that do not conduct these surveys.
- It is highly desirable for Ukrainian judicial authorities to find necessary funding and to conduct national court user surveys.
- Court user surveys should be on a regular base, this way only they become effective.
- Ukrainian courts should consider external court evaluations by way of Citizen Report Card (CRC) surveys – experience of pilot courts that participated in this program

demonstrates the effectiveness of this process. Results of Citizen Report Card surveys in Ukrainian courts demonstrate that those courts that implement recommendations developed by NGO partners based on court users feedback lead to improvement of court performance and increased user satisfaction with court services.

- Non-governmental organizations can be important partners for courts in terms of conducting court user surveys and developing recommendations based on court user feedback received since they work directly with courts and directly with citizens and, at the same time, they are completely independent.
- Citizens should be aware about court performance standards.
- Courts should work directly with public to raise public awareness on judiciary which, at the moment is very low.

### **Session 5: Enhancing Public Trust and Confidence (Relationship between Courts and Society)**

*Pamela Daniels, Court Administration Expert, former County Clerk, Snohomish, Washington State*

*Dmytro Filipenko, Legal and Communications Specialist, USAID Ukraine Rule of Law Project*

*Svitlana Gorna, Head of experts council of European Research Association in collaboration with Kiev International Institute of Sociology and USAID Ukraine National Initiatives to Enhance Reform (UNITER) project*

*Oksana Pidgaina, Deputy Chief of Staff, Volyn Oblast Court of Appeals*

- The development of democracy means that the citizens should receive appropriate information on public authorities and the conditions in which the laws are drafted. Furthermore, it is just as important for citizens to know how judicial institutions function.
- To receive public trust and confidence courts need to be transparent, with efficient processes that are accessible and equal to all.
- Justice is an essential component of democratic societies. It aims to resolve disputes concerning parties and, by the decisions which it delivers, to fulfill both a “normative” and an “educative” role, providing citizens with relevant guidance, information and assurance as to the law and to its practical application. Providing law related education to the bar, legislators, government agencies, schools, civic organizations in the form of courthouse tours, workshops, community speaking engagements will contribute to improve public trust & confidence.
- Aside from communication through the media, there is an importance of creating direct relations between the courts and the public at large. Integrating justice into society requires the judicial system to open up and learn to make itself known.
- The media can not be controlled, but should not be ignored.
- Courts themselves should participate in disseminating information concerning access to justice (by way of periodic reports, printed citizen's guides, Internet facilities, etc.)
- Establishing a bench-bar-press committee could be considered as a tool of cooperation between mentioned parties.
- It is important to organize by courts educational forums and/or regular meetings open to citizens and non-governmental organizations.

- Leadership is very important, but teamwork is no less important. Chief Judges and Chiefs of staff should identify a working group to evaluate and develop a sustainable strategic plan of action within their court and community, develop and implement Communications strategies and action plans.
- Ukrainian judicial authorities should conduct ongoing training of judges/court administrators on public trust & confidence and types of things they can do for improvement
- Obtaining public trust & confidence in the courts tasks courts to continually work on improving education programs for the public and the media.
- With the Internet – use of social media has emerged in the courts (blogs, youtube, facebook) which brings on new opportunities and challenges to courts. Having an over-all court website with links to local court web-pages seems to be a useful tool to get the basic information, but it unlikely meet the needs of the differing local court levels throughout the country. The availability of own website could contribute to increase the level of responsibility for the provision of relevant information by court staff.

### **Session 6: Strategies for Judicial Reform and the Importance of Leadership**

*Professor Gregory Reinhardt, Executive Director, Australasian Institute of Judicial Administration*

*Steve Jacobs, Principal Consultant, Agencia Consulting Ltd., former Inspector, Magistrates' Courts Inspectorate, United Kingdom*

*Ruslan Kyrlyiuk, Chairman of the State Judicial Administration of Ukraine*

*Judge Valentyna Yemelianova, Chief Judge, Kharkiv Administrative Appellate Court*

*Judge Olena Panchenko, Judge, Avdiyivskiy District Court of Donetsk Oblast, Chair of the Board, Ukrainian Association for Court Advancement*

- The new Law changed the system of court administration – new responsibilities for chief judges and chiefs of staff have been introduced. To be efficient, a leader needs support, otherwise he/she might fail.
- Strong leadership includes orientation to public, accountability and being proactive. It is important for a leader to develop a vision statement. Innovation is very important in meeting future challenges and leaders have to be able to identify these challenges. Lead by example, treat weaknesses positively. Training by peers should be used for formation of judicial leaders.
- Efficiency of judicial reform depends on proper leadership, including politicians and civil servants. Politicians need to be properly informed of what the courts are doing and what the challenges are. But this communication should not be in form of complaints. This should be a dialogue. You have to believe in what you are talking about. Professional court managers don't need to be lawyers. Training courses have to include personal development. Training in change management is very important.
- Leadership is important, but teamwork is required – the court has to be run by a team of managers. Court staff salaries are very low, and staff retention is a huge problem. Soon only judges will stay in their positions.
- Court staff forms first impressions for visitors. Court administration became independent from administration of justice under the new law. Leaders have to be

trained. Leaders have to comfort staff and reinforce positive attitude. Good leadership already changed much in select courts, even without reform.

- Leadership is key to reform. Leaders have to be passionate, and take decisive and unpopular decisions to break stereotypes. IT implementation requires preparation, SJA wants to change court processes. Organizational models for courts have to change. Reform of statistics and case management has to be carried out. Standards for courts have to be developed. All court information has to be public. We started reform but have no leaders. Chief judges have high leadership potential. New working group on court innovations with UROL support is a huge step forward.

### **Session 7: Next steps**

*Judge Tan Siong Thye, Chief District Judge, Subordinate Courts of Singapore*

*Judge Dmytro Lypskyy, Judge of the High Administrative Court of Ukraine*

*Judge Galyna Kanygina, Member of the Council of Judges of Ukraine, Justice of the Supreme Court of Ukraine*

*Judge Bogdan Poshva, Justice of the Supreme Court of Ukraine*

*Judge Stanislav Mishchenko, Judge of the High Specialized Civil and Criminal Court of Ukraine*

*Judge Yaroslav Romanyuk, Chair, Council of Judges of Ukraine*

- Ukrainian judicial authorities are ready to cooperate in terms of developing national court performance standards for Ukraine based on best international practices.
- Council of Judges of Ukraine as a body of judicial self-government is ready to take a leadership in developing national court performance standards and standard-based court performance evaluation framework. Chief-judges of high and appellate courts and the State Judicial Administration of Ukraine should also play a key role in distributing and implementing results of the court performance evaluation.
- National court user surveys is expensive and resource consuming tool, besides, they should be conducted on the regular base to be effective. Thus, judicial leadership should be very clear about further usage of the results of these surveys in order to improve justice sector. First of all, judiciary should start with implementing those standards that do not require financing such as court-staff professional conduct, communication skills, friendly attitude to court visitors.
- It will be useful for Ukrainian judicial authorities to select one pilot region (oblast) to implement internal and external evaluation in all courts for more effective promotion of these processes nationwide. It would be also appropriate to provide recommendations to these courts on how to improve their performance basing on results of evaluation and examine their progress in a year or any other term prescribed. “Healthy competition” should become a guarantee of success.
- It is necessary to have complex approach in cooperation with public and media and to create strong and timely system of citizens informing regarding court operation. That could be done only on the high level with further dissemination among courts of national policy of communication between court, media and citizens.
- Judiciary should take initiative and be active side of the communication between courts/judges/court staff and media. It should also be active in interaction with legal community such as lawyers and prosecutors to receive feedback from them on what can be improved.

- The main goal of the court performance evaluation is effective dispensation of justice and satisfaction of users of the court services. For that purpose judiciary also should promote and develop forms of alternative dispute resolution such as mediation.