SURVEY OF JUDGES OF UKRAINE REGARDING THE JUDICIAL REFORM IN UKRAINE AND IMPLEMENTATION OF LAWS OF UKRAINE «ON THE RESTORATION OF TRUST IN THE JUDICIARY», «ON PURIFICATION OF GOVERNMENT» AND «ON ENSURING THE RIGHT TO FAIR TRIAL»

SUMMARY OF THE SURVEY

Contract No. AID-121-C-11-00002

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May 16, 2016, Kyiv

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INTRODUCTION

The national survey of judges of Ukraine regarding the judicial reform in Ukraine and implementation of laws of Ukraine "On the Restoration of Trust in the Judiciary", "On Purification of Government" and "On Ensuring the Right to Fair Trial" was performed by the GFK Ukraine company in February-March 2016 with the financial support of the USAID FAIR Justice Project.

The survey was conducted by "face-to-face" interview method at the respondents' workplaces. The sample is representative according to the list of court staff members with due account of division by jurisdiction, by instance, by region according to the data of the State Judicial Administration of Ukraine placed on the site "The Judiciary of Ukraine" (http://court.gov.ua). Overall number of respondents was 717 judges.

This document provides summarized results of the survey of judges, in particular, gender balance, age structure and professional experience of judges are analyzed, conditions of work are characterized. Considerable attention is paid to the topic of the judicial reform in Ukraine in the part of judicial perception of the conditions of work, attitude to vetting and lustration procedures as well as novelties of the legislation on the judiciary. On the basis of the results of the survey summarized conclusions and recommendations are made.

The document has been prepared by the experts of the USAID FAIR Justice Project O. Serdiuk and M. Ogay.[1]

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SECTION 1. JUDGES IN UKRAINE: WHO ARE THEY?

1.1. Gender balance

The results of analysis of the data on gender identity of the respondents give grounds to draw a conclusion on availability of gender balance in the judiciary.

Women make up 47.6% of Ukrainian judges.

At the same time, the following question arises: is such balance obviously positive? Is not there "driving out of women" from the most "attractive or comfortable spheres of the judiciary" (for instance, administrative positions)?

As of the date of the survey, administrative positions were held by 15.7% of judges participating in the survey, of which 65.7% were men, and 34.3% - women; 27.3% of the respondents had previous experience of holding administrative positions, of which 67.1% were men, and 32.9% were women.

Women are most represented in administrative courts (51.6%), they constitute almost a half in commercial courts (49.6%) and are a bit less represented than men in courts of general jurisdiction (47.1%). Most of the surveyed judges (90.5 %) indicated that men and women have "equal chances of being elected to a managerial position", while 88.4 % of the respondents reject the statement that distribution of loads in courts in any way depends on gender.

At the same time, judges are not protected against gender stereotypes or manifestations of "sexism" in the society: 8.0% of the respondents have faced cases of incorrect treatment in relations between men and women based on such stereotypes. And most frequently men (9.9%) than women (5.9%) pointed to such cases. But it should also be noted that women more frequently hesitated to give an answer or even refused to give it (10.7% versus 6.5% of men).

1.2. Age structure

Prevalence of people of middle age among judges is a positive trend (in general, in courts 63.9 % of judges are aged from 31 to 49, while in trial courts they make up 72.6%). However, there are certain peculiarities that need to be taken into account:

- In appellate courts representation of judges "under 40" is insufficient, in particular, with due account of the fact that almost half are "above 50", which makes the process of upgrading the judiciary more complicated;
- In cassation courts prevalence of senior age groups (judicial work record above 20 years with 53.8% of judges) is understandable and justified, however availability of work record of less than 10 years with 6.4% of judges does not seem to be justified for the cassation court;
- In courts of administrative jurisdictions the share of persons under 40 makes up 35.7%, while in courts of general and commercial jurisdictions the corresponding share makes up some 24%. It is by this that a considerable per cent of judges aged above 50 in general and commercial courts (25.9% and 30.1% correspondingly), and almost 2.5 times smaller number in administrative courts (only 12.2%).
- The senior the judge, the more frequently he holds (or earlier held) an administrative position which is natural from the point of view of the importance of experience for such positions. Thus, at the age under 40 administrative positions are held only by 8.4% of judges, at the age "40-49" – 12.8% of judges, at the age "50 and more" the corresponding shares makes up 26.6%. Previous experience of holding an administrative position was available with every second judge aged "60 and more" and each fourth judge at the age "40-49".

1.3. Professional career: a way to the judiciary

A way to the judiciary puts an imprint on the conduct, life standpoints and legal outlook of a judge. The survey proves that most widespread are two main "social and professional lifts to the judicial office":

- work in court staff – that was the activity before the judicial position of almost 42.3% of judges (including assistant judges – 29.2%), and in trial courts– 47.9%. Along with that, the corresponding share was much smaller in commercial courts and made up 36.3%. Among women such experience could be traced 1.5 times more frequently than among men (52.5% versus 33.6% correspondingly).

- work in law-enforcement agencies – that was previous professional activity of 27.3% of the respondents. And among men the corresponding percent made up 40.7%, while among women – 12.6%. Larger experience of working in law-enforcement bodies was available with judges of courts of general jurisdiction – 30.8%, each fifth judge of courts of commercial jurisdiction and 16.8% of judges of courts of appellate jurisdiction.

A comment to this data cannot be unambiguous. Definitely, the experience received by judges is useful. But the assumption that along with experience there may form certain features of professional conscience which do not always correlate with court values in a democratic society is also not groundless.

Back in Soviet studies of judicial quality it was pointed out that judges who "originated from the law-enforcement system" ran a higher risk of "prosecution bias" in their professional motivations. One should not forget about the occurrence of other professional distortions taking place even over a short period of working in the law-enforcement sphere.

Judges "brought up in courts" do not constitute an ideal model of judicial formation either, since this provides access of court staff members to the judicial profession because they become a very "comfortable category of judges" as they are the bearers of a specific "staff bureaucracy subculture in court" with the features of discipline and the habit "to perform order" along the hierarchical system.

But could those be the main values of the judicial profession[2]?

2These conclusions are also confirmed by the results of methodologically correct surveys of the judiciary conducted in 2010-2012 in the Russian Federation: Volkov V., Dmitriyeva A. Russian judges as a professional group: norms and values // How judges pass decisions: empirical study of law / Ed. by V. V. Volkov. M.: Statut, 2012. P. 155

SECTION 2. COURTS OF UKRAINE: CONDITIONS OF WORK

The conditions of work are assessed by judges by different parameters. The general orientation of such assessments causes concern, even by parameters that do not have a direct and obvious connection to the general crisis phenomena in the society.

2.1. Work premises and office equipment provision

One third (34.6%) of the respondents are not satisfied by the condition of court premises[3]. The lowest grades are in trial courts – 40.0% of dissatisfaction, while in cassation courts the rate is 4 times lower and makes up only 9.4%. By jurisdiction, the condition of premises is better in commercial courts where 20.4% of judges pointed to its unsatisfactory quality, while in courts of general jurisdiction the corresponding figure is 38.9%.

By territorial division, the worst situation is traced in courts of the Western region (43.4% of those dissatisfied with the condition of premises), and the best one – in Kyiv city courts (the share of those dissatisfied makes up only 14.8%).

Assessments by this parameter represent substantial differences in the situation in courts of different jurisdictions and instances which is not in line with the general principles of organization of the judiciary. Thus, more than a half of the surveyed judges of trial courts (53.7%) give negative assessments, while the percentage of such assessments in appellate courts is considerably lower (30.4%), and in cassation courts – only 12.2%. In courts of general jurisdiction each second judge (53.6% of the respondents) pointed to unsatisfactory level of office equipment provision, while in courts of administrative and commercial jurisdiction only about one quarter of the respondents pointed to the above problem.

2.2. Labor remuneration and social provision

In general, only about one quarter of judges (263%) are satisfied with the level of labor remuneration. The level of satisfaction among judges of cassation courts is minimum (only 14.7% of the respondents), and this testifies to recognition of non-correspondence of the complexity and responsibility of court proceedings to the current level of judicial remuneration. In courts of general jurisdiction the level of satisfaction with labor remuneration is 30.1%, which is twice higher than in courts of administrative jurisdiction.

In general, there can be traced a logical fact that the level of satisfaction with labor remuneration depends on such factors as age (the level of satisfaction varies from 7.2% among young people to 42.9% for judges aged 60 and above), work experience (from 11.0% to 30.2%), permanent work in one court (from 16.9% to 34.0%), holding administrative positions (36.4% among those holding it versus 25.0% of those who do not hold it).

The highest level of dissatisfaction is among judges aged under 30 (92.8%), those having work record under 3 years (89.0%), employed in one court for less than three years (82.3%), of judges working in courts of the Kyiv city (83.7%) as well as in courts of administrative jurisdiction 84.1%.

Though there could be expected correlation of those grades with the level of satisfaction with labor remuneration, it turned out that judges are even less satisfied with the current opportunities for getting social services (leaves; treatment, etc.) which are not directly envisaged by legislation but are expected. In general, satisfied are less than a quarter of the respondents – 23.7%. However there exist substantial differences between courts of different types: if among judges of cassation courts satisfied are 39.7%

3 The sum of grades by the variants of answers “rather not satisfied” and “absolutely dissatisfied” is provided

(which can possibly be accounted for by "*accessibility of social welfares for higher state officials"*), the mass category of Ukrainian judges (first instance) includes only 21.1% of the respondents who are satisfied.

2.3. Judicial load

Subjective perception of load by basic parameters corresponds with the differences in the load of courts of different types and statistical data. Thus, according to court statistics, in 2014 the average number of monthly incoming cases in courts of general jurisdiction was about 60 cases per 1 judge, in courts of administrative jurisdiction – twice less, and in courts of commercial jurisdiction there were on average 16 cases per 1 judge[4].

According to the survey data, load is perceived as "normal" (acceptable) by 28.0% of the surveyed judges. The least favorable situation can be traced in appellate courts (39.8%); while in trial courts – only 23% of the respondents consider their load to be "normal". By jurisdictions, the load within the norm is recognized by 43.1% of judges of commercial courts, 38.2% of judges of administrative courts and only about a quarter (23.5%) of judges of general courts, which also correlated with the data of court statistics on actual judicial load.

Subjective assessment of the availability of "overload" is principal. Almost one third of judges of trial courts (32.3%) as well as one quarter of judges of cassation courts (25.7%) are convinced of the fact that in their court the load is too high. To compare: in appellate courts – only 14.3%. Accordingly, the figures also differ by jurisdiction. Thus, one third of judges of courts of general jurisdiction consider that they are overloaded. Along with that, the corresponding share in courts of administrative jurisdiction is twice lower, and in courts of commercial jurisdiction – almost 5 times lower and makes up only 6.9%.

2.4. Security in court and judicial self-government

In this case, most probably, not only institutional capacity of courts to ensure security of court hearings but the feeling of personal security were assessed. In general, *judges do not feel safe in court premises*, which fact has been pointed out by the majority of the respondents (88.0%). Exemplary is the fact that the differences between different jurisdictions and instances are not substantial (within 5-6%).

Assessment of judicial self-government is rather ambiguous.

On the one hand, in the perception of the situation there prevails the idea of limited institutional capacities of judicial self-government: the majority of the surveyed judges – 55.7% - in general (and the indicator does not vary significantly depending on instances, but is somewhat higher (63.5%) in courts of administrative jurisdiction) are convinced that *"judicial self-government bodies do not have an opportunity to independently solve important problems of the judiciary"*.

On the other hand, almost one third of judges (28.6%) recognize as the key problem *"passive nature and insufficient activity of judges themselves".* A quarter of those surveyed (24.5%) are of the opinion that higher bodies of judicial self-government (obviously, the Council of Judges is meant) works not in an effective way. At the same time, judicial self-government on the basic level (meetings of judges of the court) is perceived not that critically: only 4.9% of judges recognize it to be inefficient.

2.5. Dynamics of comfort of the working environment in courts: two years of reforms

Two recent years have been most dramatic not only in the history of Ukraine, but for courts as well. Over the last two years as the result of inflation labor remuneration of about 70% of judges decreased,

4 The review of the data on the state of justice administration in 2014. – Official web-portal "The Judiciary of Ukraine". – Access mode : [Electronic resource] : http://court.gov.ua/sudova_statystyka/

and with almost each second judge (45.8%) income went considerably down. And three fourths of judges (74.0%) pointed to the fact that their feeling of personal security was weakened.
The below *table 1* reflects the dynamics of subjective perception of the situation in courts by the key dimensions: load, relations among staff members, quality of administration, judicial independence.

Table 1. Change of the situation in court over the last two years in (%):

Court jurisdiction	*Increased/ improved/ raised*	*Not changed*	*Reduced/ worsened/weakened*	*TOTAL*
personal judicial load:				
General	67.4	21.6	11.0	100.0
Administrative	47.9	10.3	41.8	100.0
Commercial	48.6	24.1	27.4	100.0
TOTAL	**62.4**	**20.4**	**17.2**	**100.0**
relations in court staff:				
General	19.7	68.4	11.9	100.0
Administrative	26.5	58.8	14.7	100.0
Commercial	37.0	53.2	9.8	100.0
TOTAL	**22.9**	**65.2**	**12.0**	**100.0**
organization of work and management in court:				
General	48.2	43.3	8.6	100.0
Administrative	53.3	29.9	16.7	100.0
Commercial	70.3	24.3	5.4	100.0
TOTAL	**51.8**	**39.0**	**9.2**	**100.0**
Feeling of reality of guarantees of personal judicial independence:				
General	1.3	15.3	83.5	100.0
Administrative	2.5	17.6	79.9	100.0
Commercial	5.5	26.8	67.7	100.0
TOTAL	**2.0**	**17.1**	**80.9**	**100.0**

The above data speaks for itself and does not require any special comments. The dynamics of the situation is mainly characterized by negative trends, but for small exceptions:

- The only considerable positive “breakthrough” of the last two years has been improvement of the quality and efficiency of court administration: in total 51.8% of judges agree to that. This share is sufficiently differentiated by the instance of courts and varies from 70.3% in courts of commercial jurisdiction up to 48.2% in courts of general jurisdiction.

- As quite important, though a bit unexpected, there should also be acknowledged the fact that in courts (obviously but for high courts) there has not been any deterioration of social and psychological climate and nature of relations among staff members (almost one quarter of the surveyed judges (22.9%) acknowledge improvement of relations, at the same time 12.0% point to deterioration of relations. The best situation is in courts of commercial jurisdiction where 37.0% of judges have pointed to improvement of relations among staff members. Along with that, in courts of cassation instance the per cent of those who pointed to improvement of relations makes up only 7.7%, which is three times smaller than the per cent of those who consider that relations among staff members have deteriorated (23.1%)

This data enables to point out one more important feature of the situation in courts: both improvement in the quality of court administration and improvement of relations (social and psychological climate) among staff members are directly dependent on the optimal judicial load.

SECTION 3. REFORM OF THE JUDICIARY

3.1. Is there a need for the reform of the judiciary: legislation and practice

There is no need to ask about the need to reform the judiciary, it is more important to understand whether the judges acknowledge the current system to be efficient and rational both from the point of view of the legislative model and from the point of view of actual state of things.

Legislation on the judiciary. The key issue in this case lies in whether judges in Ukraine agree to the fact that in Ukraine there in general exists an optimal legislative model of judiciary regulation. Less than one third of the respondents (28.0%) do agree with the fact that legislation on the judiciary is of high quality, however the majority (67.4%) do not agree with that. Particularly high level of assessments is with judges of cassation courts -79.6%.

Procedural legislation. The recent years have been a period of changes and upgrading of judiciary procedures, their harmonization with international and European fair trial standards for Ukrainian courts. However, the results of the survey give the grounds for certain doubts as to the correctness, consistency and substantiation of either conceptual (political) decisions or real practice of court procedures reformation. Half of the respondents – 51.5% (and that criterion is almost the same for all instances) are not satisfied with the state of legislative regulation of court procedures. Only 5.1% of judges indicate the fact that they are "fully satisfied" with national procedural legislation. And the situation differs in courts of different jurisdiction. Thus, in courts of commercial jurisdiction the overwhelming majority of judges (68.4%) are satisfied with the quality of legislative regulation of procedural legislation, also the majority of judges are satisfied with this in courts of administrative jurisdiction (56.9%). As far as courts of general jurisdiction are concerned: 41.5% of judges are satisfied.

The problem is even more serious due to the fact that trial participants do not have a proper level of legal knowledge to apply procedural legislation, and address lawyers only in half of cases. Along with that, only 42.8% of the surveyed judges do agree to the fact that judging by their personal experience "lawyers" participating in court proceedings have a high professional level. Along with that, such an opinion is mainly spread in courts of administrative jurisdiction (61.3% of judges consider lawyers to be professionals). In courts of general jurisdiction the corresponding share in 1.5 times lower and makes up 38.4%.

Availability of legislative guarantees of independent decision-making. The issue of judicial independence is discussed both as the problem of practice and the problem of the quality of law. It is important not to mix those aspects. The survey determined the attitude of judges to current legislative guarantees of independence. In general, assessments are polarized with a certain prevalence of positive perception of available mechanisms of ensuring independence: 50.5% of judges are satisfied with the current state (though judges of cassation courts show a lower figure here – only 26.6%). However, in the assessment of judges, legislative guarantees do not create a real feeling of independence: only 40.1% of those surveyed agree to the fact that their colleagues *"feel independent"*. Absence of the "feeling/sense of independence" was mainly pointed out by judges of high courts (only 28.6%, though the assessments presuppose rather all judges).

3.2. Courts and society: perception of judges

In order to get a democratic model of partner relations between courts and society it is important to also determine **how full and proper are ideas of judges about social perception of the judiciary in general.**

The results of the public survey held in 2015 by the "GFK" company to order of the USAID FAIR Justice Project [5] show that **the level of distrust of public in the judiciary makes up 79.0%** (this figure was confirmed by other studies recently made in Ukraine). However, **in general 40.4% of judges** agree to the **statement that "society does not trust the judiciary** (among judges of appellate courts – 32.5%, cassation courts – 27.1%). It is difficult to say what affects those assessments – unwillingness to acknowledge an obvious, though unpleasant fact, or the hope for the *"opening of the eyes of pubic that have to be objective".*

Of somewhat different nature is perception by judges of the problem of **"court openness".** According to the results of the survey, 25.1% of judges (and this figure does not change depending on the court type) agree to the fact that courts are insufficiently open to the society. These results constitute a signal for courts showing not only that judicial environment positively perceives the effort of the recent years in establishing a dialogue with the society, but also showing the need for continuing and intensifying information openness policy.

3.3. Lustration in the judiciary

The need to purify the judiciary constitutes a subject of serious social discussions. The results of public survey conducted in 2015 by the "GFK" Company to order of the USAID FAIR Justice project[6] show that about 89% of the surveyed citizens acknowledge the need to have lustration in judiciary. And 49.0% of the respondents advocate radical purification of the judiciary via dismissal of all judges and having selection based on the new rules.

The survey of judges shows a difference in principle vision of the situation:

- The need to purify the judiciary is acknowledged by only 41.8% of judges (with minor differences depending on their status and court type);
- The idea of "complete upgrading of the judiciary" is shared by only 3.1% of the respondents (a quarter of them aged under 30, correspondingly with judicial work experience under three years);
- Vetting of judges is perceived as an exclusively political campaign having not other grounds but for the motives of political expediency: 78.3% of the respondents agree to such statement.

Thus, there is a stereotype in the understanding of judicial vetting which is directly or indirectly shared by the majority of judges and is based on the perception of lustration *"as a tool that was not absolutely necessary but was imposed on the judiciary".*

3.4. The risks to judicial independence: perception of influence via personal experience

In any society there exist temptations to influence court. The results of studies testify to the fact that over the past two years a quarter of judges was (27.6%) in the situation of "*case hearing under external pressure or attempt at influencing"*, and among judges of high courts – 58.6%. Of importance is who, for what purposes and in what way does it. Personal experience of judges in this over the recent years is a clear reflection of modern Ukrainian society. Distrust in courts and the striving *"to help judges to interpret what the law is and what justice is"* – and as the result the structure of those trying to influence decisions of judges, has its "*profile* that is considerably different from the "*pre-revolution period"*. Most expected is the response on the influence of the parties in the proceedings, but the situation is a bit more complicated: see the following table.

5 http://www.fair.org.ua/content/library_doc/2015_FAIR_July_Public_Survey_Lustration_UKR.pdf
6 Ibid

Table 2. Distribution of judicial answers on who tried to influence their decision-making in the case (among those pointing to the fact of pressure over the past two years), %

	Court jurisdiction			
	General	*Administrative*	*Commercial*	*Total*
Politicians	22.4	29.8	31.6	24.8
Court administration (chief judge, deputy chief judge)	9.2	17.2	9.0	10.4
Civil servants	13.3	20.6	16.2	14.8
Litigants (their representatives, relatives or friends)	45.0	40.0	17.8	40.5
Reporters/Journalists	22.5	18.1	35.1	23.5
Protesters and demonstrators	47.9	35.3	61.8	47.8
Representatives of civil society organizations (NGOs)	32.2	38.8	36.6	33.9

From the data of the table one can understand that, in the opinion of judges, protesters try to influence their decisions (47.8% of cases), and to the greatest extent in courts of commercial jurisdiction (61.8% of cases). The second place went to the influence of the litigants (40.5%), the third one – to representatives of civil society organizations, which fact was indicated by every third judge (33.9%). At the same time, such actions can be interpreted as the wish of citizens to prevent from influence and illegal decision-making, and not as pressure exerted on court.

The above data really is the manifestation of not only a rise in civil activity but the signs of substantial problems both in the society and in the judiciary. In particular, **assessments of judges were mainly influenced by certain stereotypes that have recently become wide-spread in the judicial environment**. That is particularly felt in the analysis of information on **personal experience of judges in situations of non-procedural influence on decision-making.**

Judges gave answers to the question of how their decisions and actions are influenced in the course of case hearing. Most judges recognize the critical importance of *"facts in the case and legislative requirements"* (in general 92%, and that is absolutely expected; also, expected was negation of the wide-spread nature of bias of colleagues-judges – only 2.7% agreed to that). But along with that they do not deny a certain effect of the factors that was incompatible with the notion of fair and unbiased trial. It is impossible to make final conclusions about the occurrence of the phenomenon on the basis of this data. It needs a careful interpretation, since in effect is characterized only by certain "hints" pointing to available problems:

- **Threats and intimidation on behalf of trial participants.** This factor, so to say, is traditional for court activities. The phenomenon was recorded back in Soviet studies. It is difficult to assess what the dynamics of the recent years has been, though one should be concerned about the fact that such situations arose over the past two years with more than one third of the respondents (37.3%; with judges of high courts – 57.1%). This data correlates with high level of dissatisfaction of judges with the level of personal security.

- **Influence of court administration.** Limitation of the mandate of chief judge with whom expectations of the reduction of influence on judges were related, has not solved the problem in full – 5.6% of the respondents feel such an influence in case hearing to a different extent (judges of cassation courts face even a greater influence – almost 10% of the respondents pointed to that fact). 4.5% of judges have pointed to actual cases of influence on behalf of the administration.

- **The concern of becoming a victim of "public moods", that is criticism, offences, public trial, etc.** That is a comparatively new phenomenon of the Ukrainian reality relating to the influence of public opinion on subjective mechanisms of judicial decision-making. And it is not that important which term will be used – fear or bias, the main thing is the fact of its existence and the consequences both for the judge and for the society. Almost 20% of judges got into such situations (judges of high courts – on a more frequent basis: appellate courts – 23.2%; cassation courts – 36.7%). A special situation of public reaction is "Internet activity" accompanied by dissemination of unreliable (from the judicial point of view) information. More than a quarter of the respondents got into such situations (26.6%: judges of high courts – 51.2%). Assessment of the results cannot be unambiguous: it is impossible to draw a clear formal line between legitimate and sham (like abuse and the way of exerting pressure on the judge) public control.

- **The threats of dismissal for breach of oath.** In this case the issue contained little specification in relation to the subject of such threats. It was of importance to understand whether the dismissal procedure could be used as a tool of influence. The results received show that such threats were more frequently received by trial court judges (8.3%).

- **The pressure of law-enforcement bodies** is quite a complicated phenomenon which could have different motivation, actual content and ways of exerting pressure. One should distinguish between two situations. First, 5.5% of all judges (and 6.6% of trial court judges) have indicated that they received from the prosecutor's office staff "a threat in case they refuse to make the "necessary" decision". In this situation **it would be expedient to assume illegal influence**; though that could also be the possibility of acting just "to protect the honor of the department" which also needs to be condemned and there should be legal reaction to it. Second, almost 3.0% point to the fact that they were announced about the suspicion under art. 375 or the corresponding proceedings were launched. A similar number of the respondents have indicated that it was done following other articles of the Criminal Code of Ukraine. Those situations should not be used to shape a "complex of an innocent victim" within the judicial environment as well as to strengthen corporate stereotypes of the "threat to independence" since they obviously reflect activation of anti-corruption and abuse in the judiciary much more and should have a preventive effect.

- **"Lustration activity of public organizations"** is perceived by judges mainly as the manifestation of influence on judges. The results of the survey show that 12.2% judges (in high courts – 25.1%) have faced such public initiatives. And in courts of general and administrative jurisdiction about 11.5%, while in courts of commercial jurisdiction – 16.8%.

- **Journalist investigations and other types of mass media activities.** In a democratic society the activity of courts must be controlled by mass media which not only inform the public but also assess court performance in general as well as performance of individual judges. The experience of such situations with mass media is available with a quarter of the respondents (25.4%), and among judges of high courts – 43.8%). The impression is that for Ukrainian judges that does not create any comfort and is associated with "*dissemination of unreliable information and pressure on court".* But the other side of the problem is alarming signals of non-perception of certain rules of conduct in relations with courts, even purely external ones, by journalists. Thus, in the assessments of judges, journalists quite often show *"disrespect for court during a court hearing"* (13.3% of the respondents consider that it takes place "often" and "very often"; to compare – 9.8% of the surveyed judges told about disrespect on behalf of representatives of the litigants.

- **The influence of officials/heads of executive authorities.** The results of the survey point to the occurrence of different practices of informal influence of the representatives of authorities on judges. The scope of those practices, in our opinion, has gone down, however they keep on remaining a serious problem. In the assessment of judges, 7.2% have been in such situations. This figure does not change significantly depending on the type of court, but is quite differentiated in the regional cross-section varying from 2.8% in the city of Kyiv to 10.8% in the Western region.

- **"Informal relations" of judges**, "mutual corporate commitments" and motivation based on personal contacts remain an important "illegal component" of relations in courts and affect case hearings: up to 5% of judges acknowledge the influence of those factors on case hearings, and almost 9.0% of the respondents (appellate courts – 12.5%) point to the fact that over the last two years they have been receiving "requests and proposals from colleagues". Alarming is not the very scope of the phenomenon, but certain sustainability of the practice of "*corporate tolerance of conflict of interests and dubious information practices"*.

3.5. Assessment of changes in the judiciary: novelties in the legislation on the judiciary

The above results of surveys testify to availability of the realization of the need to make reforms of the judiciary among judges. Therefore, of importance is recognition of the peculiarities of judicial perception of some already introduced **novelties in the judiciary** in Ukraine. The general idea of those assessments is provided in the following table.

Table 3. Attitude to changes in legislation on the judiciary, %

	Agree	*Do not agree*
Election of chief judges and their deputies by the meeting of judges	80.6	8.9
Introduction of qualification evaluation of judges	31.5	48.0
Introduction of primary qualification evaluation of all judges	41.6	39.3
Introduction of the procedure for regular evaluation of judges	21.7	55.5
New procedure for electing the delegates for the Congress of Judges of Ukraine	36.2	15.0
New representation of judges in the Council of Judges of Ukraine (number, proportion of representation)	39.7	15.0
New powers of the Council of Judges of Ukraine (for instance, control over compliance with the legislative requirements on conflict of interest regulation)	56.8	9.8
Liquidation of council of judges of general jurisdiction courts, council of judges of administrative courts and council of judges of commercial courts	18.6	51.2
Returning of powers to the Supreme Court of Ukraine	66.6	10.1

The highest level of support has been recorded in relation to the **change in the status of the Supreme Court of Ukraine (returning of its powers)** – the rate of support made up 66.6%. The highest figure is among judges of appellate courts (76.8%), while the lowest – among judges of high courts (39.4%).

Novelties in the sphere of administration and judicial self-government are mainly assessed positively, in some cases these assessments are shared by the majority of judges and the assessments are rather unanimous for different categories of judges. First of all, this is **election of chief judges of courts and their deputies by a meeting of judges** (the rate of support is 70.6%). Obviously, even in the conditions of fair criticism of the first practice of its application this institute is of principal importance for the prospects of democratization and efficiency of management in the judiciary. Second is **expansion of powers of the Council of Judges and overall raising of its status** (the rate of support – 56.8%). Though it should be borne in mind that a half of the surveyed judges consider it to be insufficient.

Besides that, only a quarter of judges consider the work of the Council of Judges rather efficient. Third, other **novelties in the organization of judicial self-government** are mainly assessed neutrally, or without any considerable prevalence of positive assessments. The new procedure of electing the delegates to the Congress of Judges is assessed positively by 36.2% of judges. At the same time, neutrally – by 39.8%. More positively is assessed the new approach to the composition of the Council of judges (in terms of representation) – this innovation is supported by 39.5% of the respondents, though the share of neutral assessments remains high – 35.0%.

Along with that, **liquidation of the Council of Judges within some jurisdictions** has found no support: the rate of support is only 18.6% (the lowest rate is with judges of high courts – 13.1%, the highest – with courts of the appellate instance – 21.3%). And in courts of administrative jurisdiction it was supported the least – only by 9.4%, which on the whole reflects the stable trend of "autonomist" moods of the judges of administrative courts.

Introduction of **judicial evaluation** is perceived unambiguously both in general, and in relation to some of its types. The evaluations contain a certain discrepancy which could testify to insufficient awareness level of judges about the content of those tools, unclear distinction between certain types of evaluation. Thought **the position is definitely based on assessment from the point of view of possible personal prospects.**

For Ukrainian judges **doubtful is the very idea of the evaluation of judges.** Only one third of the respondents (32.7%) agree to the fact that evaluation is an element of accountability of judges that will help remove unfair and incompetent judges (that is acknowledge if not a need, then at least the possibility of evaluation). Of importance is the fact that the above evaluations do not contain any considerable differences depending on the instance or jurisdiction. That is the judiciary appeared not to be ready to perceive the idea of evaluation of judges.

The ideas about the "Ukrainian evaluation model" and its actual implementation do not fully coincide with the general evaluation of the "idea of evaluation of judges". All in all, evaluation of judges is supported (with an important specification – in the form in which is suggested) by only 20.2% of judges, 56.6% more agree to the statement that this is a tool for discrediting judges, and 60.6% are convinced that evaluation runs counter to the standards of judicial independence. Most critical are judges of high courts ("the rate of non-acceptance" makes up 70.2%). That is, the results of the survey show that legislative drawbacks even intensify the non-readiness of Ukrainian judges to perceive evaluation.

Qualification evaluation. Only one third of judges (31.5%) support introduction of this tool. Most critical are judges of high courts: only 11.1% support the need for it. One of the factors of such perception is poor quality of the legislative base of qualification evaluation: 63.5% of judges agree to that (84.2% of judges of high courts).

Primary qualification evaluation. In treatment of primary evaluation greater unanimity of evaluations can be traced, though there remains mainly critical perception: those who recognize the need – 41.6%, do not agree to that – 39.3%. Answers to the question asked in a bit different context are characterized by even a more critical nature of the standpoint – 43.3% consider primary evaluation to be a "tool of revenge" (judges of high courts 58.9%).

Regular evaluation. Evaluations are of a contradictory nature which can be accounted for by primarily the drawbacks of the suggested legislative model of regular evaluation. At the level of general evaluation of the process of regular evaluation as an element of the system of judiciary accountability it can be supported by 32.7% of judges, but as a practical novelty – only by 20.0%.

The subject of systematic vetting of judges. In the context of introduction of systematic evaluation and vetting of judges there arises the question about the subject of such evaluation. For this reason in the context of lustration vetting of judges the standpoint of the public was formed – that must be an independent body with mandatory involvement of the public. The standpoint of judges is different: 57.3% think that vetting and evaluation of judges can be conducted only by the institutes of the judiciary (the High Council of Judges and the High Qualifications Commission of Judges). 14.7% more of the

respondents think that state authorities have to deal with this within their mandate (for example, inspection of income and costs must be performed by the fiscal service, etc.).

The idea of establishing a **specialized independent body** was supported insignificantly – by only 19.2%. But the idea of judges about the composition of such body contrasted significantly to the idea of residents. The main share should be judges and retired judges (correspondingly, 74% and 64% of judges agree to that); representatives of international organizations (33%); representatives of ombudsman (22%); scholars (20%); representatives of public unions (11.0%). As far as other categories of potential participants are concerned (the Verkhovna Rada of Ukraine, Presidential Administration, etc.), they got a minimum support.

3.6. Perception of draft new constitutional model of the judiciary

The response of judges to draft proposals on changes in the constitutional model of the judiciary is reflected in the following table.

Table 4. Attitude to changes in the Constitution, %

	Agree	*Do not agree*
Change of the name "the High Council of Justice" for the "High Council of the Judiciary"	21.2	29.2
Expansion of powers of the High Council of the Judiciary as compared to current powers of the High Council of Justice	54.5	16.6
Transfer to the High Council of the Judiciary of powers for providing consent to detention of a judge or keeping in custody	62.5	14.2
Canceling of powers of the President of Ukraine on transfer and dismissal of judges	71.8	6.9
Canceling of powers of the President of Ukraine on establishment, reorganization and liquidation of courts	69.1	9.9
Canceling of the institute of first appointment of a judge for a 5 year term	58.9	25.3
Raising the minimum age of judicial candidates from 25 to 30	75.6	11.5
Narrowing the scope of judicial immunity to functional one	27.7	47.6
Provision of courts with powers to exercise control over court decision enforcement	46.2	33.4

Though in general the data testifies to mainly favorable attitude of judges to the suggested changes, one should pay attention to the fact that obviously supported are only the measures that enhance independence of the judiciary (for instance, restriction of the President's powers) or that do not create any additional load on courts. Other ones are perceived in quite a reserved manner.

CONCLUSIONS AND RECOMMENDATIONS

The results of the survey allow to make certain summaries and to provide the following conclusions and recommendations.

Gender and age profile of judges contains the signs of optimal composition both on the level of jurisdictions and instances, and in access of judges to administrative positions. Achievement of gender balance among judges in general and the relative one – in the administrative sphere (holding administrative offices) is one of the signs of overcoming the "Soviet legacy" of the structure of the judiciary.

Recommendations:

- To amend statistical reporting of judges envisaging the possibility of recording demographic characteristics of judges and court staff, in particular gender and age;
- To envisage realistic guarantees for female representation in regulatory documents regulating the procedure of election of judges to administrative positions, forming representation of the judiciary within joint state authorities as well as forming the composition of judicial self-government bodies;
- To develop an action plan aimed at raising awareness of judges in the issues of taking into account gender aspects in justice.

The judiciary is formed on a narrow social and professional basis: the majority of judges (69.5%) are former court staff members and former law-enforcement bodies' staff.

Recommendations:

- To develop a set of motivation measures for experienced lawyers involved in the sphere of state governance and private business, to participate in competitions for judicial offices in the corresponding levels of courts.
- To develop a set of measures aimed at raising the prestige and attractiveness of working in the court staff, reduction of staff turnover and formation of a block of occupations related to court administration (majoring in law schools; system of professional development; fair labor remuneration, etc.);
- While making qualification evaluation and selection of judges, to apply the methods of identification of professional deformations and means of correcting them.

There has been shaped and is obviously getting more intensive the unsubstantiated differentiation of labor conditions in courts of different jurisdictions and instances that does not meet the basic principles of judicial organization.

Recommendations:

- Programs of funding and material and technical provision of courts have to take into account the need to overcome unsubstantiated differences in the "quality of working environment of courts";
- It would be expedient to determine the list of courts, conditions of working in which do not meet elementary requirements and need quick solving of the current problems;
- While optimizing the network of courts it is necessary to take into account the importance of creating more favorable conditions of work.

Democratization and raising the efficiency of court administration is one of the stable trends of the recent years the support of which must be a priority for the judiciary.

Recommendations:

- To generalize the experience of novelties in court administration (modern policy of HR management, new procedures of electing chief judges, etc.) to disseminate it across the judiciary;
- To introduce new technologies of court administration; to raise the level of managerial competence of judges (time management skills, skills of power delegation in performing administrative duties, etc.);
- To more actively introduce the system of court performance evaluation system as a tool of managing quality in courts.

The results of the survey have proven that the possibilities of improving the general situation in courts directly depend on optimal load of judges, absence of situations of "overload".

Recommendations:

- To take steps aimed at optimizing the network of courts and the number of judges with due account of actual load determined on the basis of the study of objective time effort and complexity of cases of different case types; such measures cannot aim at reducing the number of judges and increase in the average load, and reduction of the number of judges perceiving the load as overload should be the indicator of performance and expediency;
- To introduce standards of load as a tool of managing judicial activities and to prepare proposals to special (branch) legislation on reduction of the load on the judiciary in general;
- To contribute to implementation of alternative methods of dispute resolution to be applied in interacting with courts as exemplified by mediation.

The state of legislative regulation of court procedures is perceived by a large share of the respondents negatively (in particular, in courts of general jurisdiction). Judges are critical enough about the changes in the procedural legislation of the recent years, the belief of the need for further changes prevails there.

Recommendations:

- The judiciary must activate itself in analyzing the problems of applying novelties of procedural legislation (primarily, the new CPC, with application of which there arise most of difficulties), make proposals for introducing amendments;
- To make the National School of Judges more active in identification of the problems with interpretation and application of procedural legislation, adjustment of studying resources to practical problems;
- To initiate a wide professional discussion of the problems of improvement of court procedure regulation and to encourage judges to actively participate in the discussion.

The novelties of the recent two years have not accompanied by a full-fledged involvement of judges in the discussion on them, pilot approval and information support. Unfortunately, the activeness of judges in this respect has been insufficient. That led to "unexpected changes and establishment in the judicial environment of non-perception of many novelties only due to lack of information. In particular, the negative response of judges to introduction of the tools of qualification and regular evaluation can be accounted for by this.

Recommendations:

- To initiate preparation of amendments to the legislation on the judiciary in the part of qualification and regular evaluation in order to remove conceptual and technical drawbacks; to hold a discussion of the state of implementation of those tools in the judicial and expert environment;

- To activate information support of managerial novelties; in particular, to conduct special trainings, to share international experience, the State Judicial Administration of Ukraine and the Council of Judges of Ukraine should support the initiatives of individual courts and judges, etc.

Independence of judges is the most controversial topic. In the assessments of judges, legislative guarantees do not create a real feeling of independence: only 40.1% of the respondents agree to the fact that their colleagues "feel independent". Along with that, availability of risks to independence is not always compensated by the actual capacity of judges to work in the conditions of activated public control (for instance, to cooperate with mass media, public unions, etc.).

Recommendations:

- Changes in the legislation on the independence of judges must be widely discussed in order to raise the understanding of their content and aim by the judges;

- To continue activities in establishing partner relations between mass media and courts, in particular, using modern information technologies;

- To create new and develop available mechanisms of court interaction with the public.

The problem of distrust of the society in courts is still not perceived by a large share of judges realistically and as a confirmation of availability of actual problems not only in the society but within the judiciary itself. There is a stereotype in the understanding of vetting of judges which is directly or indirectly shared by the majority of judges and is based on the idea of lustration as of a "tool that was not absolutely necessary, but was imposed on the judiciary".

Recommendations:

- To actively use the tools of evaluating the public attitude to the quality of performance of individual courts (within the court performance evaluation system);

- To summarize the practice of vetting and lustration;

- The Council of Judges (supported by international partners and civil society institutions) should hold an annual monitoring of public opinion for the sake of identifying the level of trust in the judiciary;

- In information (communication) strategies of courts there should be envisaged a strategic task – formation of a positive image of courts.

Strengthening judicial self-government is one of the most obvious expectations of judges from the reform of the judiciary. Expansion of powers of self-governed bodies is assessed in a positive way though it is acknowledged to be insufficient. There is a wide-spread idea of insufficient efficiency of the activity of the Council of Judges and passivity of a part of judges.

Recommendations:

- To intensify notification of judges about the activities of the Council of Judges focusing on the "success stories";

- To develop legislative proposals on expansion of powers of the Council of Judges and judicial self-government in general;

- To initiate establishment of an informal infrastructure of the Council of Judges (advisory groups, committees, etc.) for the sake of involving as many judges as possible in solving current tasks, doing strategic planning, etc.

The response of judges to draft proposals on the changes in the constitutional model of the judiciary is in general positive. Along with that, judges do not accept changes that could potentially reduce the autonomy of the judiciary or could create any additional load.