PROMOTING THE RULE OF LAW IN UKRAINE: CHALLENGES, RESULTS AND OPPORTUNITIES

DAVID M. VAUGHN, ESQ.
CHIEF OF PARTY
USAID NEW JUSTICE PROGRAM
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USAID NEW JUSTICE PROGRAM

OBJECTIVES

• Judicial independence and self-governance strengthened

• Accountability and transparency of the judiciary to citizens and the rule of law increased

• Administration of justice enhanced

• Access to justice expanded and human rights protected

• Quality of legal education strengthened
OVERVIEW OF THE JUDICIARY

• 7,686 Judges
• 765 (379) Courts
• 23,000 Court Staff
• 3,500,000 Cases Filed in 2016
• 19,166 (7,100) European Court of Human Rights Cases
COURT SYSTEM

Supreme Court
(Minimum 65, Maximum 200 Justices)

Grand Chamber
(21 Justices: 5 elected by each of the 4 Cassation Courts and the Chief Justice of the Supreme Court)

Commercial Cassation Court
Administrative Cassation Court
Civil Cassation Court
Criminal Cassation Court

Appellate
Commercial
Courts
Appellate
Administrative
Courts
Appellate
Courts

Circuit
Commercial
Courts
Circuit
Administrative
Courts
Circuit
Courts

High Court on Intellectual Issues

High Anti-Corruption Court
JUDICIAL INSTITUTIONS

HIGH COUNCIL OF JUSTICE (HCJ)
Constitutional body.
Consists of 21 members (10 judges elected by the Congress of Judges with President, Parliament, Congress of Advocates, conference of prosecutors and conference of higher legal education institutions appointing two members each, and Chief Justice as an ex officio member).
Key functions include:
- Submits to President recommendations on judicial appointments
- Disciplines judges and prosecutors
- Transfers and dismisses judges
- Lifts judicial immunity
- Concurs on the establishment and liquidation of courts
- Reviews draft legislation related to the judiciary

HIGH QUALIFICATIONS COMMISSIONS OF JUDGES (HQC)
Consists of 16 members (8 judges elected by Congress of Judges, 2 members elected by higher legal education institutions, 2 members elected by Congress of Advocates, 2 members elected by Ombudsman, and 2 members elected by the State Judicial Administration).
Key functions include:
- Conducts qualifications evaluations of judges
- Selects candidates to fill judicial vacancies
- Submits recommendations to the High Council of Justice to appoint and transfer judges

CONGRESS OF JUDGES
Highest representative body of judicial self-governance.
Congress is conducted every two years. Decisions are binding on all judges and bodies of judicial self-governance.
Key functions include:
- Elects 33 members of the Council of Judges
- Elects 6 judges to the Constitutional Court
- Elects and dismisses 10 judge-members of the High Council of Justice
- Elects and dismisses 8 judge-members of the High Qualifications Commission of Judges

STATE JUDICIAL ADMINISTRATION (SJA)
Provides overall management, organizational and budget support to the courts and judicial institutions.
Operates directly under the control of the High Council of Justice.

COUNCIL OF JUDGES
Consists of 33 judge-members. Acts in lieu of the Congress of Judges during two-year period between Congresses.

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TERRITORIAL DEPARTMENTS OF THE SJA
Represents SJA in the regions. Appoints and dismisses chiefs of staff (court administrators) and their deputies in courts with decisions subject to approval by chief judges of respective courts.

NATIONAL SCHOOL OF JUDGES (NSJ)
Judicial education institution of the judiciary responsible for:
- Initial training of judicial candidates
- Ongoing training of sitting judges
- Training of court staff
- Research support for the HCJ and HQC.
CHALLENGES: JUDICIAL INDEPENDENCE

• Implementation of complex set of amendments to the Constitution and laws related to the judiciary
• Risk of backsliding with inconsistent amendments to laws
RESULTS: CONSTITUTIONAL REFORM

• Remove role of Parliament in selecting and disciplining judges
• Eliminate role of President in establishing and liquidating courts
• Limit judicial immunity to conduct on the bench
• Enshrine lifetime appointment without probation
• Increase age to become a judge to 30 years
• Re-establish 3-tier court system
• Specify grounds for disciplining judges
• Establish HCJ with majority of judges
RESULTS: NEW SUPREME COURT JUSTICES

• 115 Justices appointed
• 27 Justices with negative opinions regarding integrity
• 86 Sitting judges, 11 lawyers and 18 law professors
• 64 Men and 51 Women
• Youngest is 33 years old with the oldest at 62 years old
• 22 Regions represented
OPPORTUNITIES: JUDICIAL INDEPENDENCE

• Monitor legislative amendments related to the judiciary

• Support developing further constitutional amendments

• Support amendments to laws related to the bar, mediation and legal education
CHALLENGES: JUDICIAL SELF-GOVERNANCE

- Reactive judicial leadership with limited strategic or long-term view
- Overlapping authorities for judicial self-governance
- Ethical norms poorly applied and understood
RESULTS: JUDICIAL SELF-GOVERNANCE

• New Code of Judicial Ethics adopted with commentary
• Ethics training programs conducted for both judges and court staff
• Judicial Ethics Committee established
OPPORTUNITIES: JUDICIAL SELF-GOVERNANCE

- Build capacity to conduct strategic and long-term planning for the judiciary

- Support implementation and enforcement of the Code of Judicial Ethics
CHALLENGES: JUDICIAL ACCOUNTABILITY

- Misuse of disciplinary procedures to exert pressure on judges
- Limited capacity of judicial disciplinary inspectors
- Low level of public awareness about judicial discipline procedures
RESULTS: JUDICIAL ACCOUNTABILITY

• Judicial misconduct complaint form adopted and available for public use
• Judicial disciplinary decisions published online
• Training program for judicial disciplinary inspectors developed and implemented
OPPORTUNITIES: JUDICIAL ACCOUNTABILITY

• Standardize the screening and adjudicating judicial misconduct complaints

• Support ongoing training of disciplinary inspectors

• Promote greater public access to and monitoring of judicial disciplinary decisions
CHALLENGES: JUDICIAL ADMINISTRATION

• Lack of performance-oriented or user-centered court management approaches
• Poorly developed automated court case management and tracking system
• Weak enforcement of judicial decisions
RESULTS: JUDICIAL ADMINISTRATION

• Court performance evaluation system developed
• Access to courts for persons with disabilities improved
• Judicial administration certificate program for court leaders implemented
OPPORTUNITIES: JUDICIAL ADMINISTRATION

• Provide online access to court information and e-filing
• Support development of public and private court enforcement agents
• Train judges and court staff on handling cases involving persons with disabilities
CHALLENGES: JUDICIAL TRANSPARENCY

• Low levels of public trust in and awareness about the judiciary

• Weak judicial capacity to engage in public outreach

• Lack of information about the justice system
RESULTS: JUDICIAL TRANSPARENCY

• Training program and manual for journalists on how to cover the courts

• Court communications training program and manual for judges and court staff developed
OPPORTUNITIES: JUDICIAL TRANSPARENCY

• Public awareness and information campaigns supported

• Promote civil society monitoring of and reporting on the judiciary
CHALLENGES: LEGAL EDUCATION REFORM

• Lack of standards for evaluating the quality of legal education
• Curricula not in line with job market demands
• Weak system for fostering academic integrity
RESULTS: LEGAL EDUCATION REFORM

- Methodology for evaluating the performance of law schools developed and implemented
- Entrance exam for master’s degree in law piloted and now required
- Codes of honor adopted
OPPORTUNITIES: LEGAL EDUCATION

- Support development and implementation of national legal education quality standards
- Assist in implementing honor codes
- Support development of skills-based courses and law faculty development
- Assist developing model law school curriculum