UKRAINE RULE OF LAW PROJECT

ANALYTICAL REPORT WITH RECOMMENDATIONS ON THE LAW OF ACCESS TO COURT DECISIONS OF 22 DECEMBER 2005, AS AMENDED ON 16 APRIL 2009 AND 7 JULY 2010, AND THE ORDER ON UNIFIED REGISTRY OF COURT DECISION OPERATIONS APPROVED BY THE UKRAINIAN CABINET OF MINISTERS REGULATION OF #740 OF 26 MAY 2006 AS AMENDED 5 JANUARY 2011

A Task Order under the Rule of Law IQC

By Markus B. Zimmer

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CONTENTS

SECTION I, INTRODUCTION AND SCOPE

On 22 December 2005, Ukrainian President V. Yushenko signed into law a new *Law of Ukraine on Access to Court Decisions* ("Law"). The new Law was remarkable both its scope and purpose. Traditionally, access to decisions by Ukrainian judges was limited to the parties to the case, their counsel, other judges and court staff, and appropriate government officials. Access was largely precluded for others without specific permission based on a need to know as expressed and justified in written requests to court system officials.

Pursuant to passage of the Law and implementation of its provisions, access to all decisions issued by the courts of general jurisdiction in redacted format and with some restrictions is available to everyone[1]. The Law provides that decisions be accessible electronically[2] and remotely through the State Judicial Administration website to any person anywhere in Ukraine or, for that matter, the world, with access to a computer and Internet service. The Law was amended on 16 April 2009 and again on 7 July 2010.

In a follow-up to passage of the Law, on 25 May 2006, the Cabinet of Ministers of Ukraine issued a *Resolution on Approval of the Procedure for Maintaining the Unified State Register of Court Decisions* ("Resolution"). The Resolution sets forth in some detail the general procedural framework for implementing and operating the Registry. It was revised and approved by the Cabinet of Ministers on 5 January 2011.

As often occurs with important and far-reaching government initiatives, it is difficult to foresee during the drafting and approval stages all of the practical implications, costs, and challenges that implementing the initiatives entail. That is the case with this Law and is examined in detail in this Report. When drafting the law, the Verkhovna Rada, which functions as Ukraine's national legislative power, assigned to the State Judicial Administration ("SJA") responsibility for implementing the Unified State Register of Court Decisions ("Register"). Immediate responsibility for implementing the Register within the SJA was delegated by the SJA leadership to its State Enterprise Information Court Systems ("ICS").

In its efforts to execute the provisions of the Law and Resolution and to implement the Register, the SJA encountered a variety of challenges which limited its ability to comply with deadline and other system-wide requirements imposed by the Law and the Resolution. It also became clear, as implementation continued, that certain provisions of the Law and Resolution might need to be amended to more effectively and efficiently achieve the objective of establishing access to court decisions in the manner envisioned by the drafters of the Law and Resolution. As noted above, both

[1] See **Law of Ukraine on Access to Court Decisions,** *The Official Bulletin of the Verkhovna Rada of Ukraine* **(OBVR),** 2006, N 15, p. 128 (As amended according to the Laws No. 1276-VI (1276-17) dated 16.04.2009, OBVR, 2009, N 38, Art. 535 N 2453-VI (2453-17) dated 07.07.2010, OBVR, 2010, N 41-42, N 43, N 44-45, Art. 529, Article 2), Subsection 1.

[2] *Ibid*, Article 2, Subsection 2.

the Law and the Resolution recently were amended pursuant to adoption of a new Law on Judiciary and Status of Judges on 7 July 2010.

This report analyzes the provisions of the Law and the Resolution against the background of SJA's efforts to implement them. It references best practices and lessons-learned drawn from the experience of court systems in other countries which created their own public information registers. Finally, it includes recommendations on how the Law and Resolution might be amended to improve the Register's functionality and security.

The ultimate goal of this report is to assist the SJA and ICS to create a stronger, more efficient, and more transparent court system by developing and administering a Register that provides (i) convenient, searchable and powerful databases of court decisions for broad public access, and (ii) a powerful and practical legal research and analysis tool for use by judges and their legal assistants that will help to promote a more stable and predictable jurisprudence for Ukraine.

SECTION II, ANALYSIS OF THE LAW OF UKRAINE ON ACCESS TO COURT DECISIONS

INTRODUCTION

Pursuant to the Scope of Work for this Report, Section II analyzes the Law from the perspective of whether reconsideration of and amendments to its existing provisions might result in (i) improved operation and administration of the Registry, (ii) greater search functionality and efficiency for end-users, and (iii) increased transparency for the Ukrainian judicial system.

ARTICLE 1

COURT DECISIONS: Article 1 defines the scope of the effort to ensure access to court decisions by providing that "court decisions" encompasses not only the final dispositive judgment in a court case but, in addition, "court orders, resolutions, verdicts, [and] determinations taken by courts of general jurisdiction…" Depending on how the SJA interprets this definition of court decisions has broad implications for how many separate judicial decisions will be required for inclusion in the Register. A lengthy and complex commercial or administrative case, for example, might include a number of non-dispositive court orders issued in response to interim motions for rulings on a variety of matters. Similarly, a complex criminal conspiracy case involving multiple defendants and various categories of evidentiary materials may involve numerous interim requests for search warrants, wiretapped telephones, other secret monitoring devices, and covert vehicle tracking devices, each of which would require a separate judicial order authorizing the action.

Including all of these interim orders, resolutions, verdicts, and determinations within the definition of a court decision and requiring that they be included dramatically expands the size and complexity of the Register, thereby rendering more difficult the challenges of developing and maintaining a highly efficient search engine and ensuring that the Register provides meaningful and relevant content for a national audience.[3] Each such interim order will have to be individually indexed and edited prior to its inclusion in the Register. Moreover, individuals unfamiliar with the procedural protocol and terminology of court document-naming conventions and organization are likely to experience difficulty and frustration when searching, for example, for the final judgment in a lengthy and complex corruption case which went through two levels of appeals. The search may yield a list of interim rulings in addition to the final trial court, interim appeals, and Supreme Court judgment from among which a layperson is unable to discriminate.

Theoretically, there is nothing inherently wrong with providing access to a variety of interim judicial determinations if (i) the Register's search engine is sufficiently powerful, sophisticated and user-friendly to make it easy for users to name and find

[3] For purposes of analogy, a 10,000 page reference book, even with a comprehensive table of contents and index, is typically much more difficult for most users to negotiate than an edited 1,000 page version from which secondary and tertiary details of interest primarily to a very small minority of readers have been removed.

what they seek, and (ii) the government allocates sufficient resources necessary to process, edit, index, and integrate that quantity of documents into the Register in a timely manner. As this Report explains, however, succeeding with such an effort and securing sufficient resources from the government to ensure its maintenance is a difficult challenge. There are alternatives that have a greater likelihood of success and can achieve the same objectives at less cost. Instead of indiscriminately including all such decisions, where the utility of doing so has not been demonstrated, a more functionally useful and less-costly approach is to develop and apply systematic criteria for the exclusion of less-relevant *interim* decisions. Excluding these will reserve the corpus of the Register for the more relevant decisions and will result in a Register that is easier to maintain and more efficient to search.

BEST PRACTICES: Courts have learned that the best approach to making case information publicly accessible is to do so on an incremental basis or in stages. The first stage, for example, might comprise creating a register that provides access to the text of all supreme court or court of cassation final decisions. Following full and successful implementation of the first stage, the second stage might involve adding to the register the text of high court or intermediate appellate court final decisions. Following implementation of the second stage, the third stage might involve adding to the register the text of the more legally significant or high-profile trial court final decisions. Following implementation of the third stage, the fourth stage might involve adding to the register other key interim decisions or orders from the case files of select levels of courts.

RECOMMENDATION A1-1: That consideration be given to amending Article 1 to requiring that the Register include only final judgments which dispose of the case or that the Judicial Council, in consultation with bar association and civil society representatives, be authorized to determine which specific categories of interim decisions are essential for the Register and which are not. Interest in having access to interim decisions in a particular case is most likely to be local in origin, and those so interested could communicate that interest directly to the court in which the case was heard and possibly obtain access to them there. Alternatively, Ukraine's courts could follow the practice of an increasing number of court systems worldwide of creating their own local websites and posting both interim and final judgments on those websites.

ARTICLE 3

ALL DECISIONS: Section 3 of Article 3 provides that the Register "…shall include all court decisions of general jurisdiction courts." The Ukrainian general jurisdiction trial and appellate courts are conservatively estimated to generate five million final judgments per year. This does not include interim decisions. If we assume, without subtracting for Ukrainian government holidays, that computes into over 17,000 final decisions generated per business day. Assuming that all 17,000 were transmitted electronically to the SJA Register Center, the government's investment in human and other capital required to process, edit, and index that many decisions every working day is enormous. To the extent that the courts also are transmitting interim in addition

to final decisions, as discussed above, the numbers and human capital required to process them are that much higher.

In 2006-2007, a majority of the courts that were complying with the requirement to submit their decisions were doing so by sending certified paper copies rather than transmitting electronic copies. The additional workload entailed in processing the paper copies which had to be scanned utilizing optical character recognition or OCR software, then proofread to ensure accuracy, then converted for editing and indexing into an electronic format suitable for the Register added significantly to this investment. Indeed, it proved to be overwhelming and led to the accumulation of a serious processing backlog from which SJA and ICS staff responsible for the Register were hard pressed to recover. The Resolution has since been amended with the addition of Paragraph 12 which requires that all decisions be submitted in electronic format. To what extent all general jurisdiction courts throughout the country have been equipped with the necessary information technology hardware, software, and reliable network capacity is unknown. It is an ambitious and resource-intensive enterprise, but the SJA/ICS are to be commended for taking this important step.

COST EFFECTIVENESS: Increasingly, modern government institutions are adopting rigorous business criteria to evaluate the utility of their enterprise. Applying such criteria here, one of the critical questions is whether the gain or return to the Ukrainian government of providing access to all court decisions in a national register justifies the enormity of human capital and other resources required to produce it. Leaders of other court systems have considered this question in their own deliberations as to how much to make available and at what cost on the national level. The general consensus among best-practice courts is that the enormous investment, initial and ongoing, required to provide national access to all court decisions at all levels via a single centralized system does not warrant doing so. This is particularly important for court systems whose resources are limited. Instead, these systems opt for a lower level of access based on answers to the following types of questions:

- Which decisions are likely to be of greatest interest and consequence for the general public, the legal profession, and the academic research community?
- What quantity of decisions reasonably can be processed within the desirable time and resource constraints to avoid creating backlogs of unprocessed decisions?
- Which decisions are of least interest and consequence for the general public, the legal profession, and the academic community and could be excluded with minor negative reaction on their part?
- What quantity of decisions at what level are necessary to ensure transparency in how courts interpret and apply the law to cases they process?

All court systems generate decisions in which there is little substantive or legal interest apart from the parties to the case, immediate family members, and perhaps close friends. These types of decisions include minor administrative cases such as traffic violations, child custody, divorce, inheritance, small claims, routine contractual disputes, minor commercial cases involving small business, etc. Decisions that often

are excluded also include routine and petty misdemeanor and legally trivial felony-level criminal offenses from entry into a national registry. Resourceful court systems conclude that the expense of processing and including such cases in a public registry may not be justified, given other, more immediate priorities, and they make practical decisions to exclude certain categories of such decisions from the information resources they make accessible. For the Ukrainian Government, the resource implications are enormous; in 2006, ICS officials estimated that administrative violation cases alone represented 40-45% of all decisions rendered by the Ukrainian courts. Eliminating the requirement that they be included in the Register would substantially diminish ICS's burdensome workload with little or no erosion of the purposes for which the Register was established. It would also remove from the database a significant number of minor cases in which little, if any, national interest has been or can be documented.

BEST PRACTICES: Indeed, the Report's author knows of no other national judiciary in the industrialized world which is required to create and maintain a repository of <u>all</u> court decisions in a centralized, national database. In court systems with which the author is familiar, the judiciary's national database provides access to all significant decisions issued by their third-instance courts of final appeal such as a cassation or supreme court and the more important decisions of the intermediate appeals courts, but limits or restricts the official publication of most less-significant first-instance trial-court decisions as economically impractical and of marginal public value. Minor court case decisions, such as administrative case decisions and petty offense or minor misdemeanor decisions, are rarely published. Because interest in those decisions is almost exclusively restricted to very small populations within the geographic jurisdiction of the deciding court, it suffices to provide access to them on local court websites, a more cost-effective solution. Including them in a national electronic register only encumbers the search capacity of decision databases with material of marginal national value that is rarely, if ever, accessed for purposes of public information, judicial review, or legal research.

RECOMMENDATION A3-1: That consideration be given to amending Section 3 of Article 3 to exclude from the Register the following categories of court decisions which simply replicate existing jurisprudence:

- All routine minor administrative case decisions or appeals;
- All routine petty misdemeanor and felony offense case decisions or appeals;
- All routine family and juvenile law-related case decisions or appeals; and
- All other routine minor civil cases, such as small claims, contractual disputes, insurance cases, etc.

The author advises including in the Registry <u>only</u> those decisions in these categories which involve unusual factual situations, extraordinary legal issues, novel circumstances, or challenges involving the application of law heretofore not encountered, and unique interpretations of relevant law in each of the areas described. Decisions about whether to submit such decisions for the Register should be made by appropriately staffed review groups on the local court level rather than by SJA or ICS

officials. These review groups would ensure that this vetting process is not sabotaged and utilized by dishonest or corrupt jurists to exclude from the Register the publication of decisions that violate, falsify, or otherwise fail to respond to the dictates of objective judicial interpretation, analysis, and application of substantive law and/or procedure. Membership on these local review groups would include judges, a professor of law, experienced practicing attorneys/bar association members, and one or more citizen representatives. The decision to exclude any category of decisions would require unanimous agreement among all members.

Local court jurisdictions in many countries are creating and maintaining on their own initiative electronic databases of decisions in minor routine cases of the sort described above for posterity, reference, or research. Although some justice ministries or centralized court administration bureaus may argue that the distribution of case information, including judgments, be restricted to one web portal under their specific control to ensure the quality and integrity of the data, experience with local court websites in an increasing number of countries demonstrates that local officials are capable of building and maintaining functional websites and posting judgments and decisions under stringent quality-control standards.

MAINTENANCE OF THE REGISTER: Section 4 of Article 3 provides that the "Procedure for maintaining the Register shall be approved by the Cabinet of Ministers of Ukraine." Whether it makes good political sense for the Cabinet to retain this function over time is questionable. The increasing responsibilities of legislative and executive bodies in the governments of emerging democratic states aspiring to improve their economic and political status on the global stage has made them aware of the need to delegate less-critical responsibilities to other governmental bodies. This is particularly important where discrete functions assigned to them are not directly related to either their constitutionally mandated oversight tasks or to their direct governance functions. Managing and regulating the procedural requirements for a register of judicial decisions clearly falls into that category. Ideally, the responsibility for disseminating and providing access to judicial decisions should fall to an oversight body within the framework of the judicial power of government rather than to a ministerial cabinet which has much more pressing responsibilities relating to the executive power of government.

Moreover, the executive and legislative bodies of some of the more progressive newly independent states such as Hungary, Serbia, and Macedonia, among others, have recognized the importance of strengthening and increasing the institutional independence of their judicial systems. They are delegating to them key functions relating to their governance and administration and, in the process, weaning them from their traditional institutional dependence. Increasing institutional independence of the judiciary and a greater commitment to the effective rule are law are two elements of key importance for the international community in determining which countries offer secure long-term prospects for capital investment opportunities. Simultaneously, however, the judicial system has no effective experience in determining register maintenance procedures. To that extent, a three-year transition period should suffice to provide opportunity for the judiciary to gain relevant

experience with and prepare itself for the transfer of this responsibility from the Council of Ministers to the Ukrainian Judiciary.

BEST PRACTICES: Innovative governments recognize the importance of building strong and efficient institutional frameworks where authority for executing discrete functions is delegated to the office where responsibility for them primarily lies. Where the judicial power of government has constitutional authority for administering justice and for managing its internal affairs, the legislative power delegates to the judiciary authority and accountability for doing so, including the dissemination of case information to the public.

RECOMMENDATION A3-2: That consideration be given, pursuant to Articles 124, 130 and 131 of the Ukrainian Constitution[4], to creating a three-year transition period for transferring responsibility for review and approval of all procedural matters relating to maintaining the Register from the Cabinet of Ministers to a standing committee comprising IT-literate members of the Council of Judges.

ARTICLE 4

USAGE CHARGES: The costs of implementing and maintaining a national Register of court decisions are significant, particularly in Ukraine's case where the number of decisions of record already exceeds 11 million and is expected to increase, once full implementation is achieved, by millions every calendar year. In a recent report, the Ukrainian Government's independent audit agency, the Accounting Chamber, reported that from 2005 through mid-2020, the SJA expended64.8 million UAH in state budget funds to operate the Register and that funds expended for software royalties increased from an average of 1.1 million UAH in earlier years to more than

[4] **ARTICLE 124**. Justice in Ukraine shall be administered exclusively by the courts. Delegation of the functions of courts or appropriation of such functions by other bodies or officials shall be prohibited.
The jurisdiction of the courts shall extend to all legal relations that arise in the State.
Judicial proceedings shall be performed by the Constitutional Court of Ukraine and courts of general jurisdiction.
The people shall directly participate in the administration of justice through people's assessors and jurors.
Court decisions shall be adopted by the courts in the name of Ukraine and shall be mandatory for execution throughout the entire territory of Ukraine.
ARTICLE 130. The State shall ensure funding and proper conditions for the functioning of courts and the activity of judges. Expenditures for the maintenance of courts shall be allocated separately in the State Budget of Ukraine.
Judicial self-governance shall operate to resolve issues of the internal affairs of courts.
ARTICLE 131. The High Council of Justice shall operate in Ukraine with the following issues being under its authority:
1) submit a proposals for the appointment of judges to office or for their dismissal from office;
2) adopt decisions on the violation by judges and prosecutors of the incompatibility requirements;
3) execute disciplinary proceedings regarding judges of the Supreme Court of Ukraine and judges of high specialized courts, and the consideration of complaints regarding decisions on bringing judges of courts of appeal and local courts, and prosecutors to disciplinary liability.
The High Council of Justice shall comprise twenty members. Each of the Verkhovna Rada of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress of Representatives of Higher Legal Educational Establishments and Research Institutions shall appoint three members to the High Council of Justice, and the All-Ukrainian Conference of Employees of the Public Prosecution - two members to the High Council of Justice.
The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Prosecutor General of Ukraine shall be *ex officio* members of the High Council of Justice.

ten times that amount or 11.3 UAH in 2010. The costs of entering a single decision are in the neighborhood of 3 UAH. To help finance these costs, imposing modest charges for downloading decisions by for-profit commercial entities which extract large quantities of the Register's data and reconfigure or reprocess it for sale in the form of information databases and publications in electronic and/or paper formats. A modest per-page downloaded charge for commercial entities is likely to generate significant funds which could then be earmarked for use by the SJA to pay ICS salaries, purchase new equipment on a cyclical basis, develop faster and more efficient applications software, etc. The justification for such charges should be that funds raised from them will be plowed back into improving the Register, thus easing the burden on those commercial entities of extracting the data.

The charges also could be used to improve control of the quality and accuracy of decisions loaded onto the registry. In his report, *History of Creation and Development of the Uniform State Register of Court Decisions* prepared for the April 2010 UROL Roundtable, ICS Director General Bodelan noted that 5,870,615 decisions were entered into the Register in 2010. The work associated with loading those decisions was performed by 45 operators, a dramatic reduction from 2009 when 78 operators were required to enter 3,593,931 decisions into the Register. With 33 fewer operators, the ICS was able to enter 2,276,684 more decisions in 2010 than in 2009. This increase in efficiency is due in part to the ability of the courts to transfer their decisions to ICS electronically. However, it raises questions about whether ICS is adequately resourced to exercise the necessary review of and quality control over the enormous quantity of decisions being entered into the Register. With 45 operators loading 5,870,615 decisions in a single year, each operator loads an average of 130,458 cases during that year. Assuming 261 working days per year, without subtracting any holidays, vacation days, or illness days, each operator loads:

- An average of 500 decisions per working day
- An average of 62 decisions per hour
- An average of *one decision per minute*.

Whether that is sufficient time to adequately review each decision to ensure that the electronic text is complete, redact the required personal information, review the redactions to ensure they are complete, and index the decision to ensure that it is searchable is an open question and invites some scrutiny by the Council or Judges or other judicial system agency to guarantee that the contents of the Register have been adequately examined prior to being made available to the professional and public audiences for whom it is intended. The integrity of content of the Register must be certified before it is made available for distribution to a national audience. This suggests that ICS may need to devote additional human and other resources to this function.

BEST PRACTICES: Best-practice court systems impose modest charges for various types of information services. The revenues generated by such charges, with legislative authorization, are retained by those systems to supplement the funding requirements for the maintenance, hardware, software, and labor requirements of the

programs and services they offer. Because the charges are modest, they do not impose a financial hardship on those who incur them.

RECOMMENDATION A4-1: That consideration be given to amending Section 1 of Article 4 to authorize the SJA to impose modest charges on for-profit commercial users of the Register who reprocess, reformat, and market the data extracted from the Register. *All non-commercial users such as individuals, academics, legal researchers, journalists, etc., would retain the ability to search the Register and download decisions free of charge.*

ARTICLE 6

REPRODUCTION AND OTHER USE OF COURT DECISIONS: Section 1 of Article 6 provides that "Everyone has the right to fully or partially reproduce publicly announced court decisions in any way, including through promulgation in printed editions, in mass media, creating electronic data bases of court decisions." This is sound public policy in the view of the author because courts are public institutions funded by revenues generated from taxes, fees, and other charges imposed on the people.

Lessons Learned: Some court systems which have implemented similar public policies have been surprised at (i) the level of commercial interest in their electronic decision databases, and (ii) the demands those interests have placed on those court databases. In a number of instances, private commercial companies developed sophisticated data-mining or data-extraction applications designed to access court system databases and to download vast quantities of data for hours at a time. Some were courteous and alerted court database administrators in advance, agreeing to engage in lengthy data-mining sessions during the late evening and early morning hours to minimize tying up website connections during prime business hours. Others were less considerate, allowing their data connection to the register for extraction processes to run for hours at a time during normal business operating hours. As the number of companies extracting the data during business hours increased, the time required for individual users to connect to court websites and conduct online searches increased dramatically because of the heavy traffic, resulting in frustration and complaints to court system database administrators. To remedy these problems, some court systems installed electronic monitoring applications to (i) track commercial users and/or (ii) alert the database administrators of heavy traffic patterns. On occasion, court officials have taken actions such as:

- Warning commercial data mining organizations to restrict their court website connection time;
- Imposed specific time constraints on their access times; or
- Issued ultimatums, failure to comply with which may result in temporarily denying them access

RECOMMENDATION A6-1: That consideration be given to amending Section 1 of Article 6 by adding an advisory sentence dealing with commercial data extraction. An example of such a sentence might be: *Commercial enterprises extracting large*

quantities of data from the Register shall coordinate their scheduling with Information Court Systems or State Judicial Administration officials to ensure website and court decision database access to all interested parties. Failure to do so may result in denial of access. Adding such text will provide SJA and ICS officials with an official endorsement of their right to restrict the data extraction activities of large-scale commercial interests to ensure that individual users have reasonable access to the Register.

ARTICLE 7

Identification of Persons: Section 1 of Article 7 prohibits the identification of individual persons by name in court decisions that are added to the general-access Register and requires the replacement of name data with numbers or letters.

There is perpetual debate among judicial system policymakers over how to define the middle way that objectively balances citizens' presumptive right to access public court records against the presumptive right of individuals to ensure that their private and personal information is shielded from the inquisitive public eye and ear and, more important, from the less-responsible sensationalist public media. Civil law systems incline more toward the protection of confidential personal information side of the debate. Although the Ukrainian Government has taken a significant leap forward with passage of this law, Article 7 reflects its concern that the identity of individuals named in court decisions remain protected. Although the motivation is well-intended, it entails serious limitations on the ability of users of the Register to search for and locate case decisions they hope to access.

An examination of names of cases adjudicated in functional court systems reveals that cases almost always are named according to the parties to the dispute in civil matters and the parties charged in criminal matters. More often than not, one or more of the parties in the case name are individual persons. Thus, locating a specific case decision in an electronic database is relatively simple and straightforward where the names or one or more of the parties is known. Where the party names of individuals are redacted from the decisions that are entered into the database and do not register when entered into search engines, the task of searching for a particular decision involving individuals becomes much more difficult and time consuming. Another unique identifier that would substitute for the inability to search by the party name of a person is to search by the original case number. However, most layperson users neither know nor have access to the number of the case for which they search.

Searches for decisions based on company names, which the Law permits, are relatively simple and straight forward because the company name functions as a unique identifier. Searches for decisions based on individual names of persons, by contrast, are appreciably more difficult. Even if the general user knows one or more of the party names of individuals, the Register's search engine will not identify the case because all names of individuals have been redacted and replaced with random number/letter combinations. In essence, the user is consigned to searching for a particular decision involving an individual person by text strings, key words or other general secondary identifiers such as the issuing court, the name of the judge who

issued the decision, etc. The difficulty with these secondary identifiers is that a database already populated with approximately 11 million decisions and growing exponentially each year, when asked to conduct a search based on such secondary identifiers, pulls up a list of thousands of prospective matching decisions, leaving the frustrated user to either try to reduce their number via advanced searches or to painstakingly review each individual decision in the list, a very time-consuming prospect. For the Register, it means that searches – and thereby connect time – will be much longer than necessary.

The inability of users to search by party/case name is a potentially disabling factor in the search for a particular decision. From a practical perspective, it undermines the Ukrainian Government's well-intended effort to make decisions publicly available. It does not follow that having court decisions available in an electronic database means that they are accessible. Without a well-designed and functionally useful search mechanism, individual decisions remain almost as inaccessible as they were prior to creation of the national Register. By eliminating the names of persons from Ukrainian cases, the regulation effectively undermines the purpose of an easily accessible Unified Register. Such a policy obstructs the public's access to basic case information, substantially reduces the usefulness of the database, and reinforces the public perception that the courts are secretive.

BEST PRACTICES: Best-practice court systems recognize the importance of making public information available in a manner that is simple to use, efficient in its operation, and quick in its response time. A diminishing number of court case information systems, such those in the Netherlands' courts, redact the names of individuals who are parties to the case. Few court case information systems follow Ukraine's policy of preventing users from searching for case decisions or judgments utilizing the names of individuals involved in the case.[5] Increasingly, best-practice court systems recognize that individual names are unique identifiers which, when used, immediately narrow down the range and number of matches the computer will select. They also recognize that restricting the use of individual's names for searches will prolong the search process and make it much more difficult than it should be.

In his report previously referenced, ICS General Director Bodelan notes that the during 2010, the Unified Registry recorded 3,029,407 hits from Ukrainians seeking access to court decisions, equivalent to an average of 252,451 hits per month. He cites that figure to support his claim that the Register is both popular and functional. For purposes of contrast, the number of hits from Americans seeking access to federal court case information in the US, a database reflecting fewer than 10% of the 50 million court cases filed annually in the state and federal courts, was 420 million on 2010 or an average of 35,400,000 per month. The U.S. federal court registers, unlike Ukraine's, provide complete electronic access to all documents in the entire case file

[5] These include the court case information systems in use, to cite a few examples, in the Supreme Court, lower federal courts, and state court systems in the United States, the Privy Council, House of Lords, and Supreme Court of Great Britain, the federal and state courts of Australia, the Supreme Court of New Zealand, Italy's Council of State, the Supreme Court of the Philippines, Federal Court of Canada, European Court of Justice, and the European Court of Human Rights. Curiously, the Scottish Court of Sessions substitutes initials for party names but cites full witness names in its electronically accessible judgments.

and permit searches based on the party names. Because users of the federal court electronic case information system are able to search by party name – whether a private person or legal commercial entity, case data are accessible much more quickly and efficiently. Users there would not find acceptable a search result which, for example, lists several thousand cases in response.

RECOMMENDATION A7-1: That consideration be given to deleting from the Law all sections of Article 7 and replacing them with a single section that describes the types of personal identifiers that should be redacted to protect individuals whose names are included in court decisions as case names or otherwise. Suggested draft text for a new Article 7 might be as follows:

Article 7: Data that shall be redacted from the text of court decisions accessible on the State Judicial Administration's official website include:

1. The following data elements associated with individuals:
- *Names of children*
- *Dates of birth*
- *Residential addresses of individuals*
- *Telephone numbers, email addresses, social networking site addresses*
- *Vehicle registration numbers*
- *Financial account numbers*
- *National identity and other personal identification numbers*

2. Judges shall have the discretion to designate decisions that shall not be published either on a temporary or permanent basis because their subject matter involves one or more of the following:
- *Material deemed covered by national security regulations as secret or confidential and not subject to public disclosure*
- *Material involving proprietary intellectual property or other related corporate research and development information not subject to public disclosure to protect commercial interests*
- *Material involving juveniles, including offenses of which they are convicted and harm they may have caused*
- *Interim judicial orders which may identify confidential government sources of information such as collaborators or witnesses, disclosure of which may compromise their security*

3. *Judges shall have the discretion to eliminate from interim and final decisions the identities of persons whose disclosure might compromise their status as confidential government sources or otherwise expose them to risk of personal or professional harm on a showing of good cause and at their own request or that of legal counsel*

SUMMARY OF RECOMMENDATIONS IN SECTION II

RECOMMENDATION A1-1: That consideration be given to amending Article 1 to requiring that the Register include only final judgments which dispose of the case or that the Judicial Council be authorized to determine which specific categories of interim decisions are essential for the Register and which are not. Interest in having access to interim decisions in a particular case is most likely to be local in origin, and those so interested could communicate that interest directly to the court in which the case was heard and possibly obtain access to them there.

RECOMMENDATION A3-1: That consideration be given to amending Section 3 of Article 3 to exclude from the Register the following categories of court decisions:

- All routine minor administrative case decisions or appeals that simply replicate existing administrative jurisprudence;
- All routine petty misdemeanor and felony offense case decisions or appeals that simply replicate existing criminal jurisprudence;
- All routine family and juvenile law-related case decisions or appeals that simply replicate existing family law jurisprudence;
- All other routine minor civil cases, such as small claims, contractual disputes, insurance cases, etc., that simply replicate existing civil jurisprudence

RECOMMENDATION A3-2: That consideration be given, pursuant to Articles 124, 130 and 131 of the Ukrainian Constitution, to creating a three-year transition period for transferring responsibility for review and approval of all procedural matters relating to maintaining the Register from the Cabinet of Ministers to a standing committee comprising IT-literate members of the High Council of Justice and the Council of Judges.

RECOMMENDATION A4-1: That consideration be given to amending Section 1 of Article 4 to authorize the SJA to impose modest charges on for-profit commercial users of the Register who reprocess, reformat, and market the data extracted from the Register.

RECOMMENDATION A6-1: That consideration be given to amending Section 1 of Article 6 by adding an advisory sentence dealing with commercial data extraction. An example of such a sentence might be: *Commercial enterprises extracting large quantities of data from the Register shall coordinate their scheduling with State Judicial Administration officials to ensure website and court decision database access to all interested parties. Failure to do so may result in denial of access.* Adding such text will provide SJA and ICS officials with an official endorsement of their right to restrict the data extraction activities of large-scale commercial interests to ensure that individual users have reasonable access to the Register.

RECOMMENDATION A7-1: That consideration be given to deleting from the Law all sections of Article 7 and replacing them with a single section that describes the types of personal identifiers that should be redacted to protect individuals whose names are included in court decisions as case names or otherwise.

SECTION III, ANALYSIS OF THE CABINET OF MINISTERS OF UKRAINE RESOLUTION ON AMENDING OF THE PROCEDURE FOR MAINTAINING THE UNIFIED STATE REGISTER OF COURT DECISIONS

INTRODUCTION

Section III of this Report analyzes the Cabinet of Ministers of Ukraine *Resolution on Amending of the Procedure for Maintaining the Unified State Register of Court Decisions*, as revised and approved on 5 January 2011 ("Resolution") from the perspective of whether reconsideration of and amendments to its existing provisions might result in (i) improved operation and administration of the Registry, (ii) greater search functionality and efficiency for end-users, and (iii) greater transparency for the Ukrainian judicial system. The analysis is framed by considerations similar to those expressed in the analysis of the Law.

PARAGRAPH 2

INTERIM DECISION TIMING: Subparagraph 1 recently added to Paragraph 2 provides direction on when certain types of interim criminal case decisions, as specified in Article 1 of the Law, shall be added to the Register and made accessible to the public. This raises again the complexity of maintaining the Register. Judicial decisions granting requests for search permits, telephone taps, and similar types of covert prosecutorial actions during the investigative phase of pending criminal investigations shall be included in the Register. However, they shall be made accessible only after the criminal case has been fully adjudicated and the final decision disposing of the case and/or sentencing of the defendant(s) has been rendered. This is to preclude named suspects in pending criminal prosecutions from querying the Register to gain knowledge of investigative activity they then might avoid or subvert and to ensure the security of government witnesses and other sources.

The responsibility for withholding publication of the interim decisions until the final decision has been reached appears in this Paragraph to rest with the central administrator of the Register rather than the local judge assigned to the case or local court official designated to transmit decisions to the Register. Effectively, then, central administration is required to accept, process, and create a scheduling track for these interim criminal decisions, withholding their publication until the final decision in the case is received. In a court system as large and with as many criminal cases as the Ukraine's, the quantity of these interim criminal decisions that require tracking is likely to number in the millions each year, thus imposing an extraordinary burden on the Register's administrators as they attempt to track and coordinate the varying schedules for their publication in the Register. Statistical reports on the number of decisions in the Register over the past four years indicate that the numbers are significantly lower than they should be, that a substantial number of decisions are not being added to the Register within the timeframe specified by the Law. This suggests that central ICS staff continue to be overwhelmed by the quantity of decisions being transmitted by the courts to the Registry. This new requirement only adds to their workload and is likely to exacerbate their inability to process the decisions in a timely manner.

BEST PRACTICES: Innovative court systems seek to minimize the extent to which the processing and release of case information is handled through large centralized bureaucracies. They seek, instead, to retain those responsibilities on the local or the regional level. They recognize that the more a central bureaucracy is saddled with system-wide processing, coordination, and scheduling functions for millions of documents in a complex and tightly scheduled workflow, the greater the likelihood that over time, the central bureaucracy will fall behind and fail to efficiently execute its functions. They acknowledge that locating the responsibility instead in local court units whose judges and staff are provided with the required training, equipment, and other resources are much more likely to conform to workflow, coordination, and processing schedules. Clearly, judges and staff in local courts are much more aware of the interrelationship between interim and final decisions in the cases they process and can respond more efficiently in coordinating Register submission requirements than can the Register's central office staff.

RECOMMENDATION P2-1: That consideration be given to decentralizing to the local court level all responsibility for coordinating the timing and scheduling the transmission of interim and final decisions to the Register. Local judges and staff are clearly better positioned to handle this function than an already overburdened centralized bureaucracy. This anticipates that judges and staff at the local court level are properly trained and have the required resources. Doing so would help to ease a major and unnecessary burden on the central CIS staff.

PARAGRAPH 3

DUAL PROCESSING: Paragraph 3 defines some of the key terms of the Register's procedure; these terms elaborate the provisions in the Law that the Register must serve as a repository of not one but two complete collections of all Ukrainian court decisions. The first or "full" version comprises all original decisions as drafted and issued by the local court judge or panel of judges assigned to the case and transmitted to the Register. Collectively, they comprise the first complete set of court decisions. The second version of the court decision is referred to as the edited or redacted version from which the names and select identifying information regarding individuals referenced in the full decision have been removed and replaced with letters and/or numbers. These redacted versions collectively comprise the second complete set of all court decisions.

This requirement that the SJA process and maintain ***two versions*** of each of the millions of judicial decisions is a major impediment to creating an efficient Register of court decisions – interim and final – issued annually by the Ukrainian Courts. Given the enormous number of *full* decisions that are submitted annually for integration into the Register and maintaining them for 24-hour, seven-day access by authorized officials is a difficult and challenging proposition of itself. This difficulty and challenge are exacerbated when, in addition, ICS central staff are required to carefully review and redact all full decisions, then integrate the redacted decisions into a separate collection in the Register and to maintain them for 24 hour, seven-day access by everyone else. This requirement that essentially the same information with

minor differences be separately maintained in two separate data frameworks is known in administrative science as "dual processing."

Dual processing is a best practice frequently deployed on a *temporary* basis when an organization is moving from one category of data-maintenance and archiving systems to another. For example, when an organization determines to transfer its internal operating systems such as finance, budget, and accounting from a paper-based mode to an electronic mode, it will engage in dual processing. As the new electronic system is brought on line, the organization will temporarily utilize and maintain both the new electronic data system *and* the old paper-based system to create redundancy. The old system is used to ensure that the organization will have it to fall back on should the new system fail to properly function as staff learn to use and rely on it. Once the new electronic system has demonstrated its functionality and reliability, and once backup or redundancy models are in place to ensure the electronic system can be restored in case of failure with no loss of data, the old paper-based system is abandoned.

BEST PRACTICES: Organizational efficiency experts have long recognized that although dual processing is essential during transition periods to ensure continuity of organizational operations, it should be deployed only on a temporary basis because it is costly, redundant, inefficient, and consumes resources that can be used more profitably elsewhere in organizational operations. Best-practice court systems follow that principle only during transition periods. And when they define their case information processing and accessibility requirements, they ensure that the functionality *does not* require the collection, maintenance, and preservation of that data in two complete and only slightly different formats in a *permanent* dual-processing arrangement. By succumbing to that dual-processing model for its Register, the Ukrainian Government is defying sound organizational best practices and utilizing its limited resources in an inefficient manner.

RECOMMENDATION P3-1: That consideration be given to redefining the terms set forth in Paragraph 3 to provide:

- For one rather than two largely identical compilations of electronic court decisions, thus creating a more rational and efficient framework for the Registry; and
- For that single compilation to respond to the needs of all users, including judges, court staff, media representatives, the public, professors of law and other legal scholars and researchers, commercial organizations, statisticians, etc.

HIGH-PROFILE AND NOTABLE CASE DECISIONS: Court systems generally agree that a very small percentage of the decisions issued by their judges are of significant national interest to the general public and, for that matter, the judicial, media, and academic communities. Of those decisions, most are issued by the supreme or cassation courts or by the intermediate appellate courts. Occasionally a trial-court decision will generate significant national interest because of the events surrounding it or the innovative manner in which a judge interpreted and applied the law to the facts

of the case. Requests and searches for such high-profile decisions vastly outnumber those for more routine, less-interesting and less-consequential decisions.

BEST PRACTICES: To better respond to widespread interest in such cases, innovative court systems provide an alternative to the burden of searching for such decisions using conventional database search tools available through their registers. Instead, they feature them on their websites in a short list of hyperlinked case names. Following login, users simply click on the relevant case hyperlink, and the register takes them directly to the electronic text of the decision. The lead screen of the decision includes a print command for users who would like a paper copy. These shortlisted decisions are of special interest to the media, the public, government officials, and the legal and academic communities. Equally important, they also are of interest to judges for their instructive value in how to interpret and apply the law in what frequently are difficult fact situations that also may involve strong public sentiment, coercive influence from government officials, conflicts of law, human rights issues, etc. Having such decisions available in an immediately accessible format conserves judicial time otherwise spent searching for them using the Register search engine.

RECOMMENDATION P3-2: That consideration be given to amending Paragraph 3 by adding a new subparagraph mandating creation and maintenance on the SJA website of a separate short list of hyperlinked high-profile and noteworthy case decisions, identified by case name, that have generated substantial public and/or media interest or that address major legal issues in contemporary Ukrainian society. This new subparagraph under Paragraph 3 should task the Council of Judges with establishing the criteria for decisions to be included on the list. Decisions selected for the list should remain on it for as long as they continue to draw high numbers of hits by Register users. The process of identifying such decisions should be as prompt as possible so that users have access to them on the short list within hours where possible of their having been issued.

PARAGRAPH 5

Specialized Software: Paragraph 5 provides that "Specialized software of the Register, developed on SJA's request or purchased by it, and the database of the Register ***shall be owned by the state*** as represented by the said Administration." (Emphasis added) This requirement reflects the concern of the Cabinet of Ministers that the state budget not be gouged or otherwise depleted by unscrupulous software developers who develop specialized software for internal use by government institutions and who then proceed to levy what often are exorbitant and perpetual royalty charges for use of the software the state contracted for and paid to have developed. As previously noted, according to the Accounting Chamber, the Ukrainian Government's internal audit agency, the State Judicial Administration, in apparent violation of the Cabinet of Ministers' policy, is paying royalties to private companies for the applications software that runs the Register. Back to 2009, those royalties paid by the SJA were in the amount of 1.1 million UAH; for 2010, those royalties increased by more than 10 times to 11.3 million UAH. Moreover, the Accounting Chamber's report charges that the SJA took no initiative either to justify or to

incorporate this special arrangement into the state-owned National Informatization Program which requires agencies of the state to comply with cost-effective practices.

RECOMMENDATION P5-1: That consideration be given by the Council of Judges to request that the Accounting Chamber conduct a detailed formal inquiry into the royalty payments being made by the SJA to private companies in violation of the Council of Ministers Resolution. This formal inquiry should:

- Examine and disclose the names both of the private companies and their registered owners to whom these royalty payments are being made
- Determine the total amount of these royalty payments since inception of the Unified Register
- Examine and review any and all contracts between the SJA, ICS, and these private companies, including, if any, between the private companies;
- Determine whether and how the business interests of the owners of these private companies are related;
- Determine whether the SJA's and ICS' procedures for contracting with these private companies were in compliance with government-mandated procurement and contracting regulations
- Make recommendations as appropriate, including whether
    - Any justification exists for further investigation by Ukrainian state prosecutors; and
    - Any justification exists for possible legal action by the government to recover the royalty costs already paid by the SJA
    - Any existing contracts should promptly be terminated pursuant to the requirements of the National Informatization Program.

PARAGRAPH 7

Unlimited Storage: Paragraph 7 of the Resolution provides that "Electronic copies of court decisions are the documents subject to unlimited storage." Whether that refers to (i) the storage capacity of the Register or (ii) how long electronic versions of court decisions shall be maintained in the Register is unclear. There is no mention elsewhere in either the Law or the Resolution as to how long court decisions in electronic version must be retained in the Register[6] for purposes of access by judges, media, the public, etc. If the reference in this paragraph is to storage of the electronic records over time, the concept of storage for an unlimited period of time should be reconsidered.

BEST PRACTICES: Large national court systems accumulate and produce information relevant to their function at a rate much higher than generic government- or commercial-sector organizations. Hundreds of thousands of new cases are filed with the Ukrainian courts every year. Well-managed court systems respond to this influx by working with their legislative partners to establish rational records retention schedules. These schedules organize the various types of information court systems

[6] Paragraph 21 of the Resolution indicates that users of the Register must have access at any time to at least five years of accumulated decisions. The decision as to whether to extend that access is delegated to the "Register holder."

receive and generate on the basis of their comparative importance. For example, decisions issued by a cassation or supreme court may be classified as category one, most important, while decisions issued by a misdemeanor court are classified as category ten, least important. Decisions rendered by other courts are placed into categories two through nine, depending on their comparative value. These schedules attach to each category of case a life span or retention period that correlates with its comparative value or importance. For example, retention schedules for decisions issued by a cassation or supreme court, those in category one, typically require their retention on a permanent basis, ensuring that the government has a complete record at any time of all decisions rendered by its court of final appeal. Having such a complete record available is essential for a variety of reasons, including preservation of the national jurisprudence. The retention schedule for decisions issued by a misdemeanor court, such as minor traffic and other categories of citations by contrast, may call for them to be preserved for no more than three years, commensurate with their relative value.

Well-managed court systems with effective and efficient records management systems ensure that records retention schedules are enforced. If certain categories of court decisions are to be retained for three years, then at the conclusion of that three-year period, the records are destroyed. Decisions on paper are shredded and recycled; decisions in electronic format and their indexing data are permanently deleted from the database. Effective management of court records at all levels of the system according to a well-designed records retention schedule results in efficient and functional court systems.

RECOMMENDATION P7-1: That consideration be given to amending both the Law and the Resolution to provide for a national electronic court decisions retention and archiving schedule that:

- Categorizes decisions by type into a value-based matrix;
- Attaches to each category a retention time frame, including those that are to be permanently retained;
- Mandates the prompt deletion from the Register of those decisions whose lifecycle has expired according to the time frames specified in the schedule

Developing and implementing such a retention schedule will ensure that the Register is not subject to unprecedented and uncontrolled growth.

PARAGRAPH 9

RECOMMENDATION P9-1: That consideration be given to amending Subparagraph 2 by adding to the end of the subparagraph text equivalent to the following:

2) Register, account, process, accumulate, and store electronic copies of court decisions according to the national Register Records Retention Schedule

INTEGRITY OF LEGAL RESEARCH AND SCHOLARSHIP: Subparagraph 5 of Paragraph 9 discusses the collection into published format of court decisions by case category

and mandates that the published versions comprise the *redacted* version of those decisions. The implications of this policy for the integrity of scholarly legal research and publications for the Ukrainian legal profession and law faculties are significant. Under its provisions, for example, legal research studies into specialized aspects of Ukrainian jurisprudence will be precluded from citing significant cases by the name of the case where one or more parties are individuals. Those studies also will be precluded from referencing specific key individuals in those cases by names. Moreover, important compendia of key Supreme Court and intermediate appellate court decisions published as official legal reference works in academic libraries will be precluded from citing the names of individuals and case names involving individuals, a requirement that domestic as well as foreign scholars are likely to find curious, nonsensical, and perhaps absurd. Where judges in drafting their decisions reference established jurisprudence and leading cases of higher courts to justify their application of the law, the published versions of those decisions will contain redacted citations likely to impede legal research into those sources. The overall consequences for Ukrainian legal scholarship are likely to be negative and perceived by legal scholars from other countries as both unnecessary and inspired by archaic concepts of the preservation of personal privacy and confidentiality in an increasingly open global information environment.

BEST PRACTICES: Best-practice court systems recognize the importance for the integrity of national legal scholarship and research of making available as much information as possible about cases adjudicated in public courts. They understand that if the full text of court decisions is available only to judges, court staff, technical staff and select other government officials, the integrity of legal scholarship and research will be diminished because it is incomplete and its functionality is compromised. On balance, they opt for policies which maximize what information is made available, imposing restrictions only where essential to protect personal and confidential items of information which are no one's business from entering the public information forum. An individual's name as a party to a court case does not qualify in most systems as something that deserves state protection as either personal or confidential information.

RECOMMENDATION P9-2: That consideration be given to modifying the types of personal identifiers required to be excluded from publicly accessible court decisions pursuant to earlier Recommendation A7-1.

PARAGRAPH 13

RECOMMENDATION P13-1: That consideration be given to inserting the word "business" between "next" and "day" to read as follows: *Electronic copies of court decisions shall be sent by the responsible court staff employee not later than on the next business day after the court decision passing (issuing).*

PARAGRAPH 15

APPEALED DECISIONS: This paragraph lists the data indexing elements that are to be included on the electronic information card. Collectively, these elements do not include information on whether decisions issued by the trial- and intermediate-level

appeals courts have been appealed to higher courts. Both the Law and the Resolution require the prompt submission of decisions to the Register, well before the period allowed for filing an appeal has expired. As a consequence, users accessing the decisions of those courts have no means of determining whether an appeal has been filed without conducting a search of higher-court decisions.

BEST PRACTICES: Public service-oriented courts make every effort to provide the public and the media with as much information as possible and in the least complicated manner possible. Where, for example, the judgment of a lower court has been appealed, such courts include with the text of the decision a note indicating that an appeal has been taken and referencing the higher court.

RECOMMENDATION P15-1: That consideration be given to adding new data elements to the existing list. Each decision submitted by the intermediate appellate courts, the high courts, and the Supreme Court to the Register should include in its electronic information card the following information:

- All appellate-level court decisions
  - The name/number of the trial court case which was appealed
  - The name/oblast of the trial court from which the appeal was made
- All high court decisions
  - The name/number of the appeals court case which was appealed
  - The name/oblast of the appeals court from which the appeal was made
- All Supreme Court decisions
  - The name/number of the appeals court or high court case which was appealed
  - The name/oblast of the appeals court or high court from which the appeal was made

As this new electronic information is added the Register, ICS staff should be required to annotate decisions already in the Register which were appealed by adding the appeals court's case name, number, and court name. This will enable users, when reviewing a trial court decision, to determine quickly (i) whether the case was appealed and, if so, (ii) to locate the decision of the higher court by conducting a quick search using the case name/number/court. As the sophistication of the Register increases, the annotated case numbers of the appealed decisions should be hyperlinked so that by simply clicking on the number, the user is automatically taken to the text of the decision of the relevant appeals court.

PARAGRAPH 20

ACCESS TO COURT DECISIONS: As a matter of sound policy, persons who access decisions in the Register should be required to register for the service on the SJA website by providing their full name, organizational affiliation, email address, and telephone number. They also should be required to enter a login name and password. Thereafter, each time registered users subsequently access the Register, they should be required to enter their login and password as a condition of access. To ensure that new registrations are not being automatically generated by a preprogrammed

computer, users shall be required to read and enter a randomly generated set of graphically obtuse characters and/or numbers as a condition of submitting their registrations. Once submitted, the SJA website should send an email to the user's email address with confirmation required to ensure the request is legitimate. The purposes for this requirement are as follows:

1. Security of the contents of Register against mischief and efforts to compromise or modify the data by persons who access it;
2. Providing the SJA with a list of users and their identifying information for use in communicating with and notifying them when, for example:
    a. In an emergency, the Register needs to be shut down for servicing; and
    b. New Register features are activated or new policies or procedures are being implemented
3. Providing the SJA with statistical data on various aspects of system access for use in modifying the application software to better respond to the types of inquiries logged. This data can be used to create reports of various kinds informing officials who maintain the Register about how its contents are being accessed
4. Providing the SJA with a means to selectively identify different categories of users and tailor surveys to discrete groups of users to determine satisfaction levels and solicit comments for improving the Register
5. Providing the SJA with a means of identifying corporate users who may log in for extended periods and possibly limit or slow access and download times for other users

The SJA may already have implemented this registration requirement for judges and others authorized to access the full version of the court decisions database. It also may be in place for users of the redacted version if the government elects to continue to provide two separate databases of decisions. Even if that is the case, the requirement should be included in the procedures set forth in the Resolution to ensure that challenges to it can be effectively rebutted by reference to the original procedural authority.

BEST PRACTICES: Highly automated court systems recognize the risks that providing access to electronic public information sources can entail, and they implement rigorous policies that require, as a condition of such access, that all users first register as users of the system before access is granted as a matter of security. They recognize that failure to institute such a requirement is likely to invite problems.

RECOMMENDATION P-20-1: That consideration be given to amending either the Law or the Resolution or perhaps both to provide that use of the system (including both the full version and the redacted version should the leadership opt for the retention of dual processing) by any user, including judges, court employees, SJA and ICS officials and technical staff, and all members of the public, register as users, providing:

- Full name
- Organizational affiliation

- Email address and telephone number
- Login name and password which must be entered each time they access the system

SUMMARY OF RECOMMENDATIONS IN SECTION III

RECOMMENDATION P2-1: That consideration be given to decentralizing to the local court level all responsibility for coordinating the timing and scheduling the transmission of interim and final decisions to the Register. Local judges and staff are clearly better positioned to handle this function than an already overburdened centralized bureaucracy. This anticipates that judges and staff at the local court level are properly trained and have the required resources. Doing so would help to ease a major and unnecessary burden on the central CIS staff.

RECOMMENDATION P3-1: That consideration be given to redefining the terms set forth in Paragraph 3 to provide:

- For one rather than two largely identical compilations of electronic court decisions, thus creating a more rational and efficient framework for the Registry; and
- For that single compilation to respond to the needs of all users, including judges, court staff, media representatives, the public, professors of law and other legal scholars and researchers, commercial organizations, statisticians, etc.

RECOMMENDATION P3-2: That consideration be given to amending Paragraph 3 by adding a new subparagraph mandating creation and maintenance on the SJA website of a separate short list of hyperlinked high-profile and noteworthy case decisions, identified by case name, that have generated substantial public and/or media interest or that address major legal issues in contemporary Ukrainian society. This new subparagraph under Paragraph 3 should task the Council of Judges with establishing the criteria for decisions to be included on the list. Decisions selected for the list should remain on it for as long as they continue to draw high numbers of hits by Register users. The process of identifying such decisions should be as prompt as possible so that users have access to them on the short list within hours where possible of their having been issued.

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- Examine and disclose the names both of the private companies and their registered owners to whom these royalty payments are being made
- Determine the total amount of these royalty payments since inception of the Unified Register

- Examine and review any and all contracts between the SJA, ICS, and these private companies, including, if any, between the private companies;
- Determine whether and how the business interests of the owners of these private companies are related;
- Determine whether the SJA's and ICS' procedures for contracting with these private companies were in compliance with government-mandated procurement and contracting regulations
- Make recommendations as appropriate, including whether
    - Any justification exists for further investigation by Ukrainian state prosecutors; and
    - Any justification exists for possible legal action by the government to recover the royalty costs already paid by the SJA
    - Any existing contracts should promptly be terminated pursuant to the requirements of the National Informatization Program.

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- Categorizes decisions by type into a value-based matrix;
- Attaches to each category a retention time frame, including those that are to be permanently retained;
- Mandates the prompt deletion from the Register of those decisions whose lifecycle has expired according to the time frames specified in the schedule

RECOMMENDATION P9-1: That consideration be given to amending Subparagraph 2 by adding to the end of the subparagraph text equivalent to the following:

2) Register, account, process, accumulate, and store electronic copies of court decisions <u>according to the national Register Records Retention Schedule</u>

RECOMMENDATION P9-2: That consideration be given to modifying the types of personal identifiers required to be excluded from publicly accessible court decisions pursuant to earlier Recommendation A7-1.

RECOMMENDATION P13-1: That consideration be given to inserting the word "business" between "next" and "day" to read as follows: *Electronic copies of court decisions shall be sent by the responsible court staff employee not later than on the next business day after the court decision passing (issuing).*

RECOMMENDATION P15-1: That consideration be given to adding new data elements to the existing list. Each decision submitted by the intermediate appellate courts, the high courts, and the Supreme Court to the Register should include in its electronic information card the following information:

- All appellate-level court decisions
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        - The name/oblast of the trial court from which the appeal was made
- All high court decisions
    - The name/number of the appeals court case which was appealed
    - The name/oblast of the appeals court from which the appeal was made
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    - The name/number of the appeals court or high court case which was appealed
    - The name/oblast of the appeals court or high court from which the appeal was made

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- Full name
- Organizational affiliation
- Email address and telephone number
- Login name and password which must be entered each time they access the system