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UKRAINE RULE OF LAW PROJECT

**Improved Accessibility and Effectiveness of
the Ukrainian Judiciary:
Assessment of the Uniform Registry of Court Decisions**

Assessment Report

By

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1. EXECUTIVE SUMMARY

This report presents the findings of the assessment of the Uniform State Registry of Court Decisions of Ukraine and the related legislation and recommendations for improving the accessibility and effectiveness of the Uniform Registry and review of the related legislation.

The study is conducted in the framework of the United States Agency for International Development, USAID, Project “Combating Corruption and Strengthening the Rule of Law in Ukraine, UROL”.

The reason for commissioning the assessment is that because of the large amount of information contained in the Uniform Registry, the Administrator - Holder of the Uniform Registry, the State Court Administration, faces challenges that cannot be managed effectively without improving both its functionality and accessibility changes to the related law.

The assessment concludes that:

- A legal information retrieval database system of court decisions, the Uniform Registry should include all court decisions which are of relevance to the formulation and interpretation of rules of law.
- The relevant judicial decisions should be selected in two stages on both formal and substantive criteria: preliminary selection by the courts on the basis of formal criteria, and the remaining judgments assessed by experts on the basis of both formal and substantive criteria.
- The positive selection criteria to be used by the Documentation Centre should preferably be elaborated by experts in the field concerned.
- It is estimated that if such selection criteria are professionally used, less than ten per cent of the decisions given by courts of first instance and appeal courts will qualify for positive selection.

Recommendations for improvement of the accessibility and effectiveness of the Uniform Registry are formulated.

2. METHODOLOGY

The assessment and the recommendations out of the assessment have focused both on the perceptions of the Administrator - Holder of the Uniform Registry, the State Court Administration, and on the perspective of achievements of selected representatives of experts and users of the Uniform Registry.

To obtain this level of evaluative quality, the assessment has included:

- reviews of project documentation and study of other relevant documentation;
- meetings with judges and court officials
- interviews with a selection of users;
- interviews with experts;
- on-site visits.

The Final Report takes into account remarks and comments by the Administrator - Holder of the Registry, users and experts received, inter-alia, at a presentation of the draft of the report at a Round Table organised by the Ukraine Rule of Law Project Office, National Academy of Sciences of Ukraine, Kiev, 28 April 2011.

The following methodology has been applied for the assessment and the recommendations:

1. Fact finding:
 - a. Desktop study
 - b. On-site project visits
 - c. Interviews
2. Drafting of preliminary findings:
 - a. Preparation of Draft Report
 - b. Preparation of Power Point Presentations of initial findings
3. Wrapping up:
 - a. Presentation of initial findings to Ukraine Rule of Law Project Staff, Staff of the Administrator - Holder of the Registry, judges and court officials, experts and users of the Uniform Registry. through a PowerPoint Presentation reflecting initial findings
4. Finalization of the study:
 - a. Finalization and submission of the Final Report.

3. ASSESSMENT SCOPE AND EXPECTED RESULTS

3.1 Introduction

The Law of 22 December 2005 on Access to Court Decisions of 22 December 2005, No. 3262-15, amended on 16 April 2009 and again on 7 July 2010, further referred to as the Law, sets the framework for the Uniform State Registry of Court Decisions. In a follow-up to passage of the Law, on 25 May 2006, the Cabinet of Ministers issued a Resolution on Approval of the Procedure for Maintaining the Uniform State Registry of Court Decisions, further referred to as the Resolution. The Resolution sets forth in some detail the general procedural framework for implementing and operating the Registry, and it commissioned as Administrator – Holder of the Uniform Register the State Court Administration. The Resolution was recently revised and approved by the Cabinet of Ministers on 5 January 2011

The Law, the Explanatory Memorandum to the Law, and the Resolution are attached as Annexes 1^{a-c}.

3.2 Overall Objectives

The objectives of the assessment are providing expert assessment of the current Uniform State Registry of Court Decisions and the related legislation (the Law and the Resolution)

The assessment will focus on the functional design of the Uniform Registry and the efficiency of its operations.

3.3 Specific Objectives

- Assessment of the present Uniform Registry of Court Decisions, especially its functional design, including the organizational, administrative and functional subcomponents of the registry system.
- Analysis of the provisions of the law to identify the gaps and determine whether its text has to be reconsidered to better safeguard the operation and administration of the Uniform Registry of Court Decisions on the one hand, and improve the ability to provide a better quality search for potential Web visitors on the other.
- Review of the Resolution, to identify gaps in the process of managing court decisions in preparation for being posted.

3.4 Deliverables

- Participation in a public event in Kyiv in April 2011 to present the findings and to come up with final recommendations following a stakeholder discussion.
- Analytical report on the assessment of the system housing the present Uniform Registry of Court Decisions, including recommendations for improving its functional design and/or its organizational, administrative and functional subcomponents.
- Analytical report on the Law.

- Analytical report on the Resolution.
- Provision of a summary of gaps to be filled in by legislative changes and/or bylaw regulations .
- Provision of a list of recommendations to improve the Law.

4. THE UNIFORM REGISTRY OF COURT DECISIONS OF UKRAINE

4.1 Introduction

As reported under Chapter 3, the legal framework for the Uniform Registry is laid down in the Law on Access to Court Decisions of 22 December 2005, No. 3262-15, amended on 16 April 2009 and again on 7 July 2010, further referred to as the Law and, in a follow-up to passage of the Law, Resolution N 740 of 25 May 2006 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Maintaining the Uniform State Registry of Court Decisions, further referred to as the Resolution. The Law and the Resolution commissioned as holder of this Uniform Register the State Court Administration.

For the Commercial Courts a Legal Information Database System of Court Decisions was at that time in use for already several years. The Commercial Courts Legal Information Database system was, initially, "copied" for the - later established - Administrative Courts.

The State Court Administration decided on a different approach for the databases for the Courts for Civil and Criminal Cases and on outsourcing of the development as well as the implementation of this system (and not on feasible "upgrading" of the Commercial Courts System for these Courts). The grounds for this approach are rather concealed.

4.2 Assessment of the Uniform Registry of Court Decisions

4.2.1 Assessment of the Functional Design of the Uniform Registry of Court Decisions

Conduct of a proper assessment of the Uniform Register is seriously handicapped owing to the absence of a so-called "functional design".

In the literature on the introduction of information and communication technology in the Administration of Justice a number of guidelines are discussed that are critical for the success of its application in the administration of Justice. Of these guidelines, probably the most critical is the prerequisite of a clear establishment and identification of the scope and scale of the objectives of the information system, based on a preceding conduct of a thorough needs assessment and laid down in a so-called "functional design". If computerization in the Administration of Justice is initiated without conducting a "functional design" it often occurs that it will fail to have the desired effect and that the cost will exceed the benefits. For the users of a computerized system, the "functional design" shall exactly spell out the functionalities to be performed by the system. Further, a proper "functional design" provides clear and unequivocal criteria by which to assess the system when it is complete.

The development of the Uniform Register has been initiated without the conduct of a "functional design". Experts of the State Court Administration expressed as their opinion that the design of the Uniform Register is laid down/described in the Law on Access to Court Decisions and the related Resolution of the Cabinet of Ministers.

4.2.1.1 Scope of the Uniform Register laid down in the Law on Access to Court Decisions, c.a.¹

The overall objective of the Uniform Registry is ensuring transparency of the judiciary through providing access, electronically and remotely, to texts of *all decisions* issued by *all courts of general jurisdiction* in redacted format *to any person anywhere in Ukraine*, with access to a computer and Internet service.

The Law c.a. are mentioning four groups of users of the Uniform Registry:

- Every citizen;
- Persons participating in a case before court;
- Persons that are not participating if it directly concerns their rights, freedom, interests or obligation;
- Judges and Court Staff.

Of these are main-target-groups:

- The public in general;
- Persons participating in a case before court;
- Judges and Court Staff.

On persons participating in a case before court:

A guiding aim and leading function of the Uniform Registry is to set forth a procedure of accessing court decisions by the citizens with a view to ensure transparent operation of courts of general jurisdiction, i.e. inter-alia to provide information to parties before court on the progress of their case.

On judges and court staff:

A further guiding aim and function of the Uniform Registry is to set forth a mechanism that may facilitate consistent application of the law, uniformity of law enforcement practice of the courts, urge judges to exercise greater responsibility in drafting judicial decisions in view of the fact that these become accessible to colleague-judges, private lawyers, and the public. These targets may

Although the Law c.a. are not explicitly mentioning as "target-group" legal professionals: private lawyers, notaries, legal scientists, lawmakers, etc., these legal professionals constitute an important "target-group" and important forum of users of the Uniform Registry.

4.2.1.2 Mode of Operation of the Uniform Register

The Uniform Registry is an automated system providing collection, storage, protection, registration, retrieval and delivery of electronic copies of court decisions.

¹ Sources:

- Law on Access to Court Decisions of 22 December 2005 and Amendments of 16 April 2009 and 7 July 2010;
- Resolution Cabinet of Ministers of 25 May 2006;
- Explanatory Memorandum to the Law, MP (registration card 393);
- Annotation: On Access to Judicial Decisions (Yaroslav the Wise Institute of Legal Information; Verkhovna Rada)

The mode of operation of the Uniform Registry on storing decisions may be summarized as follows:

- Text of all decisions and rulings, including decisions in the so-called administrative infractions offences: misdemeanors, i.e. final decisions and all intermediary decisions, need to be stored in the Uniform Registry. The reason for storing all decisions and rulings is, inter-alia, to provide information to persons participating in a case before court on the progress of their case to parties before court.
- Till quite recently, many Courts for Civil and Criminal Cases were not - not adequately - equipped with computers. Accordingly, storing decisions into the State Register was foreseen to be carried out through scanning of the decisions by central regional scanning facilities, which were sending the scanned documents to the State Register for storing into the central database. (The storage of documents as images precludes the search of the contents, greatly reducing the system's potentialities and practically impeding the achievement of its comparative purposes.)

4.2.2 Assessment of the Functionalities of the Uniform Registry

The author of the present report is of the opinion that the Law on Access to Court Decisions of 22 December 2005 and the Resolution of the Cabinet of Ministers on Approval of the Procedure for Maintaining the Uniform State Registry of Court Decisions of 25 May 2006 has created a, in one respect, ponderous *giant-mammoth* justice information system and, in another respect, a *Janus-faced* information system. The author is of the opinion, that as a result of this, the Law and the Resolution are missing their mark.

The author of the present report may focus at first, and as main-body of this report, at the Uniform Registry as a *giant-mammoth* justice information system.

Giant-mammoth: because of the large amount of information, all decisions and rulings of all courts of general jurisdiction, i.e. final decisions and all intermediary decisions, the Uniform Registry is hardly manageable and very difficult searchable for the lay-users, judges and further professional users, with the mode of operation described above. These users searching on case law practice of the courts, are with this mode of operation *not well served*. The, at present, already enormous and increasingly growing number of court decisions in the Uniform Register makes decisions not accessible. The yearly growing number of court decisions creates a huge accumulation of useless information, i.e. an unnecessarily heavily overloaded database.

Some examples of searches conducted by the author of the report:

- Keyword-searching on different types of Economic Cases: numbers of decisions were for five types of economic crimes 820 – 4.197 – 8.170 – 8.702 -338.295;
- Keyword-searching on different types of Criminal Cases: number of decisions were for four types of crimes 270 – 3.098 – 5.458 – 13.536;
- Searching by article of the Criminal Code gave in a specific crime over 55.000 decisions.

These figures might tell something on criminality in specific sectors. These figures proof the inaccessibility of the Uniform Register in its present mode of operation for the users searching on case law practice of the courts .

The author of the report may reflect below views and criticisms expressed in the meetings at, amongst others, the High Administrative Court, the High Civil-Criminal Court, the Appeal Civil-Criminal Court of Kiev, Kiev Scientific Institute of Private Law of the National Academy of Law Sciences of Ukraine, Commercial Law Centre:

- Uniform Register is of low functionality;
- Uniform Register is much too lumbering/heavy;
- Uniform Register is not of real value;
- There is a need for a selection-mechanism for judgements in the Uniform Register to prevent the present overloading and inaccessibility of the Uniform Register;
- There is a need for a professional transparent system that can inform litigants - citizens (a case management system as exists at the Commercial Courts and the Civil-Criminal Court of Appeal Kiev).

The target-groups of the Uniform Register: the lay-user, judges and further professional user, may be best served by a professional legal information retrieval database system of court decisions.

As said above, the author of the report may focus at first, and as main-body of this report, at the functionality of the Uniform Registry of serving the lay-users, judges and further legal professionals with a Legal Information Retrieval Database System.

This recommendation is elaborated in the next Section.

4.3 Recommendations related to the Functionality of the Uniform Registry as Legal Information Retrieval Database System²

4.3.1 Objectives of Legal Information Retrieval Database Systems

The objectives of Legal Information Retrieval Database Systems, are inter-alia:

- to facilitate the work of the legal profession by supplying rapid, complete and up-to-date information;
- to provide information for persons directly or indirectly interested in a matter of jurisprudence;
- to publicize quickly new court decisions, especially in areas of law under development;
- to make available publication of a larger number of court decisions concerning both questions of law and questions of fact (e.g. amount of compensation, of maintenance, length of a sentence, etc.);
- to contribute to the improvement of the coherence of jurisprudence (reliability of law) without introducing inflexibility;
- to enable legislators to analyze the application of laws;
- to facilitate research on jurisprudence, e.g. historical studies of the development of case law;
- in certain cases, to furnish information for statistical purposes.

² The recommendations in this Section are based on, inter-alia, comparative studies and of best-practice in the field of Legal Information Retrieval Systems in Council of Europe Member States and Observer States and -Organisations. Further source: Recommendation No. R(95) 11, adopted by the Committee of Ministers of the Council of Europe on 11 September 1995 "The Selection, Processing, Presentation and Archiving of Court Decisions in Legal Information Retrieval Systems" and Explanatory Memorandum).

If court decisions are to perform these functions, they must be accessible. Accessibility largely depends on the classification and archiving of the growing number of court decisions and the manner in which they are stored.

4.3.2 Classification of Court Decisions for Inclusion in Legal Information Retrieval Database Systems

Classification involves selecting which of the enormous number of court decisions should be included in case law data bases and/or published in legal manuals and articles. Selection has been judged desirable in the literature on several grounds. These include:

- accessibility per se: without selection the enormous number of court decisions is not accessible in its entirety;
- the large number of court decisions arrived at every year makes selection advisable for economic and technical reasons;
- many court decisions are merely of a factual, routine or repetitive nature, and they do not add anything new to existing case law. Non-selection results in a growing but useless collection of documentation.

Of further importance:

- Inadequate classification of judicial decisions means that lawyers are given a far from complete picture of judicial decisions as a source of legal knowledge. A low degree of classification also impedes the proper application and development of the law. The analysis and subsequent classification of court decisions improve the standard of judicial procedures.
- Inadequate classification of court decisions offers little scope for identifying developments in the legal system, promoting developments in legal scholarship and case law where necessary, and establishing cross-references.
- Proper classification of court decisions should ensure that important considerations contained in findings and notes are not lost.
- Legal decisions should be classified in such a way as to avoid time-consuming and inefficient searches.

4.3.3 Selection Criteria for Inclusion of Court Decisions in Legal Information Retrieval Database Systems

The selection of court decisions for inclusion in legal information retrieval database systems must be based on specific criteria. In general the criteria which should govern legal information systems via general documentation data banks are:

- it must be complete;
- it must be rapidly available;
- it must be easy to retrieve.

The criterion of completeness means that all **relevant** information should be present. All **relevant** information, does, however, not necessarily mean that all court decisions should be present. Not all judicial decisions provide relevant information for lawyers. Many of these decisions (at least those given in lower courts) are of little importance for the interpretation or formulation of rules of law, however interesting they may be for social scientists.

It is therefore necessary to draw up specific criteria for determining which court decisions are important. These decisions should be selected, arranged according to category, and collected for inclusion in the information system. Selection should ensure broad access to comprehensive information on court decisions on the one hand, and prevent the accumulation of unimportant information, which would only serve to make the use of legal information systems more difficult, on the other.

To some extent, selection depends on the theory concerning the sources of law and in this respect legislation differs from one country to another. In many European countries the theory of the binding nature of common law is not recognized. However, judges in these countries do in practice take account of relevant precedents. It is therefore questionable whether there is really a major difference in this regard between Anglo-Saxon and Continental legal practice.

Regarding the requirement that legal information should be complete, it is of major importance that, with regard to case law, completeness of legal information should be taken to mean court decisions which provide information of relevance to the interpretation and formulation of rules of law.

It should also be noted that the requirement of rapid availability means two things. Firstly, court decisions should be included in the documentation system shortly after they have been pronounced. Secondly, the user of the documentation system should be able to search for and retrieve the text of a decision quickly. This requirement therefore means that the documentation system should be user-friendly.

4.3.4 Selection Methods for Inclusion of Court Decisions in Legal Information Retrieval Database Systems

For the selection of court decisions for inclusion in legal information systems, two methods are conceivable: positive selection and negative selection. Positive selection means the selection of those decisions which **should be included** in the data base, while negative selection means omission of decisions which should **not be included**. Both methods have their pros and cons. Best-practice compromise involves using the method, or combination of methods, that is most suitable for each area of case law. The methods recommended for use with the various bodies in the judicial hierarchy, i.e. courts of first instance, courts of appeal, courts of last instance, are given below.

For decisions given by courts of last instance, the negative selection method is by far the most preferable. In view of the importance of such decisions for the interpretation and formulation of rules of law, all should be included apart from those with a purely pro forma character and those which do not contain any substantive considerations. A further important point is that the number of decisions given by courts of last instance is not very large.

For courts of both first and second instance, a combination of the negative and positive selection methods is recommended, i.e. a number of categories of decisions will first be set aside and only those decisions which meet the relevant selection criteria will be included.

The following main-rules apply for selection criteria for court decisions to be published:

- a new rule of law is formulated, an existing rule of law is amended or modified or attention is drawn to an existing rule of law which has not been applied hitherto;

- an existing rule of law is applied to a body of facts in a way which differs significantly from earlier applications;
- the history, application or interpretation of statute law or case law is further elucidated or criticized;
- conflicting rules of law are created or resolved;
- a rule of law and/or a body of facts is involved which is of general importance;
- the decision is accompanied by a concurring or dissenting opinion.

4.3.5 Selection Process for Inclusion of Court Decisions in Legal Information Retrieval Database Systems

The selection process should be carried out in such a manner that objectivity and representativeness of the selected decisions are ensured.

The selection process should ensure, on the one hand, broad and comprehensive access to information on court decisions and, on the other, that the accumulation of useless information is avoided.

To prevent selection being based on differing ideas and preferences, it is recommended that the selection of the material to be included in the system should not be left to the courts themselves, but should be carried out by an independent body. This body will be referred here to as the "Jurisprudence Documentation Centre". It is the centre of the network which should be constructed between the information system and the courts on the input side to facilitate the collection of the material. The centre should employ qualified lawyers who select the case law information to be included in the information system - in accordance with the guidelines laid down - and make it accessible by adding the necessary annotations referring to articles of laws and keywords.

Although it is a basic principle that selection should not be carried out by the court itself, pre-selection by courts of first and second instance in particular is unavoidable on account of the massive number of decisions involved. This is acceptable provided the guidelines used are entirely clear and objective. Although part of the selection work (i.e. pre-selection) can only be carried out by the courts, the responsibility for the operation of the network rests with the Jurisprudence Documentation Centre.

The information gathering and selection process therefore consists of two phases:

- pre-selection by the courts themselves;
- selection by an independent central body, the Jurisprudence Documentation Centre.

The work in both the pre-selection and main selection phases should be based on certain guidelines. In addition to guidelines of a more or less permanent character, contingency rules may apply. The permanent guidelines should ensure primarily that all the court decisions which are important for the development of the legal system are sent to the Documentation Centre.

If pre-selection by the clerk of the court's office is to proceed accurately and rapidly, part of the material sent in will have to be regarded as "dross"; a number of the decisions will after further consideration be found unsuitable for documentation purposes.

Besides the possibility of receiving too much information, which must be removed by the experts of the Documentation Centre, care must be taken to avoid the possibility of too little information being sent in.

Where necessary, the Documentation Centre may ask the courts to provide additional information without regard to the criteria. It may be very useful to give the Centre a certain degree of freedom in this respect, so that it can exercise the necessary flexibility where necessary.

The Documentation Centre will need to be free to ask the courts to send in information on certain additional subjects for a certain period of time or for a particular purpose in accordance with contingency rules. Thus it will do in consultation with all parties concerned, and in particular the courts.

Pre-selection by the courts determines the quantity and content of the material sent in by them for further processing by the Centre (selection and the addition of annotations). Since courts are often faced with staff shortages, it is important to make the pre-selection procedure as straightforward as possible, i.e. it should be organized according to simple, external guidelines. The task of further selecting and classifying the material sent in should rest with the legal experts at the Documentation Centre.

Selection also means establishing criteria for deleting obsolete information. To guarantee the effectiveness of the information system it is important to limit the number of court decisions and to remove from the system decisions which have lost their relevance and no longer satisfy the selection criteria.

4.3.6 Pre-selection by the Courts

Pre-selection by the courts should be carried out on the basis of formal criteria which may be used by administrative staff, i.e. staff with no legal qualifications. Pre-selection means that decisions are passed on to the Documentation Centre only if:

- they have been established according to the statutory regulations, i.e. satisfy the requirement to state the grounds on which a decision is based, in accordance with the relevant law or the constitution;
- they have been pronounced in a defended action or, in the case of trials in absentia, concern a question of admissibility;
- they contain a judicial decision.

Compliance with the requirement to state the grounds on which a decision is based means that decisions of which parts have been omitted or which have been drawn up in abridged form are immediately set aside. This also applies to judgments which merely record a verbal decision. As far as these categories are concerned, the reader is unable to ascertain the relevant legal considerations which have led to the operative part of the judgment.

The second category means that cases in which the decision has been given in absentia or in which no defense has been entered are omitted. In these cases the grounds on which the judgment is based will take the form of a set formula. An exception is the category of cases in which questions of admissibility are dealt with. Such cases may also involve a relevant judicial decision.

The third category comprises all those cases in which a settlement has been arrived at under the direction of the court without being preceded by explicit consideration of a matter of law.

Application of these three criteria will significantly reduce the number of cases to be passed on to the Documentation Centre for inclusion in the data bank. As far as criminal cases are concerned, over 90% of the total number of judgments will be excluded. Selection based on the above criteria will be fairly easy to carry out and will lead to substantial savings in the costs of establishing the data bank.

It should be noted that these criteria are used for a legal information retrieval database system which can be used to obtain information on the formulation and interpretation of rules of law by the court. The cases rejected may of course be of relevance to a sociological survey and statistical analysis. If interest is focused in particular on sentencing policy or on the amount of damages awarded, the objective is different from the one involved here and a special data bank will therefore be required.

4.3.7 Selection by the Jurisprudence Documentation Centre

The aim of the selection carried out by the courts on the basis of formal criteria is to reduce the number of decisions to those cases which may be assumed to be important enough to include in a documentation system. However, this number will also include a large number of cases which are of a routine or repetitive nature, and which therefore add nothing new to existing case law. At this level, however, a selection will have to be carried out by experts, since no formal criteria can be laid down for this purpose. Questions of interpretation will constantly be involved, which can only be answered properly by qualified lawyers. As far as the input of the Documentation Centre is concerned, a distinction will have to be made according to:

- court,
- area of law (subject).

With regard to the decisions of the highest courts, a negative selection method should be used for all areas of law. This means that all the decisions will be included by the Documentation Centre unless the grounds on which they are based are stated according to a standard formula.

As far as judgments given by appeal courts and courts of first instance are concerned, the following negative selection criteria should primarily be used. Judgments should be set aside if:

- the grounds on which they are based are stated according to a standard formula or formal clause;
- they concern questions of evidence which are in agreement with existing case law; this involves judgments of the facts which add nothing to knowledge concerning the formulation and interpretation of rules of law.

Secondly, the following positive selection criteria should be used for decisions in which:

- the explanation of a concept or legal term is given, i.e. a rule of law is formulated or amended;
- the method of interpretation used results in an existing rule of law being applied to a body of facts in a way which departs from earlier applications;
- a method of argumentation is noted which departs from earlier applications;
- questions concerning the competence of the court are decided;

- the decision involves a concurring or dissenting opinion (the court's decision is not uncontested);
- a rule of law and/or body of facts is involved which is of general interest (signaling function).

These positive selection criteria should be further elaborated by experts for each area of law. In particular, the question of the topicality of the decision will also have to be considered, since obsolete information must be removed from the documentation system. Consideration could also be given to the possibility of establishing specialized area of law (cf. the earlier remark about a special data bank for sentencing or amounts awarded as damages).

4.3.8 Presentation and Processing of Court Decisions in Legal Information Retrieval Database Systems

An important question is the form in which judicial decisions should be included in a legal information retrieval system. Possibilities include the full text, a summary or a combination of the two. A further question is the manner in which notes and findings should be presented. The third important issue is the protection of personal data.

Storing the full text of court decisions in a computerized legal information system undoubtedly has the advantage that there is no dependence on the subjective judgment of those compiling the excerpts. Full-text storage also has drawbacks: cross-references are not made and it is often difficult to search for specific items efficiently.

The judicial decisions to be included should be presented in such a way as to ensure reliable, complete and rapid retrieval. It should be possible to find a decision, even if terms which are normally used to refer to the problem concerned are not used in the actual text of the decision.

It is recommended that the full text of court decisions be included in computerized legal information systems, but that consideration should also be given to including:

- headings
- keywords
- summaries
- annotations
- references to appeals and appeals in cassation and their outcome.

The use by the courts of a word processing method that enables them to process the decisions to be supplied for the information system in a form that is directly machine-readable is highly recommended. This will prevent unnecessary duplication of work and the possibility of error.

The provisions in the Law on Access to Court Decisions related to appearance of personal data in court decisions open for general access in the Uniform Registry, Article 7, "Data that cannot be made public in texts of court decisions open for general access", are in accordance with the principles laid down by the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108, European Treaty series) and its subsidiary texts.

4.3.9 Conclusions and Recommendations

- A legal information retrieval database system of court decisions should include all court decisions which are of relevance to the formulation and interpretation of rules of law.
- The relevant judicial decisions should be selected in two stages. Preliminary selection is carried out by the courts on the basis of formal criteria, and the remaining judgements are assessed by a Jurisprudence Documentation Centre on the basis of both formal and substantive criteria.
- The formal selection criteria proposed are unambiguous and easy to use. It is estimated that if they are used, less than ten per cent of the decisions given by courts of first instance and appeal courts will qualify for positive selection by the Documentation Centre. As far as decisions given by courts of last instance are concerned, negative selection only should be carried out, based on formal criteria.
- Pre-selection by the courts can be carried out by administrative staff. Subsequent selection by the Documentation Centre should be entrusted to legal experts who do not themselves belong to the courts whose decisions are being selected.
- The positive selection criteria to be used by the Documentation Centre should preferably be elaborated by experts in the field concerned.
- The word processing and telecommunications hardware currently available makes it possible to send the Documentation Centre a copy of a judgment immediately after it has been pronounced. The amount of time which the Documentation Centre takes to consider a judgment will therefore determine the period that elapses between the date on which the judgment was pronounced and its inclusion in the data bank.

5. OWNERSHIP OF THE SOFTWARE OF THE UNIFORM REGISTRY OF COURT DECISIONS

5.1 Ownership of the Software

As indicated under Chapter 4, 4.1 Introduction, after the adoption of the Law on Access to Court Decisions, the State Court Administration decided on outsourcing of the development as well as the implementation of the Uniform Registry-databases for the Courts for Civil and Criminal Cases. For the Commercial Courts a Legal Information Database System of Court Decisions was at that time in use for already several years. The grounds for this approach, i.e. not for feasible "upgrading" of the Commercial Courts System for the Courts for Civil and Criminal Cases are, as indicated under Chapter 4, 4.1 Introduction, rather concealed.

Further may be noted, that the ownership of the software, both database- and application-software, of the Uniform Registry is - from the very beginning till today - extra legem (not in accordance with the legal provisions in force. The Resolution of the Cabinet of Ministers on the Procedure for Maintaining the Uniform Register of Court Decisions reads (General Part, article 5), that both the database-software and the application-software developed on request of the State Court Administration or purchased by it shall be owned by the State as represented by the State Court Administration.

5.2 Recommendation

Consideration may be given to disclosing the tender-procedure and the contract for both the outsourcing of the development and the implementation of the Uniform Registry and to bringing the ownership of the software, both database- and application-software, of the Uniform Registry in accordance with the he Resolution of the Cabinet of Ministers on the Procedure for Maintaining the Uniform Register of Court Decisions.

6. RECOMMENDATIONS ON REVIEW OF THE LEGAL PROVISIONS ON THE UNIFORM REGISTRY OF COURT DECISIONS OF UKRAINE

This Chapter provides recommendation on how the Law on Access to Court Decisions of 22 December 2005, No. 3262-15, amended on 16 April 2009 and again on 7 July 2010 and Resolution N 740 of 25 May 2006 of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Maintaining the Uniform State Registry of Court Decisions against the background of the efforts of the State Court Administration 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 Uniform Register's functionality.

6.1 Recommendations on Review of the Legal Provisions related to the Functionality of the Uniform Registry Serving as a Legal Information Retrieval Database System

6.1.1 General

Consideration is given:

- to make provisions in the Law on the mechanism of selection for inclusion of court decisions in the Uniform Registry as described in this report;
- To make provisions in the Law for the creation of a Unit, called in this report Jurisprudence Documentation Centre, within the Council of Judges of Ukraine.

General provisions in the Law. The Resolution may regulate the mechanism in more detail the general procedural framework for its implementation and operation.

6.1.2

Article 1 of the Law

Consideration is given to amending article 1 of the Law to requiring that the Uniform Register include only final judgements that has passed the selection-process presented in this report.

6.1.3

Article 3 of the Law

M.m. as under 5.1.2

6.1.4

On the Resolution

Consideration is given to amending the Resolution accordingly.

Further reference is made to the paper by Mark Zimmer.

7. FURTHER RECOMMENDATIONS ON DIVIDING FUNCTIONALITIES AND OPERATIONS OF THE UNIFORM REGISTRY OF COURT DECISIONS

7.1 Recommendation related to the Functionality Serving the Persons Participating in a Case before Court: Court Case Management Systems

The Law c.a. are mentioning as one of target-groups of users of the Uniform Registry:

- Persons participating in a case before court.;

Here the Law c.a. is looking at a target-groups with a type of interest completely different from the interests of judges and other legal professionals. Persons participating in a case before court are interested to be informed on the progress of their cases and on the final outcome of their cases. Judges and other legal professionals are interested to be informed about case law practice of the courts.

It the author of the present report's opinion that combining these completely different interest in one information system is hardly to achieve.

The author of the present report is of the opinion that the interests of the persons participating in a case before court, i.e. serving the clientele of the courts with information on the status of their cases, is not at best served by the Uniform Registry with the present mode of operation described above. This target may be best served by a professional case management system at all courts of general jurisdiction.

At present, are, as far as to the author's knowledge, in use at the courts of general jurisdiction *five case management systems of different made:*

- a system called Yurtech, developed under contract of the State Court Administration and in use at Civil - Criminal Courts and Administrative Courts,
- a system in use at the Commercial Courts,
- a system called Teta in use at several courts of first and second instance,
- a system developed by Softline Company in use at the Civil-Criminal Court of Appeal of Kiev,
- a system called Quasar-Micro in use at the High Civil-Criminal Court and at the Supreme Court.

Each of these systems presents strong features and less-strong/weaker features. The outcome of a first assessment is, that none of these systems is qualified to possibly serve as candidate for a national system.

Accordingly, the author of the present Assessment Report may strongly recommend:

- The conduct of a thorough/in-depth evaluation by a Working Group, to be appointed by the Council of Judges, consisting of experts from the courts and the State Court Administration, and chaired by an independent expert (with in-depth expertise and experience in the field of the Administration of Justice) of the above five currently operational Case Management Systems;
- Drafting on the basis of the outcome of this evaluation a Functional Design for the new Court Case Management System. Note: this does not mean a "one size fits for all"-approach. But, a one platform-approach, i.e. one overall platform for the new Court Case Management

System, on which to build Case Management Systems for each of the lines of courts: Civil-Criminal Courts, Commercial Courts and Administrative Courts, taking into account the sui generis-administrative procedures of each of these lines of courts. The functional design for these new Court Case Management System should cover as one of the main functionalities, that it may be put on the WEB to serve the parties at courts with readily accessible information about the status of their cases (such is at present: the Case Management System of the Commercial Courts and of the Court of Appeal the as a base for the Case Management System for the Civil and Criminal Courts. Strengthening WEB-Portals at all courts offering access to court decisions at local level may also enable to "reform" the Uniform Registry of Court Decisions to a real sophisticated legal information retrieval system.

- The conduct of a fully transparent tender-procedure for the development and implementation of the new Court Case Management System.

Prerequisite: all courts of general jurisdiction are equipped with a sufficient number of computers (incl. server).

7.2 Recommendations on the Legal Provisions related to the Functionality Serving the General Public - the Clientele of the Courts: Court Case Management Systems

It is proposed to bring the ruling of this Court Case Management System-issue in the framework of the Order of the State Judicial Administration of Ukraine, June 27 2006, No. 68 on "Approving the Regulation of Paper Flow in the Local General Jurisdiction Court".

8. FINAL OBSERVATION AND RECOMMENDATIONS

This report has presented an assessment of the Uniform State Registry of Court Decisions and the related legislation.

The report is a compilation adapted from reviews of Uniform Registry project documentation and other relating documents, relating Council of Europe documentation, meetings with judges and court officials, interviews with a selection of users, interviews with experts and on-site visits.

This Chapter identifies a highly important key issue raised by participants at the Round Table organised by the Ukraine Rule of Law Project Office on 28 April 2011: conduct of a Strategy Plan and a Needs Assessment, to be carried out under the patronage of the Council of Judges of Ukraine.

The author of the present report shares the opinion that consideration may be given to the conduct of a Strategy Plan for the Uniform State Registry of Court Decisions. A guiding principle for such a Strategy Plan might, inter-alia, be dividing the functionalities and operations of the Uniform, Registry into:

- a sophisticated legal information retrieval system according to Council of Europe-standards;
- a highly functional case management system for all courts at all instances.

Further, the author of the report shares the opinion the Strategy Plan to be conducted under auspices of the Council of Judges of Ukraine.