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# ASSESSMENT STUDY: POTENTIAL ONLINE DISPUTE RESOLUTION INITIATIVES IN UKRAINE

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**Nove Pravosuddya Justice Sector Reform Program (New Justice)**

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**Development Objective 1:** More Participatory, Transparent and Accountable Government Processes

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## DISCLAIMER AND LIMITATIONS

The information in this study has been compiled to offer a preliminary assessment of the potential for online dispute resolution (ODR) initiatives in two regions in Ukraine; Odessa and Lviv. The author has prepared this document at the request of the United States Agency for International Development (USAID) New Justice Program in Ukraine solely for this purpose.

The author has used reasonable skill, care, and diligence to assess the information acquired during the preparation of this study, but no guarantees or warranties are made concerning the accuracy or completeness of this information. This document, the information it contains and relies on, and the factors associated with the implementation of ODR practices are subject to changes that are beyond the author's control. Information provided by third parties has not been independently verified.

The author does not accept responsibility for the use of this study for any purpose other than the preliminary assessment described above, and does not accept responsibility to any third party for the use, in whole or in part, of the contents of this document. This study applies to Ukraine and cannot be applied to other jurisdictions without separate independent analysis. Any use by USAID, its contractors, or any third party, or any reliance on or decisions based on this document, are the responsibility of the user or third party.

The author's views expressed in this publication do not necessarily reflect the views of the Civil Resolution Tribunal (CRT), the Province of British Columbia, USAID, or the United States Government.



## EXECUTIVE SUMMARY

### ***Background***

In September 2017, the USAID New Justice Program in Ukraine (New Justice) organized an Online Dispute Resolution (ODR) conference bringing together international ODR experts and Ukrainian judges, court administrators, lawyers, mediators, law students, and others. One of the conference recommendations was to incorporate ODR into the Ukrainian public justice system. To further this recommendation, New Justice engaged the author, on a pro bono basis, to work as part of an assessment team to evaluate the potential for implementing a court-annexed ODR initiative in the Odessa or Lviv regions of Ukraine.

### ***Methodology***

In January 2018, the assessment team visited Lviv, Kyiv, and Odessa, meeting with judges, court administrators, mediators, legal aid providers, community legal advocates, law school deans, professors, and students (justice system stakeholders). The team shared information about ODR and, more importantly, gathered feedback on the challenges and opportunities related to implementing an ODR initiative in Ukraine. Based on this information, the team evaluated the relative capacity of courts in Lviv and Odessa to successfully implement an ODR initiative, with reference to factors which have led to successful ODR projects in other jurisdictions.

### ***Conclusions***

Overall, justice system stakeholders in Kyiv, Lviv, and Odessa were highly supportive of an ODR initiative in Ukraine. Participants identified several challenges to developing this initiative, as well as strategies to overcome these. They also identified dispute types that would be amenable to ODR, and discussed opportunities to increase access to justice and improve transparency and public confidence in the justice system. From these discussions, the team identified two courts as potential homes for an ODR initiative; the Kyiv District Court of Odessa (Odessa District Court) and the Lviv Circuit and Appeal Administrative Courts (Lviv Administrative Courts). Of the two, the Odessa District Court is best placed to successfully implement an ODR initiative, with the possibility of scaling up to include the Lviv Administrative Courts at a later date.

### ***Recommendations***

New Justice should develop and support an ODR initiative annexed to the Odessa District Court for certain traffic violation disputes. New Justice should closely evaluate the initiative, and consider leveraging technology and business processes to expand the initiative to the Lviv Administrative Courts, and other courts.



## INTRODUCTION

Online dispute resolution (ODR) uses technology to assist parties to resolve their disputes. ODR does not require the use of any particular technology. It can be accomplished with accessible and inexpensive tools readily found on most smartphones, including email, telephone, and video-conferencing. Specialized tools, such as web portals and cloud-based case management software, can help scale ODR for larger organizations and provide more features and efficiencies for staff and the public.

Private and not-for-profit organizations have used ODR for over 20 years to resolve millions of disputes, including e-commerce, family, and rental disputes. In recent years, a number of courts around the world have implemented ODR initiatives within the public justice system.<sup>1</sup> Many more courts have ODR projects in the planning or implementation phase. In the public justice context, ODR is now used to resolve traffic violations, condominium and rental disputes, small claims, motor vehicle personal injury claims, and tax assessment appeal cases, among others.<sup>2</sup>

Integrating ODR into public justice systems has the potential to strengthen the rule of law and the administration of justice in a number of ways. Well-designed ODR initiatives can increase access to justice by facilitating collaborative, timely, inexpensive, simplified, and flexible dispute resolution, built around the lives and circumstances of participants. ODR projects which incorporate rigorous user testing and public consultation can increase the public's confidence in the fairness and accessibility of the justice system. Finally, ODR enables courts to transform and streamline their business processes and work flows, significantly increasing efficiency and reducing court costs.<sup>3</sup>

In September 2017, the USAID New Justice Program in Ukraine (New Justice) organized an ODR conference in Kyiv, featuring presentations and discussions with international ODR experts. Conference participants included Ukrainian judges, court administrators, lawyers, mediators, and law students, and others.<sup>4</sup> The conference explored private and public ODR projects in Canada, France, the Netherlands, the United States, Slovenia, and Ukraine, and discussed the potential for ODR in Ukraine's justice system. Participants made a number of recommendations, attached at **Appendix B**, including that ODR should be incorporated into the Ukrainian public

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<sup>1</sup> [Joint Technology Committee Resource Bulletin: Case Studies in ODR for Courts: A view from the front lines. November 2017](#)

<sup>2</sup> [Joint Technology Committee Resource Bulletin: ODR for Courts. November 2017](#)

<sup>3</sup> [Online Dispute Resolution and Justice System Integration: British Columbia's Civil Resolution Tribunal. Windsor Yearbook of Access to Justice](#)

<sup>4</sup> [USAID New Justice Program Conference, "Online Dispute Resolution and the Courts: Improving Access to Justice in Ukraine"](#)



justice system. Immediately following the conference, New Justice and the author conducted a site visit to the Lviv Circuit Administrative Court, where judges and court staff expressed significant interest in ODR, and recommended focusing on uncontested tax disputes and minor traffic violations.

In support of these recommendations, New Justice created an assessment team to evaluate and report on the potential for implementing a court-annexed ODR initiative in the Odessa or Lviv regions of Ukraine.

## METHODOLOGY

### *Preparation*

- Meetings arranged with a wide array of judges, court administrators, mediators, legal aid providers, community legal advocates, law school deans, professors, and students (justice system stakeholders) in Lviv, Kyiv, and Odessa from January 22-26, 2018. **Appendix A** lists justice system stakeholders who were consulted in this study.
- Justice system stakeholders provided with background material on ODR and existing court-annexed ODR projects.
- Justice system statistics and court data reviewed by assessment team members to identify potential ODR dispute types and efficiencies.
- Preparation of stakeholder discussion points and handouts.

### *Study visits*

- The assessment team visited justice system stakeholders in Lviv, Kyiv, and Odessa, from January 22-26, 2018.
- The team shared information about ODR, with reference to one of the first and more well-established public justice ODR initiatives, Canada's Civil Resolution Tribunal (CRT).<sup>5</sup>
- The team answered questions about ODR generally and the CRT in particular.
- Justice system stakeholders were asked for their feedback on ODR generally, as well as their views on its challenges and opportunities for their organization, and Ukraine's justice system.
- The team asked stakeholders for their opinion on which dispute types would be most amenable to ODR, with reference to a number of implementation considerations.

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<sup>5</sup> [The author is the Chair of the Civil Resolution Tribunal](https://civilresolutionbc.ca/). More information: <https://civilresolutionbc.ca/>.



## **Follow up**

- The assessment team requested statistics and other follow up information from several justice system stakeholders.

## **Evaluation**

- Based on information gathered from the study visits and supporting documents, the assessment team identified two courts as potential homes for an ODR initiative; the Kyiv District Court of Odessa (Odessa District Court) and the Lviv Circuit and Appeal Administrative Courts (Lviv Administrative Courts).
- The assessment team evaluated the relative capacity of each of these courts to successfully implement an ODR initiative, with reference to factors which have led to successful ODR projects in other jurisdictions. These evaluation criteria are described below.

## STAKEHOLDER CONSULTATIONS

Some justice system stakeholders had attended New Justice’s ODR conference in September 2017, or were otherwise familiar with ODR. Others heard about ODR for the first time from the assessment team. Regardless of their prior knowledge, justice system stakeholders were universally curious about ODR and provided thoughtful and engaged feedback. This feedback is summarized below and has not been attributed to any specific organization or representative.

### QUESTIONS

During the study visits, the assessment team provided participants with information about ODR, and the CRT, including its processes, case volumes, budget, staff, and user satisfaction results. The following are some of the more frequent questions from justice system stakeholders, as well as the assessment team’s responses:

- Is mediation in the CRT conducted by staff members or judges?

*CRT staff members conduct mediations. They are hired based on their dispute resolution expertise, whereas tribunal members are appointed based on their hearing and decision-making skills. Also, mediators are less expensive than judges, so it makes sense to resolve as many less-complex disputes as possible earlier, with less expensive staff resources.*

- How are parties identified or authenticated in ODR processes? Justice system stakeholders regularly indicated this was a requirement in Ukrainian courts, though none were aware of empirical, or even anecdotal, evidence of identity fraud.



*Most North American and European courts do not require identification when parties file documents or appear at hearings. There is little evidence of identification fraud among participants. However, courts can set aside decisions that were fraudulently obtained. In the nearly 4000 disputes the CRT has received online, there have been no known cases of identity fraud. Creating online authentication features is possible, but can be complex and costly, and create significant barriers for participants who have difficulty accessing technology or government identity documents.*

- How do people participate in ODR if they do not have access to computers or the internet?

*An ODR best practice is to encourage those who have online access to use it, while offering flexible alternative communication methods for those who do not. For example, the CRT offers service by mail, telephone, fax, as well as in-person help at service counters. The CRT's experience is that demand for offline communication methods has been surprisingly low.*

## CHALLENGES

Justice system stakeholders identified several challenges with implementing ODR in Ukraine, including the following:

- Legislative requirements may impact a court's ability to use technology or incorporate alternative dispute resolution by non-judges. The Verkhovna Rada has recently amended Ukraine's court procedural rules, and further research is necessary to delineate any potential impact on an ODR initiative; and
- The digital divide based on age, income, and geography is rapidly closing in Ukraine, alongside an exponential increase in the use of mobile technology.<sup>6</sup> Some stakeholders were concerned about how people would use ODR without access to technology. An advocacy organization which represents people with disabilities noted that their clients are largely online and find online services more accessible than going to a physical location.

## OPPORTUNITIES

Justice system stakeholders were quick to identify the potential benefits of ODR, including:

- Increased public confidence in Ukraine's judicial system;

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<sup>6</sup> [Kiev International Institute of Sociology. "Dynamics of Internet Usage in Ukraine, May 2017"](#)





- Improved transparency in court processes and decision-making;
- Increased access to justice, particularly for disabled, elderly, and rural participants.
- More efficient use of court resources, including staff and facilities, which is especially relevant in the context of budget cuts and court amalgamations;
- Increased use of mediation, resulting in more durable and satisfying outcomes for parties;
- More consultation and engagement with advocates and the public, including user-testing technology and processes; and
- Early legal information and self-resolution tools for parties to handle disputes without filing court claims.

## PROPOSED DISPUTE TYPES

Justice system stakeholders suggested a number of disputes types as amenable to resolution by ODR in Ukraine, including those involving:

- Housing and utilities
- Small claims
- Pension and social benefits
- Family issues
- Benefits for internally displaced persons
- Home owners' association issues
- Tax assessments
- Administrative traffic violations
- Minor customs violations
- Debts and loans
- Estates and inheritance
- Life care agreements
- Land issues
- Condominium issues
- Administrative or regulatory offenses
- Employment matters
- Consumer issues
- Insurance issues
- Intellectual property and copyright issues

Several stakeholders identified dispute types where parties often want to pay a fine or correct a clerical error, but are required to appear before a judge to do so. In their view, these disputes represent a particularly strong opportunity for ODR to increase access to justice and administrative efficiency.



## SUMMARY

The assessment study included a wide cross-section of justice system stakeholders, which were generally very supportive of an ODR initiative in Ukraine, and were keen to participate in its implementation. This is encouraging, as it will allow New Justice and its partners to enlist financial, public-testing, and other implementation support from the justice community.

## ADDITIONAL INFORMATION

In addition to information collected during study visits with justice system stakeholders, the assessment team reviewed and considered:

- Academic articles on the everyday justice needs of Ukrainians;
- Statistics on public confidence in the judicial system;
- Data about dispute types and time to resolution in the Ukrainian justice system;
- Statistics on the provision of, and demand for, secondary legal aid;
- Information on internet use in Ukraine; and
- Ukraine's constitution and legislation regulating the judiciary and civil and administrative procedures.

## ANALYSIS

### EVALUATION CRITERIA

As ODR has only recently been incorporated into public justice systems, there is no established methodology for evaluating a court's readiness to implement an ODR initiative. Despite this, successful public sector ODR implementations have some common characteristics, which the American Joint Technology Committee (JTC) identified in a recent report.<sup>7</sup> These characteristics include:

- Leadership and governance
- Stakeholders and partners
- Culture
- Statutes and rules
- Processes

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<sup>7</sup> The Joint Technology Committee (JTC) is established by the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM) and the National Center for State Courts (NCSC). [Joint Technology Committee Resource Bulletin: ODR for Courts, November 2017](#). The author participated in the ODR focus group and subsequent report preparation.



- Technology
- Funding

The assessment team used these criteria to evaluate the potential for implementing an ODR initiative in the Odessa District Court or the Lviv Administrative Courts. Notably, public ODR initiatives have succeeded in courts and tribunals which do not meet these criteria. Indeed, it would be unusual to find a court in any jurisdiction which meets all of them. However, taken as a whole, the criteria provide an indication of a court's capacity, in terms of culture and resources, to implement the considerable change necessitated by an ODR initiative.

In applying these criteria to the Odessa District Court and the Lviv Administrative Courts, the assessment team concluded that the Odessa District Court was best placed to incorporate an ODR initiative within its operations. This is primarily because the court has built the capacity, resources, and experience required to implement ODR, having already successfully executed an e-court project in partnership with New Justice.

The Lviv Administrative Courts expressed considerable enthusiasm for implementing an ODR initiative. This, combined with the creative, flexible, and collaborative mindset demonstrated by the senior judges and administrators of the Lviv Administrative Courts during our study visit, is an important foundation for the courts' future adoption of an ODR initiative. Later in this report, the assessment team recommends New Justice consider the Lviv Administrative Courts as a second adopter of ODR technology and business processes developed for the Odessa District Court ODR initiative.

### **Leadership & Governance**

Due to the considerable change management and resources required, ODR initiatives should be led by strong project champions with decision-making authority. ODR projects should also have an accountable, but flexible, governance structure that is collaborative, sustainable, and has a succession plan in case of senior leadership turnover.

The Odessa District Court's Chief Judge, and his deputies and senior staff, are energetic, engaged, and forward-thinking. The court's leadership has already successfully implemented an ambitious e-court project, and views the implementation of an ODR initiative as a necessary next step towards justice system transformation.

### **Stakeholders and Partners**



Cultivating strong relationships with the public and justice system stakeholders is essential to implementing a successful ODR project. The Odessa District Court has already partnered with New Justice to implement the e-court project, which required the court to lead considerable change management, both internally with staff and judges, and externally, with key stakeholders. The leadership of the court worked hard to establish collaborative relationships with key stakeholders, developing a common agenda and vision on ways to improve court operations. Eventually, the court also established effective cooperation with the local prosecutor's office, forensic expertise institutions, state migration services, and the police.

### **Culture**

As Peter Drucker says, "Culture eats strategy for breakfast." ODR implementation requires an internal court culture that is open, innovative, and able to accept failures in the name of improvement. Where staff resist changing outdated processes or finding creative solutions to obstacles, ODR projects are more likely to wither through attrition and inattention.

The Odessa District Court appears to have a judicial and staff culture that is ambitiously committed to modernization and improvement. The court has already implemented significant technology-related changes to staff roles and responsibilities through the e-court project. The court has also demonstrated its user-focus by installing a computer kiosk for parties to search for legal information, as well as offering free Wi-Fi in the courthouse.

### **Statutes & Rules**

As discussed above, it is unclear how recent legislative changes to court procedures will impact the implementation of an ODR initiative in Ukraine.

### **Processes**

ODR projects are more successful when they are built on evidence-based decisions about processes, combined with rigorous analysis of key metrics and a commitment to continuous improvement. In the study visit with the Odessa District Court, senior leadership discussed some key statistics they monitor in their e-court, as well as their commitment to improving these statistics over time. These include:

- Requests from the court to the State Migration Service regarding a person's place of residence. The average length for processing these requests was reduced from 20 to 30 days to 1 or 2 days;
- Requests, claims, and applications at the pre-trial investigation stage from the police are now shared electronically in real time, instead of the former 3-hour delivery time for paper copies; and



- Improved electronic document exchange with the forensic institute resulted in a reduction in the average time of court proceedings from 1 year to 2 months.

## Technology

Successfully incorporating ODR requires courts to use agile processes to adapt new technology as it evolves over time. For this reason, the degree to which a court is already using technology effectively is a strong indicator of ODR readiness. In implementing the e-court project, the Odessa District Court incorporated basic technology including email, scanning, and video screens. In doing so, the Odessa District Court's technology adoption surpassed many North American courts. Further, in adapting business processes to use readily available technology, rather than customized software, the Odessa District Court has demonstrated a high degree of creativity and agility.

## Funding

ODR projects without sustainable funding fail because they cannot adequately support technology upgrades, hire necessary staff, or invest in continuous improvement. While New Justice may be able to fund certain ODR implementation costs, it is necessary to develop a long-term funding plan, including a transfer of financial responsibility from New Justice to Ukrainian justice system stakeholders.

## Dispute Type

An additional consideration, not identified by the JTC report, is the choice of dispute type for an ODR initiative. Dispute types in successful ODR initiatives tend to have the following features:

- Less complex, but difficult for the public to navigate;
- Limited legal issues and evidence;
- Will not result in objectively significant consequences for parties;
- Manageable case volumes; and
- High potential to resolve consensually.

During the study visits, the assessment team heard many excellent suggestions for issue types that fit some of these criteria, as discussed earlier. In evaluating ODR readiness, the assessment team considered that the Odessa District Court has jurisdiction over traffic violations, a dispute type that is being successfully resolved using ODR in Michigan, and other jurisdictions.

Traffic violation disputes tend to be fairly straightforward, with limited evidence and available remedies. They are annoying to the public, and often difficult to resolve, but seldom result in serious consequences for the parties. Further, there is room to negotiate or mediate a reduced fine or other regulatory consequence, in exchange



for prompt payment and early resolution. Finally, traffic violation disputes will always have the regulatory agency as one party, which reduces procedural complexity around service and evidence.

Disputes arising from traffic violations comprise the majority of administrative cases in Ukraine. In 2016, the courts considered 248,358 traffic cases or 37.9% of all administrative cases,<sup>8</sup> 232,728 cases or 36.9% of all administrative cases in 2015,<sup>9</sup> and 284,442 cases or 38.8% of all administrative cases in 2014.<sup>10</sup> According to information provided by the Odessa District Court, the court considered 3,018 traffic cases in 2017.

Lviv Circuit Administrative Court has the jurisdiction over tax debt cases. Tax debt cases tend to be fairly straightforward, with limited evidence and available remedies. They also share the same abovementioned qualities as with the traffic violation cases.

Tax debt cases make up a significant percentage of administrative cases nationwide. In 2017, Ukrainian courts considered 10,181 tax debt cases or 6.7% of all administrative cases,<sup>11</sup> 9,033 cases or 6.6% of all administrative cases in 2016,<sup>12</sup> and 23,154 cases or 11% of all administrative cases in 2015<sup>13</sup>. According to information provided by the Lviv Territorial Department of the State Judicial Administration, the Lviv Circuit Administrative Court considered 372 tax debt cases in 2017 or 8.6% of all of the court's cases.

## RECOMMENDATIONS

### RECOMMENDATION ONE

The assessment team recommends New Justice develop and support an ODR initiative annexed to the Odessa District Court for certain traffic violation disputes. However, the assessment team recommends New Justice complete the following preliminary due diligence:

1. Confirming the Odessa District Court's ongoing support for the ODR initiative.

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<sup>8</sup> [https://court.gov.ua/userfiles/file/DSA/DSA\\_2017\\_all\\_docs/TRAVEN\\_17/ogl\\_2016\\_copy.pdf](https://court.gov.ua/userfiles/file/DSA/DSA_2017_all_docs/TRAVEN_17/ogl_2016_copy.pdf)

<sup>9</sup> [https://court.gov.ua/userfiles/ogliad\\_2015.pdf](https://court.gov.ua/userfiles/ogliad_2015.pdf)

<sup>10</sup> [https://court.gov.ua/inshe/sudova\\_statystyka/ghjghjfgjhjfsdghjfgjhj](https://court.gov.ua/inshe/sudova_statystyka/ghjghjfgjhjfsdghjfgjhj)

<sup>11</sup> [https://court.gov.ua/inshe/sudova\\_statystyka/rik\\_2017](https://court.gov.ua/inshe/sudova_statystyka/rik_2017)

<sup>12</sup> [https://court.gov.ua/inshe/sudova\\_statystyka/2016\\_zvit](https://court.gov.ua/inshe/sudova_statystyka/2016_zvit)

<sup>13</sup> [https://court.gov.ua/inshe/sudova\\_statystyka/Sud\\_statustuka\\_Zvit\\_2015](https://court.gov.ua/inshe/sudova_statystyka/Sud_statustuka_Zvit_2015)



2. Identifying champions within the Odessa District Court and national and territorial State Judicial Administration, who will lead business transformation, change management, and other implementation activities.
3. Determining whether the ODR initiative will be impacted by applicable procedural legislation and internal court regulations, and if so, whether it is possible to waive certain provisions for a pilot ODR initiative.
4. Obtaining and analysing data from the Odessa District Court on traffic violation cases, including case volumes, cost per case, regulatory constraints and time to resolution.
5. Preparing a business case, including development and annual operating costs associated with the ODR initiative.
6. Formulating a sustainable funding model for the ODR initiative, in cooperation with the State Judicial Administration and others, including a plan for New Justice to transfer future operational support for the project to justice system stakeholders.
7. Creating an evaluation framework, using key performance indicators (KPIs) focused on accessibility, affordability, timeliness, and transparency, using quantitative and qualitative data.

## RECOMMENDATION TWO

The assessment team recommends New Justice develop, in collaboration with relevant justice system stakeholders, an implementation roadmap for the ODR initiative, including deadlines, deliverables, and dependencies.

## RECOMMENDATION THREE

The assessment team recommends New Justice adopt the following best practices in implementing an ODR initiative in the Odessa District Court:

1. Map the Odessa District Court's current workflow for traffic violation disputes, and identify efficiencies using LEAN/Sigma Six processes.<sup>14</sup>
2. License off-the-shelf ODR technology wherever possible to mitigate risk and cost, and ensure leading edge security, technology support, and web accessibility features.
3. Use cloud-based technology where applicable to increase security, reduce staff and capital costs, and avoid future technology obsolescence.

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<sup>14</sup> Six Sigma vs. Lean Six Sigma: <https://www.villanovau.com/resources/six-sigma/six-sigma-vs-lean-six-sigma/#.Wo9LxK6nHIU>



4. Customize licensed technology using agile development processes, incorporating rigorous public user testing between development sprints.
5. Conduct user-testing with citizens experiencing the greatest barriers to accessing the public justice system, or their advocates.
6. Engage a user experience (UX) designer to ensure that citizen-facing interfaces are intuitive and user-friendly.
7. Customize existing technology only to the degree necessary to create a “minimum viable product,” which in this context means customizing technology licenced for the Odessa District Court’s traffic violation disputes as little as possible. This is necessary to ensure that any technology developed for the ODR initiative is scalable, and can be implemented in other courts with the least amount of further customization.

## RECOMMENDATION FOUR

The assessment team recommends New Justice leverage evaluation data, redesigned business processes, staff expertise, and any licenced or customized technology to expand the Odessa District Court ODR initiative to the Lviv Administrative Courts and other potential adopters.

## CONCLUSION

Implementing an ODR initiative in Ukraine has the potential to increase public confidence and transparency in the judicial system, improve access to justice for Ukrainian citizens, and create a more modern, efficient, and less expensive court administration.

With these objectives in sight, justice system stakeholders in Kyiv, Lviv, and Odessa strongly endorsed implementing an ODR initiative in Ukraine, and many offered operational or advisory assistance for the project. The degree of change required to implement an ODR project means that obstacles are inevitable, and stakeholders identified some of these challenges along with strategies to overcome them. Strong support from a wide-range of justice system stakeholders is a positive indication that New Justice and its partners will be able to successfully navigate challenges in implementing an ODR initiative.

The Ukrainian justice context makes some of these challenges more acute. At the same time, the urgent need for justice system reform in Ukraine creates a unique opportunity to implement transformational change, and to become a European leader in justice system modernization.





## APPENDIX A – JUSTICE SYSTEM STAKEHOLDERS

### UKRAINIAN JUDICIAL ORGANIZATIONS

#### High Council of Justice

<http://www.vru.gov.ua/en/>

Tetiana Malashenkova, Member  
Serhii Pushkar, Head of the Secretariat  
Volodymyr Kutsenko, Head of Inspectors Service  
Oleksandr Radchenko, Head of the IT Department

#### High Qualifications Commission

<https://vkksu.gov.ua/en/>

Sergii Koziakov, Chairman  
Taras Lukash, Member  
Andrii Kozlov, Member

### COURTS

#### Lviv Court of Appeal

<https://lva.court.gov.ua/sud1390/>

Petro Kablak, Chief Judge  
Roman Tsytsiak, Deputy Chief Judge  
Andrii Nitkevych, Judge  
Vasyl Rever, Judge  
Vasyl Mykhailiuk, Judge  
Lubov Litenets, Head of the Secretariat

#### Lviv Appeal Administrative Court

<https://apladm.lv.court.gov.ua/sud9104/>

Serhii Bohachenko, Chief Judge of the Lviv Appeal Administrative Court  
Oleh Zaverukha, Deputy Chief Judge of the Lviv Appeal Administrative Court



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Oksana Mikula, Judge of the Lviv Appeal Administrative Court  
Vitalii Zatolochnyi, Judge of the Lviv Appeal Administrative Court

## **Lviv Circuit Administrative Court**

<https://adm.lv.court.gov.ua/sud1370/>

Vitalii Martyniuk, Deputy Chief Judge of the Lviv Circuit Administrative Court

## **Kyiv District Court of Odessa**

<https://ki.od.court.gov.ua/sud1512/>

Serhii Chvankin, Chief Judge

Oksana Kurylenko, Judge

Pavlo Prohorov, Judge

Valerian Luniachenko, Judge

Iryna Puchkova, Judge

Olena Vasylykiv, Judge

Yan Beskrovnyi, Judge

Olena Kovalenko, Judge

Liubov Kalinichenko, Judge

Professor Nelli Holubieva, National University Odesa Law Academy

## **STATE JUDICIAL ADMINISTRATION**

### **State Judicial Administration**

<https://dsa.court.gov.ua/dsa/>

Zenovii Holodniuk, Head

Antonina Polishchuk, Head of the Court Statistics and Case Management Department

Dmytro Dubinko, Acting Director of the State Enterprise “Court Information Systems”

### **Lviv Territorial Department of the State Judicial Administration**

<https://lv.court.gov.ua/tu14/>

Viktor Deineka, Head

Maria Konyk, Deputy Head

### **Odessa Territorial Department of the State Judicial Administration**

<https://od.court.gov.ua/tu16/>

Viacheslav Hlushchenko, Head

Nina Lvova – Legal Department



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Inna Akbarova – Department of Statistics

## UNIVERSITIES

### Lviv National University

<http://www.lnu.edu.ua/en/>

Volodymyr Burdin, Professor, Law Faculty Dean  
Serhii Riznyk, Deputy Dean, Associate Professor

### Yaroslav Mudryi National Law University

Tetiana Tsvina, Assistant of Civil Procedure Department  
Inesa Shumilo, Associate Professor of International Law Department, Senior Manager  
for International Relations

### Odessa National Law Academy

<http://onua.edu.ua/index.php?lang=en>

Sergey V. Kivalov, President  
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## APPENDIX B – ODR CONFERENCE RECOMMENDATIONS

### USAID New Justice Program

#### Conference

#### ODR and the Courts: Improving Access to Justice in Ukraine

September 19 and 20, 2017

Kyiv, Ukraine

### CONCLUSIONS AND RECOMMENDATIONS

Whereas the more than 200 participants of the Online Dispute Resolution Conference, having convened to:

- Introduce Ukrainian stakeholders to online dispute resolution (ODR) as a means to reduce court caseloads, promote timely resolution of disputes, and increase public satisfaction and engagement;
- Present and discuss the impact, best practices, and lessons learned in implementing ODR programs in Canada, Europe and the United States;
- Discuss the challenges, opportunities, and best fit for introducing ODR in Ukraine; and
- Develop recommendations and next steps for advancing ODR in Ukraine.

Have together identified the following conclusions and recommendations for the future development of ODR in Ukraine:

#### **Introduction to Online Dispute Resolution, Dr. Orna Rabinovich-Einy, University of Haifa, Faculty of Law**

- Alternative Dispute Resolution (ADR) and ODR started to interact in the late 1990s with the advent of e-commerce.



- Neither the traditional court system nor ADR were responsive to the special requirements of e-commerce disputes regardless of how big or small, resulting in several pilot projects, e.g., eBay.
- ODR started as an alternative to ADR for online transactions, but in recent years the dynamics have changed with ODR being used now for disputes arising online and offline.
- The switch from PCs to smartphones and the rise of social media significantly increased the number of online interactions and subsequently the number of disputes as well.
- ODR led to thinking about dispute resolution anew with the capacity of automated IT systems far exceeding that of traditional systems involving face to face interaction of people in physical premises.
- ODR allows for more flexibility in resolving disputes at one's own pace, time and place of choice.
- Technology has not only resulted in new types of disputes, but also opened the door to innovative approaches to resolving disputes.
- Big data resulting from disputes resolved in courts or during ADR is not fully utilized, whereas online tools have used big data as a valuable means to study disputes and learn how to resolve and ultimately prevent them.

## **Session 1: Overview of ODR in Europe, Graham Ross, UK Lawyer/Mediator, Expert Advisor and Trainer in ODR**

- Justice should be open and accessible without the necessity of lawyer representation
- Current paper-based systems will inevitably in the future be replaced by paperless courts and digitalization. Better to be involved now in how it is designed than to leave until having to react to someone else's design.
- ODR enables mediation between parties at significant differences in geographic distance or with difficult interpersonal relations and is beneficial where the value of the dispute does not justify the cost of in-person mediation.
- ODR can be used in preparation for face-to-face mediation.
- Asynchronous online mediation enables mediators to be available and accessible to both parties in the background throughout the life of a dispute and not just during a short court imposed stay.
- Longitudinal, quantitative studies using eBay data demonstrate conclusively that a declared readiness of traders to participate in effective and speedy ODR generates increased trust and transaction volumes and profits, regardless of the outcome achieved.
- In designing and implementing ODR programs, it is important to set and control standards, think through and fully address issues related to privacy,



security and identification, and monitor user experience and constantly improve. The EU have funded the development of an online tool readily available for such purpose as an exit survey.

- Plan to preserve anonymized case profile data to build up a knowledge base for future machine learning/analytics.
- European Union and Council of Europe (COE) have already set out standards for ODR, including the COE encouraging all its 47 member states, including Ukraine, to promote awareness of, and further develop, mechanisms for ODR.

## **Session 2: ODR in Practice: Dutch Legal Aid Board – *Rechtwijzer*, Liselotte Maas and Corry van Zeeland, Dutch Legal Aid Board**

- Reasons for introducing ODR in the Netherlands included: (1) personal computers and internet availability; (2) deeper understanding of, and emphasis on the (legal) needs of citizens; (3) empowerment encouraging self-reliance and cooperation between parties; and (4) legal aid budget under pressure.
- Public private partnerships may be used to successfully implement ODR programs.
- Client satisfaction is key measurement of the success of *Rechtwijzer*, where users noted reduced costs, being in control, and fairness and reduced stress as important factors.

## **Session 3: ODR in Practice: Civil Resolution Tribunal, Shannon Salter, Chair, Civil Resolution Tribunal, Vancouver, British Columbia**

- Civil Resolution Tribunal (CRT) is part of the general court system.
- The more courts use internet, the more they build public trust.
- Overall number of cases is decreasing with more people deciding not to go to court settle their disputes. In the future, courts may possibly become venues only for the rich. Courts should therefore start thinking now about how to ensure access to justice for as many people as possible.
- CRT's main goals are timeliness, flexibility, accessibility, openness and efficiency.
- Access to justice is not about allowing access to courts from 9:00 to 17:00. 45% of CRT users enter the system in the evening outside working hours of courts, demonstrating real access at any time.
- Fees should not be low, but should allow everybody to access justice.
- Language is very important; it should be clear and simple.
- Developing and testing templates is critical with a particular emphasis on persons with low-income and special needs.



- Judicial decisions should be simple and written to be understandable to a sixth grader.
- Big data from consideration of cases can help to improve access to justice and court operations.
- ODR promotes the efficient usage of limited funds.
- Focus on providing web-based services rather than downloadable apps.
- Invest in interface and make it recognizable, using <https://www.facebook.com/> and <https://www.amazon.com/> as good examples.
- Any proposed system should be tested on real users. There is no need to guess, it is better to ask filling the gap between public demand and what courts can propose to them.
- Perfect is the enemy of good.
- Requesting user feedback is important for building public trust.

#### **Session 4: Emerging Practices in the Use of ODR, Kyle Snowdon, Vice President of International Sales, Tyler Technologies**

- Work of courts around the world have not changed much over the past 200 years; while the information age requires new IT approaches.
- Minor cases, including administrative offences, can easily be decided using ODR systems.
- In cases involving vulnerable and low income parties with limited funds to hire a lawyer or ability to represent themselves ODR can be the perfect solution.
- Court backlogs can be significantly reduced with ODR, especially related to minor cases, allowing judges to focus on more difficult and time consuming cases.
- In the future, dispute resolution will go more and more online with people ultimately preferring online technologies to face-to-face communications.
- ODR promotes access to justice and greater judicial transparency.

#### **Session 6: ODR in Practice: *Demander Justice*, Jeremy Oinino, Co-Founder and CEO, Demander Justice**

- ODR systems can provide an easy and simple platform for preparing and filing small claims cases in court.
- User satisfaction is not only based on win rates (82%), but also on the feeling that the parties themselves had a direct role in resolving their own cases.
- Empowering citizens to represent themselves in court builds trust in the judiciary.
- Be prepared for resistance from lawyers and the bar.





- IT solutions that provide cheaper and higher quality services for parties with a dispute should motivate lawyers to improve their performance. The bar should realize that their monopoly is not a privilege, but a guarantee of higher quality services.

## **Session 7: ODR in Practice: Youstice, Jakub Klimes, COO and Filip Tvrdon, IT and Operations Specialist, Youstice**

- ODR models can be flexible and include complaint management tools that offer a built-in mediation module.
- Cloud-based ODR services require no need to install and limited maintenance.
- ODR prevents escalation of disputes.
- Awareness about ODR remains very low.
- It is important to provide parties with an opportunity to express themselves.
- ODR reduces court caseloads and promotes faster and less stressful resolution of disputes.

## **Session 8: ODR in Ukraine: PINKY Solutions**

- Disputes arising from e-commerce should also have the possibility to be settled online.
- In Ukraine, the e-commerce market is rapidly growing, but the number of related court cases is extremely low.
- ODR can reduce the length of time to resolve disputes and improve access to justice those who do not have the funds to hire a lawyer.
- ODR is not widely known and has limited support in Ukraine.

## **Overall Conclusions**

- ODR programs in Ukraine should focus on pretrial settlement, general civil cases, family law matters, intellectual property cases, and the development of standardized online templates and forms.
- Although very important, private ODR solutions will not improve overall access to justice as they only fill a void created by the traditional justice system.
- There is no need to wait until there is more money, better IT solutions, or legal framework. Start now to work on ODR using tools and resources currently available.