



**OSCE Office for
Democratic Institutions and
Human Rights**



**Commission for
Strengthening Democracy
and Rule of Law**



**USAID Fair, Accountable,
Independent, and Responsible
Judiciary Program in Ukraine**

**Judicial Reform in Ukraine and International Standards on Judicial
Independence Conference
20-21 December 2011**

CONCLUSIONS AND RECOMMENDATIONS

On 20 and 21 December 2011, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the USAID Fair, Accountable, Independent, and Responsible Judiciary Program in Ukraine and the Ukrainian Commission for Strengthening Democracy and Rule of Law organized a conference to discuss judicial reform in Ukraine and international standards on judicial independence, including the relevance of the *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia* in the context of Ukraine.

In light of ongoing reform debates, the agenda (Annex 1) focused the discussion on the following issues: (1) Judicial selection and training; (2) Judicial professionalism – quality and coherence of judgments; (3) Judicial administration and self-governance; and (4) Accountability of judges and their independence in adjudication.

State officials, judges, representatives from the judicial administration and civil society as well as local and international experts including from the Venice Commission of the Council of Europe participated in the meeting. As an outcome, the participants developed the enclosed conclusions and recommendations that shall serve as a contribution to foster Ukraine's judicial reform agenda.

Conclusions and recommendations

As an overarching conclusion, it was acknowledged among participants that discussing the issue of judicial reform in Ukraine is highly politicized, but also very timely. During the discussion, participants raised many issues illustrating that the judicial system of Ukraine is in need for reform, in particular with a view to enhancing judicial independence. Many interventions underlined that some of the major legal obstacles for judicial independence stem from the constitutional set-up of the judiciary, and that constitutional reform is needed to bring Ukraine's judicial system into line with European and international standards.

In particular, a number of participants mentioned the cumbersome structure of judicial administration and self-governance with overlapping and unclear competencies. It was acknowledged that the composition of the bodies of judicial administration and self-governance are not in line with European standards. Some interventions pointed at the risk of political influence through state bodies in charge of selection and dismissal of judges. The role of the Verkhovna Rada and the President in the process of appointing judges was said to sometimes hamper fair and merit-based selection.

Participants stated that the procedures for selection and appointment, as well as those for disciplining and dismissing judges were still not sufficiently transparent despite improvements in the new Law on Judiciary and Status of Judges of 2010. The importance of public trust in the judiciary and its independence was also highlighted.

A number of participants pointed out that the lack of reasoning in judicial decisions was a serious issue of concern. As a contributing factor to judges' reluctance to provide a motivation for their decisions they cited the lack of special training and judges' fear that their reasoning of decisions would increase chances for them to be overturned on appeal.

Other important issues raised and discussed during the conference included, *inter alia*, the lack of funding for the judiciary including bodies in charge of administration and self-governance (and budget competency of judicial bodies), and the heavy and sometimes unevenly distributed case-load for judges.

Experts and participants agreed that there was no need and also no use in copying other already existing judicial systems but that Ukraine should rather develop its own system, in line with international and European standards. The need for reforms of other related institutions such as the prosecutor's office and the bar to go hand in hand with the reform of the judiciary was also highlighted. In particular, participants agreed that the strong influence of prosecutors over judges needs to be addressed.

The following recommendations were made, some of which require legislative amendments, whereas a number of them would also call for constitutional changes:

1. Judicial Selection & Training

- Ensure that the selection procedure for vacant positions of judges is transparent, based on merit and following a fair competition, including vacant positions of judges of higher courts;
- Enhance the transparency of appointment procedures of chief judges and their deputies, and of transferral of judges from one court to another;
- Consider amending the procedure for appointment to administrative positions to allow the Council of Judges of Ukraine or the meeting of judges of a court to elect candidates to these positions;
- Reduce the role of the High Council of Justice in the judicial appointment process until constitutional changes bring it into line with European standards regarding the composition of judicial self-governance bodies;

- Reduce judges' current dependency throughout their careers on approval by the Verkhovna Rada (Parliament); to avoid politicization, the role of the Parliament should be merely formal in nature;
- Ensure that the involvement of the President in judicial appointments is purely ceremonial/formal, not discretionary;
- Abandon the practice of first appointment; consider maintaining a probation period of maximum 2-3 years instead;
- Judicial training should be under the control and supervision of judicial bodies, ensuring that any training is conducted by the National School of Judges but not the institutions of the Ministry of Education. The training body's activities should be controlled by a board, i.e. High Qualifications Commission.

2. Judicial Professionalism. Quality and Coherence of Judgments

- Improve motivation and reasoning of judgments in order to strengthen public trust in the judiciary and enable peer scrutiny among judges;
- Ensure the achievement of coherence of judicial decisions and uniform interpretation of the law through strengthened reasoning and motivation of judicial decisions; the role of higher courts and the Supreme Court should in this context be mainly to overturn judgments which lack reasoning and motivation;
- Enhance provisions in procedural laws regarding the obligation of a judge to issue reasoned and motivated decisions;
- Improve legal education in particular in the area of legal analysis, interpretation and writing;
- High Qualifications Commission to ensure the development of criteria for the assessment of legal analysis, interpretation and writing abilities and skills as part of the selection of judge candidates, and overall evaluation of judges' performance;
- National School of Judges to establish courses on writing judicial decisions as part of the initial and ongoing training for judges;
- Judicial self-governance bodies to establish criteria for the monitoring of the quality of judicial decisions.

3. Judicial Administration and Self-Governance

- Simplify the structure of judicial administration and self-governance, making it more efficient;
- Change the procedure for appointing judge members of the High Council of Justice to enable them to be mandated by the community of judges;
- Revise the composition of the High Council of Justice to guarantee its independence from executive and legislative authorities for example by increasing the number of judges elected as members of the High Council of Justice;
- Revise the functions of the High Council of Justice to make it more effective in protecting judges from attacks on their independence;
- Remove duplications and overlap in functions and competencies of the various bodies of judicial administration and self-governance;

- Fund courts appropriately and involve judicial self-governance bodies in drafting and administering of the judicial budget;
- Improve the automated case assignment with respect to the specialization and case-load of judges.

4. Accountability of Judges and Independence in Adjudication

- Clarify in the Constitution or law circumstances for which judges can be held accountable in disciplinary proceedings including when and whether failing to respect procedural deadlines shall amount to a disciplinary offence; define clearly what amounts to misconduct of a judge;
- Abandon or clarify in Constitution and laws the possibility to dismiss judges for breach of the judicial oath;
- Remove from the Penal Code of Ukraine the provision in which judges can be held accountable under criminal proceedings for ‘illegal decisions’; judges should not be made criminally liable for the judgments they make;
- Divide the disciplinary and qualification powers between different bodies;
- Adopt without delay the Code of Judicial Ethics, in accordance with the Law on the Judiciary and Status of Judges, international and European standards. It is essential to ensure the Code contains both clear provisions specifying the terms “systematic” & “gross one-time violation of judicial ethics rules which undermines the authority of justice” and the requirement for judges to give regularly updated statements of their wealth as an important check to avoid corruption;
- Ensure that the composition of the disciplinary commission is such that any political/executive pressure is avoided; judges serving in it should not serve in any other body;
- Ensure the fairness of disciplinary procedure and practice including the right of the concerned judge to appeal against a disciplinary decision, the right to see all the evidence in his/her case, the possibility to use witness testimony as evidence, the right to have a lawyer.



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**USAID Fair, Accountable,
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Judiciary Program in Ukraine**

**In cooperation with
Committee on Justice of the Verkhovna Rada of Ukraine**

Judicial Reform in Ukraine and International Standards for Judicial Independence

Conference

December 20 - 21, 2011
National Academy of Science Great Conference Hall, 3rd floor
Volodymyrs'ka Str., 55 Kyiv, Ukraine

AGENDA

Day One: Tuesday, December 20, 2011

9:30 **Registration**

10:00 **Opening Remarks**

*Serhiy Holovaty, MP, Chair of the Commission for Strengthening
Democracy and Rule of Law*

Serhiy Kivalov, MP, Chair of the Verkhovna Rada Justice Committee

Benjamin Moreau, Chief Rule of Law Unit, OSCE/ODIHR

David M. Vaughn, Chief of Party, USAID Ukraine FAIR Project

Eva Katinka Schmidt, Rule of Law Officer, OSCE/ODIHR

10:30 **Session 1: Judicial Selection & Training**

- Access to judicial profession. Selection criteria.
- Professional training. Continuing education.
- Appointment process. Role of judicial bodies, court administration and chief judges
- Selection for administrative positions

Moderator: Leonid Golovko, Professor at the Faculty of Law,
Lomonosov Moscow State University

European standards: Mr. James Hamilton, Substitute Member, Venice
Commission

Pavel Gontšarov, Chief Judge of the Viru County Court in Estonia and
the Estonian ad hoc judge at the European Court of Human Rights

Ukrainian legislation, practice and prospective:

Justice Ihor Samsin, Chair, High Qualification Commission of Judges of
Ukraine

Roman Kuibida, Judicial Expert, Center for Political and Legal Reforms

12:00 Coffee break

12:30 **Session 1: Judicial Selection & Training** (continuation)

Discussion

13:30 Lunch

14:30 **Session 2: Judicial Professionalism. Quality and Coherence of
Judgments**

- Requirement of coherent reasoning
- Legal reasoning in education and professional training of judges
- Role of the court practice of the higher courts and the Supreme Court

Moderator: Oksana Syroyid, National Project Manager, Rule of Law and
Human Rights Program, OSCE Project Coordinator in Ukraine

European standards: Mr. James Hamilton, Substitute Member, Venice
Commission

Pavel Gontšarov, Chief Judge of the Viru County Court in Estonia and
the Estonian ad hoc judge at the European Court of Human Rights

Ukrainian legislation, practice and prospective:

Judge Hanna Fazykosh, Zakarpatskyi Court of Appeal

Discussion

16:30 Coffee Break

17:00 **Session 3: Judicial Self Governance**

- Membership of judicial bodies
- Competence of judicial bodies

Moderator: Roman Romanov, "Rule of Law" Program Director,
International Renaissance Foundation

European standards: Mr. James Hamilton, Substitute Member, Venice Commission

Pavel Gontšarov, Chief Judge of the Viru County Court in Estonia and the Estonian ad hoc judge at the European Court of Human Rights

Ukrainian legislation, practice and prospective:

Yaroslav Romanyuk, Head of the Council of Judges of Ukraine

Discussion

18:00 Reception hosted by USAID Ukraine FAIR Project

Day Two: Wednesday, December 21, 2011

9:00 Welcoming coffee

9:30 **Session 4: Accountability of Judges and Independence in Adjudication**

- Due process in the disciplinary proceedings
- Criteria for professional evaluation and independence in adjudication
- Professional ethics

Moderator: Nataliya Petrova, Deputy Director, USAID Ukraine FAIR Project

European standards: Mr. James Hamilton, Substitute Member, Venice Commission

Pavel Gontšarov, Chief Judge of the Viru County Court in Estonia and the Estonian ad hoc judge at the European Court of Human Rights

Ukrainian legislation:

Viktor Mikulin, Member, High Qualification Commission of Judges of Ukraine

Roman Romanov, "Rule of Law" Program Director, International Renaissance Foundation

11:00 Coffee Break

11:30 **Session 4: Accountability of Judges and Independence in Adjudication**
(continuation)

Discussion

13:00 Lunch

14:00 **Concluding session: The Way Forward - Next Steps in Judicial Reform**

Moderator: *Ukrainian policymaker (TBD)*

Open discussion of key provisions of the Constitution of Ukraine and the Law on Judiciary and Status of Judges that require changes.
Adoption of conclusions and recommendations of the conference.

15:30

Final remarks and adjournment

Final list of participants

Institution	Name	Surname	Position
High Commercial Court of Ukraine	Andriy	Potyomkin	Head of the department
High Specialized Court of Civil and Criminal matters	Pavlo	Gvozdyk	Judge, Head of Council of General Courts Judges
High Administrative Court of Ukraine	Mykola	Soroka	Judge
	Svitlana	Pylypets	Judge
	Yuriy	Tsvirkun	Judge
State Judicial Administration of Ukraine	Inna	Tsymbal	
Verkhovna Rada	Rostyslav	Gerasymov	Adviser to the Head of the Justice Committee
High Council of Justice of Ukraine	Kostyantyn	Kravchenko	Member
Council of Judges	Tetyana	Kozyr	Secretary
	Inna	Alyeeva	Member
	Yaroslav	Romanyuk	Head
Commission for Strengthening Democracy and Rule of Law	Serhiy	Holovaty	MP, Head of the Commission
	Vitaliy	Boyko	Chief justice of the SCU (1994-2002)
	Mykola	Kozyubra	Law professor, retired Judge of the Constitutional Court
	Roman	Romanov	Rule of Law Program Director, International Renaissance Foundation
	Volodymyr	Yavorskyy	Executive director, Ukrainian Helsinki Human Rights Union
	Igor	Koliushko	Chairman of the Board, , Center for Political and Legal Reforms
	Oksana	Syroyid	OSCE Rule of Law Unit
	Mykola	Khavronyuk	Deputy head, Supreme Court Administration
	Valentyn	Dolezhan	Professor, National University "Odessa Law Academy"
	Oleksandr	Petryshyn	Vice President, National Legal Science Academy of Ukraine
High Qualification Commission of Judges of Ukraine	Anatoliy	Martsynkevych	Secretary of the Commission
	Mykhailo	Kostin	Disciplinary Inspector
	Viktor	Hevko	Disciplinary Inspector

	Yulia	Plahotnyuk	
National School of Judges	Nataliya	Shuklina	Prorector
	Olena	Kuchynska	Prorector
	Oleksandr	Ishchenko	Head of the department
Kyiv District Administrative Court	Andriy	Volkov	Judge
Sevastopol court of appeal	Anna	Illyuhima	Judge
Volynsky court of appeal	Petro	Filyuk	Chief Judge
Donetsk court of appeal	Iryna	Vasylieva	Judge
Zhytomyr court of appeal	Vitaliy	Kotik	Chief Judge
Zaporizhya court of appeal	Viktor	Horodovenko	Chief Judge
Ivano-Frankivsk court of appeal	Nadia	Stefaniv	Chief Judge
Luhansk court of appeal	Mykhailo	Kozhushok	Judge
Poltava court of appeal	Petro	Abramov	Judge
Cheksasy court of appeal	Volodymyr	Borodiychuk	Judge
	Anatoliy	Dymydenko	Deputy chief judge
Zakarpatsky court of appeal	Hanna	Fazykozh	judge
Odessa court of appeal	Anatolii	Babii	judge
Kirovograd court of appeal	Yurii	Medvedenko	chief judge
Rivne court of appeal	Anzhelika	Sheremet	judge
Dnipropetrovsk court of appeal	Iryna	Zhyvoglyadova	
Vinnytsa administrative appeal court	Vitaliy	Kuzmishyn	Chief Judge
Venice Commission	James	Hamilton	Substitute Member
	Amaya	Ubeda	
Center of Judicial Studies	Nataliya	Vereshchynska	Director
Center for Political and Legal Reforms	Roman	Kuibida	Judicial Expert
Viru County Court (Estonia)	Pavel	Gontšarov	Chief Judge, Estonian ad hoc judge to the European Court of Human Rights
Lomonosov Moscow State University	Leonid	Golovko	Professor at the Faculty of Law
European Union External Action (EEAS)	Andriy	Spivak	
OSCE ODIHR	Benjamin	Moreau	Chief Rule of Law Unit
	Ludvig	Becking	Legal Officer
	Antonio	Polimeni	Intern
	Eva Katinka	Schmidt	Rule of Law Officer
USAID FAIR Justice Project	David	Vaughn	Chief of Party
	Natalia	Petrova	Deputy Chief of Party
	Olena	Kolesnichenko	Communication Specialist

	Olga	Nikoaleva	Program Coordinator
	Tetyana	Lavrynovych	Administrator
	Myroslava	Serdyuk	Bookkeeper
	Ashot	Agaian	Judicial Accountability Expert
	Myroslava	Vorontsova	Legal Judicial Selection Specialist
American Bar Association / Rule of Law Initiatives	Michael	Lechner	Country Director
USAID Ukraine	Jeff	Meyers	Acting ODG Director
	Oleksandr	Piskun	Democracy Project Management Specialist
	Tetyana	Tymoshenko	
USA Embassy	Nazar	Fedorchuk	Legal Adviser