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ANALYSIS OF THE ORGANIZATION OF COURT ADMINISTRATION IN UKRAINE

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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Introduction

The aim of this assessment is to assist the State Judicial Administration of Ukraine (SJA) in conducting a structural gap analysis of its organization and preparing recommendations for enhancing the efficiency of the SJA's operations and ability to serve the needs of the courts. A strong, independent, and efficient judicial system is not possible without adequate financing, logistical support, training and implementation of modern automated solutions. The recommendations to be developed will serve as a basis for determining the needs of the SJA in structural reform aimed at providing better customer service to the judiciary. This assessment has been conducted by Dr. Jesper Wittrup in order to provide a European perspective on the organization and operations of the SJA.

When making decisions about the future organizational structure the SJA can and ought to benefit from knowledge of the experiences of other European countries in this regard. The present analysis draws upon these experiences in order to assess the effectiveness of the current organization and to provide recommendations for future initiatives. Appendix contains a description of the organizational structure of court administrations in a number of European countries. The selection concentrates on countries with a separate agency for court administration (and not on those countries where court administration is carried out by a department within the Ministry of Justice).

The assessment is based upon interviews conducted in Kyiv, but also on a draft report prepared by the US expert working on this assignment.

The analysis begins with a discussion of how European court administrations have in recent years successfully embraced a strategic approach to management, and the organizational impact from this new approach. This insight is used to derive a number of specific recommendations for the organizational structure of the SJA.

The analysis then goes on to discuss the overall structure for how to deliver court support. Three different basic European models are identified and the current Ukrainian practice is

compared to these models. A number of short-term and long-term recommendations for the structure of court support are provided.

Executive summary

In Ukraine the court administration and the Council of judges is currently considering adopting a strategy for the judiciary. By doing so the Ukrainian judiciary will follow in the footsteps of several other European court administrations which have successfully developed visions with overall goals, explicit strategies with concrete action steps for how achieve these goals, and measurable indicators to monitor progress.

The adoption of a true strategic approach has caused many European court administrations to reconsider their organization. In this report it is argued that in order to support a new focus on strategy and performance management it is necessary to reconsider the existing organizational structure. It is therefore recommended to establish a new Strategic Department with the following main tasks:

- Development of performance indicators linked to the strategy
- Monitoring of strategy implementation
- Making proposals for updating the strategy
- Analysis and application of statistics

In order to simplify and streamline the remaining organization it is recommended to adopt an organizational structure with 5 additional departments: An Economic Department; An Administrative and Legal Department; a Human Resource Department; an IT Department; and a Communication Department. This structure will gather “similar” functions (or functions requiring similar type of skills) within the same department and in that way allow for maximum flexibility when fluctuations in workload cause a need for reassigning staff between these similar functions.

The overall structure for court support, which in Ukraine relies upon 27 regional offices of the State Judicial Administration (SJAFO’s), is also analyzed. From a European perspective, this model is unusual. It may also be inefficient. Some SJAFO functions could probably be handled more efficiently by the courts, while others could be handled better by the SJACO.

The present analysis provides an indication of how functions, currently undertaken by the SJAFO's, may successfully be divided between courts and the SJACO.

It is clear that a dismantling of the 27 SJAFO's would constitute a major structural reform. Such a step should not be taken only with the support of a short-term analysis like the present one. It is therefore recommended to initiate a more thorough analysis of the overall structure for court support in Ukraine. This analysis should seek to determine:

1. How –and by how much - the quality of court support might improve by elimination of the SJAFO's and dividing SFAFO responsibilities between the courts and the SJACO?
2. What are the cost implications (potential savings) from such a reform?
3. How to support smaller courts in a scenario without SJAFO's?

The analysis should provide the basis for making a decision for how court support should be provided for the long term.

In addition, this analysis provides the following short-term recommendations for improving the efficiency of the overall court support:

- To merge the Kiev city SJAFO with the Kiev Oblast SJAFO.
- To establish a rational model for allocating budgets and staff between SJAFO's. The model should take into account the number of courts and court staff, as well as geographical distances within the particular region.
- To hold the SJAFO's accountable for the service they deliver to courts by using surveys among courts to regularly assess the performance of SJAFO's.

The transition to modern court administration and its impact on organizational structure

There are some clear common trends among European national court administrations for how they have in recent years sought to modernize and optimize their organizational efficiency. Much of this development is linked to the development of explicit strategies for how to improve performance. Previously, most European court administrations did either not have a strategy, or if they had one, the so-called strategy was composed of rather general statements of intentions which would not tend to drive actual behavior. Today, many European court administrations have developed overall visions with overall goals (Why are we here? What are we supposed to accomplish?), an explicit strategy with concrete action steps for how achieve these goals, and measurable indicators to monitor progress.

Why do court administrations (as well as most other modern organizations) establish goals and adopt strategies?

- A vision for the future, by clarifying the general direction for change, simplifies decision-making and helps coordinate the actions of many individuals
- It motivates people to take action in the right direction
- By linking strategic goals to measurable indicators management will have a powerful tool for day-to-day operational management

In Ukraine the court administration and the Council of judges is currently considering adopting a strategy for the judiciary. In the following it is assumed such a strategy will be adopted.

The adoption of a true strategic approach has caused many court administrations to reconsider their organization. First, in order to develop a viable strategy the organization needs the proper skills and expertise for doing so. This expertise is rarely found among

employees who are accustomed to more traditional tasks related to court administration. Certainly, external consultants have often been used to help with the development of court administration strategies, but since a strategy needs to be regularly reconsidered and updated, there is a need for some in-house expertise with regard to this.

Second, a strategy is of a little value if it is not communicated well. In order to have an impact the court administration must have capabilities for effectively communicating the strategy and accomplishments in relation to the strategy. Generally speaking, since an important purpose is to motivate people, communication of a new vision strategy requires very good communication skills.

Third, and even more importantly, the strategic approach requires that progress towards strategic goals is continuously measured and monitored. Indicators of performance have to be developed. This again fundamentally changes the way statistics is handled. While court statistics have previously often (and this is true for most countries) been collected without much thought for why and how data might be applied for anything in particular, now the focus should be on the making court statistics useful for management. This implies that new data will have to be collected, that ensuring high data quality becomes much more important, and that there is need for very strong in-house analytical skills for analyzing and interpreting data.

A focus on strategy and performance indicators should eventually impact everything the court administration does. Allocation of budgets and human resources ought to be based on indicators for court workload. Statistics should be improved to better assist court management. Case management systems need to be developed to support the collection of performance data.

Such a major change of focus as is implied when a focus on strategy and performance management is to be adopted cannot in general be handled well only within the existing organization and organizational hierarchy. The experience from European court

administrations confirms that in order to support a strategy-based approach it is necessary to reconsider the existing organizational structure. New people with special skills have to be hired, and they should be allowed to bypass the existing hierarchy when promoting the new ideas they are bringing.

For example in Denmark, in order to develop a strategic and performance-based approach to court administration an executive advisor (the author of this report) was hired in 2000. The advisor would head intra-organizational project teams and report directly to the General Director of the Court Administration, thus by-passing existing department heads.

Other court administrations have chosen different organizational solutions in order to support the transition to strategy-based performance management, including the establishment of a separate Department for Development (see appendix A). There are a number of issues to consider when re-modeling the organizational structure:

- One important reason for establishing a separate department focusing on strategy development and performance measurement is the risk that these important tasks will tend to be “crowded out” if the existing hierarchy is maintained. In any of the existing departments there is likely to be many urgent tasks and activities, and it will be tempting for department heads to use any additional staff allocated to work with strategy and performance measurement to solve such urgent problems.
- On the other hand, development activities should not be isolated to a new department. The strategic approach should have an impact on all departments. In order to anchor the new initiatives in the entire organization, and to utilize existing knowledge, is important that intra-organizational teams are established to work with key strategic issues.

Based upon the interviews conducted as part of this assignment it is considered that the best way for the SJA to embrace to support the adoption of the new strategy is to establish a new department with the following main tasks:

- Development of performance indicators linked to the strategy
- Monitoring and reporting on strategy implementation
- Making proposals for updating the strategy
- Analysis and application of statistics

In addition this new strategic department should involve and coordinate projects related to implementation of the new strategy in cooperation with the other departments.

It will likely be necessary to recruit externally some of the key people for the Strategic Department. The following functions / divisions from the existing organization should, however, be transferred to the new Strategic Department: The Analytical Division from the Department of Organizational Support to SJA's Operations; and the Court Statistics Division from the Department of Court IT and Case Management.

In order to simplify and streamline the remaining organization it is recommended to adopt an organizational structure (the existing organizational structure is depicted in Appendix B) with 5 additional departments: An Economic Department; An Administrative and Legal Department; a Human Resource Department; an IT Department; and a Communication Department.

This structure will gather "similar" functions (or functions requiring similar type of skills) within the same department and in that way allow for maximum flexibility when fluctuations in workload cause a need for reassigning staff between these similar functions.

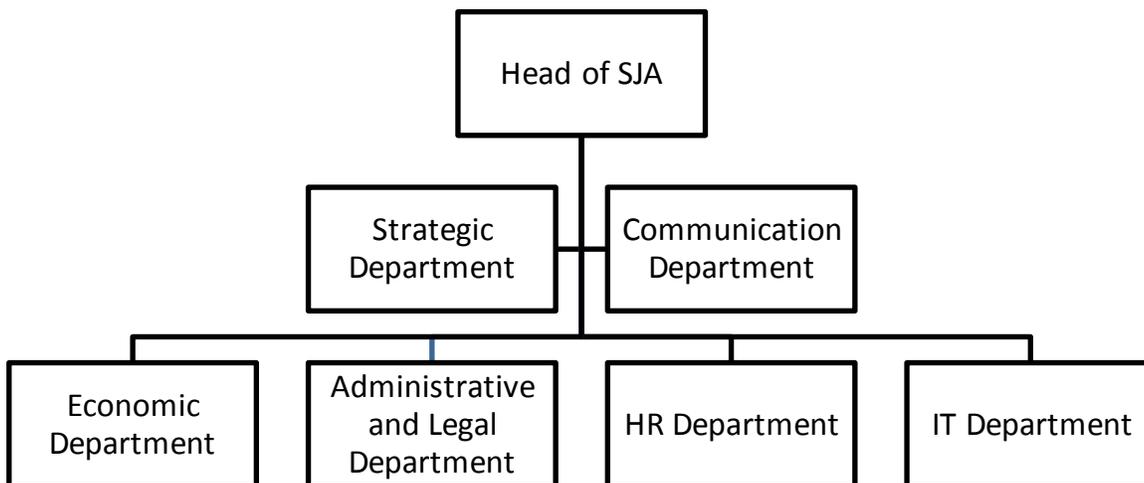
The new Economic Department would include the current departments for Finance and Planning, Accounting, Auditing. As can be seen from Appendix A, it is quite common to have these functions within one Economic Department. It is very important to ensure a close cooperation between the Economic Department and the Strategic Department.

The new Administrative and Legal Department would be comprised of the current Legal Department and the Department for Organizational Support for Operations to Judicial Self-

governance Bodies. All staff in these two departments has law degrees, and it will make sense – when the amount of related handling complaints or supporting self-governance bodies fluctuates – to be able to quickly reassign staff to the most urgent tasks.

In addition, it is recommended to add to the new Administrative and Legal Department the staff from the current Department of Organizational Support to SJA’s Operations dealing with supporting the general meetings of SJACO’s management and handling correspondence, since these tasks are related to the other tasks handled by the new department. The current Department for Material and Technical Support will also fit within the new Administrative and Legal Department since it is mostly doing various administrative tasks.

Proposal for a new organizational structure



The new HR department would combine HR management in courts and internal HR management within SJACO (and SJAFO heads) since there does not appear to be important reasons for having different departments deal with HR. The department would thus be comprised of the current department for Organization of Court Operations and the staff

within the current Department of Organizational Support to SJA's operations dealing with internal HR.

It is recommended to form a new IT Department. This is in order to acknowledge the huge importance of well-functioning IT and case management systems. Even when actual IT development and IT support is mainly outsourced, it is vital to have strong in-house IT-expertise in order to be able to define the requirements for new IT systems and in order to monitor the suppliers. It will be necessary for the SJA to hire additional staff to perform these tasks well.

Finally, it is recommended to form a new Department for Communication. Good communication is vital for any court administration, and the importance of communication is only likely to increase in coming years.

The current organization structure includes two SJA deputy heads. Whether it is useful to have deputy heads, or not, will more than else depend on the individual management style of the SJA head. Since the particular management style of the SJA head has not been assessed as part of this assignment, the present proposal for a new organizational structure does not contain any suggestions on whether or not to continue with two SJA deputy heads.

Models of court support

There is a large variation among European countries with regard to court administration practices. There are several different models of how courts are provided with support.

Overall, one can distinguish between three main models: The Northern and central European model, the Southern European Model, and the Anglo-Saxon Model.

The *Northern and Central European Model* is based upon very strong court organizations. The courts handle most court support tasks themselves and have adequate staff to carry out these functions. Court staff is organized in a hierarchy with the court president at the top. Most often the president will have a court administrator (or in Germany a “Rechtspfleger”) to handle much of the day-to-day administration.

Three models of court support

The Northern/Central European model: Self-supporting courts with limited coordinating role for the central courts administration

The Southern European model: Coordination and support is provided by Court of Appeals

The Anglo-Saxon model: Regional court administration offices provide extensive support to courts in order to allow judges to concentrate on judicial matters only

Since the courts in these countries are able to handle most administrative tasks themselves, the national court administrations are limited to carry out coordinating and monitoring functions related to e.g. allocation of budgets and staff, developing common case management systems, handling and analyzing court statistics, coordinating large building projects etc. In some countries (e.g. the Netherlands and the Scandinavian Countries) these coordinating functions are handled by are more or less independent (subject to judicial self-

governance) court administration. In other countries (e.g. the German Bundesländer, Austria and Finland) administrative coordination is taken care of by the respective Ministry of Justice.

The major advantages with the Northern and Central European model for court support are that the courts can function as strong and complete organizations with a clear managerial hierarchy. Accountability for performance ultimately rests with the court president. A potential disadvantage is that the model is not well suited for small courts. Courts need to have a certain size in order to be able to handle all administrative and managerial tasks.

In the *Southern European model* court of appeals play a significant role with regard to coordination court administration of lower courts. They often handle the financial management, IT support for lower level courts within their jurisdiction. In most of Southern Europe overall coordination of court budgets and ICT is the responsibility of the Ministry of Justice and because of this it may be perceived to allow for some degree of judicial self-governance to let the Court of Appeals play a role in this area. A disadvantage is that in practice this model will often result in lack of support for lower level courts, because the court of appeals may use their power to secure most of the available resources for themselves.

The *Anglo-Saxon model* (to be found in e.g. Great Britain and Ireland) is based on the principle that judges should be allowed to concentrate on judicial matters and not be much involved with management of the courts. Thus court support is coordinated by court service agencies. These agencies essentially employ court staff, excluding judges. The court administrations in these countries are involved, not only with overall coordination between courts, but with support of individual judges/magistrates. They have therefore a much higher number of staff, and are also organized with regional offices in order for staff to be close to the courts being supported.

It is relevant to bear in mind some specific characteristics of British judges and courts which seem to make this model fit particularly well. First, unlike in continental Europe England does not as such have a “career judiciary”, since judges are chosen among practitioners rather

than specifically trained to become judges. This is said to have helped establish a strong “culture of individualism”¹ in which judges do not tend to identify much with courts as organizations. Second, the English system relies heavily on lay magistrates. Third, many lower level courts in England are quite small.

A Potential advantage with the Anglo Saxon model may be that it is possible to economize better with resources because courts can essentially “share” staff and resources. The model is also well suited to support very small courts. A potential disadvantage is the sharp division between justice as a right, dispensed by the judges, and the infrastructure of justice as a public service. In theory, the two can be kept separate, but in practice many observers will perceive them as closely linked². Another potential disadvantage may be that it can be more difficult to sustain uniform court administration practices.

The current practice in Ukraine can be described as a mix between the Anglo Saxon model and the Northern/Central European model. On the one hand, the 665 general jurisdiction courts receive support from 27 regional offices of the SJA (SJAFO’s). However, this is not a “pure” version of the Anglo-Saxon-model since the regional offices do not employ all non-judge staff in these courts. On the other hand, the remaining 101 courts receive support mainly from the central SJA (SJACO).

The author of this report finds it peculiar that Ukraine is relying so heavily on “regionalized” court administration. Obviously, the size of the country (more than 600.000 km² and more than 45 million inhabitants³) may partly justify this, at least from a historical perspective. Today however, with modern means of communication, the existence of SJAFO’s may no longer be an optimal solution. Some SJAFO functions could probably be handled more efficiently by the courts, while others could be handled better by the SJACO.

¹ See e.g. Kate Malleson. “Judicial Training and Performance Appraisal”, *The Modern Law Review*, 1997.

² See e.g. J. Bell, *Judiciaries within Europe* (Cambridge 2006).

³ But notice, however, that other countries covering a large geographical area (e.g. Norway and Sweden) do not have a regionalized court administration.

The table below indicates how functions currently undertaken by the SJAFO's may in the future be divided between the SJACO and the courts.

Current SJAFO-functions	Future responsibilities for these functions
Financial management	Courts should be allowed to handle their own budgeting and procurement. When facing e.g. difficult procurement situations they should be allowed to request assistance from the SJACO. Most often this assistance will not require face-to-face communication. Monitoring of financial management can be handled with regular inspections from the SJACO. Even considering the costs of travel, this is likely to be more efficient than maintaining a regional unit for financial management.
Human Resource Management	Courts can take over all internal HR-functions, and only rely upon human resource assistance from the SJACO with regard to particularly difficult HR issues (face-to-face communication in general not required).
Training	It is common in other European countries to have regional centers for judicial training. These can be managed, however, with a limited number of staff - and training can be coordinated from the SJACO.
Statistical reporting and analysis	When the collection and processing of statistical data is fully automated (and this is apparently not currently the case) there will be no need for a regional statistics function. It is highly important to ensure uniform practices in collection of statistics so coordination hereof should be done by the SJACO.
Maintaining court facilities	In order to take over these functions courts will need to be allowed to hire staff with the relevant technical expertise.
Legal services	The SJACO can handle complaints and provide the courts with legal advice on contracts.

It is clear that the elimination of the 27 SJAFO's would constitute a major structural reform. Such a step should not be taken only with the support of a short-term analysis like the present one. It is therefore not recommended to eliminate the SJAFO's. Instead, the recommendation is to initiate a more thorough analysis of the overall structure for court support in Ukraine. This analysis should seek to determine:

4. How –and by how much - is the quality of court support likely to improve by elimination of the SJAFO’s and dividing SFAFO responsibilities between the courts and the SJACO?
5. What are the cost implications (potential savings) from such a reform?
6. How to support smaller courts without the SJAFO’s? In other countries, it has been a rule of thumb that court needs to have a minimum of 8 judges and a non-judicial staff of at least 12 persons in order to self-manage.

As part of this analysis, current court satisfaction (or dissatisfaction) with the support received from the SJAFO’s should be measured by a survey among the users of SJAFO services. The satisfaction levels (and the costs of court support) should be compared to that of the courts not presently receiving support from the SJAFO’s.

Such an analysis should allow for a deliberate choice about the future way to deliver court support to be made. The analysis should provide the basis for making a decision for how court support should be provided for the long term.

Second, even if the current regionalized structure is retained there are some obvious short-term possibilities for making the current structure more efficient.

- The potential advantages of the regionalized model are entirely linked to geography. Only if there is a major geographical distance between two courts does it in theory make sense to let two different SJAFO’s deliver court support. For this reason, it is recommended to merge the Kiev city SJAFO with the Kiev Oblast SJAFO.
- Just as a rational model for allocating budgets and staff between courts is currently being developed, a similar model for allocating resources among SJAFO’s should be established. The model should take into account the number of courts and court staff, as well as geographical distances within the particular region.
- SJAFO’s should be held accountable for the service they deliver to courts. Surveys among courts should be carried out regularly to assess the performance of SJAFO’s.

SJACO should use the results of these surveys to identify Best Practices, and encourage sub-performing SJAFO's to adopt such practices.

Appendix A: European Court Administrations

The appendix provides information on the organizational structure and governance of a number of European court administrations.

Denmark: Court Administration Established 1999

Governance	
<p>The Danish Court Administration is headed by a board of governors and a director. The Danish Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no instructive power and cannot change decisions made by the Danish Court Administration.</p> <p>The board of governors is the chief executive and generally liable for the activities of the Danish Court Administration. The director, who is appointed and may be discharged by the board of governors, is in charge of the day-to-day management. The director is not required to hold a law degree.</p> <p>The composition of the Danish Court Administration's board of governors is provided by the Danish Court Administration Act. The board of governors has 11 members, eight of whom are court representatives, one is a lawyer and two have special management and social insights.</p>	
Main functions	
Ensuring proper and adequate administration of the courts: Budgeting, staff, buildings and it.	
Strategy	See: http://www.domstol.dk/om/otherlanguages/english/visionvaluesobjectives/Pages/Vision,valuesandobjectives.aspx
Organizational Structure: (staff number: approximately 100)	
<pre> graph TD Director[Director] --- Communication[Communication] Communication --- Resources[Resources and IT management] Communication --- IT[IT Development] Communication --- Quality[Department for Quality and Development] Communication --- Admin[Administrative Department] </pre>	

**England and Wales: Her Majesty's
Courts and Tribunals Service**

Established 2011

Governance	
HM Courts & Tribunals Service is an agency of the Ministry of Justice. It uniquely operates as a partnership between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals	
Main functions	
Responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.	
Strategy	See: http://www.justice.gov.uk/downloads/publications/corporate-reports/hmcts/2012/hmcts-business-plan12-13.pdf
Organizational Structure	
A new organizational structure is currently being implemented.	
HMCTS has seven regions in England and Wales, headed by a delivery director who answers to the Chief Executive and HMCTS Board. The seven regions are further divided into 34 clusters. A cluster is an operational unit covering a geographical area containing a number of courts and tribunals. A cluster manager is responsible for courts and about 500 staff.	

Ireland: Courts Service

Established 1999

Governance

The Court Service Board consists of seventeen members, of which nine are members of the judiciary. The function of the Board is to consider and determine policy in relation to the Service, and to oversee the implementation of that policy by the Chief Executive Officer.

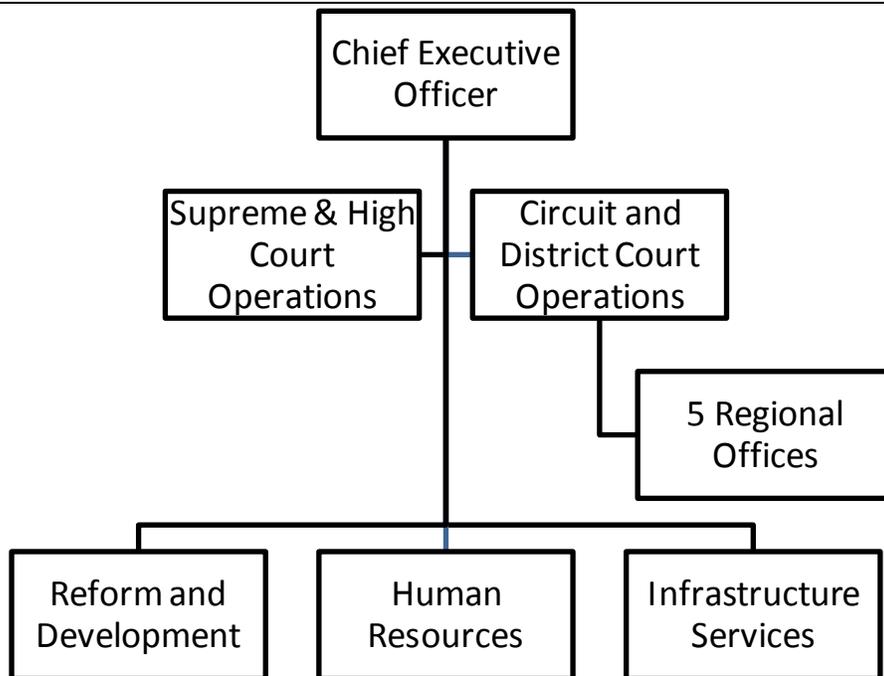
Main functions

To manage the courts, support the judges, provide information on the court system to the public, and provide court buildings and facilities for court users

Strategy

See: <http://www.courts.ie/courts.ie/library3.nsf/WebPageCurrentWeb/818CA6535C6DB8BF80256D9F004C8808?OpenDocument&l=en>

Organizational Structure



Netherlands: Bureau of the Council for the Judiciary **Established 2002**

Governance

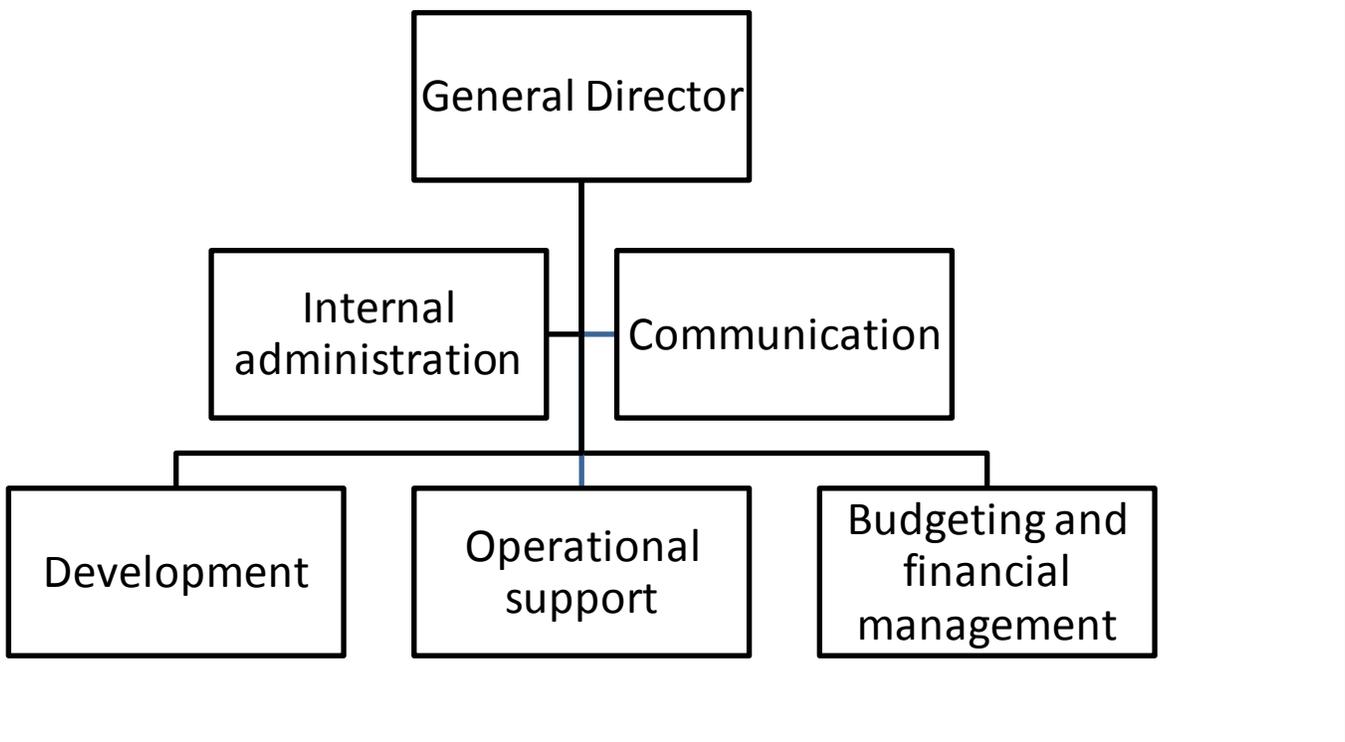
The council has 5 members. 3 of them are judges. The minister of Justice makes up a list of candidates after consultation with the judiciary and the judicial council. The government cabinet then appoints the members, including to non-judges.

Main functions

Allocation of budgets, supervision of financial management, personnel policy, ICT, housing. The Council supports the courts in executing their tasks in these areas. Another central task of the Council is to promote quality within the judiciary system and to advise on new legislation which has implications for how justice is administered. The Council also acts as a spokesperson for the judiciary on a national and international level

Strategy	See: http://www.rechtspraak.nl/English/Publications/Documents/BrochKwaliteit_GB_FR.pdf
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Organizational Structure (2008) - staff number: approximately 150



Sweden: Court Administration

Established 1975

Governance

The Swedish Court Administration is an executive agency. It reports to an advisory board composed of 8 members. 4 members represent the parliament (the 4 main parties).

Main functions

The function of the Swedish National Courts Administration is to be responsible for overall coordination and common issues within the Swedish Judiciary. The work also involves providing service to the courts, the regional rent and tenancies tribunals and the National Legal Aid Authority.

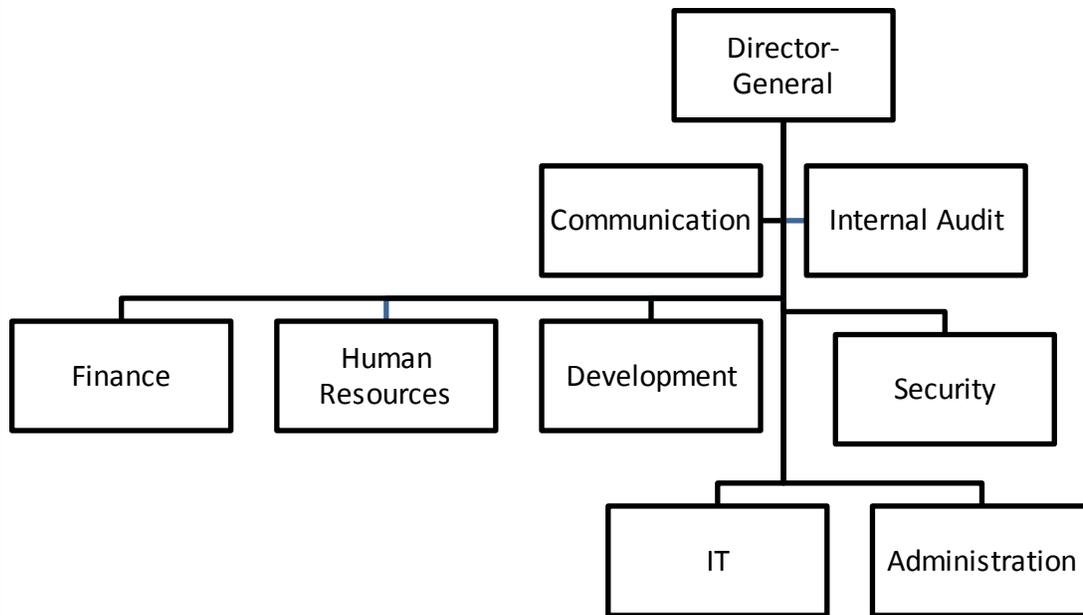
This may involve issues concerning personnel development, education and information, preparation of regulations, advice and instructions and responsibility for the operation being conducted in an efficient and easily accessible way for the citizens

Strategy

See:

http://www.domstol.se/Publikationer/Verksamhetsplan/operational_plan_2011-2013_eng.pdf

Organizational Structure



Appendix B: The current organizational structure of the Ukrainian court administration

