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EXPERT REPORT ON RESULTS OF DEVELOPING A TRAINING COURSE FOR JUDGES ON CASEFLOW MANAGEMENT

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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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Table of Contents

BACKGROUND	5
Purpose and Scope	5
Methodological Procedures	6
Limitations.....	8
Acknowledgements	9
CASEFLOW MANAGEMENT CONTEXT	9
Principles of Court Administration	9
Purposes and Responsibilities of the Courts	11
Court Culture	11
Leadership.....	11
Financial Management	12
Operations Management.....	12
Human Resources Management and Consultation	12
Information Technology.....	12
Community Engagement.....	13
Stakeholder Collaboration	13
Strategic Management	14
Caseflow Management.....	14
Fundamentals of Caseflow Management.....	14
Leadership.....	16
Stakeholder Consultation.....	17
Court Supervision	17
Benchmarks.....	18
Control Continuances	19
Early Resolutions	20
Information Systems.....	21
ON-SITE OBSERVATIONS	21
National School of Judges	21
Supreme Court	22

New Justice Team	25
Attorney Conference	25
Administrative Cassation Court.....	26
Commercial Cassation Court.....	27
Civil Cassation Court	29
Criminal Cassation Court.....	32
CONCLUSIONS.....	34
Summary of Recommendations.....	45

BACKGROUND

Purpose and Scope

This report together with the caseflow management model curriculum and associated materials of the new Supreme Court (SC) was prepared by a sole subject matter expert (SME) from the United States pursuant to the heretofore objectives of the USAID Nove Pravosuddya Justice Sector Reform Program (New Justice) in Ukraine. New Justice was established and designed to support, among other responsibilities, the judiciary's mission to serve its citizenry and society and to create and continually improve upon its administration so as to safeguard an independent, accountable, transparent, and effective justice system. In accordance with that mission, New Justice set forth the following 5 objectives:

1. Judicial Independence and Self-Governance Strengthened.
2. Accountability and Transparency of the Judiciary to Citizens and the Rule of Law Increased.
3. Administration of Justice Enhanced.
4. Quality of Legal Education Strengthened.
5. Access to Justice Expanded and Human Rights Protected.

The purpose of this consulting project was to work with the National School of Judges (NSJ) to support the following subordinate objectives of Objective 3 – Administration of Justice Enhanced:

- 3.1: Strengthen Judicial Administration Institutions, Policies, and Procedures.
- 3.2: Improve Professional Competencies and Expertise of Judges and Judicial Personnel.

Pursuant to these points, the operative goals of the project were twofold:

1. To develop and implement caseflow management strategies, policies, and procedures for managing court operations and providing quality services to the public.
2. To provide training in the principles and application of caseflow management to judges and judicial assistants.

The newly-instituted SC commenced operation on December 15, 2017. On December 29, 2017, the Ukraine President signed the decrees on the appeal and local courts consolidation with the aim to achieve a more structured and efficient justice system. In an effort to improve its operations, the SC established working groups to address issues related to the unification of case law, quality of court decisions, and communications, administration, management, and anticorruption measures. At the time of this consultation there were 118 justices appointed of the 200 reserved positions to hear cases in four separate cassation courts – administrative, civil, commercial, and criminal matters. Seventeen of these justices (currently prorated based on the total number of active justices) were appointed to serve full-time on the court's Grand Chamber (GC), which focuses on unifying practices across the four said jurisdictions.

One of the several goals shared by judges and staff was to appoint the full slate of 200 justices so that the GC could have a full complement of 21 justices to hear cases. During its

first year of operation, the SC managed an estimated 150,000 cases – 76,000 of which were carried over from the former SC. At the time of this project, dispositions had been rendered in approximately 81,000 cases. Pursuant to the approval of the High Council of Justice (HCJ), the State Judicial Administration (SJA) established 1,439 judge positions who would eventually be assigned to the newly established appellate courts – the majority of whom are expected to be drawn from the former appellate courts. The 2017 data demonstrated that the annual aggregate caseload for the appellate courts is projected to be approximately 500,000 cases. The data noted below was provided in the 2018 Kiev Baseline Assessment report and illustrates the active case filings and procedural applications of the SC specific to the GC and cassation courts.

SUPREME COURT ACTIVE CASES AND PROCEDURAL APPLICATIONS AS OF 13 APRIL 2018						
SOURCE	SUPREME COURT TOTAL	GRAND CHAMBER	ADMINISTRATIVE CASSATION COURT	COMMERCIAL CASSATION COURT	CRIMINAL CASSATION COURT	CIVIL CASSATION COURT
NEW FILINGS SINCE 5 DEC 2017	30,318	540	13,115	4,818	4,788	7,057
PENDING FILINGS TRANSFERRED FROM OLD SUPREME & HIGH SPECIALIZED COURTS	60,565	171	42,584	3,703	3,331	11,776
TOTAL PENDING FILINGS TRANSFERRED TO NEW SUPREME COURT	90,503	711	54,699	8,521	8,119	18,833
PENDING FILINGS TRANSFERRED FROM OTHER COURTS BUT NOT REGISTERED IN NEW SUPREME COURT	17,558	0	0	0	2	17,556
TOTAL PENDING SC REGISTERED & UNREGISTERED FILINGS	108,061	711	54,699	8,521	8,121	36,389

Currently, the rules of adjudication are prescribed by respective procedural codes, but the hearing of cases by the panel of judges setting is not reflected anywhere. The SC has expressed the need to develop modern case management and processing protocols for hearing cases and to develop a caseload management training program for judges assigned to the appellate and cassation courts so that they can manage their respective caseloads in a more effective manner. The NSJ developed the Court Room Management training program for the judges assigned to the lower courts, however similar training does not yet exist for the higher courts. The scope of work for this project is centered on collaborating with the NSJ team to develop a model training curriculum for appellate and cassation-level judges on the principles and application of caseload management; to that end, the curriculum shall provide the courts with the knowledgebase to expand upon their understanding of case management fundamentals and to tailor those approaches to improve and make more effective the courts' case-processing capacity.

Methodological Procedures

This model training curriculum was developed by the noted SME in consultation with the NSJ and selected judges of the Ukrainian appellate and cassation court judges and

administrators. The curriculum is based on a series of brief on-site interviews over a four-day period in March 2019 with the aforementioned stakeholders in the following areas/courts of the Ukraine Judiciary:

- Supreme Court
- Administrative Cassation Court
- Civil Cassation Court
- Commercial Cassation Court
- Criminal Cassation Court
- National School of Judges Working Group
- New Justice Team

Over the course of the four-day period, the interviews and discussions were supplemented with scheduled observations of court proceedings of the GC and cassation courts in each of the four jurisdictions (administrative, civil, commercial, and criminal). Appendix A of this report depicts the organizational chart of the Ukraine Judiciary and the areas wherein this consultation was centered.

The observations were preceded by brief follow-up discussions with the judge panels and administrative staff of the respective courts. These findings were incorporated into the list of recommendations and incorporated into the court administration paradigm (see Figure 1) based on the experience and research of the SME having worked and consulted in a variety of courts. Prior to the commencement of the on-site review and during the initial day's visit, the SME designed a questionnaire (see Appendix B) for key stakeholders to respond to regarding the background information and current operations of the court in order to draft an accurate and comprehensive course of study in caseload management. The 12 areas of inquiry included the following:

1. Court Administration
2. Judicial Policy Making
3. Judicial Powers
4. Allocation of Resources
5. Administrative Support for the Judiciary
6. Training
7. Judicial Performance Standards
8. Automation
9. Procedural Issues
10. Local Legal Culture
11. Caseload and Trials
12. Caseflow Management

Additionally, as a part of this qualitative study, the following key documents were requested together with questionnaire responses:

1. Organizational Chart of the Courts
2. Annual Report of the Judiciary

3. Strategic Plan or Long Term Plan for the Judiciary
4. Case Flowcharts
5. Statistical Reports on Filings, Dispositions and Pending Cases

In support of the requested information for the purposes of this project, the New Justice Team provided two reports – Court Performance Evaluation Framework: Standards, Criteria, Indicators, and Methods (2015) and Baseline Assessment of the New Supreme Court (2018) – that albeit having a separate and distinct basis from this consultation, were informative insofar as providing some of the background and data points that were sought in the questionnaire. Other materials from which contextual analysis was derived included procedural codes, 1996 Ukraine Constitution with Amendments through 2016, excerpts of law pertaining to the judiciary status of judges, organizational chart for the courts and judicial institutions, and the draft NSJ caseflow management curriculum.

The information collected from the individual meetings/discussions, observations, and aforementioned documents was reviewed and evaluated to design an initial draft of the case management training curriculum. Ultimately, the curriculum would be designed so as to serve as a model template for cassation and appellate courts and centered on the following 7 fundamentals of caseflow management:

1. Leadership
2. Stakeholder Consultation
3. Court Supervision
4. Benchmarks
5. Control Continuances
6. Early Resolutions
7. Information Systems

The initial draft would be presented to the NSJ team and select judges wherein the SME would collaborate to redraft and finalize the curriculum. Upon final approval, the content would be delivered to a select group of judges and then followed by a session in which the SME would train-the-trainer while at the same time incorporating the feedback of the piloted session into the finalized curriculum.

Limitations

Due to the short duration of this project, the scope of this consultation is limited insofar that conclusions were extrapolated from the findings and observations during the said timeframe and only from the input of those judges, administrators, and staff with whom the SME collaborated. While the draft curriculum model is grounded on the practical experience and research of the SME, it was supplemented using only the relevant documents which were provided and made available by the New Justice Team (NJT). Consequently, findings and recommendations may not be universal to the Ukraine justice system, particularly for those courts subordinate to the appellate part. Another important limitation was related to the automated systems currently in use by the Ukraine Judiciary. The time constraints of this consultation precluded the opportunity for an in-depth review of the courts' automation systems.

Existing case management functions vis-à-vis these systems were therefore excluded from analysis as it pertains to the fundamentals of caseflow management.

Acknowledgements

The SME is appreciative and acknowledges the thoughtful consideration of the SC justices, NSJ, administrators, and the NJT of the Ukraine Judiciary who allowed access into their courts and were generous with their time in responding to the numerous inquiries presented. Appreciation is also extended to the representatives of the Ukrainian Bar Association who provided access into their professional development conference to attend a panel session comprised of justices, legislators, and attorneys. A special word of gratitude is offered to David Vaughn, Nataliya I. Petrova, Anna Sukhova, and Iryna Zaretska of the NJT who collectively spent many hours with the SME discussing the history, organization, and strategic objectives of the New Justice. The trust and confidence they imparted to assist in the efforts to forge a more effective justice system has been an inspiration.

CASEFLOW MANAGEMENT CONTEXT

Principles of Court Administration

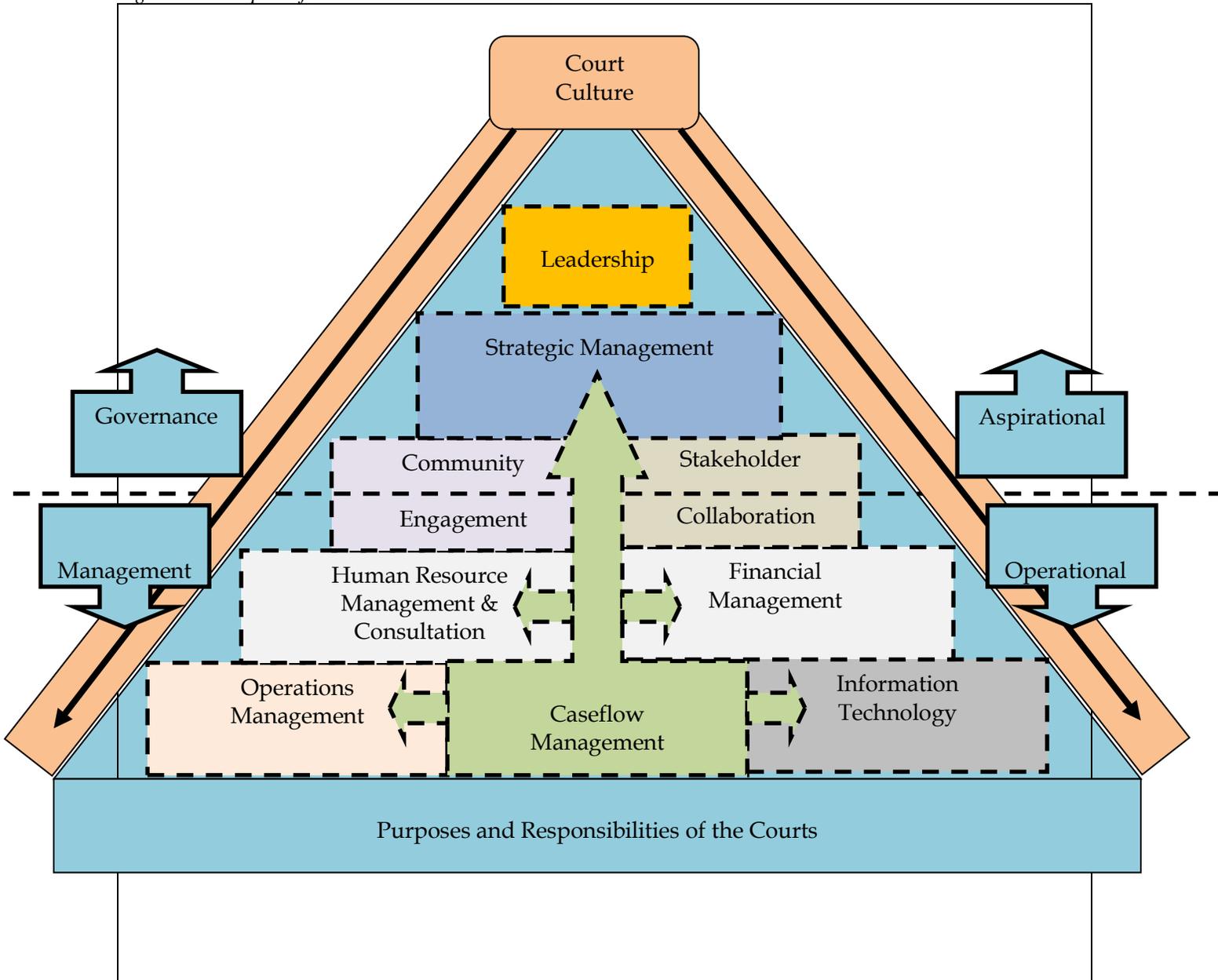
Figure 1 depicts the core elements of responsibility in managing a court. This paradigm is designed around 10 areas of application wherein the purposes and responsibilities of the courts serve as the foundation. It also delineates how the administrative functions differ in their governance/aspirational and management/operational capacity. The equilateral triangle from which the model is based portrays the equivalent importance of all of these functions; and while no one area of responsibility is greater than the other, caseflow management is at the very heart of the model because it represents the “product” of the court’s work. Ensuring that individual justice is given to individual cases is the *raison d’être* of the court. Caseflow management is the coordination of those activities and resources so that this underlying purpose is not compromised or otherwise not attained due to unnecessary delay. Delay, perhaps more than any other single factor, vitiates all other efforts made by the court to achieve justice. Indeed, developing methods to reduce and eliminate delay is a fundamental responsibility because besides discrediting the purpose of the court, it is destructive to its very existence. Ernest Friesen explained the importance of delay reduction in this way:

“The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist...Justice is lost with the passage of time...No matter how you look at it, whether it’s a civil or a criminal matter, time destroys the purposes of the courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Case management is what we’re about in controlling delay”¹.

¹ Steelman, D. C., Goerdts, J. A., and J. E. McMillan. 2000. *Caseflow management: The heart of court management in the new millennium*. Williamsburg, VA: National Center for State Courts, page 12.

Moreover, the triangle in this context represents the stability of the court, independent from political whim and influence, and embodies the tradition and formal procedure which guides it. The court's predictability is what enables economic development, sustains the government's legitimacy, and cultivates the democratic institution. The equilateral triangle also holds its place in mathematics as embodying ideal proportions. The dotted parameters of the functional areas represents the fluidity and permeability of one skill set to the other; in so doing, the expected distribution among these functions is ideal. A brief description of each element is noted below and provides the context of how caseload management is necessarily connected.

Figure 1. Principles of Court Administration Model



Purposes and Responsibilities of the Courts

The purposes and responsibilities of courts are the foundation for everything courts do. They determine and inform not only what judges do in their adjudicative roles but also how judges in their administrative roles, along with staff and managers, perform and make decisions. The following represent the core foundation of the purposes of courts, which have been widely accepted and serve as a basis for the other elements from which the model is grounded:

- 1) Assure individual justice in individual cases
- 2) Assure the appearance of individual justice in individual cases
- 3) Provide a forum for the resolution of legal disputes
- 4) Protect individuals from the arbitrary use of governmental power
- 5) Create a formal record of legal status
- 6) Deter criminal behavior
- 7) Rehabilitate persons convicted of crime and
- 8) Separate some convicted people from society.²

Court Culture

Institutional court culture is important as an over-arching reality for five key dimensions of the organization: dominant case management style, judicial and court staff relations, change management, courthouse leadership, and internal organization. Culture for an organization is akin to character for an individual. Character, it is said, portends destiny only after it is preceded by thoughts, acts, and habits. The culture of the court comprises its values, attitudes, beliefs, and customs, which, in turn, direct its “normative” practices and way of thinking about how the organization’s members resolve issues and the extent to which they carry out the purposes and responsibilities of the court. Organizational culture is depicted in the model as flowing downward and surrounding all of the administrative elements of the court because of its extensive influence on the court’s governance, management, aspirations, and operations.

Leadership

The art and practice of leadership is fundamental and (as expounded upon below) central to effectively managing cases. Leadership type and style can and do vary, but the extent to which (or lack thereof) the court places in taking ownership of guiding the institution toward its goals matters immensely, however slowly the intended results materialize. Good leadership influences/drives the court culture over the *long-term* toward achieving the operational and aspirational ends in support of the foregoing purposes and responsibilities. While leadership is not traditionally a part of the law school pedagogy, attorneys (and now judges) generally do possess some of the inherent qualities that are needed in the application of good leadership. For instance, the practice of law requires critical thinking skills that are analogous to those required for effective leadership, such as assessing complex problems, formulating diagnoses, and generating action plans (short and long-term strategies). Apart from ability, however, leadership involves the *willingness* of judges to take ownership of the court organization that is combined

² National Association for Court Management. 2004. *Core competency curriculum guidelines: What court leaders need to know and be able to do*. Williamsburg, VA: Author, page 12.

with an intrinsic drive to do what is grounded in the purposes and responsibilities. In this instance, it necessarily involves becoming familiar with the principles of caseload management (the operational basis for why the courts exist) and then implementing those principles in practice. In order for leadership to be effective (a continual work in progress), it involves those charged with the direction of the court to establish a clear mission, a vision, strategic plan, and culture that is conducive to that course of action.

Financial Management

Financial management embraces planning, preparing, presenting, justifying, monitoring, and adjusting, as needed, the budget, and evaluating budget decisions. It also includes a court's responsibilities to assure that imposed fines, fees, and penalties are collected as appropriate. Like case management, financial management impinges upon every other aspect of responsibly managing the court. It is tied to and driven by both strategic and long-range planning. As with other government entities, courts do not set their own budget, but must work within whatever the funding authority allocates. It generally involves the decision-making that accounts for the environment, process, and individuals' strategies.³

Operations Management

Operations management is a catchment area of court administration that covers a wide spectrum of both general and specialized services. Each is an important function or responsibility of a court, but on its own does not rise to the level of the functions identified in Figure 1. Key components of "operations" include interpreting services, mailroom services, reporting and transcription services, telecommunications and video conferencing, fleet management, facilities and grounds, safety and security, emergency management and continuity of operations, and records management.

Human Resources Management and Consultation

Courts are fundamentally a people business and not just from the perspective of the public served, but because of the staff and judges who are responsible for doing the court's work. Recruiting and managing the human capital of the court represents a specific set of knowledge, skills, and abilities (KSAs). It includes recruiting, hiring, labor/management relations, training, position control, evaluation and feedback, policies and procedures, progressive discipline, surveying staff needs and opinions, incident reporting, compensation study and analysis, and workforce forecasting. The separate management of judges is generally the responsibility of the chief or supervising judge and thus falls outside the administrator's purview. Having said that, an administrator may fill a "consultation" role for the chief or supervising judge on organizational fit or a specific management issue involving a judge.

Information Technology

Technology is an inescapable, as well as, indispensable element of contemporary courts in fulfilling purposes and responsibilities. Almost universally it is used for case management.

³ See Rubin, I. S. 1997 for an in-depth analysis on the decision-making model.

Increasingly, it is improving courts' communication with litigants, attorneys, external stakeholders, and the general public. Although some courts around the world are engaging their respective public through social media outlets, most predominantly rely on their web sites to improve the information available about cases, the court, and court procedures and to enable the digital filing of documents by litigants. Web sites also are the vehicle for the sharing of press releases and for the public gaining data and budget information about court operations. Technology also is used for the court to obtain better data about operations to guide improvements. Transparency and accountability are improved as the use of technology expands.

Community Engagement

Community engagement supports and improves the accessibility and transparency of a court. It also puts a "human" face on the courthouse that can improve public support for needed and desired improvements, particularly if these require budget increases. The imperatives underlying community engagement seems particularly important in light of the new case filing "filters" that the Ukraine Judiciary recently instituted and the impact that these changes have had on the public. Community engagement is an area that is often overlooked when leadership is juggling multiple internal and external demands – a current reality of the Ukraine Judiciary and one in which its leadership should be cognizant so as to not compromise its intention to educate and engage public stakeholders. Because the judiciary often must be its own public advocate, with some support from the public and private Bar, getting ahead of community concerns is critically important. Media relations and volunteer coordination could also fall within the scope of community engagement, as would seeking feedback from those using the court and, more broadly, the community. These efforts are indispensable to address the need for courts to be perceived in doing justice. They also help to advance recognition among the public that the court is fair and accessible.

Stakeholder Collaboration

Stakeholder collaboration is an inherent part of managing a court because the court depends on many external agencies and individuals to be able to function. A partial list from the initial visitation of the Cassation Courts includes the prosecutor's office, the defense counsel office, private attorneys, social service agencies serving and supporting people involved in court cases, correctional institutions, law enforcement, and political bodies and officials. Consequently, regular and frequent collaboration with the numerous stakeholders that affect the courts' work is a necessity and should be carried out in the appropriate manner so that it does not violate the Code of Judicial Ethics and the Bangalore Principles of Judicial Conduct. With regard to caseload management, examples would include formal collaborations in speedy trial committees, case management committees, coordination committee meetings/forums. Each of these involves multiple stakeholders coming together on a regular schedule to discuss and resolve shared issues. Informal and ad-hoc, one-on-one meetings, can sometimes facilitate and improve collaboration and understanding in some jurisdictions, however the courts expressed a preference to maintain the formality of these meetings with stakeholders so that they are open and a part of the record.

Strategic Management

Organizations, including courts, should evaluate the current state of affairs (retrospective) as well as strategizing what the court should achieve and look like organizationally in the next 3-5, 10, and 20 years (prospective). Akin to the function of human resources, these areas require specific KSAs. This will require Ukraine leadership to have foresight (the ability to look over the horizon and see the big picture), insight (the ability to be discerning and determine what is most important), and action (the ability to make decisions on the best path forward). More specifically, strategic management involves what the Ukraine Judiciary will *do* to succeed in accomplishing its purposes and responsibilities. For instance, the SC aspires to effectively and efficiently manage the judiciary's caseload from filing to resolution. The strategy that it follows to achieve this vision would include, among other things, providing the basic and advanced caseflow management training for its judges and management teams, instituting best practices, evaluating benchmark performance standards, and publishing the outcome data.

Caseflow Management

Caseflow management is at the center of the functions performed by the judiciary because ultimately courts exist to bring cases to a just resolution as quickly as the circumstances of each case warrant. Caseflow management is about managing this process as effectively and efficiently as possible. The types and nuances of cases vary, but the principles of effective case management are universal. Whatever specific procedures are developed for different case types and for individual cases, the process of case management touches upon every aspect of operations. Thus, caseflow management informs and drives all other operational roles and responsibilities; consequently, it is portrayed in the model as central, above the purposes and responsibilities and with arrows impinging on all other functions. Accordingly, all administrative areas are, justifiably, in support of this core function.

Fundamentals of Caseflow Management

Solomon, Cooper, and Bakke defined caseflow management as the “coordinated management by the court of the processes and resources necessary to move each case from filing to disposition” irrespective of how that disposition is ultimately decided⁴. Put succinctly, case management is “the process by which courts convert their inputs (cases) into outputs (dispositions)”⁵. The National Association for Court Management (NACM) remarked on its importance:

“The quality of justice is enhanced when judicial administration is organized around the requirements of effective caseflow management...and is the process by which courts convert their “inputs” (cases) into “outputs” (dispositions). The quality of this process

⁴ Solomon, M., Cooper, C. S., and H. Bakke. 2002. Building public trust and confidence through effective caseflow management. In *The improvement of the administration of justice*, 7th ed., ed. G. M. Griller, E. K. Stott, Jr., and J. Fallahay. 111-129. Chicago, IL: American Bar Association, page 111.

⁵ See Note 2 *supra*, page 12.

determines how well courts achieve their most fundamental and substantive objectives and purposes. Properly understood, caseload management is the absolute heart of court management”⁶.

The term “caseload” is somewhat misleading in that it insinuates cases moving through the Ukrainian Judiciary at an uninterrupted pace. Clearly, this is not what happens in reality. Rather than resembling a suggestive river running downstream, once filed, cases are in “stop-and-go” traffic until they reach their destination (disposition). The type of disposition reached governs the destination’s distance. For instance, the exit out of the traffic for a cassation matter with few contemplative factors is much closer than one which can potentially set new precedent. Not unlike other courts, individual factors of the cassation courts such as resources, personnel, and local legal culture can dictate whether the congestion is moving through two lanes or six lanes, if the weather is inclement, or whether there are any “accidents” on the road. Because of these sometimes vast differences in influence and resources, the local conditions and culture of the court *must* be considered in tailoring the best approach in carrying out this central purpose. Having said that, caseload is still characterized as the life of a case that consists of a series of events that are separated by varying lengths of time.

Delay is not inevitable, but rather should be regarded as being either necessary or unnecessary. Much of what is involved in case management is distinguishing between the two. Unnecessary delay “causes injustice and hardship...and is the primary cause of diminished public trust and confidence in the court”⁷. The American Bar Association (ABA) submitted that unnecessary delay constitutes any elapsed time that falls outside that which can be reasonably expected for court events to occur⁸. Moving a case from filing to disposition is a robust test of the court’s effectiveness. Quite simply, the prevalence of delay is correlated with the court’s commitment to reduce it. The SC’s efforts to efficiently manage the disposition of its caseload will necessarily involve two specific task-oriented functions: first, the court’s screening and monitoring of cases and second, its control of events (early and continuous).

Delay often occurs when the judge and attorneys accept it as an ordinary expectation of case processing. While the court is charged with controlling the pace of litigation of its cassation filings, it cannot be overstated that the consensus among judges and attorneys must be that unnecessary delay is first, a problem and second, unacceptable, before any strategy and training to reduce it will have the intended long-term effects the SC desires. In fact, it *is* the judge who is responsible for managing cases. Staff and administration, albeit essential, are ancillary regarding this role.

⁶ Steelman, D. C., Goerdts, J. A., and J. E. McMillan. 2000. *Caseload management: The heart of court management in the new millennium*. Williamsburg, VA: National Center for State Courts, page 12.

⁷ Bureau of Justice Assistance. 1997. *Trial court performance standards with commentary*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, page 10.

⁸ American Bar Association. 1986. *Defeating delay: Developing and implementing a court delay reduction program*. Chicago, IL: Author.

Active caseload management is fundamental to a successful program. This relies in part on research from which the cassation courts should use to make informed decisions. Some of this data includes generic caseload statistics, impact studies, and longitudinal reports. There exist several techniques to managing the caseload; however a few concepts have been universally accepted and proven to be successful in managing the caseload. To that end, the Ukraine Judiciary should likewise institute those practices into their operational models. Solomon, Cooper, and Bakke highlighted the following seven characteristics of an effective caseload management system:

1. Judicial leadership and commitment to court management of the pace of litigation.
2. Consultation by the court with the organized bar and criminal justice agencies regarding caseload policies, procedures, and performance.
3. Court supervision of case progress from filing to final disposition.
4. Time standards and operational goals for case processing.
5. A case monitoring and information system to monitor the caseload and to identify any cases that are in danger of exceeding established time limits and goals.
6. A credible scheduling system that assures that court events occur on the first scheduled date.
7. Court control of continuances⁹.

Leadership

Research findings in the administration of the courts particularly as it relates to its management of cases underscores the importance of the organization's leadership. Accordingly, leadership development should be at the center of any case management training program. The Ukraine Judiciary will find (as other courts have consistently determined) that the costs of leadership development programs are negligible when compared to the long term returns of a well-trained judicial executive. In this regard, the court is not unlike any other public entity such that this consultation is one of many steps that the Ukraine courts regard as an investment strategy to endorse and support its leadership, which is critical to enhancing the quality and delivery of justice through its core function of caseload management. There are four distinct, however connected, ideas vis-vis defining leadership. First, leadership is a process that effectively accomplishes organizational goals of managing its caseload. Conceptually, leadership cannot be separated from accomplishing its principal objectives. Second, judges (like administrators) can learn leadership skills. Third, leadership is a group process that requires influencing a variety of stakeholders using an assortment of strategies. Fourth, there are a range of techniques (all of which can be learned) that judges can utilize to influence and strategize to accomplish the court's case management objectives.

⁹ Solomon, M., Cooper, C. S., and H. Bakke. 2002. Building public trust and confidence through effective caseload management. In *The improvement of the administration of justice*, 7th ed., ed. G. M. Griller, E. K. Stott, Jr., and J. Fallahay. 111-129. Chicago, IL: American Bar Association, page 113-115.

Stakeholder Consultation

As mentioned, the life of a case consists of a series of events that are separated by varying lengths of time. Managing the caseload involves an assurance that these events are meaningful; that is, the activity and preparation required for the event to take place on the scheduled date is completed before that date by all involved stakeholders. Gathering information from different stakeholders offers a wider perspective of the challenges that delay dispositions. Moreover, the fact that case management is central to the court's purpose means succeeding in this realm of the organization can bolster judges' ability to effectively manage.

The extent to which Ukraine seeks to achieve its case management goals will necessarily require the active cooperation of non-judicial entities including high-level representatives from the jail, police agencies, legislative bodies, and attorneys from each of the four jurisdictions. Apart from the committee and respective subcommittees that good case management requires, stakeholder partnerships for the purposes of collaboration should be forged and managed. Likewise to committee meetings, these partnerships require a forum for discussion but attendance must be made mandatory. Lack of attendance is indicative of an ineffectual commitment to collaborate. For these purposes, collaboration is defined as "a mutually beneficial relationship between two or more parties to achieve common goals by sharing responsibility, authority, and accountability for results...to create a shared vision and joint strategy to address concerns that go beyond the purview of any particular party"¹⁰. In the course of maintaining the partnership, data should be shared on how handling the caseload in an efficient manner improves the expectations and demands of the public. Bona fide collaboration, therefore, exists when stakeholders take the initiative to understand and accommodate the challenges of other stakeholders for the common good.

Court Supervision

Cases are resolved when stakeholders have what they believe is adequate information upon which to act. Supervising the court entails setting clear expectations for attorneys so that they are understood and communicated to their clients. There are four axioms associated with this fundamental:

1. Lawyers settle cases, not judges.
2. Lawyers settle cases when prepared.
3. Lawyers prepare for significant events.
4. Decision makers decide when they have sufficient information to act.

Along this vein, there are four principles in overseeing the progress of a case that engenders a culture of expectation:

1. Early court control.
2. Continuous court control.

¹⁰ Chrislip, D. D., and C. E. Larson. 1994. *Collaborative leadership: How citizens and civic leaders can make a difference*. San Francisco: Jossey-Bass, page 5.

3. On a schedule that incorporates enough time to prepare, but short enough so that it encourages preparation.
4. Create the expectation and reality that events will occur when scheduled.

The judges’ supervision of cases encompasses controlling time such that “any elapsed time beyond what is reasonably required for pleadings, motions, and court events is eliminated”¹¹.

Benchmarks

Instituting benchmarks and gauging performance along those established standards and goals is essential to a successful program. This relies in part on research including generic caseload statistics, impact studies, and longitudinal reports, from which the judge can juxtapose to the said standards and goals to make informed decisions on how to proceed with the case. By way of example, Figure 2 illustrates the ABA and Conference of State Court Administrators (COSCA) processing standards and goals for the noted case-types. Information systems that will eventually be instituted in the Ukraine courts should generate the appropriate reports from which judges can assess the performance of their court to the established benchmarks.

Figure 2. Case Processing Standards and Goals

Case-type	COSCA Case Processing Standards	ABA Case Processing Standards
Criminal	<ul style="list-style-type: none"> ➤ Felony – 100 percent within 180 days ➤ Misdemeanor – 100 percent within 90 days 	<ul style="list-style-type: none"> ➤ Felony <ul style="list-style-type: none"> ▪ 90 percent within 120 days ▪ 98 percent within 180 days ▪ 100 percent within one year ➤ Misdemeanor <ul style="list-style-type: none"> ▪ 90 percent within 30 days ▪ 100 percent within 90 days
Civil	<ul style="list-style-type: none"> ➤ Non-Jury Trial – 100 percent within 12 months ➤ Jury Trial – 100 percent within 18 months 	<ul style="list-style-type: none"> ➤ 90 percent within 12 months ➤ 98 percent within 18 months ➤ 100 percent within 24 months

The National Center for State Courts (NCSC) highlighted five reasons why appellate courts should utilize benchmarks to evaluate its performance. First, the empirical data offered by the measurements allows the court to develop policy and procedure based on outcomes that are consistent with reality, rather than perceptions or anecdotal information, which may not be entirely accurate. Second, the measurements focus on aspects of the operation that have the greatest impact on court users thereby ensures that resources are gauged toward these areas. Third, given that the methods focus on outcomes, it fosters creativity among court staff in developing innovative means to achieve desired ends. Fourth, it allows the court to articulate its budgetary needs while maintaining accountability through evidence-based data. Lastly, since courts operate from a budget funded by taxpayers, the public is entitled to objective data by which they can evaluate performance¹². Furthermore, when the court assesses its own

¹¹ See ABA Standards.

¹² National Center for State Courts. 2006. *Future trends in state courts: Performance measurement gains momentum through CourTools*. Williamsburg, VA: Author.

performance and acknowledges its accomplishments and areas of needed improvement, its ability to autonomously govern the role and responsibilities of the third branch of government is strengthened.

The NCSC offers six appellate court performance measures – three of which are directly linked to the court’s management of cases. Measures 2, 3, and 4 provide a methodology by which court managers can examine their management and processing of cases. The measures include clearance rates (measure 2), time to disposition (measure 3), and age of active pending caseload (measure 4). Clearance rate is regarded as the number of outgoing cases as a percentage of the number of incoming cases. The purpose is to determine:

“Whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, from month to month and year to year, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements may be made. Courts should aspire to clear (i.e., dispose of) at least as many cases as have been filed/reopened/reactivated in a period by having a clearance rate of 100 percent or higher”.

Time to disposition is the percentage of cases disposed or otherwise resolved within established time frames. The measure is intended to be used in conjunction with clearance rates and age of active pending caseload, to assess the length of time it takes a court to process cases. The court’s performance should be compared with those guidelines that have been established for the respective jurisdictions in the Ukraine Judiciary.

The age of the active cases’ measure refers to the cases that are filed, but are not yet disposed. It is measured as the number of days from filing until the time of measurement. It is noted as follows:

“Having a complete and accurate inventory of active pending cases as well as tracking their number and age is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the number and type of cases drawing near or about to surpass the court’s case processing time standards. Once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes”¹³.

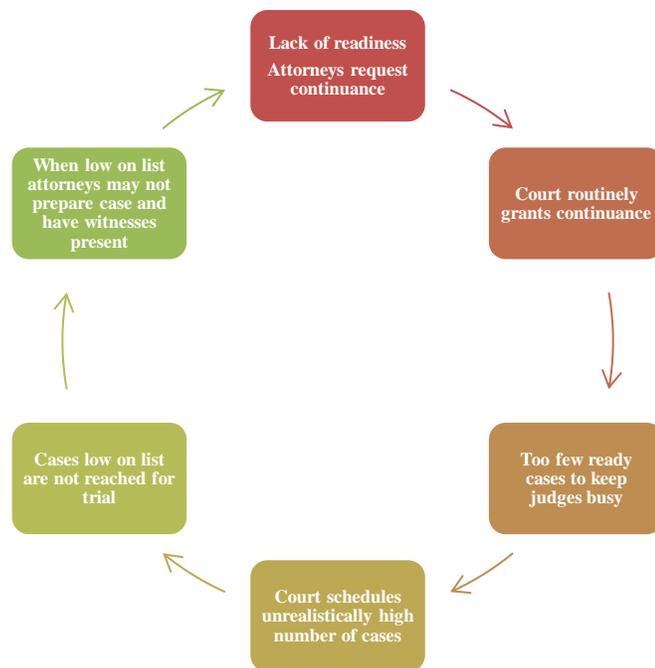
Control Continuances

Controlling the number of continuances in an actual court environment always proves to be a complicated affair than what hypotheticals offer. For this reason, training must provide those relevant and actual instances when adjournments do occur (as noted in the recommendations section of this report – “concept and concrete example” method of

¹³ Loc. Cit.

instruction). Adjournments will always encumber the courts, but what is quintessential to moderating its impact revolves around the intangible, “atmosphere of expectation,” and then operationalizing it in how the court functions. Adjournments on the whole cannot be eliminated, however successful courts understand the distinction (and implications of the conundrum) between time that should be granted for *this* case on *this* occasion, as opposed to time which is unreasonably required for an ill-prepared party. Moreover, successful courts are good at strategizing expectations with stakeholders so that these differences are clear, and most importantly, enforced. Figure 3 illustrates the continuance conundrum¹⁴. Although controlling continuances is an obvious best practice, limiting the number of continuances is a perpetual challenge for most courts and the on-site discussions with judges and staff in each of the jurisdictions showed that Ukraine was not an exception; albeit it may have more to do with an abuse of the legal procedure by attorneys, which is exacerbating an already burdensome issue. Notwithstanding the challenge, New Justice must be cognizant that courts that fail to control continuances transmute the caseflow process into an iniquitous cycle that inevitably advantages one side over the other and (most importantly) depletes the public’s trust and confidence.

Figure 3. Continuance Conundrum Cycle



Early Resolutions

The notion of efficient case management derives from the court’s ability to track its cases in accordance to relative complexity. This implies that all cases are not managed the same with respect to the rate at which and procedures through which they are resolved. To that end, the

¹⁴ Fundamental Issues in Caseflow Management Participant Guide, (2004), 3-10, from Maureen Solomon, Caseflow Management in the Trial Courts, ABA, 1973.

cassation and appellate courts must develop their case management program so that it addresses three questions. First, approximately how much calendar time do particular sets of cases normally require for the judge panels to consider in reaching a disposition? Second, how much effort will the attorney need to invest in disposing these types of cases? Third, how much judicial supervision will be needed for a just and timely resolution? These three questions are designed to maximize the availability of the two most valuable commodities within the court: judicial time and judicial attention, so the cases that require and/or would benefit the most from that attention can receive it.

Information Systems

Case management exists in all courts; the difference among them is how they manage cases: the extent to which they adhere to the purposes and responsibilities – the mission and foundational element of the court and the continual commitment of all judges to accept and implement the policies and procedures of best-practice management. If a towel saturated with water represents the court’s caseload, data-based management enables one to wring the towel; that is, to more efficiently process the non-complex cases out of the system while permitting the complex ones to receive the judicial time and attention and calendar time they legitimately require. Information, hence, is critical in any case management system.

For the reasons noted in the limitations section of this report, the automation systems of the Ukraine Judiciary were excluded from this initial analysis. Preliminarily, however, and as noted in the benchmarks fundamental, the NCSC’s appellate court case management measures (clearance rate, time to disposition, and age of active pending caseload) represent a good instrument from which the SC can use to gauge relative performance. Recommendations will also include utilizing the Backlog per 100 measure so that diverse jurisdictions of the judiciary can be appropriately compared. Apart from aligning performance to goals, these information reports (however they are collected) should be reviewed on a regular basis in determining current processing realities. The court may find that while some reports are no longer needed or used by judges’ teams, others may need to be created.

ON-SITE OBSERVATIONS

As noted in the methodology of this report, the training curriculum for the Ukrainian appellate and cassation courts were considered and developed following a series of on-site observations of the four jurisdiction courts, SC, and in consultation with the NJT and NSJ. Accordingly, the findings following those observations and discussions are segmented along each of those respective jurisdictions and consortia.

National School of Judges

The consultation meeting with the NSJ revealed both a desire and eagerness in developing a model curriculum that could be provided to the SC, as well as to each of the appellate and cassation courts. The NSJ expressed the need for a consistent and uniform curriculum to manage caseloads in light of the different information systems among the jurisdictions. There are presently no standards on teaching these courses and therefore require guidance on structuring and carrying out the training. Moreover, individual judge practices

differ given their background prior to be appointed to the bench. For instance, judges who were previously employed as attorneys can sometimes function in vastly different ways from those who were in academia. Along this same vein, staff “burnout” was occasionally an issue based on how individual judges managed their calendar and scheduled cases. Law clerks are appointed directly by the judges and so tension among this particular staff was less of an issue.

The NSJ mentioned, which was later confirmed by the NJT, that case management training was conducted in the past but was only provided to staff. Judges were provided with coursework pertaining to “time management”, but it did not touch upon the same management principles or best practices that are involved in managing the court. To that end, the NSJ believed that the judges particularly at this juncture in the history of the Ukraine Judiciary would be well served with case management training. The initial set of objectives of the training that were developed by the NSJ were reviewed with the SME, who provided some preliminary feedback on potential deliverables along the constructs of Bloom’s taxonomy (as noted in the recommendations section). The general consensus of the group agreed with the SME that the program, once developed, should be piloted in a set of modules over the course of 2 days to a select group of judges. The NSJ suggested that the program should be initially delivered to a new court – High Anti-Corruption Court which would constitute approximately 39 judges.

One of the most pressing issues plaguing the effectiveness of the court is the ongoing management (or lack thereof) of controlling continuances. Judges do not regularly engage with attorneys or other stakeholders who can impact the pace of litigation. The relationships in which judges are generally active involve the panel members with whom he or she sits with in sets of 3, 5, or 7 along one of the four areas of law. The NSJ also added that the training should include parameters of the kind of information and/or data that judges would find to be most useful in determining relative performance. Once consensus on the types of information that should be provided to judges is reached, the data should be identified in determining vendor requirements. By way of example, the SME gave an ad-hoc presentation of the Backlog per 100 measure and how such a measurement could be used to compare disparate jurisdictions and courts.

Supreme Court

The SC schedules hearings three days a week (Tuesday, Wednesday, and Thursday). There are three criteria in which cases are referred to the GC: Exclusive Legal Problem; Development of Legal Practice; and Restrictions of Law. The sessions typically commence at 10:00 a.m. and proceed late into the evening with staff and attorneys mentioning the day’s session can last a full 12 to 14 hours. Initial observations of the SC waiting area and security screening appeared orderly and generally organized, albeit there were not many attorneys or litigants in the designated space. There were 14 cases scheduled for the day with what appeared to be two different parties (excluding the prosecutor) awaiting their case to be called at the time we were present. The cases scheduled for the day were enumerated on a monitor and color-coded (white signified those cases scheduled but not yet heard; red noted the case(s) currently being heard; and green were cases that were resolved). At the time of arrival, the SC had resolved two cases comprising about the initial two hours of the morning. All attorneys are provided notice to appear at 10:00 a.m., but very few appear at that hour knowing that the court can take multiple hours before their case is called. It was not entirely clear the process by which

the court organizes its calendar and the priority by which those cases are arranged. For instance, it appeared that the court could benefit from staggering the cases in one hour increments and commencing the day an hour earlier at 9:00 with respective parties notified accordingly. A caseload analysis to corroborate the average time the SC requires for each case and the extent to which these types of reports are used in decision-making did not appear to be used based on staff responses. The small sampling of cases were consistent with staff feedback insofar as each case took approximately 1 hour to resolve or otherwise dispose.

Observations of the actual proceeding did not demonstrate anything that appeared to be inefficient or unorthodox with respect to the formality that generally follows the protocol of a cassation court. The session commenced with an introduction including a statement from the present judges who were recusing themselves. The judge seated adjacent to the Chief Justice provided a summary of the case. The prosecution was subsequently permitted to present and argue its case, which involved a complaint against law enforcement for inaction and one in which the claimant (who was not present) requested \$1.8 million in damages. In short, the prosecutor submitted that there was no evidence to substantiate the claim and therefore, requested that the court not grant compensation. Individual judges then began to question the prosecutor and ostensible merits of his argument until all of the panel's questions and follow-up inquiries were exhausted. The public was then dismissed from the gallery while the court went into deliberation. The timetable of the visit did not allow to wait for the court's decision of the instant case, but the SME was advised that deliberations vary in length.

The SME was provided the opportunity to meet with one of the SC Justices on a later date to discuss her overall perspective regarding the judiciary's case management procedures and general organization. Prior to being appointed to the bench, the judge was a practicing attorney for a considerably-sized law firm. She expressed a great deal of enthusiasm in improving accessibility and management and articulated a clear and practical-minded approach in describing the variety of issues and problems that the court is experiencing. With regard to the nature of case management, the judge indicated that it is lacking significantly because it is simply non-existent. Benchmark standards have not been established; consequently, there is no clear direction on individual or system-wide performance.

Based on the discussion, there appears to be a complicated system of analytical services that do not operate in a concerted manner. The disconnect and relative mismanagement is exacerbated in part because the majority of those with oversight of these important functions have no background or experience in management, but rather are lawyers with legal training (more than 1,000 of the estimated 1,259 assigned staff in the judiciary are attorneys). The Justice conceded that while it is not feasible to terminate all of these staff, an alternative course of action must be pursued in training them in the principles and best practices of case management. There is significant overlap of staffing in judges' chambers and the legal departments designated in each of the cassation courts with no clear understanding of activity. Some accountability measures which were instituted recently has assisted in assessing the workflow productivity as it pertains to the legal department. These initial assessments has allowed the different departments to coordinate their work more efficiently. The Justice believed that this should serve as a pilot program and rolled out to other areas of the court to determine organization of roles and responsibilities. To the extent that staff *are* aware of respective

caseflow activity, there are no uniform orientation program(s) that can guide new employees. Indeed, in each of the visits to the cassation courts, while it was later learned that flowcharts were developed as a part of the Michigan State University (MSU) training program several years ago (see Appendix C), these documents were not made accessible during the course of the visitations (to the extent and assuming that they had knowledge of its existence).

The case management system is an antiquated technology and one in which cannot assign work. The administration and communication of the system is not integrated and discussion with the Justice confirmed what was advised by the NSJ – a major drawback of the system is that it does not bridge the communications across all entities of the system. In what would be a basic method of working with a case management system, the system does not allow judges to simultaneously work on the relevant documents that are being considered. The problem of the technology is compounded by the fact that many judges are not computer savvy. The Justice shared that while this is generally known, it is not typically acknowledged. This is going to be particularly relevant and will be an imperative issue with the onset of the unified telecommunications system that is anticipated to be instituted in the next several months. With regard to the unified system, this consultation concurs with the findings and suggestions noted in the 2018 Kiev Baseline Assessment. To reiterate, the recommendations for leaders for the SC and SJA to consider included the following (emphasis added):

1. Set a realistic timetable for development and deployment of the new comprehensive case management module.
2. Design the case management module around defined case management goals as elaborated in earlier sections.
3. Refine the advisory structure for development and deployment of the UJITS.
4. Strengthen success factors and avoid common failure points encountered in case management system development.

Judges require basic Windows program training, which would at the very minimum begin to address case management inefficiencies associated with technology. The problem of the lack of training with respect to basic programs such as Word, PowerPoint, Excel, etc. also extends to some of the judge's staff. For instance, the computer use of some support staff is exclusive to the basic typing of correspondence. The recent appointment of new judges has resulted in these jurists teaching their respective support staff who were employed by the prior administration on the basic uses of these platforms.

The most pressing issue according to the Justice is to ensure a unified case law so that panel decisions are not contradictory and can be expedited in a more timely fashion. The inability to rely on a uniform set of precedents has created enormous challenges in both of these regards. Notwithstanding this very critical problem, the 112 Justices have resolved more than 87,000 cases – 1,200 of which were handled by the 17 Justices currently appointed to the GC. The New Reform Movement inherited an extraordinary backlog with virtually no ability to filter these cases out of the system, which of course, has only compounded the workload volume problem. There is no differentiation of the caseload, rather Justices work from an extensive inventory of cases that are not organized in any statistically meaningful manner. At the same time, there has been a public backlash regarding the judiciary's handling of cases. For instance,

in 2018, of the 2,500 cases that were filed, the clearance rate was estimated to be 50 percent. While cassation court vacancies have been slow to fill, this has not impacted the volume of work in the GC.

New Justice Team

The SME had the opportunity during the course of the visitation to attend a staff meeting chaired by the Chief of Party, David Vaughn. There were a total of 23 staff persons present. The meeting was well organized that included an agenda and a variety of action list and pending items. Each of the staff had an opportunity to briefly discuss their current projects and associated tasks. A segment of the meeting was also reserved to introduce new members of the team. New members were introduced and as an “icebreaker” type of management technique, he/she is asked to tell the group something about themselves not found on their curriculum vitae and an embarrassing story. It was not immediately clear if minutes were being kept in any formal manner and later shared to the group. Having said that, there were a number of important matters discussed including the prospect of partnering with private sector institutions on information technology projects, access to justice initiatives, utilizing court hearing broadcast mediums to bolster transparency and the public confidence in the courts, safety and security updates regarding ongoing political rallies, leadership programming, research into jury management, business process reengineering, among other relevant and timely topics in the administration of justice. Mr. Vaughn’s meeting demonstrated a respectful candor and camaraderie among staff. Indeed, the meeting displayed a type of organization and culture from which the courts could (and should) emulate.

Attorney Conference

The SME attended a professional development session of the local Bar Conference that included a panel of attorneys, Supreme Court Judge, Cassation Court Judge, politician, and a representative of the Bar. Incidentally, the attorney who was one of the litigants during our observation of the Civil Cassation court was attending the session and is perhaps indicative of the active professional development of attorneys who present before the court engage. The session was generally well attended with the panel addressing a variety of important points regarding the status quo of the judicial system. The politician, for instance, raised questions regarding the need for an Anti-corruption Court, among other specialized courts. He highlighted the need for developing a “truer understanding of what we are doing and why we are doing it”. He believed that the SC is established for the purposes of addressing a variety of matters (including those that handle anti-corruption) and thus, there should be no need to develop specializations in spite of the pressures that are brought to bear by the public. He appealed to the sensibilities of attorneys imploring them to balance their needs of representing their clients without unnecessarily delaying matters. One of the other issues he highlighted, (evidently has been an ongoing problem in the country) is the issue that “detention” time – that being, the period in which a defendant is detained pending the disposition of the case is not accounted as “prison” time and is excluded when the period of incarceration is calculated.

The Bar representative of the panel discussed three points regarding the changes to the attorney profession that have been perpetuated by the recent reform efforts. First, confirmation

of authority to represent clients. Second, the order and organization of the Bar Association. Third (and perhaps most relevant to this report), the workload responsibility of attorneys affecting the process by which the court operates including the associated deadlines. The representative also presented a review of recent survey findings to supplement his discussion. The feedback provided by survey respondents were generally positive with respect to the openness and transparency of the SC and workload efficiency of the Cassation Courts. It also showed workload of the GC comparative with other nations. The representative showed a concurring opinion among respondents with the SC Justice's earlier remarks regarding the unification of the case law. Respondents similarly believed this to be of paramount importance to more effectively manage the caseload. Likewise to the internal stakeholders of the judiciary, the survey revealed that attorneys also seek efficient decisions in their cases.

Administrative Cassation Court

The Administrative Cassation Court is presently comprised of 30 judges, but is expected to be appropriated with a total of 56. The additional 26 judges are in the process of being vetted and are expected to be appointed over the course of the current year. Similar to the other cassation courts, four of the judges are assigned to the GC. The cassation court comprises an estimated 247 staff, who assist the judges in managing an estimated 76,000 cases, about half of which 36,000 are in active pending status. Approximately 60 percent of the active pending cases are over the 60-day goal. Additionally, the court inherited approximately 42,000 cases from the prior system of which 23,000 remain in active pending status. Since being established, the court has experienced an increase in its caseload, which has resulted in the additional appointments of judges. During the meeting, stakeholders mentioned that presently it is a particularly busy and difficult time for the court because of the upcoming presidential election. The court serves as an appellate court for election cases and receive an average of 60 appellate case complaints as it pertains to the election. Additionally, the court serves as a trial court in those matters when the defendant is the president, a member of the parliament, or a high ranking government official.

Stakeholders mentioned that challenges vary based on jurisdiction, but generally include the following: collection of documents and evidence, interrogation and transport of witnesses, and the scheduling and payments of expert testimony (e.g. asset evaluation). They noted ongoing problems with the Ukraine Post Office because notifications are not delivered on a timely basis and in many instances not delivered at all. They were confident that following the much anticipated unified telecommunications system and the implementation of an e-courts protocol (an automation of processes), the caseload will improve significantly because they will have different means in notifying the parties. The implementation of the system, however has since been delayed for a period of 2 to 3 months. The court believed that they generally have a positive relationship with the legal stakeholder community. The judge advised that the court attempts to also maintain the perception among the highly skeptical public that they are an impartial branch of government. Reports or other empirically-grounded information were not made available in either of these regards, however the judge did show the variety of photos that were hung in the private corridor of the courthouse depicting the court's advocacy and support for public causes.

Observation of the court proceeding was comprised of a 5-judge panel involving a citizen's complaint of the HQC. Court staff included an unarmed bailiff and secretary. The representative for the defendant was present, however the other party was absent for the hearing. The case was heard notwithstanding the absence of the complainant and examination of the file was conducted on the record. The defendant's representative was provided approximately 1 minute to respond to the complaint at which point the panel proceeded to deliberate. In this instance, the court ruled in favor of the defendant, but was acting in the capacity of a trial court and thus, the matter could be subject to appeal to the GC. The complainant was notified that he had 30 days to appeal and would receive a record of the decision within 5 days. The actual court proceeding appeared to be managed quite efficiently with the panel deliberating for a relatively brief period of time before rendering its decision.

The panel of judges mentioned that the overall workload of the court is substantial, but it is often exacerbated by the abuse of FTA and other technical procedures within the confines of the law, which legal stakeholders can manipulate for monetary benefit or other advantage. Consequently, it is often difficult if not altogether impossible, for the current cadre of judges to manage so that cases are resolved within the 60-day standard. Individual judges are generally responsible for reviewing and scheduling cases. There was no workflow or caseflow chart that was immediately available that could be used during the course of discussion to pinpoint the particular events that most often protract the process. Newly appointed judges are generally orientated to the nuances of the roles and responsibilities of the work by other judges. A more formal orientation program, however is being developed which would also include assigning a mentoring judge to those new to the bench. There is also a current process of developing specialization among judges such that particular cases would be assigned to judges appropriately trained and skilled in managing those types of matters.

Other challenges related to the actual courthouse. The building was retrofitted because it was not originally designed as a court. Judges can be found walking in the same corridors as the public, which can obviously present a number of safety and security concerns. In the lobby of the same corridors which were only moderately crowded at the time of this visitation, there were staggered time schedules posted for litigants to review. The SME was advised that identical schedules were also posted on the court's website so that litigants could review before coming to the courthouse.

Commercial Cassation Court

The Commercial Cassation Court reviews arbitration matters and is also considered the "business court" of the judiciary wherein cases involving banks, corporate affairs, bankruptcy, entrepreneurial legal matters, property ownership rights, and land ownership relations are considered. Stakeholders within this court concurred that the Ukraine Judiciary has undergone a sea change in recent years and they believe many of those changes have since been instituted in the commercial jurisdiction. As a matter of priority, they believed that "accessible justice" should be a centerpiece to the caseflow management curriculum. In many regards, the court suggested that they needed to gain the public's trust and confidence because of recent changes in law and policy. For instance, previous legislation allowed all parties with the right to appeal their matter. The new commercial code, however has since changed the procedure placing

procedural filters at the stage of appellate and cassation proceedings. As a result, the change particularly among those who anticipate appealing after initialing losing the case has not been well received. The same appears to be true of the general community. Having said that, the court revealed a similar problem that the other courts are experiencing; that is, the main challenge has been the adoption and application of procedural filters to ease and advance consideration of uncomplicated and low profile cases.

According to the court's stakeholders, the court has experienced a decrease in backlog and that there is no current backlog in the commercial jurisdiction in light of their data evaluation. In 2018, the court had 15,600 filings of which 14,556 were resolved. They filtered out approximately 2,500 within the initial 10-day period of filing. Within those initial 10 days, the court decides if it will hear the case through the application of filters. Approximately 80 percent of cases are conducted in the court hearings with summoning of the parties to appear which can protract the resolution of the case because of the specific procedures involved in calendaring these matters. The benchmark 60-day standard is applied to all cases without consideration to the complexity of the matter. The court comprises 29 judges, but only 24 of them are assigned on-site to manage commercial cases because 4 are appointed to the GC and 1 is assigned as the Chief Justice. Despite having experienced a downturn in the number of filings, the court anticipates 16 newly-judges to be appointed over the course of the current year. One of the judges assigned to the commercial court also mentioned the application of an e-court model as offering a number of benefits to how cases are currently managed. The court indicated that the rate of adjournments and continuances are generally not a problem indicative by their backlog. They expressed confidence of maximizing the clearance rate once the caseload is further distributed among the 16 judges who are awaiting confirmation.

The court hearing that was observed was comprised of a 3-judge panel. Also present was a secretary, judge assistant, and bailiff. The case involved a complainant (representative of the enterprise) who lost a decision in a lower court and was appealing the matter to challenge the decision. No representative from the bank was present for the hearing. Following the complainant's argument, the panel deliberated for approximately 10 minutes and rendered its decision. With respect to how the case was reviewed and deliberated, there was no apparent delay having taken less than an hour from the time the event commenced until the decision was read into the record.

The jurisdiction includes a total of approximately 100 staff with an additional 100 personnel serving in an administrative capacity. The department head of each unit is responsible for training the personnel under his or her purview. No formal training is provided and is at the discretion of the respective units regarding the process by which they are orientated to the court's day-to-day business. No overall chart of the caseflow or workflow was immediately available at the time of our discussion.

The greatest challenges regarding the efficient handling of cases involved the court's technology (or lack thereof) such as the digital signatures which are not transferable from the judge's chambers to the bench. In practice, however, the procedure of signing the decision with a digital signature appears to be fairly complicated when considering the realities of the day-to-day operations of the court. For instance, panel hearing decisions must be signed by all judges of

that panel on the same day when the decision was drafted. Coordinating those efforts, however are encumbered because the same judges of the panel are often occupied in other court hearings throughout the course of the day. Stakeholders noted the general need for a greater application of information technology solutions so that judges can be more productive. They also cited the development of trial management skills and working with parties who directly impact case processing. Regarding other factors of delay, they mentioned that external parties can sometimes disrupt the session because they are open to the public.

One particular factor hampering the adjudication of cases involves recent changes of the Commercial Procedural Code of Ukraine, which commences the timeframe for legal proceedings effective from the day of delivery for a court's decision. The procedural law, however, which links the start of the delivery day for the court's decision does not consider all of the possible circumstances that can impact the delivery of that item by the postal service. In fact, in most cases postal service operators specify "expiration of the safekeeping period" as a reason for returning a registered letter. Pursuant to the Rules for Rendering Postal Services (clause 116) approved by Decree # 270 dated March 05, 2009, of the Cabinet of Ministers of Ukraine, postal items which cannot be delivered to recipients will be kept by a local post office for one month from the day of receiving it. In so doing, the day of putting on the postal item a mark about "safekeeping period expiration" should not be considered as the day of delivering the court decision for the purpose of Art. 242 para 6 of the Commercial Procedural Code of Ukraine. In view of the above, the court is not afforded the opportunity in the procedure to take further action and (more specifically) to commence a cassation review or return a cassation appeal.

Consequently, judges require additional training in managing these types of unconventional delays that do not impact other courts in the same way. Generally, the belief was that there are no significant issues within the initial 10-day period. When delays are experienced, they occur during the subsequent 60-day period because of the case's complexity. Respondents and plaintiffs can purposely protract the case beyond the 60-day standard and for these reasons judges require communication and management training to develop these skills in dealing with litigants whose aim is to provoke a conflict.

Currently, there is no tracking system in the commercial jurisdiction. Cases are managed in order of priority pursuant to the judge's discretion. Judicial staff advised that judges determine the relative priority of the case in accordance with the procedural terms (which may differ depending on the type of proceeding). Staff accept filings in the order of the said priority by assigning each case a number and category. Once the case is entered into the filing system, the process by which it is assigned to a panel and lead judge is automated at which point the 10-day timeframe commences. In the interim, designated staff will begin to gather the relevant case law for the panel's review. Each panel has a scheduled day and room – the day of which is divided into 3 segments (morning, afternoon, and evening) with each judge serving as the lead judge for the respective segment.

Civil Cassation Court

Observation of the hearing consisted of a 3-judge panel, bailiff, and courtroom secretary and involved a case of a private enforcement officer who contended that a case should be closed.

Each of the parties of the case were represented. The lower trial court ruled that the matter should be enforced and the appellant submitted that all of the bank's documents in the matter should be thoroughly inspected. The crux of the case rested on whether the assets of the bank should be seized. The bank submitted that law enforcement had no legal recourse to seize the assets of this branch, but instead should be directed to its headquarters located in Russia. Following the arguments of each side and a brief deliberation, the panel ruled that the court could not rule because additional information is required before a decision could be reached. In most instances, the court functions as a 3 tier system. This particular case involved an international law matter, namely, it was concerned jurisdiction of the International Commercial Arbitration Court with the Chamber of Trade and Industry of Ukraine, and was heard initially at the appellate court as a trial court in the first instance. The Civil Cassation Court had thus handled the matter in the capacity as an initial appellate court.

The Civil Cassation Court is comprised of 26 judges¹⁵. Each of the judges is assigned a total of 4 staff including a secretary, consultant, and 2 assistants. Staff indicated that the court is oftentimes frustrated with the procedural tactics of attorneys, who purposefully use the technical aspects of the law to delay the case. Most delay occurs in local courts where the file originates prior to being appealed to the cassation court. Staff mentioned that there are 2 reasons procedural law is generally exploited. First, unscrupulous attorneys who seek to delay the case so that they can expense more of their time to clients. Second, procedural regulations allow attorneys to misapply these technical areas of the law so long as they can provide a "valid" reason. Moreover (and unfortunately), the ill-informed public with respect to the legality of these processes gives the impression as though it is the *courts* and not the attorneys delaying the case. New codes have been established in which abuses of the procedural code can be filed, however it is difficult to prove and so in most instances, the complaints have been fruitless. The Statistics Department is currently working to provide the court with an assessment incorporating these analytics. They expect to demonstrate the efficacy of the new provisions and the extent of consequences. The preliminary results however have not been promising insofar as there is only one documented instance thus far in which an attorney was censured for abuse of procedure. There seems to be a disconnect between the public and court on what constitutes fairness – due process vis-à-vis who prevails in the matter – and so this can further challenge the court's efforts.

The sentiment among judges and staff is that understaffing has also been a factor that has extended the time to disposition of cases. The Civil Cassation Court consists of 2 chambers but there is no differentiation between them. Each chamber is headed by a Secretary of the Chamber who is elected by their respective chamber for a period of 4 years. During the course of their tenure, which cannot extend 2 full terms, he or she will have regular interaction with the Chief Judge of the Cassation Court who is assigned to the GC. The organizational structure is believed to contribute to unifying case law which is very much needed at this juncture of Ukraine history. The cassation court is currently comprised of 26 judges in addition to 4 judges who are currently assigned to the GC (30 judges). At the time of this consultation visit, the court expected to fill the 23 vacant judgeships, 22 of whom will be assigned to the cassation court with the remaining judge appointed to the GC. There are a total of 263 currently assigned court staff.

¹⁵ In May 2019, 23 new justices were appointed by this Court, and thus, is presently comprised of 48 justices (one of whom is appointed to the Grand Chamber).

Judges are appointed to specific jurisdiction (civil, criminal, administrative, and commercial). Once the judge is appointed to the civil cassation court, he or she is placed on 3-judge panel. Disputed cases are resolved by randomly assigned 5-judge panels (approximately 30 to 40 percent of dispositions are resolved by these larger panels) in a manner to ensure that the diversity and experience of the judges is equally distributed among the panels. As cases are filed, each is randomly assigned to a judge on a selected panel. The judge is provided a period of 10 days to draft a decision to open the cassation proceeding, deny the proceeding, or may opt to leave the prior court decision without further consideration. These decisions are rendered by a composition of 3 judges (judge-rapporteur and 2 other judges). In those matters wherein the 2 other judges agree to leave the decision of the prior court unchanged, then the final decision in the case is rendered accordingly. If, however, either of the judges disagree to deliver the final decision, then the case proceeds to a panel of 5 judges.

Delay can also depend on the knowledge and experience of the judge, which is presently being addressed as new panels of jurists are formed. Judges who are more experienced have attempted to guide or otherwise counsel new judges on those processes which are permissible so that attorneys do not take advantage of their lack of knowledge. More specifically, the staff advised that certain elements of the law stipulate filters which allow the court to expedite the handling of the case, however judges are currently considering both old and new cases. Filters which are presently a part of the procedural guidelines cannot be applied to active pending cases which were filed prior to the filters being established. The new filter system that precludes some cases from being filed at the cassation level has also been received negatively by the public. Judges spend a significant portion of their time rendering decisions that necessarily requires reasoning notwithstanding if the motion is groundless. Staff expressed frustration with respect to the motions that are filed without merit because they inevitably obstruct other cases from reaching resolution sooner. For instance, requests to recuse the judge in the case can delay the matter up to 20 days. Other reasons and causes of delay relate to the extraordinary number of constituents who file cases pro se and lack the knowledge in legal affairs. As a result, it requires staff to provide much support in guiding them through the protocol, all of which can delay the case an inordinate number of days and, in some instances, months.

Staff suggested that once the court receives its full complement of judges, training should be conducted so that attorneys are included. In this way, they could be instructed on how to be more responsible in their practice and the adverse effects that delay tactics can have on the public. They would also like to see a public awareness campaign so that the community can more easily recognize the current and actual challenges of the court's caseload. Judges have site visits where they meet with trial courts, appellate courts, and Bar representatives to discuss ongoing issues impacting the judiciary, but the results on whether the strategy of these periodic meetings is working is not empirically known. Staff and judges would like to see a formal mentoring program for newly appointed jurists, but the urgent task for the time being is resolving the estimated 12,000 backlog cases that were carried over from the prior administration. They indicated that they have the support and commitment of the Chief Justice with regard to the said cases and intend to devote the necessary resources and time in clearing the matters from the court's docket.

The Civil Cassation Court was the only jurisdiction of the four visited that provided performance data of the court. The Legal Department of the Civil Cassation Court appeared to maintain caseload data in daily, weekly, and monthly reports. Moreover, they present the data to the judges on a regular basis so that they are aware of the performance within each of the jurisdiction's regions. Staff noted the differences among the various regions highlighting that courts often have their own "local legal culture", which affects their decision-making and appeal outcomes. For instance, the reversal rate between regions were remarkable ranging from 50 percent to 8 percent. The benchmark goal was the same as other jurisdictions – a 60-day standard to resolve the case from the point of filing, however parties may agree to extend the goal pursuant to the circumstances of the case and approval of the court.

Criminal Cassation Court

The observation of the court included two hearings, both of which were reviewed by a 3-judge panel. The prosecutor was also present and represented the state on both cases. The court staff present included 2 secretaries (each of whom was responsible for audio and video recording) and an unarmed bailiff. The first case involved a robbery and assault matter. The defense attorney was present and represented his client who was seen via video conference. The SME was advised that the victim implicated in the matter has a right to be present but did not appear. The defense counsel motioned the court to reverse the decision of the lower court and to remand the case for a new trial. Both the defense and prosecution had the opportunity to present oral argument of their position in which each discussed the facts from their perspective and how the decision was rendered by the subordinate courts. The second hearing was heard by the same judge panel with a different lead judge. The case involved an individual who was intoxicated and allegedly shot and killed one person and severely injured a second. The case was 7 years old, however the defendant was not being detained during the appeals process. The defense counsel made a lengthy argument as to why the case should be dismissed, but at one point the lead judge interrupted him to insist that he stay focused on the specific points of law that was currently being considered by the appellate court. After a deliberation by the panel, the cassation appeal was dismissed. In both instances, the hearings proceeded with little to no delay.

Subsequent discussion with the Deputy Chief of Staff of the Criminal Cassation Court noted that the court is plagued with an array of challenges in managing its caseload. The issues generally fall under one of two broad areas – procedural and organizational. With regard to the procedural, specific elements and features of the criminal legislation unfortunately permit attorneys to (again) abuse the process. For instance, both parties must agree for the date of the next court hearings if either of the parties fails to appear before the court. Consequently, in almost all cases where a party is absent, the hearings are not held and the case is postponed. In some instances the defense is not present and on other occasions the prosecutor is absent. Deputy Head of the Supreme Court Apparatus - Head of the Criminal Cassation Court Apparatus could not provide data on which of the two sides is more delinquent in failing to appear, but stated that they are equally at fault for these types adjournments. Postponements in the criminal jurisdiction must therefore be addressed differently than the other courts that were visited because "on the record" decisions when one of the parties is not present very rarely occurs in these types of appellate matters. The Head of the Criminal Cassation Court Apparatus did mention that new legislation is adopted in which the procedure for criminal offenses will be

tracked in a more simplified system for misdemeanors. They are hopeful that the law (if passed) will enable the court to “filter” out cases prior to reaching cassation. The staff also advised that using the loopholes in the criminal law affected cases at the trial level more so than at the cassation level, but still poses a serious enough issue that it should be addressed as a part of the caseload curriculum. Data with regard to these conjectures were not immediately available for review, but staff indicated that the court has very little recourse regarding these continuances. For instance, the judge can file a complaint with the Bar Disciplinary Commission if a valid reason is not submitted, but these complaints are not expedited in short order. Similarly, there was no available data at the time of the visitation on the commission’s actions or the relative effectiveness of those proceedings.

With respect to the organizational challenges of criminal cassation affairs, the issues centered mainly on the workload and overall infrastructure. For instance, the court reviews approximately 100 cases a week among all the panels in the criminal caseload, who are designated in two different buildings. The number of cases exceed the allocation of judges that are currently appointed to the bench. The geographic separation of the court also results in inefficient practice. Presently, the court includes a total of 29 judges¹⁶ (4 of whom are assigned to the GC). The remaining 25 judges are divided into 2 chambers (12 in one and 13 in the other)¹⁷. The judge panels for the chambers are structured as follows: the 12 member chamber is divided into 4 panels with each panel comprised of 3 judge members and the 13 member chamber is divided into 5 panels (4 panels have 3 judge members). A computer system randomly selects 2 other ad-hoc judges from the other 4 panels of the chamber to rotate into this sole-appointed judge panel). The workload is taken into account by the system that was tailored for these judge assignment purposes.

A review of the organizational chart requires greater detail and clarification because the one provided was not entirely consistent with how staff described the system of organization in the judiciary. Head of the Apparatus indicated that the Chief Judge of each cassation court determines the possibility and/or desire for a deputy judge to be appointed, who can serve as a liaison. A liaison judge serving in this capacity could be beneficial to the court in its collaboration with the GC. ~~There are no formal, regular meetings with persons outside of the judiciary who can potentially impact the movement of cases.~~ Judges generally collaborate among themselves by participating in seminars, ad-hoc discussions, etc., but on occasion, they will have a working meeting organized by the Prosecutor National Academy. The Criminal Cassation Court within the Supreme Court embarks upon different measures (representatives of the Criminal Cassation Court participate in the working groups meetings with different Parliament Steering Committees and propose amendments to the laws, deliver their opinions on different events, and during official meetings, etc.) with the aim to amend current criminal procedure law and improve written cassation procedures. Quarterly meetings regarding legal matters are sometimes held, but minutes and action lists from these meetings were not readily accessible to the extent that such records of the gatherings are actually taken. The only report reference was that of a semi-annual report, which is maintained by the office of the State Court Administration and includes adjournments due to FTAs of counsel, witnesses, prosecutors, etc.

¹⁶ The number of judges has since changed and is currently comprised of 43 judges assigned to the Criminal Cassation Court.

¹⁷ A total of 38 judges are divided into 3 chambers (12 in the first, 13 in the second, and 12 in the third).

The court's relationship with the penitentiary is mainly guided by the decisions of an investigative judge vis-à-vis pre-trial restrictions including custodial detention and other applications which are not connected to the defendant's custodial status¹⁸.

CONCLUSIONS

Caseflow management is the process by which *all* courts execute their central function (“the heart of court management”¹⁹) of moving cases from filing to resolution. The difference between courts is in how effective they are in managing this process. The management of the caseflow is critical to the purposes and responsibilities of the courts because it establishes the means by which individuals receive procedural due process and equal protection. It necessarily involves the allocation of human capital (judges and staff) and resources, organizing structures and workflows, and coordinating stakeholder activities that routinely impact the caseflow process. The court's leadership, namely chief judges and executive administration, must use these key roles to develop vision and strategies in ensuring the judiciary's caseflow is resolved in a timely and fair manner. These leaders, must therefore, be trained in honing those skills required and indicative by those persons appointed in critical roles of Ukraine society so that they are visionary, articulate, analytical, innovative, and influential. In order to manage those processes to ensure that the caseflow is effective, court leaders require a variety of skills in performing functions that relies on the following²⁰:

1. Coordination with justice system partners — the prosecutor, public defender, social service agencies, the private bar and legislative and executive branches.
2. Common understanding of applicable policies and procedures.
3. Adherence to performance standards.
4. System monitoring and reporting.
5. Use of relevant and evolving technologies.

In terms of application, the caseflow management curriculum should focus training so that the court's leadership is able to do the following²¹:

1. Develop and support effective working relationships with judges, court staff and personnel in other organizational entities involved in court processes, including funding authorities, to enable the court to accomplish effective case management.
2. Identify variations in caseload type and complexity and assess the implications for the court's caseflow and workflow processes and implement new protocols as needed.

¹⁸ Meetings with these particular stakeholders also do not appear to be held on a regular basis, albeit the time to disposition of these matters was of particular concern because approximately 40 percent of those held in the detention center were unindicted.

¹⁹ See Steelman, D. C., Goerdt, J. A., and J. E. McMillan. 2000. *Caseflow management: The heart of court management in the new millennium*. Williamsburg, VA: National Center for State Courts.

²⁰ See NACM Core Guide.

²¹ Loc. Cit.

3. Use management information systems to generate information about operations that allows for the monitoring of case processing.
4. Develop performance standards, protocols for monitoring performance and methods to identify emerging issues and potential resources needed to address them.
5. Contribute to the preparation of information about the court's caseload and caseflow for judges, court staff and other justice system stakeholders.
6. Based on the analysis of caseflow, identify situations where backlogs or other inefficiencies exist along with recommendations for improvement.

The overall visitation left an impression that the court is making progress in earnest over the last several years considering that the most recent amendments to the national Constitution were ratified in 2016. Having said that, this consultation revealed that much work remains to be done particularly as it relates to caseflow management. The merit selection in which the judges are appointed appeared to be carried out with a mounting importance and urgency in light of the procedural changes that have been instituted and the impact that these central figures obviously have on the country's justice system. It is not yet clear how the differences in the judges' professional backgrounds prior to being appointed to the bench will impact their management styles; albeit those coming from law firms or institutions in which attorneys are conversant in using technology to manage their work may come to expect the same level of performance from the court's operations and staff. Many of the stakeholders with whom were interviewed indicated that the public has general trepidations about the Ukraine judiciary. The impression from these discussions was that much of this skepticism has a two-fold basis – the first of which is grounded on the current historical period Ukraine finds itself and second, the recent changes that have been made to the legal procedures that have codified the filing standards for appellate cases. It is worth noting that while the court cannot control for all of those variables that perpetuate the public's dissatisfaction in the courts (or the government bureaucracy in general), mismanaging its caseload will almost certainly exacerbate it. Any large scale caseflow management implementation initiative should be advanced in concert with a public relations effort so that the court duly informs the public of anticipated changes and (most importantly) the rationale and benefit of those changes.

The conclusions and recommendations following this visitation correspond with those that were supported by the subsidiary purpose of the 2018 Kiev Baseline Assessment. That visitation provided the opportunity to record their observations of the case management process in the four cassation courts. The areas of improvement recommended for the case management process are noted below. In particular, those processes related to recommendations 1, 3, and 4 should be included in the training curriculum. An exception to point 4, however should be noted that the hearings at the time of this visitation were observed to be conducted without delay and thus appeared to be done efficiently.

1. Development of system-wide case management goals, objectives and targets.
2. Tuning of manual, automated and future case management electronic systems to accomplish case management goals.
3. Reviewing and analyzing case-processing trends to see why significant case backlogs were received from predecessor courts and whether backlogs will continue to grow under current court structures.

4. Developing more efficient strategies for scheduling and conducting hearings.
5. Once the case management strategy has been defined, developing and delivering targeted case management training for new judges, existing judges and key court staff.

Having participants review their case processing to pinpoint the stages where delay occurs most frequently is generally a part of any training curriculum and should likewise, be included here. For instance the Baseline Assessment team depicted the following chart regarding the general workflow in the cassation courts' electronic registration system. The procedures that were analyzed by that team at the point of intake showed that staff were meeting the procedural timeframes (registering new cases within 24 hours of receipt and assigning justices using the automated judge assignment module within 48 hours). As a part of the caseload training curriculum, workflows should be mapped in similar fashion by participants so that they can review and discuss the process more comprehensively in connection with case management best practices.

**GENERALIZED DOCUMENT WORKFLOW
CASSATION COURTS - UKRAINE**

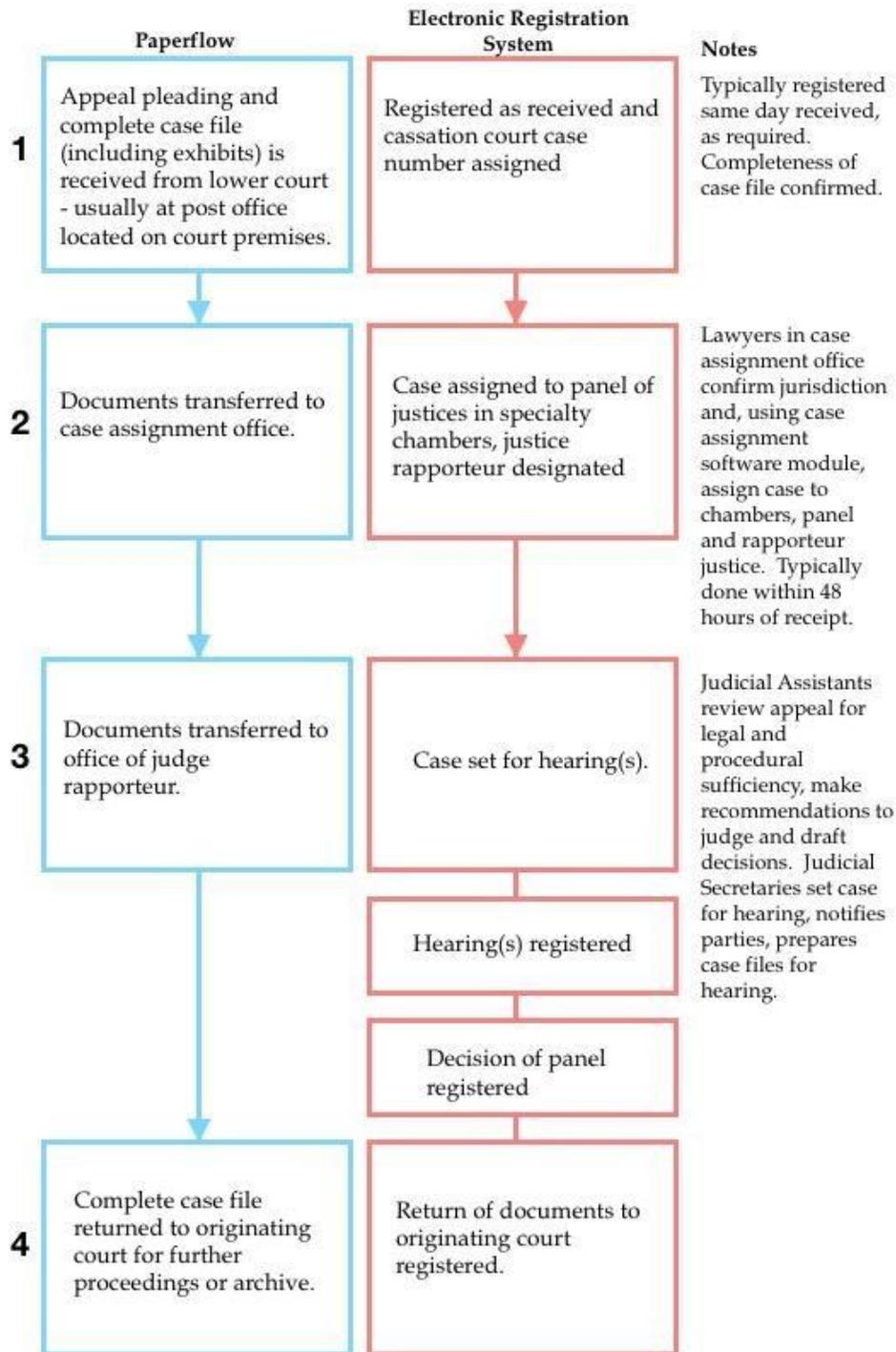


TABLE 10

The entire business operation of the court, that being, the caseload management process from the point of filing to the various dispositions in which cases are resolved requires an in-depth review and analysis so that it can be precisely documented. The review would necessarily assess those aspects of the process that involve tasks and elements of the process that staff and administration oversee, as well as those judicial functions that can only be managed by respective judges. This large scale review will determine the extent to which the operational areas of the court require business process reengineering (some of which could be accomplished through training and information technology). The documentation of the processes could also be used to complement ongoing judge and staff/administration training. At present, there is no accounting of case complexity and to that end, there is a critical need for tracking cases in some regard. The criteria by which these matters are differentiated in each of the jurisdictions can certainly be addressed so that the stakeholders reach a consensus, but managing the cases so that the system is not centered on a FIFO approach would be a prudent and critical step forward.

Although most of the judges and administrative staff were receptive to the preliminary suggestions that were shared during the debriefing segments of the visitation, it was revealed that in some instances, the idea of “caseload management” would be an entirely novel concept to judges. In some instances, some judges will be understandably apprehensive at the suggestion of “managing” the caseload through the use of processing “standards” and “performance benchmarks.” The experience of judges who are vexed by the suggestion that they manage a caseload and then are assessed in accordance with a standard set of benchmarks is not surprising. Indeed, the cassation courts should come to expect similar reactions, but leadership can mitigate the adverse impact by managing its internal culture so that performance-based management is a normative and valued part of the organization. Training, of course, should have very specific operational reference and procedure. External consultants must be guided by internal stakeholders or trainers who are intimately familiar with the nuances of their system so that the core principles of managing the caseload are not disregarded.

The cassation courts require an information technology system that can resolve the coordination of work among judges so that they can work simultaneously from relevant precedents. This would include SC rulings and the cross-referencing of cases. The on-site observations and discussions with the various internal stakeholders demonstrated a dire need for performance metrics even if those benchmarks are at the most rudimentary levels. For many of the courts, there was no immediately available report that showed any basic or advanced level of data collection and analysis of the caseload. Much of the data collection was done manually and so whatever information technology system is instituted into the courts, it should account for the court’s ability to track micro, meso, and macro level performance. The collection and analysis of the data has been particularly relevant and important because it demonstrates the veracity of what and how the court is managing itself to justify, among other things, funding and staff increases. Apart from this, using the data will prove beneficial in its public relations outreach in light of the public’s mounting dissatisfaction with the court’s handling of the backlog.

The issue of “filters” was raised on a regular and consistent basis. This particular challenge, among the other issues confronting the cassation courts, can be addressed by the awareness campaign so that the SC can exercise some degree of control of how case management is being perceived by the general public. For instance, staff suggested that a more

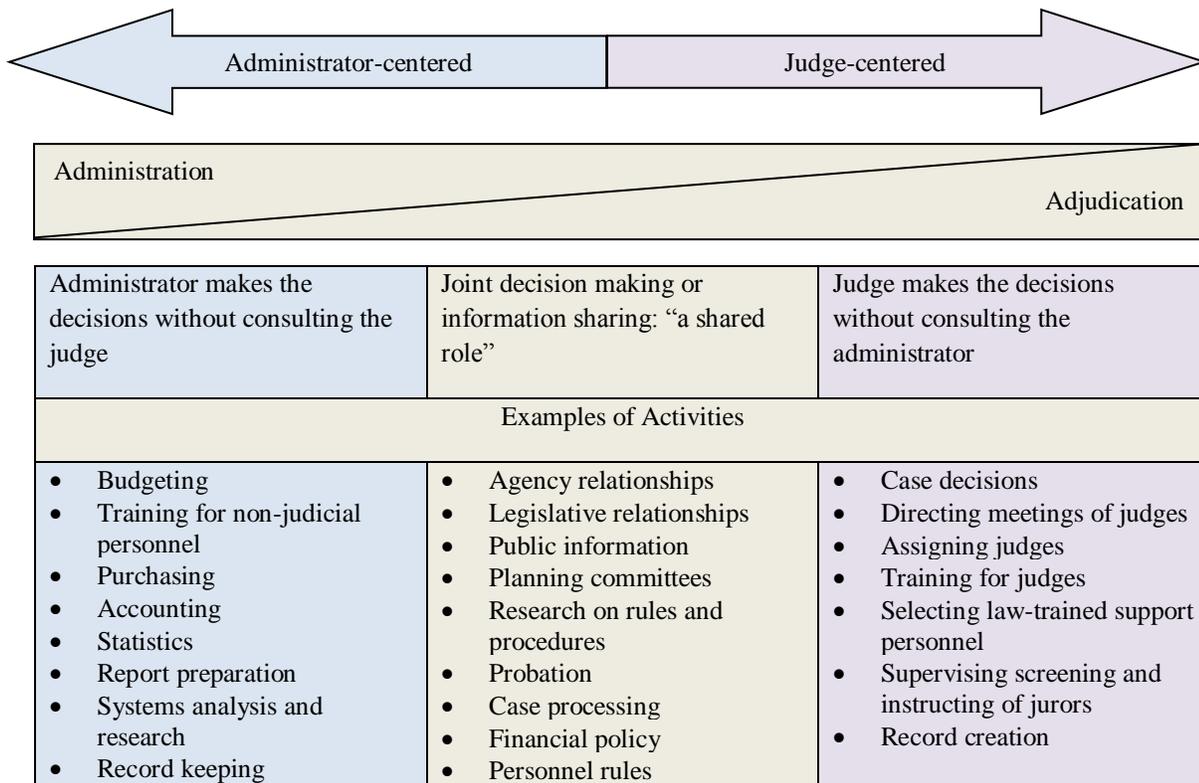
wide-ranging public relations effort must be made in bridging the chasm constituents hold in defining justice – due process vis-à-vis who prevails in the matter. This too is not unlike other systems of justice that are burdened with striking a similar balance between public order and individual rights that are often viewed as conflicting goals. Discussion with staff and judges suggest that while filters are sometimes applied in evaluating cases upon initial filing, the consistency by which these methods are utilized seemed mixed between and within each of the jurisdictions. The extent to which filters are used to actually track cases once they were accepted for filing was likewise unclear. Although it may be premature at this juncture to institute a wide-scale differentiated case management (DCM) protocol, some preliminary analysis in instituting and tracking filters so that cases can be tracked and analyzed is warranted. Tracking can be done on any number of variables that judges and staff should institute, if even to pilot such a practice until it is refined for wider application. Judges should then be trained in these methodologies at the outset of their selection to the bench. Staff can be of greater assistance to their respective jurisdictions by providing a summary of the case filings so that judges can more quickly decide the disposition of those matters. Creating constructs to differentiate cases (as opposed to the FIFO approach) will greatly reduce the time for “simple” cases while allowing judges to allocate more of their limited time toward “complex” matters. Rather than identifying a specialization of cases and assigning to appropriate judges, all cases should be tracked and assigned to judges in a more holistic way.

While it is outside the scope of this study, courthouse security as a function of operations indirectly affects caseflow management. Operations, not unlike the other areas of the model that are summarized in Figure 1, must be designed and instituted in the most effective and practicable manner (form follows function) so that the court’s purposes and responsibilities are supported. Having judges in the same space as the public belies those objectives. While the judiciary representatives mentioned the occasional gatherings between internal court stakeholders and external stakeholders, namely attorneys impacting the processing of cases, these meetings do not occur often enough with any regularity or formal record including an agenda, minutes, action lists, sub-committees, etc.

Although the primary objective of this study was to develop a series of recommendations to develop and teach a caseflow management curriculum for cassation and appellate-level judges, the more long-term goal should be to bring jurists and administrators together on the components of this education. The desire to bring the “executive component” together on caseflow training was shown to have beneficial outcomes for other similarly-situated courts and would likewise be recommended for the Ukraine judicial branch. Consider, for instance Figure 4, illustrating the span of control for judges and administrators, in which case processing is denoted as a shared role²². Cassation and appellate courts should adopt such a perspective especially as it pertains to supervisory staff; in so doing, they will become formal advisors to their respective judges in managing backlog.

²² Stott, E. K., Jr. 1982. The judicial executive: Toward greater congruence in an emerging profession. *The Justice System Journal* 7 (2): 152-179, page 152.

Figure 4. Continuum of Judicial-Administrative Activities



At the very minimum, this would serve to familiarize both sets of the court’s key stakeholders on standards and best practices so that they are strategizing on parallel lines. Furthermore, this would integrate the organization’s values, processes, and performance measures so that there is greater consistency within and between jurisdiction operations. As far as training currently offered by the court, the consultant was advised that when judges are initially appointed to the bench, they are required to participate in a two-week orientation seminar. Beyond this initial orientation, ample opportunities for training exist without disrupting the operation of the court, but they are not always taken. Although an evaluation of the curriculum was not conducted at the time of this study, judges who have recently completed the program purported that they were never fully orientated to case management practices or the role of the team leader. Therefore, for many newly-appointed judges, caseload management and the roles and responsibilities of staff pursuant to these practices is an arcane concept that should heretofore be brought to forefront of the orientation program in light of the importance that it has on their daily work.

Expecting judges to understand and embrace the purposes and methods of caseload management without formal training is not realistic particularly because many of them were practicing attorneys before being appointed. Whereas attorneys expound upon the exception and anecdotal, court managers, as data analysts, are trained to develop policy and procedure on ordinary cases (the largest segment of the caseload) *not* the anomalies (cases which tend to fill one’s recollection). Given the managerial aspects of the work, judges should be afforded with the appropriate training so that the transition is less onerous.

Case management training that will eventually incorporate the unified telecommunications system in monitoring case movement should be offered jointly to judges and supervisory/executive staff. Most recently, a case management seminar was provided by MSU to select administrative staff. The extent to which the learning objectives of that training were achieved and how the acquired knowledgebase was operationalized by staff in the courts is not known. Nonetheless, there is a contingent employed by the court who *is* familiar with some of the tenets of the caseflow management. The NSJ was agreeable to the initial recommendation that judges attend a two-day seminar that is designated exclusively for caseflow management at a single location. If possible, attendance should be made mandatory by the SC Chief Justice.

Once judges have completed their initial orientation, they should be assigned a mentor judge – one who has been acknowledged as having exceptional abilities in managing cases, which is not necessarily correlated with years on the bench. Apart from counseling judges on managing the volume of cases, mentor judges can also provide guidance in complying with past and present procedures which has significantly increased the time to disposition rates as the court disposes matters from both the prior and current administration.

The case management literature shows that in order to achieve efficiency, timeliness, and quality, the court (and the cassation and appellate courts would not be an exception to this general rule) should adopt a three-step strategy comprised of self-diagnosis (processes are examined and goals are set), communication (goals are clarified), and education (training programs for court participants emphasizing efficiency, rather than delay reduction). While delay corrodes the basis of the courts, it is not always viewed as detrimental by attorneys – a fact that was corroborated among the various stakeholders in the jurisdictions. To that end, justice delayed is not necessarily justice denied in the perspective of attorneys, who use delay strategically to reach a settlement, prepare more meticulously for the case, and to acquire more clients than they would otherwise have time to counsel²³. In the case of our visitation, staff believed that the primary motivator for attorneys in manipulating the technical aspect of the procedure for their advantage was to charge clients a greater number of billable hours. Whatever the reasons, delay results when the process of moving the case from filing to disposition is protracted by the assigned attorney (not the court). It is important to note and should be a key part of the training curriculum that the relative time to disposition and backlog are both determined by the “expectations, practices, and informal rules of behavior of judges and attorneys”²⁴; that being, the variations of court culture and significant influence it has on every aspect of the organization. Disparities in backlog and the overall efficiency in how cases are managed may have more to do with the organizational culture than other factors. This key finding is not exclusive to any one court, but rather is shown to be the reality for all courts irrespective of country or venue²⁵; thus, should be a focal point in the curriculum. Ultimately,

²³ Glick, H. R. 1982. The politics of state-court reforms. In *The politics of judicial reform*, ed. P. L. Dubois, 17–33. Lexington, MA: D.C. Heath & Co.

²⁴ Goerdts, J., Lomvardias, C., Gallas, G., and B. Mahoney. 1987. *Examining court delay: The pace of litigation in 26 urban trial courts, 1987*. Williamsburg, VA: National Center for State Courts.

²⁵ Weatherburn, D., and J. Baker. 2000. Delays in trial case processing: An empirical analysis of delay in the New South Wales District Criminal Court. *Journal of Judicial Administration* 10 (1).

with all things being equal, the caseload rate is most often the end product of the attitudes and expectations of judges and attorneys.

To the extent that judges are not already aware, while some attorneys may display their support for caseload management publicly, some of them may harbor deep reservations about caseload management because of the implications it has on their ability to control the pace of litigation and consequently, their personal interests. The court may come to find that the pressure some attorneys exert on the court to relax standards will intensify and perhaps grow more frequent than the current reality. Case management training must prepare judges for these experiences. It is quite natural particular for smaller jurisdictions that a professional courtesy develops among the court and attorneys resulting in a high tolerance quotient for continuances. Once comfort settles in, attorneys, in particular, have a stake in the status quo because of the advantages reaped from an organization with which they have rapport and familiarity. Therefore, in order to make significant progress towards reducing delay, judges (and staff) must be able to recognize and address organizational behavior patterns that supports past practices. Once problem areas have been uncovered, reform measures to enhance efficiency do not come effortlessly, but this training must be conveyed and facilitated as an all-important first step.

The SC will undoubtedly be challenged by judges' resistance to performance evaluations. While some court reforms have attempted to emulate a business model, they remain considerably different from these and other types of organizations. Indeed, the cassation and appellate courts are unique and complex because, inter alia, they operate with limited control over legislative procedure that is enacted, as well as individuals who can significantly impact caseload. The loosely-coupled nature of the court incorporates individuals and groups whose competing interests and objectives do not necessarily correlate with efficient caseload. Moreover, this fragmentation makes prospective analysis (policy futures) especially challenging because of inter-organizational cooperation that cassation and appellate courts must rely upon. These cooperative relationships must be developed and maintained if the court expects to be effective in managing its caseload. Accordingly, the caseload management curriculum must incorporate those strategies that are articulated along the enumerated fundamentals. In terms of reports, statistical reports at the micro, meso, and macro level must again be developed and utilized so that the court's decisions are well informed on how cases are proceeding through the system.

Courts that operationalize the atmosphere of expectation do so through a variety of practices and those specific processes should be discussed during the training. For instance, some jurisdictions require attorneys to document requests for adjournments in a motion and submit it to the court at least three business days prior to the event for review. Some judges may find that attorneys may reconsider requests to adjourn the matter if they know that they must allocate time (that is, money) to documenting a cogent argument to compel the court to postpone the event. This is especially true if the procedure allows the court granting these requests to deny the motion. In those cases where the court must grant the continuance for good cause, training will demonstrate how the courts should nonetheless document the finding on the record for two reasons: First, to ensure individual justice in individual cases (including the perception of fairness) and second, to solidify expectations of the caseload process.

The caseflow management curriculum for the cassation and appellate courts should be developed along the seven fundamentals that are universally accepted as best practice and have been applied to a wide-range of courts in a variety of jurisdictions. The curriculum should be operationalized along Bloom's Taxonomy of learning objectives in which instruction is centered on the following four E's of effective learning:

1. Engaging Interest – personal vignettes, case studies, interactive exercises, and inclusion of visuals such as videos that are specific to caseflow
2. Encoding Information – presenting key concepts relevant to the study of case management so that they are provided in summary format and highlighted through the use of PowerPoint slides and handouts.
3. Elaborating Meaning – linking case management concepts and best practices through elaborative rehearsal (reflecting on the meaning of the material and relating it to actual examples as in for every concept, provide an example). Keys to elaborative rehearsal include the following:
 - a. Relating information to experiences
 - b. Presenting information in different modalities (text, film, and discussion)
 - c. Presenting information in different formats (narrative text, concept charts, spatial diagrams, etc.)
 - d. Encouraging deeper processing through interactive exercises such as self-assessments
4. Evaluating Progress – instruction should gauge judges' progress and understanding of the case management material throughout the 2-day seminar. This can be accomplished through mastery quizzing at the conclusion of each of the 7 fundamentals.

The training program should be designed and facilitated so that it adheres and guides judges through the praxis method so that actions have an informed basis. In so doing, it answers the foundational question: how does caseflow management work in an actual court environment? The focus, thus, must be threefold in accomplishing the objectives of the praxis process: theory (the idea in which caseflow management is based), research (the data and research findings that support or refute the caseflow management paradigm), and application (the exercise or practice of applying caseflow management to the court organization).

Learning outcomes for judges participating in the training should be constructed using Bloom's Taxonomy of Learning Objectives so that their learning experiences are discernible and measurable in accordance to Figure 5.

Figure 5. Bloom's Hierarchical Model of Educational Learning Objectives

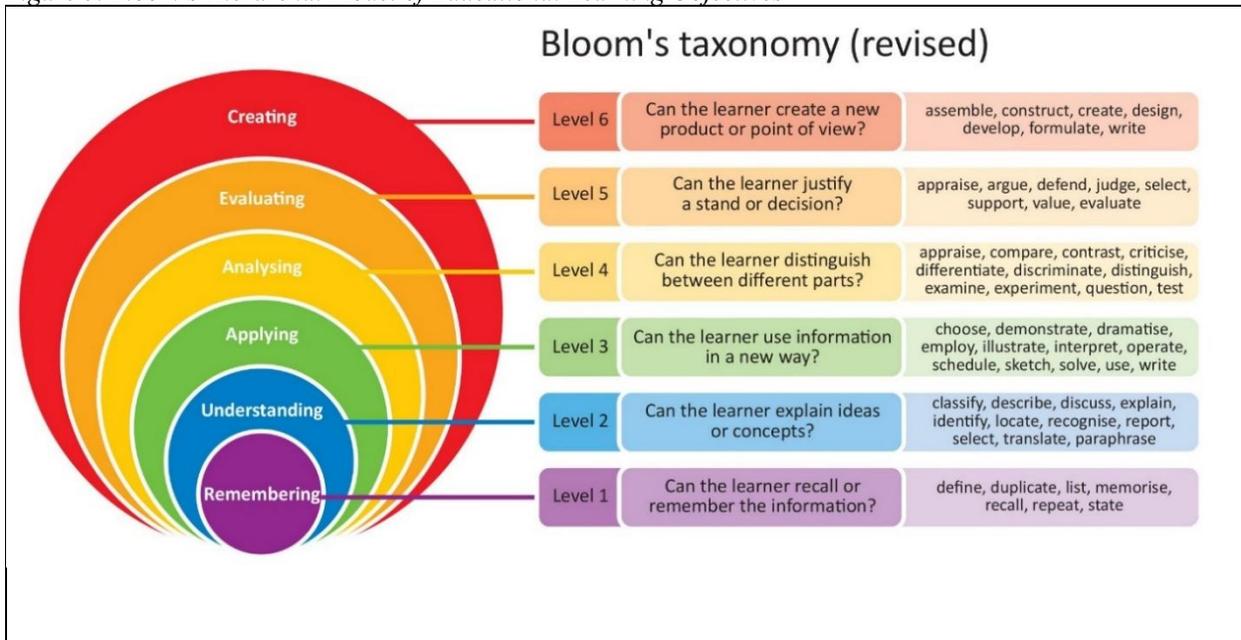
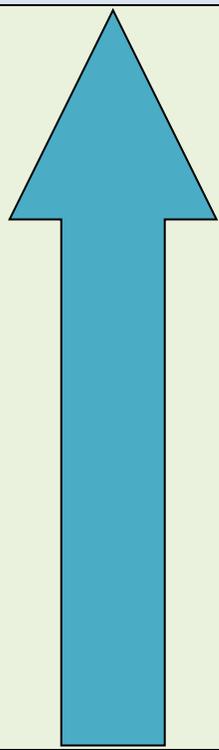


Figure 6 provides a sample by which Bloom’s learning objectives can be applied for each of the fundamentals comprising the caseflow management curriculum.

Figure 6. Bloom’s Taxonomy of Learning Objectives by Level, Domain, and Cognitive Processing

Level	Domain	Cognitive Processing
Level Six (Highest Level)	Creating	Combining different ideas in the service of creating something original or integrating ideas into a solution. <ul style="list-style-type: none"> • Create a new paradigm or specific organizational process that incorporates the fundamentals of caseflow management to maximize the efficiency by which cases are resolved.
Level Five	Evaluating	Judging the value of something based on articulated criteria or logic. <ul style="list-style-type: none"> • Justify or otherwise appropriately evaluate the perspective or position of the caseflow management system.
Level Four	Analyzing	Breaking information into component parts in order to analyze relationships between parts, or to recognize organizing principles. <ul style="list-style-type: none"> • Compare and contrast the components of caseflow systems, data, and processes.
Level Three	Applying	Applying knowledge to new situations or to new problems. <ul style="list-style-type: none"> • Provide examples in applying or using the principles of caseflow management in the court environment.
Level Two	Understanding	Explaining or describing information, often without relating it to anything else. <ul style="list-style-type: none"> • Explain the relevant framework, principles, concepts, etc. of caseflow management.
Level One (Lowest Level)	Remembering	Recalling or remembering facts or terms. <ul style="list-style-type: none"> • Define the terms relevant to caseflow management.



Summary of Recommendations

The following summarizes 16 recommendations that the Ukraine Judiciary should consider in developing and implementing of the caseflow management training curriculum.

1. A consistent and uniform level of training is needed and should be provided to judges and administrators at all levels of the Ukraine Judiciary. Having said that, it would prudent to commence this process in an incremental fashion with the leadership of the organization. It

can then be rolled out to the other areas of the organization as the training becomes a part of the institutional culture of performance and expectations.

2. There are current standards or paradigm in teaching caseload. To that end, a good starting point would be to use the model which has been provided in this report. The model provides the basis wherein the curriculum and associated activities can be launched and later made more specific to the individual circumstances and nuances of the Ukraine Judiciary. The caseload management training should be a part of a more wide-scale formal orientation program that all judges should receive at the outset of their appointment. Although the Administrative Cassation Court advised that such a program is under review, the precise structure of the program to acquaint judges to their roles and responsibilities was not immediately made available.
3. Provide the 2 day training for Judges that will supplement the training that they have already been provided in “time management”. The program should be piloted to a select group of judges where they can provide feedback, which can be used to modify or otherwise enhance the program for subsequent groups. For instance, the lack of a unified case law and the issues that it presents to Ukraine Judiciary is specific that can (and should) be addressed in the training. Other specific issues, for example, such as the delays caused by the public who can attend the open hearings of the commercial cassation court are aspects that should be addressed as they relate to specific jurisdictions.
4. One particular problem that was repeated across each of the on-site discussions involved the court’s lack of effectiveness (and management) in controlling continuances. Part of the issue may be that judges do not regularly engage with those attorneys and stakeholders who impact the pace of litigation. The importance of collaborative relationships and training in controlling continuances are key aspects to the training model provided. Should the Ukraine Judiciary decide to deviate from the model, these particular features of caseload management, as well as benchmark standards should not be excluded. Each of the courts also expressed the principal problem in which attorneys delay the case by manipulating the procedural law. This is an issue that evidently adversely affects each court and so should be included as a specific point of reference in the curriculum. Moreover, courts must become acquainted with the adoption and application of procedural filters so that filings are not unnecessarily protracted.
5. Outcome feedback from the training should be summarized and used in identifying appropriate vendors who can satisfy the needed information technology requirements. In particular, a system that bridges the communications across all entities of the organization appears to be an absolute necessity because of the extraordinary inefficiencies of the current configuration that does not allow judges, among other things, to simultaneously work on a case’s relevant documents.
6. Some judges may require training in Windows programs. The SC will want to consider offering (mandating) this training prior to providing the caseload management training, which is typically gauged toward a more advanced user in technology.
7. Based on the observations at the SC, the curriculum should incorporate discussion of calendaring options for the judges to consider.
8. The curriculum should include discussion of time analysis (time to disposition) in light of the feedback that suggests that the disposition rates among filings vary considerably. Benchmarks should be incorporated in the training and should eventually be incorporated into the institutional culture and analyzed at the macro, meso, and micro levels for the

purposes of developing and implementing policy and protocol. Micro-level analysis, in particular, should review the processes and procedures impacting the specific court. For instance, the Administrative Cassation Court will likely consider the collection of documents and evidence, interrogation and transport of witnesses, asset evaluation, and the inefficiencies of the Ukraine Post Office in their ongoing review and assessment on the causes of delay.

9. It was revealed that there is significant overlap of staffing in judges' chambers and the legal departments in each of the cassation courts. There is, however, a lack of clear direction on the range of responsibilities and relative roles of these staff. The SME concurred with the sentiment among the stakeholders who were interviewed that a more wide-scale training program that incorporates workflow productivity and accountability measures is warranted for all administrators and staff whose work intersects with that of judges. As discussed in the body of this report, their work is not inconsequential to the timely resolution of cases; thus, coupling their training to that of judges has long-term and more substantive implications.
10. With regard to the unified telecommunications system, this consultation concurs with the findings and suggestions noted in the 2018 Kiev Baseline Assessment.
11. The importance of collaboration and the necessity of having formal, regular meetings with stakeholders should be highlighted in the training. Meetings that include an agenda, minutes, and action/pending list of items as demonstrated by the NJT provides a good example in how the work of the court can be planned, organized, and executed. Other forums such as those attended by the Bar association session offer other avenues that can and should be explored to maintain regular and consistent discussion among stakeholders.
12. Developing or otherwise implementing e-court solutions, digital signatures, etc. as was suggested by some of the stakeholders can offer some benefits, but the court should first fully assess its processes and staffing needs so that those solutions can be tailored to the caseflow areas that have been reviewed and substantiated as presenting a problem. Those assessment should illustrate how and to what extent those hindrances within the system can be solved through the application of available technologies.
13. Each of the courts appear to function using a FIFO approach. Along with the different calendar methods already mentioned, training should also incorporate alternative tracking methods within a DCM structure.
14. A public awareness campaign should be instituted insofar as its wide-scale implications on the court making a concerted effort to maximize its case processing efficiency as so many of the interviewed stakeholders conveyed during the visitation. This will be especially useful in managing the increasing number of pro se litigants that some of the courts are compelled to assist and manage through the caseflow process.
15. The fact that little is done and thus expected from the impact that continuances have on the caseflow could be discouraging staffing units from maintaining data. The data, however, can serve to impel change, however slowly, by authenticating what some can dismiss as being anecdotal. Data should be collected along the provided measures and judges, administrators, and staff should be trained in the collection and analysis of those benchmarks.
16. Outcomes for the training curriculum should be developed so that each are measurable in accordance with Bloom's Taxonomy of Learning Objectives as noted in the foregoing models included in this report.