Content
III Annual International Conference

"The Legal Status of the High Qualification Commission of Judges of Ukraine: ways to improve qualification and disciplinary institutions in light of the constitutional reform"

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Enhancement of the guarantees of the independence of judges– main issue of the constitutional reform

A reform is a process of dramatic change in certain areas of public life, governmental and legal institutions and other aspects. It normally modernizes and changes the form and substance of particular relations without affecting their fundamentals though.

Our nation has been going a long way towards approval of the Law of Ukraine *On the Judiciary and Status of Judges.* In fact, the country has worked hard since mid-2000s to harmonize its laws regulating the judicial system and status of judges with international European standards. The European Commission for Democracy through Law (The Venice Commission) provided extensive assistance to Ukraine on this way.

In its multiple joint opinions the Venice Commission emphasized the need to continue judicial reforms on a higher constitutional level. Back in March 2010, this international organization issued a joint expert opinion on the draft Law of Ukraine *On the Judiciary and Status of Judges* and advised "to confine judicial reform not to the legislative level but to undertake a profound constitutional reform, aiming to lay down the solid foundation for a modern and efficient judiciary in full compliance with European standards."

The judge as the holder of judicial power is the key "player" in the judiciary. Professional judges perform a constitutional function of executing justice. This stands behind their special legal status.

Independence of judges is integral to their status, a constitutional principle of court organization and functioning and professional activity of judges. Independence of judges is also an important pre-condition for their impartiality and autonomy and abidance only by the law as they execute justice. It also guarantees that judges properly carry out their constitutional functions to protect human and civil rights and freedoms.

Independence of judges is important for the development of Ukraine as a state of law and requires effective guarantees to be fixed in the Constitution.

On July 4, 2013, the President of Ukraine moved a draft law on amendments to the Constitution of Ukraine to strengthen guarantees of judicial independence for consideration by the Verkhovna Rada. The draft law suggests provisions that would help to protect a judge as the main actor in the judicial branch and make functioning of the judiciary more stable in general.

First, I wish to focus on the amendments to the Constitution related directly to the High Qualification Commission of Judges of Ukraine.

Part One of Article 127 of the Constitution suggests that Ukraine has the High Council of Justice and the High Qualification Commission of Judges of Ukraine.

I should note that practical implementation of the Law *On the Judiciary and the Status of*

Judges, which established the High Qualification Commission of Judges of Ukraine, proved that the country had chosen the right model of the judiciary system with two separate agencies – the High Council of Justice and the High Qualification Commission of Judges of Ukraine.

Launched in September 2010, the High Qualification Commission of Judges of Ukraine has consistently worked in its new status for three years and fully and professionally performed the functions prescribed by the law.

This is not my view as the chairman of the Commission. This is the evaluation of our work by international organizations and diplomatic missions. Regrettably, people tend to talk only about negative things nowadays and do not want to listen about positive changes. We are not alone in this situation though. People in European countries, where courts and governments are much more trusted, are interested in scandals and disclosures more than in news about achievements and successes. But I believe it cannot serve as a reason for lack of action and excuses.

The Law of Ukraine *On the Judiciary and the Status of Judges* has dramatically changed the current approach to selection of the first-time judicial candidates. And it is the High Qualification Commission of Judges of Ukraine supported by the USAID Fair Justice project that put the system in place.

We have arranged three national selection rounds based on the principles of equality, openness, public accessibility, competition and priority to knowledge and skills of judicial candidates.

In 2013, the Commission completed the last stage for judge appointment required by the Law – special training of candidates for judge office. Therefore, training of would-be judges is fully within the competence of a judiciary agency in our country now.

Since its inception, the Commission has been recommending candidates for permanent posts and disciplining judges of local and appeal courts.

The Venice Commission many times stressed the importance of the High Qualification Commission. For example, the Opinion of March 16-17, 2007 of the Venice Commission says that the judges' appointment procedure is a key for court independence in any system and underlined that the High Qualification Commission is a standalone agency bearing responsibility for this procedure imposed by the lawmakers.

The Opinion of October 15-16, 2010 by the Venice Commission directly says: "Another problematic important feature of the Law is the important role attributed to the High Qualifications Commission of Judges and the High Council of Justice. While the former presents characteristics that seem compatible with European standards, the latter definitely is not compatible with these standards. It was recommended that the Constitution be amended so as to bring the composition of the High Council of Justice in line with the European standards."

The Venice Commission has never opined that co-existence of the High Qualification Commission of Judges and the High Council of Justice violates international judiciary principles.

It should be noted that powers of these agencies are clearly distinguished by the Law of Ukraine *On the Judiciary and the Status of Judges* and the Law of Ukraine *On High Council of Justice*. The division of powers is expected to be further improved and specified as part of constitutional amendments.

In addition, the report 'Training of Judges' prepared by the working group "Efficient Judicial Systems" under the project "Eastern Partnership - Enhancing Judicial Reform in the Eastern

Partnership Countries" (May 2012, Strasbourg) underlined: "However, in order to ensure a proper separation of the roles and responsibilities referred to in the CCJE Opinion No 1, the same authority should not be directly responsible for training, appointing and disciplining judges."

As stated above, the functions of the High Qualification Commission and High Council of Justice are clearly divided and not duplicated:

- The High Qualification Commission deals with selection of the first-time judicial candidates and training of judges. The High Council of Justice files a motion to the President of Ukraine to appoint a judge to the position.
- Both apply disciplinary sanctions yet their powers are performed on the different instance levels.
- Existence of these two agencies in Ukraine as standalone and independent institutions in fact ensures the guarantees outlined in the Recommendation of the Committee of Ministers of the Council of Europe of October 13, 1994, in particular:
- the High Qualification Commission of Judges as a special independent and authorized institution submits to the Verkhovna Rada a motion to appoint a permanent judge. If the High Qualification Commission refused to recommend a candidate for a permanent judicial position, he/she has a right fixed in the law to appeal against such a decision with another independent and authorized judiciary institution – the High Council of Justice.
- It is also true for the powers of the Commission to initially examine qualifications of a candidate and the powers to impose disciplinary sanctions.

The Venice Commission in its Opinion of June 15, 2013 on the Draft Law on the amendments to the Constitution, strengthening the independence of judges stressed once again that both institutions can be kept provided that they remain independent and act transparently (Cl 40 of the Opinion).

The Opinion does not object a three-level system for judge selection: the High Qualification Commission recommends a candidate, the High Council of Justice files an appointment motion and the President of Ukraine appoints the judge to the position. The only warning the Venice Commission had in respect to this system is that the role of President comes down to ceremonial vesting of a judge with authorities without any further involvement into his/her career.

If we benchmark the legal importance of powers of the two institutions, we will arrive at the following conclusion: the High Qualification Commission performs an administrative and organizational function for the issues that are subject to the supervisory function of the High Council of Justice, which ensures the right to appeal against decisions of the High Qualification Commission.

Having two standalone and independent judiciary institutions also protects candidates and judges from undue or illicit influence exerted by the decision-making institution (Cl 3 of the Recommendation of the Committee of Ministers of the Council of Europe mentioned above).

Practical application of the judicial reform principles fixed in the Law of Ukraine *On the Judiciary and the Status of Judges* suggests that the current Ukrainian system comprised of two independent judiciary institutions does not conflict with generally recognized international principles in terms of the role and independence of the judiciary. Moreover, it proved that it is effective and must be maintained.

Alongside the powers to recommend a candidate for the position of a judge, the amendments suggested to the Constitution of Ukraine will give the Commission the powers to file a motion to the President of Ukraine to transfer a judge to another court of general jurisdiction and file a motion to the High Council of Justice to detain or arrest a judge until a guilty verdict is delivered.

So, it is absolutely logical to set forth in the Constitution the functions of the Commission to file a motion to the President of Ukraine to transfer a judge to another court of general jurisdiction because of two reasons:

1) The Law of Ukraine *On the Judiciary and the Status of Judges* gives the Commission powers to keep records of the number of judicial positions in courts of general jurisdiction including vacancies and the number of administrative positions in courts of general jurisdiction. The Commission thus has all the information about any judge rotations;

2) It is proposed to set forth in the Constitution that a judge may be transferred to a higher instance court only on a competitive basis. Today the High Qualification Commission is the only player in the judiciary system with theoretical and practical expertise in the area.

Since 2011 the Commission has been deciding to transfer a judge to a court of a different specialization or level after the candidate passes a comprehensive examination organized as tests in the branch of law in which the court and instance specializes and a practical assignment that requires preparing a draft procedural document.

In this way the Commission can evaluate how well a candidate is prepared to work in a higher instance court and select a candidate with better knowledge if there are several applicants (the most common case). The Commission developed exam test matrices that consider the specialization and instance of courts to which a judge may apply as well as a database of the practical assignments built on the same principle.

Therefore, the suggested amendments to the Constitution of Ukraine only confirm that the Commission has chosen a right approach to the selection of professional judges.

Immunity of judges that is a part of their independence has always been a special issue. Decision No.7-зп made by the Constitutional Court of Ukraine on December 23, 1997 says that "establishing guarantees of immunity, that are additional to personal immunity, for particular categories of state officials is aimed at creating necessary conditions for them to perform the duties imposed by the government and protect them from illegal interference into their activities."

Assigning the Commission with a function to file a petition to the High Council of Justice to detain or arrest a judge before a guilty court verdict is delivered will help to avoid any political influence on the process and on the judge. It will be also a right thing to do as the Commission also deals with suspension of a judge following a reasonable petition filed by the Prosecutor General of Ukraine. It means that today the Commission is already deciding on the "future use" of the action - suspension - that may be applied to a judge during criminal proceedings.

So far the Commission has received and made corresponding decisions as to 67 resolutions of the Prosecutor General of Ukraine to suspend judges because of the criminal proceedings initiated against them.

Another innovation of the draft law is that it cancels a five-year appointment of new judges and introduces permanent appointment for all judges of general jurisdiction courts. The move will make the procedure of judge appointment easier and help to avoid pauses in judge's duties arising because of current procedures.

It has been recently feared that this amendment would strengthen the role of the President of Ukraine and make his influence on the judiciary system almost unlimited. We cannot agree with that.

Today the judge selection process considered by the parliament, which as you know consists

of different political parties, comes across difficulties during voting. Many times some political parties acting under vocal public calls try to win back the leverage mechanisms they lost after the Law *On the Judiciary and the Status of Judges* took effect. And this is happening as the Parliamentary Assembly of the Council of Europe and the Venice Commission all together are calling on Ukraine to reduce pressure that the Verkhovna Rada is exerting on the judge selection procedure.

Unlike the Verkhovna Rada, the President of Ukraine strictly observes the new procedure and is positive about his purely ceremonial role in appointment of judges. Statistics prove this point. The President did not reject any of 958 people recommended by the Commission to be appointed as new judges and 1,362 judges recommended by the Commission to be transferred to other courts.

Moreover, the judicial branch of power will in fact build the judicial pool, transfer and promote judges because judges will be appointed and removed upon a motion of the High Council of Justice following recommendations of the High Qualification Commission of Judges of Ukraine.

The amendments mentioned refute unreasonable claims about increased role of the President of Ukraine in the activities of the judicial branch. Indicative is that it was the President of Ukraine who initiated the amendments to the Constitution of Ukraine which deprive him of the right to establish courts.

Provisions of the draft law regarding the composition of the High Council of Justice also prove that recommendations of international and European experts are met. The Venice Commission has always expressed concerns about composition and formation of the High Council of Justice: its Opinions of March 16, 2010, October 07 and 18, 2010 and October 18, 2011.

The issue was raised also in Clause 46 of the Recommendation made by the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges of November 17, 2011. It said directly that the agency taking decisions on the selection and career of judges should be independent of the executive and legislative powers. To ensure independence of the agency, judges elected by judges should take at least half of its seats. We can see this position also in the decision of the European Court of Human Rights in the case of *Volkov vs. Ukraine*.

In view of the above, these amendments to the Constitution of Ukraine also signal that our country observes the Recommendations of the Committee of Ministers of the Council of Europe to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights. In particular, the Recommendations state that under certain circumstances, the obligation to abide by the final judgments of the European Court of Human Rights may entail actions other than just satisfaction awarded by the Court in accordance with Article 41 of the Convention on Human Rights and Fundamental Freedoms and/or general measures or individual measures, which ensure that the affected party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention.

Increased age limit and duration of the professional employment is an important innovation that will help strengthen expertise of judicial candidates.

Combining constitutional and disciplinary liability is a strategic objective that needs prompt action. The draft law suggests such reason for the judge removal as a disciplinary offence committed by a judge, which prevents him/her from remaining in office. At the same time, such a removal reason as the breach of oath that is purely declarative will be deleted from the Constitution.

To analyze this provision, we should recall the Joint Opinion of the Venice Commission On the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the

right to appeal of October 7, 2010. It says that precision and foreseeability of the grounds for disciplinary liability is desirable for legal certainty and particularly to safeguard the independence of the judges. The Venice Commission also notes that using vague grounds or broad definitions should be avoided.

In the context of our event, I wish to draw attention to professional training of judges as one of the most important and top-priority functions of the Commission.

The authorities and objectives of the Commission set forth by the law offer it an exceptional opportunity to build an organic system for training and professional development of judges. On the one hand, it would meet the current needs of the court practices to be explored by judges. On the other hand, it would apply the latest international practices, modern teaching methods and thus develop highly-skilled judiciary in the most effective manner.

Unlike other judiciary agencies, the Commission has statistical data and can promptly respond and provide advanced training for judges in the most "problematic" areas.

Today the Commission is implementing a range of international projects designed to build a brand new system for professional training of judges in Ukraine.

The first-priority steps being taken jointly with our partners – Canadian-Ukrainian project "Judicial Education for Economic Growth" and USAID-led Fair Justice project – include training of judges using programs focused on practical skills immediately needed for a judge; increasing the role of pre-trial settlement of disputes in the judicial practice; introducing training of judges in small interactive groups and offering professional development through distance courses; engaging as widely as possible judges as lecturers and training them to use modern teaching methods; and engagement of judges in international exchange programs.

In summary, the need to adopt the Draft Law on the amendments to the Constitution of Ukraine, strengthening the independence of judges is obvious.

A national round table about Ukraine's European integration took place on October 11, 2013 in the Verkhovna Rada. Its delegates made a joint statement and, in particular, called on leaders of all branches of power in Ukraine to take every effort for Ukraine to deliver on its liabilities and meet requirements and recommendations of the Council of EU and the European Parliament Monitoring Mission to Ukraine led by Pat Cox and Aleksander Kwaśniewski, and adopt necessary bills for Ukraine to sign the Association Agreement at the Eastern Partnership Summit in Vilnius on November 28-29, 2013.

The participants of the round table viewed the Agreement as a key instrument to modernize Ukraine towards the European model, strengthen shared values of democracy and the rule of law and achieve the highest European standards of living for Ukrainians.

Meeting the requirement to carry out judicial reform is a condition for signing of the Agreement. Therefore, implementation of the constitutional judicial reform is a very important step for Ukraine's European choice.

The points above only confirm how important and relevant is the 3rd International Conference dedicated to the legal status of the High Qualification Commission of Judges of Ukraine.

I believe that our event will discuss the most urgent issues of operations of the High Qualification Commission in the context of the constitutional judicial reform and Ukraine's aspirations to speed up the European integration process.

John Stacey,
President of the European Commission
for the Efficiency of Justice

Measuring and improving the quality of justice

The quality of justice is one of the hardest elements of a judicial system to be effectively measured and has presented CEPEJ with one of its hardest challenges. But we are now close to agreeing the first set of quality standards following on from our work on quality indicators[1].

But it is important to have clarity about the scope when initiating quality measurement and improvement activities. What is it that you want to measure?

In a narrow sense, "quality of justice" is sometimes understood as "quality of judicial decisions". Reformers aiming at measuring this kind of quality will look for tools to assess the quality of judicial decisions only. However measuring the quality of judicial decision alone gives a very distorted view of the judicial system and unless this undertaken with some sensitivity it could rightly be claimed as impinging on the independence of the judiciary.

A crude measure that may be workable is to look at the number of successful appeals. Appeal court judges would just need to look at developing trends in appeals to identify weaknesses in the knowledge, skill or at attitude of junior judges that collectively requires some remedial work.

A comprehensive list of areas for measurement of the judicial decision could include:-

The completeness of the decision:-
- The facts underlying the decision are stated;
- The claims of the parties are stated;
- The outcome of the decision is stated;
- The decision quotes the underlying normative provision;
- There is a legal reasoning;
- The decision decides on the costs;
- The decision determines the relevant dates of interest rates.

Clarity of decision:-
- The facts underlying the decision are stated in plain language;
- The claims of the parties are presented in plain language;
- The outcome is formulated in plain language;
- The reasoning based on the underlying normative provision is clear;
- The enforcement modalities are unequivocal.

Correctness of the decision:-
- The reasoning is factually correct;
- The reasoning is legally correct.

Acceptance of the decision:-
- The process was fair;

[1] https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2008)2&Language=lanEnglish&Ver=original&Site=DGHL-CEPEJ&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6

- The outcome of the decision is fair.

In a broader sense, "quality of justice" is often understood as comprising not only the quality of judicial decisions, but all components of judicial service delivery. Reformers aiming at measuring this kind of quality should include indicators that go beyond the quality of the decision itself and include areas such as timeliness[2], accessibility, ease of use of the judicial process together with all other aspects that are relevant for the effective functioning of the justice system.

This comprehensive list would include:-

Timeliness:-

- Time from filing to disposition, disaggregated by type of cases;
- Ratio of case dispositions to case filings (clearance rate), disaggregated by type of cases;
- Age of pending caseload, disaggregated by types of cases;
- Number of adjournments, disaggregated by types of cases;
- Compliance of decisions with optimum processing time set for this type of case;
- User satisfaction with duration, disaggregated by type of proceedings.

Tools issued by CEPEJ for checking quality include customer satisfaction surveys and court user committees[3]. These allow the court users and stakeholders to voice their opinion and to provide a degree of transparency of the delivery of justice.

I have not yet mentioned the importance of 'public confidence' in the judicial system. Everyone involved with the judicial system whether they are from Government, the Judiciary or other legal professionals must give 'public confidence' one of the highest priorities to achieve. In many ways this is more important than any other aspect of justice reform. If you achieve the transparency and public participation I have referred to quality and efficiency will improve and as a consequence 'public confidence' will grow.

The measures I have mentioned are just the start of the story, as the commitment to achieve transparency, public participation and public confidence become ingrained in the culture of the judicial system the pace of reform will gather momentum. No area of the judicial system should be exempt from this process even former areas clouded in secrecy such as judicial recruitment, training, complaints, judicial discipline and even judicial appraisal need to be included and/or processes established.

I accept that if you have never been involved in the process of obtaining feedback or allowing a greater degree of transparency and participation from the users this can be a traumatic experience. However, I am not aware of any situation where the involvement of the citizen in such exercises has resulted in anything other than a positive contribution to the delivery of justice at local and national level.

We have a duty to ensure the citizen has a legal system that they can have pride in and is fit for purpose.

If you would like to know more about how CEPEJ can help you achieve improved quality, effectiveness and transparency I invite you to look at the specific links to our website and our homepage[4].

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[3] https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2005)12&Sector=secDGHL&Language=lanEnglish&Ver=rev&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6

[4]https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2010)1&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

[5] http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp

Mykola Melnyk,
Member of the High Qualification
Commission of Judges of Ukraine

Adoption of the international experience of the High Qualification Commission of Judges of Ukraine in bringing judges to the discipline liability

Today our government has identified the top priority of the public policy – signing the Association Agreement between Ukraine and European Union during the Summit in Vilnius. Judicial reform was one of the requirements set by the European partners to sign the Agreement. Establishment of the High Qualification Commission of Judges of Ukraine with respective powers in a new legal framework is one of the crucial results of the judicial reform.

The Commission's works to prevent disciplinary offences by Ukrainian judges and improve their qualifications to strengthen Ukraine's image in the global arena.

Despite a quite young age of the Commission as a government authority, it has managed to gain valuable experience in disciplinary proceedings against judges. At the same time, its members realize they need to explore and use the best practices of European and other countries in this area to improve the Commission's performance.

Cooperation with respective European institutions is one of the ways to do it. In particular, the Commission engages with the Council of Europe Project "Enhancing judicial reform in the Eastern Partnership countries". Under this initiative, Commission's members take part in meetings of working groups in Strasbourg held to facilitate implementation of the principles of independence, professionalism and efficient judicial system of the Council of Europe and European Union in beneficiary countries.

Consistent collaboration with the USAID Ukraine Fair Justice project should also be taken into account.

In general, the Commission attaches special focus and importance to cooperation with foreign judicial agencies, which have similar powers of disciplinary action against judges.

To build a highly skilled judicial pool working to the principles of independence, Ukraine has to improve regulation of disciplinary actions, especially regulations on imposition of several disciplinary sanctions. A graduated scale of disciplinary sanctions helps reflect the degree and gravity of misconduct. In turn, this helps guarantee lawfulness and respect to human rights when an agency decides on taking a disciplinary action against a judge.

This approach is enshrined in the laws of the United States and Canada.

For example, disciplinary actions taken in Washington State include:
- admonishment
- reprimand
- censure. Censure may require a recommendation to the supreme court of the state that the respondent be suspended or removed.

Unlike disciplinary sanctions in Washington State, Georgia imposes the following actions:

a) admonition b) private reprimand c) public reprimand d) censure e) suspension, and f) removal. The actions are indicated in the order of severity. Admonition, the least severe disciplinary action, involves a private communication reminding a judge of ethical responsibilities. An admonition may be used to give authoritative advice or to express disapproval of behavior. Censure is a public declaration that a judge is guilty of misconduct that does not require removal from office. The most severe action is removal from office imposed for serious misconduct.

The laws of Georgia also provide for retirement of a judge, yet it cannot be regarded as a disciplinary action as it is imposed for a disability that seriously interferes with the performance of judicial duties.

The Georgia Code of Judicial Conduct sets forth grounds for discipline, which include:
- wilful misconduct in office
- wilful or persistent failure to perform duties or habitual intemperance
- conduct prejudicial to the administration of justice.

Unlike the United States, Spain has a law regulating principles of judicial power and disciplinary liability of judges – Organic Law 6/1985 of the Judiciary Power. Under the law, the most severe types of judicial misconduct include:
- wilful incompliance with the Constitution
- membership in political parties
- interference with duties of other judge
- actions incompatible with the dignity essential to the exercise of judicial functions (legal consultations, commercial activities)
- failure to suspend from a case if the judge has interest in it
- absence from work for more than seven days
- delivery of ungrounded judgments
- failure to observe the confidentiality principle.

Decisions of the qualifications commission may be challenged before the Plenum of the General Council of the Judiciary. If an individual challenges decisions of the Plenum (regarding the gravest offences), he/she should file an appeal with the Administrative Chamber of the Supreme Court of Spain.

When developing amendments to laws, Ukraine should take into account interesting and advantageous practices of Portugal to control legitimate imposition of disciplinary action. [In Portugal], this process is controlled by the High Council of the Judiciary.

In Lithuania, an absolute ground for removal of a judge is a police report for driving under the influence of drink or a report on the abnormal behavior under the influence of drink in public places.

These examples of disciplinary liability prove the following.

When a question of disciplinary action arises, the United States prioritizes ethical aspects of judicial conduct even in the case of gross violation of laws by a judge such as selective justice (prejudice) and failure to perform judicial duties. In Spain, the list of grounds for discipline is broader, with the grounds being clearly defined. Interesting is that these relations are governed by the broader law on the judicial power, not a special law.

In this context, it is reasonable to amend the Law of Ukraine *On the Judiciary and the Status of Judges*, namely Article 83 thereof, which establishes grounds for disciplinary actions against judges. The following should be added to the list of grounds for discipline: membership in political

parties; interference with duties of other judge; actions incompatible with the dignity essential to the exercise of judicial functions (legal consultations, commercial activities). It is worth noting that Article 83 establishes grounds for discipline which in fact has no relation to the duty of administering justice. They are about failure to disclose a transparency return on the property, income, expenses and financial obligations for the past year (paragraph 6, part 1, Article 83). Liability for this failure should be governed by anti-corruption laws.

This example shows that it is important to establish in regulations on grounds and application of disciplinary actions whether the misconduct relates to discipline relations or other relations: public order, safety, etc. If a judge is engaged in misconduct violating certain rules and we take into account Lithuanian practices, we should impose only one sanction – removal from office.

Article 88 of the Law of Ukraine *On the Judiciary and the Status of Judges* provides for only one disciplinary action against judges – censure. Pursuant to Part Five of Article 87 of the Law, following disciplinary proceedings, the High Qualification Commission of Judges of Ukraine may decide to recommend the High Council of Justice that a removal motion be made in regard to the judge if certain grounds are in place.

International judicial standards suggest a graduated scale of sanctions. Clause 5.1 of the European Charter on the statute for judges prescribes that the dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation. The scale of sanctions which may be imposed is set out in the statute, and their imposition is subject to the principle of proportionality.

Article 147 of the Labor Code of Ukraine gives a list of sanctions imposed for violation of the workplace discipline. Only one of the following actions may be taken against an employee: 1) censure; 2) removal. Laws, charters and regulations on discipline may provide for other disciplinary sanctions for certain employee categories.

Therefore, labor laws allow for other sanctions imposed on certain employee categories.

The legal status of a judge as an individual who is disciplined and application of disciplinary sanctions to judges drive us to conclusion that disciplinary liability of judges should be described as special, not general. Special disciplinary liability is also in place in regard to such officers performing public functions as public prosecutors, law enforcement officers, servicemen, etc. Their disciplinary liability is governed mostly by charters. Nevertheless, to improve procedures of disciplinary action against judges, it is reasonable to draft a respective law, especially given Paragraph 22, Part 1, Article 92 of the Constitution of Ukraine. Under the provisions, the principles of civil legal liability, acts deemed crimes, administrative or disciplinary offences, and liability for the same shall be determined exclusively by laws of Ukraine. At the same time, Paragraph 14, Part 1, Article 92 of the Constitution of Ukraine requires that the judicial system, judiciary, the status of judges, etc. be regulated by laws. Therefore, the Constitution prescribes that laws on the status of judges should not cover provisions on the disciplinary liability of judges.

As to extending the list of disciplinary actions against judges, we may take into account laws of the Washington state where the list of actions includes also admonishment and reprimand unlike the list established by the Law of Ukraine *On the Judiciary and the Status of Judges*.

The legal meaning of admonishment explains the need to introduce it as a disciplinary action. In administrative laws, admonishment is the least severe sanction. It involves an official negative

evaluation of conduct by a government authority (official) and a warning against illegal actions in future.

Given such interpretation of the term 'admonishment', the main thing is that the admonishment is a negative evaluation of someone's conduct and a warning against his/her illegal actions in future. Introduction of this sanction for misconduct by a judge is not in conflict with the applicable laws, the European Charter on the statute for judges, reflects a special nature of the disciplinary liability of judges and extends the list of sanctions as compared with the labor laws. The sanction works as a preventive measure before another sanction, reprimand, is used.

The reprimand should be public to be a measure of compulsion. A public reprimand should be made by the court president or at a meeting of the High Qualification Commission of Judges of Ukraine and be published on the Commission's website.

Speaking of ways to improve disciplinary liability of judges, we should remember the Action Plan to enforce the Law of Ukraine *On the Judiciary and the Status of Judges*, Section 6 on disciplinary liability. Prepared by Marylyn G. Holmes for Chemonics International as part of Ukraine Rule of Law project in January 2011, the document sets forth detailed procedures to impose disciplinary liability on judges, starting from selection of complaints to appeals against decisions of the High Qualification Commission of Judges of Ukraine. The Action Plan does not provide for reasons to adopt an individual law on disciplinary liability of judges, but indicates the need to set up two commissions consisting of members of the Commission who carry out checks and members of the Commission who hold hearings and decide on disciplinary cases.

Comparing these recommendations with the Law of Ukraine *On the Judiciary and the Status of Judges* as in effect, I would like to draw your attention to the service of disciplinary inspectors. Regulations on the service need improvement, especially improvement of provisions on professional requirements, career development and competences.

Therefore, improvements of regulations on disciplinary liability of judges suggested on the basis of practices of the United States, Spain and Lithuania may include:

- adding such grounds for discipline as: membership in political parties; interference with duties of other judge actions incompatible with the dignity essential to the exercise of judicial functions (legal consultations, commercial activities)
- adding admonishment and public reprimand to the list of disciplinary sanctions and establishing agencies imposing sanctions and imposition procedures
- developing and adopting an individual law on disciplinary actions against judges, including provisions on the status of disciplinary inspectors and their career development.

Thank you!

JUDICIAL EDUCATION – JUDICIAL EXCELLENCE
UKRAINE - CANADA

DONALD CHIASSON

NATIONAL JUDICIAL INSTITUTE

HIGH QUALIFICATION COMMISSION OF JUDGES OF UKRAINE

28, 29 OCTOBER 2013, KYIV

NATIONAL JUDICIAL INSTITUTE

Canadian NGO – chaired by Chief Justice Canada

Domestic and international programmes

- Over 90% of education for Canadian judges
- Work many countries

Historical shift – from lecture/knowledge transfer to judge-focused, interactive

THE PROJECT

- 2012 to 2017
- Judicial Education for Economic Growth
- Department of Foreign Affairs, Trade and Development, Canada

- High Qualification Commission of Judges of Ukraine
- National School of Judges of Ukraine
- Pilot Courts, Ukraine
- National Judicial Institute of Canada
- Office of Federal Judicial Affairs, Canada

FOCUS ON JUDICIAL EDUCATION

Judicial education – critical many aspects

- Competence
- Credibility
- Transparency
- Justice – actually delivered and perceived to have been delivered by court users – bedrock rule of law

KEY ATTRIBUTES OF JUDICIAL EDUCATION

Judges must:

- Know the law
- Have skills to apply the law
  - Communicating, Reasoning, Deciding clearly
- Be aware of the context
  - Litigants, of all backgrounds, must feel heard

These are 3 keys to effective judicial education

CORE OF NJI EDUCATIONAL PROGRAMMING

Both domestic and international

- Working judges of all levels – in education and administration
- Methodology
  - Based on judicial realities
  - Draw on experience
  - Group learning
  - Skills-based, interactive
  - Interesting

OUR PROJECT

Three Sections

1. Judicial Education (candidate judges too)
2. Institutional strengthening
3. Piloting judicial pretrial settlement – economic cases (different courts)

COURSE & CURRICULUM

Development & delivery – go together

Interactive methodology

- Judicial skills – to do the job
- Knowledge – of new or difficult areas
- Context – social awareness

Apply to candidate training

Curriculum for newly-appointed judges

INSTITUTIONAL STRENGTHENING

Judges must be integrally involved – no substitute

But cannot without significant institutional support – time commitments

Therefore, working to help HSJ and HQC realize goal – being excellent institutions to administer and effectively support judge-led education

PRETRIAL SETTLEMENT

- Focus on economic cases
- Ivano-Frankisk and Odessa - pilot
- Administrative and civil courts
- Develop process
- Educate judges through NSJ in this new skill

A SNAPSHOT - TODAY

November 2013

- International Organization for Judicial Training – Washington
- Action planning – curriculum new judges
- Courtroom Management Course
- Statutory Interpretation
- Land Law – Generic and Administrative
- Judicial Faculty Development

CJC CCM
Canadian Judicial Council
Conseil canadien de la magistrature

Norman Sabourin,
Executive Director and General
Counsel of the Canadian Judicial Council

Presentation Plan

1. Canada: overview
2. Ontario: overview
3. Recent trends
   - Technology
   - Self-represented litigants
   - Litigation
4. Future reform

1. Canada: Legislation

- Legislation: Judges Act
- "The Council may investigate any complaint or allegation made in respect of a judge of a superior court."
- Council can make a recommendation to the Minister of Justice
- A judge may only be removed from office by joint address of both houses of Parliament

1. Canada: Five levels of review

- Decision by Executive Director to open a file
- Review by the Chairperson of the Conduct Committee*
- Review by a Panel*
- Review by an Inquiry Committee
- Review by Council

* With the possibility of "further inquiries" by a lawyer

1. Canada: Complaints in 2012-13

- Fewer complaint files: about 150
- More clarifications letters: about 250
- More cases of abuse: about 40
- Many requests for reconsideration

2. Ontario: Differences

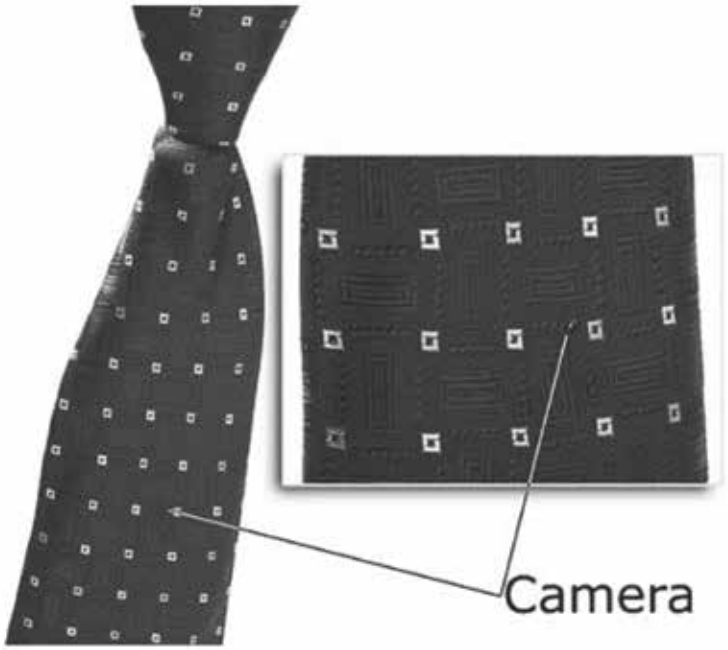
- Council includes non-judges: lawyers (2 of 12) and members of the community (4 of 12), who participate at all levels of review
- Council can impose intermediary sanctions, including suspension and public reprimand
- Mediation is possible, but highly exceptional

2. Ontario: Review levels

- Each complaint must be formally reviewed (there is NO administrative screening)
- Three levels of review: Complaint Subcommittee; Review Panel; Hearing Panel
- Hearing Panel is public

3. Recent Trends: Technology

- Judges are recorded
- Legal advice is all over the internet
- Information can be easily stored



Service Canada

Canada

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Au service des gens

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Accueil > Événements de la vie

Au sujet de Service Canada
Au service des gens

Événements de la vie
- Chercher un emploi
- Élever une famille
- Avoir un enfant
- Planification de la retraite
- Lancer une entreprise

Voir tous les Événements de la vie

Services par sujet
- Aide au revenu
- Assistance juridique
- Documents personnels
- Emploi
- Études et formation
- Événements spéciaux

Divorcer

Cette liste, préparée par Service Canada, vous aidera à comprendre les questions juridiques et les démarches reliées à un divorce au Canada. Elle vous donne un aperçu de vos droits et de vos responsabilités. Rappelons toutefois que pour obtenir des conseils juridiques, vous devez consulter un avocat.

1. Se renseigner sur les lois entourant le divorce au Canada

Le guide La Loi sur le divorce : Questions et réponses vous donne des renseignements de base sur ce que vous devez savoir en matière de divorce au Canada. Il explique aussi quelles sont les exigences à satisfaire, certains des formulaires que vous devrez remplir, la condition de logement des enfants, les pensions alimentaires pour les enfants et le conjoint et le partage des biens et des dettes.

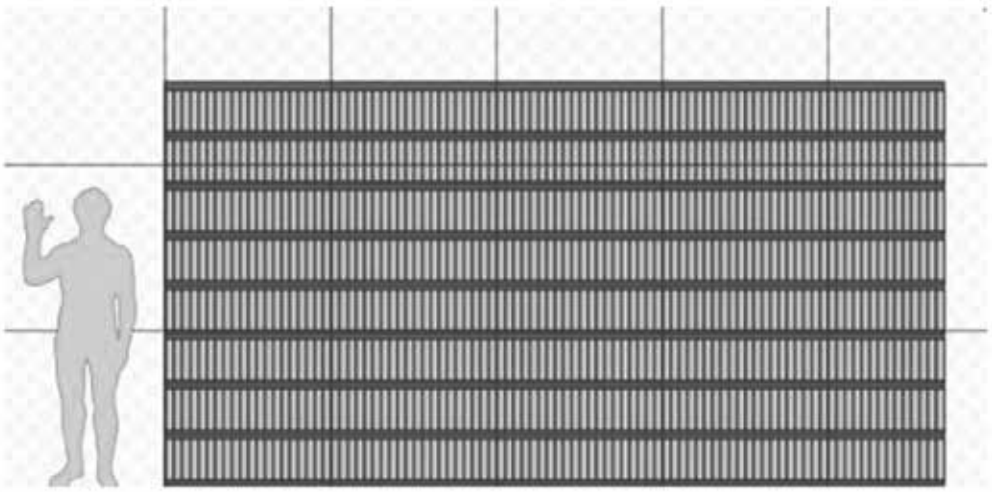
Des lois provinciales et territoriales s'appliquent lorsque des parents non mariés se séparent ou que des parents mariés se séparent sans divorcer. Ces lois provinciales et territoriales peuvent contenir des dispositions sur les relations entre parents et enfants (autorité parentale, tutelle, etc.).

2. Obtenir de l'aide et des conseils juridiques

Si vous n'avez pas les moyens de payer un avocat, vous pourriez avoir droit à l'aide juridique. L'aide juridique en matière civile (par exemple en droit de la famille) est une compétence provinciale et territoriale. Bon nombre de provinces et de territoires offrent aussi un service d'assistance - Avocats.

Les Programmes d'aide au droit familial offrent des programmes reliés aux ordonnances et aux ententes familiales, aux actions en divorce et à la saisie des salaires.

3. Être parent après un divorce

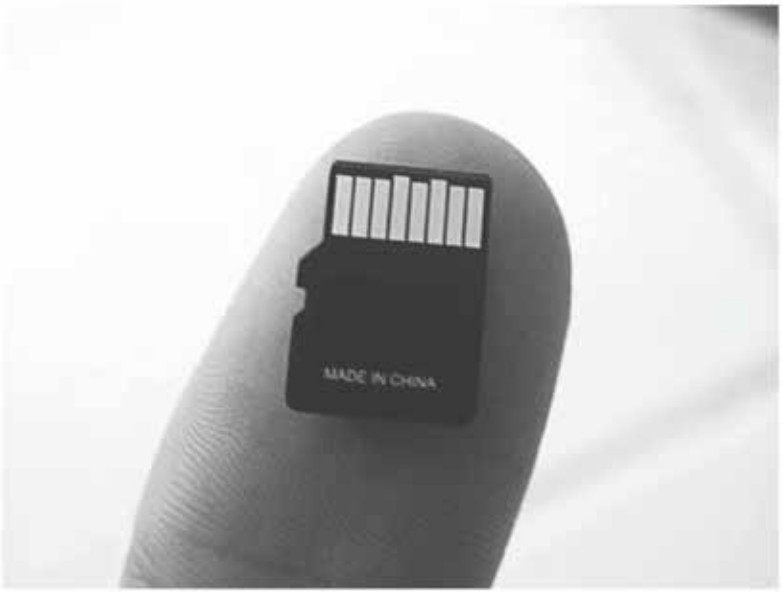


750 books of 400 pages each, totalling 300,000 pages take up a space about 10 feet wide (3.2m) and 6 feet high (1.7m)

Or, you can digitize it to total about 5 GB of data

750 livres de 400 pages totalisent 300,000 pages de texte et peuvent tenir dans un espace d'environ 10 pieds (3.2m) par 6 pieds (1.7m)

Les mêmes données numérisées totalisent environ 5 GO



A 64 GB card can contain the equivalent of **4 million** printed pages

Une puce de 64 GO peut contenir l'équivalent de **4 million** de pages

3. Recent Trends: SRL

- Civil litigation = 40 to 66%
- Necessity or Choice
- Unbundling of services
- Knowledge is no longer secret
- Over half of complainants at the CJC

3. Recent Trends: Litigation

- No does not always mean no
- Challenges made about the individuals, the process, the statutory regime, as well as constitutional issues
- Lawyers, judges, chief judges
- Risk of undermining the integrity of the process

4. Future Reform

- Screening process
- Participation of lay persons
- Public Reprimands
- Conducting inquiries
- Inquisitorial or Adversarial?
- Public Consultation: efficiency and public confidence

CJC
CCM

Canadian
Judicial Council

Conseil canadien
de la magistrature

Oleh Hlukhanchuk,
President of Odessa District
Administrative Court

Pre-trial settlement: practical aspects of the implementation in administrative justice

Good afternoon, ladies and gentlemen, dear colleagues!

Let me thank you for the opportunity to speak here today before such an honorable audience.

My speech is about pre-trail dispute settlement in administrative proceedings as exemplified by practices of pilot district administrative courts in Odesa and Ivano-Frankivsk.

Nevertheless, let me take this chance as a speaker to thank the institution, which has offered us this opportunity to discuss ways to enhance independence, efficiency and professionalism of the judicial branch and introduce new forms of protection of individuals' rights and freedoms.

Three years have passed since such an extremely important institution as the High Qualification Commission of Judges appeared officially in Ukrainian judicial system. Soon the Commission will receive the constitutional status.

We can have long discussion of whether this period is enough to see results, but all Ukrainian judges can unanimously confirm that it's hard to overestimate the role of the High Qualification Commission of Judges of Ukraine in the national judiciary. The Commission is responsible for building a pool of professional judges. This institution ensures that after passing all selection stages judges are ready to do justice properly and the national judicial system is in line with high international standards. Today it is difficult to imagine the selection of judges without involvement of the Commission. Due to transparency and availability of information we have a good opportunity to see how members of the Commission work hardly to ensure stable, timely and effective supply of professional judges for domestic courts. The selection procedure gets better with each stage: new rules are adopted to improve it and ensure its transparency and openness.

In my court, six judicial assistants passed the selection procedure. As the president of the court, I can assure you that access to the profession has become much easier. Everyone who has a desire knowledge can become a judge. The High Qualification Commission should definitely be credited for this. Moreover, new rules have a positive influence on candidates, encouraging them to deepen their professional knowledge, have more reasonable approach to the profession and helping them to get prepared for personal liability.

Apart from selection and special training of judges, the Commission carries out fair and objective disciplinary proceedings in regard to judges. In the eyes of the judicial community and the whole society this creates the image of an unbiased and fair guardian of standards of the judicial profession.

Positive results of Commission's fruitful cooperation with international organizations and involvement in international projects should not be left unnoticed as well.

Due to one of such projects, I mean Canadian-Ukrainian project "Judicial Education for Economic Growth" coordinated by the Commission itself, Ukraine can implement the best practices of

pre-trial dispute settlement involving judges.

In particular, Odesa District Administrative Court is among four pilot Ukrainian courts where the project was rolled out. It is right about the pre-trial dispute settlement, one of components of the project.

Now I would like to elaborate on implementation of the mechanism in administrative proceedings through the example of two pilot administrative courts in Ukraine: Odesa and Ivano-Frankivsk district administrative courts.

A main element of administrative proceedings is that a public administration entity acts as a party to a public legal dispute. This fact has a certain impact on the early dispute settlement in administrative proceedings. First of all, it relates to implementation of such principles of early settlement as voluntariness and initiative. As one of the parties to administrative proceedings is a public authority, this fact shapes relations between parties during protection of the legitimate rights and interests. Even if officials have certain management powers, their discretionary power is often limited. On the one hand, a public administration entity should act within its mandate according to procedures established by the Constitution and laws of Ukraine. In particular, Article 3 of the Constitution states that human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State. Pursuant to Article 113 of the Code of Administrative Court Proceedings of Ukraine, parties may settle their dispute in full or in part by mutual concessions. On the other hand, judges in administrative courts see very often that letters of authority of representatives of the public administration entities even ban any conciliation, which is in conflict with Article 113 of the Code.

As to the principle of initiative, unfortunately, only individuals or legal entities, which are not public administration entities, initiate pre-trail dispute settlement. Representatives of government authorities show no intent to make concessions or seek compromise in disputes with business entities or individuals. To justify it, they say that either they do not have powers to do so or it is not established by the applicable laws of Ukraine. Being practicing lawyers however, they recognize the evident point to use pre-trail dispute settlement procedures in certain cases.

Judicial practices in other countries such as the Netherlands, Canada and the United States prove that early settlement of public legal disputes is not only possible, but also very popular.

For example, in Saskatchewan, Canada, all cases undergo the pre-trail settlement procedure, with 65% of them being closed by amicable agreements. But it has taken 25 years for Canadian judges to reach these results. Therefore, we should be ready that establishment of the procedure in our country will take time and efforts, primarily, to change the mindset or attitude of conflicting parties to advantages of alternative dispute resolution. Hopefully, joint efforts of the parties concerned will help us to reach results as soon as possible.

Everybody will agree that judicial decisions should be based on perfect and inviolable principles of personal ethics and law and adopted after comprehensive and unbiased examination of case papers. Even such decision will not satisfy one of the parties.

Moreover, in course of the project we have become certain that settlement of a public legal dispute by judicial means (i.e. on the basis of laws without actual conciliation and amicable agreement between the parties) does not always bring expected results even for the winning party. We can see that when judgments are made in favor of an individual or legal entity appealing against decisions of a public administration entity, the latter continues the litigation anyway, using its legitimate right to file an appeal and cassation. This certainly results in higher workload of the

judicial system, additional legal expenses and postpones the date of enforcement of a judgment adopted by the court of first instance. These factors do not facilitate effective protection of legitimate human and civil rights and freedoms. With the pre-trail dispute settlement mechanisms, we managed to arrive at mutually beneficial agreement for both parties: after negotiations the parties found way to reconcile, which definitely alleviated social tension. The positive attitude of the parties after they underwent the pre-trail dispute settlement procedure builds trust and confidence in final resolution of the conflict. Therefore, attempts to settle a dispute with help of a professional judge by mutual concessions and compromise are a good opportunity for the parties, especially ordinary citizens, to save time, money and avoid numerous litigation-related stresses.

These facts are proven by international practices, where early settlement is an effective mechanism to resolve disputes. High court fees, high hourly rates of lawyers and long proceedings are typical for traditional dispute settlement in such countries as United Kingdom, United States, Germany and Canada. Under such circumstances, alternative dispute resolution methods have become increasingly popular. Early settlement benefits not only private parties but also governments as promotion of such kinds of dispute resolution ensures lower workload of courts and saves costs to sustain them.

We have to show opportunities and advantages of the early settlement procedures to the public to introduce them finally and effectively in the administrative proceedings. Pilot district administrative courts in Ivano-Frankivsk and Odesa have put forth many efforts on this way. We took an extensive outreach campaign during the launch of the procedure: we developed special information stands and leaflets where court visitors could find about pre-trial dispute settlement. Also, this information was posted on the websites of courts. But, given our experience, we put a special focus on engagement with government authorities. In Odesa District Administrative Court, we held several meetings and round tables involving project organizers, representatives of government authorities and human rights organizations. Officials give a positive feedback on the Canadian initiative and agree that the process needs to be regulated at the highest level. Certainly, pre-trial dispute settlement procedure should be enshrined in law.

Finally, I would like to emphasize that an administrative legal dispute is a dispute with the government. Filing lawsuits against a public administration entity with courts, people realize that a judge resolving the dispute acts on behalf of the government as well. Therefore, they show distrust in the administrative court and suspect prejudice of the judge even before court proceedings. On the contrary, if the judge talks to the parties under conditions, which differ from a court hearing both in terms of the setting and methods, it helps rebut this false perception as the judge plays a new procedural role, coordinating and assisting the parties.

So may a deep respect to the fundamental human and civil rights and freedoms and care about development of Ukraine, which are the guiding principles of the High Qualification Commission of Judges of Ukraine, be the locomotive to drive a large-scale introduction of the pre-trail dispute settlement procedure and help Ukraine come closer to European community!

Taras Antoniak,
Chairman of the Ivano-Frankivsk
City/District Court
of Ivano-Frankivsk region

Pre-trial settlement in civil proceedings: achievements and prospects

Thank you! Chairman Samsin, conference delegates and guests! First of all, I want to thank organizers of the event for the opportunity to tell you what out court has done as part of Ukrainian-Canadian project "Judicial Education for Economic Growth". Its integral element is to introduce pre-trial dispute settlement mechanisms.

Ivano-Frankivsk City Court is one of four pilot Ukrainian courts adopting pre-trial dispute settlement mechanisms, with the High Qualification Commission of Judges of Ukraine overseeing the process and coordinating our actions during that time.

We started implementing the project on May 15, 2013 although our Canadian partners and the Commission had done a lot of preparation and training before. Canadian judges Ted Zazhechny and Donald Brick as well as representatives of the Office of the Commissioner for Federal Judicial Affairs Canada visited Ukraine three times to provide pre-trial dispute settlement training for our judges. The Commission has coordinated efforts of the participants to determine key areas and timelines of the project. In particular, this involved meetings with legal departments in banks, telecommunications companies and utility companies, drafting a conciliation guide, creating an informational stand and developing proposals to improve procedural laws. How we started First, meetings of judges established a number of judges involved in pre-trial dispute settlement. Given specialization of judges assigned to examine particular categories of cases, the project covers all judges examining civil and administrative cases. In fact, there are nine of them, with the President of the court coordinating the process.

Every week meetings of judges discussed practical application of the pre-trial dispute settlement mechanisms in particular cases and identified potential problems. In particular, these are psychological aspects to ensure that a judge explains to the parties in an unbiased manner the soundness or, vice versa, unsoundness of their positions in a case and that parties prove their right to seek recusal on certain grounds. These discussions are focused on current practices of law application and resolution of the mentioned disputes. These are practices applied by the High Specialized Court of Ukraine, the Supreme Court of Ukraine, resolutions of plenary assembles and newsletters. We worked to develop a clear algorithm of a preliminary court session and integrate pre-trial settlement mechanisms into it. In fact, it means creation of universal standards of conduct for judges in preliminary court sessions.

Court is certainly a reputable institution for both parties. Therefore, it is a strong argument for them to hear from the court how to settle their dispute, and experience has proven that parties responded actively to it. In this case, the crucial point is the psychological ability of a judge who should in no case express his/her opinion on possible dispute resolution during conciliation process. In this context, it was problematic that preliminary court sessions were scheduled for 10-15 minutes given our workload.

It was not enough time to show the parties their weaknesses and ways to reconcile. Therefore, the rules have often been changed, and a lot depended on professional skills of a judge. Taking it into account, it was important to give preliminary explanation to the parties of concilia-

tion opportunities by giving them the conciliation guide before the proceedings begin. Canadian practices have shown that conciliation is a way to save their money and time. During the project we have reconsidered potential conciliation forms. In fact, conciliation is what we should strive for. It is any types of compromises to stop disputes. The experience has shown that after having better understanding of their positions, the parties do not necessarily seek amicable settlement of disputes. In most cases, parties want to stop any dispute as soon as possible; therefore, the most convenient procedural ways to do it are the following. I'll give them in order of priority: leaving a lawsuit without consideration because of conciliation; compromise settlement through recognition of claims after they are reduced or if parties agree not to increase the claims. Finally, the least popular way is closing proceedings because of waiver of a lawsuit and conclusion of an amicable agreement. As projected, the priority categories of claims where conciliation mechanisms are applied are disputes in marriage and family relations and disputes raised by banking institutions against individuals. Claims to collect insurance compensation or debts for provided services are fewer now. In general, since introduction of pre-trial dispute resolution mechanisms, we reached compromise in 199 cases, which is twice as much as we did year on year. Moreover, we have to take into account that this figure covers the period from the middle of May to September, which is the vacation time, so the indicator may be better. We have placed a big emphasis on explanation of objectives ad prospects of the project to representatives of bar associations, banking and insurance institutions. We had several meetings with them yet it's too early to speak of results of the meetings as these legal segment shows little understanding of the mechanisms but rather willingness to take part in conciliation. It stands to reason that most practicing lawyers are interested in long proceedings so we focused our efforts on representatives of legal departments and law firms which may seek quick economic wins for their clients. We regularly inform the public of prospects of the judicial settlement mechanisms via mass media by posting information on the court's website and explaining the project during meetings with journalists. Our future plans, first, include regular public outreach activities. Second, we will improve procedural skills of judges. Third, we may establish preferences for the parties in case of their conciliation if amendments are made to procedural laws in regard to judicial settlement. Such amendments should prescribe clear actions of the court and parties. In general, our results have shown that mechanisms of pre-trail dispute settlement can be successfully implemented in our environment. They help reduce the workload of courts, alleviate social tension and build stronger trust in the judicial branch.

Thank you for attention!

Leonid Lichman,
President of the Malynovskyi District
Court in Odessa, S.J.D.

Prospects of pre-trial settlement as a way to resolve disputes in civil proceedings

Civil proceedings seek to ensure timely settlement of civil cases. A new doctrine of the modern civil procedure laws of Ukraine is aimed at creating conditions for courts to examine cases within reasonable time limits, speeding up civil proceedings, from the decision on commencement of proceedings to examination on the merits of cases by the courts of first instance and courts of appeals, examination according to cassation procedures, and enforcing judgments. It is also meant to ensure transparent civil proceedings. In particular, it is about time limits of summoning participants of a case to court, commencement of proceedings, preliminary examination of cases and examination on merits, appeals, cassation, etc. The temporality inherent to today's civil proceedings is largely in line with the European Convention on Human Rights and Fundamental Freedoms, namely in line with Article 6 thereof on the right to a fair trial within a reasonable time. At the same time, it is not by chance that the reasonable time is not limited to particular time periods by the Convention. Dispute resolution within a short period may have negative consequences as well. First, a conflict between a complainant and defendant (unfortunately, the parties in civil cases are often close relatives, neighbors, colleagues, etc.) very often escalates instead of ending after a verdict is delivered. Second, the parties face further case examination in courts of appeals and cassation and judgment enforcement, which requires additional financial, ethical, psychological, psychiatric, time and other resources and expenses of the parties and courts.

The principle of optionality in the civil legislation is fully implemented in the same-name principle in the civil procedure laws. Theory, practical application of the procedure laws in civil proceedings and, most importantly, the essence of this type of proceedings, where the parties are legally equal and materially independent, show that the justice (pre-trial dispute settlement also ends up with a court judgment) should be smart, i.e. be done without unnecessary acceleration. Therefore, it is quite natural in civil relations that disputes (conflicts) are resolved by the parties themselves who hold respective subjective rights and obligations. The parties may by mutual consent exercise their material and procedural rights to ensure that if grounds are in place, the case is not examined on the merits for a long time and the court seeks amicable agreement according to established procedure. Such duration will not harm the national interests, and the justice will perform its function in full if the pre-trial settlement [mediation] brings positive results.

We can see from practices of Ivano-Frankivsk City Court described by the previous speaker and practices of Malynivsky District Court in Odesa as part of Ukrainian-Canadian Project ""Judicial Education for Economic Growth" that an active and non-formalistic approach of the mediator to conciliation procedures and actions of the court to raise awareness of the parties to civil proceedings, including lawyers, have delivered satisfactory results: we have settled much more disputes than the year before. These practices should be replicated across Ukrainian courts. We should recognize though that the Civil Procedure Code needs to be amended to ensure effective implementation of the pre-trial settlement. The current version of the Code does not provide for a good mechanism (procedure) for the parties to exercise their right to amicable agreement. Moreover, neither laws nor court practices suggest that a court may influence the parties to make them reconcile. It is important to avoid excessive regulation of this procedure and find a balance between involvement of a judge in pre-trial settlement and his/her discretion depending on the circumstances of the case and its parties given their psychological state. Therefore, we need to regulate the main rights and obligations of the parties, their representatives, the mediators and sequence of pre-trial settlement procedures.

The pre-trial settlement should start in a civil suit after the judge commences civil proceedings and upon mutual consent of the parties during a preliminary court session held with help of a conference (consultations). We need to identify the universally binding requirements (guiding principles) of the pre-trial settlement procedure pursuant to the Constitution of Ukraine, Recommendation Rec (2002)10 of the Committee of Ministers of the Council of Europe to the member states on mediation in civil matters approved on September 18, 2002 and the Civil Procedure Code: the rule of law; lawfulness; oral nature; right to access to court; a balance between sufficient time provided for the parties to consider the issues at stake, any other possible settlement of the dispute and limitation periods of mediation procedures given parties' interests in conciliation to prevent a party acting in bad faith from using mediation as a delaying tactic; mediators should act independently and impartially and should ensure that the principle of equality of arms be respected during the mediation process. The mediators have no power to impose a solution on the parties. In other words, the mediator should assists the parties and help them resolve the dispute using his/her experience, knowledge, professionalism and benevolence. Parties should assess all risks they may face if a case is referred further to court where the trial may last for more than one year.

Mediators should inform the parties of the effect of agreements reached and of the steps which have to be taken if one or both parties wish to enforce their agreement. The mediator should notify the parties that information on the mediation process is confidential (off the record) and may not be used subsequently. The mediator should explain to parties that only acting by mutual consent they can reach an amicable agreement, which will give rise to mutual rights and obligations, and only in regard to their rights, obligations and subject-matter of the dispute without violations of the public order. The parties should also be explained that their amicable agreement is recognized by the court, they or their successors may not file a lawsuit with the same subject-matter and on the same grounds for the second time. In order to define the subject-matter, the scope and the conclusions of the agreement, a written document should usually be drawn up at the end of every mediation procedure, and the parties should be allowed a limited time for reflection, which is agreed by the parties, after the document has been drawn up and before signing it.

The mediator should notify the parties that the dispute will be referred to another judge for examination on the merits unless they fail to settle it.

Ukrainian court practices, however, do not provide for an opportunity to discuss facts of the case and application of laws between the mediator and complainant in absence of the defendant and vice versa, between the mediator and the defendant in absence of the claimant, during so called private sessions of the conference (consultations). Such discussion takes place after the parties and their representatives disclose their positions before the judge and other party during a public session of the conference (consultations). It is during private conference that the mediator uses different means such as questions, comments and warnings to shape position of a party in regard to the circumstances of the case and respective relations to see whether appropriate, admissible and reliable evidence is in place and can satisfy the court. Such consultations should ensure rapprochement of the parties in regard to the facts of the case, which is possible due to the mediator's professionalism. After such rapprochement the mediator discusses application of laws during the private conference. For example, the parties agreed that in course of extra-contractual relations the defendant's actions brought damage to the property of the complainant and the gross negligence of the affected party increased the damage. During public consultations the parties agree on the terms and conditions of an amicable agreement, or the complainant's waiver of his claims if the defendant restores the complainant's rights in full or in part, or the defendant accepts the amended claims.

At the same time, we should not confine ourselves to amendments of the laws only. We think, implementation of new provisions requires special actions, which also should involve the High Qualification Commission of Judges of Ukraine. Pursuant to Part Two of Article 69 and Part Two of Article 81 of the Law of Ukraine On the Judiciary and the Status of Judges, the Commission shall approve a program, curriculum and procedures of special training and a list of higher law schools that would train candidates for the judicial office. The Commission coordinates the National School of Judges. According to Article 82 of the Law of Ukraine On the Judiciary and the Status of Judges, the School shall: organize special training for judicial candidates, train judges, organize regular excellence courses for judges, carry out researches to improve court proceedings, and explore international court practices. Therefore, the National School should by virtue of its status work to address the issue. International court practices in Canada, the United States, Germany and other countries play an important role as these nations have been applying pre-trial settlement of civil disputes for a long time.

Human factor enables effective implementation of mediation procedures, which confirms such approach. The human factor means how judges realize the need of such procedures, whether they act in a good faith while performing their duties and strive for continuous improvement and learning both legal, psychological and other aspects of such science as conflict studies. It is quite evident that this also applies to lawyers representing parties in civil cases.

Another action to help implement the procedures is to ensure that every agency administering the justice should use all communications channels to raise awareness of the public and parties to court proceedings about efficiency of the pre-trial settlement, placing emphasis on absolute advantages of the procedure over examination on the merits of the case. They should also replicate good mediation practices and provide impartial consultations and information on the pre-trial settlement.

I would like to note that Ukraine is implementing the mediation procedure as part of the Council of Europe program "Transparency and efficiency of the judicial system of Ukraine". This initiative will introduce judges to pre-trial settlement practices and, hopefully, it will be another step to show the lawmakers that pre-trial settlement needs regulation, in particular in civil proceedings. Finally, pre-trial settlement should turn into a judicial tradition and then a universal practice in Ukrainian civil proceedings.

Nikolay Timoshin,
Chairman of the Supreme Qualification Collegium of Judges of the Russian Federation

Powers exercised by the Supreme Qualification Collegium of Judges of the Russian Federation and strengthening the legal status of the institution

Dear conference delegates and colleagues,

Let me thank the organizers and personally the Chairman of the High Qualification Commission for the invitation, greet you on behalf of the Supreme Qualification Collegium of Judges of the Russian Federation and wish you success in your professional walk of life.

In my speech, I would like to share with you how the Supreme Qualification Collegium of Judges and judicial collegiums operate in Russian Federation.

The Supreme Qualification Collegium of Judges of the Russian Federation celebrated its 20th anniversary quite recently, in June 2013. The Collegium was set up by the 2nd All-Russian Congress of Judges on June 30, 1993. For the first time in the history of Russian judicial system, the congress elected 32 judges of the Supreme Qualification Collegium of Judges by secret ballot.

The procedure was in line with the law on the status of judges in the Russian Federation, which provided for establishment of the Supreme Collegium and judicial qualification collegiums in two high courts, courts in the subjects of the Russian Federation, military districts, military forces, navy and arbitration courts. Therefore, we created a system of qualification judicial collegiums with powers to build a judicial pool, ensure judicial independence, encourage career development of judges and judicial liability.

For nearly a decade since the launch the Supreme Collegium and other judicial collegiums had consisted of judges only, but there was a lack of integration among them. Late 2002 saw restructuring of the system, with powers of the qualification collegiums of high court being transferred to the Supreme Collegium and subjects of the Russian Federation establishing unified qualification collegiums of judges.

Today the Supreme Qualification Collegium consists of nine judges from the general jurisdiction courts, nine arbitration judges elected by the All-Russian Congress of Judges and ten community leaders such as reputable law researchers, teachers and representatives of universities appointed by the Council of Federation and a representative of the President of Russia. Such approach ensures efficient consideration of issues, enhances the Collegium's reputation and makes creation of the judicial pool more open. Members of qualification collegiums of judges in the subjects of the Russian Federation are also elected subject to interests of the public.

Development needs of the judicial system and new impulses of the judicial reform have driven change in competences and powers of the Supreme Collegium and regional collegiums of judges.

The Supreme Collegium exercises powers established by the Law On Bodies of Judicial Community in the Russian Federation. Collegium's goals and objectives are broad: encouraging improvement of the judicial system and judicial proceedings; protecting rights and legitimate inter-

ests of judges; assisting in organizational, HR and resource support to the judiciary; enhancing reputation of the judicial power, ensuring compliance with the Code of Judicial Ethics by judges. As a rule, the Collegium holds meetings every two months; its members are relieved from their duties for the time of meetings only. Meetings are prepared by a standing administrative office of the Collegium.

Comparison of results reflects the scale and changes in operations. We have identified certain trends in core areas of operation by analyzing particular statistics. The main trend is definitely growth. Here is some comparison.

During its first four years (1993-1996) the Collegium examined 300 applications of judicial candidates and recommended 265 applicants, while during the most active four years (2005-2008) it examined 2,482 applications and recommended 1,682 candidates.

Since its inception (1993-2012) the Collegium has examined about 120,000 complaints of individuals and legal entities against actions or omission thereof of judges.

These figures are given to emphasize, first of all, that quantitative indicators of our performance are naturally determined by needs of the judicial system.

We should understand them properly and respond accordingly. In 2012, the Collegium had nine meetings instead of six as prescribed by its rules and regulations. This year the situation is similar as one of our objectives is to consider issues as soon as possible and make grounded and lawful decisions. We think such ways of development of the Collegium satisfies interests of the judiciary.

Generally speaking, qualification collegiums of judges exist, operate and develop in line with the judicial system, even though they are not a part of the judicial system. The collegiums are neither a part of other branches of power, nor federal, regional or municipal agencies. At the same time, they have particular powers of authority under the law.

Collegiums are not civil association either within the traditional meaning of this term as judges become members of the judicial community once they take oath, while voluntary membership, as you know, is the cornerstone of a civil association. Yet electivity inherent to civil associations is in place in the collegiums when they and their governing bodies are formed. The collegiums, however, have no membership fees, property, bank accounts, etc. essential to associations of citizens.

The law on bodies of judicial community establishes that the bodies operate in a collective and open manner subject to principles of judicial independence and non-interference with judicial activities. Regulations on qualification collegiums of judges approved by the Supreme Qualification Collegium of Judges of the Russian Federation give definition in a pithy manner: a qualification collegium of judges is a body of judicial community with powers of authority to meet objectives set by federal constitutional laws and federal laws.

The 20th anniversary of the Supreme Collegium suggests two important conclusions. First, a qualification collegium of judges has full legal capacity, i.e. it has big rights and equally big obligations. For example, no judge may be appointed to office, including senior positions, in Russia without recommendations of a qualification collegium of judges. A judge may be suspended only following a decision of a qualification collegium of judges. Second, qualification collegiums of judges are legally capable, i.e. they exercise their rights and obligations in full.

The status of a qualification collegium of judges as a body of judicial community raises a question about the legal essence of the collegium. A logical approach to the legal essence, which

is a universal objective characteristic of a subject and an immanent permanent content of a subject, suggests that the main thing is the permanence of the content, which becomes evident in externals.

Such externals include different forms of the collegium's operations within its powers. Broad competences and the scope of powers determine the place of collegiums in the system of social relations and ensure efficient influence of the collegiums on such relations.

The legal essence of qualification collegiums is revealed through implementation of provisions established by the Constitution of the Russian Federation on requirements for judicial candidates, grounds to suspend or remove judges from office and principles of immunity and independence.

It is evident in this context that the legal essence of qualification collegiums of judges has not appeared automatically due to adoption of the law, but has developed due to collegiums' operations, powers and competences, i.e. due to historical process of inception and development of the institutions.

Initially, powers of collegiums were exercised in two areas crucial for the judiciary: selection procedure of candidates for the office of judge and imposition of judicial powers on them and mechanisms of disciplinary liability of judges.

It is essential that the crucial functions of collegiums vested in them since inception as back as the Soviet era are still performed. Collegiums' rights and obligations have been extended amid fast-changing regulations on the judiciary mostly due to efforts of collegiums themselves, which helped enhance their legal status. Examples of such efforts include methodological guidance by collegiums of the subjects of the Russian Federation and consideration of complaints against decisions of collegiums in the subjects.

In 2008, it was the Supreme Collegium that proposed amendments to laws, emphasizing the reasons to extend types of disciplinary actions and increase a number of qualification classes. In 2012, it suggested introducing a period of limitation for disciplinary misconduct.

The federal lawmakers took these suggestions into account and updated the system of qualification evaluation of judges for it to motivate judges to enhance their qualifications. New types of disciplinary actions have been introduced as well to ensure effective correlation of the severity of misconduct and sanction. A period of limitation for disciplinary proceedings has again been established in laws.

As we know, the period of limitation for the disciplinary liability of judges is also fixed in the Law of Ukraine On the Judiciary and the Status of Judges.

Following the initiative of the Supreme Collegium, examination collegiums of the qualification collegiums has become independent bodies of the judicial community. They give a qualifying examination to applicants as it was before.

Judges – direct holders of the judicial power – working in nearly 3,000 federal courts and more than 7,000 judicial districts of Justices of the Peace need structures to express and defend their interests.

Therefore, the legal essence of the collegiums is revealed through performance of its key function of voicing and defending interests of judges.

Being bodies of the judicial community, collegiums exercise powers of self-government in the

judicial community. Clearly, decisions made by collegiums as a self-governing judicial authority bring certain legal implications for the judges, presidents of courts, etc. These implications depend on the nature and scope of powers of a collegium in certain area of activities of the judicial community.

A qualification collegium of judges in the Russian Federation carries out the following functions: first, HR management for judges, second, judge evaluation, third, inquiry and preliminary investigation in course of disciplinary proceedings against judges, fourth, almost judicial scrutiny during examination of disciplinary cases at meetings of the collegium and, fifth, trial of judges where a collective verdict on a discipline action is delivered.

Unlike Ukrainian practices, our Supreme Qualification Collegium decides independently on early termination of office of a judge, including judges in high courts, for disciplinary reasons. Grounds for discipline are checked not by one member of a collegium, but by an ad hoc collegium involving representatives of the public and council of judges. Our collegiums apply three sanctions: reprimand, admonition and early termination of office.

I'd like to emphasize that each of the function of our collegiums is exclusive: any other public authority, civil organization or official may perform it.

For the Supreme Collegium and all collegiums in Russia it is commonplace truth that qualification collegiums meet the needs of the judicial system, which in turn takes into account needs of the society. The society obviously needs to see stronger role of the justice in everyday life and understand approaches and norms of application of laws which should be consistent. Russian judicial system faces change aimed at establishing the integrated mechanism. Clearly, the system of qualification collegiums will take the lead in addressing certain issues. We will face some specific issues as well. In particular, we'll see changes in formation of collegiums, with changes taking into account new reality of the judiciary.

Russian qualification collegiums make up a team built for certain time to address specific issues identified by laws. Moreover, this team is creative, because the exercise of our powers requires a responsible and creative approach. Creativity is in very delicate aspects such as evaluating people and influencing them. Russian proverb "Two heads are better than one" plays a great role here. Believe me, a collective intelligence driven by brains of 29 members of the Supreme Collegium is a good potential.

Review of Ukrainian laws and performance of the High Qualification Commission of Judges of Ukraine proves once again that goals and objectives of our organizations are mainly identical, with the vector of development being slightly different though. For example, our Supreme Collegium is not a legal entity, nor are collegiums in the subjects of the Russian Federation. Any member of a collegium works there on a voluntary basis without exemption from the main job. Powers of our institutions vary as well.

But the variance and peculiar features raises more interest and spurs a need in exchange of practices and in networking to drive progress. As Nikolay Gogol's character Taras Bulba said: "There is nothing as sacred as bonds of the fellowship!"

Thank you for attention!

Nataliya Shuklina,
Acting President of the National
School of Judges of Ukraine,
S.J.D., Professor

The Role of the National School of Judges of Ukraine in training skilled human resources for the Ukrainian judicial system

The Law of Ukraine *On the Judiciary and the Status of Judges* sets joint objectives to the National School of Judges and the High Qualification Commission of Judges of Ukraine to ensure strong professional competence of the judiciary.

According to this law, the National School of Judges is a governmental institution with a special status set up to prepare skilled specialists for the judicial system and carry out R&D. The National School of Judges is established under the umbrella of the High Qualification Commission of Judges. So, the National School of Judges was established following a decision of the High Qualification Commission of December 21, 2010.

On January 17, 2011 the President of Ukraine issued Decree No. 52/2011, where he instructed to speed up the establishment of the National School of Judges at the premises of the Academy of Judges of Ukraine.

The National School of Judges is a special autonomous institution responsible for:
1) organization and initial training of candidates for judicial office;
2) preparation and regular training of judges and court workers.

The organization of judicial education fully corresponds to the European standards, particular to Opinions No. 4 (2003) and 10 (2007) of the Consultative Council of European Judges, Recommendations CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges (endorsed on November 17, 2010) and Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

The Law of Ukraine *On the Judiciary and the Status of Judges* establishes the right of a judge to raise his/her professional level and take appropriate training. The law also obliges a judge to take two-week training at the National School of Judges from time to time. So, Part Six of Article 54 of the Law *On the Judiciary and the Status of Judges* requires a newly appointed judge to take the two-week training at the National School of Judges every year. A judge on a lifelong position shall take the training at least every three years.

Eight regional departments of the National School of Judges operate to bring training of judges and court workers closer to the regional court network. They are based in Dnipropetrovsk, Donetsk, Lviv, Odesa, Sevastopol, Kharkiv, Chernivtsi and the Crimea.

Training skilled staff for the judicial system and performing R&D activities are core areas of operation of the National School of Judges.

To organize quality training in 2013, the School developed and approved 30 standard plans for training of judges, presidents and deputy presidents of courts of all instances and specializa-

tions as well as court administration workers. The standard plans for judicial training are based on the suggestions made by local courts and courts of appeals and cassation. Comments of judges are also taken into account. The plans are then generalized by researchers of the National School of Judges.

To fully meet the needs of the judicial system during planning and holding of educational activities for judges, Coordination Center for Judges was established on June 12, 2013. It operates as an advisory pro-bono agency acting on a collective basis to engage the community of judges to agree on the content of the standard plans for training of judges, court administration workers and candidates for judicial positions.

To prove that, I will show you some figures. In 2012, the National School of Judges provided training for 15,904 judges and court administration workers, of which 9,816 were judges. In Q1-3 2013, the school trained 8,925 people including 4,950 judges. It is 390 attendees more year on year.

But the numbers of students is not our top priority. We champion firstly the quality of training! Therefore, in 2013 the National School of Judges began to update its teaching methodology. We partner with the Canadian-Ukrainian project "Judicial Education for Economic Growth" to prepare pilot courses for judges built on skills-based education approach. We recognized the training of newly appointed judges as the key area for implementation of new educational methods. In the longer term, the National School of Judges is going to gradually replace classic lectures with new courses.

But even today the School is offering such training techniques as:
1)mini lectures
2)discussions
3)role games
4)simulation of problematic situations
5)trial case studies
6)work in small teams
7)workshops, conferences, training sessions, etc.

Professional psychologists are invited to deliver classes on psychology and conflict-resolution aspects in the work of judges, the influence of social factors, psychological aspects of particular categories of cases, ways to optimize communications with court administration workers and visitors and prevention of a job burnout effect.

In 2013, the National School of Judges began to organize training in regional courts of appeals. So, in May and September 2013 the School jointly with Odesa Oblast Court of Appeals held a week-long training for judges of the trial chamber of this court.

On July 11, 2013 a workshop on application of the Criminal Procedure Code was organized for judges of the court of appeals and local general courts in Volyn Oblast. Same activities are planned this year in the courts of appeals in Kirovohrad and Chernihiv oblasts.

These measures show that strategic objective for the National School of Judges is to implement the instruction of the President of Ukraine to retrain court workers and law enforcers on how to apply the new provisions of the Criminal Procedure Code endorsed on July 5, 2012.

Distance learning is expected to become an individual innovative way of training at the School.

Building an own regular faculty is a mainstream activity of the National School of Judges.

To train judges who will be coaching at the School, it uses resources provided by programs and projects of international technical assistance and engages leading Ukrainian and global experts. In 2011, the EU Twinning project "Supporting the National School of Judges" engaged Austrian experts to hold two cycles of workshops for coaches about interactive teaching methods. In 2012, the School jointly with the USAID-led Fair Justice project and the Department of Justice of the U.S. Embassy in Ukraine organized two training sessions for coaching judges on the new Criminal Procedure Code of Ukraine. In 2013, the training series was continued for these 60 coaches and focused on the substance of educational activities related to application of the Criminal Procedure Code and international practices.

In 2013, the Canadian-Ukrainian project "Judicial Education for Economic Growth" helped build four working groups to develop training courses for judges using the skills-based methodology. Developers of courses attended guidance workshops on how to hear land disputes, interpret regulations and manage the court room.

To launch distance learning, the School and USAID-led Fair Justice project co-held a workshop for coaches on how to develop curricula and oversee progress of attendees.

Coaches attended courses on the following issues under a joint program of the EU and CE "Transparency and Efficiency of the Judicial System of Ukraine": 1) applying the European Convention on Human Rights and Fundamental Freedoms and the practices of the European Court of Human Rights in civil proceedings; 2) anti-corruption laws and their application: practices of the EU and Ukraine.

The coaches of the National School of Judges are 19 judges of the Supreme Court of Ukraine, 52 judges of high specialized courts, about 300 judges of the courts of appeals and local courts, experienced workers of court administrations and the National Judicial Administration. As seen from the above, the National School of Judges has established a stable team of researches and lecturers ensuring high quality of training for attendees that is confirmed by their survey forms.

Clauses 20 and 21 of Opinion 4 (2003) of the Consultative Council of European Judges say that it is important that the training is carried out by judges and by experts in each discipline. Coaches should be chosen from among the best in their profession, taking into account their knowledge of the subjects and their teaching skills. When judges are in charge of training activities, it is important that these judges preserve contact with court practices.

Part Four of Article 53 of the Law On the Judiciary and the Status of Judges suggests that a judge may, upon his/her request, be seconded to work, in particular, in the National School of Judges and at the same time keep salary at the main place of employment. Please note that there is no practical legal mechanism for such secondment for judges. I believe it is immediately important to fix in a law the rights, duties and professional guarantees for seconded judges, determine the secondment procedure (display of the initiative, document preparation procedure) and describe the conditions for keeping contact with practice and the ways of engagement with educational and research activities at the National School of Judges. This approach would establish legal preconditions for building a sustainable training capacity of the School.

After training the attendees of the National School of Judges obtain a certificate that the High Qualification Commission of Judges of Ukraine must consider when making a decision on transfer or lifelong appointment of a judge or applying disciplinary sanctions against judges.

Introducing special training for candidates applying for the position of judges has been a highlight of this year. For the first time the School organized dedicated training for 630 candidates

from February 4 till September 8, 2013. The Law *On the Judiciary and the Status of Judges* authorizes the School only to arrange dedicated training, while its delivery is the responsibility of higher law schools approved by the High Qualification Commission of Judges of Ukraine. So, four leading law schools offered theoretic classes, while the practical training (internship) took place in courts of all four specializations under guidance of mentor judges. For the record, we have introduced the mechanism of using mentor judges for the first time and it has showed good results. Mentors were the judges of appropriate courts with a solid record on their position (appointed for a lifelong term or with at least three years of experience). A mentor judge supervised not more than three candidates for judicial positions at the same time.

In total, 174 judges and 80 researches were involved to provide dedicated training to the curriculum approved by the High Qualification Commission of Judges of Ukraine. The program of specific training activities for the dedicated training was developed by the National School of Judges and endorsed by judges of high specialized courts, courts of appeals and the Council of Judges of Ukraine.

Research and development. In 2011-2013, researches of the National School of Judges prepared and published the following manuals for students and professors:

1. Criminal proceedings principles in the context of practices of the European Court of Human Rights
2. Applying the practices of the European Court of Human Rights in civil proceedings
3. Communications of the judiciary
4. Writing court decisions
5. Protecting children's rights in civil proceedings; court decisions
6. Detention and custody: practical guidance
7. Applying European standards to counter violence and impunity in Ukraine
8. Article 8 of the Convention on Human Rights and Fundamental Freedoms: how to apply it when administering the justice
9. Applying the European Convention on Human Rights in economic trials
10. Domestic abuse trials
11. Trials of domestic abuse in Ukraine: how to comply with international standards and improve quality.

E-versions of the manuals are available for the judicial community on the official website of the National School of Judges.

As part of cooperation with the USAID Fair Justice project, we develop courses for newly appointed judges on drafting court decisions, a manual, Being a Judge, and a distance course for judges, The Judicial Ethics.

The National School of Judges takes part in national programs, particularly the National Program for prevention and fight against corruption for 2011-2015, the Concept of the National Migration Policy and the National Stop Violence Campaign designed until 2015. The School developed corresponding action plans to deliver on the above programs.

We set up a Research and Methodology Council, an advisory unit to organize research at the School. The Strategic Development Plan of the National School of Judges for 2014-2018 expects the Research and Methodology Council to evolve into a facility that determines research priorities of the judiciary, organizes, plans and coordinates R&D and methodology efforts of the National School of Judges, helps do research and implement results in judicial practices.

The School launched an official website for public outreach and publishes a national judicial research edition *Slovo Natsionalnoyi Shkoly Suddiv Ukrainy* [The Word of the National School of

Judges of Ukraine] coming out four times a year.

Strategic plan. On October 11, 2013 the High Qualification Commission of Judges of Ukraine approved the Strategic Plan for the Development of the National School of Judges of Ukraine in 2014-2018. It is a long-term plan based on interim objectives that the National School of Judges has set considering Ukraine's strategy of the judiciary's development. Achievement of its strategic goals and objectives will drive activities of the institution in a corresponding sector, encourage application of the leading international practices and better administration.

International cooperation. The National School of Judges cooperates with international organizations through programs and projects of technical support. Such collaboration seeks to ensure firstly the institutional capacity of the School for the performance of its core functions. As examples, I would mention the cooperation with the EU as part of the Ukraine-EU Action Plan in the field of justice, liberty and security and collaboration with the Council of Europe (CE) under the CE's Action Plan for Ukraine 2011-2014, including: Joint program of the EU and CE "Transparency and Efficiency of the Judicial System of Ukraine (2008-2011); European Union and Council of Europe Joint Program "Reinforcing the fight against ill-treatment and impunity" (2010-2012); A CE project "Enhancing judicial reform in the Eastern Partnership countries" (2011-2012); A CE program "Strengthening the lawyers' capacity for domestic application of the European Convention on Human Rights – the European Program for Human Rights Education for Legal Professionals (HELP II) (2010-2013); CE/SIDA Project "Support for Prison Reform in Ukraine" (2011-2013) CE Project "Support to the criminal justice reform in Ukraine" (2013-2015).

The Fair Justice project is being realized with the USAID (2011-2013). We continue cooperation with the Commercial Law Development Program of the U.S. Department of Commerce to train coaching judges on how to hear cases on violations of intellectual property rights. Canadian International Development Agency (CIDA) is supporting a five-year project, Judicial Education for Economic Development, (2012-2017) in partnership with the National Judicial Institute of Canada. We continue cooperation with the International Organization for Migration under the project "Building capacity of law-enforcement agencies and the judiciary to fight human trafficking committed for labor exploitation" (2011-2012).

The National School of Judges is a member of the International Organization for Judicial Training (IOJT) that brings together 108 schools for judges and prosecutors from 67 nations. We are also a part of the Lisbon Network that consists of judicial training institutions from 46 member states of the Council of Europe.

I wish to stress that the National School of Judges cooperates constructively with the High Qualification Commission of Judges of Ukraine to deliver on its goals and functions under the Law *On the Judiciary and the Status of Judges*. We are thankful for the support, understanding and help that we are enjoying from the Chairman of the Commission Ihor Samsin and representatives of the Commission.

Cooperation of our institutions is especially important for ensuring the research and methodology groundwork for the Commission's exam (anonymous testing) prepared to identify the general theoretic knowledge of a candidate for the position of judge, a qualifications exam and special training for candidates. The School prepares draft programs for anonymous tests and qualification exams, develops and regularly updates databases of test questions and court case studies (practical assignments) for judicial candidates and serving judges in case of a transfer to another court. The school also monitors questions for exams, engages experts to finalize and test them and arranges workshops for developers of tests and case studies.

Finally, I wish to say that strong training of the judiciary in line with international and Euro-

pean standards must be a national priority and a driver towards higher efficiency of the national judicial system. Therefore, increasing the role of the National School of Judges and harmonizing its legal status with European and international standards should be the next step in the judicial reform strategy. Raising the institutional capacity and the legal status of the School will certainly require additional resources needed to provide it with own rooms, modern IT and telecommunications, accommodation premises for judicial candidates during their training and increased budget to retain our faculty.

The National School of Judges has the necessary capacity to become a national center for judicial education relatively soon!

Thank you!

Paata Silagadze,
Judge of the Supreme
Court of Georgia

Appointment of the judges for indefinite term

I will try not to bother you with my long speech. Though, I would like to speak about our today's topic and note that appointment of the judges for indefinite term is at least one of the guarantees that ensures independence of a judge.

Georgian legislation even took this step when it recorded in a new constitution (which will enter into force after a new presidential election in Georgia) about unlimited appointment of the judges until they reach their pension ages but there was noted that the judge can be appointed for 3 years of probation term which to my opinion is one of the possibilities to restrict a judge's independence.

Above-mentioned probation term was introduced in the law of common courts where also was added that the probation term considers that Higher Council of Justice of Georgia should conduct monitoring to a judge at the end of each year based on a conclusion made by one of a selected members of the council. The conclusion will become a ground to decide whether appoint or not a judge at his/her post.

It is true that the Parliament postponed to discuss the issue for the 1st of May of the next year to determine the criteria for the monitoring which Higher Council of Justice should judge during monitoring of the judges but according to the daft law which is submitted to the Parliament of Georgia it is easy to guess what criteria are determined.

Pursuant to the mentioned project, monitoring must be conducted based on the proofs of decisions, impartiality of judges and other similar statements which to my opinion is direct interference in independence and impartiality of judge. Judge must thing about decision of the case based on the law and internal belief and not about the thing whether monitoring executor likes or dislikes the specific decision, which will be the forth instance after supreme court, which I think is not correct. Despite the fact that I am a member of the Higher Council of Justice of Georgia I don't want to conduct such monitoring and interfere in making decision by judge. Discussion of decision submitted by a higher instance courts is quite different issue which is legal and fair.

Also it should be considered that as far as I know Ukraine is going to refuse probation term and conduction of monitoring. All above this, Ukraine is going to introduce changes in the law in this sphere as I think is promotional step on the way towards the independence of the judges.

It is true that probation term is also established in Germany but it only considers observing of ethic norms by a judge and the issues whether a judge committed any crime or not.

To consider the issue that the law about 3 years' probation terms for the judges in Georgia is already taken it will be acceptable to focus only on these two criteria and pay attention to observing of ethic norms and discuss whether a judge committed any criminal offences or not after which the judges will automatically be appointed for indefinite term. It must not be allowed to conduct monitoring on proving the decisions made by the judges and on their impartiality regarding some concrete case which is based on assessment and it is difficult to discuss whether judge was impartial or not without subjective idea.

It should be mentioned that two conferences were held by initiation of the court about probation term and monitoring where advocates and non-governmental representatives were participated. They stated their negative attitude towards the mentioned changes and advocates noted that it is not acceptable to discuss the case by the judges which are appointed under probation term in order not to get a client's interest into danger and they will always try to refuse the judge which is appoint for probation term. Parliament forced to approve the mentioned changes in the law without public discussion.

Furthermore, it should be mentioned that the probation term is not only established for those people who were appointed as a judge for the first time but also for those judges who completed ten years authority of judge which is defined under the acting law and they again participate in the competition for reappointment. I let you make your own conclusion regarding the above mentioned.

I hope our legislative bodies will take into consideration Georgian judges' opinions regarding the mentioned issue and fulfill such reforms which don't take us back in past instead of getting success.

Thank you for your attention.

Viktor Horodovenko,
Chairman of the Appeal Court of Zaporizhzhia region,
representative of Ukraine in the Consultative Council
of European Judges of the Council of Europe

Cooperation of the High Qualification Commission of Judges of Ukraine with professional judicial associations

Chairman Samsin, colleagues and guests!

The present stage of development of Ukrainian society, establishment of the state of law and civil society drive the need to guarantee independence of the judicial branch as one of democratic grounds of the society. In this context, a professional association of judges plays a great role. Such association helps the judicial community participate in the management of the judicial system and ensure the independence of judges, courts, etc. At the same time, doing justice depends not only on judges, but also on institutions responsible for developing and realizing HR policy of the judicial branch, in particular, on the High Qualification Commission of Judges of Ukraine. Therefore, my speech today focuses on the Commission and its interaction with professional associations of judges.

At this conference, the Chairman of the High Qualification Commission of Judges of Ukraine, international seakers and domestic legal experts have stated repeatedly that judicial independence is one of fundamentals of a state of law. A democratic society may not exist without independent and unbiased justice. No doubt, human rights, the rule of law and independent justice are key values of the modern civilization. International standards and practices have been playing an important role in Ukrainian judiciary. In most democratic countries across the globe, judicial independence is a cornerstone of the Constitution and a constitutional directive at the same time, which is an integral part of any democratic state. We are honored to have here today the President of the European Commission for the Efficiency of Justice and many other our colleagues who can assess the maturity of a judicial system by a degree of understanding, harmonizing and implementing of international standards in the national laws as well as by the extent to which professional associations of judges recognize the international standards. In Europe, the underlying documents regulating standards, roles and status of the judicial power and judicial independence are European Charter on the statute of judges, the document adopted by the United Nations, conclusions of the Consultative Council, conclusions of the European Commission for the Efficiency of Justice and other international documents, both European and global. These documents establish the role, place and purpose of the judicial power in the democratic society. Particularly, the judicial independence as defined by many international documents... Perhaps, today I'm not the first and not the last one to state it, but it is very important for understanding goals of the judicial community in regard to the society. So the judicial independence is not the ultimate goal, but a prerequisite to exercise the human right to fair justice and rule of law. The judicial independence seeks to guarantee the fundamental right of everyone to a fair trial by an independent and impartial tribunal established by law. Independence of judges is guaranteed by independence of the judicial power in general and is the fundamental principle of the rule of law. It is important to unite constitutional and international principles and enshrine them in Ukrainian legislation. Such good regulations or ideas enshrined in the Constitution, that is at the highest level, is a very important signal or, as they say, indicator of the public consciousness. In the judicial community, public consciousness is determined by professional associations of judges. It's a pleasure that today the Chairman of the High Qualification Commission of Judges of Ukraine has announced clauses 60-61 of the Opinion No.3 of the Consultative Council of European Judges about professional conduct of judges. According to the clauses, we should differentiate between the breach of professional

standards and misconduct giving rise to disciplinary sanctions. This issue has also been raised by the first working expert meeting of the International Association of Judges in Costa del Bravo. Professional standards are a conduct model towards which all judges should aspire. It would discourage the future development of such standards and misunderstand their purpose to equate them with misconduct justifying disciplinary proceedings. In order to justify disciplinary proceedings, misconduct must be serious and flagrant, in a way which cannot be posited simply because there has been a failure to observe professional standards. Certainly, judicial community may not stay aside of how judges are held liable to disciplinary proceedings. Judge's status and essence of his/her beliefs should also be taken into account by judicial self-government authorities and the High Qualification Commission of Judges of Ukraine when developing criteria and understanding the meaning of misconduct. I'm pleased to state the High Qualification Commission of Judges of Ukraine takes into account opinions of judges. To illustrate how professional associations of judges operate in Ukraine, I'd like to emphasize a big contribution made by the Center for Judicial Studies as a professional association of judges. In particular, I can show you a practical guide the Center has been developing for many years. The guide covers judicial independence, standards of national practices, regional models and monitoring. Also, the Center was involved to monitor how correct the first, second and third judge selection stages were organized. I'm pleased to state that in 2010, with the support of the USAID Rule of Law Project, Ukraine was one of the first European countries to publish and translate all opinions of the Consultative Council of European Judges and international judicial standards to give opportunity to every Ukrainian judge to have such publications. We shared this information with colleagues during the meeting dedicated to the tenth anniversary of the Consultative Council of European Judges. I'm very honored to say that over the last years International Association of Judges and Ukrainian Association of Judges, which is a full member of the international institution, have cooperated a lot with the High Qualification Commission of Judges of Ukraine and the National School of Judges of Ukraine in regard to judicial education. I'd like to stress again that whatever good laws our lawmakers may make and whatever international documents of the Council of Europe and the United Nations we may adopt, we cannot speak of any progress unless every Ukrainian judge regards himself/herself as a truly European judge responsible for establishment of a modern rule-of-law democratic state. But I hope, and I see understanding in the eyes of my colleagues, that together we will overcome all difficulties. Europe and the United Nations, if I may put it so, will be proud of how the court proceedings are carried out in Ukraine.

Thank you for attention!

Ivan Nazarov,
Associate Professor, Department
of Organization of Judicial and
Law Enforcement Bodies, Yaroslav
the Wise National Law Academy, S.J.D.

Legal nature and importance of disciplinary liability of judges

Liability of judges has always been in focus as the observance of the principle of judge independence and the quality of justice depend on the way such liability is enshrined in law and observed.

In the most general form, the liability of judges is presented as social responsibility that determines an appropriate punishment and obliges a judge to act in a socially responsible manner within the boundaries of judicial freedom.

Legal (judicial) liability is a type of social responsibility that includes disciplinary, criminal, civil and administrative liability. Ethical responsibility as determined by the law can also be seen as part of legal liability.

Disciplinary liability of judges is viewed as a special and individual type of legal responsibility applied in the specific area of legal relations and connected with professional activities of particular actors - judges. It guarantees that judges carry out their duties and ensures the rights of citizens for effective and fair trial.

International regulations also attach importance to disciplinary liability of judges. They include, in particular: Basic Principles on the Independence of the Judiciary endorsed by the UN General Assembly resolutions 40/32 and 40/146 of 29 November and 13 December 1985; Recommendation of the Committee of Council of Europe Ministers to Member States on the Independence, Efficiency and Role of Judges approved in 2010, etc.

General international principles of disciplinary liability of judges are as follows:

a) when judges fail to carry out their duties, in the event of disciplinary offences, in case of negligence, they shall be held liable with due regard and respect to judicial independence;

b) disciplinary proceedings shall be performed by an agency that is independent from executive and legislative branches;

c) judges elected by judges shall take at least half of seats in the disciplinary agency in regard to judges;

d) decisions to apply disciplinary sanctions shall be controlled by a superior judicial authority.

Ukraine has only partially implemented the above standards. Therefore, all the judicial reform initiatives suggest steps to streamline issues related to liability of judges to improve the quality of justice and maintain independence of the judiciary.

Thus the draft law of Ukraine on amendments to the Constitution of Ukraine submitted by the President of Ukraine to the Verkhovna Rada to strengthen judicial independence (registration No. № 2522a, hereinafter referred to as the draft law) regulates also the liability of judges. In particular:

1. The amendments to Parts Five to Seven of Article 126 of the Constitution of Ukraine suggest that reasons for removal and reasons for suspension of a judge be distinguished. Reasons for judge suspension are objective (age of 70 or death) and do not require a special decision of the agency that appointed the judge to the position.

2. Additional reasons for removal of a judge are specified. For example, the draft law suggests fixing in the Constitution such a removal reason as a disciplinary action taken against the judge for a disciplinary offence, which prevents him/her from remaining in office. Other reasons include leaving Ukraine for permanent residence in another country, recognizing a judge as incapable and failure of the judge to agree with transfer to another court if his/her court of general jurisdiction has been liquidated or reorganized.

The last reason for judge removal is rather controversial as it provides no mechanism for its practical realization. The point at issue is that a judge may be removed from office if his/her court has been liquidated or reorganized, i.e. objective reasons for a judge transfer arise, while he/she does not agree to be transferred to another court.

If we look at potential expansion of the list of judge removal reasons on the constitutional level, it may require a procedure for handling such issues to be developed and concurrently discussed. At the same time, such a procedure shall be fixed in a special law. In our case, the procedure of transferring a judge from one court to another specified in the current Law of Ukraine *On the Judiciary and Status of Judges* of July 07, 2010 will not work. If the draft law withdraws the authority of the Verkhovna Rada to elect judges permanently, the Rada then shall not be involved in transferring permanently elected judges from one court to another nor can it remove them from office because of the reasons in question. The role of the President of Ukraine in this matter shall be technical, while the reasons and procedure of addressing the issue by the High Qualification Commission of Judges of Ukraine and the High Council of Justice shall be enshrined in detail in the Law *On the Judiciary and Status of Judges* and the Law *On High Council of Justice. Judicial* legislation should also clearly define the term "reorganization of a court". The term "liquidation" is known from the Law of *Ukraine On the Judiciary and Status of Judges* as it describes the procedure and reasons of establishment or liquidation of court. The term "reorganization" of a court, its reasons and procedure also needs definition.

3. Amendments to Article 131 suggest reforms of powers and composition of the High Council of Justice by stating that 12 of 20 members shall be judges appointed by the Congress of Ukrainian judges. The congress of Ukrainian lawyers and congress of representatives of higher law schools and academic institutions appoint two members of the High Council of Justice each. The High Council of Justice shall include the President of the Constitutional Court of Ukraine, the President of the Supreme Court of Ukraine, the Chairman of the Council of Judges and the Prosecutor General of Ukraine by virtue of their positions. Amendments to Article 131 also suggest enshrining in the law the requirement to the composition of the High Qualification Commission of Judges of Ukraine, where judges elected by the congress of judges of Ukraine shall take the majority of seats. The only meaning of the last sentence is to enhance the constitutional status of this institution.

4. Amendments to Part Three of Article 126 suggest enshrining in the law that the High Council of Justice shall give consent to detention or arrest of a judge upon a motion made by the High Qualification Commission of Judges of Ukraine.

A question arises during review of the last suggestion: why does not the Prosecutor General of Ukraine initiate the issue? The public prosecutor's office manages the investigation of criminal cases. Therefore, it is absolutely logical that now the issue is brought before the High Qualifica-

tion Commission of Judges of Ukraine by the Prosecutor General of Ukraine or his deputy. Why do the suggested amendments fail to mention the prosecutor's office and why do we need such a complicated process: public prosecutor's office – High Qualification Commission of Judges of Ukraine – High Council of Justice? One of the last two institutions will be sufficient.

In summary, we see that responsibility of judges in general and disciplinary liability in particular are in focus of international standards of the judiciary and the national current and draft laws. But in any way the amendments to the current laws in this area need preliminary discussion and research to avoid any breach of the principle of judicial independence and maintain the quality of justice.


Lex est judicum tutissimus ductor
INDEPENDENCE OF THE JUDICIARY
Lithuanian experience
LIETUVOS RESPUBLIKOS TEISĖJŲ TARYBA
Vigintas Višinskis
Judge of Court of Appeal of Lithuania,
Member of the Judicial Council, Professor of
Mykolas Romeris University


THE MAIN ISSUES:
Introduction to the system of courts
Self-Governance of courts
Independence of judges / courts

The CONSTITUTIONAL COURT: 2 indivisible aspects of INDEPENDENCE of judges / courts

INSTITUTIONAL

- **The independence of courts as the system of the institutions of the judiciary**

PROCEDURAL

- **The independence of judges and courts while investigating cases**

COURT SYSTEM IN LITHUANIA

Courts of GENERAL Jurisdiction

- **Supreme Court**
- **Court of Appeal**
- **5 Regional courts**
- **49 District courts**
  - **6 City** District courts
  - **43 Regional** District courts

Courts of SPECIAL Jurisdiction

- **Supreme Administrative Court**
- **5 Regional Administrative courts**
  - Vilnius
  - Kaunas
  - Klaidpėda
  - Šiauliai
  - Panevėžys
- Theoretical possibility of **other specialized courts** (no such courts in LT)

REFORM OF COURTS

from 1st January, 2015

Courts of GENERAL Jurisdiction

- Supreme Court
- Court of Appeal
- 5 Regional courts
- 12 District courts — Regional District fillials

Courts of SPECIAL Jurisdiction

- Supreme Administrative Court
- 2 Regional Administrative courts
  - Vilnius — Regional filials
  - Kaunas — Regional fillials
- Theoretical possibility of **other specialized courts** (no such courts in LT)

THE SELF-GOVERNANCE OF COURTS OF LITHUANIA

- Article 109 of the Constitution of the Republic of Lithuania states that ***"while administering justice, the judge and courts shall be independent".***
- With purpose to ensure the independence of courts the **Law on Courts**, which came into effect on 1 May 2002 regulates their ***organizational autonomy realized through judicial self-governance***.

THE SYSTEM OF SELF-GOVERNANCE OF COURTS

- GENERAL MEETING OF JUDGES
- JUDICIAL COUNCIL
- JUDICIAL COURT OF HONOUR
- JUDICIAL ETHICS AND DISCIPLINE COMMISSION

DISCIPLINARY LIABILITY OF JUDGES

Right to make a motion:

1) Judicial Council;
2) Judicial Ethics and Discipline Commission;
3) Chairperson of the court where the judge is employed or of higher level court;
4) Any other person

Right to institute disciplinary action:

The Judicial Ethics and Discipline commission

Hearing the Disciplinary case:

The Judicial Court of Honour

Decision of the Judicial Court of Honour might be appealed to:

The Supreme Court of Lithuania

DISCIPLINARY LIABILITY OF JUDGES

Grounds for bringing the disciplinary action against a judge:

(i) an action demeaning the judicial office

(ii) violation of other requirements of the Code of Ethics of Judges

(iii) non-compliance with the limitations on the work and political activities of judges provided by law

An act demeaning the judicial office - an act **incompatible with the judge's honour** and **in conflict with the requirements of the Code of Ethics of Judges** whereby the office of the judge is discredited and the authority of the court is undermined.

Any misconduct in office - negligent performance of any specific duty of a judge or omission to act without a good cause shall also be regarded an act demeaning the office of a judge (Art. 84 of Law on Courts).

The CONSTITUTIONAL COURT:

The Independence of Courts and Judges is Indivisible

The assessment of the system of guarantees of independence of judges and courts permits to assert that they are closely interrelated

In case any guarantee of independence of judges and courts is violated, administration of justice might be damaged, there might appear a danger that neither human rights and freedoms will be ensured nor the rule of law be guaranteed.

GUARANTESS FOR INDEPENDENCE FOR JUDGES

Safeguards guaranteeing the independence of judges (Constitution and Law on Courts)

- Guaranteeing the security of tenure
- Guaranteeing personal immunity of a judge
- Securing social (material) guarantees of judges

GUARANTEEING SECURITY OF TENURE

- Appointment , transference, suspension, removal – grounds and procedure specified in the Constitution
- Special procedure and requirements for the selection of candidates to judicial office and for the promotion of judges
- Judge's consent is required for the appointment to court of lower level (exception – reorganization, liquidation of court)
- Appointment to a judicial office for a definite term

GUARANTEEING PERSONAL IMMUNITY OF JUDGE

Interference by institutions of State power and governance, Members of Parliament and other officials, political parties, political and public organisations, or citizens with the activities of a judge or the court is prohibited and incurs liability provided for by law

The cases to judges are allocated to the judges and the judicial panel shall be constituted via the IT programme

A judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Parliament

A judge shall not be liable for the damage caused to party to proceedings because of the unlawful or ungrounded decision

SECURING SOCIAL (MATERIAL) GUARANTEES OF JUDGES

Remuneration for judges shall be in conformity with the status of the judiciary and the judge, with the functions exercised by them and their responsibility

Financial and organizational technical measures, adequate conditions of work

Physical protection of the judge and members of his family when there is real threat to their life, health or their property connected with the discharge of judicial duties

Compensation for the damage caused by injury, by destroying or stealing the property belonging to the judge or members of his family connected with the discharge of judicial duties

INITIATIVES AT EUROPEAN LEVEL TO REINFORCE JUDICIAL INDEPENDENCE

Risks to the independence of judges

- Political, media, other influence;
- Partiality;
- Lack of social guarantees;
- Corruption, etc.

New initiatives at European level

- Establishment of European judicial culture;
- Reinforcing mutual trust and confidence;
- ENCJ project on the Independence and accountability of the judiciary (2013-2014), etc.

THANK YOU FOR YOUR ATTENTION!

LIETUVOS RESPUBLIKOS TEISĖJŲ TARYBA

Wish you success with your future endeavors!

Grzegorz Borkowski,
Judge, International Cooperation Department
of the Polish National School of Judiciary and
Public Prosecution, Doctor of Law

The ways of becoming a judge in Poland – further developments

Ladies and Gentlemen, Dear Colleagues,

First of all I would like to express my gratitude for inviting me again to this beautiful city of Kiev. I must admit that the view over the Dnipro river is absolutely breath-taking.

Let me start with a general remark- my presentation is called "The ways of becoming a judge in Poland- further developments". Nevertheless I will concentrate on planned changes, i.e. those which have not yet entered into force, and out of them I will mainly dwell upon one issue, which is an idea to re-introduce to Polish legal system the institution of judicial apprenticeship, called "*asesura*".

So far, the scheme of judicial training in the National School of Judiciary and Public Prosecution may be summarized as follows[1]:

The planned changes of the above- shown system are mainly targeted at shortening the judicial initial education, that is to skip the general training stage and to start the training on two parallel ways: either judicial or prosecutor's initial training. This means that a candidate would have to choose whether he wants to become a judge or a prosecutor at the very beginning (before becoming a trainee) and would have to pass an initial examination for either judicial or prosecutor's training course. Such a solution would shorten the initial training period by a year. The above-mentioned solution is planned to be introduced the next year, as this year the candidates still passed the exam to become general training trainees.

Another, and much more important reform to be taken is to liquidate the part of the training which takes place after the exam (i.e. working as a referendary - "referendarz sądowy"- for 18 months) and re-introduce to the Polish legal system the institution of judicial apprentice ("*asesor sądowy*") instead.

[1] I presented the issue of the current state of play of judicial training in Poland in Lviv, during a seminar, which took place on 22-24 Feb. 2012

The problem is that this institution was part of a our legal system for ca. eight decades, but in 2007 it was declared unconstitutional by the Polish Constitutional Court. Afterwards, the judgment of the European Court of Human Rights followed, also stating that performing judicial power by "asesor sądowy" was in breach of art. 6 of the European Convention of Human Rights (hereinafter: Convention).

Why then would we want to return to this idea? To answer the question above, it is indispensable to look back into the past and see what were the reasons behind the above-mentioned judgments:

The institution of a judicial apprentice (*asesor sądowy* - hereinafter: assessor), as a stage between a judicial trainee and a judge, has been present in Polish legal system since 1928, and it was based on a German "Richter auf Probe" or a "judge to be tested" (not the best translation, I must admit). Assessor was authorized to exercise judicial powers in a district court for a specified period of time and while adjudicating, he/she was independent and subject only to the Constitution and statutes. The difference between a judge and an assessor was that the latter, during the period of exercising judicial powers, remained under the supervision of a judge designated to carry out the function of a consulting judge.

Also the Law on Common Courts Organisation of 27July 2001 stipulated the requirements that had to be fulfilled to assume the office of a district court judge. A candidate for such office was required, among other conditions, to complete a judge's or prosecutor's training (*aplikacja*) and then pass the relevant examination. Subsequently, he or she had to work a minimum of three years as an assessor in a district court (it should be stressed that the minimum period of serving as an assessor was gradually growing, to reach three years in the above mentioned Act).

Section 134 of the Act provided that the Minister of Justice may appoint as an assessor a person who has completed a judge's or prosecutor's training and passed the judge's or prosecutor's examination and who meets the specific requirements and that the Minister of Justice may also discharge an assessor, having given him notice and subject to approval by the board (of judges) of a regional court. According to the official statistics, the Minister of Justice had never exercised the power to dismiss an assessor during his/her term.

Because of the growing scope of activities of common courts (e.g. since 2001 the misdemeanors' or, in other words, petty crimes' offenders have been tried by common courts) and due to the prolonging period of being an assessor at the beginning of the judicial career, the number of assessors in common courts was constantly growing. In 2006 there were more than 8 million new cases in district courts and in the same year there were 8181 judges in district courts, in that number 5237 in district courts and out of them 1675 were assessors (over 30%).

In 2006 the Constitutional Tribunal tried to draw attention of the lower chamber of Parliament (*Sejm*) to the fact that there was a case pending in the Tribunal challenging the assessors' judicial powers and both the Ombudsman and the National Judicial Council shared the claimants' main arguments. There was no reply, however.

In its judgment of 24 October 2007 (SK 7/06) the Constitutional Tribunal found that the vesting of judicial powers in assessors by the Minister of Justice (as representing the executive) was unconstitutional since the assessors did not enjoy the necessary guarantees of independence which were required of judges.

The Tribunal noted, inter alia, that in accordance with the text of the statute, while adjudicating an assessor shall be independent and subject only to the Constitution and statutes (section 135 § 2). "However such regulation of itself is only a declaration, not ensuring the real and

effective independence required by the Constitution, unless the independence is supplemented by concrete guarantees, namely particular legal regulations related to effective securing of the observance of the particular elements of the concept of independence. The issue of independence from the Minister of Justice should be seen from the angle of the assessor's appointment, the vesting of judicial powers in an assessor and his or her dismissal. In respect of the appointment, and in particular the vesting of judicial powers, the statute does not precisely specify the time frame in which such appointment should be made. Considered from the functional point of view, independence does not have to mean appointment for life or appointment until retirement age, but it must mean a certain level of stability in employment and in the exercise of judicial powers. It should be indicated here that the Strasbourg case-law underlines precisely that if judges or persons exercising judicial powers are not appointed for life, they could be appointed for a certain term of office, and that they must benefit from a certain stability and must not be dependent on any authority (judgment of the ECHR of 23 October 1985 in the case of *Benthem v. the Netherlands*, no. 8848/80). It may be indicated here that in attempting to define more closely a certain minimum period which would guarantee professional stability the European Court of Human Rights found three years to be sufficient (judgment of the ECHR of 28 June 1984 in the case of *Campbell and Fell v. the United Kingdom*, nos. 7819/77 and 7878/77, and the judgment of the ECHR of 22 October 1984 in the case of *Sramek v. Austria*, no. 8790/79). The regulation of the assessor's status does not contain such guarantees, since there is no minimum period for which such a person is employed and no minimum period for which an assessor is vested with judicial powers. It is undoubtedly a situation which gives rise to significant misgivings as to its compliance with the principle of independence. In this respect the situation would have looked unambiguous if the statute had expressly determined the period for which an assessor was appointed and the period for which the judicial powers were vested. The existing regulation, implying discretion of the minister and the board of judges of the regional court (...) thus amounts to one-sided dependence of the assessor's professional status on those organs.

The principal argument indicative of the unconstitutionality of the vesting of judicial powers in an assessor is the admissibility of his or her dismissal, including even during the period in which an assessor exercises judicial powers. Even assuming the constitutional admissibility of the institution of temporarily vesting those powers in an assessor within the jurisdictional and temporal limits specified by a statute, then a rudimentary aspect of the principle of independence which must be adhered to also in this case requires that it should be possible to remove an assessor from office only in the same way as judges may be so removed or even only in some of those cases. The existing regulation, firstly, does not contain a proviso that the dismissal of an assessor (at least one who has been vested with judicial powers) is allowed only as an exception to the rule. Secondly, the statute does not precisely set out the factual circumstances serving as justification for dismissal from the office. Thirdly, a decision on dismissal is taken by the Minister of Justice and not by a court. It follows that, regardless of whether dismissal from the office of assessor may be reviewed by a court, the essential requirements of independence from non-judicial authorities stemming from Article 180 § 1 of the Constitution are not met. The obligation [to secure] the approval of the board of judges of a regional court is not a pertinent circumstance, since this body is not a court but an organ of court administration, and moreover its approval is also of a discretionary character as there are no specific legal norms which indicate whether or not a dismissal is justified in a given situation. Consequently, there are no substantive guarantees and no adequate procedural guarantees which would indicate that the assessor's dismissal on the ground of the content of his/her rulings is excluded. (...)".

The Constitutional Tribunal also ruled that the provisions of section 135 § 1 of the Act will lose its binding force eighteen months after the promulgation of the judgment, therefore during the eighteen-month period it was constitutionally admissible for the assessors to continue adjudicating. That period was also necessary for Parliament to enact new legislation dealing with the matter.

On 23 January 2009 Parliament enacted the Law on the National School for the Judiciary and Public Prosecution (*Ustawa o Krajowej Szkole Sądownictwa i Prokuratury*), which entered into force on 4 March 2009; the law inter alia abolished the institution of judicial assessors.

On 30 November 2010 the European Court of Human Rights (hereinafter: the Court) in Strasbourg gave a judgment in case of Henryk Urban and Ryszard Urban v. Poland (*Application no. 23614/08*) concerning Polish citizens tried by assessors. In written grounds of the judgment, the Court has frequently recalled the above-cited Constitutional Tribunal's judgment, following its way of reasoning. The Court, inter alia stressed that the Constitutional Court found that the manner in which Poland had legislated for the status of assessors was deficient since it lacked the guarantees of independence required under article 45 § 1 of the Constitution, guarantees which are substantively identical to those under Article 6 § 1 of the Convention.

The Court also noted, recalling its previous judgments, that appointment of judges by the executive is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role. It further stressed that the Constitutional Tribunal did not exclude the possibility that assessors or similar officers could exercise judicial powers provided they had the requisite guarantees of independence and that it pointed to the variety of possible solutions for allowing adjudication by persons other than judges.

In conclusion, the Court considered that the assessors lacked their independence required by Article 6 § 1 of the Convention, because they could have been removed by the Minister of Justice at any time during her term of office and that there were no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister. By contrast, the Court recalled case of *Stieringer v. Germany*, (no. 28899/95, Commission decision of 25 November 1996), in which the relevant German regulation provided that dismissal of probationary judges was susceptible to judicial review.

Therefore, the current situation in Poland is that the National Council of Judiciary has to evaluate candidates for judicial position, who have never been behind a judicial table, but have been performing duties of court referendary (*referendarz sądowy*) or judicial assistant instead. The problem arising is quite obvious- how to decide about a person's ability to perform his/her duties as a judge in a situation when there is no possibility to assess how such a person would react in a stressful situation? What's more, the lawyers ironically recall the English *bon mot* according to which "a judicial position is a crowning achievement in a lawyer's carrier"; in Poland instead, the judicial position has become a crowning achievement in judicial assistant's carrier.

Needless to say, the situation is not approved by most of judges, therefore there is consent on the issue that the system of becoming a judge in Poland must be changed. Moreover, in spite of the fact, that almost everyone was certain about the end of the age of assessors, there is also consent between the President, the Minister of Justice, The National Judiciary Council and the National School of Judiciary and Prosecution that the institution of judicial assessor must be re-established.

Everyone also knows that it cannot be "revived" in a way it used to exist for decades. There is a discussion going on in Poland[2], whether the body nominating an assessor would be the President of Poland (as in case of judges), or the President of the Supreme Court, or maybe the Chairman of the National Judiciary Council. Nevertheless, there is a common consent, that it cannot be the Minister of Justice. In this way, the "new is back" but with different face.

[2] Compare materials in quarterly issued periodic of the National Judiciary Council - Krajowa Rada Sądownictwa, no. 2 (19), June 2013, p. 5-20

I presume that it is quite obvious that both the society and the economical situation is changing, therefore the relevant laws' changes must follow. It also applies to the Constitution provisions concerning the status of judges or judges-to-be[3].

But to sum up, I would like to quote "*Alice in Wonderlands*": when Alice asked the Cat: "Would you tell me, please, which way I ought to go from here?", she heard an answer: "That depends a good deal on where you want to get to." So, taking a lesson from Lewis Carroll's book, I may say that before taking a decision which way to change a legal system, one should think it over thoroughly beforehand. Otherwise you may find yourself in a position where we are at the moment, which is: going back, after a few years of experimenting, to a well-known, but slightly revised, idea[4].

[3] See e.g. the Venice Commission's opinion of 15 June 2013 concerning Ukraine, point C

[4] Author followed the English versions of Polish legal institution accepted in above-mentioned ECHR judgment Urban v. Poland

Mykhailo Zhernakov,
Judge of the Vinnytsia
Regional Administrative Court,
PhD in Law

Activity of the High Qualification Commission of Judges of Ukraine in ensuring judges' right to work

Good afternoon, Mr Chairman and conference delegates! I am honored to speak here today. Thank you for this opportunity.

For a start, I'd like to congratulate the High Qualification Commission of Judges of Ukraine on its third anniversary of acting in such status. This is a special day not only for the Commission but probably for the whole legal system of the country. Today and yesterday other speakers stated rightly that the Commission has recently had an enormous positive influence on Ukrainian judiciary system.

On my part, I would like to elaborate on the Commission's role in professional life of judges and give a couple of my own examples. Particularly, I had luck to be among those first judges who were appointed according to the new procedure of judge selection. In Vinnytsia district administrative court, where I'm working now, there were eight of us appointed according to the procedure. I am deeply convinced that all my colleagues, like other judges in other courts selected so, are truly professional judges. We have discussed the selection procedure with colleagues many times and all share the same opinion: such situation would not have happened unless the Commission had acted within current powers.

Thinking of the topic of my speech, I came up with "the right of a professional judge to work". However, I changed the title immediately as the right to work guaranteed by the Constitution for all individuals is not exactly what the Commission cares about. In judiciary, the objective seems to be much broader. Speakers at this conference have already stated that the objective of the Commission is to ensure that the judicial system has specialists who have to meet a number of criteria, both professional and ethical. On the other hand, the Commission has other, no less important mission: it guarantees that individuals who meet these criteria and are willing to become judges have access to this profession.

No doubt, the established judge selection procedure plays the major role.

At the same time, the procedure, like any complicated and new system, has several aspects not yet regulated. I'd like to stress that this is far from criticism of the Commission, but rather suggestions. First, some aspects should be enshrined in a law or regulatory act, which is beyond the Commission's mandate; second, other suggestions are my own speculations as I am a person who has passed the selection procedure. You may either agree or disagree with them. Nevertheless, this conference is titled "Ways to improve qualifications and disciplinary institutions". Therefore, I'd like to draw your attention to the following if we think of the ways to improve the selection procedure.

First, let's take such selection criteria as legal work experience. Today the minimum requirement is three years yet draft amendments to the Constitution of Ukraine provide for five years. At the same time, it is not established by law what exactly the "legal work experience" means. The law stipulates that this is "the degree-related work experience after a person obtained higher

education degree in law, which is not lower than specialist's degree". However, a question arises: five years' experience with the legal department of a business entity, five years' experience with law enforcement agencies and five years' experience with a human rights organization are quite different. Are those individuals equally prepared to work as judges? For example, my colleagues who became judges in administrative courts after working in public prosecutor's offices said it was very hard for the first six months to change their "governmental position" acquired during their work in public prosecutor's offices and focus on protection of rights, freedoms and interests of individuals and legal entities against infringements by public officials as the Code of Administrative Proceedings of Ukraine prescribes.

It is positive that today's selection procedure includes special six months' training of candidates. Such training helps prepare individuals both professionally and ethically to be judges. At the same time, it wouldn't be inappropriate to enshrine in law a list of professions or, at least, criteria which are to be met by individuals with work experience in certain professions to become judges. I think, one of key characteristics of such professions should be a fair level of liberty, discretion and ability to make independent decisions as it is hard to imagine a judge who has no such skills and is not ready for this.

Also, speakers have emphasized the need to separate powers of the Commission and the High Council of Justice. Perhaps, I would not say anything new. I fully agree that they are two independent institutions, each having particular powers. Up to date, there has been no conflict between them in regard to the selection procedure. However, I also agree with Hanna Sukhotska who stressed the need to fix clearer separation of powers of the two institutions. According to current separation of powers, which is, however, not evident to everyone, some individuals, in particular judicial candidates, can doubt on usefulness of certain requirements, absence of duplicated powers and efficiency of the appointment procedure in general. If powers of each institution in regard to the selection procedure and implementation are clearly fixed in regulations, the doubts will become irrelevant.

According to Gordon Hewart, Lord Chief Justice of England and Wales, cited by the European Court of Human Rights, "not only must Justice be done; it must also be seen to be done." I think, this also applies to the selection of those appointed to do justice. If people not only guess about efficiency, objectivity and impartiality of the selection procedure, but can see it, they will have stronger trust in the procedure and institutions that implement them.

Finally, I'd like to talk briefly on questions put to candidates during anonymous testing and the examination. Yesterday I talked to specialists from the Commission and found out that the format and essence of questions have considerably changed since the time I passed the selection procedure. During the first selection there were many questions to assess knowledge: procedural terms, statutory definitions, etc. Today testing and especially qualifications examination are focused on the ability to interpret and implement laws and solve specific problems. This is a very positive trend, I believe. These very questions and tasks can give more information on how candidates understand the law, whether they are able to think independently if necessary and, finally, whether they are ready to be judges.

The same goes about teaching methods applied by the National School of Judges of Ukraine mentioned yesterday by Nataliya Shuklina and Donald Chiasson. When I participated in Twinning project organized by European Union in cooperation of the High Administrative Court of Ukraine, we had a five days' training session on teaching methods. I found out during the session that modern interactive teaching methods are much more effective than long lectures traditional for most of us. Such methods applied during special training, which is a part of the judge selection procedure, play great role.

All this is a result of continuous efforts to improve the selection procedure, which obviously contributes to formation of truly professional and independent judicial branch and establishment of the rule of law in Ukraine.

In conclusion, I want to say that I was lucky to pass the selection procedure when the High Qualification Commission of Judges of Ukraine had current powers. Moreover, the Commission has recently made a decision to transfer me to another court, and I am certainly very grateful for such high appreciation of my professional skills. My appointment, career development and an opportunity to choose a work place would not have been possible unless the Commission had operated within current powers.

Thank you very much for attention! I congratulate all employees of the Commission on the anniversary and wish everybody professional achievements!

Serhii Stasiuk,
Judge of the Commercial Court of Kiev,
Doctor of Laws

Study visits of Ukrainian judges to Strasbourg, the hub of key European institutions

For two years the High Qualification Commission of Judges of Ukraine has been cooperating with the Center of Promotion of Education and Exchange in International Law (CEFEDI) to organize study visits of judges from all judicial institutions in Ukraine to Strasbourg, France. The city is truly a European capital like Brussels, which is home to key European institutions, in particular, the Council of Europe, European Parliament, Office of the European Ombudsman and the European Court of Human Rights, of course.

The visits have been a part of actions taken by the National School of Judges of Ukraine to upgrade qualifications of judges in execution of Article 82 of the Law of Ukraine On the Judiciary and the Status of Judges. Pursuant to the Article, the National School of Judges of Ukraine is responsible for regular training of judges to improve their qualifications and learn international judicial practices.

A group of Ukrainian judges included judges of the Supreme Court of Ukraine, commercial court in Kyiv, commercial court in Kharkiv Oblast and district administrative court in Kyiv. The group took part in one of such study visits from 26 May to 1 June 2013 and had meetings with:

- Taras Vavrynchuk, a representative of the European Court of Human Rights; discussing structure and procedures of applications examination by the Court; general overview of the case law of the Court in regard to Ukraine.
- Natacha de Roeck, a representative of the Human Rights Law and Policy Division; presentation of HELP program.
- Hanna Yudkivska, a judge of the European Court of Human Rights; detailed overview of the Court's judgments regarding Ukraine and discussing case examination procedures.
- Mykola Tochytsky, Permanent Representative of Ukraine to the Council of Europe;
- the President of the Supreme Court in Strasbourg; discussing the judiciary system in France, categories of disputes examined by the Supreme Court in Strasbourg.

During the meetings the delegation attended the European Court of Human Rights, European Parliament, the Council of Europe, Permanent Mission of Ukraine to the Council of Europe, and the Supreme Court in Strasbourg.

After the study visits all participants received two certificates from the Center of Promotion of Education and Exchange in International Law (CEFEDI) and the National School of Judges of Ukraine to certify that they attended excellence courses.

Over the last two years the High Qualification Commission of Judges of Ukraine and the Center of Promotion of Education and Exchange in International Law organized study visits for about 80 Ukrainian judges. Certainly, this proves a great interest in learning practices of key European institutions, implementing international law and judgments of the European Court of Human Rights in the national legislation and applying the regulations by national courts.

Ukrainian judiciary has recently been placing a great emphasis on execution of judgments of the European Court. Therefore, such study visits offer a mutually beneficial opportunity: firstly,

they help prevent national courts from adopting decisions which contradict the European Convention on Human Rights and, secondly, they help prevent the European Court from passing judgments which may not be implemented in the current legal framework.

Today Ukraine is about to sign the EU Association Agreement. Ukraine's integration into European legal environment involves large-scale reforms of the national legal system and judiciary system, adoption of European standards in the national legislation and efforts to ensure that Ukrainian judges base their judgments on imperative norms of human rights protection guaranteed by the Convention.

Rafail Aliyev,
Judge of Baku City Nasimi District Court
of the Republic of Azerbaijan

Role of the Judicial-Legal Council of Azerbaijan Republic as a body of judicial self-government in improving of the efficiency of justice

Dear ladies and gentlemen!

Yesterday we got a lot of useful information about the ways and methods of improving the efficiency of justice in Ukraine and some other countries. Today I wanna make a speech on significant role of the Judicial-Legal Council of the Republic of Azerbaycan as self-governing body of judiciary in improving the efficiency of justice in our country. But about all in an order.

Since Azerbaijan restored its independence in early 1990`s, under the leadership of the founder of the national statehood – Mr. Heydar Aliyev – there were carried out huge reforms in all spheres of public life. But implementation of progressive reforms aimed on defense of human rights within the legal and judiciary system inherited from the former Soviet Union would not be possible, therefore the most comprehensive reforms were performed in legal-judicial field.

There was founded Law Reform Commission in Azerbaijan Republic in order to implement judicial and legal reforms and the president Heydar Aliyev emphasizing special importance to this issue personally undertook the leadership of that commission.

At a very short period for history, judicial and legal system of the country was entirely reconstructed, modern judicial system was established on the basis of democratic principles, progressive laws and codes were adopted in accordance with European standards.

Nowadays, consistent measures in this field being taken by our newly reelected President Mr. Ilham Aliyev who pays great attention to the judiciary system on protection of human rights in accordance with international norms and principles.

Substantially updating legislation on "Courts and Judges" and the adoption of a special law on "Judicial-Legal Council" at the end of 2004 have a serious impact on enhancement of the efficiency of justice.

A quite new institution - self-governing body of the judiciary - Judicial-Legal Council was established consisting of 15 members, its structure has been mostly composed by judges (9 persons), at the same time, representatives of the President, the Parliament, the Prosecutor's Office, Bar Association, Ministry of Justice of the Republic of Azerbaijan and a scientist lawyer.

The Judicial-Legal Council is the permanently functioning independent body and does not depend on legislative, executive and judicial authorities, local self-governments or legal and natural persons in organizational, financial and other matters.

Arrangement of selection of candidates who are not Judges to the vacant Judicial posts, evaluation of the activity of Judges, transfering of Judges to different Judicial post, their promotion, calling Judges to disciplinary liability, as well as, other issues related to courts and Judges are under competence of the Council.

As we know, formation of judicial system as an influental and independent institution is mostly up to persons - judges performing this activity. Specially, perceptions of people about law, court, justness of state and law mostly being formed according to the judges' behavior and decisions. Judges are persons who put the law into force, directly affecting thoughts of people about justice and law.

Judicial pactice in different democratic societies, made it necessary to have a functioning institution without harming the independence of the judges and the principle of separation of powers, which will carry out purposeful measures to improve the functioning of the judicial practice, the assessment of judges, and improvement of qualification of judges by teaching them according the level of modern requirements, implementation and strengthening of labor discipline, prohibiting the violation of law, elimination of the negative sides of judiciary.

Such institutions achieved significant precedents in France and Italy at the end of XIX century. And today Judicial Legal Council of the Republic of Azerbaijan, established in 2005, as a self-governing body of judiciary was recommended to many other states as a progressive experience by several influental inetrnational organizations.

Selection procedure of judges is one of the most important factors in order to get objective and impartial judges who hear proceedings more effectively, and also to ensure the independence of judges.

In that sense, according to a new legislation establishing a new institution in Azerbaijan Republic - Selection Committee of Judges and selection procedure of judge candidates in Azerbaijan by that Committee highly appreciated by several influential international organizations, selection procedure of judge candidates in Azerbaijan was selected as a one of the most progressive and transparent methods in Europe.

Thus, selection procedure of judge candidates were monitored by the European Commission for the Transparency of Justice (CEPEJ). A comprehensive report prepared by CEPEJ experts was discussed broadly in the meeting of Commission in 2011 and was approved as a positive example of Azerbaijan in this field. By the way, European Union recommended our practice to other states.

In addition, Azerbaijan was noted specially and appreciated as the first country that translated comprehensive reports of CEPEJ on analysis of judiciary of all european countries into native language and printed out. Taking into consideration positive experiences achieved by Azerbaijan in modernizing process of judicial system and its effective cooperation with CEPEJ, only the minister of justice of France and the Chairman of the Judicial-Legal Council of Azerbaijan were invited to the presentation of reports on examining court systems of European countries in September, 2012 in Vienna along with host country Austria.

In addion I want to say that the selection procedure of judges in Azerbaijan consists of numerous examinations and interviews, as well as long-term training courses and practices in courtyards in order to prepare qualified candidates for vacant judicial posts.

According to the new rules established in Azerbaijan since 2005, in order to provide objectivity and transparency in the selection of candidates to judicial posts, written examinations and examinations on a test basis are held in a single hall. All stages of examination process are held with participation of all candidates. At the same time, according to the new rules, according the international practise, oral examinations are held in order to define not only the knowledge level of candidates, but also their general outlook, ability to make logical conclusions and express their opinions fluently.

The representatives of embassies, local and international NGO-s who participated in both written and oral examinations left positive comments on the objectivity and transparency of this selection process and its accordance to the advanced rules, what is very important for us because of trust of the society to the fairness of the selection procedure.

The candidates gained success in the multilevel examinations are being involved to long-term training courses. During those courses being used modern teaching methods, paying special attention to the issues like human rights, fight against corruption, court ethics, behavior of judges, efficient organization of court activity and other relevant subjects are studied in detail by the participation of influential international experts. Afterwards, candidates before the appointment pass internship in courts.

Within the actions carried out on improvement the efficiency of judiciary system of the Republic of Azerbaijan, there paid special attention and being taken consistent measures on the dismissal of judges who causes severe infingements of law.

Previously bringing the judges into disciplinary liability was implemented by the disciplinary board of the Supreme Court. Implementation of this authority directly by higher instance court paved a way for creation of corporative relations, decreasing the efficiency of disciplinary measures.

Therefore, the involvement procedure of judges to disciplinary liabtility was once more reviewed and it was included into the exclusive competention of the Judicial-Legal Council.

The number of subjects who could apply on the commencement of disciplinary proceedings of judges were increased by including here the chairman of Supreme Court and Minister of Justice, as well as chairmans of appeal courts. At the same time, physical and legal entities were given right to apply to the Council on the corruption infringements by judges.

While defining these procedures, there paid special attention to guarantee the independence of judicial power. So that, in case when essential grounds are found to bring judges to dissiplinary liability, Judicial Legal Council issues an edict on the commencement of disciplinary proceedings. Research on the disciplinary proceeding is carried out solely by judge member of the Judicial Legal Council. During the research lasting roughly three months, the judge about whom disciplinary proceedings are implemented are being introduced with all materials, their explanations are heard and detailed report is made for the meeting of Council.

Judge whose issue of disciplinary liablity is reviewed in the meeting of Judicial Legal Council can use the assistance of advocates and judges. Voting for the disciplinary measures about judges is solely right of the judge members of the Council, as well as the right to appeal of the Supreme Court offers an additional opportunity to the objectivity of the process of disciplinary proceeding.

At the same time, disciplinary proceedings about the judges do not always result with the disciplinary measure. In case when violation of law by the judge is not defined, proceedings being terminated.

By taking into account the importance of developing the professional skills of judges in improvement the efficiency of justice and elimination of court mistakes, international practice is studied by Judicial Legal Council of the Republic of Azerbaijan. There`s been done huge work in this field by the recommendations of the Consultative Council of European Judges.

In improvement the efficiency of justuce, ethic behavioral conduct of judges is also of the great importance. For this purpose Code of Ethics adopted by the Judicial Legal Council defining

the specific ethic requirements for judges, as well as their professional ethic issues, regulating the judges' behavior and defining their attitude to professional activity. At the same time, commencement to the application of new, progressive rule of implementation of clerical work left a positive effect on the efficieny of justice.

Besides, constant actions are implemented in terms of fundamental modernization of court infrastructure and providing wide opportunities to use new technologies in the judicial system by the Judicial Legal Council.

For the purpose of qualified implementation of court processes and improvement of working conditions of judges, dozens of new court building were constructed or repaired fundamentally. International organizations and financial bodies noticing the progressive character of implemented judicial-legal reforms have shown their great interest in this field, the implementation of the joint project called "The modernization of judicial sector" was launched with the World Bank.

Within the project being implemented intensively, there was begun to construct the modernest buildings for courts of different instances, to develop governing opportunities of judicial and justice bodies, to ease document turnover and information exchnage by creating unified national electronic network.

Of course, above mentioned issues do not mean that actions on the development of judicial system in our country by the Judicial Legal Council have already been completed. We suppose that, this process will last till establishing more perfect and efficient judicial system.

Thank you for your attention!

Vision and Role of Turkish HCJP in In-Service Training

Engin DURNAGÖL
Deputy Secretary of HCJP

Presentation Outline

1) Legal Basis of In-Service Training

2) Strategic Aims and Goals of in-Service Training

3) Goals & Principles in Implementation of In-Service Training

4) Annual In-Service Training Plan

5) Collaboration with Other Institutions

6) Decleration of the Symposium on "TRAINING OF MEMBERS OF THE JUDICIARY FOR EFFICIENT AND EFFECTIVE JUSTICE"

Legal Basis of In-Service Training

Article 119 of Law 2802 on Judges and Prosecutors:

«In-service trainings, being rights and obligations of judges and prosecutors, are made to be carried out by HCJP. The procedures and principles for in-service trainings shall be regulated by a by-law which will be issued by HCJP, in consideration of the opinions of Turkish Justice Academy.»

- Judges & prosecutors' right to demand for in-service training
- *Ex officio* admission of judges & prosecutors to n-service training by the Council

Goals of Strategic Plan (2012-2016)

1) Reinforcing the Independence & Impartiality of the Judiciary
2) Reinforcing the Tenure of Judges and Prosecutors
3) Increasing the Confidence in the Judiciary
4) Increasing the Effectiveness & Efficiency of the Judiciary
5) Improving the Professional Competence of Judges & Prosecutors
6) Reformation of the Judiciary
7) Enhancing the Court Management
8) Renforcing the Institutional Background & Capacity

Improving the Professional Competence of Judges & Prosecutors

- Conducting **Scientific Studies** concerning the improvement of the professional competence of judges and prosecutors
- Preparing **the annual training plan** in collaboration with Turkish Justice Academy
- Entegration of legal education with practice, providing judges and prosecutors with a chance to do their **academic studies in Turkish Republic and overseas**
- Conuducting studies to increase **the professional competence and experience of judges and prosecutors**

Purpose of In-Service Training (1)

- To contribute **professional and personal improvement** increasing their knowledge, skills, experience and competence,
- To improve the skill to carry out **fair and fast trials** in accordance with human rights and laws,
- To develop **skills to perceive** the socio-economical, cultural and technological changes and developments and the skills **to produce ideas accordingly**,
- To contribute **the internalization of universal legal understanding**,

Purpose of In-Service Training (2)

- To increase the awareness on **profesional ethics**,
- To improve the skills of **time management**, **quick-perception of legal problems** and **to produce appropriate solutions**,
- **To deal with professional problems** concerning laws and justice and to provide professional improvement,
- **To plan training programs and to keep them up-to-date** in consideration of fundamental international documents and practices in judicial training.

Principles of In-Service Training (1)

- Providing **equal opportunities** between judges and prosecutors,
- Trainings on **typical cases and prosecutions often encountered**
- Conducting training appropriate programs for **the duties that require sprecilization**,
- Holding **legal discussion meetings** to exchange experience regarding establishing a unified practice and providing solutions for judicial problems
- Presenting **adaptation trainings** to cover amendments in duties, competences and legislation

Principles of In-Service Training (2)

- **Collaboration with all institutions** when necessary,
- Conducting trainings in accordance with the **principles of efficiency, effectiveness, economy and maintainability**,
- Conducting training programs activities so as **not to prevent the judicial duties** of judges and prosecutors,
- Benefiting from the experts and the expertise other than the judiciary when necessary,
- **Planning, implementing and doing follow-ups and evaluation of the outcomes** of in-service trainngs

Annual In-Service Training Plan

- **Commission on Training Planning** (High Council, High Courts, Turkish Justice Academy, judges and prosecutors, governmental institutions, universities, NGOs)
- **Education type and method** (congress, confrence, symposum, seminar, workshop, panel, &c.),
- Subject, aims and goals
- Target group and the number of participants,
- Venue, date and length,
- Expertise of professors and the instititions to collaborate with
- Announcement of annual training plan and possible changes

Collaboration with Other Institutions

- **Turkish Justice Academy (Primary Provider)**,
  - Determining the venue of the training and accommodation,
  - Preparing the cirruculum and determining the trainers
- **High Courts** (Constitutional Court, Supreme Court, Council of State),
- Other governmental institutions,
- Universities, NGOs and private institutions,
- International orgnizations and institutions and the institutions inother countries

Foreign Language Education (2011-2013)

PERIOD	2011	2012	2013
3-MONTH	0	0	26
6-MONTH	0	10	0
1-YEAR	5	19	20
TOTAL	5	29	46

MA & PhD STUDIES (2011-2013)

TYPE	2011	2012	2013	TOTAL
MA	0	29	16	45
PhD	0	4	5	9
PROFESSIONAL RESEARCH	0	1	7	8

Internship Overseas (2011-2013)

European Court of Human Rights (ECHR)

- 3 people for 6 months
- 1 person for a month
- 2 judges for 1 year (Seconded)

Court of Justice of the European Union

- 2 people for 1 month

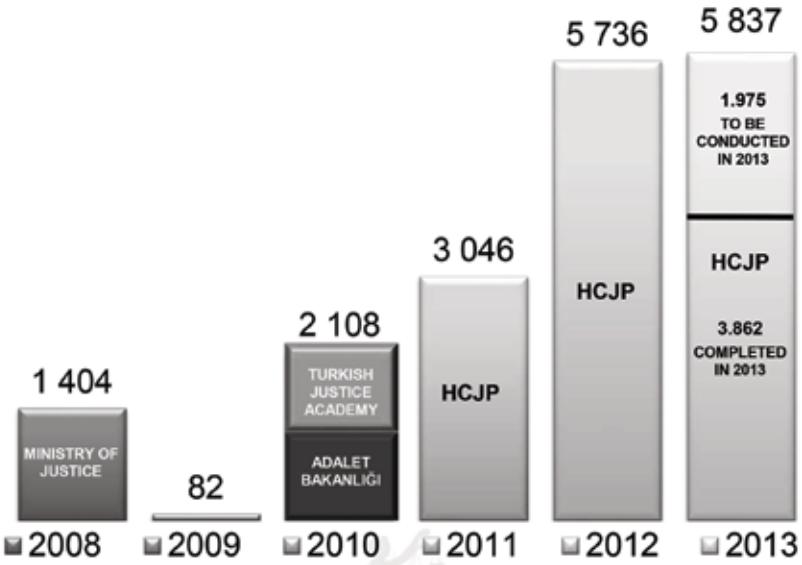
CEPEJ

- 1 Chief Inspectof of HCJP – long term (Seconded)

French National School for the Judiciary

- 1 Chief Inspectof of HCJP – 1 year

IN-SERVICE TRAINING ANNUAL SHARES



Projects We Conduct (2011-2013)

- Enhancing Awareness in ECHR Decisions
  - 72 judges-prosecutors in 2012
  - 273 judges-prosecutors in 2013
- Open World Leadership Center (Study Visits to USA)
  - 25 as of October 2013 (in total: 100 judges-prosecutors)
- Project on Bilateral Cooperation between Sweeden-Turkey («Preliminary Examination» & «Mediator»)
  - 16 judges-prosecutors in 2012
  - 20 judges-prosecutors – as of October
- Leonardo Da Vinci Mobility Project
  - «Cross Examination» ve «Protection of Women's rights» (36 judges-prosecutors in 2013)
- Project on Judicial Ethics (In preparation phase)

Projects in Collaboration (2011-2013)

- Project on Court Management (MoJ)
- Freedom of Expression and Media (MoJ)
- Strengthening the Capacity of High Judicial Institutions in accordance with European Standards (MoJ)
- HELP (Human Rights Education for Legal Professions) (Council of Europe)
- Project on Strengthening Criminal Justice System (MoJ)
- Project on Juvenile Justice (MoJ)

Academic Activities (2011-2013)

- "Symposium on the Problems due to Apprehension and Detention in Turkey, and Acceleration and Increasing of Efficiency and Effectiveness of the Judiciary", September 11-14, 2011
- "Reforms in Turkish Judiciary and Past and Present of HCJP with Comparison to European Practice", İstanbul, October 24-27, 2011,
- "International Symposium on Judicial Ethics", Ankara, November 15-16, 2012,
- "Symposium on Training of Members of the Judiciary for More Efficient and Effective Judiciary", Antalya, October 23-25, 2013
- Legal Discussion Meetings (7 places in 2012, participated by 672 people; 9 places in 2013, participated by 942)

Academic Activities (2011-2013)

- **SYMPOSIUM ON "TRAINING OF MEMBERS OF THE JUDICIARY FOR EFFICIENT AND EFFECTIVE JUSTICE"**

- 23-25 OCTOBER ANTALYA / TURKEY

- Declaration of Symposium was published

SYMPOSIUM DECLARATION

- ***Preparation of in-service plans and the needs analysis on which they are based on should be realized in cooperation not only with the service providers but also with the opinions from the parties that benefit from judicial services, and with the participation of concerned institutions, judges and prosecutors , universities, training experts and attorneys.***

SYMPOSIUM DECLARATION

- ***The planning of in-service trainings, setting the dates of training date and determining the participants to the trainings beforehand and well-functioning of the services should be provided. In determining the participants to the in-service training, individual demands, objective needs, the needs f judicial services, cost-effective use of resources and the principle of justice should be followed.***

SYMPOSIUM DECLARATION

- ***Considering that the contributions to be made by active participation of judges and prosecutors uninterrrupting their judicial duties, the laws undermining this matter should be abolished.***

SYMPOSIUM DECLARATION

- ***Despite the opinions claiming that perception of in-service training as compulsory would undermine the independence of the judiciary, there are also contrary opinions claiming that the lack of necessary professional knowledge would undermine as such. It is impossible to accept that being subjected to specific training would undermine the judiciary.***

SYMPOSIUM DECLARATION

- ***High Courts should be actively participated in in-service training and members of High Courts should be provided the chance to participate not only as trainers but also as beneficiaries in in-service training***
- ***Considering equal opportunities both national and international level for members of the judiciary, the opportunities should be presented within the limits of budget and workload based on specific planning.***

SYMPOSIUM DECLARATION

- ***In-service training materials should be published not only as printed but also as digital copy and online, and they should be kept ready-to-use for the members of the judiciary. Within this scope, distant learning methods should be used more comprehensively in in-service training regulations to encourage and obligate the members to use the distant learning methods.***

SYMPOSIUM DECLARATION

- ***There should be regulations establishing what bodies will conduct the evaluation, efficiency, feedback, assessment and supervision. Therefore, it is vital to establish a department in charge of planning, programming, implementation, follow-up, feedback and updating the educational cycle as a whole.***

SYMPOSIUM DECLARATION

- ***The in-service trainings that judges and prosecutors received should be taken into account not only in promotions and also in authorization and secondment. Therefore, there should be established a system to track, to record and output the data concerning the training that they receive.***

Thank You for Your Kind Attention

RECOMMENDATIONS

Adopted following the results of the Third Annual International Scientific-practical Conference and including the conclusions of the expert discussion and analysis of the current issues of the constitutional judicial reform, creation of corps of professional judges in Ukraine, cooperation between different judicial bodies, and improving public credibility of the judiciary.

In accordance with the Constitution of Ukraine, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Charter On the Statute for Judges, and the Law of Ukraine On the Judiciary and the Status of Judges;

having regard to the recommendations and conclusions of the European Commission for Democracy through Law (Venice Commission), the Consultative Council of European Judges, the European Commission of Human Rights,

the following actions should be taken to ensure effective implementation of the independence of judges and the judiciary in Ukraine as set forth herein.

1. The functions and powers of the High Council of Judges and the High Qualification Commission of Judges of Ukraine must be clearly separated by the existing legislation in light of the constitutional judicial reform. On July 4, 2013 the President of Ukraine submitted the draft Law of Ukraine "On Amendments to the Constitution of Ukraine on the enhancement of the guarantee of the independence of judges" to the Verkhovna Rada of Ukraine.

This draft law was previously approved by the Verkhovna Rada of Ukraine on October 10, 2013. For the final implementation of the amendments to the Constitution of Ukraine it is necessary that the draft law be adopted by no less than two-thirds of the constitutional composition of the Verkhovna Rada of Ukraine at the next regular session of the Verkhovna Rada of Ukraine.

The aforesaid is only the first step on the long road of implementation of the constitutional judicial reform. It is obvious that the next stage in the stated direction should be changes to the relevant legislative acts. And at this stage the High Qualification Commission of Judges of Ukraine, within its competence and together with the High Council of Justice, will actively contribute to avoiding the dualism of functions of the two bodies and strengthening the clear separation of powers of these government agencies.

2. Disciplinary practices of the High Council of Justice and the High Qualification Commission of Judges of Ukraine require coordination and elaboration of common approaches to the interpretation of the grounds for disciplinary responsibility of judges.

In order to address this issue the High Qualification Commission of Judges of Ukraine proposes to conduct conciliation meetings and joint events.

To establish a dialogue between the High Council of Judges and the High Qualification Commission of Judges of Ukraine, a roundtable on "Theoretical and Practical Aspects of Judicial Disciplinary Proceedings" shall be conducted with the support of the USAID FAIR Justice Project.

3. The range of possible disciplinary sanctions imposed on a judge and criteria for their proportional application should be regulated by law.

The aforementioned legislative changes will allow not only to settle the issues directly related to the amendments to the Constitution, but also to improve the legal framework governing the disciplinary responsibility of judges.

The High Qualification Commission of Judges of Ukraine, for its part, will actively contribute to the settlement of the issue of the differentiation of disciplinary sanctions imposed on a judge.

4. The principle of confidential consideration of complaints or reports on judicial misconduct and publication of final decision of the High Qualification Commission of Judges of Ukraine shall be introduced.

To solve this issue the corresponding legislative changes should be adopted.

5. To improve the efficiency of the system of professional training of judges the National School of Judges of Ukraine shall constantly cooperate with the judiciary.

6. Creation of the Judiciary Coordination Centre on the initiative of the High Qualification Commission of Judges of Ukraine is a positive step towards establishing the cooperation between the National School of Judges of Ukraine and practicing judges. The mechanism of its interaction with the National School of Judges shall be elaborated to provide advice in the preparation of judges, improving the level of training and special training of candidate judges. The permanent executive body composed of 8 – 12 judges representing each area of specialization shall be created, due to the significant number of members of the Judiciary Coordination Centre (45 persons)

7. Judges shall actively participate in training of their colleagues, and the High Qualification Commission of Judges and the National School of Judges shall be responsible for creating favourable environment to ensure such training and identifying effective models of planning and organization of judicial training. The schedule of training should be composed in advance. The National School of Judges of Ukraine shall set up a faculty of experienced judges-lecturers and introduce a system of timely informing on dates of training to let judges schedule their work time in court.

8. The High Qualification Commission of Judges of Ukraine and the National School of Judges of Ukraine shall develop an effective mechanism for assignment of judges to lecture and conduct scientific research in the National School of Judges of Ukraine. This mechanism should be agreed with the judicial authorities and the heads of courts. In order to regulate the order of assignment of judges, amendments to existing legislation regarding the remuneration of judges and introducing the time of their lecturing in the National School of Judges of Ukraine to the record of their teaching experience shall be established.

9. The system of professional training of candidate judges shall focus on applied practical training through maximum involvement of candidates in training and internship in courts. Therefore, the National School of Judges of Ukraine has to gradually switch from theoretical to practical training of judicial candidates and provide to judges-lecturers periodic training in teaching methodology.

10. Judicial training programs shall include the study of principles of judicial ethics, management skills, and methods of pre-trial dispute resolution. Drafts of training programs already elaborated by the National School of Judges of Ukraine should be implemented in practice as soon as possible.

11. The system of professional training of judges should be built on the principle of maximum use of the advanced technologies (interactive technologies, distant training, small group work), be of applied nature and assist judges in solving law enforcement problems.

12. With the institution that is created as an institution responsible for training of the highly qualified judicial personnel, the judiciary of Ukraine shall, in co-operation with international organizations and international technical assistance projects, take measures to assist the institutional development of the National school of judges of Ukraine.

13. Openness and transparency of the Government is one of the principles of state policy. To improve public credibility to the High Qualification Commission of Judges of Ukraine and the judi-

ciary, constant monitoring of public opinion on the work of the Commission shall be carried out.

The success of the work of the High Qualification Commission of Judges of Ukraine is largely dependent on its public perception. It is through the media that the public learn about the activities of the High Qualification Commission of Judges of Ukraine. Therefore, the cooperation with mass media is highly important for the High Qualification Commission of Judges of Ukraine. Communication and messaging with journalists is carried out in the following forms:

1) presence of media representatives in public sessions of the Commission.

Sessions of the Commission, to which journalists are always invited, are an exemplary source of information for the media. During the session, journalists have a great opportunity to learn about the procedure for consideration of matters within the competence of the Commission, and communicate with the Members of the Commission after the end of the session;

2)periodic press conferences and briefings by the Chairman and the Members of the Commission for the media. The Commission authorities are always open for the dialogue with journalists;

3) broad coverage of the activities of the High Qualification Commission of Judges of Ukraine in newspapers and other print media, radio and television broadcasts;

4) publication of information about the activities of the High Qualification Commission of Judges of Ukraine on its official web portal.

The types of cooperation with the media listed above are of priority for the High Qualification Commission of Judges of Ukraine, and they should serve as "information channel" to reach a broad audience.

14. To increase court efficiency, fairness in dispute resolution and improve professional knowledge and skills of judges, the Canadian International Development Agency Project "Judicial Education for Economic Growth" is being implemented in Ukraine since April 2012. Project components include the use of early settlement mechanisms in four pilot courts in the districts of Ivano-Frankivsk and Odessa.

To implement the mechanism for pre-trial dispute settlement in Ukraine's legal system, the results of the pilot courts participating in the "Judicial Education for Economic Growth" project should be considered in the elaboration of the relevant amendments to the procedural laws of Ukraine.

To change public attitude to the procedure and improve public credibility of the judiciary, continuous coverage and promotion through various media and the Internet of pre-trial dispute settlement prospects is required.

Successful implementation of pre-trial dispute settlement procedure in Ukraine will allow achieving results similar to those in Canada, including unloading of judges, improving public credibility of the judiciary and enhancing the efficiency of justice.

The Recommendations have been considered and approved by the participants of the Third Annual International Conference "The Legal Status of the High Qualification Commission of Judges of Ukraine: ways to improve qualification and disciplinary institutions in light of the constitutional reform".

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