

Executive Summary

Brief Overview of the Results

The 2005 Judicial Reform Index (JRI) assessment for Ukraine was conducted at a crucial time. The new democratic government that came to power following the 2004 Orange Revolution is open to considering numerous proposals for reforming the country's struggling judiciary. The basic legal framework for the operation of the judicial system, including the 2002 Law on the Judicial System, remains largely in place, but it has proven insufficient to address the numerous systemic deficiencies, such as external interference in all aspects of the work of the judiciary, dire financial conditions, and lack of transparency in the administration of justice. Yet, despite the fact that the most common and severe problems facing the Ukrainian judiciary are well known, the Ukrainian government lacks a comprehensive conceptual vision for judicial reform.

As illustrated in the Table of Factor Correlations, Ukraine scored positively only on four of the thirty JRI factors (Minority and Gender Representation, Judicial Jurisdiction over Administrative Practice and over Civil Liberties, and Guaranteed Tenure). Fifteen factors received a negative correlation, including most factors related to the independence of judicial decision-making, financial resources and structural safeguards, and transparency of court proceedings and documents. These results are comparable to the performance of other countries in the region where the ABA recently implemented the JRIs.¹

Concerns Relating to Judicial Independence

- One of the most serious problems facing the Ukrainian judiciary is ***improper influence in judicial decision-making from a variety of sources***, despite the constitutional and other protections against such interference. The perception of judicial corruption is widespread, and while judges are reluctant to discuss bribery or improper influence from court chairmen and upper-level courts, they are rather straightforward about the interference coming from other branches of government, as well as from prosecutors, advocates, and the media. ***Government officials employ an array of means in their attempts to influence the judicial decisions***, ranging from letters, telephone calls or personal visits to judges or court chairmen to open criticism of specific judicial decisions that diverge from their view of the correct outcome. Ex parte communications, which are not directly prohibited by any legislation, are commonplace. Similarly, ***court chairmen have disproportionate influence over individual judges*** on their courts. Court chairs dominate the judicial selection process, hire and fire court staff, assign cases to judges, and approve their vacation schedules. They also bear the burden of securing supplemental funding to maintain their courts, which makes them susceptible to influence by local or national authorities or commercial interests. Indeed, these external actors may manipulate any given judge without ever contacting him/her, channeling all influence through a court chairman.
- A related issue is ***the overall lack of respect for the judicial decisions and the judiciary in general***, which translates into the low level of public confidence in the judiciary. This attitude may be perpetuated by the constant backlash against the judiciary propelled by criticism from other government officials and negative publicity created by the media. The lack of respect is perhaps best illustrated by the fact that both the government and private parties frequently disregard judicial subpoena orders and other decisions. The ***lack of timely and proper enforcement of judgments*** has become a major crisis. In fact, this issue comes up in the overwhelming majority

¹ In early 2002, the ABA conducted a previous JRI assessment for Ukraine, which was one of the very first JRIs to be implemented. Since then, the JRI methodology has evolved and has become fully institutionalized, and the assessment of each factor now emphasizes both *de jure* and *de facto* analysis. Consequently, while the 2002 Ukraine JRI is still available and can be found at our website, <http://www.abanet.org/ceeli/publications/jri/home.html>, the 2005 Ukraine JRI should be viewed as a comprehensive stand-alone document. For this reason, the ABA has decided not to include in this report a comparative analysis of the findings of the 2002 and 2006 JRI reports.

of complaints against Ukraine filed with the European Court of Human Rights. The government has even refused to comply with some Constitutional Court decisions regarding unconstitutionality of legal acts. Further, disgruntled litigants frequently utilize available mechanisms for **filing complaints against judges in an attempt to alter judicial decisions through non-procedural means**, including decisions that were reviewed and affirmed by several levels of courts. Nonetheless, many in the judiciary contend that, despite the negative public opinion polls, most court users are satisfied with their performance, as demonstrated by the growing number of cases filed with the courts, the resolution of most civil and commercial disputes in favor of the plaintiffs, and the fact that only a small percentage of judgments are appealed.

- **Judicial independence may be jeopardized throughout all stages of a judge's service**, starting with selection and appointment of judicial candidates through advancement to leadership positions to matters of judicial discipline and removal. Decisions related to judicial appointments, discipline and removal are ultimately dependent on the High Council of Justice, a quasi-judicial constitutional body of 20 members, only four of whom are judges. Frequently, these decisions are not guided by any legally specified criteria or procedures and are often inefficient, non-transparent, highly politicized, and lacking in objectivity. For instance, both the appointment and promotion of judges are thought to rely primarily on personal or business connections, corruption, political loyalties, and other subjective factors, rather than a candidate's professional qualifications or integrity. Similarly, some judges may avoid any responsibility for misconduct if they have influential connections, while in other instances the grounds and procedures for judicial discipline and removal can be manipulated to punish disfavored judges.

Concerns Relating to the Lack of Adequate Funding

- Another key set of problems relates to the **chronic under-funding of the judicial system**. With the exception of the Constitutional, Supreme, and high specialized courts, the judiciary has almost no influence over the funding amounts allocated to it or over the expenditure of these funds. These issues fall within the competence of the State Judicial Administration, an executive branch agency whose procedures are not transparent to judges. The amounts allocated traditionally cover only about 50% of the judiciary's financial needs, and are often insufficient to cover basic needs, such as office supplies, computers and other equipment, and capital construction. Even these meager funding amounts are not always disbursed in full. As a result, judges must pay for many of these expenses out of their own pockets or resort to "sponsorship" by local authorities or commercial interests, prompting one interviewee to comment that justice has become a beggar. In addition, the **disparity in budgetary status of the Supreme Court and other general jurisdiction courts** leads to friction between the different levels of the judiciary. It should be noted, however, that the 2006 budget provides for a significant increase in funding, which is a promising first step, but significantly more resources will be needed to address the severe under-funding of the judiciary.
- **Judicial salaries are universally regarded as too low**, averaging US\$ 300-450 per month for local and appellate judges, and are insufficient to attract qualified lawyers. The executive branch has near total discretion in determining the actual amounts. A significant increase in judicial salaries was initially scheduled to take effect on January 1, 2006, but this apparently did not occur. By contrast, the leadership of the highest courts received substantial salary raises effective June 1, 2005, and this disparity further aggravates the existing tensions within the ranks of judges. The low level of judicial salaries is seen as the primary reason behind the perceived high levels of corruption in the judiciary, although there is a general agreement that a salary increase alone would not be sufficient to prevent corruption. Judges are also entitled to **a variety of fringe benefits**, most notably state-supplied housing, but these are mostly non-functional and make judges more susceptible to improper influences. Most judges would prefer to have these benefits repealed in exchange for adequate salaries. With regard to non-judicial court personnel, the salary situation is even more severe.

- Lack of resources has also meant that ***it is impossible to provide appropriate facilities to the courts***. Indeed, court buildings appear to be in worse shape than those of most other government agencies, and many lack basic infrastructure such as plumbing or heating. There is insufficient space in terms of the number of offices, forcing most judges to share offices with their assistants or secretaries, or even with other judges. Many courts are also unable to fill the existing vacancies due to lack of space for new judges' offices. Further, most judges use their offices as courtrooms, which, most recently, rendered the courts unprepared to comply with the new procedural rules mandating full audio-recording of trials. Both judges and courthouses have occasionally become targets of security threats because of lack of proper security arrangements. Overall, these conditions make it impossible to command respect for the judicial system. Several government programs have announced their intention to provide the judiciary with adequate facilities, but they are not supported by adequate financial resources.

Other Concerns

- The ***Constitutional Court***, which has built a reputation as a largely effective and impartial authority on issues related to constitutionality and official interpretation of legislation, ***has been paralyzed and unable to perform its functions since October 2005***. Only five of the eighteen positions on the Court are currently filled, which is insufficient to constitute a quorum for either instituting new proceedings or adjudicating pending cases. The President and the Congress of Judges promptly appointed nine additional justices, but the Parliament, for political reasons, has thus far refused to conduct a mandatory swearing-in ceremony for these justices. Both the international community and the domestic stakeholders have urged the Ukrainian authorities to remedy this situation, all to no avail. As a result, justice (in the words of the Parliamentary Assembly of the Council of Europe) is "held hostage by political interests" and citizens are denied access to constitutional justice.
- The Ukrainian courts are faced with ***overwhelming and ever-growing caseloads***, but the number of judges has remained relatively constant. The proffered reason is the lack of resources to support new judicial positions, which has also been responsible for the high and relatively stable number of vacancies. As a result, each local judge has to deal with, on average, 116 cases per month, but this number may reach as high as 250-300 cases in some courts. Many of these cases relate to petty misdemeanors, such as uncontested minor traffic infractions. Similarly, due to 2002 procedural changes that made it easier to lodge appeals with the Supreme Court, the Court's docket now includes over 50,000 pending civil cassations and a monthly workload of 67 cases per judge. Overall, these caseloads make it difficult for most judges to adhere to procedural mandates that cases be resolved within a reasonable time, resulting in ***major procedural delays and backlogs*** throughout the judiciary.
- Lack of transparency in both court proceedings and documents has long been identified as a problem. Often there are problems with ensuring trials are open to the public and the media due to broad statutory exceptions and the lack of courtroom space to accommodate those wishing to observe a trial. With the exception of judgments of the highest courts, only a very small percentage of judicial decisions are published. ***Lack of public access to judgments*** results in the lack of uniformity in application of the law and poor quality of written opinions. In fact, it is not uncommon for the same case to be considered simultaneously by several courts that may issue contradictory rulings. ***Accurate and reliable trial records are created only in rare instances***, and the recent introduction of mandatory technical recording of all civil and administrative proceedings was short-lived because the judiciary lacked the space and resources necessary to comply with this requirement. Neither judicial decisions nor case files are a matter of public record and are typically available only to parties; others must first obtain a permission from court chairman. On a more positive note, a law providing for publication of all court decisions on the Internet was recently adopted but is yet to come into force.