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CILC
Center for International Legal Cooperation

PEER 2 PEER 4 JUSTICE
UKRAINE

ASSESSMENT REPORT: COURTS OF JUSTICE

In cooperation with

CJS

This report has been drafted in the framework of the Peer 2 Peer 4 Justice – Phase I project that is designed and implemented by the Center for International Legal Cooperation (CILC) and the Centre for Judicial Studies (CJS). This project is funded by the Matra Programme of the Netherlands Ministry of Foreign Affairs. The contents of this report are the sole responsibility of CILC and CJS, and can in no way be taken to reflect the views of the Netherlands Ministry of Foreign Affairs.

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1. Introduction

Phase I of the *Peer 2 Peer 4 Justice Ukraine* project started in October 2016. This is a collaborative project between the Center for International Legal Cooperation and the Centre for Judicial Studies, financed by the Dutch Ministry of Foreign Affairs. The aim of the project is to strengthen the rule of law in the Lviv region of Ukraine. Phase 1 consists of an in-depth assessment of the playing field of the courts in the region, followed by a presentation of the resulting recommendations. The report will then be completed, and the report and the proposals for future actions will be adopted (phase II). Two experts from the Netherlands are involved in phase I, reporting on problems facing the judicial system, namely J.J.I. Verburg, LLM, former President of the Appeal Court of The Hague, and M.C. van der Jagt, LLM, former Board Member of the District Court of North Holland.

At the request of the CILC and CJS, both experts were in Lviv, Ukraine, in the period from 27 November up to and including 10 December 2016, when they visited four courts in the Lviv region, as well as two agencies associated with the courts. These were the (general) district courts of Lviv/Shevchenko, Pustomyty and Stryy, and the (general) Court of Appeal for the Lviv region (Lvivskaja Oblast'). They also spoke with representatives of the regional office of the State Court Administration (SCA) and the regional branch of the National School of Judges of Ukraine (NSJU). They were accompanied and supported by Mr Andriy Aleksyeyev (legal expert, CJS) and Ms Lily Kuznetsova (interpreter). On the first day, Mr Lino Brosius (CILC) and Ms Natalia Vereshchinska (CJS) were also present. Their tasks were (i) to carry out an assessment at these courts based on a questionaire drawn up previously (and agreed with CJS) and (ii) to formulate practical recommendations for the way in which the expertise available within the Dutch judicial system can be applied in the current reform of the judicial system in Ukraine.

The experts were impressed with the commitment of the judges and staff – both of the courts and the agencies mentioned – with whom they spoke, and of the hospitality and openness with which they were received. This contributed to the following report and the recommendations contained in it. The mission was welcomed positively and it is clear that the results are eagerly awaited. The experts wish to thank heartily all those who made such efforts to assist them for the information and support they provided. The initial impressions and the structure of the report were discussed with the expert from CJS both during the mission and at its conclusion. A preliminary version of the report was also submitted to CJS. All the findings, including any inaccuracies or omissions in this definitive report, are the full responsibility of the Dutch experts.

2. Approach

Before travelling to the Lviv region, the experts drew up an assessment framework together with CILC and CJS, in the form of an extensive questionnaire that served as a guideline for the discussions. The idea behind this was that applying this framework would help ensure consistency in the topics reviewed in all the discussions. The assessment framework focuses on such topics as the size of the organisation, the range of cases handled, the way the work process is organised, how the courts are financed, external relations, quality monitoring, the communication function, staffing policy, information technology and office accommodation. Obviously, it was not possible to include all the questions in the framework in all the discussions. Each time, a selection was made from the questionnaire, bearing in mind the function of the discussion partner and the available time. Taking the interviews as a whole, all the questions were addressed. The framework is available on request.

During the ten working days that the experts spent in the Lviv region, they visited each of the courts selected for two days. They also held discussions as planned in advance and attended one or more hearings, or parts of hearings. A separate day was taken up with discussions with the SCA. The first day of the visit was devoted to introducing the assessment team to the presidents of the courts to be visited; on the same day an introductory visit was made to the director of the SCA (who was unavailable later) and a discussion was held with the regional director of the NSJU, in the presence of one of the vice-rectors of the national branch of the NSJU from Kiev.

The visits to the courts followed a set pattern. Discussions were held with the Head of the Court, the court manager, the judicial assistants and the court clerks. The sequence and the size of the delegations differed, but each visit started and finished with a discussion with the Head of the Court. A total of 41 discussions were held, in some cases with a single person, but generally with a small group of people. Four hearings were attended. The complete programme is available on request.

3. General impression

The judicial system in Ukraine has undergone major changes in recent years; changes that are aimed at least to some extent at making the system more transparent and less susceptible to corruption. The flipside of these changes is that there has been an increase in bureaucracy and countless new laws have been introduced that give little scope for staff to organise their own daily work. A continuous flow of new laws and amendments to laws means a heavy workload for judges and staff at the courts. With the budget available to the SCA, the courts can make very little progress with rectifying material deficiencies. The level of satisfaction with the remuneration of judges and staff is low, and the direct political interference in the daily functioning of the judicial system is universally denounced.

One issue that was immediately apparent was the inflexible nature of a number of (legal) regulations, which have ostensibly been introduced to avoid abuses and to make the activities of judges more transparent. The allocation of cases, for example, is fully automated; there is little or no room for specialisation, audio recordings are made of all hearings, the time allowed for handling cases is very tight and the district courts have no budgetary autonomy at all.

The judicial system in Ukraine is moreover undermined by poor – or at the very least poorly considered – legislation. One instance of this is the change in the law relating to the possibility of voluntary retirement, which has resulted in the departure of 30% of the judges at the Court of Appeal in Lviv. The procedure for filling vacancies is so laborious that the first influx of new judges is not expected until the autumn of 2017.

One particular change that has serious consequences for the district courts is the appointment of judges after their first temporary five-year contract. This system was amended in 2014, but to date without there being any satisfactory transition arrangement in place. As a consequence, some 900 judges who have successfully completed their temporary term of office have not been re-appointed and this number will continue to increase until 2019 if no solution is found. They receive a salary and carry out work for their court, but they are unable to conduct hearings or pass sentences. They are currently ‘transition judges’ operating in a kind of vacuum. Ukraine has around 9,000 judges, which means that some 10% of them are unable to fulfill their duties.

The statutory system of attaching judicial assistants to an individual judge under a system of patronage means that in all cases where a judge leaves or changes position, the assistant attached to the judge has to be dismissed. These assistants are paid by the SCA, but in terms of their job, position and authority are subordinate and, as it were, an adjunct to the judge for whom they work.

The current state of the judicial organisation in Ukraine can to some extent be compared to that in the Netherlands in the 1980s: a strong, centralised organisation where a start has been made on automation, heavily overburdened, lacking the necessary material facilities and suffering a seriously inadequate standard of accommodation. Only the confidence in the judicial system and the judges themselves is not comparable. This aspect has been reasonably stable and at an appropriate level in the Netherlands for many years; Ukraine is lagging behind on this issue, which up to a certain point can be attributed to the deplorable state of the judicial system when the Soviet Union collapsed and Ukraine became independent in 1991. It is crucially important for the judicial system that judges are seen as trustworthy, but in Ukraine the level of confidence in

judges is still rather low. This was endorsed to a greater or lesser degree by all those involved in the discussions.

Specific issues for Ukraine are moreover the lack of proper neutrality on the part of politicians towards the activities of the judiciary and the very poor image of the judicial system among the general public. This last issue has its roots on the one hand in the public's lack of understanding of the working of the judicial system and on the other hand in the all too frequent corruption, or at least the suspicion of such corruption. There is a sense among a large proportion of the public that many judges are not invulnerable to improper influences on their decisions.

Barring the negative image that the general public has of the judicial system, the impressions of the experts are in many respects, in particular as regards the commitment and the professisonal level of the work, generally positive. In the visits they made to the courts, they met many hard-working judges and staff, who apply themselves to raising pubic confidence in the judicial system, but who seem to be frustrated by the constant undermining of the system in the press.

The findings of the experts can be summed up in a number of topics that are further described and elaborated below. As an aid to understanding, first a brief description is given of the Lviv region (Lvivskaja Oblast') as well as of the courts and agencies visited.

4. The region and the courts and organisations visited

Lviv Oblast'

The region is 21,883 km^2 in size, with a population of some 2.5 million, of whom 1.5 million live in an urban environment. There are 44 cities and 1,884 villages in the region, of which Lviv is the administrative centre. The region has a total of 29 general district courts and a general court of appeal, as well as a local and appeal court for specific administrative and/or economic matters. During the visit, in view of the time available and for the purposes of comparison, only courts of general jurisdiction were visited.

Shevchenko district court

This court, that serves part of the city of Lviv, has 13 judges, making it one of the larger district courts. The city has five district courts. In 2015, 11,048 cases were tried, an average of 850 for each judge. At the present time, three judges are in 'transition', waiting for re-appointment.

The court is housed in an old building, on a busy street in the immediate vicinity of the Ivano Franko University. The court is on several floors. The access doors to apartments and offices of other users are also in the same stairwell, which means that an adequate system of security is out of the question. The working areas are cramped and poorly maintained; the courtroom makes a desolate impression. Remarkably, the court is not located in its own district: its work area is elsewhere in the city. Judges and staff feel they are part of a close and warm family, led by the Head of Court (Ms Halina Bilinska) who started work at the court over twenty years ago as court clerk. The court handles cases typical of an urban environment, which has an effect on the type of case handled (urban criminality, contract law).

Pustomyty district court

This court serves a large region, lying in a ring around the city of Lviv. It has six judges and in 2015 it handled 3,770 cases, an average of 630 for each judge. There are currently two judges in 'transition', waiting for re-appointment.

The Head of Court, Volodymyr Musievsky, has his hands full with the daily running of the court, which is wrestling with major problems: inadequate accommodation, under-staffing, a poor image and few opportunities for autonomy, apart from working harder. The court building is located just outside the centre of Pustomyty, and is poorly maintained. Here, too, there are problems of lack of office space and a shortage of courtrooms. However, there is also a positive team spirit and a persistent effort to make the best of things. The range of cases is determined by the rural environment, which means that many of the cases relate to the rental or purchase of land. The low level of education of many of the inhabitants of the district is also said to be a

problem, in the sense that there is a feeling of distrust of the court and it is difficult to explain how procedures work.

Stryy district court

This court serves a large rural area to the south of Lviv. This court has jurisdiction over the city of Stryy, the Stryy district and the town of Morshyn. It has 12 judges, and in 2015 it handled more than 4,000 cases (an average of 650 cases for each judge). Currently, six judges are inactive, five of whom are transition judges and one is sick.

The court has for a short while now been located in a vacated bank building close to the centre of Stryy; the building has been well maintained and has modern furnishings. Due to a recent merger with a municipal court, there is a second building in use, within walking distance of the first. In the court, five judges are still waiting for their appointment; the pressure of work is experienced as high. Cases are also taken over from other courts. A recent customer satisfaction survey indicated that individuals seeking justice are reasonably satisfied with the court, in any event they are more satisfied than might be expected on the basis of public opinion. The Head of Court (Vasyl Barakovsky) appears to be a driven manager and is clearly seeking renewal and improvement of his court. He is also engaged in shaping his role as press spokesperson, and is taking a systematic approach to this task. The pressure of work is less severe in this court.

Court of Appeal for the Lviv Region

The Court of Appeal in Lviv handles appeals from the Lviv district. De court has a staff of 66 judges, but because of the recent (1 September 2016) exodus of judges as a result of the new pension regulation, only 38 judges are currently active. The appeal court handled a total of 10,166 cases in 2015, an average of 154 for each judge.

The court is located in an old building, a former hotel, situated on a busy shopping street in the centre of Lviv. On entering the building, visitors find themselves in a large hall, dimly lit by a single fluorescent bulb. The courtrooms are very soberly furnished, and the offices that we saw were reasonably adequately furnished. The departure of one-third of the judges has been resolved by extending the actual days on which cases can be heard from 2 to 4, and it is not unusual for hearings to last until 10 o' clock in the evening.

On the first day of their visit (the general introduction), the experts talked with the Head of Court, Mr Petro Kablak. He indicated that the battle against corruption is still ongoing, and that his court is now taking action and will try to improve the provision of information to the general public: a press officer has been appointed to take care of this.

During both days of the working visit that concluded the mission, the experts were accompanied by the director, and two deputies were also available. They explained that the appeal courts have greater budgetary autonomy and that the court of appeal is authorised to procure materials directly up to a limit of 20,000 Hrivnja (around 720 euros). These purchases are made via an electronic purchasing system: "Prozoro". The same system can be used for materials that cost between 20,000 and 200,000 Hrivnja (720 and 7,200 euros). In this case it works as a public

tender, where the system selects the supplier offering the lowest price. The procurement of materials costing above 200,000 Hrivnja is also arranged electronically and works on the basis of public tender. When asked, the director of the appeal court indicated that in financial terms the appeal court is better served by the SCA and that it also has more freedom in how it spends the budget. If the appeal court wants to transfer budget from one cost sector to another, this has to be discussed with the SCA head office in Kiev. The budget for salary costs is an exception to this rule; no alterations to the salary budget are permitted.

State Court Administration in the Lviv Region

The branch of the regional department of the State Court Administration is currently still housed in a complex outside the centre of Lviv close to the station. This is also where the regional department of the National School of Judges of Ukraine and two general district courts are located. The SCA is due to move very shortly to a different building, in the centre of Lviv.

There are 29 district courts in the Lviv region, all independent entities but in terms of the number of judges varying between 3 and 14. All the courts have a director, who manages the business processes that support the court. The director is responsible for the staff of a court, but does not have any budgetary authorities: these are entirely in the hands of the SCA.

The SCA in the Lviv region has 24 members of staff, who look after the financing and accommodation of the district courts. In the absence of Director Viktor Deyneka, the experts spoke with deputy director Maria Konik. They also spoke with the Head of Finance, the Head of Personnel and the Head of Statistics. The budgets for staff and material are kept strictly separate, apparently to avoid misuse. The SCA determines the staffing structure and the material budgets for the courts, on the basis of national norms. This leaves little flexibility for specific circumstances: at one of the courts, for example, we heard that there were too many permanent positions for court clerks, but that there is no possibility of exchanging some of these positions for other functions.

A management report is published twice a year on the results achieved in the previous period. Little use is made of this report for managing the courts for the simple reason that the Head of Court and the court manager have no authority to direct matters: the staffing structure and the material budgets are fixed. This means there is also no need for more frequent reporting.

Personnel policy is in the hands of the State Court Administration. There is a standard career path that leads from court clerk via judicial assistant to judge. The judges themselves select the Head of Court from among their midst. In terms of salary there is little difference between a Head of Court and a judge (just 10 euros a month, we were told). Along the career path, candidates obviously have to follow training programmes, pass exams and endure a comparative test.

Salaries are at a low level, even by Ukrainian standards. A judicial assistant, for example, currently earns 170 euros a month (excluding an end-of-year bonus, the amount of which is determined by the excess on the current account of the SCA and the employee's length of service), and a judge earns 450 to 600 euros. There are statutory allowances on top of these basic salaries, depending on experience and education. It is therefore very tempting to look elsewhere for a contribution

to living costs. Obviously, this is not discussed openly, but we understood from different sources that some judges are open to bribes in exchange for favours.

National School of Judges of Ukraine

The regional branch of the National School of Judges of Ukraine is located in the same building as the SCA. The NSJU has been in existence since 2010, and currently has five regional offices, besides the head office in Kiev. The NSJU is the successor to the Academy of Judges of Ukraine. The regional department in Lviv has been operational since 2004.

Judges in active service in Ukraine are expected to take part in at least 40 hours of training every three years. This is laid down in the law.

The NSJU provides courses for trainee judges and court employees, but also has a broad range of programmes for judges in active service. Judges are obliged to spend at least one week a year on training courses; for appeal court judges, this is once every three years. There is close cooperation with diverse international NGOs, which means that the required expertise - and in some cases budgets - are available.

During our visit we had a broad exchange of ideas with the Director, Ms Oksana Polna, and the Vice-Rector Mr Anatoli Kostenko on a current project to organise a number of workshops in 2017 on ‘Judges and ethics’ in collaboration with CILC and NSJU with judges from appeal courts in the Netherlands (Arnhem-Leeuwarden) and Poland (Krakov). A possible role of the NSJU in the follow-up of the current project was also tentatively discussed.

5. Two types of findings

The two-week visit provided the experts with a wealth of information. Often, parallels could be drawn with current or past problems in the Dutch judicial system, although this does not mean that the position of the judicial system (judges and courts) in the two countries is comparable. Unlike in the Netherlands, politicians in Ukraine have no hesitation in criticising the judicial system while having no real basis for doing so. Also, unlike in the Netherlands, the legal system is generally not considered trustworthy.

The remit of the experts was to investigate to what extent Dutch expertise can be applied in strengthening the rule of law. As will be explained below, the experts see some possibilities for achieving this. However, they also identified a large number of problems that will have to be tackled at a different level because they are outside the jurisdiction of the courts and they are beyond the practical support that the Netherlands is able to provide.

In the following report on the findings of the experts, those themes will first be summed up that urgently require a solution, but where Dutch expertise cannot be applied. This will be followed by a summary of the findings that can be addressed within the region and where Dutch expertise may be helpful. How this can be achieved will be described in the recommendations and preconditions.

6. Findings: topics that fall outside the scope of the project

Unfit legislation

As mentioned earlier, the administration of justice in Ukraine is negatively impacted by the inadequacy of the legislation. By this, experts mean legislation with unforeseen side-effects that are detrimental to the intention of the legislator. A pertinent example is the change in appointment procedure following the trial period, which has resulted in around 10% of the judges (the transition judges) still awaiting their appointment. The change in the conditions for voluntary retirement is causing enormous problems for the staffing levels of the appeal courts, where, as in Lviv, one-third of the judges have recently retired. A final example is the position of the judicial assistants, whose contract ends once the judge for whom they work leaves his employment. As a consequence, a lot of experience is being lost in an uncontrolled manner.

Finally, the current Ukrainian legislation – that is largely based on recommendations from EU countries and the USA, and therefore rests on two different concepts of the judicial process – in the opinion of many judges leads to a multiplicity of rules that entail a lot of bureaucracy but whose practical benefit is limited. Changes to legislation that give judges greater freedom to make the judicial processes more efficient, based on professional shared experiences could make a significant contribution to a good judicial system with fewer delays and less paperwork without compromising respect for the parties' positions or the necessary transparency.

Lack of material budget

As the experts understand it, every year there is uncertainty about the budget available for the judicial system. This lack of clarity can last well into the budget year, which means it is almost impossible to conduct a consistent operational policy. Moreover, the budget for procurement is far from adequate to run a normal office, and there is often even insufficient money for the most basic office supplies. The experts recorded situations where the only way to meet immediate necessities is to ask people for financial contributions. This situation is unwelcome, but as long as it is resolved within the court, it does not necessarily represent a threat to a reliable judicial system. However, once private external parties are involved, this becomes unacceptable from the perspective of transparency. According to several partners in the discussions, the depreciation period for computers, for example, is much longer than the technical lifetime of these items, which means they are no longer reliable. It should be obvious that to build a reliable legal system the material conditions need to be adequate.

Low salary level

The low salaries of judges and support staff represent a major threat for staff motivation, and

increase the likelihood that judges will be open to financial payments from parties who can influence their impartiality. The experts understood from various sources that a reasonably large proportion of the judges are guilty of corruption. The judges concerned justify this on the grounds of the low salaries, which make it necessary to resort to alternative sources of income, sometimes even to meet the materials needed of the courts themselves.

Poor accommodation

One of the greatest concerns mentioned by the judges and staff is the state of the office accommodation. At most of the courts visited by the experts there was a considerable arrears of maintenance as well as a shortage of space (both of offices and courtrooms). Four or five members of staff working in a room no bigger than 16 m^2 is no exception. In addition, the central heating is faulty and there is not enough archive space. We understand that a national accommodation plan has now been drawn up, although the financial means necessary to carry out the plan are not in place. It is unclear when the plan can be implemented.

Scale of operations of the district courts

The limited scale of many district courts makes them extremely vulnerable, as is now apparent with the issue of the transition judges. In addition, a staffing level of fewer than 10 judges does not allow for any degree of specialisation, if specialisation were regarded as worthwhile given the current system of allocating cases. Diverse partners in the discussions indicated they were in favour of concentrating courts. Opponents of this idea claim, however, that the distances involved in traveling to a court would become too great for many citizens. The experts suggested a solution, where the offices or office function of a few courts could be merged (creating a larger organisational unit), but still maintaining the different court locations with a limited staffing level. These locations would be visited regularly (for example, one or two days a week) by one or more judges to hold hearings. Given the reactions from the parties with whom the experts held discussions, this option is not yet being considered seriously, although the idea itself was felt to be interesting.

Security shortcomings

In view of the current office accommodation situation, it is not possible for most courts to ensure adequate security. If premises have to be shared with other tenants, and everyone can enter and leave freely, there is no chance of creating what could be termed a secure situation. During their visit, the experts also learned that the specific department that was responsible for security was recently closed down, and that this task is now in the hands of the local police. This development means that a great deal of experience and knowledge have been lost.

Inadequate computer systems

A computer system is in use that registers all cases and records the judgements passed. All the judgements are published on internet. The working process is completely computer-directed, with cases being allocated to judges on the basis of ensuring that the work packages are comparable in terms of size and seriousness. There are many complaints about the quality of the computers, which are often outdated and slow. In the outlying areas, where power cuts are not infrequent, the work often comes to a standstill because the computer system is out of use.

7. Findings and recommendations that can be addressed in the region

This chapter outlines issues that can be tackled at the regional level, where Dutch expertise can be helpful..

Press and public information

The judicial system in Ukraine is seen in a poor light. Judges are suspected of being biased, and confidence is therefore low. Knowledge of the working of the justice system is very limited. In rural areas, in particular, judges are regarded as being of the same mould as the police, the public prosecution service and prison: a penal institution that can best be avoided. The media are in the hands of politicians, who are said to have connections with the private sector and/or political groups, which mean that they are not interested in promoting a positive image of the reliability of the justice system. The same is true of a number of lawyers who give their clients the impression that a gift might help to put the judge in a positive mood, immediately pocket the money themselves and then complain about corrupt judges who were apparently tempted by a higher gift from the opposing party. According to the partners in the discussions, this shows clearly that the press is opposed to the justice system. The media regularly publish reports about scandals, which incites mistrust on the part of the public rather than challenging it.

There seems to be a lack of a well-developed national policy to improve the image of the judicial system by providing objective information about the law and how the system works. The courts themselves do have their own website, aimed at the public, with information about the court hearings and the courts themselves. Further, a year ago a system was set up where each court has a media judge whose task it is to disseminate general information about the court and the judicial system, and who can take initiatives to raise awareness of the justice system among the inhabitants of a district or region. Some courts are better at this than others. Studies have shown that people have a more positive image of a court and the judicial system when they have actually had contact with the court themselves (as a party in a case or as a witness, etc.) than those people who only know the court from social media, local and national press and hearsay. The appeal court has recently acquired its own press officer who was previously a journalist herself.

Here and there the experts witnessed a certain degree of resignation when people were asked how the public image of the justice system could be swayed in a positive direction. Judges and support staff do their utmost to provide a good judicial system, both in terms of substance and timeliness, but they come up against powers that are not interested in good news and only want to highlight errors and mistakes. In such cases the reaction is “It’s always been like that and that’s the way it will stay”. This is not a typically Ukrainian response. Good news is generally not news and the public is eager to hear about things that have gone wrong, particularly if they confirm an already existing opinion. It is therefore important to engage in active public information provision and not to wait until a news fact or rumour has spread uncontrollably. The upsurge in social media in particular means that the spread of negative – even malicious – information is many

times greater than in the past. But the old adage still applies: “Trust is hard to gain, but easy to lose.” It means that we have to be patient about making public opinion more positive and that the approach of the courts on this issue has to be well planned, consistent, pro-active and persistent. Good news has to be reported consistently and bad news – it is unavoidable in such a large organisation as the legal system in which thousands of judges work and tens of thousands of cases are handled that something will occasionally go wrong – has to be brought immediately and fully into the public domain. This can be achieved by means of a press release with a clear account of the facts and the steps being taken to remedy the situation, followed by further media contact, and not shying away from intervention on social media. Heads of courts and media judges should act in unison, each representing his own area of responsibility, but press officers and other judges in the court – who generally provide information on the cases they have judged – should endorse this approach and the proposed actions. The courts should press the SCA to provide a budget for this activity and for the proposed actions.

The experts discovered that very few of the media judges and the press office with whom they spoke have anything in the way of a firm plan for the activities to be carried out. This is not so unusual, given that these functions have only very recently been created. In the Netherlands we now have around 20 years of experience with public and press relations. In the Dutch approach:

- The press are actively approached;
- Press releases are published when important issues arise;
- Television series are made about the daily work of judges;
- National Open Days are organised;
- An up-to-date site per court is maintained, providing news about important judgements and information about the working of the law and judicial procedures;
- A lot of written and digital information material is published and disseminated;
- Contacts are made with schools at local level for visits to court hearings.

The experts therefore recommend initiating a programme, where the experiences gained in the Netherlands are communicated to a select group of judge speakers in the Lviv region, and also to involve the press officer of the appeal court in Lviv. One way to achieve this would be by organising a conference, but another option could be to introduce a mentor scheme in a form that has yet to be decided. Under this scheme, Dutch expertise would be communicated one-on-one to the media judges selected for the pilot (in a kind of mentor relationship).

Effectiveness of the judicial system

The experts were able to determine that within the courts attention is being paid to monitoring the quality of the content of judicial decisions. Minor questions and problems that require an immediate answer or solution are generally discussed with colleagues. There are also regular meetings with judges, at which assistants are not present, both within their own court and together with the appeal court. All decisions are recorded in digital form and, according to the informants, can be accessed via different entry points. Judges and assistants are expected to gain points every year by taking part in courses, seminars or tutorials organised by the NSJU. Furthermore, so-called curators - civil or criminal court judges - are attached to the district courts, who can be consulted by a district judge when necessary; this does happen on a regular basis. Amendments to legislation are kept up to date and made accessible by the Supreme Court

and CJS, the partner organisation to CILC. Good opportunities for maintaining the level of professional knowledge are being developed, but technical IT problems may delay or even block access to websites. A further study should be made to determine what facilities should be provided at what level and with what degree of depth, as well as to what extent the judges and assistants actually make use of these facilities. All in all, the experts have a positive impression of the possibilities for maintaining professional quality standards and the way in which these possibilities are utilised. The experts currently see no reason to make additional suggestions in this area.

There are two different but complementary ways of quantifying the quality of the judicial system. Besides the content of the judicial decisions and the conduct of judges at court hearings (meticulous, thorough, unbiased), the quality of the judicial system is also determined by the time needed to process a case and reach a judgement. The system needs to be optimised, and fortunately there are opportunities for achieving this.

As far as the experts have been able to assess, throughput times are still unexplored areas of information, let alone that any norms have been formulated for different categories of cases (whether they are simple, average or complex). Little attention also seems to be paid to what is the critical path for an average case and at which instances in the process the handling and judgement of cases brought before the court can be improved, while still maintaining professional quality.

Current practice is as follows. The work processes at the district courts are determined centrally and are very strictly regulated. Incoming cases (civil and criminal) are first recorded in the computer register and are then automatically allocated by computer to a judge, taking into account the nature and weight of the cases. All judges therefore in principle receive an equally heavy and varied package of cases, but there is no scope for taking account of experience or personal preferences. Everyone handles all kinds of cases; there is no question of specialisation. Judges work in their own team with a legal assistant and an administrative aide, specially for the hearings. The judge immediately sets a date for the hearing, and his support staff ensure that all parties are informed. If one of the two parties fails to appear at the first hearing, the case is halted. A judge at one of the courts we visited told us that this happens in around 80% of civil cases, which causes an enormous loss of time. In another court we heard that 90% of the cases are dealt with within the statutory term of two months. The experts have been unable to find an explanation for these very different perspectives. In criminal cases, a case often has to be halted because the public prosecutor has not yet had the opportunity to look at the case documents, the dossier is incomplete, one of the parties or a witness fails to appear, etc. An audio recording has to be made of all hearings; the recording is preserved but the experts were not clear about the further use of these recordings.

All judgements are published in full on internet. In simple or very simple cases the legal assistants draw up a draft judgement, which is checked and then signed – or not – by the judge. The experts understand that the division of tasks among judges and assistants and the degree to which assistants are given their own responsibilities can differ considerably.

The experts heard from from different parties that there are inefficiencies in the work processes. It is, for example, apparently impossible to handle the bulk cases, for which the percentage of appearances is low, more efficiently by planning several cases at the same time.

The experts were informed explicitly about the time-consuming instruction that for all criminal cases, even the simplest, an extensive, motivated sentence must be passed. There was a high level of interest in the practice in the Netherlands where the police judge – who in the first instance handles around 90% of all criminal cases – only has to record his decision and passes an extensive sentence only if the suspect lodges an appeal, which occurs in less than 10% of cases.

The experts sensed among several judges a strong need for improvement in the working process. Within the Dutch judicial system in recent years, for example in the context of the revision of the judicial map as of 1 January 2013, a great deal of attention is paid to making work processes more efficient. It is conceivable that with the help of Dutch experts at a number of courts in the Lviv region an inventory can be made of the different steps in judicial proceedings and where improvements can be made. It will undoubtedly become apparent that certain laws and practical objections stand in the way of such amendments, but the experts have the impression that immediate amendments and practical changes can be implemented if the desire to achieve change is strong enough. In any event, this approach may result in well-founded proposals for modifications to procedural law if legal obstacles do arise.

When considering modifications to the system, a distinction should be made not only between civil and criminal cases, but also within civil law also between, for example, youth, family, contract and property issues and within criminal law in the type of offence, such as whether it is a misdemeanour or a criminal offence. In addition, it is of course important whether the case is handled once or on multiple occasions.

Funding and management of the courts

The experts were told repeatedly that the courts have no responsibility whatsoever for their own finances. The relaxed side of this situation is that no choices have to be made and that there is no accountability. The experts nonetheless have the impression that this system is raising an increasing number of questions, which in itself is an understandable step in the process towards a mature and reliable judicial system.

In Ukraine there is an annual budget for financing the judicial system at national level. All the courts are financed from this budget and a record is kept of how much of the budget is reserved for each court. The amount that a court ultimately receives is determined by the SCA, who manages these budgets. In general, courts receive less than the amount budgetted. A few Heads of Court with whom the experts spoke were not able to say what their court costs the taxpayer. Every decision to open up a vacancy and to fill that position, and all purchases of material are organised via the State Court Administration. This state institution controls the finances and the management of the courts and is organised at national and regional level; in each of the *Oblast's*, thus also in Lviv, there is a territorial office that determines how the financial resources will be distributed among the district courts, based on the national budget and the regional allocation. The appeal court receives its resources – at least the staff and material allocations – directly from the national office in Kiev.

The general opinion is that since the financial resources for the judicial system are no longer dependent on the priorities of the Minister of Justice and are allocated directly by Parliament to the SCA, the situation has improved. But follow-up steps need to be taken. At the present time

the courts communicate their specific wishes and needs at the end of the year to the State Court Administration, but the budget allocation is completely standardised, so little or no account is taken of these wishes and needs. Those involved experience the financing of their courts as a kind of 'black box'. The discussion partners from the SCA felt the need to nuance this strong image that is prevalent at the courts. Indeed, the experts were able to view an SCA summary of the budget allocations for the courts. The problem is also that there is no certainty at all that these budgets will actually be available.

In the present situation, the district courts are themselves unable to set any priorities and are completely dependent on the allocation from the SCA for material supplies and staffing. The courts involved have no idea how the financial allocation is made and what they may expect. It may be that this system is maintained because of the scarcity of financial resources, but it also points to a lack of trust. At the present time the court has to go by car to the regional office of the SCA to replenish the stocks of paper and other office supplies (cartridges, pens, etc.). If there are any shortages in the intervening period, the courts have to ask for financial contributions to purchase the necessary materials from a local supplier. People are also open to contributions from 'friends', who take care of the basic requirements such as printer ink and paper.

There is often no money for furnishing the judges' rooms, where parties are interviewed every day. As a result, the judges often pay for furniture from their own pockets, at least assuming they can resist the temptation to rely on other sources of funding. People are aware that this kind of behaviour is bad for the independence of the judges, but they see no other options.

Current legislation does not allow for any far-reaching changes, but the experts can imagine that there is good reason to place greater budget responsibility with the courts, and there are two reasons for this. The first is that the availability of budgets at court level means that the funding can be applied more rapidly and more efficiently. The second is that giving the managers of a court a degree of budget responsibility also forces them to be more creative and responsible in how they utilise these resources: if people are able to determine themselves how any savings made should be used, they will also be more alert to ensuring that the savings are put to worthwhile use. In the third place, people experience greater job satisfaction if they can make choices themselves that generate more efficiency, as Dutch experience has shown.

In principle, there can be no objection to transferring budget responsibility since the appeal court already has this responsibility to a certain extent. The size of the court could be a problem, but this can be resolved by scaling up the management and office function of the smaller courts.

As an experiment, a start could be made by giving a few courts in the Lviv Oblast' responsibility for part of the material budget allocated to their district, supported by Dutch expertise. This budget can be expressed as a percentage or an earmarked part, it should be allocated on an annual basis and can be expanded as the court sees fit. Before embarking on this experiment, insight is needed into the minimum conditions required to set up a simple planning and control cycle and above all the beginnings of confidence from the SCA that the district courts that are given this limited responsibility will be able to handle the budget with due care and in line with the objectives. If the first step proves successful, further steps can be taken towards courts accepting responsibility for their material budget. In time, greater flexibility should be allowed for staff budgets so that the courts have the opportunity to use the resources to better meet their own requirements, differently from what was originally foreseen, budgetted and allocated.

Obviously, control mechanisms need to be in place for such a system so that higher authorities can monitor them and check that the financial resources are being expended properly.

As more – positive – experience is gained, the supervision and control can be reduced. In current practice, figures are produced by the SCA every six months detailing inflow, outflow and volume of work. At the present time, these data have little importance internally for managing the courts because there is no freedom to change the way the resources are used. The figures are put on the agenda of the general meeting of judges, but they only give insight into the number of cases brought before the court and the number of cases still needing to be dealt with. In the event of a backlog or if the influx of cases increases, the only solution considered is to increase the number of staff; any decision is in the hands of the State Court Administration. The system does not include any incentives for the courts themselves to look for creative solutions to improve the work processes. If the courts had greater budgetery freedom, the periodic management reports would have to be looked at: these should take on more the function of taking decisions about the future than their current function (namely reporting on what has already happened).

Workload and pressure of work

The problem of the workload and pressure of work experienced by judges was raised frequently. The workload is the actual workload, compared to the standard workload; pressure of work is the experience of the actual workload by the judge, and is related to the character of the judge and to working conditions, external pressure, politicised media attention, etc.

In the recommendations made below, the experts focus primarily on workload, although the factor of pressure of work mentioned previously certainly has an effect and warrants further research.

The experts have the impression that there are several specific factors that make the present workload considerably heavier. One of the first of these is the current procedure prescribed in law, which, as has been said, certainly warrants being investigated so that ways can be devised of optimising it. After attending several civil and criminal hearings, the experts have the impression that cases are handled meticulously but with excessive – almost minute – attention to detail and the required procedural steps. The question is whether this approach is due completely to legal rules or whether it can be attributed to a need to act in all respects in a verifiable and responsible way, in order to avoid any complaints. The many changes to legislation and the general rule (although there are exceptions) that every judge can and does everything, does not make for an efficient judicial process and a manageable workload. It would improve matters if judges were for a certain period deployed only for civil or criminal cases so that, in that particular legal area, they are up to date with all the latest developments in legislation and jurisprudence and are able to master these developments so that they can function optimally in this particular field. An important positive side-effect that can be expected is that this will allow malpractice to be reduced to an unavoidable minimum (absolute zero is impossible; the only way to achieve zero mistakes is not to take any decisions at all).

The extent to which current legislation provides scope to work with more efficient procedures remains to be seen, but the recommendation is in any event to carry out further studies in this area.

A second factor that adds considerably to the actual workload is the fact that many judges are awaiting a new appointment after the expiry of their five-year term. All these judges are precluded from conducting hearings or passing judgements, and writing drafts for colleagues is only rarely accepted. The reason given for this is that every judge has his own working method and style. This could raise a barrier to having confidence that experienced – temporarily former – colleagues are perfectly able to prepare a draft verdict that can withstand the test of criticism according to generally accepted standards of criticism. Furthermore, lawyers might make a point of the fact that somebody other than the judge who is responsible for the sentence pre-determines the decision by preparing a draft verdict. The experts found that not all courts provide structural and active guidance to ensure that full use is made of these transition judges. The expectation is therefore justified that there is room for improvement on this point.

A third factor that could explain the high workload is the fact that the allocation of staff is based solely on the number of inhabitants of a district, and no other factors are taken into account. Historical information on the actual numbers of cases that can predict the volume of work in the subsequent year are not taken into account. Any relevant special circumstances, such as accessibility, the type of legal area (for example, complex land issues or urban criminality), are also disregarded. Consequently, the current level of staffing is regarded as unreasonable by the judges. This argument (the third factor) by the courts is also disputed by the SCA, who claim that other factors are taken into account. The experts were unable to verify the accuracy of these two assertions, but it is very telling that there should be such a difference in the insight of the two parties into and their assessment of the actual situation.

The experts are not sure whether the heavy workload also applies to the administrative staff, given the different reports that reached them. It seems clear that the workload of the judicial assistants keeps pace with the weight of the workload of the judges. On a positive note, there is a regular career path for administrative workers (general workers at the court for the intake of cases and the secretary to the judge), via judicial assistant to the position of judge. Support staff are highly qualified, and although they are poorly paid, they are proud of the work they do and almost without exception they dream of becoming a judge. Judicial assistants, through selection and the personal choice of the judge, have positioned themselves for a judicial appointment. They, too, experience a heavy workload, but they gave the experts the impression that they are happy to accept the situation, even if this is only in order to avoid damaging their chances.

The experts noted that the present situation is regarded with some apathy. The first step to breaking down this attitude is on the one hand to make a plan to develop norms for a professionally accepted workload and on the other hand to chart the actual workload. Such a study should investigate the precise consequences of the above-mentioned factors on the workload, and how these can be minimized. Dutch experts in this field could provide assistance with this study.

In any event, it is likely that only minimal change is possible at regional level through national legislation but a start could be made on charting which fixed rules apply in allocating staff, which of these rules are based on legislation, what the relevant policy is and which specific elements could be considered in order to arrive at a fairer system.

8. Summary of recommendations

Press and public information

A programme should be developed whereby the experience gained in the Netherlands can be conveyed in a focused manner to a select group of media judges in the Lviv region. The press spokesperson for the appeal court in Lviv should be involved because, with her professionalism, she can play a permanent role in the communication from the courts in the region. Efforts should be made to make sure that Dutch knowledge and experiences are conveyed to the media judges selected for the pilot.

Effectiveness of the judicial system

A programme should be initiated to chart and improve the working processes in a number of courts in the region. Dutch experts should be involved who have experience with analysing the different steps taken in a legal process and who have discovered what works in practice and what does not. The authorities should see what can be achieved by the courts themselves within the existing legislation and ensure that a phased list is drawn up of useful modifications to the policies of higher authorities or legislation.

Financing and management of the courts

A limited experiment should be designed where, with the input of Dutch expertise, it is possible for a small number of courts in the Lviv region to start to take responsibility for part of the budget allocation. This budget can be a percentage of a dedicated part, should be allocated on an annual basis and can be expended as the courts see fit. The aim is for the courts to ultimately have the opportunity to use the available resources differently from the purpose for which the resources were initially provided, budgeted and allocated, according to their own needs and priorities; the available resources will then be used effectively and efficiently. The control mechanisms required should be explained so that such a system can be monitored by higher authorities to ensure that the financial resources are being expended properly. In the first phase, aiming for consensus with regard to the follow-up steps should be avoided in order to avoid this recommendation immediately coming to a standstill out of fear of the unknown. A good planning and control cycle should be devised that actually gives the courts insight into operational management and the opportunities for making adjustments in the course of the year.

Workload and pressure of work

We recommend making a plan to on the one hand develop norms for a professionally accepted workload and on the other hand to chart the actual workload. A summary should be made of the factors that are responsible for the pressure of work experienced. Particular attention should be paid to the indicators that are important for determining the staff structure/staffing levels at the courts and proposals drawn up for making these issues more effective and fairer. It would be wise to talk with lawyers to give them an insight into judicial working methods and explore to what extent they can accept further forms of delegation to transition judges and judicial assistants and what conditions have to be taken into consideration if this is to be realised. Staff (judges and experts in the field of work processes) from the Dutch judicial system (*de Rechtspraak)* could be involved who have experience in improving work processes and developing professional standards.

9. In conclusion

As regards the implementation of the recommendations, the experts have refrained from making suggestions for working methods that are available and that offer an optimum likelihood of success. It is in the first place important that the recommendations are discussed in the relevant bodies and endorsed by them. The experts do want to emphasise in advance that the recommendations require a firm basis of support in order to be successful, and all the expertise and practical knowledge available in the courts will need to be applied. This means that not only will the judges be consulted, but also the administrative workers and judicial assistants, who generally have a good idea of what has to be improved and how. Obviously, these members of staff should be involved according to their expertise and enthusiasm. It should be borne in mind that only willing volunteers will create a positive environment for success. It is also important that persuasive and timely discussions should be held with the bodies that will play a role in implementing the recommendations. If these bodies cooperate, the chance of success will be considerably greater; conversely, the possibility of resistance cannot be excluded, which represents a risk for the success of the recommendations. In any event, resistance must be factored in from the outset. Not everyone within the courts will be immediately enthusiastic. We know from experience that there is always a group of people who want things to remain the same, but there will also be a group that is enthusiastic about getting down to work. The advice from the experts is not to neglect the disinclined, but to work mainly with those individuals who see opportunities. This is an important pre-condition for success.

Naturally, the experts hope that this report will make a contribution to strengthening the judicial system in the Lviv region, and that this will ultimately spread throughout Ukraine. If the recommendations are followed up, this will not be a rapid process. The many actions to be set in motion will take time and there will undoubtedly be setbacks and failures. The experts are convinced that there are good oportunities, but it is also an enormous task to convert opportuities into successes.

The experts understand that this report in its definitive form will be presented to the discussion partners in the region and that a round table meeting will be organised by CILC and CJS. The experts believe it will be useful for them to be present to answer for their findings where necessary and to explain their recommendations. During the round table discussions agreements will have to be made that are as concrete as possible to allow the Ministry of Foreign Affairs, which is funding the project, to take a responsible positive decision about the following phase of the project. The experts do not hesitate to state that one result of this mission is that expectations of the discussion partners in Ukraine have been raised, although in every discussion it has been made clear that there is as yet no fiat on the follow-up steps. It is now up to the discussion partners themselves during the round table discussions to assure the provider of the subsidy that this is a promising project that warrants being implemented.

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