JUDICIAL REFORM INDEX

FOR

UKRAINE

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Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

> (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

> The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra,* at 616.

ABA/CEELI's Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R (94)12 "On the Independence, Efficiency, and Role of Judges";* and *Council of Europe, the European Charter on the Statute for Judges.* Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the

statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

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Ukraine Background

Legal Context

Ukraine is a unitary state, administratively divided into 24 *oblasts* (provinces), the cities of Kyiv and Sevastopol, and the Autonomous Republic of Crimea (ARC). Courts of Kyiv, Sevastopol, the ARC, and the Oblast courts are supervised by the High Specialized and Supreme Courts of Ukraine.

In the hierarchy of laws, officially promulgated international treaties overrule domestic statutes, while the latter in turn overrule "sub-legal acts" – acts issued by the Cabinet of Ministers and other lower agencies. Judicial precedent is not officially recognized, although there are some quasi-precedential practices.

The main precept in the structure of the judiciary is the doctrine of separation of powers with each of the three traditional branches of government checking and balancing one another. The Constitution recognizes the right of an aggrieved party to seek justice in international institutions upon exhaustion of domestic remedies.

History of the Judiciary

Ukraine's association with Russia, which began in the 17th century, was interrupted by a short period of independence in the early 20th century, after which Ukraine became a republic of the Soviet Union. During Soviet rule, the Ukrainian judiciary was composed of local and regional courts and the Supreme Court of the Ukrainian Soviet Socialist Republic, which was subordinate to the Supreme Court of the USSR.

The Soviet philosophy rejected the value of separation of powers viewing courts as well as other organs of the state to be parts of a single governmental mechanism, empowered by the will of the Soviet people. As the will of the people was viewed as indivisible, so had to be the power. The ultimate task of the Soviet judiciary was "finding the objective truth" in a dispute, requiring judges to be active in investigating claims. For example, judges had to continue reviewing a criminal case even after the defendant pleaded guilty or the prosecutor abandoned the accusation. Judges were further required to consult with a poorly prepared party to determine what evidence would prove his cause and to issue court orders requiring an entity possessing such evidence to present it.

In 1991, Ukraine proclaimed independence. The Constitution of 1996 upholds the doctrine of separation of powers. The Constitution called for institution of jury trials; shifting the power to issue arrest and search warrants from prosecutor to the judge; creation of appellate courts; and a number of other reforms. Since the implementing legislation did not exist, the Constitution allowed a five-year transition period, during which time the courts operated as under Soviet times. At the end of this five year period, in early June 2001, the reform legislation required by the Constitution had not yet been enacted due to lack of adequate support for any of the competing proposals. On June 21, 2001, the Verkhovna Rada passed a "small judicial reform" that satisfied the minimum mandates of the Constitution, but fell short of the broader reform anticipated. A more comprehensive act was passed on February 7, 2002, to go into effect June 1, 2002. This report does not evaluate the impact of the February 7, 2002 reform, given that ABA/CEELI's assessment was concluded prior to the effective date of June 1, 2002.

Structure of the Courts

The judicial system consists of the courts of general jurisdiction headed by the Supreme Court and the Constitutional Court, a separate judicial body, which is technically considered outside the traditional judicial branch.

Courts of general jurisdiction are divided into common and specialized courts. As of this writing, the only specialized court is the economic court, though administrative courts will be introduced under the new law to take effect June 1, 2002. Common courts consist of both territorial and military courts. All types of courts include a local and an appellate tier. Furthermore, specialized courts are supervised by a High Specialized Court of the respective jurisdiction.

The **Constitutional Court** is "the sole body of constitutional jurisdiction." Its mandate is (1) to rule on constitutionality of laws and other legal acts of the Verkhovna Rada (the Supreme Council), the president, the Cabinet of Ministers, and the Verkhovna Rada of the ARC; (2) to provide the official interpretation of the Constitution of Ukraine and the laws of Ukraine; (3) to determine whether international treaties are consistent with the Constitution of Ukraine; and (4) to determine the constitutionality of the process used to impeach the president. Legal acts determined to be unconstitutional become void as of the date of the decision of the Constitutional Court.

Courts of general jurisdiction hear criminal, civil, commercial, and administrative cases within the scope of their respective jurisdictions. Ukrainian rules of procedure presently recognize three modes of review: (1) appellate review (the reviewing court may re-evaluate the facts); (2) cassation review (the reviewing court may only re-evaluate application of the law to the facts); and (3) extraordinary review (re-opening of a case upon discovery of extraordinary circumstances such as fraud or perjury).

Most cases are tried in local courts, and appeals are brought to appellate courts, while the Supreme and the High Economic Courts generally serve as courts of cassation. However, appellate courts may serve as courts of first instance in some instances, such as murder and other grave or complicated cases, as well as in disputes involving a local court as a party. The Supreme Court may serve as a first instance court in certain cases and as appellate court in limited circumstances as proscribed by law.

The **Supreme Court** is the highest judicial body in the system of courts of general jurisdiction. In addition to acting as a court of cassation, appellate court, or court of first instance as described above, the Supreme Court is expected to issue guidance to lower courts as to application of the law. The Supreme Court operates through chambers (Civil, Criminal, Military, and Economic) or collectively through the Plenum, which includes all judges of the Court. Guidance to lower courts on application of the law is issued exclusively by the Plenum.

Economic courts primarily handle bankruptcy cases, disputes between organizations (juridical persons) and individuals registered as entrepreneurs, and cases challenging the validity of official acts. Prior to the "small judicial reform" in June 2001, this line of courts consisted of 27 courts of first instance and the High Economic Court (then called the High Arbitration Court). The reform added an appellate tier to the line and subordinated the High Economic Court to the Supreme Court. All cases within the jurisdiction of the economic courts are tried by local economic courts and appealed to the appellate economic courts. The High Economic and the Supreme Court serve as courts of cassation. The High Economic Court can issue guidance to the lower economic courts as to application of the law, but since the "small judicial reform," such guidance may be invalidated by the Plenum of the Supreme Court.

Military courts address the armed services of Ukraine. Their line consists of courts of garrisons, which act as local courts, and regional military and navy courts, which serve the appellate functions. Military courts have jurisdiction over military crimes, espionage, any crimes or administrative offenses by members of the military service, complaints from members of the military service against officers, and other cases when protection of rights and lawful interests of individuals in military service or military entities is at stake.

Territorial courts consider all other disputes not specifically entrusted to another line of courts. This leaves the majority of criminal, civil, and administrative cases within the scope of their jurisdiction. Local territorial courts are formed within administrative units, usually *rayons* (districts or counties) and towns. Appellate territorial courts are also affiliated with the territorial administrative units. There are 27 territorial appellate courts: one in each Oblast, the appellate court of the ARC, and the appellate courts of Kyiv and of Sevastopol.

Conditions of Service

Qualifications

Professional judges are required to have formal university-level legal training before taking the bench. Although the Constitution technically allows judges of the specialized courts to have a degree in the specialization of the court in lieu of legal training, in practice, virtually all judges have a law degree. However, legal education is not a pre-requisite of service as a lay judge. Lay judges are engaged in consideration of aggravated murder cases. Such cases are tried in the first instance in the appellate courts by a panel consisting of two professional and three lay judges. Decisions are taken by majority vote.

The Ukrainian court system offers two "entry" levels for judicial candidates: local courts and the Constitutional Court. Candidates to a judicial position in a local court must have a university degree in law, must possess command of the state language, have attained the age of twenty-five, have had work experience in the sphere of law for at least three years, and have resided in Ukraine for no less than ten years. There is no requirement that the person have prior experience practicing before a tribunal.

Candidates to a judicial position in the Constitutional Court must possess command of the state language, be forty years of age, have at least ten years of professional experience (practicing or teaching law), and have resided in Ukraine for the last twenty years. Judicial candidates to other courts must have previously served as judges for varying terms, depending on the court.

Appointment and Tenure

Individuals meeting the above requirements and interested in obtaining a judicial position in a court of general jurisdiction may apply with a qualifying commission of judges to take a qualification exam. Candidates passing the exam are recommended by the qualifying commission to the High Council of Justice for appointment. The High Council of Justice presents candidates to the president of Ukraine for appointment. Initial appointment to a general jurisdiction court is for a five-year term. Upon its expiration, the Verkhovna Rada may confirm the judge's appointment through the mandatory retirement age. Promotion of judges to higher courts is administered by the Verkhovna Rada. The exception is the promotion of local court judges to the appellate court within the initial five-year term. The latter can take place and is administered by the president. After expiration of the five-year term, the judge still must be confirmed by the Verkhovna Rada.

The Verkhovna Rada of Ukraine, the president of Ukraine, and the Congress of Judges each appoint six judges to the Constitutional Court, which is composed of 18 judicial positions.

Training

The law does not contain any requirements on additional training for judges or judicial candidates. However, the Ministry of Justice (MOJ) and chief judges of courts are required to "provide for improvement of qualification" of judges and court personnel. One day seminars and one to two week courses are offered on ad hoc basis by the MOJ and the higher courts.

Assessment Team

The Ukraine JRI 2002 Analysis assessment team was led by Adele Baker and benefited in substantial part from Olena Dmytrenko, Olga Dmytrenko, Petro Matiaszek, and Kateryna Kozlova. ABA/CEELI Washington staff members Scott Carlson and Julie Broome served as editors. The conclusions and analysis are based on interviews that were conducted in Ukraine during the spring of 2002 and relevant documents that were reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

Ukraine JRI 2002 Analysis

The Ukraine JRI 2002 Analysis documents Ukraine's progression towards an independent judiciary at a critical juncture—immediately before the introduction of substantial reforms mandated by the Constitution. Over time, it is hoped that this Analysis will serve as a basis by which these reforms and others can be assessed. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI would underscore that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis, and ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

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I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university-level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	***Correlation: Positive***

Formal legal education is statutorily required for all judicial candidates, except those seeking appointment to the specialized courts. In practice, however, virtually all judges have a university degree in law. However, the overall quality of legal education in Ukraine has declined since independence. In addition, entry level judges must further have prior legal experience, though practice before a tribunal is not required. Higher court judges, except those on the Constitutional Court, must also have prior judicial experience. University training includes courses in basic substantive and procedural areas of law.

Analysis/Background:

All judicial candidates, with the possible exception of those applying to specialized courts, must have a "higher legal education." LAW OF UKRAINE ON THE STATUS OF JUDGES #2862-XII, 15 DECEMBER 1992 [hereinafter LSJ], Art. 7, ¶1.[1] While the Constitution of Ukraine provides, "Persons with professional training in jurisdiction of specialized courts may be judges of these courts," (THE CONSTITUTION OF UKRAINE, 28 JUNE 1996 [hereinafter CONSTITUTION], Art. 127) and does not specifically require higher legal education, as a practical matter, persons are rarely, if ever, appointed to such positions without law degrees. "Higher legal education" in Ukraine consists of a five year degree from an accredited law faculty. The curriculum is mostly stipulated by the Ministry of Education, but courses in procedural and substantive law, as well as courses touching upon cultural sensitivity issues, are included.

It is widely believed that since 1991 the overall quality of legal education has declined. The four main state schools that predate independence are regarded as providing strong, theoretical education. Since independence, however, almost 200 institutions have added law to their curriculum. Many of these faculties lack competent professors, basic libraries and the materials necessary for a quality legal education. Although presently most judges have graduated from one of the four main state schools, as the newer schools graduate more students, the composition of the bench may change.

The integrity of the legal education process may be corrupted at various stages. Sometimes bribes/gifts are given to obtain admission to the prestigious law schools. After admission, cheating is commonplace at most institutions. Finally, bribing professors for grades and degrees takes place to varying degrees at many law schools. This type of corruption can lead to poorly educated judicial applicants.

Judicial candidates for local courts must have at least three years of experience in the field of law (CONSTITUTION, *supra* at 6, ART. 127), but this experience need not include practice before tribunals. Constitutional Court judges must have at least ten years of practical, scientific, or

[1] A notable, but limited, exception is the use of "People's Assessors," also known as "lay judges." Criminal matters punishable by life imprisonment may be decided by a panel including two professional judges and three People's Assessors, though in practice this alternative is rarely utilized. CRIMINAL PROCEDURE CODE OF UKRAINE #1000-05, 28 DEC. 1960 LAST AMENDED 12 JULY 2001 [hereinafter CrPC], Art. 17.

pedagogical professional experience. LAW OF UKRAINE ON THE CONSTITUTIONAL COURT #422/96-BP, 16 OCTOBER 1996 [hereinafter LCC], Art. 16. All other judges must have some judicial experience. Prospective appellate judges must have three years of judicial experience in one of the lower courts. LSJ, *supra* at 6, Art. 7, ¶ 2. To be eligible for appointment to one of the higher specialized courts, a judge must have seven years of legal experience, of which five are judicial. *Id.*, Art. 7, ¶ 3. Similarly, a prerequisite for appointment to the Supreme Court is ten years of legal experience, half of which must be on the bench. *Id.*, Art. 7, ¶ 4.

Some schools, including the Kharkiv National Yaroslav Mudry Law Academy, have recently started a one-year, post-graduate program specifically for judicial training. While thus far only sitting judges have participated, the expectation is that eventually it will be required for all prospective judges.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	***Correlation: Neutral***
Although the actual selection process is highly subjective, the general perception is that improper motives do not often influence the vast majority of judicial appointments to the local courts. However, appointments to the Constitutional Court and Supreme Court are perceived as being more politically motivated.	

Analysis/Background:

The statutory process for the selection of judges is detailed and clear. Only Ukrainian citizens who have been residents for at least ten years and have command of the state language are eligible. CONSTITUTION, *supra* at 6, Art. 127. Legal education as well as prior legal and/or judicial experience is also required, as described in Factor 1. Minimum age requirements are 25 for local courts, 30 for appellate and high specialized courts, and 35 for the Supreme Court. *Id.*; LSJ, *supra* at 6, Art. 7, ¶¶ 1-4. Individuals who satisfy these prerequisites are eligible for consideration by a qualifying commission for appointment to the local court. Qualifying commissions for local courts are comprised of eight judges elected by judges of the particular court, one lawyer designated by the regional council, one lawyer selected by the heads of the regional executive body, and one legal academician. LAW OF UKRAINE ON THE QUALIFYING COMMISSIONS, QUALIFYING CERTIFICATION AND DISCIPLINARY RESPONSIBILITY OF JUDGES OF THE COURTS OF UKRAINE #2536-III, 21 JUNE 2001 [hereinafter LQC], Art. 2-3. Members of the qualifying commissions serve five-year terms. *Id.*, Art. 2, ¶ 2. Recommendations of the qualifying commissions go to the High Council of Justice, which in turn makes recommendations to the president, who may appoint judges to a five-year term; at the end of this term, the Verkhovna Rada may extend it to an indefinite appointment through retirement. CONSTITUTION, *supra* at 6, Art. 128. In addition to the above, military court judges must be officers. LAW OF UKRAINE ON THE JUDICIAL SYSTEM #2022-X, 5 JUNE 1981 LAST AMENDED 21 JUNE 2001 [hereinafter LJS], Art. 38-3.

While the statutes anticipate that the qualifying commission will select from a pool of candidates who have successfully completed the qualification examination within the prior three years (LSJ, *supra* at 6, Art. 8, ¶¶ 4-7), in practice, the interviewees described the qualification exam as *pro forma*, given only to candidates pre-selected by the chief judge of the court with the vacancy to be filled. In the economic courts, this practice is expressly authorized by statute. LQC, *supra* at 7, Art. 28, ¶ 1. Moreover, the qualification examination itself is largely subjective. The written

portion is an abstract on an agreed upon topic; if the paper is deemed satisfactory by the qualifying commission, an oral exam or interview is conducted. *Id.*, Art. 27, ¶ 3.

The statute does allow disgruntled candidates to appeal the decision of the local qualifying commission to the High Qualifying Commission of Judges of Ukraine—a body consisting of six judges from the court of general jurisdiction, three from the economic courts, one from the military court, one lawyer elected by the Verkhovna Rada, one lawyer appointed by the president and one legal academician. LSJ, *supra* at 6, Art. 8, ¶ 4; LQC, *supra* at 7, Art. 3, ¶ 4. Again, however, the interviewees described appeals as rare and were skeptical as to whether they were meaningful.

Despite this high degree of subjectivity, most interviewees did not feel that the selection process for judges of the local courts is unduly influenced by political factors, though some opined that political influence may be more prevalent at higher levels. The Constitution prohibits judges from being members of political parties or trade unions and from participation in political activities. CONSTITUTION, *supra* at 6, Art. 127. However, this prohibition is surprisingly narrow: the Chairman of the Supreme Court was listed on one of the party-bloc lists in the 2002 parliamentary elections.

Other than the Constitutional Court, higher court judges are elevated from the local courts. Subject to the age requirements, appellate court judges are elected by the Verkhovna Rada or, if still within the five year term of the initial appointment, may be appointed to the appellate bench by the president. LJS, *supra* at 7, Art. 30. Judges in the high specialized courts are also elected by the Verkhovna Rada. *Id.*, Art. 38-13. The Constitutional Court is composed of 18 judges; the president, the Verkhovna Rada, and the Congress of Judges each appoint six judges, who serve nine-year, non-repeatable terms. CONSTITUTION, *supra* at 6, Art. 148. Constitutional Court judges must be citizens who have lived in Ukraine for the prior 20 years, are at least 40 years old, and are proficient in the Ukrainian language. *Id.* Supreme Court judges are elected by the Verkhovna Rada for an indefinite term through the retirement age of 65. LJS, *supra* at 7, Art. 41; CONSTITUTION, *supra* at 6, Art. 126.2. The degree to which these appointments are based upon improper political influences is not quantifiable, though most agree that at least some of the appointments are highly politicized.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	***Correlation: Negative***
While the MOJ and chief judges are statutorily mandated to provide continuing legal education to court personnel, in practice, such training is haphazard, in part because of inadequate funding, but also sometimes as a result of the lack of motivation of the local MOJ department or the leadership of the courts. Nevertheless, numerous courts and local MOJ departments do conduct continuing legal education on a regular basis.	

Analysis/Background:

Limited post-graduate educational opportunities are available for judges in Ukraine. The Kharkiv National Yaroslav Mudry Law Academy recently opened its Department for Preparation of Professional Judges, a one-year program, financed by the MOJ for sitting judges. Approximately, 100 judges may enroll per year. More commonly, an appellate court will designate a mentor for each *rayon* court within its jurisdiction; the mentor is expected to answer questions or otherwise assist *rayon* judges with issues of substantive and procedural law. Training opportunities for new

judges are limited and haphazard. Most courts do not have a formal mentorship program, although a few notable exceptions, i.e., Donetsk Appellate Court, exist. In the early stages of their career, however, many *rayon* judges "intern" on the appellate court in one week increments to better understand the appellate review process as it relates to their work. Similarly, the economic court provides a week long introductory judgeship course with practical training twice a year.

There is no particular amount of continuing legal education required for judges; however, there are provisions that relate to continuing legal education for court personnel. Under the Law of Ukraine "*On the Judicial System*," the MOJ, the Chief MOJ Department of the ARC, Oblast, Kyiv and Sevastopol City MOJ Departments are mandated to "organize the work with personnel of the courts on the management, development and trainings…" and to "…organize logistical support of appellate and local courts … to create appropriate conditions for the appropriate functioning of courts and for the activity of judges." LJS, *supra* at 7, Art. 19.2, 19.4. The chief judge of a local court is required to "…provide for continuing education of the court personnel." *Id.*, Art. 26. The chief of the appellate court is required to "…organize the work on the professional improvement of judges of the respective court and the court staffers." *Id.*, Art. 37. The chief of a high specialized court is charged with the same duties. *Id.*, Art. 37. The Deputy Chief of the Supreme Court is required to "…organize work on the professional improvement of judges of the respective court chambers. *Id.*, Art. 52. The Congress of Judges is also charged with "…considering the questions of rendering a methodical aid to judges and upgrading their qualification." LAW OF UKRAINE ON THE BODIES OF JUDICIAL SELF-GOVERNMENT #2535-III, 25 JUNE 2001 [hereinafter LBJSG], Art. 15.2.

In spite of the numerous persons having responsibility to ensure continuing legal education, sufficient funds for such training have not been provided. When training programs are provided, judges are sometimes required to pay their own transportation and lodging costs, deterring their attendance at such meetings. The amount and effectiveness of actual continuing legal education also depends upon the leadership of the particular court in question. Some *rayon* and appellate courts have informal weekly meetings to discuss new cases and legislation. Some of the appellate courts sponsor monthly or quarterly training sessions for *rayon* court judges. As mentioned above, some of the appellate courts also have formal mentor programs in which an appellate judge is assigned to assist *rayon* court judges. Some of the local MOJ departments provide regularly scheduled training sessions to *rayon* court judges, while others do not provide such training because of lack of resources.

Several judges reported that in practice there is virtually no continuing legal education. While the Supreme Court endeavors to provide quality training to judges through its Center on Professional Improvement of Judges, there are insufficient funds to reach the judiciary on a large scale. Many of the Supreme Court and MOJ conferences are supported largely by international donors, including the Council of Europe, OSCE, USAID and others.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	***Correlation: Neutral***
Statistics regarding the ethnic and religious composition of law school graduates (the pool of potential nominees) and Ukrainian judges are not kept. Although roughly one quarter of the lower court judges are women, they assume leadership roles much less frequently. Their incidence on the higher courts is also considerably lower, though this may reflect, at least in part, voluntary choices by the women judges.	

Analysis/Background:

The Law "*On the Status of Judges*" provides that the selection of candidates for judicial positions must be performed without discrimination on the basis of descent/background, racial and national background, gender, political views, or religious convictions. LSJ, *supra* at 6, Art. 8. In practice, the degree to which ethnic, religious or racial discrimination in the judiciary may exist is impossible to quantify; without a definable pool of potential applicants and absent statistics concerning the ethnicity, race, and religion of law school graduates generally, it can not be determined if minorities are appointed in proportion to their incidence in the pool of eligible candidates. None of the individuals interviewed believed that discrimination took place on any quantifiable level.

As for gender, of 6,993 judges in Ukraine in 2001, 1,818, or 26%, were women. *HERALD OF THE SUPREME COURT OF UKRAINE* JOURNAL (*VISNYK VERKHOVNOHO SUDU*), #1(29), 2002. Explanations for this difference are speculative, but at least some judges confide that Ukraine's generous maternity leave law creates a strong disincentive to appointing female judges. Appointment of women to leadership positions reveals even greater disparity. For example, in the economic courts, only four of 30 chief judges (13%) are women. No definitive conclusion can be drawn as to the reasons for the disproportionate representation of women on the bench. A woman lawyer in private practice opined that women may place more priority on time with their families and therefore are less interested in assuming leadership positions. Of the 85 judges on the Supreme Court, ten are women; two of the 18 Constitutional Court judges are women.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	***Correlation: Positive***
The Constitutional Court of Ukraine has actively and independently reviewed the constitutionality of a variety of acts. Courts of general jurisdiction have been inconsistent in their decisions regarding their jurisdictional authority to hear cases involving violation of individual civil liberties, and they seem to avoid reference to the Constitution where possible.	

Analysis/Background:

The Constitutional Court is specifically designated as "the sole body of constitutional jurisdiction" with authority to decide "issues of conformity of laws and other legal acts with the Constitution of Ukraine," and to provide "the official interpretation of the Constitution of Ukraine and the laws of Ukraine." CONSTITUTION, *supra* at 6, Art. 147, 151. The Constitutional Court may further decide whether international treaties conform to the Constitution and guide the Verkhovna Rada procedurally in the event of executive impeachment proceedings. *Id.*, Art. 151. Legal acts deemed unconstitutional by the Constitutional Court lose validity as of the day of the decision. *Id.,* Art. 152

While the authority of the Constitutional Court is quite broad, standing to file appeals to the Constitutional Court is limited. The president, at least 45 People's Deputies, the Supreme Court, the Authorized Representative of the Verkhovna Rada of Ukraine on Human Rights (the "Ombudsman") and the Verkhovna Rada of the ARC may submit laws to the Constitutional Court for consideration as to Constitutionality. Only the president and the Cabinet of Ministers may submit questions concerning the correlation of treaties to the Constitution; only the Verkhovna Rada may apply to the Constitutional Court for procedural guidance in executive impeachment process; all of the above entities as well as other bodies of state power and local self-government may request an official interpretation of the Constitution and laws of Ukraine. LCC, *supra* at 6, Art. 40-41.

Individuals are entitled to file a petition before the Constitutional Court, if they believe their own rights have been violated. Both government appeals and citizen petitions are discretionary. Applications to the Constitutional Court were presented by the following subjects: national deputies – 23% of applications; president of Ukraine – 17%; higher courts – 3.2%; other bodies of government – 9.5%; citizens and organizations – 11.2% (through May 2002). Most individuals and even some advocates and judges are unaware of an individual's right to petition the Court, although a highly publicized decision of the Court finding that a criminal defendant may choose anyone as his legal representative, not just advocates, stemmed from an individual's petition.

The Constitutional Court has proved to be an effective tool in guaranteeing civil rights. The Court confirmed the individual's constitutional right to call upon the courts to protect their rights in the *Dzyuba* case (25 November 1997) and the *Zhovti Vody residents'* case (25 December 1997). In these cases, the court of first instance had cited to legal provisions outside of the Constitution in ruling that they did not have jurisdiction. In reversing, the Constitutional Court cited articles 55 and 124 of the Constitution confirming that each citizen has the right to bring grievances before the court and that the court has jurisdiction to hear claims regarding any activity regulated by law. Thus, the Constitutional Court obligated general courts to try all complaints about violations of constitutional rights regardless of whether the law provided any administrative remedies. These decisions have resulted in a dramatic increase in the number of complaints the courts must hear. Some of these cases involve nuisance complaints that, but for the Constitutional Court's decisions, would have been heard by executive agencies.

The Constitutional Court has not been hesitant in finding legislative acts unconstitutional: in 42 of its 79 decisions, it found all or part of an act to be unconstitutional. Some of these decisions have been quite bold. For example, under the former Soviet system, the "propiska" registration system established a citizen's domicile and could not be amended without authorization, which was difficult to obtain and subject to political manipulation. On November 14, 2001, the Constitutional Court ruled that this unconstitutionally restricted freedom of movement, even though this decision was reportedly unpopular with the presidential administration.[2] In another matter, the

[2] The Constitutional Court did not invalidate the use of the propiska itself as a means of registration, but declared that citizens had the right to change their propiska at will to reflect their chosen domicile. Regrettably, in practice while citizens can change their propiska it is so procedurally cumbersome that many people have not made the effort to change it. Some may equate this administrative labyrinth with a constructive defiance of the Constitutional Court decision.

Constitutional Court ruled that the president did not have the power to appoint deputy heads of local administrations.

Moreover, while individuals are entitled to assert their constitutional rights before courts of general jurisdiction, (CONSTITUTION, *supra* at 6, Art. 55; SUPREME COURT RESOLUTION, 1 NOVEMBER 1996) some of these courts remain reluctant to cite directly to the Constitution. Whether attributable to lack of information as to the decisions of the Constitutional and Supreme Courts, confusion over jurisdictional boundaries, fear of reprisal, or even subjective opposition to such rights, some courts maintain that they do not have jurisdiction over citizens' civil rights claims while other judges, especially those who were appointed during Soviet times, are loathe to refer to the Constitution. One professor opined that judges simply lacked the "culture" to implement the Constitution. Another interviewee blamed lawyers for not raising constitutional issues before the courts. However, there are indications that such attitudes and cultures are changing, as citations to the Constitution, and to a lesser extent, the European Convention on Human Rights are occurring more frequently.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	***Correlation: Positive***
The judiciary does have the power to review administrative acts and to compel the government to act where a legal duty to act exists; however, there are instances when the government does not comply with the court orders.	

Analysis/Background:

There are ample provisions under the law empowering the judiciary to review administrative acts and to compel the government to act where a legal duty to act exists. See discussion in Factor 5 regarding Constitutional review. Citizens are entitled to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local self-government, officials, and officers (CONSTITUTION, *supra* at 6, Art. 55), as well as appeal to the court for protection from state infringement on their legal rights or interests. CIVIL PROCEDURE CODE OF UKRAINE #1500-06, 18 JUNE 1963 LAST AMENDED 21 JUNE 2001 [hereinafter CPC], Art. 4; ECONOMIC PROCEDURAL CODE OF UKRAINE #1798-XXII, 6 NOVEMBER 1991 [hereinafter EPC], Art. 12. Conversely, courts are required to review matters regarding violations of the law on elections and referenda and complaints about action or inaction of agencies and/or officials. CPC, *supra* at 11, Art. 236, 248. If the court finds the complaint valid, the governmental agency or official must rectify the violation by satisfying the complainant's demands, eliminating the violations, canceling penalties, or in some other way making restitution. *Id.*, Art. 248-7.

It is apparent that citizens are eager to exercise their challenges to administrative acts. Prior to independence, in 1990, only 535 complaints of illegal actions of state agencies and officials were lodged; 210 were found to be justified. In contrast, 29,952 complaints were filed in 2000, and 18,260 were deemed valid. In the first six months of 2001, 20,911 were admitted and 15,284 were justified. *THE HERALD OF THE SUPREME COURT OF UKRAINE* JOURNAL (*VISNYK VERKHOVNOHO SUDU*), #1 (29), 2002.

Courts have another means of administrative review under the "separate ruling doctrine." If a court becomes aware of a violation of law by administrative officials or other juridical persons in the course of a lawsuit before it, the court shall issue a corrective order to the offending individual,

even though the person is not a party to the litigation. CPC, *supra* at 11, Art. 235; CrPC, *supra* at 6, Art. 23-2, EPC, *supra* at 11, Art. 90. This person is "bound to take measures providing for execution of the separate ruling and report to the court within a one month term." CPC, *supra* at 11, Art. 235. If an official fails to respond to the separate ruling of the court, he is subject to a fine, albeit minimal. CODE OF UKRAINE ON ADMINISTRATIVE OFFENCES #8073-X, 7 DEC. 1984 LAST AMENDED 17 JAN. 2002 [hereafter CAO], Art. 185-6. Courts utilize this remedial tool liberally: in the first half of 2001, 3,975 separate rulings were issued by the criminal divisions of general jurisdiction courts (*ANALYSIS OF THE WORK OF JUDGES OF GENERAL JURISDICTION COURTS OF UKRAINE IN THE FIRST HALF-YEAR OF 2001 BASED ON DATA OF THE JUDICIAL STATISTICS* prepared by the Supreme Court, Department of Generalization of Judicial Practice, [hereinafter *ANALYSIS OF THE WORK OF JUDGES*]), and 224 officials were reportedly penalized for failing to respond appropriately. *Id.* In the civil division, 1,402 separate rulings were issued. *Id.*

State agencies found to have committed administrative violations must inform the court and the complainant of its execution of the court ruling within one month. CPC, *supra* at 11, Art. 248-9. Forcible enforcement of judgments is executed by the State Enforcement Service ("SES"), a governmental agency, separate but subordinate to the MOJ. LAW OF UKRAINE ON ENFORCEMENT PROCEEDINGS #606-XIV, 21 APRIL 1999 [hereinafter LAW ON ENFORCEMENT PROCEEDINGS], Art. 2. However, the burden of ensuring enforcement typically falls upon the complainant, who may apply to the SES if the court order has not been executed. *Id.*, Art. 18. If the SES does not enforce the judgment, the complainant may appeal to the court in order to seek a remedy. *Id.*, Art. 85.

While the interviewees generally reported that court orders are enforced, they noted that orders providing for fines against the government are frequently ignored or not paid because of a claimed lack of funds.

Although courts are sometimes perceived as reluctant to overturn administrative acts, some high profile instances suggest that at least some courts are boldly exercising their authority. For example, the Kyiv Appellate Court invalidated a search of a judge's apartment for two reasons: (1) the warrant was authorized by the Deputy Chief Prosecutor rather than the Chief Prosecutor, and, (2) it was executed in the middle of the night. Similarly, citing the European Convention of Human Rights, the Supreme Court held the militia responsible for seizing a person based upon a search rather than an arrest warrant.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	***Correlation: Positive***
The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.	

Analysis/Background:

The Constitution specifically enumerates the basic personal freedoms, protections, and rights commonly recognized in modern civil society. CONSTITUTION, *supra* at 6, Art. 29-68, generally. Citizens have the specific right to challenge actions or inactions which they believe encroach upon those rights in court, and courts are constitutionally charged with the responsibility of protecting human and citizen rights. *Id.*, Art. 55; CPC, *supra* at 11, Chapter 31A; EPC, *supra* at 11, Art. 12. Ukraine further has an Ombudsman to whom citizens may appeal. CONSTITUTION, *supra* at 6, Art. 55. In addition to the statutory and constitutional protections, Ukraine is a

signatory to the European Convention of Human Rights, which is automatically incorporated into domestic law since ratification on July 17, 1997. Aggrieved parties may appeal to the European Court or to any other relevant international tribunal upon exhaustion of domestic remedies. *Id.*

In practice, protection of fundamental civil rights is hindered by a general lack of citizen awareness concerning their rights. Even those who would otherwise pursue a claim may not be able to afford the costs associated with litigation. For those cases that are filed, courts historically have had a demonstrated preference for application of domestic law over the European Convention or cases emanating from the European Court of Human Rights, though gradual changes are evident. This may be attributable to judges' general unfamiliarity with the Convention or the precedential effect of decisions from the European Court. In some instances, judges do not even have access to the text of the Convention; other judges reported believing that there is no precedential value to the decisions of the European Court. Even those judges who would be inclined to reference the international cases may have difficulty obtaining them. See discussion in Factor 30.

Another reason for judges' reluctance to apply the Convention is time constraints. Judges are often burdened by heavy caseloads, and they find analyzing the Convention and the case law related to it too time consuming. Several interviewees said that if a judge feels that it is possible to write a decision without reference to international conventions then he will do so. Fortunately, such instances do not typically result in deprivation of human rights since the Constitutional guarantees are quite broad as well.

The final avenue for protection of human rights, application to the European Court, is also recognized. *Id.* Domestic alternatives must have been exhausted in order to be heard by the European Court.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	***Correlation: Positive***
Judicial decisions may be reversed only through the judicial appellate process.	

Analysis/Background:

That judgments may be reversed only through the judicial appellate process is well established in Ukraine. The Constitution of Ukraine stresses the doctrine of separation of power. CONSTITUTION, *supra* at 6, Art. 6. It provides that "justice in Ukraine is administered exclusively by the courts. The delegation of the functions of the courts, and also the appropriation of these functions by other bodies or officials, shall not be permitted." *Id.*, Art. 124. Further, it establishes that "creation of extraordinary and special courts shall not be permitted." *Id.*, Art. 125. All bodies except for courts are precluded from assuming judicial functions. The Constitution provides the right to seek review of judgments through the appellate or cassation process. *Id.*, Art. 129-8. The civil, criminal, and economic procedural codes establish rules of review, while the Law "*On the Judicial System*" establishes the court hierarchy.

The codes set forth three types of review: appellate, cassation, and extraordinary. Appellate review is a matter of right, except in special categories of cases, where the law does not allow appeal (e.g. certain election cases). CPC, *supra* at 11, Art. 243-5, 243-10, 243-15. This type of review allows for revision of facts wrongly concluded or where there has been a misapplication of the law. A judgment in a criminal case does not enter into force for 15 days (CrPC, *supra* at 6,

Art. 349); in civil cases, for a month (CPC, *supra* at 11, Art. 292 and 231); and in commercial cases, for ten days (EPC, *supra* at 11, Art. 85) to allow time in which to lodge an appeal. Decisions of appellate courts usually enter into force immediately.

Cassation review of a case does not involve a review of the facts. The decision whether to accept a petition for cassation review in criminal and civil litigation is made by a panel of three judges. CrPC, *supra* at 6, Art. 394, CPC, *supra* at 11, Art. 329. Procedures in economic court allow two levels of cassation review: by the High Economic Court, where every cassation petition is admitted (EPC, *supra* at 11, Art. 111-3) and, after such review, by the Supreme Court, where the decision on admission is made by a panel of five judges**.** EPC, *supra* at 11, Art. 111-17.

Extraordinary review of a decision which has entered into force may take place in conjunction with newly revealed circumstances, including such grounds as (1) the real, substantial case circumstances were not and could not have been known by the applicant; (2) false testimony or falsification of evidence that caused an unlawful ruling, as to be determined by the sentencing court; (3) cancellation of a judgment, a sentence, or a decision of a court or another agency that had been a ground for issuance of the ruling or decree; or (4) a finding that the law applied by the court was unconstitutional. CPC, *supra* at 11, Art. 347-2. Extraordinary review of criminal cases is discretional (CrPC, *supra* at 6, Art. 400-9), while in civil cases, it may be mandatory under certain circumstances (CPC, *supra* at 11, Art. 347-2 – 327-7), and in economic jurisdictions, it is mandatory in any event. EPC, *supra* at 11, Art. 113-1.

Hierarchy of the courts is set out in the Law "*On the Judicial System*." Ukraine has local, appellate, and high specialized courts, as well as the Supreme Court. Only the Supreme and the High Economic Court may review cases in cassation mode. In extraordinary circumstances, such as revelation of perjury, the appropriate court may re-open a case for reconsideration. Appellate review is handled by the appellate court, unless the latter reviewed the case in the first instance.[3]

The Supreme Court is the highest judicial body in the system of courts of general jurisdiction. CONSTITUTION, *supra* at 6, Art. 125. The Supreme Court can review the decisions of the courts of general jurisdiction in both the appellate and cassation modes. LJS, *supra* at 7, Art. 40. Decisions of the Supreme Court are final, although the Supreme Court may remand the case for reconsideration by a lower court. CPC, *supra* at 11, Art. 342.2; EPC, *supra* at 11, Art. 111-18. 2, 111-20; CrPC, *supra* at 6, Art. 396. The decisions of the Constitutional Court are final and may not be appealed. CONSTITUTION, *supra* at 6, Art. 150.

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	***Correlation: Neutral***
The courts do have adequate subpoena and contempt powers that are utilized; however, their enforcement powers are inadequate. Judicial orders are not always supported or respected by other branches of government.	

[3] The law foresees that certain types of cases are tried by appellate courts in first instance e.g. criminal accusation of a judge (LSJ, *supra* at 6, Art. 13.5) or accusations entailing possibility of a life sentence (CrPC, *supra* at 6, Art. 34). In such instances, appeals are reported to be temporarily lodged with the Supreme Court, until the appellate court of Ukraine is created, as foreseen by the new Law "*On the Judicial System*" to enter into force on June 1, 2002.

Analysis/Background:

Ukrainian courts possess both contempt and subpoena powers. Judges may compel the attendance of witnesses and subpoena documents in civil and criminal cases. E.g. EPC, *supra* at 11, Art. 38; CrPC, *supra* at 6, Art. 70, 72, 177; CPC, *supra* at 11, Art. 48. A subpoenaed witness who fails to appear in either a criminal or a civil matter without grounds is subject to being fined. CAO, *supra* at 12, Art. 185-3; CrPC, *supra* at 6, Art. 70, 72. A court can direct the militia to enforce a subpoena, though in practice, this power is rarely used to force a nonparty witness into court. Sanctions for nonattendance by parties in civil cases include fines, suspension of the hearing, or dismissal of the complaint. CPC, *supra* at 11, Art. 82, 172. When a criminal defendant fails to appear at an obligatory proceeding, however, the court must suspend the sitting, and it can order Internal Affairs to bring the defendant to court, at the defendant's personal expense. CrPC, *supra* at 6, Art. 288. The criminal court judges interviewed reported that the Ministry of the Internal Affairs is cooperative and effective in compelling the attendance of witnesses.

Judges have similar authority to control behavior within their courtroom. CPC, *supra* at 11, Art. 164; CrPC, *supra* at 6, Art. 272. Disrespectful conduct by parties or others present at trial is grounds for liability including fines. LSJ, *supra* at 6, Art. 14; CAO, *supra* at 12, Art. 185-3; CPC, *supra* at 11, Art. 82; CrPC, *supra* at 6, Art. 288. An attorney who fails to abide by the orders of the presiding judge during a court session is entitled to a warning from the court; if the misconduct continues, the court may then suspend the proceedings. CPC, *supra* at 11, Art. 164. The court further must inform the supervising prosecutor or a presidium of the collegium of advocates of the contempt finding. *Id.* In the event that a party or third person violates a judge's order in court, the court may suspend the review or remove the violator from the courtroom. *Id.* Interviewees described contempt citations as rare, explaining that the threat of sanctions is typically sufficient to ensure respectful conduct. The court does have the power to fine individuals for contempt, but these fines are minimal. CAO, *supra* at 12, Art. 185-3. In criminal cases, the courts also have similar contempt powers that may result in criminal or administrative offense charges. See, e.g., CAO, *supra* at 12, Art. 185 regarding administrative offenses and CRIMINAL CODE OF UKRAINE #2341-III, 5 APRIL 2001 LAST AMENDED 17 JANUARY 2002 [hereinafter CrC], Art. 385 regarding refusal of witnesses to testify.

Courts are not directly responsible for the enforcement of judgments. In civil cases, the burden of ensuring enforcement typically falls upon the complainant. If the debtor fails to comply with the judgment, on the request of complainant the court issues an enforcement letter. Forcible enforcement of judgments is executed by the SES. LAW ON ENFORCEMENT PROCEEDINGS, *supra* at 12, Art. 2. If the SES does not enforce the judgment, the complainant may appeal to the court in order to seek a remedy. *Id.*, Art. 85. Judgments regarding state agencies found to have committed administrative violations are sent to the affected agency within ten days of entry, and the agency must inform the court and the complainant of its execution of the court ruling within one month. CPC, *supra* at 11, Art. 248-9. Should the debtor fail to comply with the judgment, he may be fined or held criminally liable. LAW ON ENFORCEMENT PROCEEDINGS, *supra* at 12, Art. 46, 87. Economic courts retain the authority to verify the acts or omissions of the SES. EPC, *supra* at 11, Art. 121-2. In criminal cases, the responsibility for enforcing judgments of imprisonment rests with the Department on Execution of Sentences. Criminal courts of appellate instance must verify that a defendant has been released from custody upon acquittal. CrPC, *supra* at 6, Art. 381.

Many interviewees reported problems of enforcement with respect to fines and money judgments. There continues to be some political pressure on courts from other branches of government, and at times, judicial orders are ignored. Agencies frequently report that they do not have the funds to pay such fines or judgments. The willful failure of a governmental official to comply with a judgment is a crime. CrC, *supra* at 15, Art. 382. However, to prosecute such an action under the Criminal Code a separate criminal action must be brought by the Prosecutor's Office. Such a

procedure does not result in enforcement of the original judgment order, but only in a potential conviction.

The economic court judgments seem to have fewer problems with enforcement, no doubt, because the parties involved are generally "juridical persons," i.e., organizations that must have registered bank accounts.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	***Correlation: Negative***
The judiciary's ability to influence decisions about its funding is extremely limited.	

Analysis/Background:

The judiciary has very little influence on its funding. Local courts of general jurisdiction submit proposed budgets to the local MOJ department, which consolidates these into a single request for the region. The Verkhovna Rada then allocates a lump sum to the local MOJ departments. Division and distribution of this sum to the individual courts is within the discretion of the local MOJ department. Thus, these courts do not have line item budgets and are subject to the whim of the local MOJ departments.

Appellate courts submit their budgets directly to the MOJ, which reviews and revises them before forwarding them to the Minister of Finance for submission to the Verkhovna Rada. The Verkhovna Rada then awards a line-item budget for appellate courts collectively. Unfortunately, the amount appropriated, even for the appellate courts, is often a small fraction of the amount requested in the proposed budget of the appellate court and is generally deemed wholly inadequate.

The MOJ is not involved in funding decisions for the Constitutional, Supreme, and economic courts. Both the Constitutional Court and the Supreme Court file their budget requests and receive their funding directly from the Ministry of Finance. The High Economic Court submits a budget for its lower courts to the Ministry of Finance, which then submits it in to the Cabinet of Ministers. The Cabinet of Ministers submits budget recommendations to the Verkhovna Rada. Money allocated to the economic courts is then transferred to the High Economic Court for allocation to the lower economic courts.

The Council of Judges, the Supreme Court, and the Constitutional Court may be present at the Verkhovna Rada's standing budget committee's sessions, but they evidently have little influence over the ultimate decisions. The diverse channels for budget proposals from the various courts effectively limit the courts' ability to unify and lobby the Verkhovna Rada for funding.

Courts at all levels are woefully under-funded. Despite the constitutional mandate that judicial proceedings be recorded (CONSTITUTION, *supra* at 6, Art. 129.7), funding for recording equipment has not been provided. Similarly, although the MOJ is required to provide funds for the retention of counsel and experts for indigent defendants (REGULATION ON MOJ APPROVED BY THE

PRESIDENTIAL EDICT #1396/97, 30 DECEMBER 1997, Art. 4.27), courts do not have the required funds to provide these services. The local courts often must petition the local MOJ departments to provide basic essentials such as paper, writing utensils, and envelopes. Alternatively, litigants may be required to supply the paper, envelopes, postal stamps, etc. needed in their case. Another consequence of under-funding is that courts of general jurisdiction openly "fundraise" by soliciting sponsors, despite the statutory prohibition. LAW OF UKRAINE ON SOURCES OF FINANCING GOVERNMENTAL BODIES #783-XIV, 30 JUNE 1999, Art. 2.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.

Conclusion	***Correlation: Negative***
While there are qualified individuals who aspire to become judges, the salaries and other compensation are inadequate, and sometimes, judges resort to outside sources for compensation.	

Analysis/Background:

The current compensation package for judges is not markedly different from that of Soviet times. A modest base wage is supplemented by housing, utilities, tax exemptions, a 50% reduction in most state service fees, medical treatment, local transportation, an annual pass to a convalescence/recreation facility, as well as other incidental compensation. Additional compensation may be allotted based on years of service, workload, and rank. LSJ, *supra* at 6, Art. 44. Elevation in rank may be granted by the qualifying commission after the judge passes an examination. Because some of the compensation is determined by the local state administration and *rada* (council), i.e. differences in apartments, judges may fear reprisals for unpopular decisions.

Judges' salaries are based upon a percentage of the wages of the Chairman of the Supreme Court of Ukraine and cannot be less than 50% of his wages. Similarly, a judge's wages cannot be less than 80% of that of the chief judge of his court. *Id.*, Art. 44.

Base wages are low. The base wage allocations go up to the equivalent of $72 per month for chief judges and $37 per month for local judges. RESOLUTION OF THE CABINET OF MINISTERS OF UKRAINE ON SYSTEMATIZING THE CONDITIONS OF PAYMENTS TO EMPLOYEES OF THE EXECUTIVE POWER BODIES, BODIES OF LOCAL SELF-GOVERNMENT, PROSECUTORS OFFICE, COURTS, AND OTHER BODIES #2288, 13 DECEMBER 1999. However, base salaries are augmented based upon the particular judge's skills and/or experience. Although still a meager wage, judges report actually receiving between $80 and $150 per month. See MANAGEMENT SYSTEMS INTERNATIONAL (MSI), *DEVELOPING THE RULE OF LAW IN UKRAINE: ACHIEVEMENTS, IMPACTS, AND CHALLENGES*, DRAFT REPORT, MAY 2002. This is relatively commensurate with the Chief Prosecutor's salary, though some interviewees felt that the Chief Prosecutor's benefits (housing and office space) were better. While judges enjoy reasonable job security, their salaries may be reduced by the qualifying commission and the High Council of Justice following disciplinary proceedings. Further, there have been instances where local authorities have not provided judges with housing or robes, as required. Judges have had to sue the State Treasury of Ukraine in order to obtain the compensation due to them.

Given the inadequate level of compensation, it is reported that many judges are prey to bribery in multiple forms. Some interviewees described both parties making contributions to the judge simply to obtain a decision, rather than to influence the outcome. Moreover, given the public's perception that "gifts" or "bribes" are a standard, judges are often offered unsolicited bribes.

Whether motivated by job security, tax savings, an interest in public service, or prestige, many qualified lawyers become judges despite the poor compensation. Most interviewees believe that the majority of judges in Ukraine do not accept gifts or bribes, and the courts have shown intolerance for dishonest judges when prosecutors have filed actions against them. For example, last year in Donetsk Oblast, two judges were sentenced to four years imprisonment for accepting bribes.

Factor 12: Judicial Buildings

Judicial buildings are conveniently located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	***Correlation: Negative***
While generally judicial buildings are conveniently located and easy to find, as a result of their often poor condition, most of them do not provide a respectable environment for the dispensation of justice.	

Analysis/Background:

Generally, court buildings are conveniently located and easy to find. In some instances, however, the court entrances are behind buildings or through passages, making it difficult for citizens to gain access.

Many court houses, particularly the *rayon* courts, do not provide respectable environments for the dispensation of justice. Courts are often located in older and sometimes decrepit office buildings or houses. Some have neither heat nor plumbing. Building maintenance is commonly accomplished through "fundraising" efforts by the courts. This may take the form of soliciting workers to make repairs free of charge or seeking "sponsors," often law firms and businesses, for renovations. In either event, the courts are rendered dependent upon the goodwill of individuals or entities that are likely stakeholders in the judicial process.

Lack of space is also a major problem, with too few offices and courtrooms. It is not uncommon for three or more judges to share an office. Given the lack of courtrooms, many judges hear civil cases in their offices. Criminal cases are delayed from time to time because a courtroom is unavailable. Thousands of new judicial positions created in the reorganizational amendments of June 2001 remain vacant since court houses do not have room to accommodate additional judges.

The observation that some administrative agencies, such as tax authorities, are better housed than courts perpetuates the conclusion that the judiciary is not an equal or significant branch of government. In turn, this impinges upon the courts' ability to command the respect and reverence integral to the judicial process.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	***Correlation: Negative***
Threats against judges are not uncommon, and although the law requires the State to protect judges from threats, sufficient resources are not allocated to ensure the safety of judges.	

Analysis/Background:

Courtroom security varies widely throughout Ukraine. In criminal matters, the defendant is accompanied by guards and typically remains behind bars while in the courtroom. There are no uniform security standards beyond these procedures. While some court entrances are equipped with metal detectors and guards, others have no security safeguards whatsoever. In some instances, the courts have privately negotiated with the militia to provide a guard for the court, but this is not a service provided by the government.

Judges are at greater risk outside the courthouse. Threats against judges are not uncommon, especially with the increase in organized crime. The Constitution of Ukraine, Article 126 provides that the State must ensure the personal security of judges and their families. The Law of Ukraine "*On the Status of Judges*," provides that judges and their families are under the special protection of the state, and that the internal affairs organs must take all necessary steps to protect a judge and his family if the judge submits a request for it. LSJ, *supra* at 6, Art. 42.

The Law "*On State Protection of Employees of the Courts and of Law Enforcement Organs,*" adopted in 1994, establishes special measures for the state protection of court employees and of law enforcement bodies, as well as their close relatives. These measures include the provision of bodyguards, guards for housing and property, weapons and other means of personal protection for court personnel, telephone and surveillance equipment, temporary placement of threatened court personnel in secure locations, as well as changing their place of work and/or residence, documents and appearance. The chief judge decides which measures should be used upon application of the threatened judge. The organs of internal affairs (militia) are responsible for enforcement of these measures. According to the law, special subdivisions should be formed to accomplish the mandates of the law (ORDER OF THE MINISTRY OF INTERNAL AFFAIRS ON CREATING SPECIAL DETACHMENTS OF MILITIA FOR ENSURING SECURITY OF THE COURT PERSONNEL, LAW ENFORCEMENT AGENCIES, PERSONS, WHO TAKE PART IN CRIMINAL LITIGATION, MEMBERS OF THEIR FAMILY AND CLOSE RELATIVES # 467, 23 JULY 1997), but the unit has not yet been created, and no funds have been allocated to create it. Some interviewees report that judges are at the mercy of the ministry of the interior, and although they plead for protection, guards are not provided when needed. One interviewee reported that when a judge requested protection by the militia, the militia demanded payment for the service. Other interviewees reported that they have been given protection upon request.

IV. Structural Safeguards

Factor 14: Guaranteed Tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	***Correlation: Positive***
All judges, except those on the Constitutional Court, are initially appointed for five year terms, after which they either receive tenure until the age of mandatory retirement or are dismissed. Constitutional court judges serve single nine year terms.	

Analysis/Background:

The statutory tenure for judges strikes a good balance between ensuring the opportunity to evaluate performance and providing the job security to allow judges to act without fear of reprisal. Judges, other than those serving on the Constitutional Court, are initially appointed to a five-year term by the president, upon recommendation of the qualifying commission. CONSTITUTION, *supra* at 6, Art. 128. Upon completion of this term, the Verkhovna Rada will either award tenure until the age of mandatory retirement, 65, or dismiss the judge. *Id.* This affords the Verkhovna Rada the opportunity to remove a judge who has not demonstrated appropriate ability, dedication, and integrity. Judges may, naturally, temper their actions during the initial five-year appointment in order to be elected to a tenured position upon its conclusion. The judges of the Supreme Court are elected by the Verkhovna Rada for an indefinite term, until the age of mandatory retirement. LJS, *supra* at 7, Art. 41.

Although Constitutional Court judges are not entitled to life tenure, the statutory structure sufficiently protects their job security to allow them to work independently. The 18 judges of the Constitutional Court are appointed to nine-year, nonrenewable terms. CONSTITUTION, *supra* at 6, Art. 148. Thus, while they may have political ambitions, their conduct will not be motivated by the desire to obtain an additional term on the Constitutional Court.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	***Correlation: Positive***
Judicial advancement is based upon objective criteria. Ability, integrity, and experience play a greater role in judicial appointment than politics in most instances.	

Analysis/Background:

There are three kinds of "advancement" within the judiciary of Ukraine: (1) to a higher class (rank); (2) to a higher court; and (3) to an administrative office within the court. "Depending on the office, years of service, work experience, and level of professional expertise for judges there shall be established six qualification classes: superior, first, second, third, fourth, and fifth." LSJ, *supra* at 6, Art. 40. Initially, a judge does not have a class ranking, but can be assigned to the fifth class

after being tested by the qualifying commission within his first two years of service. *Id.*, Art. 39. Each class rank lasts a specific term. LQC, *supra* at 7, Art. 17. Within a month of the expiration of the term, the judge must again be tested, at which time the qualifying commission will decide if the judge should be assigned to a higher class. *Id.*, Art. 17, 18. Downgrading of class rank may happen only as the result of a disciplinary penalty. *Id.*, Art. 18.

Promotion to a higher court is dependent upon (1) one's age (candidate needs to be at least 30 years for appellate and high specialized court and 35 for the Supreme Court) (LSJ, *supra* at 6, Art. 7); (2) years of legal career (five years for appellate courts, seven for High Specialized, and ten for the Supreme Courts) (*Id.*) and (3) years of judicial experience (three for appellate court, five for a High Specialized and the Supreme Courts). The judge must be recommended by the respective qualifying commission for promotion to the appellate court (LQC, *supra* at 7, Art. 6(2)), while such recommendation for judges of High Specialized and the Supreme Courts is to be issued by the High Qualifying Commission. *Id.*, Art. 6(1). Proposals for promotion are introduced by the chief judge of the court where the judge is currently serving (LSJ, *supra* at 6, Art. 15 ¶2) and the MOJ (LJS, *supra* at 7, Art. 19 ¶ 2.). Appointment to the new office is administered by the Verkhovna Rada, except when a local court judge is promoted to an appellate court within his five first years of service. In such event, the appointment is administered by the president of Ukraine. When the five-year term expires, the judge can obtain tenure only through confirmation by the Verkhovna Rada. *Id.*, Art. 30.

Chief judges and deputy chief judges of local and military courts are appointed to five-year terms by the MOJ upon recommendation of the Council of Judges of Ukraine. *Id*., Art. 23, 38-3. The leadership of appellate and high specialized courts, as well as the Supreme Court, is elected collectively by the judges of the respective courts. *Id.*, Art. 30 (appellate court), Art. 38-13 (High Specialized); Art. 43 (Supreme).

The interviewees reported that judicial advancements are based largely upon work ethic, intelligence, integrity, and experience. The opinions of chief judges seem to be given considerable weight in decisions regarding promotions.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Positive***
Statutory immunity protects judges from prosecution or liability premised upon execution of their professional responsibilities.	

Analysis/Background:

Judicial civil and criminal immunity is quite broad, both in theory and in practice. The Constitution and code provide substantial safeguards against harassment by investigating authorities. A judge can not be arrested or detained without approval by the Verkhovna Rada. CONSTITUTION, *supra* at 6, Art. 126; LSJ, *supra* at 6, Art. 13. Immunity from civil liability was somewhat vague until February 1999, when the Plenum of the Supreme Court unambiguously ruled that judges may not be sued in civil proceedings for official actions. THE PLENUM OF THE SUPREME COURT POSTANOVA OF 26 FEBRUARY 1999 PUBLISHED IN THE *HERALD OF THE SUPREME COURT OF UKRAINE* JOURNAL (*VISNYK VERKHOVNOHO SUDU*), #2, 1999. Specifically, the Plenum stated that a judge's decisions, actions, or omissions associated with the dispensation of justice may not be reviewed by a court in civil litigation.

Courts routinely respect the immunity defense. Indeed, there may be times when judges are given immunity for behavior unrelated to their professional responsibilities.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	***Correlation: Positive***
Judges may be removed from office or punished only for specified official misconduct, governed by objective criteria. However, the process is not completely transparent.	

Analysis/Background:

A judge may be removed from office only in the event of (1) the expiration of his term, (2) the judge's attainment of the age of 65, (3) inability of the judge to exercise his authority for reasons of health, (4) the violation by the judge of the prohibition to hold any paid office or perform any other paid work except for teaching, academic research or creative activity, (5) the breach of the judicial oath, (6) the entry into legal force of a guilty verdict against him, (7) the termination of the judge's citizenship, (8) the declaration that the judge is missing or dead, or (9) the judge's resignation or voluntary dismissal from office. CONSTITUTION, *supra* at 6, Art. 126. Similar provisions govern removal of Constitutional Court judges. LCC, *supra* at 6, Art. 23.

If a chief judge learns of existence of the grounds for dismissal of one of the judges of his court, within one month he must inform the president or, if a tenured judge is involved, the Verkhovna Rada. LSJ, *supra* at 6, Art. 15. With respect to local and appellate judges of the courts of general jurisdiction, disciplinary proceedings may be commenced by the qualifying commission upon submission of a complaint by the chief judge of the court where the judge serves, the chief judge of the supervising (appellate) court or a respective officer of the MOJ, citizens, National Deputies of Ukraine, and chiefs or deputy chiefs of state organs or organs of local self-government. Complaints may also be based upon information published in the media. LQC, *supra* at 7, Art. 32. The High Council of Justice hears appeals regarding the disciplinary rulings of the qualifying commission. LAW OF UKRAINE ON THE HIGH COUNCIL OF JUSTICE #22/98-BP, 15 JANUARY 1998 [hereinafter LHCJ], Chapter 5.

Disciplinary proceedings regarding judges of all courts, except for the Supreme and high specialized court judges are conducted by qualifying commissions. If grounds for initiation of a disciplinary proceeding emerge, the qualifying commission conducts a preliminary investigation within one month. LSJ, *supra* at 6, Art. 35.1. Within ten days of completion of the investigation, the qualifying commission hears the case. The judge, whose conduct is being investigated, has the right to be heard and to provide explanations. *Id.*, Art. 35.2 and 35.4. If the qualifying commission finds the judge guilty of committing a disciplinary violation, it can reprimand or downgrade rank as a penalty. In addition, the qualifying commission may address the High Council of Justice with the recommendation to commence dismissal procedures against a judge. *Id.*, Art. 32. During 2001 the High Council of Justice dismissed 41 judges – 38 for breach of oath and three for criminal convictions (US Department of State, *Country Reports on Human Rights Practices,* 2001 (visited May 5, 2002) <www.state.gov/g/drl/rls/hrrpt/2001/eur/8361pf.htm>). Decisions of the qualifying commission on imposition of disciplinary liability may be appealed to the High Council of Justice. LHCJ, *supra* at 21, Art. 3.

The High Council of Justice has the authority to rule upon a judge's alleged violation of the obligation not to engage in most remunerative work and to exercise disciplinary procedures with

regard to the judges of the Supreme Court and high specialized courts. CONSTITUTION, *supra* at 6, Art. 131; LHCJ, *supra* at 21, Art. 3. The High Council of Justice consists of 20 members, three coming from each of the following organs: the Verkhovna Rada, the president's office, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions. The All-Ukrainian Conference of Employees of the Prosecution appoints two members to the High Council of Justice. The Chairman of the Supreme Court, the Minister of Justice of Ukraine, and the Chief Prosecutor of Ukraine are *ex officio* members of the High Council of Justice. CONSTITUTION, *supra* at 6, Art. 131.

Complaints of judicial misconduct regarding Supreme Court judges or the judges of the high specialized courts are verified by members of the High Council of Justice. LHCJ, *supra* at 21, Art. 38. The accused judge may file a complaint regarding the qualifying commission's accusation with the High Council within one month of receiving the qualifying commission's decision. *Id.*, Art. 46. The judge involved must be invited to the Council's session in which it considers the qualifying commission's accusation, and the judge has the right to be heard. *Id*. However, the judge is not permitted to be present when the final decision is made by the Council. *Id.*, Art. 42. To find a judge guilty of the misconduct described in items 4 and 5 above requires a vote of no less than two-thirds of the votes of the High Council of Justice participating in the session. *Id.*, Art. 32. Upon a finding of guilt as to violation of the oath of office, the High Council of Justice may reprimand the judge, downgrade the rank of the judge, or recommend the dismissal of the judge. If the Council finds a judge's non-compliance with the occupied position, it forwards the decision to the body which has appointed or elected the judge. *Id.*, Art. 37.

A judge of the Constitutional Court may be removed for official misconduct by the Verkhovna Rada of Ukraine.

There are abundant complaints about judges, many of them unjustified. If there is political pressure to remove a judge, the complaints about his conduct may receive a great deal of attention and serve as a basis for disciplinary proceedings, even if there is little substance to them.

Many of the interviewees noted that while there are clear criteria for the removal of judges, the decision- making process is not transparent, and only the final decision is available for public scrutiny. The minutes of disciplinary sessions must be recorded (LHCJ, *supra* at 21, Art. 24; LQC, *supra* at 7, Art. 13), and the sessions of the qualifying commissions are supposed to be open (LQC, *supra* at 7, Art. 8.5), but it is not clear that the public is duly informed of the place, time, and agenda.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	***Correlation: Neutral***
The methods of case assignment are varied. Assignment may be made on the basis of territory, workload, and area of specialization or on a purely subjective basis. A chief judge may reassign cases for a number of reasons.	

Analysis/Background:

Civil judges in the lower courts are usually assigned specific regions. If a case arises from a judge's region, it is automatically assigned to that judge. In contrast, criminal cases are filed by the prosecution and assigned by the chief judge of the local or appellate court based upon a variety of factors including the expertise of the judge, the complexity of the case, workload, and other subjective factors. Commercial cases are usually assigned based upon the specialization of the judge, so tax cases go only to judges assigned to the area of tax, etc.

In practice, cases are sometimes assigned on a highly subjective basis. Some chief judges use the flexibility to assign politically sensitive or difficult cases to themselves in order to shield lower judges from inappropriate pressures. However, others reportedly have motives that are more negative. Some direct sensitive cases to those judges known to be "pro-administration." One judge reported that his chief judge assigned a case to him that the administration wanted to be resolved in a certain fashion. He reviewed the case and told his chief that only the opposite resolution of the case was proper under the law. The day of the trial, the chief judge reassigned the case to another judge whose decision was in favor of the administration.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	***Correlation: Neutral***
The bodies of judicial self-governance and scattered newly emerging judicial associations exist for the sole aim of protecting and promoting the interests of the judiciary. However, none of these organizations have the strength required to effectuate judicial reform and the protection of judges.	

Analysis/Background:

Promotion of the interests of the judiciary rests with the bodies of judicial self-governance. These bodies are charged with the following responsibilities: "(1) to create the most favorable conditions for the activities of the court, (2) to improve the preparation and qualification of judges, and (3) to strengthen the independence of judges and to protect them from interference with their judicial activities." LBJSG, *supra* at 9, Art. 3. The law specifies that the bodies of judicial self-governance shall consist of (1) conferences of judges; (2) meetings (assemblies) of judges of the high specialized courts and of the Supreme Court; (3) the [national] congress of judges of Ukraine; and (4) the councils of judges, including the Council of Judges of Ukraine and territorial councils of judges. *Id.*, Art. 13.

None of these bodies can be called an association *per se*. First, unlike an association of judges based upon voluntary membership, the bodies of judicial self-governance exist per statute and are assumed to represent all judges within their jurisdiction. The conferences of judges and the national congress of judges are comprised of delegates from the courts, while the meetings (assemblies) involve all judges at the particular court. The council of judges is essentially an executive body, and its representatives are elected by the other three bodies of judicial self-governance. Second, bodies of judicial self-governance are not juridical persons, and therefore they cannot own property, open bank accounts, be a party of a law suit, etc., as could a registered judicial association.

Because the bodies of judicial self-governance are relatively new and their funding has been lacking, promoting judicial interests has been challenging. While judges often complain about lack of initiative of the bodies of judicial self-governance, the leadership of the bodies themselves complain that local judges do not actively support their efforts. For example, it is reported that courts, routinely unable to send out subpoenas due to lack of paper and stamps, often require the parties to provide the supplies. A recent Kyiv Oblast conference of judges condemned this practice as disruptive to the image of the judiciary and suggested that courts lacking supplies suspend the proceedings and demand the state provide the necessary provisions. The courts have not followed the conference's suggestion, and signs advising parties to provide their own supplies remain a common sight.

Although unable to adequately protect many judicial interests, the bodies of judicial self-governance deserve credit for some significant contributions. One of their initiatives resulted in passage of the "Code of Judicial Ethics'' by the Council of Judges of Ukraine. COUNCIL OF JUDGES DECISION #5, 24 FEBRUARY 2000. The code is advisory and does not have the force of law.

In addition to the statutory bodies of judicial self-governance, there are several scattered judicial associations. Judicial associations in Kharkiv, Ternopil, and Crimea have emerged in the last few years. A national association of judges was formed in early 2002. There had been concern that judicial associations were illegal based on the statutory prohibition against trade-unions and political activism for judges; this attitude has shifted in part because of efforts of international organizations promoting judicial independence. Nevertheless, lack of time and financial resources, in addition to general unfamiliarity with professional associations, have thus far precluded the judges from forming sustainable, active, and efficient organizations that adequately promote their interests.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court precedents), private interests, or other branches of government.

Conclusion	***Correlation: Negative***
Improper influence on judges is a significant problem that takes many forms, including political pressure, inappropriate *ex parte* communications, and bribes. Despite these pressures, the judiciary is increasingly exercising its independence and deciding cases based purely on the law and the facts.	

Analysis/Background:

The frequency of bribery and other improper influences on judges is impossible to quantify. Viewpoints vary from extreme cynicism to extreme optimism. Nonetheless, there is little dispute that unethical conduct does occur to some degree and a general consensus that both financial and political forces create the motivation and/or opportunity to compromise the integrity of the judicial system.

The inadequacy of judges' salaries is commonly regarded as a factor contributing to the solicitation and/or acceptance of bribes. Likewise, low budgets and poor working conditions motivate some courts to accept contributions from current or prospective litigants. Just as judges may feel a loyalty to a party who has contributed to the maintenance of the court building, some

judges reported difficulty in making objective decisions when administrative bodies with judicial budgetary power are involved in the case. From a political perspective, non-tenured judges may feel increased pressure as they seek election to an indefinite appointment position. Similarly, judges with political ambitions or aspirations to advance within the judiciary may try to curry favor with influential persons through their decisions.

"Telephone justice" (calling a judge or chief judge to influence the outcome of the case) is reportedly common in cases involving political factors, especially at the *rayon* court level. Chief judges in particular are subjected to such conduct, with the expectation that they will deliver the message to the sitting judge. Even National Deputies have made inquiries of the courts in particular cases. On May 19, 1999, the Constitutional Court ruled that National Deputies do not have the right to question the court, chief judges, or judges regarding specific cases, reasoning in part, that such activities violate the constitutional prohibition against external influence of the judiciary and the constitutional guarantee of an independent judiciary. DECISION # 4-РП/99, 19 MAY 1999. Despite this decision, attempts at "telephone justice" continue, but judges are increasingly rankling at such interference and are proceeding based upon their interpretation of the law and facts. Some interviewees reported that when National Deputies have made inquiries in recent times, they have reminded them of the independence of the judiciary and warned that if such inquiries continued, they would be forwarded to the Verkhovna Rada's Committee on Deputies Ethics. It was reported that such warnings have caused the deputies to forgo further inquiries.

Ex parte communications are permitted under the law and are commonplace at the lower court level. Some judges reach conclusions based solely upon information provided by one advocate, without affording the opposing party the opportunity to refute. In criminal matters, the frequency of *ex parte* communications leads some to conclude that the prosecutor has undue influence over the courts. One judge related an instance in which he spoke to a prosecutor outside the presence of the defendant. He described the conversation as one "between two lawyers, not between a lawyer and a judge." In this conversation, the relative strengths and weaknesses of the case were discussed.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	***Correlation: Neutral***
The Council of Judges has adopted a code of ethics that is recommended, but it does not have force of law. Ethics provisions are included in various pieces of legislation, but no ethical training is required of judges.	

Analysis/Background:

Although the Council of Judges has adopted a two-page code of ethics, it is only advisory. COUNCIL OF JUDGES DECISION #5, 24 FEBRUARY 2000. Furthermore, the code is not widely available to judges. Many ethical provisions are, however, set forth in the Constitution and in various pieces of legislation. Judges are prohibited from engaging in political activity or engaging in remunerative work outside of the court, except for scholarly work, teaching, or creative activity. CONSTITUTION, *supra* at 6, Art. 127. A judge is required to act in such a manner that there is no doubt as to his objectivity and independence. LSJ, *supra* at 6, Art. 6.

The Civil and Criminal Procedure Codes and the Law on the Status of Judges all contain conflict of interest provisions. The grounds for disqualification of a judge include bias, familial, or special relationship to the parties or witnesses and other circumstances arousing doubts as to impartiality. CPC, *supra* at 11, Art. 18. Similar provisions are found in the Criminal Procedure Code. CrPC, *supra* at 6, Art. 54. Criminal and Civil Procedure Codes are available at most, if not all, courts. The interviewees reported that judges are aware of the provisions related to judicial conduct. Unfortunately, the codes provide little guidance for judges in other ethical dilemmas. Moreover, judges are not required to undergo any specific training regarding judicial ethics before or during their tenure.

Ex parte communications, as discussed above in Factor 21, are not prohibited and are even required in some instances. See, e.g., CPC, *supra* at 11, Art. 143: When a judge prepares for the hearing of a civil suit, he must call the plaintiff to clarify the plaintiff's position where it is unclear.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	***Correlation: Positive***
The process for filing complaints of judicial misconduct is utilized and effective.	

Analysis/Background:

Everyone has the right to file complaints of judicial misconduct with any governmental entity, which in turn is obliged to either forward the complaint to the appropriate entity within five days (LAW OF UKRAINE ON APPLICATIONS OF CITIZENS #393/96-BP, 2 OCTOBER 1996 LAST AMENDED 13 MAY 1999 [hereinafter LAC], Art. 7) or consider the complaint and provide a substantiated reply. CONSTITUTION, *supra* at 6, Art. 40. See also, LAC, *supra* at 25, Art. 1. The law obligates governmental entities receiving oral or written complaints from the public to register them; the subject of a complaint must respond within one month. LAC, *supra* at 25, Art. 1, 7, and 20. Although technically the public may file a complaint with any governmental entity, complaints about a judge's conduct are most commonly filed with the chief judge, the qualifying commission, the MOJ, the High Council of Justice, the National Deputies, or the Ombudsman, since these entities can most directly initiate disciplinary proceedings. LQC, *supra* at 7, Art. 32.

When the local qualifying commission receives information that a judge may have engaged in misconduct, it must investigate the claim. *Id.*, Art. 31. If grounds exist, the qualifying commission may commence a disciplinary proceeding. *Id.*, Art. 33. Likewise, the Chief Justices of the Supreme Court and high specialized courts, chief judges or their deputies, and the MOJ and its bodies can request that the qualifying commission commence disciplinary proceedings. *Id.*, Art. 32. Complaints regarding higher court judges are heard by the High Council of Justice.

In practice, the process is meaningful, though it attracts many groundless complaints.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	***Correlation: Neutral***
While court proceedings generally are open to the public and media, exceptions to this principle are broadly worded and ill-defined. Lack of courtroom space also hinders public access.	

Analysis/Background:

The "openness" of trials is constitutionally ensured. CONSTITUTION, *supra* at 6, Art. 129. Closure of a hearing is only possible upon a court ruling under specific circumstances. LJS, *supra* at 7, Art. 14. The Civil and Criminal Procedure Codes provide that all cases shall be open except for those involving state secrets. CPC, *supra* at 11, Art. 10; CrPC, *supra* at 6, Art. 20. A judicial review *in camera* is also permitted where the court finds it necessary to prevent publication of private information, such as in cases involving rape, minors, or adoption. *Id.* In practice, these options are not abused: courts of general jurisdiction are typically open to the public, and *in camera* reviews are very rare.

Proceedings in the economic courts are more commonly closed. In economic court, a case may be closed to the public upon a showing that governmental, commercial or banking secrets are at issue, or when either or both parties present valid reasons for requesting hearings *in camera* and present the relevant petition before the initiation of the proceedings. EPC, *supra* at 11, Art. 4-4.

Despite the legislation intended to ensure open judicial procedures, except for delineated circumstances, members of the public do not often attend proceedings. While some of this may be due to lack of interest, those who are interested sometimes encounter difficulties in exercising this right. Court personnel, including guards, are unhelpful and sometimes impolite to spectators. Public attendance is often further hampered by the failure to make the time and location of specific hearings readily available. Finally, the lack of space effectively precludes visitors in some instances. Nevertheless, the vast majority of hearings and trials are open to the public. At least one court appointed a judge as the "media contact" to assist the media with information concerning the hearing schedules and to ensure that space will be available for its attendance.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	***Correlation: Negative***
While parties are entitled to access decisions, obtaining copies is sometimes difficult. Most decisions are not published. So, in order for a nonparty to review a decision, he must obtain permission from the litigant, the presiding judge, or his chief judge.	

Analysis/Background:

While rulings must be announced publicly (CPC, *supra* at 11, Art. 212; CrPC, *supra* at 6, Art. 20), the vast majority of decisions are not published, and access to court files by nonparties is limited.

For nonparties to gain access to court files the approval of the presiding judge or the chief judge of the court is usually required. Even where a person is permitted to see the decision, he may not be able to copy it, except by hand, because copy machines are usually not available. Consequently, most decisions are subjected neither to academic comment nor to public scrutiny unless the parties themselves disseminate the decisions.

Because decisions of the Constitutional Court are binding on all other courts, as opposed to decisions from the courts of general jurisdictions which have no precedential value, the decisions of the Constitutional Court of Ukraine are published in the *Herald of the Constitutional Court of Ukraine* (LCC, *supra* at 6, Art. 67), and they are also available on a database. Some of the decisions of the Supreme Court and of the High Economic Court have instructive value, and as such, selected excerpts from these decisions are published in the *Herald of the Supreme Court of Ukraine* or in the *Herald of Commercial Justice.* Electronic legal databases, legal newspapers, and other publications also print excerpted exemplary decisions of both higher courts and the lower courts. There is no comprehensive database of such decisions, however. The courts themselves have difficulty obtaining decisions of other courts. See discussion in Factor 30.

Justification for limited public access to court decisions is based upon their limited precedential value weighed against the desire to shield the private information about parties contained in court files from public inspection. Furthermore, there is a practical concern about producing files for public inspection since there is typically no electronic backup and photocopying options are limited.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	***Correlation: Negative***
Although the Constitution requires the technical recording of proceedings, very few courts have received the funding necessary to provide the equipment. Therefore, most proceedings are recorded only by a secretary writing longhand the major points of the hearing. All parties do have the right to request corrections to the secretary's notes. The public does not have the right to review this "transcript" without the consent of the presiding judge or his chief judge.	

Analysis/Background:

The Constitution requires the technical recording of judicial proceedings. CONSTITUTION, *supra* at 6, Art. 129.7. Despite the constitutional mandate that the State ensure funding for the operation of the courts (*Id.*, Art. 130), the vast majority of courts lack technical recording equipment. Some courts have procured recording equipment from sources outside of the MOJ, while others have none.

In criminal matters, either party is entitled to demand a complete recording of a trial by technical means. CrPC, *supra* at 6, Art. 87-1. Moreover, a material violation of the requirements of the Code is grounds for reversal. *Id.*, Art. 370. Thus, where a defendant demanded the recording, and the court failed to provide it, the defendant's conviction must be reversed for a material violation of the Criminal Procedure Code and returned to the trial court for retrial. Accordingly, criminal defendants may insist upon recording equipment, but possibly face pretrial detention until such time, months or years later, as the necessary equipment is obtained. Alternatively, criminal defendants may consent to a proceeding without technical equipment, recognizing that appealing

the matter without a record is problematic. A backlog of criminal cases, possibly as many as 250, exists because of lack of recording equipment.

Civil court proceedings should also be recorded by technical means (CPC, *supra* at 11, Art. 198), but such recordings, rarely, if ever, take place. One interviewee referred to a case in which a judge agreed to a party's proposal to bring in her own technical equipment for recording the case. The judge was accused of being corrupt. However, unlike criminal matters, failure to record civil proceedings does not entitle a party to retrial. Proceedings in the economic courts, by statute may, but do not have to be recorded. EPC, *supra* at 11, Art. 81-1.[4]

Although in most instances no technical recording is created, the major points of proceedings are generally recorded in longhand by a court secretary. The parties have the right to review these "minutes" and to make applications to the court for amendments. The accuracy, timeliness, and completeness of these notes vary widely. As part of the case file, these minutes are not available to the public. See discussion in Factor 24.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	***Correlation: Neutral***
Adequate secretarial staffing exists for the most part, but judges have insufficient assistance as far as legal research is concerned.	

Analysis/Background:

While there was some disagreement as to whether sufficient secretarial assistance is provided to the courts, most of the judges interviewed felt that these needs were met. In some of the lower courts, however, the MOJ departments have not provided the funds to pay the salaries of the requisite number of secretaries, and positions remain unfilled. Further difficulties arise because low salaries do not always attract qualified candidates. In addition, if a lower court wants to hire a person outside of its budget, it must apply to the local MOJ department with a request substantiating the need of the additional staff person. Obtaining such an authorization may take a year or more. Moreover, many of the judges interviewed said that support staff generally do not receive any standardized training. In contrast, the local MOJ department interviewees said that they provide training to the staff at least once a quarter, and that guidance is given to the staff regarding document management whenever MOJ department employees visit the court. While the Kharkiv National Yaroslav Mudry Law Academy offers some courses relating to court administration, individuals selected for such training often try to avoid the courses because they may incur the expenses of lodging, meals and transportation. Many of the court staff are law students who require leaves of absence during examinations.

Contrasted with the general contentment with the level of secretarial assistance, there were numerous complaints that judges do not have appropriate staff, both in terms of number and skill/educational level to perform quality legal research. In the lower courts, most of the judges reported that they conducted their own legal research; economic court judges report better

[4] There is a question whether this provision is Constitutional in light of the Constitutional mandate noted above.

staffing for legal research. Low base salaries make recruitment of qualified personnel difficult, and frequent staff turnover in some courts further hinders continuity and creates greater training needs.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	***Correlation: Negative***
Ukraine's system of creating new judicial positions as needed exists, but many of these positions remain vacant.	

Analysis/Background:

The creation of courts and the number of judges in every local and appellate court is determined by the president upon submission of the Chairman of the Supreme Court, the chief judge of a higher specialized court or the Minister of Justice of Ukraine. LJS, *supra* at 7, Art. 24, 30, and 38. Regional population is one of the factors considered in deciding the appropriate number of judges. While there were 7,435 judicial slots in 2001, only 6,993 judges were serving during that time period due to lack of funding, inadequate space, and scarcity of qualified applicants.

The responses of the interviewees were quite diverse with some judges, especially those in the economic courts, stating that their caseloads are manageable, while others describe an overwhelming workload. Even those who found the number of judges to be adequate complained of insufficient office space and too few courtrooms. The statistics support the conclusion that many courts are understaffed.

Although the workload of the courts has increased dramatically, the number of sitting judges has not grown commensurately. For example, in 1993, the monthly workload per judge of the first instance courts was 32.1 cases, and in 2001, the figure was 72. *HERALD OF THE SUPREME COURT OF UKRAINE* JOURNAL (*VISNYK VERKHOVNOHO SUDU*), #1 (29), 2002. Comparing the first half of 2000 to the first half of 2001, there was a 14.5% increase in the number of cases handled by the courts of general jurisdiction, yet the number of judicial positions remained the same. *ANALYSIS OF THE WORK OF JUDGES, supra* Factor 6, at 12.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	***Correlation: Negative***
An antiquated case filing and tracking system is in place in the courts of Ukraine. The time limits mandated by the Civil and Criminal Procedure Codes are not uniformly incorporated and are sometimes exceeded because of lack of judges or courtrooms, or because of the criminal defendant's lawful demand that the proceedings be recorded by technical means that are not routinely available.	

Analysis/Background:

The case filing and tracking system is antiquated and inefficient. Logistically, a civil complaint may be mailed to the chancellery where a clerk registers it and assigns it to a judge, usually based on territorial assignments. A citizen may choose instead to meet with a judge during his "public hours" and have the judge determine whether the complaint meets the filing requirements. If it does not, the citizen may revise the complaint according to the judge's instructions. If the complaint is adequate, it is registered by the chancellery officer and assigned by whatever system is used by that court. See Factor 18. Criminal cases are registered directly with the chancellery of the criminal division and then sent to the chief judge for assignment.

The civil and criminal procedure codes contain specific time limits for processing cases. Judges in civil matters have seven days to prepare a case for trial, though this term may be extended up to 20 days in complex cases. CPC, *supra* at 11, Art. 146. Criminal cases must be set for trial within ten days, except in particularly complex matters which are allowed up to 30 days under the code. CrPC, *supra* at 6, Art. 241, 256. However, the filing and tracking system does not incorporate these requirements, and therefore, it does not trigger notification of these deadlines.

Since the creation of the information arbitration center in July of 2001, the economic courts have utilized a computerized process for the registration of cases. Economic court judges reported that cases are generally decided within the legislative deadline of two months.

In practice, these deadlines are sometimes exceeded due to lack of judges, courtrooms, or recording devices. Administrative inefficiencies account for other delays. Despite the extreme delays in a couple of highly publicized and political cases,[5] the interviewees generally reported that most cases are resolved in a timely fashion.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	***Correlation: Negative***
The judiciary does not have a sufficient number of computers or other equipment to enable it to handle its caseload in a reasonably efficient manner.	

Analysis/Background:

Some courts do not have any computers, other courts have too few, and only a small number of courts are adequately supplied. It is reported that the state provides an inadequate number of computers, so some judges use their own computer equipment, while other equipment is donated by private "sponsors" or international donor organizations. The lack of computer equipment limits the courts' ability to perform legal research using the electronic legal databases or to network with each other via the Internet. Moreover, most courts do not have equipment to provide technical recordings as required by law. Some of the lower court judges described a paucity of copy machines, typewriters, paper, pens, and stamps, much less computers.

[5] For example, the demonstrators arrested during the protests of April 2001 have not yet been tried due to delays ranging from unavailability of a sufficiently large courtroom, illness of the judge, and conduct attributable to the accused. Similar delays have occurred in the trial of Boris Feldman on a controversial fraud charge.

Economic courts seem somewhat better equipped than others. Although no official statistics are kept at the central level, the belief by one official within the MOJ that there is at least one computer per every two judges in Ukraine is not consistent with the computers/judges ratio in the Kyiv Courts. As of December 2001, there were 27 computers in the Appellate Court of Kyiv Oblast, which has 43 judges. Only 33 computers and 29 printers were located in the 34 *rayon* courts of Kyiv Oblast despite the 189 judicial positions. Moreover, distribution of these computers was tremendously uneven, suggesting that the availability of technical equipment may depend upon the fundraising skills of the court chief judge, whether via legitimate international donors or private "sponsors."

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally recognized system for identifying and organizing changes in the law.

Conclusion	***Correlation: Negative***
Although there is a system for indexing and distribution of legislation to courts, it is inadequate and sometimes untimely. Moreover, judges often must finance their own subscriptions to legal resources.	

Analysis/Background:

New legislation is not easily accessible to most courts, especially the lower courts. While eventually each court receives one copy of new legislation, it is often delayed, and the courts are dependent upon subscription legal newspapers in order to receive timely updates.

Maintenance of the national official acts system is vested in the MOJ, which maintains a computerized register of normative acts. Statutes, acts of the president, the Cabinet of Ministers and the highest courts and all other acts carrying the force of law are included in this database. Unfortunately, while the Supreme Court, the Constitutional Court, and the High Economic Court are among the list of bodies eligible for free access to this register, lower courts are not. Other courts and entities can only access the register by paid subscription.

Legal acts affecting individual citizens must be officially published in a journal such as the MOJ's *Official Visnyk of Ukraine (Herald*). PRESIDENTIAL EDICT #1207/96, 13 DECEMBER 1996. The *Herald* is the only comprehensive printed publication of legal acts, though numerous other publications dedicated to particular types of acts or laws are also available. Unfortunately, none of these publications are provided free of charge to the courts; the MOJ uses part of the courts' budget to purchase a subscription for some courts, though others are told there are insufficient funds.

In addition to the official sources, legal acts are available to varying degrees in unofficial publications, private electronic databases, and through the Internet. The unofficial publications and the private databases may be purchased. The databases are more comprehensive, but are also rather costly. Several websites, including that of the Verkhovna Rada, can be accessed directly through the Internet, and thus are free to anyone with Internet access.

For most courts, lack of access to current laws and court decisions is a recurrent problem. The Supreme Court's *Explanations of Judicial Practice*, as well as its instructive *Generalizations of Judicial Practice* are provided free of charge to the appellate courts, and in turn, they are sometimes passed along to the local courts. The higher courts generally have access to private legal databases, although it is typically limited to a single computer in the courthouse. Legislation

can be downloaded, depending upon the contract with the provider, pursuant to an individual judge's needs. Some courts also have Internet access and therefore would be able to access the Verkhovna Rada server and its comprehensive legal database.

Access to legal resources in the local courts is often difficult. Most of these courts do not have the technical capacity to access the Internet or databases. Given the dismal salaries of judges, it is unrealistic to expect judges to purchase their own subscriptions to legal newspapers, although in many cases they do so. Even for those courts that do purchase subscriptions to one or more of the publications, maintaining a coherent and comprehensive registry of legal acts is difficult. Many courts have a consultant/legal librarian who is charged with indexing the laws and making them available to judges. The quality of the library resources is dependent upon the skill of that individual. Given the frequent turnover of persons in such positions, court libraries are often outdated. Further, some courts do not have proper space for a library in which to store codes and legal newspapers. In such cases, the materials may be disorganized and difficult to access.