

# INSTRUMENTS FOR STRENGTHENING CONFIDENCE IN THE COURTS IN UKRAINE



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The objective of the project is to initiate a discussion about all-European political challenges based on analytical studies. Twinning format of cooperation between the Ukrainian experts and their EU counterparts will be the most effective for capacity building. Focus on public events will help reaching the audience which is usually detached from the policy development process. An additional focus on advocacy will attract attention of current EU member states to the problem of low support of EU-Ukraine association. The European audience will receive an explanation on the reforms course in Ukraine, which will help to avoid “Ukraine`s fatigue” that usually appears when the reforms slow down.

As part of the project, CES experts and other RPR member organizations hold a series of advocacy meetings in selected EU countries and study the acute issues of European policy together with their EU counterparts.

The goal of drafting this research paper is to facilitate an informed discussion with policymakers on improving confidence in Ukrainian courts. The research paper has been prepared based on: analytical desk research (including surveys conducted by Ukrainian and international organisations/institutions); discussions with practitioners from the justice sectors in Ukraine and the Netherlands. The contents of this report are the sole responsibility of the authors.

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The Centre for Economic Strategy is an independent research agency on public policy issues. The mission of the CES is to support reforms in Ukraine in order to achieve sustainable economic growth. The Centre contributes to the development of Ukraine’s economic growth strategy, performs an independent analysis of the most important aspects of national policy, and works on strengthening public support for reforms. It was established in May 2015.

Our principles:

1. Economic freedom (liberalization, deregulation, privatization)
2. Free and fair competition
3. Reducing the role of the state due to improving its effectiveness
4. Information transparency and freedom of speech
5. The rule of law and the protection of private property
6. Healthy and stable public finances
7. Knowledge-based economy

For more information on the CES, please contact Andrii Fedotov, Director of Communications (tel.: (044) 492-7970, [office@ces.org.ua](mailto:office@ces.org.ua)).

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# 1. PROBLEM

- 1.1. Ukraine has a weak and fairly corrupt judicial system (in particular, weakened by the military conflict with Russia) lacking sufficient confidence on the part of the public and business. On the eve of the Revolution of Dignity (late 2013–early 2014), the level of confidence in the courts in Ukraine [was](#) among the lowest in the world and the lowest in the former Soviet Union. According to the Corruption Perceptions Index, in 2014, Ukraine [was ranked](#) 142 out of 175 countries where research was conducted.

The belief that most judges are corrupt and dependent on politicians and oligarchs, as well as there being a mutual coverup in the judiciary [dominated](#) and remain dominant in society.

- 1.2. After the Revolution of Dignity, the Ukrainian parliament has made at least three attempts to strengthen public confidence in the judiciary, in particular by amending the Constitution to implement European standards and by granting judges greater autonomy. However, over the past four years, the confidence-building measures have been ineffective in the short term, although some progress may be felt in the longer term.

Ukrainian courts still remain the lowest-ranked by level of confidence in Europe. In 2018, according to the Corruption Perceptions Index, Ukraine [moved up](#) slightly, ranking 120 out of 180 countries (mostly due to legislative changes that have not yet been fully implemented).

- 1.3. The Netherlands has had success in achieving a relatively high degree of public confidence in the justice system. The Hague is recognised as the world capital for international justice. Dutch organisations have unique experience in implementing various judicial reform projects in other countries (including in Ukraine, countries in the Western Balkans, and Moldova). Therefore, the Netherlands' experience was relied upon in the preparation of this document.

- 1.4. The purpose of this document is to identify innovative solutions to enhance the level of confidence in the courts in Ukraine, in particular, based on the Netherlands' experience.

- 1.5. To achieve this objective, the document is divided into the following sections:

- **“Tradition”**: does the level of confidence depend on the geopolitical location of the country, its history and culture? how does the confidence in the courts relate to the confidence in other public institutions? what are the trends in changing the level of confidence in courts over time and with respect to the experience of participation in judicial proceedings?
- **“Personnel”**: how to ensure high quality of judicial personnel through the mechanisms of selection, training, and accountability?
- **“Service orientation”**: how to make courts effective, convenient, clear, and focused on the needs of participants in court proceedings?
- **“Communications”**: how to increase confidence in courts by providing quality information services?

## 2. TRADITION

There are certain societies that have a high level of confidence in the state and public institutions, and there are those that have low ones. Currently, Ukrainian society belongs to the latter group. Generally, only a small number of public institutions enjoy the trust of the majority of Ukraine's population. According to a [survey](#) conducted by the Razumkov Centre (March 2019), these include volunteer organisations (68% of respondents trust them), the Armed Forces of Ukraine (61%), church (61%), State Emergency Service (57%), volunteer battalions (56%), and State Border Guard Service (52%). Only 12% of respondents trust the courts.

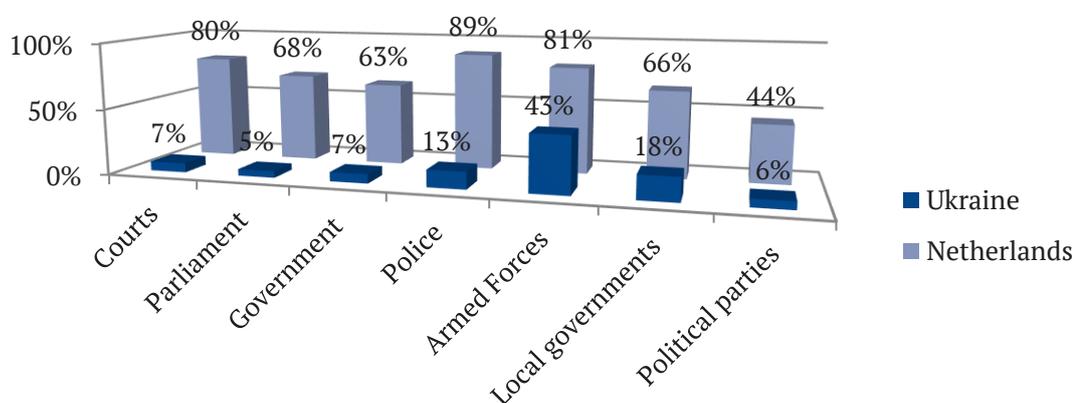
- 2.1. According to Eurobarometer, the highest level of confidence in the courts in the EU is [typical](#) primarily in the Nordic countries, as well as in certain Central European countries - Denmark (88% as of November 2018), Finland (84%), the Netherlands (80%), Sweden (83%), Austria (73%), and Germany (70%). The lowest level of confidence in the EU – according to Eurobarometer - is demonstrated by the former state socialist countries - Bulgaria (19%), Slovenia (23%), Croatia (24%). At the same time, there is a similar correlation among these countries when it comes to the level of confidence in other state institutions, such as [parliament](#), [government](#), and [police](#). However, the level of confidence in parliament and the government in each country is noticeably lower than the level of confidence in the courts, while the level of confidence in the police is a bit higher.

Consequently, there are societies where the public institutions enjoy a high level of confidence (most of them are sustainable democracies located in northern Europe) and societies with low levels of confidence in state institutions (post-Soviet countries).

There may be various explanations for this phenomenon: the impacts of history and geopolitics, political regime, social upheavals, religion, level of general trust among people, welfare, etc.

- 2.2. Ukraine is one of the states that regained its independence after the collapse of the USSR. As in most post-Soviet countries, the level of trust in public institutions in Ukraine is rather low. In the context of the hybrid war with Russia, the army enjoys the greatest support among all state institutions.

Confidence in public institutions in [Ukraine](#) (Institute of Sociology of the National Academy of Sciences of Ukraine, 2018) and the [Netherlands](#) (Eurobarometer, 2018)



According to different sociological surveys, the level of confidence in the courts in Ukraine varied from 7 to 16 percent in 2018. At the same time, most of the studies showed a confidence level at less than 10 percent.

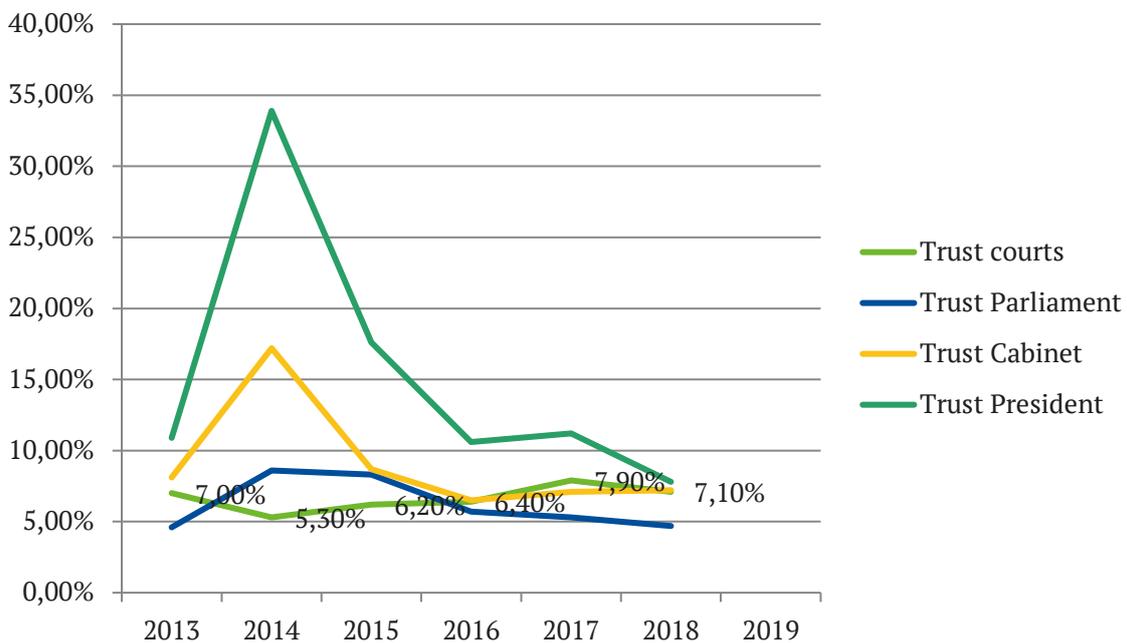
- 2.3. The Netherlands belongs to a group of countries with traditionally high level of confidence in state institutions. Among all state institutions, the courts rank second in level of confidence after the police. Therefore, Dutch experts believe that the level of confidence itself is not the most important indicator of the judiciary’s success. It is much more important to compare the level of confidence in different institutions within the country, as well as the dynamics of confidence in a particular institution over a certain long period of time.

*"An absolute indicator of confidence does not tell you much. It often depends on the time of the survey and crises that occur from time to time. Much more important are the trends that can be seen only over a longer period of time".*

*Bart Rijs, Head of the Communications Department of the Netherlands Council for the Judiciary*

- 2.4. According to the [data](#) of the Institute of Sociology of the National Academy of Sciences of Ukraine, confidence in the courts remained at a stable, very low level (5-7%) before and after 2013.

Dynamics of the share of Ukrainian citizens who trust state institutions (2013–2018), Institute of Sociology of the National Academy of Sciences of Ukraine (2014 and 2019 are election years)

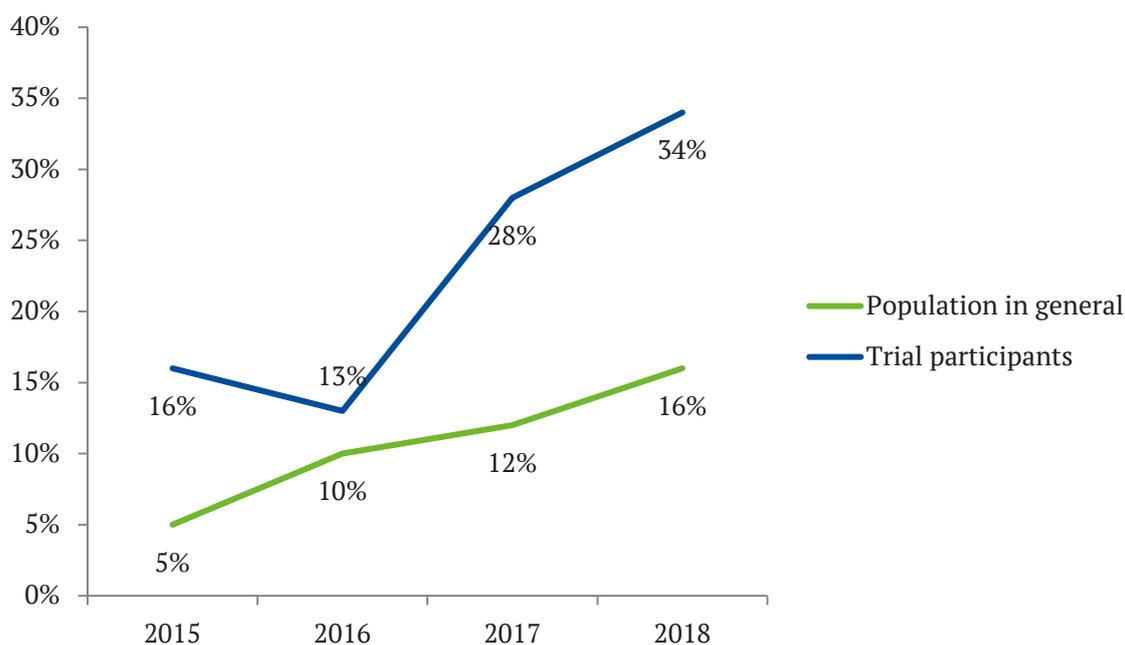


- 2.5. Unlike the political authorities (president, parliament, government), the level of confidence in the courts, regardless of the country, seems to be relatively stable. Confidence in political authorities varies from election to election (the level is high after the election, and decreases closer to the election). In Western Europe, the level of confidence in political bodies is usually lower than in the courts, whereas in Ukraine, by contrast, political authorities usually enjoy greater confidence than courts (except during the pre-election period, when the level of trust in political bodies may be similar to courts).

- 2.6. The results of some [studies](#) show the following trend in societies with relatively high level of confidence in the courts: those who have had experience with court proceedings tend to distrust the courts more than those who have not had such experience. This statement was confirmed by the Dutch experts who spoke to the authors of this study. They explained this by the high expectations that are often not met during the proceedings due to the length of the process, the high costs, etc.

In Ukraine, however, the level of confidence in the courts among the users of judicial services is higher than among those who had no experience with the courts.

Level of confidence in the courts among population at large and among participants in proceedings, Ukraine (2015-2018), USAID New Justice Program

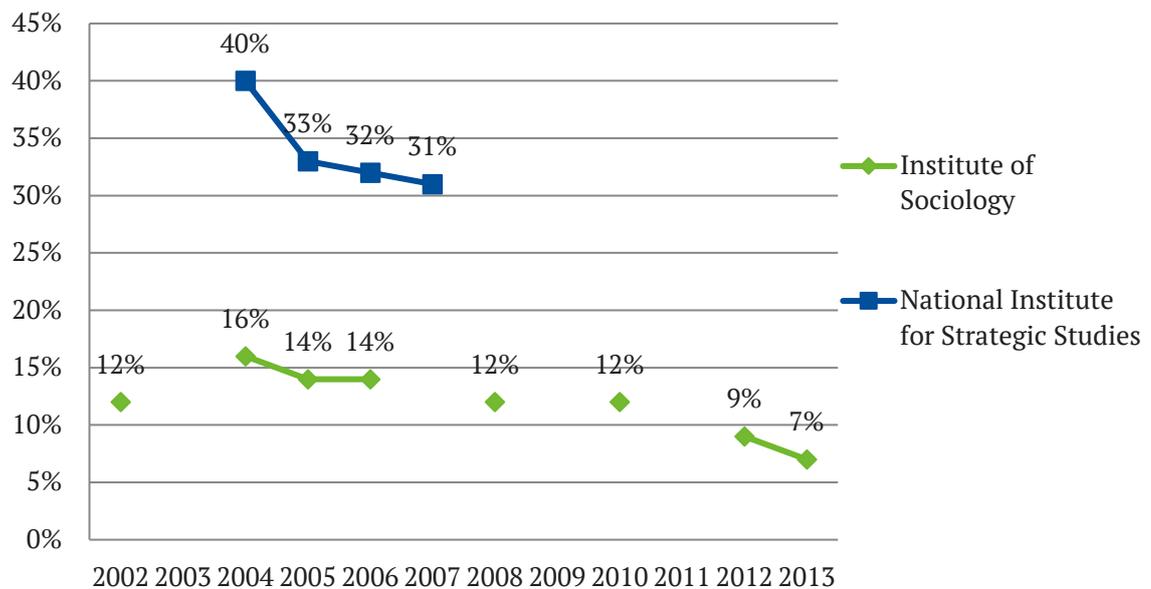


- 2.7. Ukrainian experts explain this phenomenon by the poor reputation of the courts formed through the media and the perception of the courts as corrupt institutions, while impressions of trial participants can be, for example, based on the outcome of the case, or depend on the level of their satisfaction from contact with the court, or from the procedural role as a trial participant. Thus, the low expectations that existed prior to contact with a court may in some cases be overcome during such contact if a person feels that (s)he is treated in a good way and feels that his/her case is considered properly.
- 2.8. Despite the respectable stature of institutions that conduct sociological polls in Ukraine and the uniformity of questions, these surveys often show different results. At the same time, survey methodologies are quite comparable (more than 2000 respondents, 2-3 percent margin of error, coverage across all regions).

The data shown above, from the Institute of Sociology of the National Academy of Sciences of Ukraine and the USAID New Justice Program, not only differ substantially but also show different trends. Results of the Institute of Sociology of the National Academy of Sciences of Ukraine show relatively stable low confidence indicators in recent years (5-7%), while results of the USAID New Justice Program show notable increase (by three times, from 5% to 16%) in the level of confidence in courts during the last three years.

Presented below is the comparison of data from two sources – the [Institute of Sociology](#) of the National Academy of Sciences of Ukraine (2002-2013) and the [National Institute for Strategic Studies](#) (2004-2007, based on compilation from various sources).

### Confidence in the courts, Ukraine, Comparison of findings from different studies



It should be noted that the answer options are formulated similarly in all surveys: “fully trust, rather trust, rather do not trust, fully distrust”, and “difficult to answer”. The confidence indicator (the tendency to trust) is determined from those who have chosen “fully trust” and “rather trust” responses. However, the USAID New Justice Program’s survey for 2018 also included another option that measured a neutral attitude. With this option, the confidence indicator was 16%, while without it, it was 20%, which sets the results of this survey even further apart from other similar surveys.

As can be seen, the difference between the results of various surveys is striking. At present, the reasons for such difference need to be further analysed.

Despite the differences in the numbers of different polls, the overall picture is that people generally have little trust in the courts in Ukraine.

- 2.9. The low level of confidence in the courts in Ukraine can be explained both by general distrust in the authorities and by special reasons, since the courts in Ukraine mostly enjoy less confidence than political authorities. This distinguishes Ukraine from Western European states, where courts mostly receive higher confidence rates than other branches of government.**

**The fact that the users of court services in Ukraine have greater confidence in the courts than those who have not participated in trials is of great significance for potentially improving the confidence in the courts. Personal experience can destroy stereotypes. It is important that the experience of communication with the court be positive.**

**Other important elements are:**

- **Ensuring procedural justice: listening seriously to the parties' stories equally, assembling true facts to build the bridge between the norms and the facts, being interested in the 'truth', treating people as you yourself want to be treated – respectfully. Justice must not only be done, it must also be seen to be done.**
- **Paying attention to judges' core task: grounding/motivating each decision thoroughly. People/society must be able to understand the line of reasoning of a judicial decision.**

## 3. PERSONNEL

**People who provide judicial services are the face of justice. They have the greatest influence on the development of the judiciary as an authority and, accordingly, of confidence in it. Regarding the image of the Ukrainian judiciary in the eyes of society, according to the results of a [survey](#) conducted by the Democratic Initiatives Foundation in 2015, the prevalence of corruption among judges was acknowledged by 85.2% of respondents, the dependence of judges on oligarchs – by 67.2%, and dependence of judges on politicians – by 60.5%. According to respondents, these factors had the most negative impact on the level of confidence in the courts. Accordingly, Ukraine has faced, and continues to face, high public demand for cleansing and updating of the judicial ranks.**

### 3.1. SELECTION OF JUDGES

- 3.1.1. The procedure for acquiring a judicial office in Ukraine had been considered quite corrupt for a long time. In essence, the heads of courts selected candidates who were then led through the necessary procedures in the qualification commissions and the High Council of Justice. It was a fairly closed system. As a result, it led to the emergence of judicial dynasties. Only in 2010 was competition for judicial positions in local courts introduced, although even this did not occur without manipulations.
- 3.1.2. Since 2016, after constitutional amendments in Ukraine, the selection of judges for courts of all levels has been carried out on a competitive basis. To become a judge of a local court, one must pass a selection exam (testing), a yearlong special training, and pass a qualification exam (test and practical assignment). And before being eligible to do that, it is necessary to obtain five years of experience in the field of law.

The selection for appellate courts, the High Court for Intellectual Property, and the Supreme Court is carried out by passing a knowledge test, completing a practical assignment, undergoing psychological testing, and interviewing before the High Qualification Commission of Judges with the participation of representatives of the Public Integrity Council<sup>1</sup>. In contrast to the selection for local courts, there is an additional verification of candidates' compliance with integrity and professional ethics criteria, but there is no special training stage. Judges, advocates, and scholars with significant experience can apply for positions in the appellate courts and the Supreme Court.

In 2018, a special procedure was established for appointment to the High Anticorruption Court. The Public Council of International Experts (consisting of six members nominated by international organisations) is engaged in assessing the knowledge and integrity of candidates and may, based on interview results, terminate a candidate's participation in a competition during a joint meeting with the High Qualification Commission of Judges.

- 3.1.3. In 2017, a new Supreme Court was formed. Unfortunately, distrust in the courts is also transferred onto the newly created institutions. During the competition to the new Supreme Court, the Public Integrity Council revealed numerous facts of judges' false property declarations, inconsistencies

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<sup>1</sup> Public Integrity Council is an instrument set up by the law for the public to assist the High Qualification Commission of Judges in evaluating judges and candidates to judicial position.

between lifestyle and income, issuance of politically motivated decisions, and gross violations of human rights. These facts did not prevent the appointment of many of such candidates to the Supreme Court.

The low level of integrity can be explained by the fact that many members of the High Qualification Commission of Judges and the High Council of Justice themselves do not meet these criteria. These bodies did not become agents of change, but rather on the contrary, seem to have preserved negative phenomena in the judicial system - mutual coverup, carrying out political orders, and tolerance of various manifestations of dishonesty. These bodies themselves are the product of such a system, because their majority consists of judges and lawyers delegated by their own colleagues. The majority of the population does [not believe](#) in their ability to give an independent assessment of their colleagues and bring them to responsibility for committed offenses.

Thanks to the activity of the Public Council of International Experts and its direct participation in the decision-making did the filtering of dishonest candidates out of the High Anticorruption Court membership turn out to be quite successful.

- 3.1.4. The procedure for acquiring a judicial office in the Netherlands also occurs in [multiple stages](#) and involves a lengthy traineeship ranging from 15 months to four years following successful completion of the selection procedure.

The selection is carried out by the National Commission for the Selection of Judges. A candidate must pass an analytical test that consists of three parts: oral reasoning skills, abstract thinking skills, and language skills; candidates who have not passed the analytical test are taken out of the selection procedure.

Next, a candidate must pass the first interview with a member of the National Commission for the Selection of Judges, a representative of the court where he or she intends to work, and a HR specialist. During this interview, a candidate's motivation, persuasion, oral skills, and understanding of what it means to be a judge are verified. Candidates who do not pass this interview are taken out of the selection procedure.

After this, psychological assessment takes place. Following it, a candidate receives a report, which also contains information on the areas/topics which the candidate will have to pay attention to when he or she begins to work as a judge.

Then, a candidate undergoes three 45-minute interviews, each administered by two members of the National Commission for the Selection of Judges. The purpose of interviews is to get an idea of a candidate's personal qualities, such as the ability to work in a team and the ability to delegate authority. In addition, if a candidate performs certain additional social roles, such as serving as a volunteer, his or her vision of what is happening in the society and how he or she speaks of this also become important.

The last step is an interview with a selection committee of the specific court; here, it is important whether a candidate will be able to integrate into the team and work well with other judges who already serve on this court.

The procedure for selecting judges to courts of appeal is similar, but somewhat easier (given the greater experience of candidates). To apply for a judicial position in a court of appeal, a candidate must have at least ten years of highly professional experience and be nominated by the president of the respective court of appeal.

It is important that the National Commission for the Selection of Judges is composed of representatives of different professions; it consists of representatives of the judiciary and other sectors, such as public administration, business, education and science, the bar, and prosecutorial

bodies. For example, currently there are 18 members on the commission, out of which nine are judges, while the remaining members include an advocate, a Protestant pastor/theologist, a film consultant and director, a tax and legal advisor, a district court level prosecutor, a head of a conglomerate for the cooperation of fire, security, and emergency services, a court of appeal level prosecutor, a secretary of the regional bar association, and a teacher. This experience may be interesting for reforming the High Qualification Commission of Judges of Ukraine.

- 3.1.5. To overcome mutual coverup and protectionism in the Ukrainian justice system, it might be beneficial to change the composition of the judicial selection bodies for instance by including a majority of civic sector representatives who are trusted by the community (e.g., human rights activists, journalists, representatives of specialised NGOs, etc.). Temporary participation of international organisations representatives' in the judicial selection bodies will also increase transparency and confidence in this process among Ukrainian society and the international community.**

**It is important to introduce the verification of compliance with the integrity and professional ethics criteria for candidates to the judicial positions in local courts and to increase the weight of these criteria in competition procedures for higher level courts.**

## 3.2. TRAINING

- 3.2.1. Candidates for a judicial position in a local court in Ukraine undergo special training at the National School of Judges for twelve months. The High Qualification Commission of Judges of Ukraine may set another term (for example, this term has been reduced to six months for candidates from among assistant judges). In-office judges also undergo periodic training.

Judges or retired judges are involved in training delivery. Trainer judges do not always exhibit high moral qualities. For example, one of the Deputy Chairs of the High Economic Court who was involved in conducting trainings for court chairs and their deputies was subsequently dismissed from judicial office for interfering in the activity of judges who were ruling on a case. Some judges provide training for other judges, even though they have received negative opinions from the Public Council of Integrity.

- 3.2.2. The system of training new judges plays an important role in maintaining the high level of confidence in the judicial system in the Netherlands. The training process lasts from 15 months to 4 years, and all trainers are also in-office judges. During the training course, great attention is paid to ethical principles and the core values of justice, which are debated and discussed with future judges.

In light of his own experience conducting trainings for judges in Ukraine and in the Netherlands, a Dutch expert pointed out a key difference between the Ukrainian and the Dutch judges: Ukrainian judges often try to find answers to all questions in the law, while the Dutch judges are guided by values and principles.

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“Ukrainian judges are in general legalistic in their approach to legal issues. Notions of reasonableness and equity, good-faith, moderation, principles of proportionality and subsidiarity, weighing the norms and the facts, searching for the most just decision, that all is something that does not fit well with this legalistic approach”.

*Ruth van der Pol, judge in the court of Arnhem-Leeuwarden and trainer for the National Training and Study Centre for the Judiciary, the Netherlands*

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- 3.2.3. **In light of the Dutch experience, it is important to redirect the professional training of future judges in Ukraine from providing clear instructions on how to apply the law to the development of judges' ability to be guided by principles and values in resolving various dilemmas. Persons with dubious reputations absolutely should not be engaged as trainers for judges.**

### 3.3. ACCOUNTABILITY

- 3.3.1. Accountability is the creation of conditions under which judges feel responsible to society. This includes transparency in the work of courts, objective case assignment, and use of fair mechanisms of responsibility for misconduct by judges. All of these are safeguards against corruption.
- 3.3.2. Ukraine can be proud of the quantity of such safeguards. It is possible to freely conduct audio- and video-recording and photography during court hearings, and some hearings are broadcast online. Texts of judicial opinions are accessible to the general public on the judiciary's official web portal. Cases are assigned to judges by an automated system. Annually, judges file three declarations, which are accessible online: a property declaration about their and their family members' assets, a family ties declaration to prevent conflicts of interests, and an integrity declaration. The institution of disciplinary responsibility contains a specific list of grounds for disciplinary penalties, along with a broad range of penalties.

These safeguards are functional, and yet – paradoxically - they often fail to achieve their goal. Judges are rarely penalised for listing false information in their declarations or for other acts of misconduct. Manifestations of dishonest behaviour and lack of integrity often do not become an obstacle for a judge's career advancement. In fact, the prevalence of such behaviour among judges constantly supports the steady perception among the public that courts and judges are corrupt.

Unfortunately, all of the above measures are merely a forced incentive for proper conduct by judges. They do little to affect judges' consciousness. And it will likely take the change of more than one generation of judges in order for most of these measures to become unnecessary.

- 3.3.3. One of the key factors behind the high level of confidence in the courts in the Netherlands is that courts are not considered as corrupt.

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*“Generally speaking, Dutch society has very few reasons to be concerned with the state of affairs in the judicial system”.*

**Tamara Trotman, Judge of the Court of Appeal in Hague and President of the Judges for Judges Foundation, the Netherlands**

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Instances of violations of ethical standards by judges are rare and are a cause for serious attention from both the public and the judicial community.

Lack of examples of direct corruption among judges and the limited amount of cases of violations of integrity or professional ethics requirements by judges allow the Netherlands to have a judicial system that, in many aspects, may seem backwards when compared to the Ukrainian one. In particular, participants of proceedings and court visitors do not have the right to make audio- or video-recordings or to take photographs during court hearings. Hearings are not broadcast online.

There is no detailed system of disciplinary responsibility for judges in the Netherlands (although there is a removal mechanism for serious misconduct, which is implemented by the Supreme

Court). Currently, there are discussions in the Netherlands regarding the introduction of a system of disciplinary measures, but judges point out that politicians do not have an answer to the question as to what problem in the judicial system might be addressed through the introduction of a judicial discipline system.

There is also no automated case assignment system in the Netherlands. Currently, cases are assigned among judges by the presidents of permanent judicial panels. The way cases are allocated allows to make optimal use of the specialisation of individual judges in courts. At the same time there are not a lot of examples of misuse of this way of case allocation.

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“Given the fact that we have such high level of confidence in our judicial system, we believe that we can do such things, but it is doubtful that this is appropriate to adopt by other countries”.

*Willem van Nieuwkerk, Director of the Center for International Legal Cooperation*

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- 3.3.4. Judicial accountability mechanisms could have a restraining effect, but they are not in very high demand in those societies where the justice system enjoys trust and where the judges have gained respect among the public. It is necessary to aspire for the integrity of judges to be their conscious choice and for them to stand firm before influences and temptations. This could be accomplished by quality selection of judicial personnel that takes into account their past and virtues, as well as their training and by ensuring reasonable reimbursement and good secondary labour conditions for judicial office holders. At the same time, continuing development of accountability mechanisms in Ukraine and – most importantly – their proper application could have a positive impact on the conduct of in-office judges.**

## 4. SERVICE ORIENTATION

**Service orientation is widespread in business and is starting to be implemented in Ukraine’s public sector. There is progress in creation of convenient conditions for administrative services. But courts are still not perceived as a convenient and comfortable institution aimed at meeting people’s needs.**

### 4.1. EFFICIENCY

- 4.1.1. The judicial system serves the people if it satisfies the demand for justice. Such a system is effective from the perspective of users of judicial services, and therefore enjoys confidence. A court system can be considered effective if it provides timely consideration of cases, restores justice, eliminates controversy, and ensures enforcement of judgments. Presently, there are many factors that impede the effectiveness of the judicial system in Ukraine.
- 4.1.2. In many cases, courts do not ensure the timely consideration of cases. The biggest obstacle to adhering to reasonable terms is the personnel deficit and the resulting heavy workloads (over the last three years, nearly three thousand judicial positions became vacant and remain unfilled).

Excessive workloads demotivate judges and negatively impact the quality of judicial decisions. This situation will have prolonged negative consequences, as the excess of unresolved cases will pass to the new judges as soon as their selection is completed and they are appointed. Dissatisfaction with excessive case processing periods may also undermine confidence in the new judges.

According to the findings of a trial monitoring [program](#) conducted in 2017, almost half of hearings did not occur on the assigned day. And one third of the hearings that do occur start more than half an hour later than the scheduled time. This causes dissatisfaction among those who are forced to spend time in a court, often without any outcome, especially if a person had to travel for a long time.

Consideration of many cases is delayed and stretched over a large number of court sessions, the interval between which may take several weeks.

- 4.1.3. According to the results of a [survey](#) conducted in 2018 among those who participated in court proceedings during the last two years in Ukraine:

44% believe that judges made lawful and fair decisions (rising to 53% among surveyed advocates and prosecutors);

53% believe that the court adhered to reasonable time limits (51% among surveyed advocates and prosecutors);

46% believe that court decisions have been executed on time and in full (45% among advocates and prosecutors).

Thus, approximately half of trial participants assessed the work of courts in Ukraine as effective. However, this finding may have a great margin of error, as the number of surveyed nonlawyer trial participants was small (233 persons), while the number of surveyed advocates and prosecutors was 400.

- 4.1.4. The problem of inadequate enforcement of court decisions in Ukraine still remains. Reform of the system of enforcement of court decisions has started; in particular, the institution of private bailiffs has been introduced, which slightly [improved](#) the situation with the execution of court decisions. However, the development of this institution is currently being artificially restrained in order to preserve the influence of the state enforcement service. The justice sector benefits if the enforcement of court decisions is enhanced. Without enforcement there is no justice.

- 4.1.5. The effectiveness of the judicial system in Ukraine is hampered by excessive workloads and the lack of judges. Therefore, now it is important to fill judicial vacancies. It is also necessary to improve time management in the courts and to introduce a system of early notification of trial participants regarding postponement of court sessions. Regarding the enforcement of court decisions, it is important to further develop the institution of private bailiffs who work on a competitive basis, and to gradually reduce the share of the state enforcement service, potentially with the view of eliminating it entirely.**

## 4.2. CONVENIENCE AND CLARITY

- 4.2.1. Many court buildings in Ukraine are in a rather poor condition. The logistics of obtaining information, case files, or copies of court decisions are often inconvenient for court users. There are long lines into offices. Visitors frequently meet busy court personnel who treat them in a demeaning and unfriendly manner, sometimes showing reluctance to provide assistance. Under such circumstances, it is difficult for the courts to maintain authority and respect for justice.

- 4.2.2. The judicial process is formalised to the extent that trial participants do not always understand what is happening. According to a [survey](#) conducted in Ukraine among lawyer trial participants in 2018, less than half of respondents (48%) believed that information on court procedures and the course of proceedings is accessible and understandable for citizens, and only 34% believed that proper conditions were created in courts for all participants, including vulnerable groups.

The Netherlands has undergone several court reorganisations in the past decades: Since 2013 there are 11 district courts and four courts of appeal for a population of 17 million. Amsterdam City Court has 200 judges for 800 thousand residents. Court buildings are large and spacious. Similarly to large shopping centres, courts have information desks where visitors can obtain information regarding navigating inside the courthouse and relevant services. Courtrooms are of different sizes, including large courtrooms for hearing of high-profile cases. At the same time, the part of the courtroom that is designated for the public is often separated by glass, and everything happening in a court session is broadcast via loudspeakers.

Great attention is paid in the Netherlands to the interaction among judges and citizens during a court session.

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*“What is most important is to show the people that you are genuinely interested in a case, are speaking with them, that you are working hard on resolving their issue during the hearing, to show something about yourself that demonstrates that a judge in this case is also a human being made of flesh and blood”.*

*Ruth van der Pol, judge in the court of Arnhem-Leeuwarden and trainer for the National Training and Study Centre for the Judiciary, the Netherlands*

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Case participants receive quality services. Court facilities and the interior are comfortable and enable the feeling that a court cares about the users of its services. Judges are attentive to users' complaints and wishes concerning the quality of services and they provide feedback.

- 4.2.3. In light of the Netherlands' experience, Ukraine should review and revise court services, resources, and related technological procedures, from the point of view of orienting them towards meeting the needs of the users of these services. It is also important to develop and introduce quality standards for court services. It is desirable to make court procedures less formalistic; to humanise them. Court building designs should take into account the needs of users of court services to the greatest extent possible.**

## 4.3. FREE LEGAL AID

- 4.3.1. Legal aid is the system which makes justice more understandable and accessible for citizens. So trust in the judiciary also depends on the quality of legal aid.
- 4.3.2. Not too long ago, free legal aid in Ukraine was ensured only in criminal proceedings for persons who could not afford for it. The quality of such aid was often very low, and the government's pay for it was symbolic.
- 4.3.3. According to the 2011 Law “On free legal aid”, an extensive [system](#) of free legal aid has been gradually introduced in Ukraine. Free secondary legal aid Centres were established, which engage lawyers in the provision of legal services in courts to low-income persons regardless of the type of proceeding, at the state's expense and on a competitive basis.

Currently, this system is administered by the Coordination Centre for Legal Aid, which operates within the Ministry of Justice. This Centre operates transparently and free of concerns. Bar self-governance bodies have repeatedly initiated the transfer of responsibilities for free legal aid system administration into their jurisdiction. Such interest is presumably caused not so much by the desire to improve quality (the system works effectively as is), as by attempts to concentrate

leverage points and obtain access to significant public resources (the 2019 State Budget plans allocating over EUR 13 million for this system).

- 4.3.4. The Netherlands system of state-subsidised legal aid is in need of reform. Recently, an independent commission [stated](#) that lawyers engaged in this system receive unfairly low remuneration for their work, as the volume of work has increased while the level of remuneration remained unchanged. The Commission described four scenarios: 1) additional increase of budget expenditures by EUR 125 million; 2) requiring advocates to work more to receive a reasonable income; 3) reducing the hourly rate; and 4) reducing the number of cases eligible for guaranteed subsidised legal aid.

The Dutch Minister for Legal Protection indicated in late 2018 that he is in favour of installing an independent gatekeeper to decide on whether a justice seeker is entitled to receive free legal aid. This idea led to protests not only among lawyers, but also among judges who believed this would have a negative impact on access to justice.

About 400,000 Dutch citizens use subsidised legal aid annually (a total of 1.7 million cases are considered by the courts annually in the Netherlands). Approximately 40% of citizens have the right to a so-called subsidy, based on income requirements. As a comparison, in Ukraine, 160,796 cases were heard involving state-paid lawyers during 2017 (courts considered a total of 3.3 million of cases that year).

## 4.4. NEW TECHNOLOGIES

- 4.4.1. Modern technologies allow communication at a distance and introduction of innovative services. Such communication can meet various needs - information, document transfer, audio- or video-communication, etc.
- 4.4.2. Certain elements of electronic courts, which improve the convenience of citizens' communications with the courts and the transparency of the judiciary's activity, have been introduced in Ukraine. In particular, the official [web portal](#) "Judicial Power of Ukraine", which unites the sites of all Ukrainian courts, has been created. It enables access to information on the [status](#) of pending cases, [payment](#) of court fees, and review of [online broadcasts](#) of certain court sessions. The Unified State [Register](#) of Court Decisions has been introduced, which ensures open and free access to the texts of court decisions rendered by Ukrainian courts. All court decisions and even dissenting opinions by judges should be made public in the Register. The ability to receive court summonses and notifications, as well as copies of court decisions by email has been introduced, and court summonses and notifications can also be delivered via SMS.
- 4.4.3. The introduction of the Unified court informational-telecommunication system has been provided in the new versions of procedural codes (2017). Among other tasks it will ensure the exchange of documents (transmission / receiving) in electronic form between the courts, between the court and the trial participants and between trial participants. This system is hasn't been implemented yet.
- 4.4.4. Such a system should, *inter alia*, enable filing documents electronically, access case materials and judicial decisions without visiting a court, send copies of procedural documents to other case participants, participate in court hearings via videoconference, as well as enable the court (regardless of the level) to hear the case using electronic materials.
- 4.4.5. **The introduction of modern technologies in court proceedings (e-court) will enable faster exchange of information and reduce time and financial inputs by both the state and the users of court services. The risks of disrupting the schedule of court hearings due to non-arrival by one of the participants will decrease, while any postponements will not carry such negative consequences. Thus, there will be a guaranteed ability to obtain justice**

while remaining at one's home or workplace, without spending so much time. As a result, the court will become more accessible to people, including to persons with disabilities.

It is also advisable to amend procedural codes to provide for extraterritorial assignment of cases among courts, if those cases are decided by e-court. This will allow to balance out court workloads, since cases decided via E-Court system will be allocated among courts and judges without taking into account traditional territorial jurisdiction rules – because the Internet makes a court's location irrelevant.

In the longer-term, the introduction of artificial intelligence might enable an e-court to serve as a mediator for various disputes without involvement of a human judge, while in some cases it could conceivably even absorb certain traditional functions of a judge.

## 5. COMMUNICATIONS

The level of confidence in the courts depends not only on the quality of their main function – the administration of justice – but (amongst other things) on the information about such activity that reaches the public. Negative information about courts and judges prevails in the Ukrainian informational space (sadly, the judicial system provides a lot of grounds for this), which certainly affects the weak confidence. However, the fact that trial participants tend more towards trusting the courts suggests it is possible to use communication tools to increase confidence among those who have not been to court.

### 5.1. ANALYTICAL BASIS

5.1.1. In recent years, a lot has been done for the development of communications between the judiciary and the public. In many courts, the position of [press secretary](#) has been introduced, spokesperson judges have been appointed, and a unified [press Centre](#) for the judiciary has been established. With the support of various international technical assistance projects, trainings have been conducted for those responsible for communications within the judicial system. In 2017, the Communications Committee of the Justice System was established, which consists of leadership of the High Council of Justice, the Supreme Court, the Council of Judges of Ukraine, the High Qualification Commission of Judges of Ukraine, the National School of Judges of Ukraine, and the State Judicial Administration of Ukraine. A [Concept Paper](#) on direct relations between the courts and the public was adopted.

However, the communication itself does not have a qualitative analytical basis and, in most cases, is not targeted but spontaneous. More attention is paid to the range of communication channels than to the achievement of efficiency in communications.

5.1.2. In the Netherlands, the Council for the Judiciary regularly conducts research as to the reputation of the judiciary, and its results are crucial for the formulation of the judiciary's communication policy. Every 3-4 years, the Council for the Judiciary conducts a major comprehensive study on the reputation of the judiciary, and it also measures attitudes towards the judiciary three times a year in an effort to determine the reputation trends.

The methodology of these studies includes a survey of eight stakeholder groups (citizens, media representatives, members of Parliament, law enforcement officials, advocates, scholars, etc.) along seven parameters (trust and transparency, professionalism, clarity, impartiality, efficiency and quality of service, innovation, ability to solve problems, independence, and protection of the rights of citizens and companies). Each parameter is evaluated both by quantitative and qualitative indicators. The methodology for data collection involves administering regular questionnaires, focus groups, interviews, etc.

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*“We chose this model because it allows a deeper look into factors that determine the reputation of the judicial system. For us, these studies are our policy tool”.*

*Bart Rijs, Head of the Communications Department of the Council for the Judiciary, Netherlands*

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The reports prepared by the Council for the Judiciary based on this research record changes in the evaluation of stated parameters among different stakeholder groups, they analyse the causes of these changes, and determine the priority areas for work.

For example, one of the research findings regarding the judicial system’s reputation was the fact that judges in the Netherlands should focus less on the independence of the judiciary. All stakeholder groups noted the absence of problems with independence of judges and that concentrating on independence is perceived as a reason to make no changes. Thus, when speaking about independence, the judiciary pays less attention to problems that truly concern citizens (for example, in the areas of innovation, service user orientation, etc.).

- 5.1.3. Given the success of the Dutch experience, Ukraine’s High Council of Justice should develop and implement a methodology for regularly collecting and analysing information necessary for the development of effective communications with different target groups.**

## 5.2. EXTERNAL COMMUNICATIONS

- 5.2.1. The judiciary in Ukraine has started to use many tools for external communications: webpages of courts and other judicial bodies, social media pages (mostly on Facebook, and sometimes also on YouTube), organisation or participation in awareness events, etc. So far, this communication is not always "humanised" and is often delivered in dry legalese (i.e., in bureaucratic language). Information messages, especially those at the regional level, are created “just for the heck of it” rather than to meet the information needs of target audiences. There is also a problem with production of the content itself by the court system (positive changes) that would be important to communicate.

At the same time, one can note a positive trend: whereas information messages on the official web portal “Judiciary of Ukraine” used to be mostly oriented towards judges and other judicial system employees, the proportion of messages geared towards users of judicial services, mass media, and the public has now significantly increased.

Many judges have their own Facebook pages, but only some of them attempt to share interesting information about everyday lives of judges, react to important events in the judicial system, explain the problems that exist in the judicial system, etc.

But before the judiciary starts to promote that individual judges post items on Facebook or other social media platforms, it seems wise that it first discusses and formulates what is the role of the judiciary in society.

- 5.2.2. In the Netherlands, significant attention is devoted to the judiciary’s external communications, which is largely the responsibility of the Council for the Judiciary. The Netherlands Council for the Judiciary prefers direct communication with citizens through social media. To this end, the Council strives to make official pages as interesting for citizens and users of court services as possible. Greater attention is paid to the quality rather than the quantity of information messages, which serves to generate interest.

Honesty in communications has great significance for maintaining citizens’ trust.

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*“We try to avoid announcements along the lines of ‘Older man shaking hands with another older man at an event dedicated to ...’”.*

*“As soon as we try to portray the judiciary in a more positive light than we should have, people immediately notice this and point it out to us. That is why we try to be very factual and unbiased in our communications”.*

*Bart Rijs, Head of the Communications Department of the Council for the Judiciary, Netherlands*

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The communications strategy of the Council for the Judiciary envisions the development of materials specifically geared towards different target groups.

Communications specialists divide the population into various segments and groups of people (based more on lifestyle rather than political views) and produce materials that a particular demographic segment could find interesting.

- 5.2.3. One of the significant factors behind maintaining high levels of confidence in the judiciary in the Netherlands is the existence of independent professional mass media.

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*“In recent years, politicians’ attacks against the judicial system have become more frequent. Some politicians try to portray judges as people who belong to a separate caste, as people who have lost touch with reality. But we have strong, independent, professional media, which helps the judicial system to balance out the negative that is spread around by the populists”.*

*Tamara Trotman, Judge of the Court of Appeal in Hague and President of the Judges for Judges Foundation, the Netherlands*

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The Council for the Judiciary’s communications department monitors journalistic materials regarding the judiciary. If it uncovers any substantive errors, the communications department comments and asks journalists to correct them. This works in the Netherlands as a result of two inter-connected factors. First, journalists are concerned with their reputation. And second, the judicial system enjoys a high level of confidence among the population.

- 5.2.4. **It is necessary to commend the significant progress that the Ukrainian judiciary is making to improve its communications with society. That being said, communications still need improvement. It is necessary to emphasise quality over quantity of information products. The courts should be producing content that would improve the impression of the judiciary’s activity (positive changes) without being misleading at the same time (honest communication). The style used in information messages should be more “humanised” and oriented towards users (dry bureaucratic language is harmful).**

## 5.3. REACTIVE AND PROACTIVE COMMUNICATION

- 5.3.1. Oftentimes, certain high-profile cases that attract media attention can affect confidence in the courts. Most frequently, court press services and spokesperson judges comment on such proceedings only in response to journalist questions. The judiciary in Ukraine is often faced with instances of negative interpretation of the work of courts and judges by the media, to which it is forced to respond by posting rebuttals or explanations (reactive communication). In reality, however, the “making excuses” approach is a losing one, as it has smaller reach and less credibility.

That is why a proactive (anticipatory) communication approach, which facilitates proper coverage of judicial processes, is important.

- 5.3.2. As observed by the Dutch experts, public confidence in the courts is shaped by, at most, 15-20 cases that are heard during a given year. 80% of those cases are criminal. These are cases that are widely discussed in mass media, and their outcomes affect the citizens' trust in the court system.

The Netherlands Council for the Judiciary recently introduced a successful practice of preparing intermediate reports for judges presiding over such cases. The Council for the Judiciary staff collect key comments, opinions, and reactions expressed by both the media and the ordinary citizens with regards to court cases that are widely discussed within society, which they then send to presiding judges in the form of a 2-3 page report.

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*“Of course, this is not a report along the lines of ‘people want this guy to be locked up, so punish him’. This is more a report in which we collect the issues that the public is most concerned with, in order to help a judge structure his or her decision in a way that would respond to these issues”.*

*Bart Rijs, Head of the Communications Department of the Council for the Judiciary, Netherlands*

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Additionally, the Netherlands practices the preparation of two types of judicial decisions in complex cases that generate a lot of attention.

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*“One of the decisions is prepared in legalese and follows high reasoning standards, whereas the other one is the most simple and accessible for understanding by any person without specialised legal knowledge”.*

*Henk Naves, President of the Amsterdam Court and President of the Council for the Judiciary (from Sept. 1, 2018)*

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Judges assigned to hearing the case prepare both types of opinions, although the drafting of a “simple” opinion will also usually involve help from a court’s communications department. Interviewed experts also point out the important role of press spokesperson judges when it comes to communication of resounding cases in the Netherlands.

- 5.3.3. **Thus, when it comes to high-profile cases of great societal significance, it is worthwhile to give preference to proactive communication rather than reactive. Proactive communication could involve organising press conferences immediately after court sessions (primarily those where a final court opinion is announced) or dissemination of press releases as to the court’s principal rationales.**

**It is also advisable to amend procedural codes to require the court, after announcing its opinion, to provide a short, plain-language explanation understandable to the parties and the public. Currently, judges most frequently only read out the resolution part of the court opinion and postpone the drafting of the complete text until later. At the same time, in criminal cases, judges typically read the full text of the court opinion during the court session. However, this could be dropped in favour of providing a short and clear oral rationale during the court session, followed by subsequently providing the full text of the opinion to the parties and posting the opinion in the registry of court decisions.**

## 5.4. WORKING WITH YOUTHS

- 5.4.1. Awareness efforts, particularly directed at children and young people who are not burdened with stereotypes, are of utmost importance for building confidence in the courts.
- 5.4.2. There are examples in Ukraine (albeit not sufficiently widespread) of the courts working successfully with the young generation – such as hosting open house days, court tours, lectures for secondary school and university students, etc. Such practices are gradually becoming more widespread.
- 5.4.3. In the Netherlands, courts are open to the public. The practice of judges visiting schools and universities is widespread, and educational visits to courts to familiarise students with their work are often organised. The Council for the Judiciary is also in charge of public relations. It produces and disseminates educational materials about the judiciary geared towards young people. This is one of the focus areas of the Council.
- 5.4.4. **Youths need to be designated as a separate target audience in the courts' communication strategy, requiring special attention and the creation of special content (animated cartoons, videoclips, educational films, computer games, comic books, etc.). Creation of such content is currently possible in partnership with interested civic organisations.**

## 6. CONCLUSIONS AND RECOMMENDATIONS

1. There are certain societies that have a high level of confidence in the state and public institutions, and there are those that have low ones. Currently, Ukrainian society belongs to the latter group. Generally, only a small number of public institutions enjoy the trust of the majority of Ukraine's population. Only 11% of the respondents trust the courts.  
The low level of confidence in the courts in Ukraine can be explained both by general distrust in the authorities and by special reasons, since the courts in Ukraine generally enjoy less confidence than political authorities. This distinguishes Ukraine from Western European states, where courts enjoy higher confidence than other branches of government.  
The fact that the users of court services have greater confidence in the courts than those who have not participated in trials is of great significance for potentially improving the confidence in the courts. Personal experience can destroy stereotypes. It is important that the experience of communication with the court be positive.
2. People who provide judicial services are the face of justice. They have the greatest influence on the development of the judiciary as an authority and, accordingly, of confidence in it. Ukraine has faced, and continues to face, high public demand for cleansing and updating of the judicial ranks.
3. To overcome mutual coverups and protectionism in the Ukrainian justice system it might be beneficial to change the composition of the judicial selection bodies, for instance, by including a majority of civic sector representatives who are trusted by the community (e.g., human rights activists, journalists, representatives of specialised NGOs, etc.). Temporary participation of international organisation representatives' in the judicial selection bodies will also increase transparency and confidence in this process among Ukrainian society and the international community.
4. It is important to introduce the verification of compliance with the integrity and professional ethics criteria for candidates to judicial positions in local courts and to increase the weight of these criteria in competition procedures for higher level courts.
5. In light of the Dutch experience, it is important to redirect the professional training of future judges in Ukraine from applying the law to the development of judges' ability to be guided by principles and

values in resolving various dilemmas. Persons with dubious reputation should not be engaged as trainers for judges.

6. Judicial accountability mechanisms could have a restraining effect, but they are not in very high demand in those societies where the justice system enjoys trust and where the judges have gained respect among the public. It is necessary to aspire for the integrity of judges to be their conscious choice and for them to stand firm before influences and temptations. This could be accomplished by quality selection of judicial personnel that takes into account their past and virtues, as well as their training. At the same time, continuing development of accountability mechanisms in Ukraine and – most importantly – their proper application could have a positive impact on the conduct of in-office judges.
7. Service orientation is widespread in business and is starting to be implemented in Ukraine's public sector. There is progress in creation of convenient conditions for administrative services. But courts are still not perceived as a convenient and comfortable institutions aimed at meeting people's needs.
8. The effectiveness of the judicial system in Ukraine is suffering from excessive workloads and lack of judges. Therefore, now it is important to fill judicial vacancies. It is also necessary to improve time management in the courts and to introduce a system of early notification of trial participants regarding postponement of court sessions. Regarding the enforcement of court decisions, it is important to develop the institution of private bailiffs who work on a competitive basis, and to gradually reduce the share of the state enforcement service, potentially with the view of eliminating it entirely.
9. It is necessary to review and revise court services, resources, and related technological procedures, from the point of view of orienting them towards meeting the needs of the users of these services. It is also important to develop and introduce quality standards for court services. It is desirable to make court procedures less formalistic; to humanise them. Court building designs should take into account the needs of users of court services to the greatest extent possible.
10. The introduction of modern technologies in court proceedings (e-court) might enable faster exchange of information and reduce time and financial inputs by both the state and the users of court services. The risks of disrupting the schedule of court hearings due to non-arrival by one of the participants will decrease, while any postponements will not carry such negative consequences. Thus, there will be guaranteed ability to obtain justice while remaining at one's home or workplace, without spending much time on this. As a result, the court will become more accessible to people, including to persons with disabilities.
11. It is advisable to amend procedural codes to provide for extraterritorial assignment of cases among courts, if those cases are decided by e-court. This will allow to balance out court workloads, since cases decided via the E-Court system will be allocated among courts and judges without taking into account traditional territorial jurisdiction rules – because the Internet makes a court's location irrelevant.
12. In the longer-term, the introduction of artificial intelligence will enable an e-court to serve as mediator for various disputes without involvement of a human judge, while in some cases it could conceivably even absorb certain traditional functions of a judge.
13. The level of confidence in the courts depends not only on quality of them performing their main function – the administration of justice – but also on the information about such activity that reaches the public. Negative information about courts and judges prevails in the Ukrainian informational space (sadly, the judicial system provides a lot of grounds for this), which certainly affects the decline in confidence. However, the fact that trial participants tend more towards trusting the courts suggests it is possible to use communication tools to increase confidence among those who have not been to court.

Ensuring procedural justice is also important: listening seriously to the parties' stories equally, assembling true facts to build the bridge between the norms and the facts, being interested in the 'truth', treating people as you yourself want to be treated - respectfully: justice must not only be done, it must also be seen to be done; paying attention to the judges' core task: grounding/motivating each decision thoroughly. People/society must be able to understand the line of reasoning of a judicial decision.

14. It is advisable to recommend the High Council of Justice to develop and implement a methodology for regularly collecting and analysing information necessary for the development of effective communications with different target groups.
15. It is necessary to commend the significant progress that Ukrainian judiciary is making to improve its communications with the society. That being said, communications need improvement. It is necessary to emphasise quality over quantity of information output. The courts should be producing content that improve the impression of the judiciary's activity (positive changes) without being misleading at the same time (honest communication). The style used in information messages should be more "humanised" and oriented towards users (dry bureaucratic language is harmful).
16. Regarding the high-profile cases of great societal significance, it is worthwhile to give preference to proactive communication rather than reactive. Proactive communication could involve organising press conferences immediately after court sessions (primarily those where a final court opinion is announced) or dissemination of press releases as to the court's principal rationales.
17. It is advisable to amend procedural codes to require the court, after announcing its opinion, to provide a short, plain-language justification understandable to the parties and the public. Currently, judges most frequently only read out the resolution part of the court opinion and postpone the drafting of the complete text until later. At the same time, in criminal cases, judges typically read the full text of the court opinion during the court session. However, this could be dropped in favour of providing a short and clear oral rationale during the court session, followed by subsequently providing the full text of the opinion to the parties and posting the opinion in the registry of court decisions.
18. Youths need to be designated as a separate target audience in the courts' communication strategy, requiring special attention and the creation of special content (animated cartoons, videoclips, educational films, computer games, comic books, etc.). Creation of such content is currently possible in partnership with interested civic organisations.

