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Centre of Policy and
Legal Reform

UKRAINIAN JUSTICE MATRIX:

**ASSESSMENT OF THE UKRAINIAN
JUSTICE SYSTEM
UNDER THE
EU JUSTICE SCOREBOARD 2022
METHODOLOGY**

Kyiv, 2022

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The authors express their gratitude to the experts of the Regional Public Charitable Foundation “Law and Democracy” and Yevhen Kravyv (Centre of Policy and Legal Reform) for their help in preparing this study.

This publication was produced with the support of the European Union and the International Renaissance Foundation within the framework of the EU4USociety project. Its contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union and the International Renaissance Foundation.



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INTRODUCTION

Political statements and policy documents, which declare the goal of bringing the Ukrainian justice system in line with European standards and best practices of the European Union (hereinafter – the EU), usually do not operate with quantitative and qualitative indicators of the justice activity compared to the EU countries' indicators. Instead, in the EU, special tools are used to evaluate the justice systems, among which is the EU Justice Scoreboard – an annual review of the justice systems of the member states.

The purpose of the EU Justice Scoreboard is to help the EU and member states improve the efficiency of their national justice systems by providing objective, reliable, and comparative data on a range of indicators relevant to the assessment of the effectiveness, quality, and independence of justice systems. In particular, in the resolution of the European Parliament of February 11, 2021 №2019/2202(INI) on the implementation of the EU Association Agreement with Ukraine (para. 46), it is recommended, inter alia, to use the EU Justice Scoreboard to assess the progress and adjust the reforms ongoing in the area of justice in Ukraine.

In this study, we attempted to assess the Ukrainian justice system using the EU Justice Scoreboard methodology (the 2022 publication was used as the basis for the report), highlight its advantages and disadvantages, and determine further priority directions for judicial reform in the process of European integration. We hope that this study will become a starting point for regular assessment of the Ukrainian justice and its comparison with systems of the EU member states.

It is worth emphasizing that the preparation of this report was conducted in the conditions of the full-scale invasion by the Russian Federation on the territory of Ukraine, which began at the end of February 2022. The war affected all areas of life in Ukraine, and the justice system is no exception. However, given the peculiarities of the preparation of the EU Justice Scoreboard report, even though the report is dated 2022, most of the indicators in it reflect the state of the justice system for 2020-2021. That is why our study includes an assessment of the Ukrainian justice system in pre-war times. At the same time, despite the war, the administration of justice in Ukraine did not stop, and timely measures taken by the state made it possible to ensure its practically uninterrupted operation.

Countries' symbols

| | | | | | |
|-----------|----------|-----------|-------------|-----------|----------|
| BE | Belgium | HR | Croatia | PL | Poland |
| BG | Bulgaria | IT | Italy | PT | Portugal |
| CZ | Czechia | CY | Cyprus | RO | Romania |
| DK | Denmark | LV | Latvia | SI | Slovenia |
| DE | Germany | LT | Lithuania | SK | Slovakia |
| EE | Estonia | LU | Luxemburg | FI | Finland |
| IE | Ireland | HU | Hungary | SE | Sweden |
| EL | Greece | MT | Malta | UA | Ukraine |
| ES | Spain | NL | Netherlands | | |
| FR | France | AT | Austria | | |

appointed to this body. The Ethics Council is formed according to the same principle as the competition commission for the selection of members of the High Qualification Commission of Judges, and international experts were also included in its composition for the transition period (with the right to a tiebreaking vote).

There is a three-tier system of courts in Ukraine – local courts (717 courts [a large number of courts do not administer justice due to the temporary occupation of certain regions of Ukraine]), appellate courts (41 courts), and the Supreme Court, which comprises and operates as four cassation courts (administrative, civil, commercial, and criminal courts) and the Grand Chamber. The court system is built on the principle of specialization, as there are separate networks of general courts (which hear civil, criminal, and certain categories of administrative cases), commercial courts, and administrative courts. In September 2019, the High Anti-Corruption Court began its activity as a specialized court for hearing of criminal cases related to high-level corruption, which functions as a court of first and appellate instances. The High Court on Intellectual Property Issues is also to be established, but the selection of judges to this court is currently suspended. In the future, it is planned to reduce the number of local courts by consolidating judicial districts.

At the beginning of 2022, the number of judicial personnel positions in local and appellate courts was 7,039, but only 5,022 judicial positions were actually filled with judges. 179 judges administer justice as part of the Supreme Court and 38 judges on the High Anti-Corruption Court.

The appointment of a judge is carried out on a competitive basis. The High Qualification Commission of Judges announces and conducts the competition, and based on its results, it recommends candidates for appointment to the High Council of Justice. Based on the results of consideration of the recommendations, the High Council of Justice submits to the President of Ukraine a proposal on the appointment of judges. The President of Ukraine does not have the authority to reject this recommendation and must issue a decree on the appointment of a judge within thirty days.

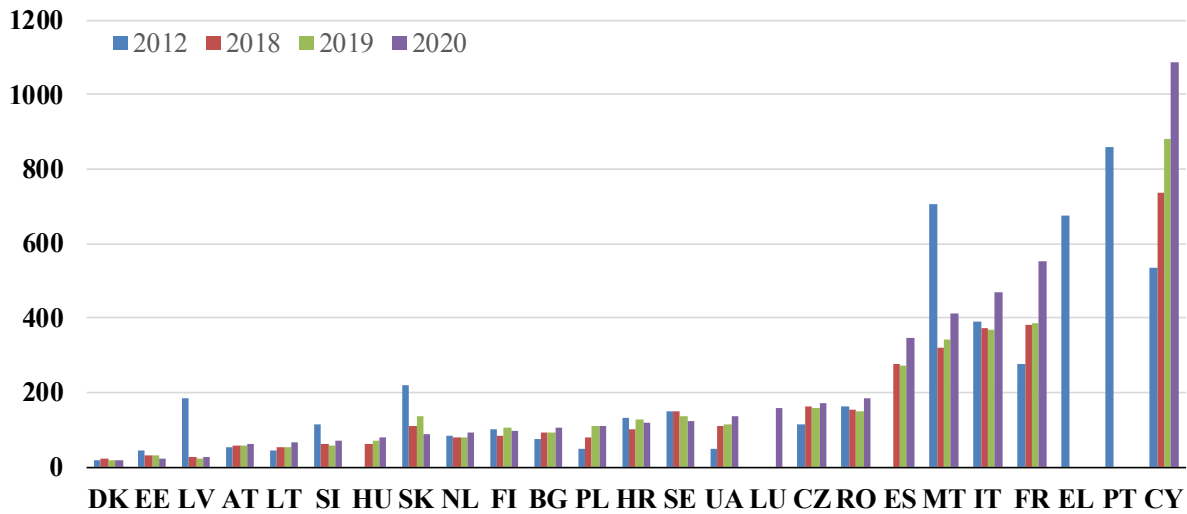
All judges who were appointed before the 2016 constitutional amendments are required to undergo a qualification assessment, which involves confirming their compliance with the criteria of competence, integrity, and professional ethics. The evaluation was entrusted to the High Qualification Commission of Judges of Ukraine. The Public Integrity Council, made up of members of the public, was involved in the assessment. In case of establishing the facts that may indicate a judge's non-compliance with the criteria of integrity and professional ethics, the Council has the right to issue an opinion that must be considered by the High Qualification Commission of Judges. The qualification assessment was almost completely failed by the High Qualification Commission of Judges, as less than 1% of judges who participated in it were dismissed. Currently, the assessment of almost half of the judges' corps has yet to be completed.

As part the judicial reform that began with the 2016 constitutional amendments, the procedural codes, which determine the procedure for consideration of civil, administrative, and commercial cases, were reissued in the new versions. In particular, the possibility of resolving a dispute with the participation of a judge was introduced, the scope of writ proceedings was expanded (simplified trial for cases in which there is no dispute between

the parties), the procedure for using electronic evidence was regulated, and mechanisms to prevent the abuse of procedural rights by participants were introduced. However, the legislative amendments did not end there. The justice system in Ukraine has always been the subject of Parliament's increased attention. According to our calculations, in 2021, 112 draft laws related to the operation of the justice system were introduced and 21 laws were adopted. Unlike in the EU countries, it is typical for Ukraine that a large number of legislative initiatives do not receive the Parliament's support. Insufficient attention is paid to the development and adoption of legislative initiatives regarding alternative dispute resolution methods and the introduction of artificial intelligence in the justice system in Ukraine. Furthermore, unlike in the EU countries, where significant attention was paid to the legal regulation of the status of judges and legal professionals in 2021, no law on this issue was adopted in Ukraine (despite more than 20 draft laws submitted for Parliament's consideration).

Thus, starting in 2014, the Ukrainian justice system has undergone numerous transformations and, as of 2022, is on the verge of a new stage of judicial reform.

Figure 4 (6*) Estimated time needed to resolve civil, commercial, administrative and other cases in 2012, 2018-2020 (1st instance/in days):



In Ukraine in 2020, the disposition time for the first instance courts to clear the balance of unresolved non-criminal cases was 138 days. Compared to previous years, there is a clear trend towards its increase (since 2012, the duration has almost tripled). Thus, it becomes increasingly difficult for the Ukrainian courts to promptly consider incoming cases every year. This is caused primarily by the personnel deficit, which has been observed in the judicial system for the past few years and is increasing every year.

As can be seen from the figure, Ukraine’s result is average for EU countries. In 10 countries, this indicator is less than 100 days, in 5 countries – from 100 to 150 days, and in 7 countries – more than 150 days. The “leaders” are Cyprus, France, and Italy, where the courts of first instance need as many as 1,087, 554, and 471 days, respectively to resolve all pending cases.

Figure 5 (7*) Estimated time needed to resolve litigious civil and commercial cases at first instance in 2012, 2018-2020 (1st/ in days):

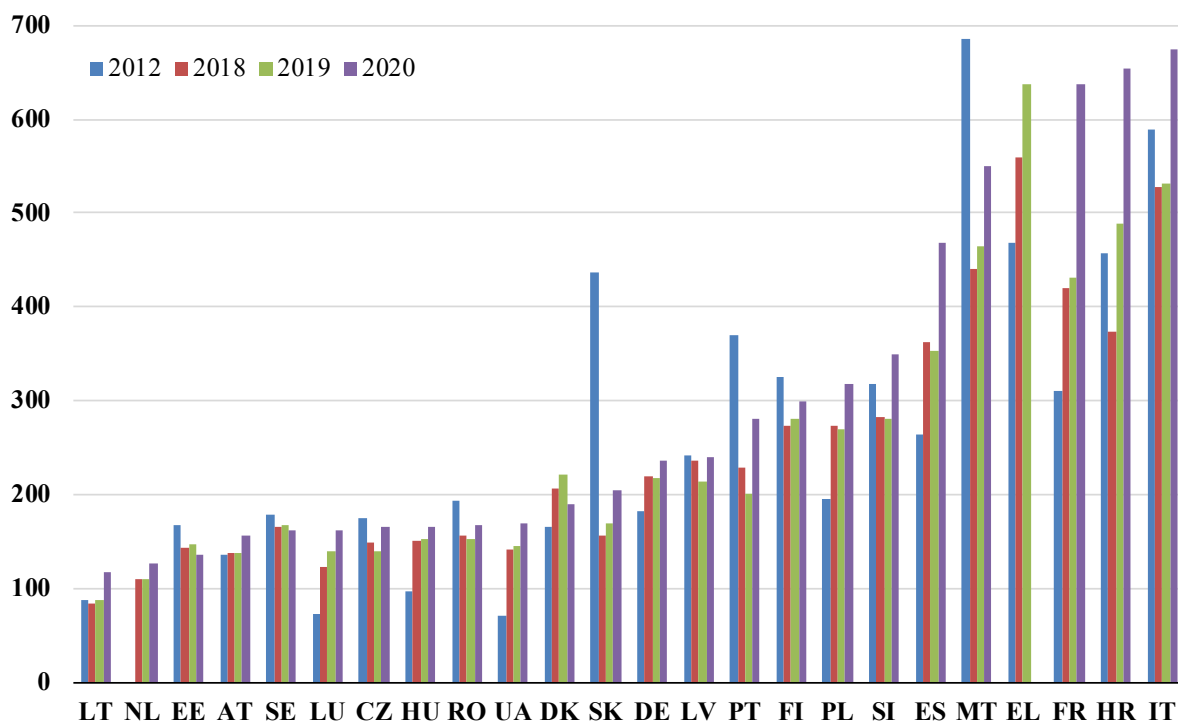
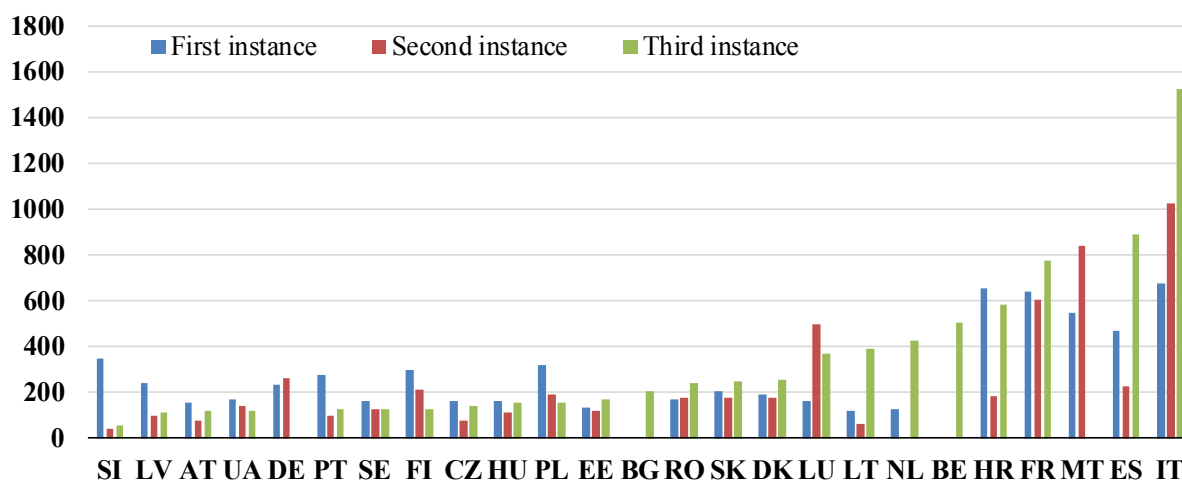


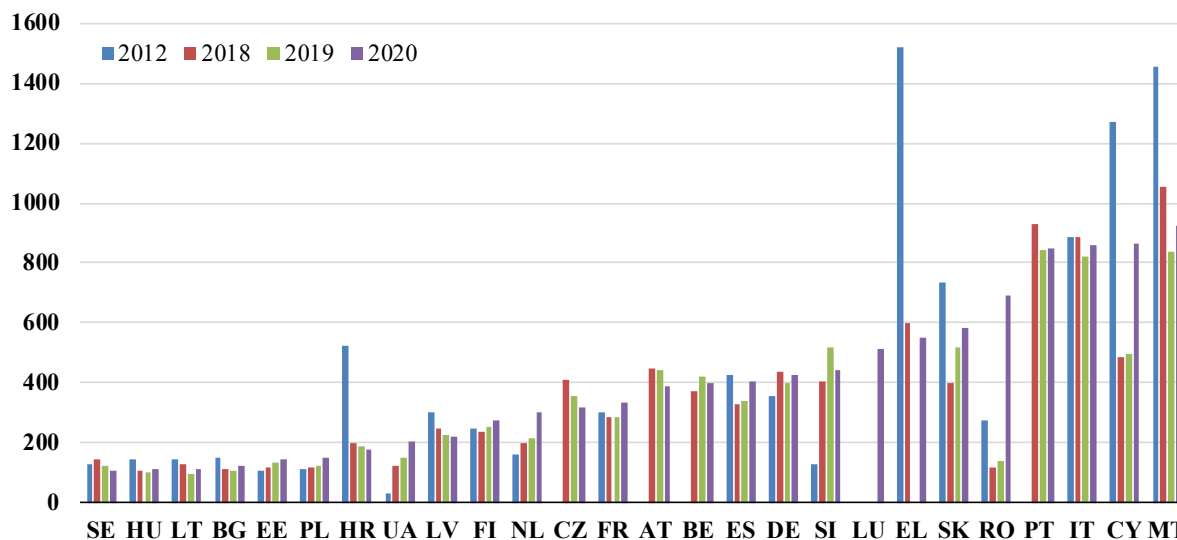
Figure 6 (8*) Estimated time needed to resolve litigious civil and commercial cases at all court instances in 2020 (1st, 2nd and 3rd instance/in days):



According to the data for *Figure 5 (7*)*, the estimated time needed for the courts of first instance to clear the balance of pending civil and commercial cases in which there is a dispute between the parties is somewhat higher, and amounted to 170 days in 2020. Similarly to *Figure 4 (6*)*, there is a trend towards increase in the time to clear the backlog of cases. However, this is a relatively good result, since there are as many as 13 EU countries where this indicator exceeds 200 days.

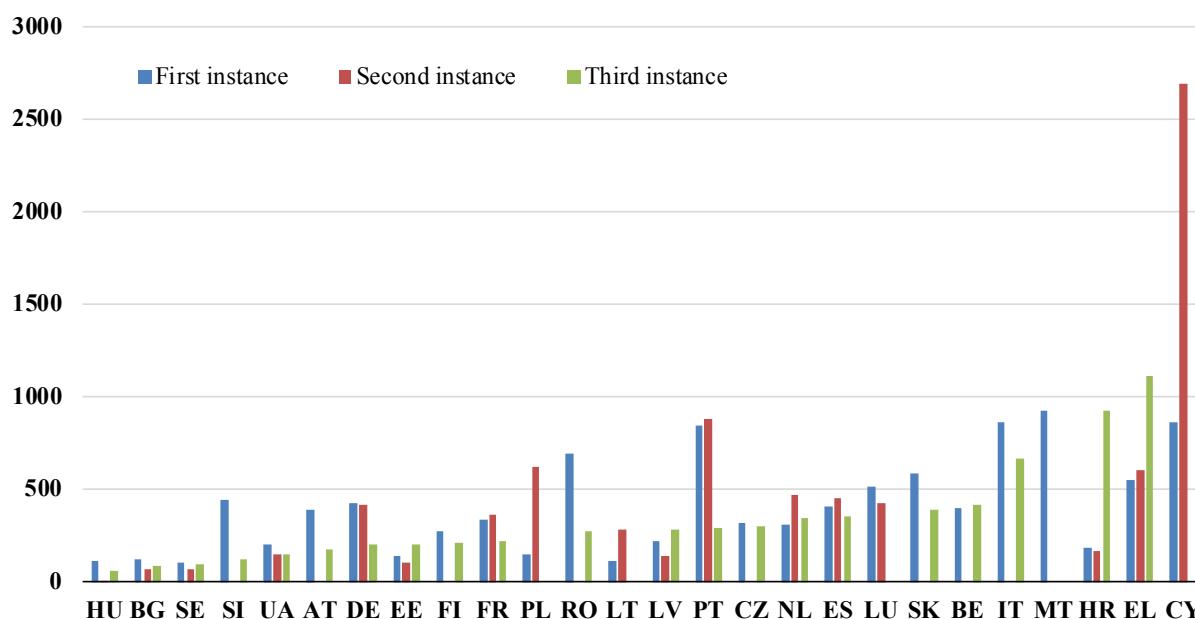
The Ukrainian judicial system also shows a good result in terms of the estimated time for clearing the backlog of civil and commercial cases in which there is a dispute between the parties in all court instances. According to *Figure 6 (8*)*, the performance of cassation courts in Ukraine is one of the most efficient among the EU countries, as it takes only 122 days to clear the backlog of cases, while the median value for EU countries is almost twice as high (224 days).

Figure 7 (9*) Estimated time needed to resolve administrative cases at first instance in 2012, 2018-2020 (1st instance/in days):



Regarding the clearance of pending administrative cases, Ukraine’s result is somewhat worse. In 2020, this indicator amounted to as many as 203 days for first instance courts (*Figure 7 (9*)*). Even compared to 2018, it deteriorated by almost twice, and compared to 2012 – by more than six times. That is, there is a trend towards significant decrease of the efficiency of administrative proceedings in Ukraine. However, even this result is much better than in most EU countries, since in 18 countries it exceeds 220 days. Regarding the clearance of pending administrative cases in all court instances (*Figure 8 (10*)*), again, the courts of cassation (Cassation Administrative Court within the Supreme Court) show one of the best results among the EU countries (144 days compared to the median value of 281 days).

Figure 8 (10*) Estimated time needed to resolve administrative cases at all court instances in 2020 (1st, 2nd, 3rd instance/in days):

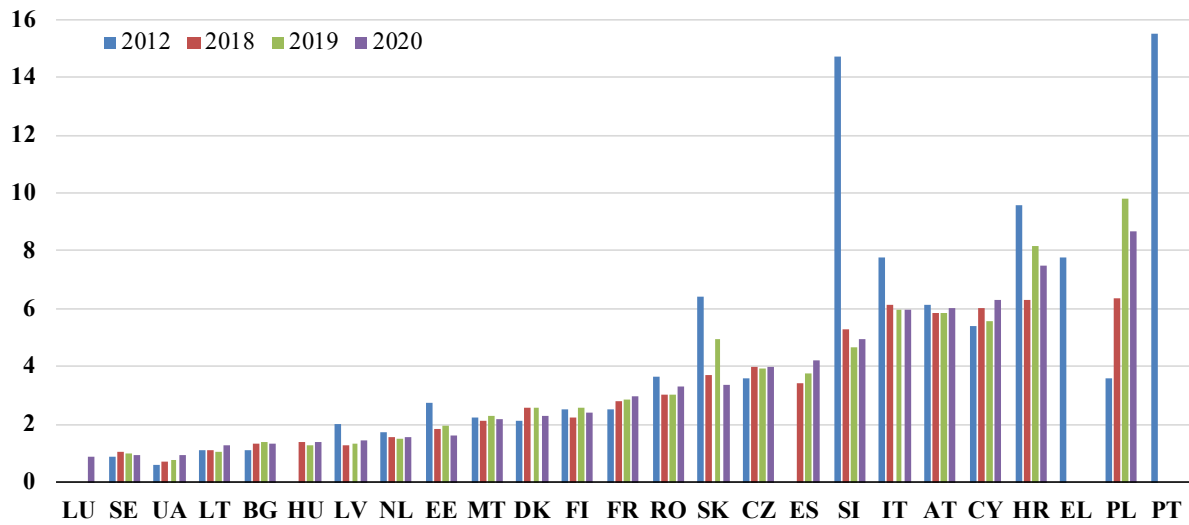


Ukraine's results with regard to *Figures 4-8* showed that the Ukrainian judicial system is quite effective in comparison with the EU countries. The approximate time for clearing the backlogs in non-criminal cases by the Ukrainian courts is average compared to EU countries, and for some categories of cases (for example, administrative cases) it is even one of the lowest. Ukraine's results in 2018-2020 were negatively affected by the personnel deficit, which deteriorated every year, but even taking into account this factor, the result is significantly better than in most EU countries.

clearance rate

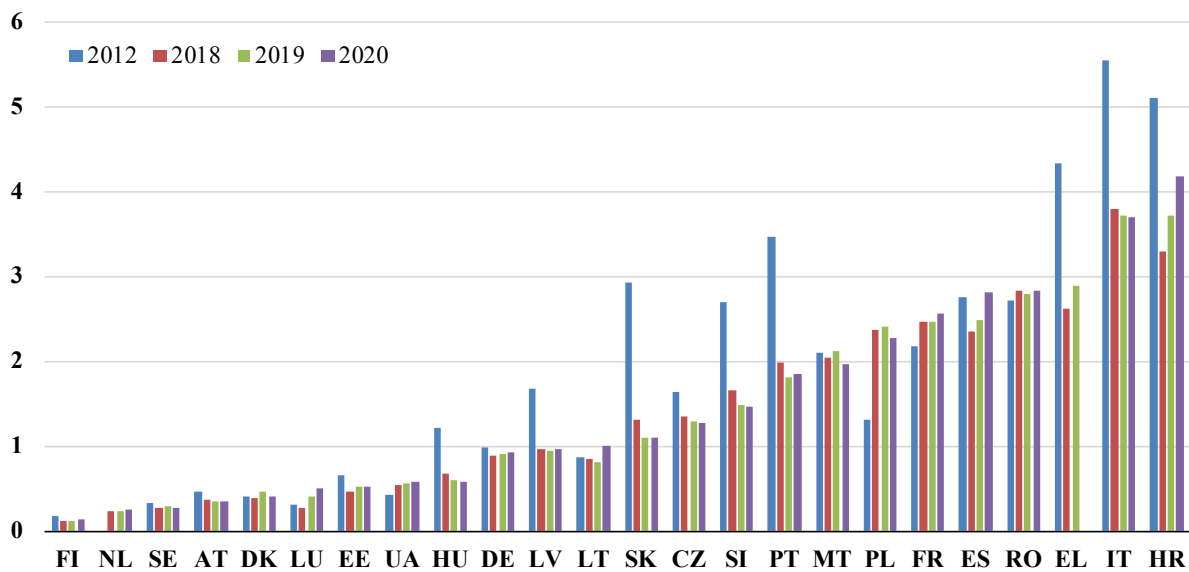
The clearance rate is the ratio of the number of resolved cases over the number of incoming cases. This indicator reflects the capacity of the judicial system to keeping up with the flow of incoming caseload. A 100% or higher clearance rate means the courts are successfully coping with the existing caseload. A result of less than 100% means that the courts are overloaded – i.e., they are unable to resolve the incoming caseload which, as a result, negatively affects the duration their hearing.

Figure 12 (14*) Number of pending civil, commercial and administrative and other cases in 2012, 2018-2020 (1st instance/per 100 inhabitants):



According to our calculations, at the end of 2020, there was almost one non-criminal case pending in the courts of first instance per 100 residents in Ukraine. Again, there is a clear trend towards deterioration, as in 2012, this rate was 0.57 cases, in 2018 – 0.71 cases, in 2019 – 0.76 cases. A similar trend is observed both for civil and commercial cases in which there is a dispute between the parties and for administrative cases (*Figures 13 (15*), 14 (16*)*).

Figure 13 (15*) Number of pending litigious civil and commercial cases in 2012, 2018-2020 (1st instance/per 100 inhabitants):



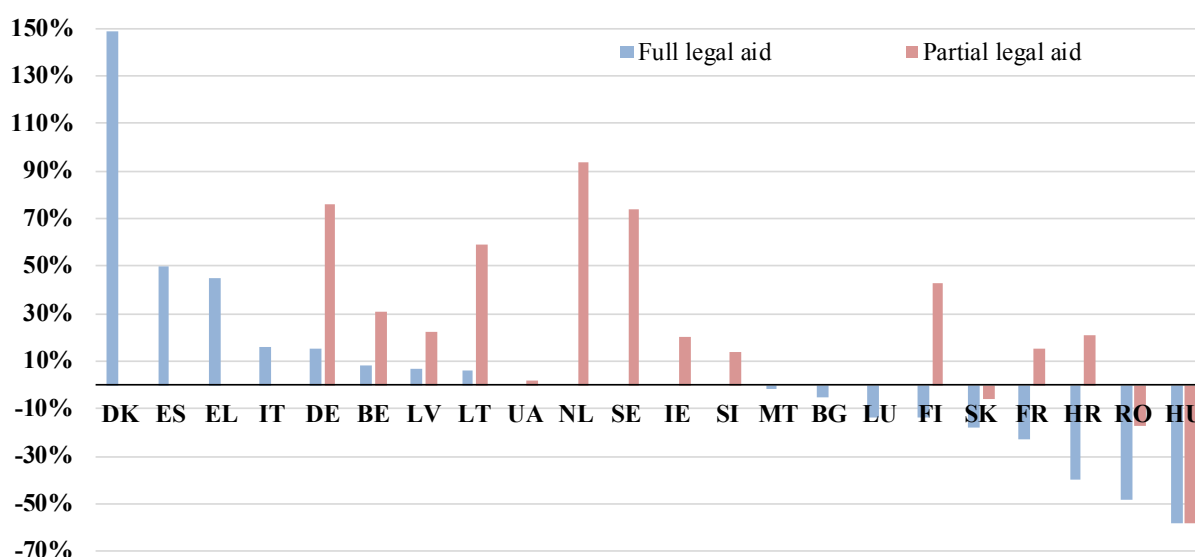
SECTION 2.

QUALITY OF JUSTICE SYSTEMS

2.1. Accessibility

legal aid, court fees and legal fees

Figure 15 (25*) Income threshold for legal aid in a specific consumer case, 2021
(differences in % from Eurostat poverty threshold⁵):



Notes:

1. For the purposes of calculating this indicator, a specific case on the protection of consumer rights is understood as a dispute between a consumer (a 35-year-old, unmarried, employed person, without any dependents and legal expenses insurance, with a regular income and a rented apartment) and a company, with a stated claim in the amount of EUR 6 thousand;
2. In Ukraine, full legal aid is not provided – i.e., the state does not cover all costs related to court proceedings (including the payment of court fees), and therefore the indicator was calculated exclusively for partial legal aid.

In Ukraine, free legal aid guaranteed by the state is divided into primary and secondary aid. Primary legal aid consists of informing a person on his/her rights, the procedure for their implementation or restoration in the event of a violation, as well as the procedure for appealing the actions of the authorities. It covers the provision of legal information, consultations, interpretations, and preparation of non-procedural legal documents. All

⁵ Because Eurostat does not set the poverty threshold for Ukraine, the indicator was calculated by taking into account the actual amount of subsistence minimum as of December 2021 (UAH 4,662/EUR 151): <https://www.msp.gov.ua/news/21281.html>.

persons under Ukraine's jurisdiction have the right to such aid, and such aid is provided by executive authorities, local self-government bodies, individuals and private legal entities, specialized institutions (which may be formed by local self-government bodies), and free secondary legal aid centers.

Secondary legal aid consists of creation of equal opportunities for individuals to access justice, and covers such types of legal services as defense in criminal proceedings, representation of the interests (in courts or before other persons), as well as preparation of procedural documents. Such legal aid is provided by the free secondary legal aid centers and specially selected lawyers who are included in the relevant register.

A person is entitled to receive free secondary legal aid if his/her income is less than two subsistence minimums (UAH 4.7 thousand/EUR 154 for an employment-capable person in 2021). That is, the difference with the poverty threshold is insignificant (about +2%). At the same time, if the poverty threshold is calculated as 60% of the average salary (UAH 14 thousand/EUR 453), then the referenced indicator is as much as -77%. In essence, this indicates that free secondary legal aid is available only to the poorest, and even a person who earns the minimum wage (UAH 6.5 thousand/EUR 210) is not entitled to it (for example, in 2021, free secondary legal aid in non-criminal cases was provided in almost 86,000 cases⁶).

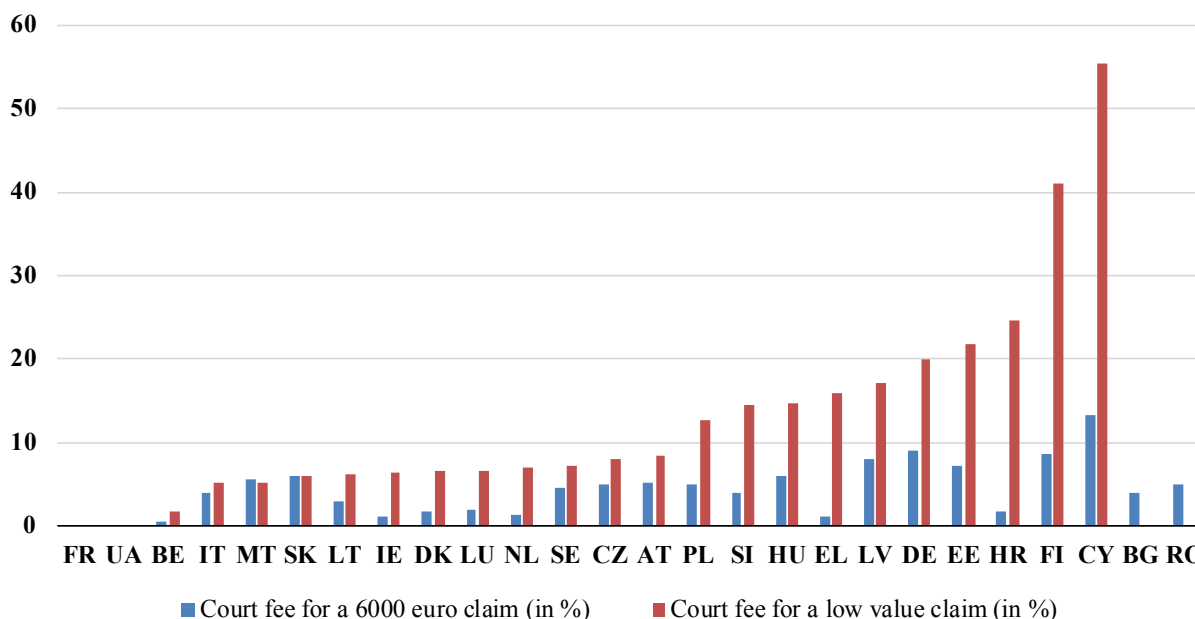
Ukraine's indicator differs from the general European trend. In most of the EU countries, a person has the right to legal aid even if his/her income is significantly higher than the poverty threshold. This ensures better access to justice for people with low incomes. In Czech Republic, Austria, and Poland, there is no reference to a specific amount of income at all, and the decision on the provision of legal aid is within a judge's discretion.

Recommendations:

- revise the level of income that entitles one to free secondary legal aid, tying it to the minimum wage or to another justified income level that suggests a person's inability to hire a lawyer on his/her own. Furthermore, it determining a person's right to receive such aid, overall property state (availability of real estate, vehicles, debt obligations, etc.) must also be taken into account;
 - provide the court with discretionary powers to make a decision on the provision of free secondary legal aid to a person depending on his/her life circumstances.
-

⁶ Report on the activity of free legal aid system in 2021 // Available at: <https://legalaid.gov.ua/wp-content/uploads/2022/08/zvitbpd-2021.pdf>.

Figure 16 (26*) Court fee to start judicial proceedings in a specific consumer case, 2021
(amount of court fee as a proportion of the value of the claim):

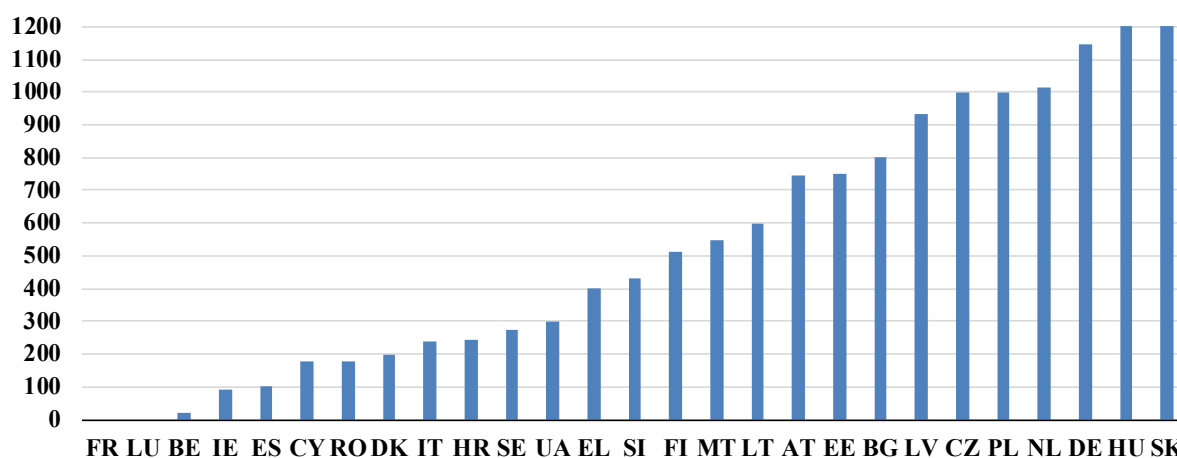


In Ukraine, consumers are exempt from paying court fees for lawsuits related to the violation of their rights. This is an atypical situation for EU countries, as only France has such a benefit.

As a general rule, an individual who applies to the court with a claim of a property nature must pay a court fee in the amount of 1% of the price of the claim, but not less than 0.4 of the subsistence minimum (UAH 908/EUR 29). This rate is one of the lowest among the EU countries, because the average court fee for the appeal to the court in a case regarding consumer rights protection is 4.7% of the claim price. Yet, when looking at the lawsuits in which the price corresponds to the poverty threshold, Ukraine, on the contrary, has one of the highest court fees for such lawsuits, at 19.5% of the claim price (only 7 EU countries have the court fee for such cases exceeding 15%). Thus, in Ukraine, the court fee plays a deterrent role for applying to court with a small claim. Combined with the undeveloped alternative dispute resolution mechanisms, this worsens access to justice.

It should be noted that in most EU countries, recipients of free legal aid are exempt from paying the court fees for applying to court. On the other hand, in Ukraine, such persons are not automatically exempted from paying the court fees and must separately request such an exemption before the court.

Figure 17 (27*) Court fee to start judicial proceedings in a specific commercial case, 2021 (in EUR)



Note: for the purposes of calculating this indicator, a specific commercial case means a transnational dispute between two companies regarding the enforcement of a contract with a EUR 20 thousand claim price.

When applying to a commercial court with a claim of a property nature in Ukraine, the plaintiff must pay a court fee in the amount of 1.5% of the claim price (EUR 300 for a claim with a price of EUR 20 thousand). The law does not provide for the payment of any other fees related to the consideration of the case by the court. Compared to the EU members, this court fee is low (in 15 countries, the amount is higher and ranges from 2% to 6%).

The data of *Figures 16 (26*) and 17 (27*)* shows that the judicial system in Ukraine is inexpensive for citizens and businesses compared to the EU countries. This leads to the state assuming the major portion of the court system’s costs, as the courts are not “self-sustaining”. According to the State Judicial Administration, in 2021⁷, income from the court fees was only about 20% of all budget allocations for first instance and appellate courts.

Recommendations:

- review the amount of the court fees in order to ensure a balance between compensation for the costs of the case and effective access to justice;
- create a mechanism for alternative (out-of-court) dispute resolution (for example, justices of the peace) for hearing of minor cases;
- at the legislative level, exempt persons who receive free secondary legal aid due to low income from paying the court fees.

⁷ Report on the Activities of the State Judicial Administration of Ukraine for 2021 // Available at: https://lk.lv.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

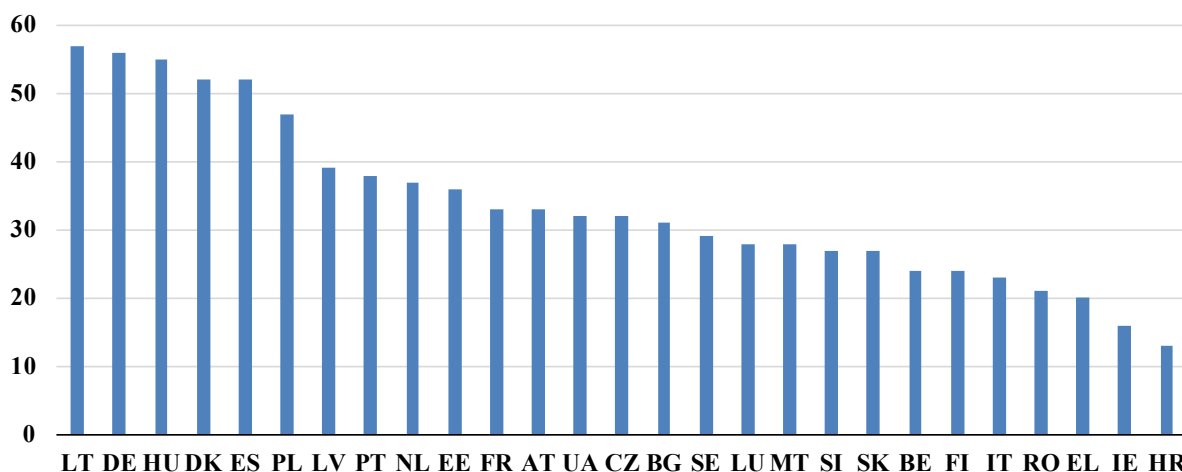
Figure 18 (28*) Recoverability of legal fees in a commercial trial, 2021: in the EU states, there are three main systems for reimbursement of the legal aid costs:

- in countries with statutory fee systems, the amount of compensation depends on the statutory fee and the substance of the work performed by the lawyer (such mechanism operates in 10 countries);
- in countries in which the amount of payment for legal aid is not defined at the regulatory level, the reimbursement can be either full or partial;
- in many countries, the amount of costs to be reimbursed is determined by the court on an individual basis (such mechanism operates in 12 countries).

In Ukraine, the amount of payment for legal aid has not been set at the regulatory level. The law specifies that the party in whose favor the decision was made has the right to compensation for incurred court costs (including legal aid costs). At the same time, the court is authorized to reduce the amount of compensation depending on whether the amount of incurred expenses is reasonable and proportionate to the subject of the dispute. The behavior of the party during the trial is also taken into account, including any actions regarding the settlement of the dispute. In practice, there are frequent cases when the court reduces the amount of expenses for legal aid declared by the party due to it being unjustified.

accessing alternative dispute resolution methods

Figure 19 (29*) Promotion of and incentives for using ADR methods, 2021:



Note: the maximum number of points for this indicator is 68. Measures taken to encourage the development of alternative dispute resolution mechanisms in four categories of disputes (civil and commercial, labor, consumer, and administrative) are evaluated. The assessment is carried out separately for each category of disputes according to 17 indicators (in brackets is the generalized assessment for all categories of disputes in Ukraine): 1) availability of a website providing information on ADR (2 points); 2) conducting of media publicity campaigns (2 points); 3) availability of brochures for general public (2 points); 4) provision of specific information sessions on ADR by the court upon request (2 points); 5) availability of a court ADR/mediation coordinator (0 points); 6) publication of evaluations on the use of ADR (0 points); 7) publication of statistics on the use of ADR (2 points); 8) partial or full coverage by legal aid of costs incurred for ADR (0 points); 9) full or partial refund of court fees, including stamp duties, if ADR is successful (4 points); 10) requirement to have a lawyer for ADR procedures (1 point is awarded if the participation of a lawyer is not required) (4 points); 11) judge can act as a mediator (4 points); 12) agreement reached by the parties becomes enforceable by the court (4 points); 13) possibility

to initiate proceedings/file a claim and submit documentary evidence online (2 points, exclusively in court mediation; other alternative dispute resolution mechanisms are not regulated); 14) parties can be informed of the launch of ADR proceedings and different steps undertaken electronically (2 points, exclusively in court mediation; other alternative dispute resolution mechanisms are not regulated); 15) parties can pay court fees electronically (2 points, exclusively in court mediation; other alternative dispute resolution mechanisms are not regulated); 16) use of technology (artificial intelligence applications, chat bots) to facilitate the submission and resolution of disputes (0 points); 17) availability of other means that contribute to alternative dispute resolution (0 points). For the purposes of calculating this indicator, we use information not only about the measures taken by the state to promote the ADR development, but also by non-state actors (in this case, the result for the relevant indicator is divided in half).

The Ukrainian legislation allows the use of a number of mechanisms for ADR (arbitration, arbitration courts, mediation). As part of the trial, at a preparatory meeting, the judge finds out whether the parties wish to reconcile (including with the judge as intermediary), use the services of a mediator, or refer the dispute to arbitration court. However, in practice, this happens as mere formality, without a detailed explanation of the advantages and disadvantages of such mechanisms and encouraging the parties to use them. In combination with the fact that the state does not pursue an active policy of informing about the possibilities of using ADR mechanisms, public awareness of such mechanisms (and therefore the frequency of their use) is very low. According to the results of a public opinion survey conducted in 2021, 77% of respondents knew nothing or almost nothing about the existence of the possibility of alternative (out-of-court) dispute resolution, another 20% knew something, but not enough, and only 3% of respondents reported full awareness of this opportunity⁸.

In recent years, activity on ADR has intensified. Legislative amendments to the procedural codes in 2017 introduced the possibility of dispute settlement with the participation of a judge in civil, commercial, and administrative cases (so-called “court-annexed mediation”). Such settlement takes place exclusively with the consent of the parties by conducting joint (with the participation of all parties and their representatives) and/or closed meetings (with each of the parties separately) with the judge as an intermediary, in which the parties can participate via videoconference. During the meetings, the judge invites the parties to submit their proposals regarding the vision for reconciliation pathways and may also suggest a possible way of peaceful settlement of the dispute. The judge does not provide the parties with legal advice and recommendations and does not evaluate the evidence in the case. The law provides that the term for the peaceful settlement of a dispute with the participation of a judge cannot exceed 30 days from the date of the court’s ruling on settlement under this procedure. Each party has the right to withdraw from this procedure at any time. Based on the results of the settlement, the parties can enter into a settlement agreement, which is later approved by the court, or terminate the settlement and move forward with the trial of the case, which will be conducted by a different judge.

⁸ Survey of the Population of Ukraine on the Trust in Courts and Other Branches of Government, Judicial Independence and Accountability, and Perceptions of Corruption and Readiness to Report on Its Incidents (April 2021) // Available at: https://newjustice.org.ua/wp-content/uploads/2021/06/2021_Survey_Population_Report_UKR.pdf.

In practice, the use of this tool has not yet become widespread. During 2019, only 50 decisions were made on settlement of the dispute with the participation of a judge, and the parties reached reconciliation in only 12 cases. In 2020, the number of such decisions increased to 77, and the number of reconciliations to 22 cases⁹. In 2021, there were already 99 such decisions (at the same time, more than 60% of them were made in civil cases), and reconciliation was reached in 28 cases. Given that hundreds of thousands of cases are pending before courts every year, these indicators are critically low.

Procedural codes encourage peaceful settlement of the dispute, since when the parties reach a settlement agreement based on a court decision, a portion of the court fee paid at the time of applying to the court is refunded (50% in the case of a regular settlement agreement and 60% if reconciliation is reached as part of a mediation procedure).

It is anticipated that mediation will be actively developed in the coming years. In November 2021, the Law of Ukraine "On Mediation"¹⁰ was adopted, which for the first time defined the legal principles and procedure of mediation at the legal level (although mediation de facto existed even before the adoption of this law).

As mentioned above, the state does not conduct an active information policy on ADR mechanisms. To a large extent, this function has been taken over by specialized non-governmental organizations. In particular, the web portal of the Ukrainian Mediation Center and the National Association of Mediators of Ukraine contains information about ADR mechanisms in Ukraine. The Association has even developed a special information brochure for citizens, titled "Mediation and the Judicial System: What? How? Why?"¹¹. The EU project "Pravo-Justice" is also actively working on the popularization of mediation. In addition to preparing analytical materials¹² on mediation in Ukraine, it also produces various informational materials and guidebooks¹³.

Ukraine's result in this area is average compared to the EU countries and has been largely achieved thanks to the efforts of CSOs. The state will need to make more efforts to institutionalize the mediation system and popularize ADR among the population. At the same time, given the fact that the framework legislation has already been adopted and that there are capable civic organizations that already function in this area and have the

⁹ Supreme Court's Civil Cassation Court Judges: Mediation Should be Introduced for Some Categories of Family, Labor, Inheritance, and Land Disputes // Available at: <https://supreme.court.gov.ua/supreme/pres-centr/news/1157851/>.

¹⁰ Law of Ukraine No. 1875-IX "On Mediation" of Nov. 16, 2021 // Available at: <https://zakon.rada.gov.ua/laws/show/1875-20#Text>.

¹¹ Mediation and Court System: What? How? Why? // Available at: http://namu.com.ua/ua/downloads/promomaterials/DODATOK_6_BROSHURA_MEDIATCHIA_TA_SUD.pdf.

¹² Mediation in Civil and Commercial Cases // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/615/5ac/7a6/6155ac7a6e5a3765926585.pdf>; Gap-Analysis of the Introduction of Mediation in Ukraine // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/5f5/f7d/2a9/5f5f7d2a9b5cb356474501.pdf>.

¹³ Law on Mediation: Key Provisions // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/61b/212/36e/61b21236e6b21109174169.pdf>; Guidelines on Ensuring Access to Mediation in Courts // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/603/75d/2f9/60375d2f92149955873450.pdf>; Information on Opportunities for Reconciliation in Court // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/603/758/4ae/6037584ae6e6a915170122.pdf>.

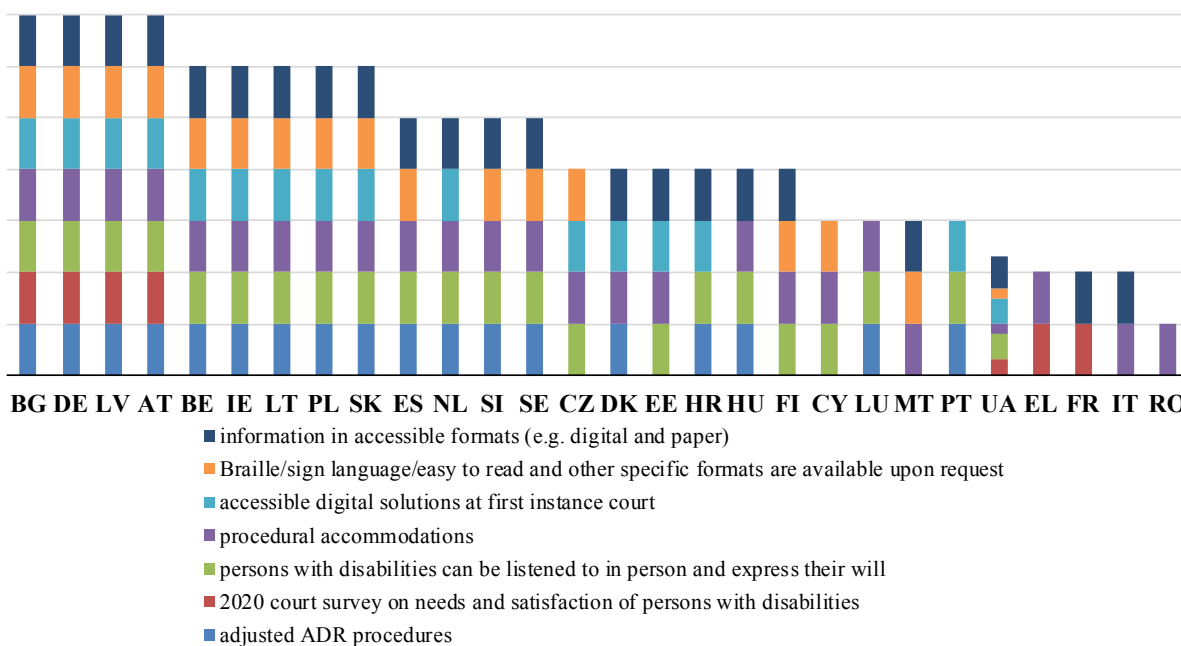
relevant experience, it is possible to achieve significant success in this area in the next few years – provided that the state plays a more active role.

Recommendations:

- regularly conduct information campaigns to increase public awareness of the opportunities for using ADR mechanisms (targeting both the population generally and directly the court visitors);
- create a separate section on ADR mechanisms on the official web portal “Judicial Power of Ukraine”;
- conduct a regular assessment of ADR mechanisms’ implementation (including by conducting specialized sociological surveys and collecting and analyzing relevant statistical data).

specific arrangements for access to justice of persons with disabilities

Figure 20 (30*) Specific arrangements for access to justice of persons with disabilities, 2021:



The implementation of special arrangements to ensure unimpeded access to justice for persons with disabilities is at a low level, as the state does not conduct systematic work in this area. Although some courts conduct assessments of their own barrier-free accessibility, the recommendations based on the results of such assessments are largely not carried out due to the need to allocate significant budget for their implementation. Ensuring physical accessibility (architectural accessibility) is also complicated, since most courts in Ukraine are not located in specially adapted premises, which makes impossible to adapt them without reconstruction. Although visitor surveys conducted annually by the courts include questions about accessibility of the court and court services for persons with

disabilities, these are usually limited to one or two questions, so it cannot be claimed that such surveys fully cover the research of the needs of persons with disabilities.

There are also problems with ensuring direct participation of persons with disabilities in court proceedings. Although procedural laws provide for the mandatory participation of a sign language interpreter in cases involving persons with hearing or speech disabilities, in practice the procedural status of such interpreters is not properly regulated and there are often problems with compensation for their involvement, which results in a person with disability having to pay for their participation at their own expense. In addition, due to the small number of interpreters who are familiar with legal (court) terminology, it is difficult to involve them in the cases.

There are also significant problems in obtaining the necessary information. According to the State Judicial Administration¹⁴, as of the end of 2021, only 44% of courts had the names of main premises and direction signs reproduced in Braille. Other information about the work of the court (schedules of hearings, information booklets, etc.) is not reproduced at all. There are also problems with obtaining information in electronic format. Although there are versions for people with visual disabilities on the official web portal “Judicial Power of Ukraine” and the websites of courts, they mostly do not contain the necessary functionality (font size, spacing, contrast, site colors setting, audio narrative of information content)¹⁵; thus, it is necessary to use special software separately.

The “Electronic Court” system, which already provides the opportunity to apply to the court, review case materials, and participate in trials without leaving home, will be able to improve access to justice for persons with disabilities. At the same time, the functionality of this system needs to be refined to ensure a full-fledged opportunity for visually disabled people to work with it.

It should be noted that most measures to improve access to justice for persons with disabilities in Ukraine are initiated and implemented by specialized civic organizations. In particular, experts of the Regional Public Charitable Foundation “Law and Democracy”, in cooperation with the National School of Judges of Ukraine and with the support of the USAID “Fair Justice” project, developed a series of pilot trainings for judges, court staff, and court security officers on the peculiarities of working with people with disabilities. They also organize trainings on the basics of sign language. It is at the initiative of civic organizations that in recent years projects have been implemented in Ukraine to introduce the service of special court assistants (court volunteers) who, among other things, will help persons with disabilities during their stay in the court premises.

In comparison with the EU countries, almost all of the measures listed in this indicator have been introduced and implemented in Ukraine. However, due to the problems with financing of the judiciary and inconsistent government policy, these measures have not been fully implemented at the moment.

¹⁴ Report on the Activities of the State Judicial Administration of Ukraine for 2021 // Available at: https://lk.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

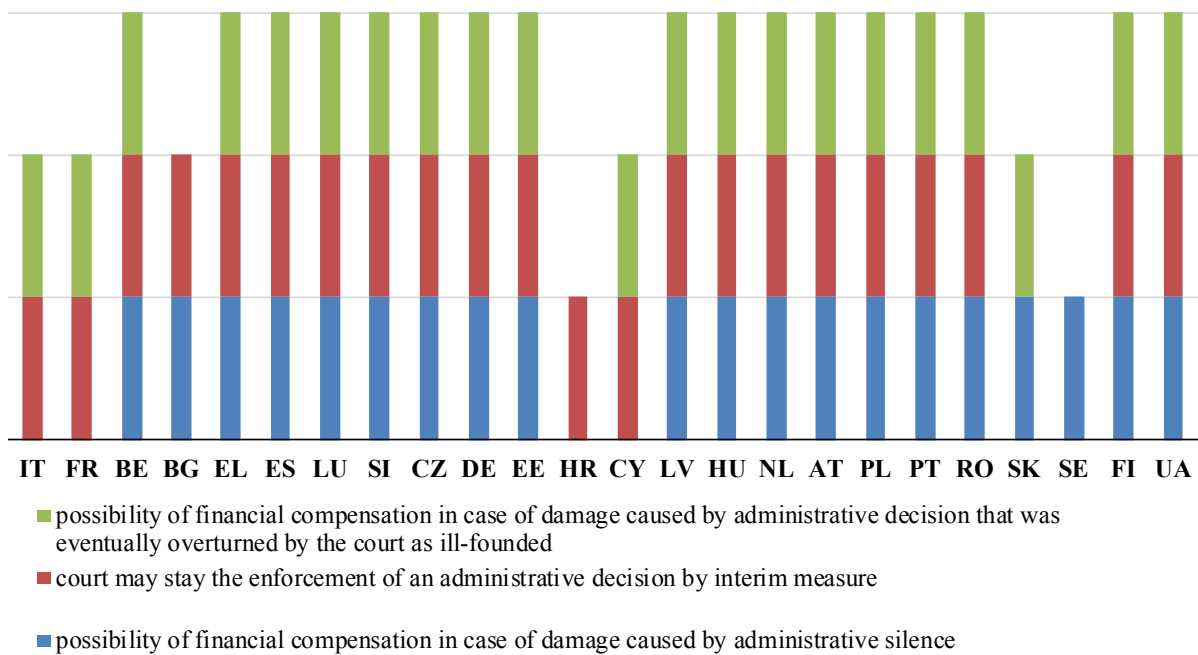
¹⁵ As an example of a website that has integrated the needed functionality for access by people with visual disabilities, please refer to the website of the Association for Protection of Rights of People with Disabilities: <https://psi.org.ua/>.

Recommendations:

- conduct an audit of the judicial system to determine the extent to which it is “barrier-free” (including the official websites of the courts) and, based on its results, develop a strategy for ensuring unimpeded access to justice for persons with disabilities and standards for court interaction with persons with disabilities;
- introduce the practice of preparing annual reports on the state of ensuring access to justice for persons with disabilities, as well as collecting statistical data on the participation of persons with disabilities in court proceedings;
- regulate the legal status and procedure for engaging with and confirming qualification of sign language interpreters;
- develop a special course on effective communication and basics of sign language for employees of the Court Security Service;
- develop a course on the application of the elements of simplified speech system for interaction with people with disabilities.

judicial control over public administration in business-related scenarios

Figure 21 (31*) Legal safeguards regarding decisions or inaction of administrative authorities, 2021:

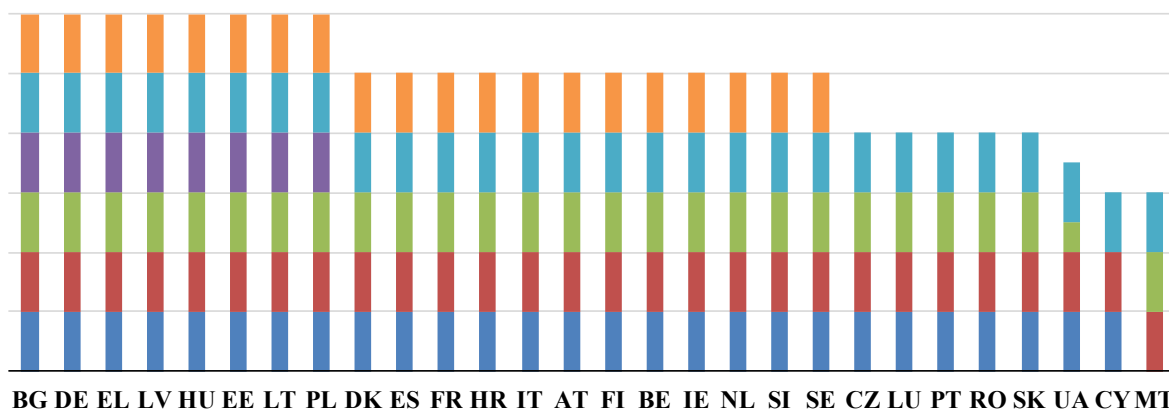


In Ukraine, an individual or a legal entity has the right to compensation for damages caused by an illegal decisions, action, or inaction of a state authority. For example, according to judicial statistics, only district administrative courts issued more than 160,000 documents in 2021 for the execution of decisions where state authorities are debtors, for a total amount of UAH 2.5 billion (approx. EUR 81,5 million). Furthermore, as a precautionary measure, a court may suspend the contested administrative act for the duration of a trial.

Thus, the Ukrainian system of administrative justice provides the same procedural guarantees as most systems of the EU member states. At the same time, significant problems are observed in Ukraine with the execution of court decisions on recovery of damages from state authorities. Even the European Court of Human Rights recognized the systemic nature of this problem (group of cases “Burmych and others v. Ukraine”), which led to approval by the Government of Ukraine of the National Strategy addressing the problems of failure to execute judicial decisions by debtors that are a state authority or a state enterprise, institution, organization, for the period up to 2022¹⁶.

child-friendly justice

Figure 22 (32*) Specific arrangements for child-friendly proceedings, 2021 (civil and criminal/juvenile justice and administrative proceedings):



- specifically child-friendly designed website to provide online information about the justice system
- children are treated in an appropriate manner which takes into account their specific needs and rights
- evaluation of such treatment is covered by court surveys addressed to court users
- training for judges on child-friendly and child-rights based communication with children
- children who are suspects or accused persons in criminal proceedings have the right to legal aid
- measures are in place to provide for a specific treatment of children who are deprived of liberty

¹⁶ Order of the Cabinet of Ministers of Ukraine No. 1218-p of Sept. 30, 2020 “On Approving the National Strategy for Addressing the Issues with Non-Performance of Court Decision Where the Debtor is a State Authority or a State Enterprise, Institution, or Organization for the Period of Up to 2022” // Available at: <https://zakon.rada.gov.ua/laws/show/1218-2020-%D1%80#Text>.

According to international standards, in order to provide access to justice, specific procedures adapted to a child's needs should be implemented, which are designed to create the most comfortable conditions for children in the courtroom and during the trial. Ukraine has ratified¹⁷ most of the international documents related to children's rights protection, and the national legislation contains provisions aimed at ensuring the rights of a child in judicial proceedings: a special procedure for hearing and questioning, a guaranteed right to free secondary legal aid, and procedural activity of the court in order to protect the interests of a child (initiative in collecting evidence).

In 2021, the National Police of Ukraine, in partnership with the Interdepartmental Coordination Council for Juvenile Justice, developed methodological recommendations for the organization of work with children using the "Green Room" method¹⁸ for investigators and juvenile police officers¹⁹. Also, as part of civic initiatives to improve the qualifications of judges when working with children, guidelines for judges on the peculiarities of interviewing a minor victim or witness of a crime were developed²⁰. Finally, in 2022, the National School of Judges developed methodological recommendations for judges on organization of work with children using the "Green Room" method²¹.

According to the results of a 2019 study on the state of compliance with child-friendly justice standards in non-criminal cases by courts and custody authorities²², courts show a special approach towards children in court proceedings and increased activism when hearing cases involving children. At the same time, based on the monitoring results, a number of

¹⁷ UN Convention on the Rights of the Child of Nov. 20, 1989, European Convention on the Exercise of Children's Rights of Jan. 25, 1996, Hague Convention on the Civil Aspects of International Child Abduction of Jan. 25, 1980, Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children of Oct. 19, 1996, Convention on Contact Concerning Children of May 15, 2003, Convention on the Recovery Abroad of Maintenance of June 20, 1956, Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations of Oct. 2, 1973, European Convention on the Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children of May 20, 1980, and European Convention on the Legal Status of Children Born out of Wedlock of Oct. 15, 1975. In addition, a number of conventions are also being prepared for ratification, including: Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, European Convention on the Adoption of Children (revised), and The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

¹⁸ The "Green Room" is a set of measures that are used during procedural and investigative action to ensure the protection of the rights and freedoms of a child who is a witness, victim, or in conflict with the law, in order to conduct interview (interrogation/questioning) of a child while taking into account his/her age and psychological circumstances and under conditions that minimize and prevent repeated traumatization of a child's psyche. Interviews are held using the following "formula": safe space (most adapted for interaction with a child) + safe adult (interacting with a child as "equals") = safe child.

¹⁹ Methodological Recommendations for Investigators and Juvenile Police Officers on Organizing the Work with Children Using a "Green Room" Method // Available at: <https://www.unicef.org/ukraine/media/16976/file/Green%20Room%20Methodology%20for%20Police%20Officers.pdf>.

²⁰ Peculiarities of Interviewing a Minor Victim or Witness of a Crime: Guidelines for Judges // Available at: <https://drive.google.com/file/d/1eSGPS4ZfFzebrNqi2Ac-OUb-3YxVXqyD/view>.

²¹ Methodological Recommendations for Judges on Organizing the Work with Children Using a "Green Room" Method // Available at: <https://www.unicef.org/ukraine/media/16966/file/Green%20Room%20Methodology%20for%20Judges.%D0%BF%D0%BE%D0%B2%D0%BE%D0%B4%D0%B6>.

²² Child-Friendly Justice Standards and Their Implementation in Ukraine (non-criminal aspects) (2020) // Available at: <https://www.osce.org/files/f/documents/e/d/453435.pdf>.

regulatory and practical problems in this area were identified: chaotic and unsystematized legislation in terms of protection of children's rights; lack of requirements for the use of special rooms adapted for children during trials; premises of most courts unsuitable for the presence of children; inadequate legislative regulation of the procedure of interviewing (interrogating) children; lack of regulation of the right to psychological assistance; failure to establish the minimum age from which a child can be interviewed; lack of prioritization in the adjudication of cases regarding the interests of children in courts, as well as of reduced terms of consideration.

The results of the study also showed high demand for training on child-friendly justice among professionals, while judges that were interviewed noted insufficient level of training for proper consideration of cases involving children. The training programs developed by the National School of Judges include some issues of communicating with children and protection of children's rights, but the coverage of these issues is superficial and non-systematized, and there is no separate general training course. However, according to the School, the peculiarities of justice in cases involving children in criminal proceedings are the subject of separate trainings for judges²³. Dedicated seminars or lessons on this topic are also conducted in regional branches of the School.

In analyzing the experience of EU member states, 20 out of 27 countries have special websites for providing children with the information about the justice system. In Ukraine, there is no such web platform, just as there are no other resources where a child could get information regarding the work of the justice system in an accessible form. We found a page about children's rights with legislative excerpts that are not adapted for a child only on the website of the Parliament's Commissioner for Human Rights²⁴. Some courts develop informational materials for children about justice on their own initiative (for example, "Guidebook to the Court System for School Children"²⁵) and conduct educational lessons and tours in the courts. CSOs are also engaged in such educational work. For example, the Ukrainian Foundation "Welfare of Children" developed a brochure titled, "I Am Going to Testify in Court"²⁶.

Furthermore, there are no regular surveys of users of court services being conducted in Ukraine that include questions to assess the adaptability of justice to a child's needs.

²³ Child-Friendly Justice Standards and Their Implementation in Ukraine (criminal aspects): Report based on Monitoring Results of Court Proceedings in Ukraine (2021) // Available at: <https://www.osce.org/files/f/documents/f/9/488050.pdf>.

²⁴ Parliament Commissioner on Human Rights (Ombudsman) website. Page for Children // Available at: <https://www.ombudsman.gov.ua/uk/storinka-dlya-ditej>.

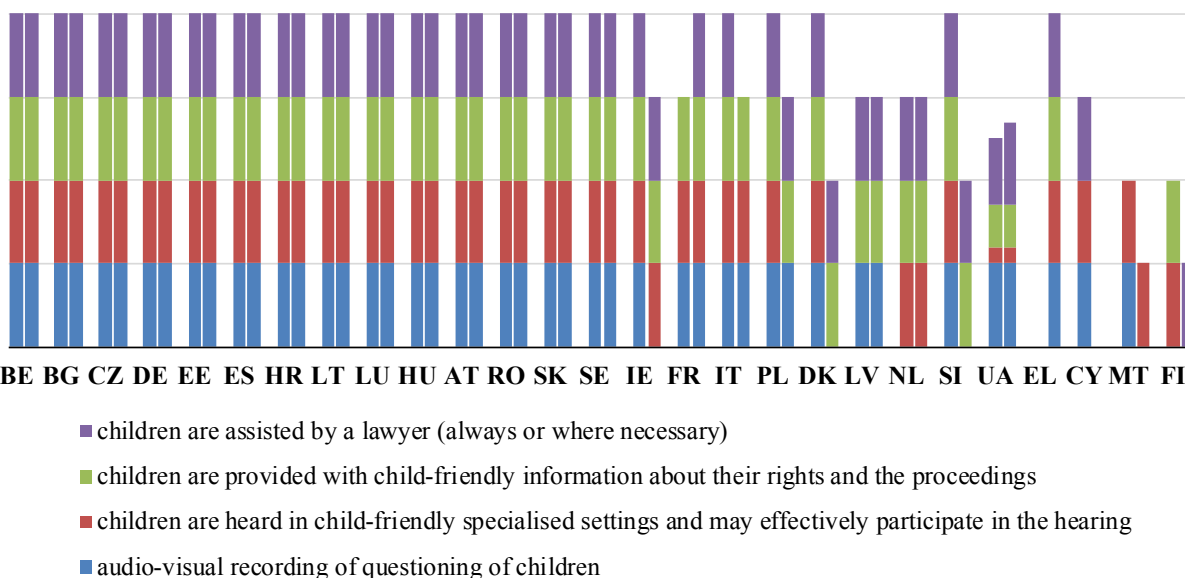
²⁵ Seventh Appellate Administrative Court: Guidebook to the Court System for School Children // Available at: <https://youtu.be/wNKL03-MCAI>.

²⁶ I Am Going to Testify in Court: Information for Children and Youth // Available at: https://childfund.org.ua/Uploads/Files/books_pdf/broshura_svidchity_v_sudi.pdf.

Recommendations:

- codify legislation on children’s rights or develop a law on child-friendly justice that fully embraces the European standards;
- ensure adaptation of court premises to children’s needs;
- create a web portal about justice for children, with content adapted to the needs of children of different age groups;
- develop and implement training programs on child-friendly justice;
- conduct regular surveys of users of court services on mechanisms that make justice suitable for a child’s needs (child-friendly justice).

Figure 23 (33*) Specific arrangements for child-friendly proceedings with children involved as victims or suspects or as accused persons, 2021:



Note: the left column reflects the measures taken in relation to child victims, and the right column – child suspects accused of committing a crime.

The national legislation provides for additional safeguards for children involved in criminal proceedings, which are mostly in line with international standards. In Ukraine, positive changes are gradually occurring in this area: juvenile prevention units have been created in the police; juvenile investigators, prosecutors, and judges have been introduced; legislation on the protection of children from domestic violence, bullying, sexual exploitation, and sexual violence has been improved; the practice of using the “green room” method for questioning children is becoming increasingly common; the possibility of remote interrogation of minors using video communication has been introduced; the institution of probation was introduced; the amount of trainings on child-friendly justice has been increased; etc.

At the same time, there are a number of legislative gaps, as well as practical problems that prevent the full protection of children's rights. According to the results of monitoring of criminal trials in terms of the state of compliance by the courts with the standards of child-friendly justice, which was conducted in the second half of 2020²⁷, adherence to the special procedures for children is often pro forma in practice. The premises of criminal justice authorities are mostly not adapted to the needs of children, and courts rarely have courtrooms adapted for the participation of children (such rooms are missing even in the Supreme Court). Criminal proceedings usually utilize courtrooms with metal or glass barriers for holding of detained defendants (often, there is no exception for children).

Although the legislation provides for specialization of investigators, prosecutors, and judges for criminal proceedings in cases involving children, in practice the implementation of this specialization is incomplete. In particular, judges who hear criminal cases against minors are not relieved from other cases. Such judges are elected by the assembly of judges of the respective court, and the law does not even require any prior mandatory special training.

Furthermore, there is no uniform approach regarding the questioning child participants with different procedural status (suspect, defendant, victim, witness). Existing procedures for questioning/interrogating a child do not contribute to reducing the number of a child's interactions with justice, especially when the child is a victim or witness of a crime. The law also does not impose an obligation on the investigative bodies to provide a lawyer for a child victim or witness of a crime, although this category of persons has a guaranteed right to free secondary legal aid.

There are also obstacles to accessing the free legal aid for minors, since they can exercise this right only through their legal representative. The quality of such aid is not always adequate, because there are no requirements regarding the availability of special training for a lawyer who is involved in representing a child's interests.

²⁷ Child-Friendly Justice Standards and Their Implementation in Ukraine (criminal aspects): Report based on Monitoring Results of Court Proceedings in Ukraine (2021) // Available at: <https://www.osce.org/files/f/documents/f/9/488050.pdf>.

Recommendations:

- expand the specialization of investigators, prosecutors, and judges in the area of children’s rights (juvenile investigator, prosecutor, and judge);
- introduce the specialization of defense attorneys who represent the interests of children in criminal cases, as well as strengthen control over the quality of free legal aid provided by attorneys and their duties to protect minors who are in contact or in conflict with the law;
- introduce systemic trainings of child interrogators, investigators, prosecutors, attorneys, judges, psychologists, and probation service workers;
- ensure a unified approach to questioning of children, regardless of their status in criminal proceedings, in particular using the “Green Room” method;
- create comfortable conditions for hearing of cases involving children and their stay in appropriate premises.

2.2. Resources

financial resources

Figure 24 (34*) General government total expenditure on law courts in EUR per inhabitant, 2012, 2018-2020:

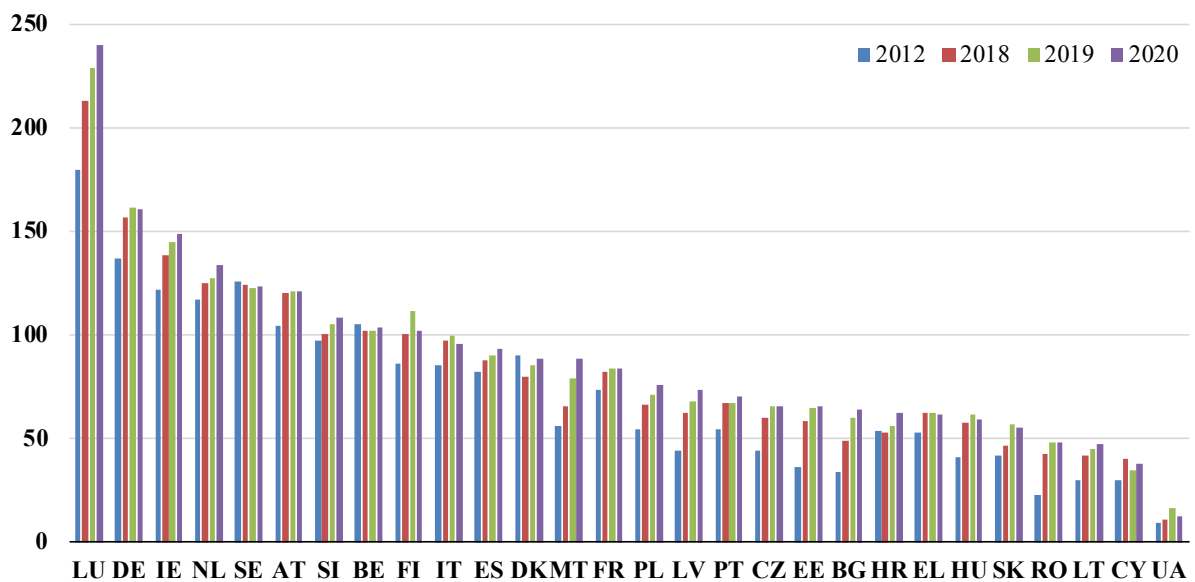
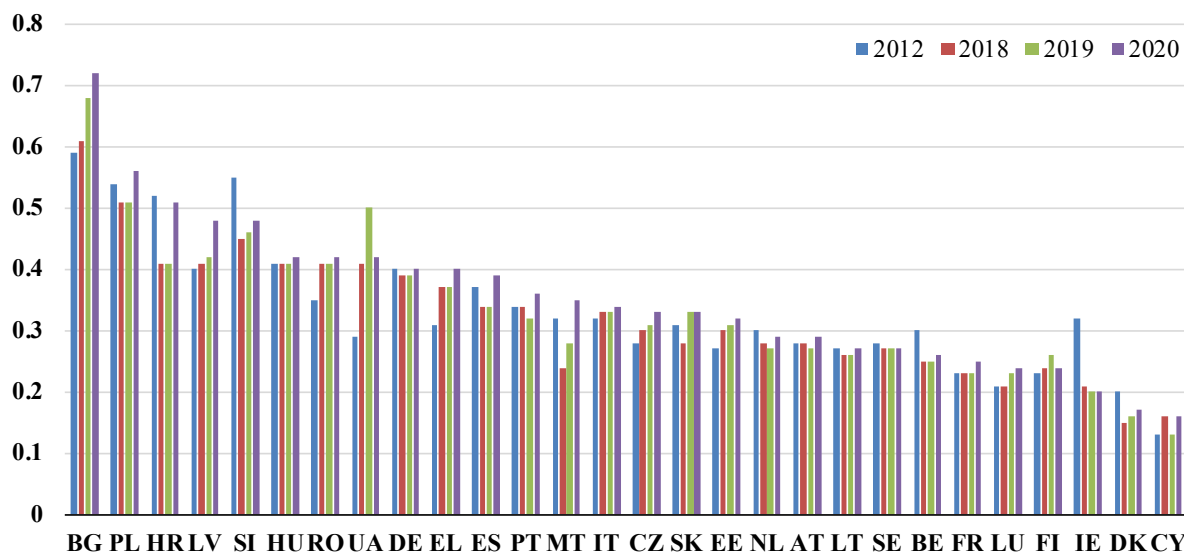


Figure 25 (35*) General government total expenditure on law courts as a percentage of GDP, 2012, 2018-2020:



In 2020, the total budgetary expenditures for the court system were more than UAH 18 billion (almost EUR 530 million). Only EUR 13 was spent on the court system per resident, which is more than seven times below the European average (92 euros). At the same time, the share of expenditures as a percentage of the gross domestic product in Ukraine, on the contrary, is one of the highest among the EU states and is 0.42%.

In recent years, the problem of court financing in Ukraine has become more acute. According to the State Judicial Administration, the state budget for 2021 covered the needs of the judicial system in terms of financial resources at only 42.5% (in 2017 – 79.1%, in 2018 – 77.9%, in 2019 – 72.4%, in 2020 – 64.9%)²⁸. At the same time, income from court fees covers only one-fifth of the budget allocations for the courts of first and appellate instances. Currently, more than 90% of the budget expenditures on the courts are salary costs (due to the excessively high salaries of judges) and only 2% are development expenditures. It is obvious that in such conditions, there can be no talk of the judicial system's modernization (new premises, technical equipment, digitalization of procedures, etc.). At the same time, the audit of the State Judicial Administration conducted in 2021 revealed inefficient use of funds in the multimillion-dollar range²⁹.

Recommendation:

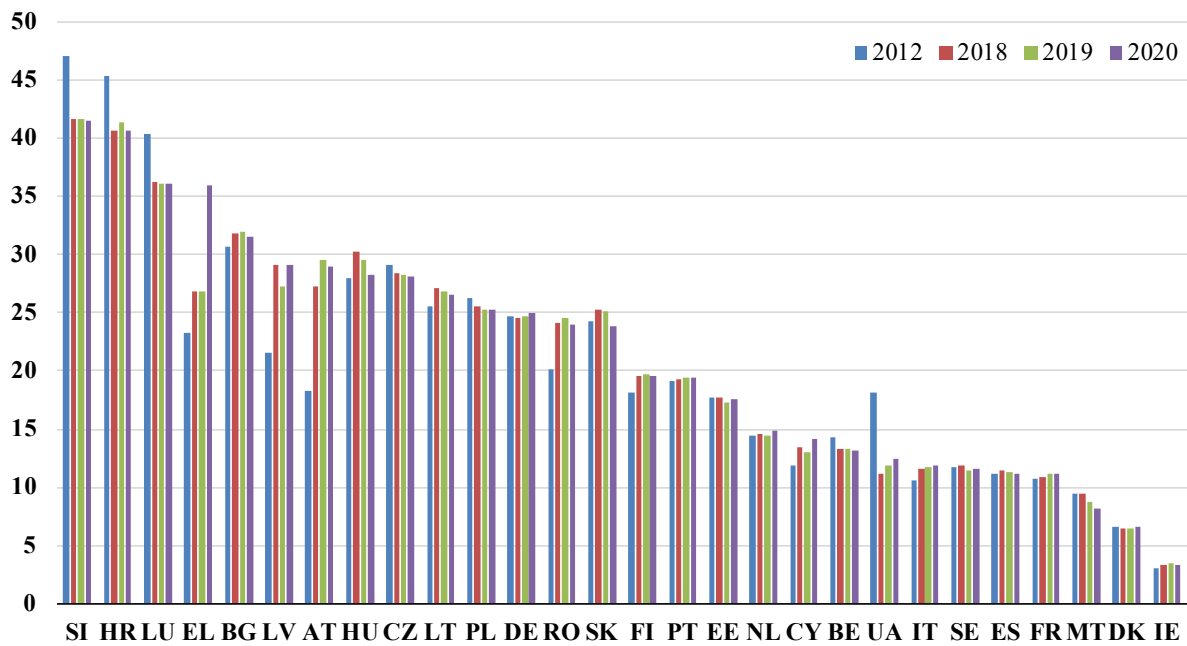
improve the mechanism of court financing by introducing transparent mechanisms for the development of budget requests and allocation of funds, as well as control over the effectiveness of completed expenses.

²⁸ Report on the Activities of the State Judicial Administration of Ukraine for 2021 // Available at: https://dsa.court.gov.ua/userfiles/media/new_folder_for_uploads/dsa/2021.pdf.

²⁹ Results of the State Financial Audit of the State Judicial Administration of Ukraine // Available at: <https://dasu.gov.ua/ua/news/3872>.

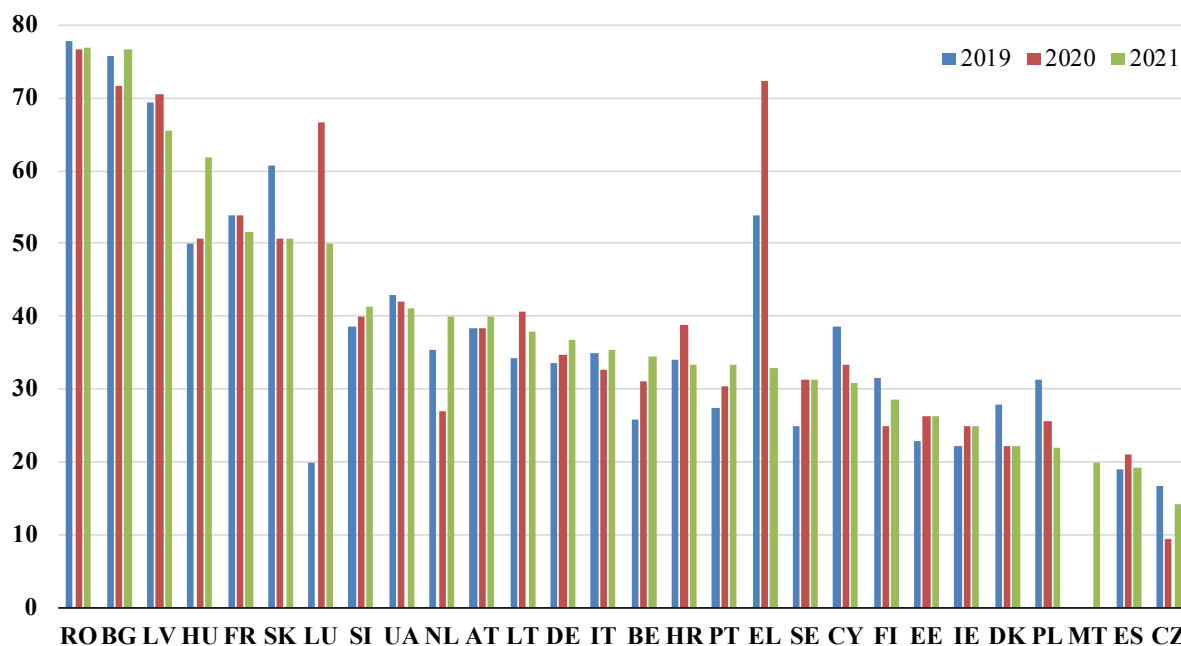
human resources

Figure 26 (36*) Number of judges, 2012, 2018-2020 (per 100 000 inhabitants):

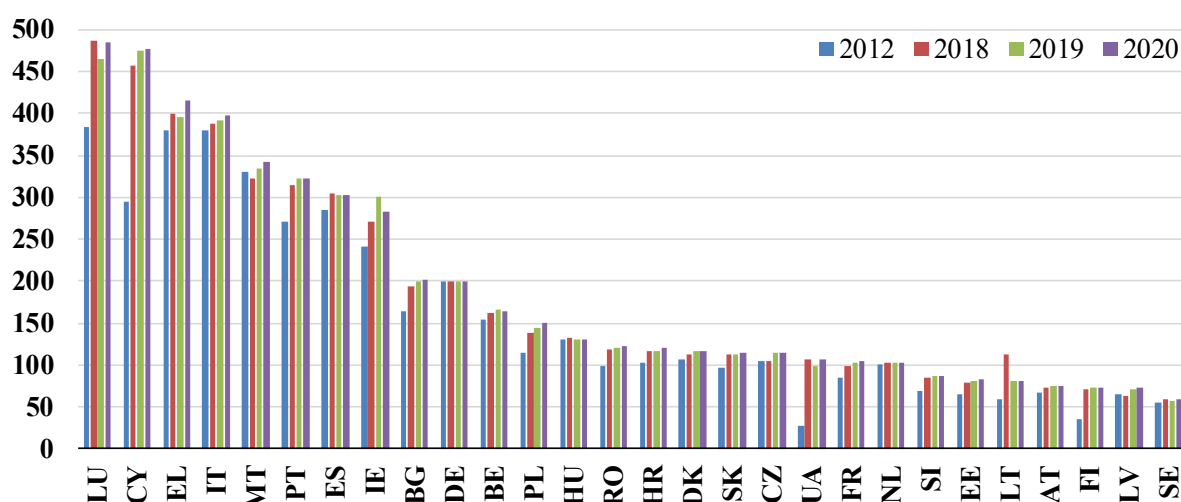


In 2020, 5,199 judicial positions were filled in Ukraine. There were slightly more than 12 working judges per 100,000 residents (17 judges, if calculated based on the approved staff number of judges). This is one of the lowest indicators among the EU countries and almost twice below the European average, which is 22 judges per 100,000 residents.

There are no doubts that the number of judges directly affects the indicators of the administration of justice, in particular, the speed of resolving the cases. At the same time, in our opinion, a major increase in the number of judges in Ukraine is not the optimal way for improving the judicial system. As noted in the explanations for *Figure 25 (35*)*, the expenses for the judicial system as a percentage of the gross domestic product in Ukraine are one of the highest among the EU countries. In case of a significant increase in the number of judges, the amount of such expenditures will increase accordingly, as judges will need to be paid salaries and receive support staff, premises, and technical means. At the same time, in recent years, the state could not even meet the basic needs of court financing with the existing number of judges. This is why the development of mechanisms for alternative and pre-trial dispute resolution, which are cheaper and will be able to reduce the burden on the judicial system – and therefore the need for judges – looks promising.

Figure 27 (37*) Proportion of female professional Supreme Court judges 2019-2021:

The Ukrainian legislation ensures equal rights of representatives of each gender in the process of selection and appointment of judges. According to CEPEJ, Ukraine is included in the group of countries with an equal gender ratio in all court tiers in terms of the number of judges, but with a lower representation of women among the heads of courts, especially in appellate courts.³⁰ Regarding the gender balance in the Supreme Court, as in most EU countries, the number of women in the judicial positions on the Supreme Court of Ukraine is less than 50% of the total number of judges of this court.

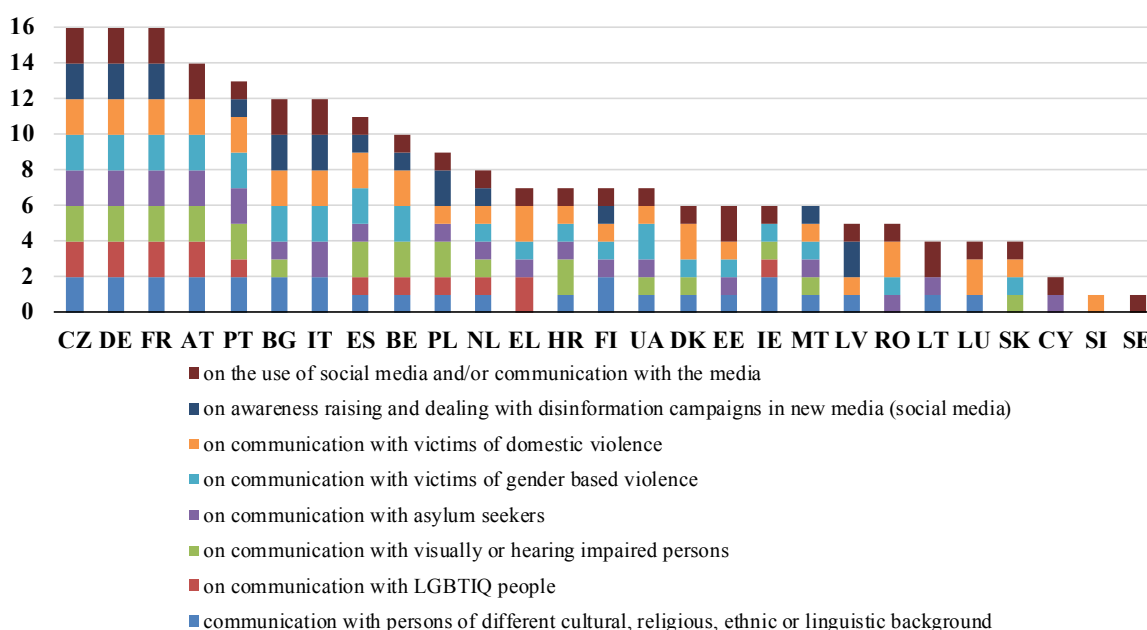
Figure 28 (38*) Number of lawyers, 2012, 2018-2020 (per 100 000 inhabitants):

³⁰ CEPEJ - Gender equality // Available at: https://public.tableau.com/app/profile/cepej/viz/CEPEJ-Genderequalityv2020_1_0EN/GenderEquality.

In Ukraine, a person who has completed a university degree in law, has command of the state language, and has at least two years of work experience in the field of law can become a lawyer. To do this, one needs to pass a qualification exam and undergo a six-month internship with a lawyer who has at least five years of experience as a lawyer. The gradual introduction of the lawyers’ monopoly on representation in court since 2016 has led to a rapid increase in the number of lawyers (in 2012, there were slightly more than 27 lawyers per 100,000 residents, while eight years later, this ratio has increased by almost four times to 106 lawyers). However, this is still below the EU countries average, which is more than 190 lawyers per 100,000 residents.

training

Figure 29 (39*) Availability of training in communication for judges, 2021:



Note: 1 point was given for the availability of initial training (for the candidates for judicial position) and 1 point for the availability of continuous training (maximum of 2 points for each type of training). Maximum possible score is 16 points.

The National School of Judges of Ukraine is responsible for training the candidates for the position of a judge and continuing education of judges. Special attention in the process of training is devoted to the communication aspect of a judge’s activity. In particular, a special online course was developed in this topic. Trainings on the interaction with journalists and mass media and with persons with disabilities are also conducted, and issues of communication with victims of domestic violence, refugees, and foreigners are covered as part of thematic trainings on the hearing of relevant categories of disputes.

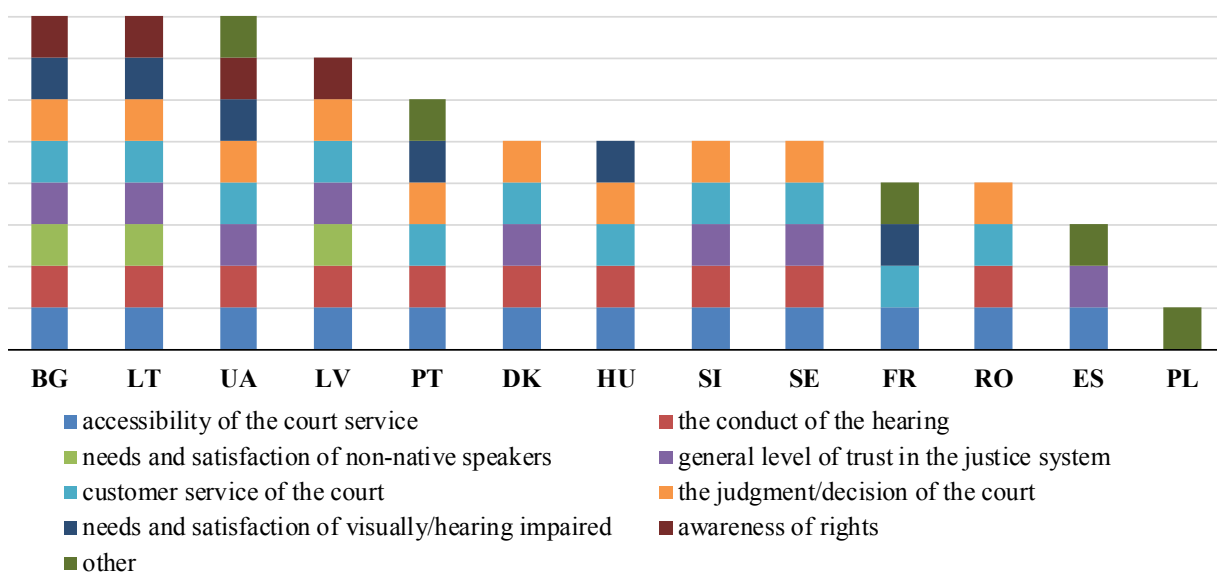
As can be seen from the figure, communications trainings for judges in Ukraine cover essentially the same topics as in the EU countries. At the same time, as evident from the response by the National School of Judges of Ukraine³¹, in the process of training of new judges in 2021, insufficient attention was paid to communications aspects. Considering

³¹ National School of Judges of Ukraine Letter from July 14, 2022 No. 08-05/491.

the active development of social networks and media, special attention in the training process should be paid to the use of these media tools by the judges, as well as to issues of countering disinformation campaigns about judges in these networks.

2.3. Assessment tools

Figure 30 (40*) Topic of surveys conducted among court users or legal professionals, 2019:



Sociological studies and surveys on the functioning of the judicial system are regularly conducted both at the national (in particular, the survey of court users – trial participants exiting the court premises³²), as well as regional³³ and local (individual court³⁴) levels in Ukraine. In 2020, the topics of such surveys covered all of the issues specified in the indicator, except those relating to assessing the level of meeting the needs and satisfaction of non-native speakers in court. Among the questions posed to the respondents were: geographical accessibility of the court; comfortable waiting conditions in court premises; timeliness of hearing the case; attitude and politeness of court employees (both court staff and judges themselves) and prosecutors; clarity of a judge's language; clarity of a court's decision; timeframes for judgement; and financial accessibility of court costs (except attorney's fees). Furthermore, the surveys studied the following issues: the level of citizens' trust in courts

³² Survey of the Participants of Court Hearings on Exit from Courts, conducted by the Razumkov Center Sociological Service between Oct. 21-28, 2020 // Available at: <https://rm.coe.int/annex-2-survey-on-exit-from-courts/1680a0c2b1>.

³³ Assessment of the Citizen Satisfaction Level with the Quality of Certain Aspects of Court Functioning in Kharkiv Oblast (2019) // Available at: https://ldn.org.ua/wp-content/uploads/2019/09/USAID_LDN_Courts-Evaluation_Report_Kharkiv_2019.pdf; Assessment of the Citizen Satisfaction Level with the Quality of Certain Aspects of Court Functioning in Poltava Oblast (2019) // Available at: https://ldn.org.ua/wp-content/uploads/2019/09/USAID_LDN_Courts-Evaluation_Report_Poltava_2019.pdf; Assessment of the Citizen Satisfaction Level with the Quality of Certain Aspects of Court Functioning in Chernivtsi Oblast (2019) // Available at: https://ldn.org.ua/wp-content/uploads/2019/09/USAID_LDN_Courts-Evaluation_Report_Chernivtsi_2019.pdf.

³⁴ Assessment of the work of Luhansk District Administrative Court. Analytical Report (2020) // Available at: https://adm.lg.court.gov.ua/userfiles/media/new_folder_for_uploads/sud1270/ocinuvannya2020.docx

of various levels³⁵; timeliness of court proceedings (compliance with reasonable terms); independence and impartiality of the court when considering the case; and timeliness of enforcement of court decisions³⁶.

Also, a survey of professional lawyers who participate in court proceedings, but are not judges, was conducted in 2019 and 2021 on the following issues: proper justification and clarity of court decisions; compliance with reasonable terms of court proceedings; timeliness of enforcement of court decisions; independence and impartiality of judges in hearing the case; and presence of bribery in court³⁷.

Compared to the EU countries, Ukraine's result is very good, as no surveys of court users were conducted in 15 countries at all in 2020, while half of remaining countries only had surveys that covered a little more than half (or less) of the topics mentioned in the indicator. It should be noted that Ukraine's result was largely achieved due to the efforts of non-governmental institutions, since the vast majority of surveys on the functioning of the justice system are conducted on their initiative and at their expense.

Recommendation:

introduce regular (annual) surveys of court services users regarding the quality of functioning of the justice system, to be conducted at both the national and local (individual court) levels.

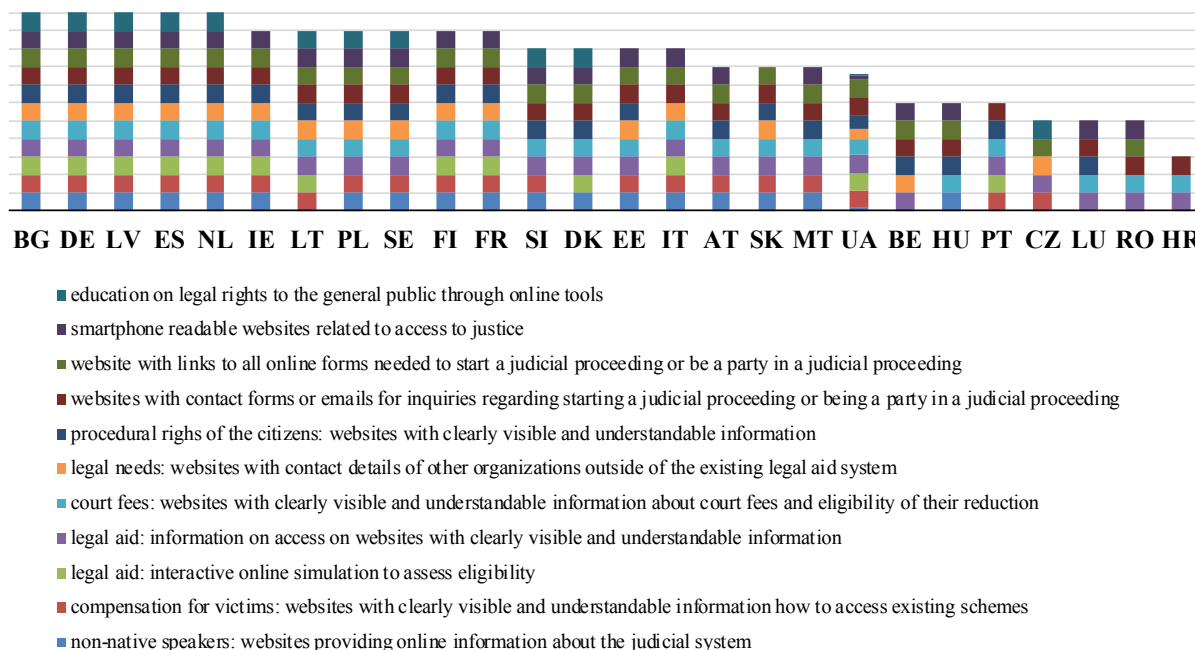
³⁵ Citizens' Assessment of the Work of Government, the Level of Trust in Social Institutions and Politicians, and Electoral Tendencies of Citizens (2020) // Available at: <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-diialnosti-vlady-riven-doviry-do-sotsialnykh-institutiv-ta-politykiv-elektoralni-orientatsii-gromadian-liutyi-2020r>.

³⁶ Trust Barometer in Court: Report on the Results of the First Phase of Online Survey Using the CAWI Method (2020) // Available: https://newjustice.org.ua/wp-content/uploads/2021/03/Public_Trust_Barometer_Report_1st_Stage_2020_UKR.pdf.

³⁷ Results of the National Surveys of the Court Employees, Support Staff, and Jurors in 2019 // Available at: https://newjustice.org.ua/wp-content/uploads/2019/07/NJ_2019_Surveys_Results_July2019_UKR.pdf; Survey of Professional Lawyer Who Participate in Court Proceedings but Are not Judges or Court Support Staff Regarding Trust in the Judiciary, Judicial Independence and Accountability, Corruption Perceptions, and Readiness to Report on Corruption Incidents (April 2021) // Available at: https://newjustice.org.ua/wp-content/uploads/2021/06/2021_Survey_LegalProfessionals_Report_UKR-1.pdf.

2.4. Digitalization

Figure 31 (41*) Availability of online information about the judicial system for the general public, 2021:



Online access to information about the judicial system is provided at a sufficiently high level in Ukraine. A number of web services function for this purpose:

- *the official web portal “Judicial Power of Ukraine”³⁸*, which contains information about the system of courts in Ukraine, judicial self-governance bodies, status of cases, scheduled broadcasts of court sessions, a module for calculating court fees for applying to court, justice news, etc. The portal also contains explanations on how to apply to court, appeal a court decision, and get free legal aid, as well as links to other registers and systems that may be useful for court services users (such as the Unified State Register of Court Decisions, the Unified Register of Attorneys of Ukraine, the “E-Court” subsystem, etc.). In essence, the portal is a key resource that provides centralized access to information about the judicial system. Among the portal’s shortcomings are the lack of a mobile version, an insufficient number of explanations for citizens on the most common questions regarding court activities, as well as the outdated nature of some information posted on it. For example, the information booklet on how to appeal a court decision in a civil case³⁹ was last updated in August 2014, although the procedural legislation in Ukraine was significantly amended at the end of 2017;
- *the Unified State Register of Court Decisions⁴⁰*, which provides general, free, 24-hours access to court decisions (both interim and on the merits of the case) adopted by the Ukrainian courts (regardless of the tier and type of court proceedings);

³⁸ Available at: <https://court.gov.ua/>.

³⁹ How to Appeal a Judgment in a Civil Case? // Available at: https://court.gov.ua/userfiles/05_web.pdf.

⁴⁰ Available at: <https://reyestr.court.gov.ua/>.

- *E-Court*⁴¹, thanks to which a person can submit procedural documents to the court, calculate and pay the court fee, review materials of his/her case, and receive court decisions. This resource also contains templates of procedural documents for different categories of cases and types of proceedings;
- *official websites of the courts*, which contain information about the court (list of judges, contact info), news, list of cases assigned for hearing, results of automated assignment of cases to judges, templates of procedural documents for applying to a court, module for calculating and paying court fees, information booklets and explanations for users of court services, etc.

Furthermore, a large set of data from judicial self-governance bodies and individual courts is published in an open data format on a special web portal⁴².

Regarding access to legal aid, the Legal Aid Coordination Center created information platform for legal advice “WikiLegalAid”⁴³, which contains consultations on the most common issues. There are also mobile applications “Free legal aid” (where, among other, a person can determine whether he/she has the right to free secondary legal aid) and “Your right”. It is also possible to seek legal advice online (via messengers, website, or by phone).

Thus, in Ukraine a person can get almost all necessary information without leaving home – get acquainted with legal consultations on the most common issues, calculate and pay the court fees by filling out the form to apply to court, get information about the assignment of his/her case to a specific judge, the status of the case, as well as review a couple of the court decisions.

At the same time, there are significant problems in providing online access to information for persons who do not speak the state language, since almost no court has an English-language version of the site. Furthermore, as shown by research, many EU countries have developed online educational programs for public about their rights. Unfortunately, there are no such resources in Ukraine yet, and civic education of citizens is mainly carried out by civic organizations (although to increase the level of public awareness on court activities some courts implement projects to increase the level of public awareness on the work of courts on their own initiative⁴⁴).

⁴¹ Available at: <https://id.court.gov.ua/>.

⁴² Open Data Portal // Available at: <https://data.gov.ua/>.

⁴³ Available at: <https://wiki.legalaid.gov.ua>.

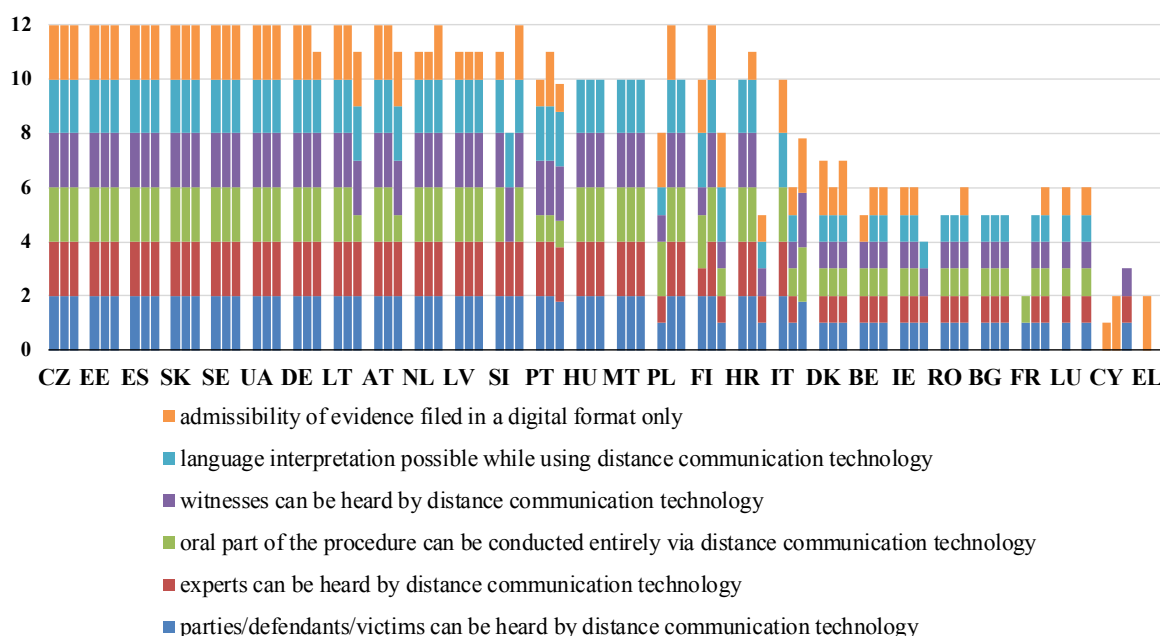
⁴⁴ For example, Zarichny District Court in the city of Sumy has introduced a project “We’re Waiting for You in Court”, as part of which important legislative issues are discussed with citizens. Kherson Circuit Administrative Court has implemented a project “#Accessible_About_Court”. For more details on public awareness projects implemented by courts, see the Center of Policy and Legal Reform study on “Service-Oriented Courts: 5 Steps Towards People” // Available at: <http://innovation.cplr.tilda.ws/>.

Recommendations:

- conduct an audit of the web portal “Judicial Power of Ukraine” on the presence of irrelevant and outdated information, based on the results of which update the information content of the portal, primarily in the section where information for citizens is posted. Develop a mobile version of the portal;
- develop an English-language version of the web-portal “Judicial Power of Ukraine” to post the main information about the activities of the judicial system of Ukraine;
- develop an online course on the basics of functioning of the judicial system of Ukraine and the citizens’ rights.

digital ready rules

Figure 32 (42*) Procedural rules allowing digital technology in courts in civil/commercial administrative and criminal cases, 2021:



Note: for each state, three columns reflect the regulation by procedural legislation of the use of relevant digital technologies in the following types of cases (from left to right): 1) civil/commercial cases; 2) administrative cases; 3) criminal cases. The maximum number of points is 12 (2 points if the corresponding option is available in all categories of disputes of the corresponding type of case, 1 point if it is available in some categories).

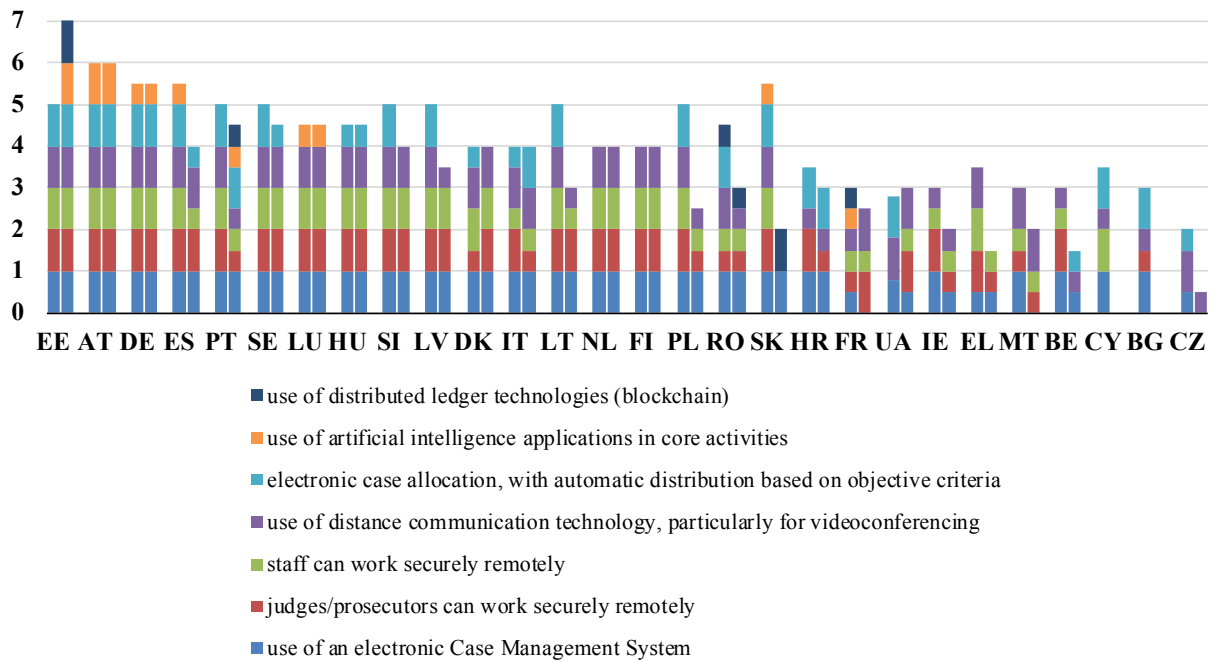
The procedural legislation in Ukraine provides for broad opportunities for the use of digital technologies during the administration of justice. Case participants (not only the parties, but also witnesses, experts, translators, specialists) in all categories of disputes can participate in a court hearing via a video conference mode. Previously, such participation was possible only from the premises of another court, but since April 2020, parties in non-criminal cases have been allowed to participate in hearings online using their own technical means. Thus, to participate in a hearing, a party does not even need to leave the house/office. Witnesses, experts, and translators can participate in a trial via video conference

only from the premises of another court. Procedural amendments of 2017 also regulated the use of electronic evidence in civil, commercial, and administrative cases.

Based on the figure's data, it can be stated that the Ukrainian procedural legislation in the context of the use of digital technologies in the administration of justice is one of the most progressive among the EU member states.

use of digital tools

Figure 33 (43*) Use of digital technology by courts and prosecution services, 2021:



Note. Left column reflects the use of digital technologies by the courts, and right column shows the use of digital technologies by the procuracy.

For a long time, digital technologies – notably, the electronic document management systems, which provides for the possibility of sending/receiving documents in electronic format (while the paper document management still remains the main one), remote communication technologies (for conducting video conferences both with other courts and with detention institutions, as well as directly with participants in court proceedings) have been used in Ukrainian courts. Cases that come before the court are subject to automated assignment to judges, interference into which is punishable criminally. At the same time, unlike most EU countries, Ukraine does not have technologies that can ensure secure remote work of judges and court staff.

The development of the Unified Court Information and Telecommunication System (UCITS) has been ongoing since 2017, which should become the next step in the digitalization of justice, providing both electronic document circulation in courts and storage of procedural documents, exchange of documents and information in electronic form, automatization of court work, assignment of cases to judges, audio and video recording of trials (including their broadcast on the Internet), conducting video conferences, functioning of unified contact

center for managing applications, and other functions. Currently, only select modules of UCITS are officially launched (in particular, the subsystems “E-court”, “E-cabinet”, and video conferencing), and therefore an automated document management system is also used to perform certain functions.

As for the prosecutor’s office, the situation is somewhat different. Although there is an internal system of electronic workflow within the prosecutor’s office, it actually consists in duplicating all documents in an electronic format (i.e., the existence of this system does not exempt prosecutors from paper-based workflow). There is also no system of automated electronic assignment of criminal proceedings among prosecutors, and therefore the assignment is carried out manually by heads of departments. In contrast to courts, due to the availability of protected electronic access keys for prosecutors, the possibility of secure remote work (for both prosecutors and support staff) with criminal proceedings materials is ensured.

There are no developments in the area of artificial intelligence (AI) programs and blockchain technologies for use in either courts or prosecutors’ core activities. For example, in Austria, AI is used to anonymize court documents, analyze incoming correspondence (receiving metadata, determining the type of document, providing suggestions for describing the document and its name, “routing” the document), and structuring information to facilitate its further development (including extracting certain information from a document)⁴⁵.

Recommendations:

- implement technologies that will ensure secure remote work of judges and court staff;
 - develop a concept of digitalization of the judiciary, providing for the implementation of artificial intelligence and blockchain technologies in current activities.
-

⁴⁵ G.Stawa Artificial Intelligence. How is Austria approaching AI integration into judicial policies // Available at: <https://rm.coe.int/how-is-austria-approaching-ai-integration-into-judicial-policies-/16808e4d81>.

Figure 34 (44*) Courts: electronic communication tools, 2021:

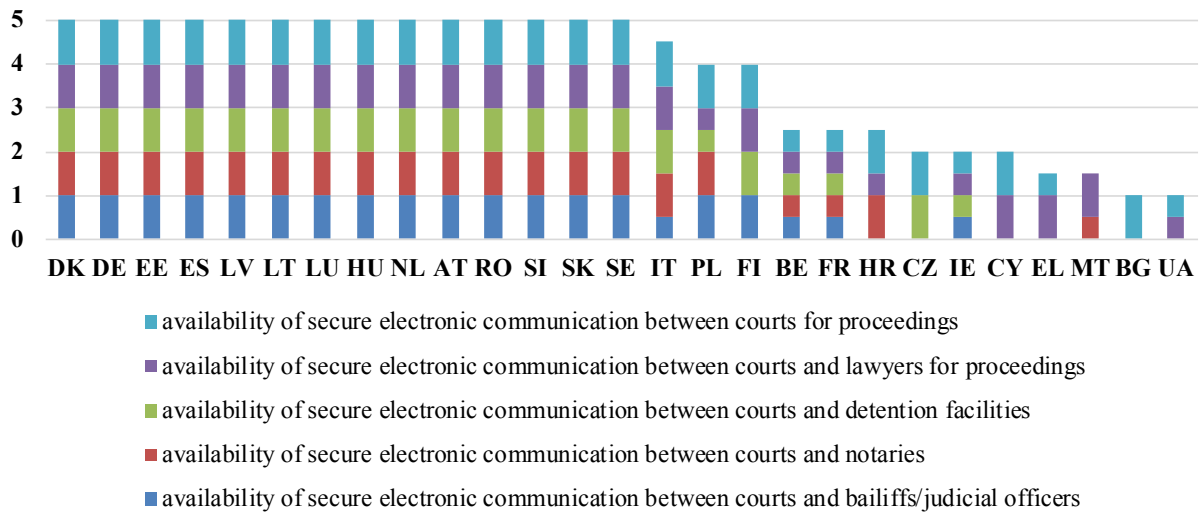
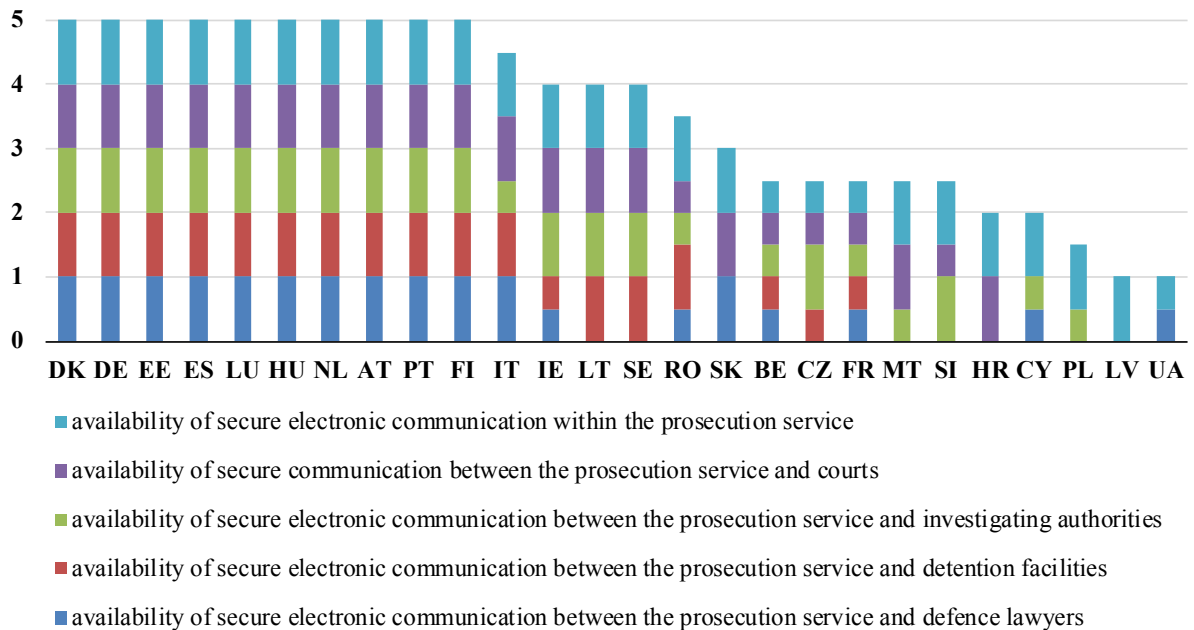


Figure 35 (45*) Prosecution service: electronic communication tools, 2021:



In our opinion, there are no reliably protected digital communication tools within the justice system in Ukraine. There are no separate secure lines of communication, and paper-based workflow is still the main form of communication. A certain level of security is provided by the UCITS module, which is responsible for forwarding procedural documents and court decisions between the court and the trial participants.

The security of programs used for conducting video conferencing is dubious. The TrueConf system that was developed in Russia is used for video conferences among courts and between courts and temporary detention facilities, and the video conferencing systems

used for conducting online court hearings (EasyCon, Skype, Zoom) have not undergone the state certification procedure⁴⁶.

As for prosecutor's offices, the exchange of physical copies of documents is the main form of communication between prosecutors and pretrial detention centers, pre-trial investigation bodies, and courts. That is, electronic communication tools are practically not used. At the same time, each prosecutor has a special e-mail with the domain of the prosecutor's, that provides some protection for electronic communication within the prosecutor's office or with an attorney (which is a rather uncommon phenomenon).

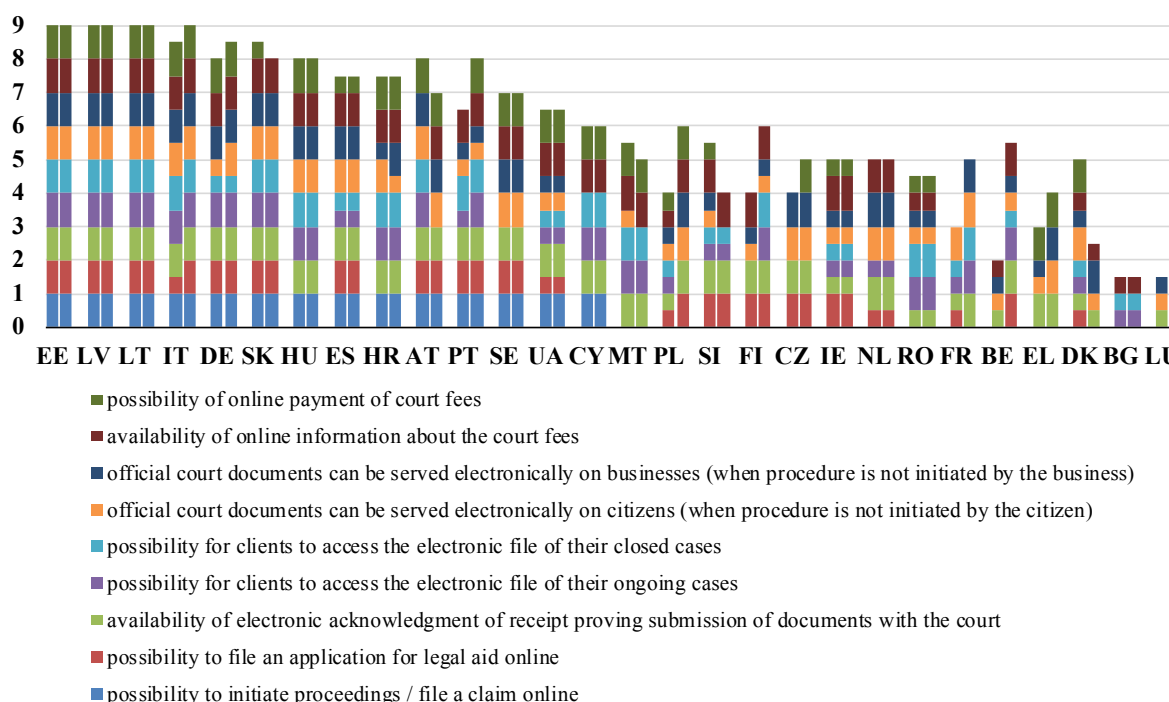
Thus, compared to the EU member states, Ukraine has a catastrophic situation when it comes to security of electronic communication tools used by the justice system.

Recommendation:

develop a system of protected electronic communication tools for interaction between the justice system individuals.

online access to courts

Figure 36 (46*) Digital solutions to initiate and follow proceedings in civil/commercial and administrative cases, 2021:



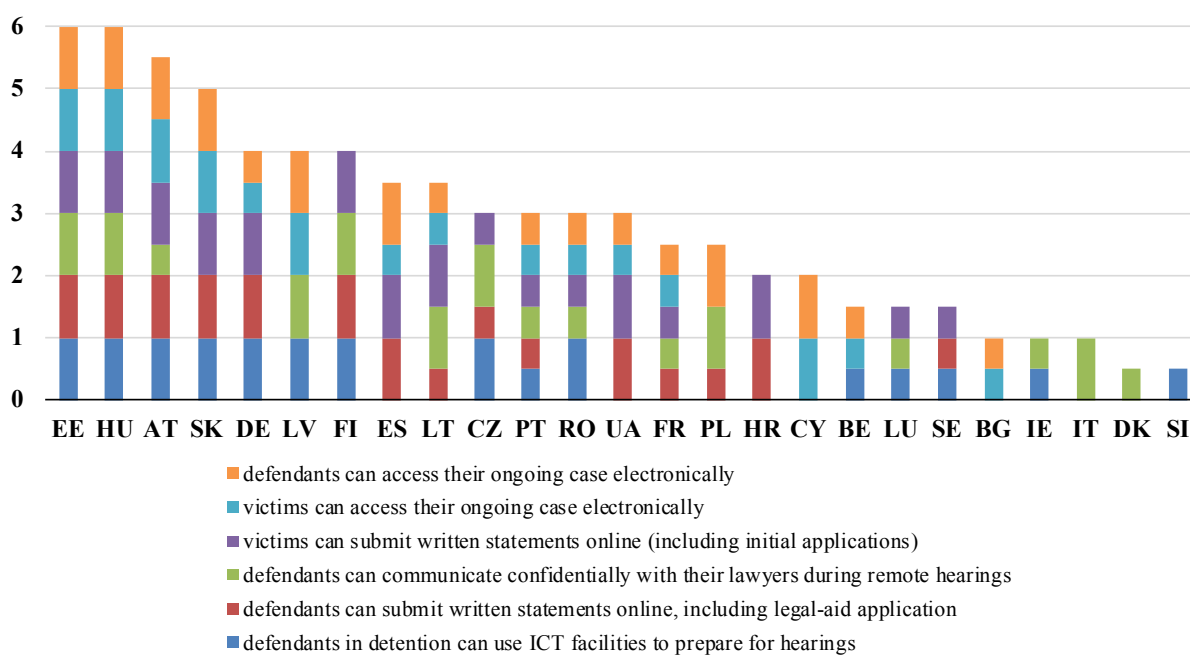
Note: For each state, the two columns represent the digital solutions to initiate and participate proceedings in the following types of cases (from left to right): 1) civil/commercial cases; 2) administrative cases. Maximum possible score is 9 points. For each criterion, 1 point was given if the possibility exists in all civil/commercial and administrative cases, respectively, and 0.5 point was awarded when the possibility exists only in some categories of cases.

⁴⁶ I. Sherstiuk, N. Kovalko. Comparative Analysis of the Video-Conferencing Systems (updated version) // Available at: <https://www.pravojustice.eu/storage/app/uploads/public/5ee/391/564/5ee3915648c47196437209.pdf>.

Digital solutions are widely implemented in court activities in Ukraine. To receive a decision in a case, a person basically does not need to leave their home⁴⁷, since with an electronic digital signature, one can apply to the court and calculate and pay the court fee online through the “E-Cabinet” subsystem, which is a part of UCITS. Through this subsystem, it is possible to submit procedural documents in a case, receive documents submitted by other participants or court decisions, as well as review case materials. Furthermore, it is possible to participate in the hearing using one’s own technical means.

Thus, all digital solutions indicated in the figure are already being implemented in the Ukrainian justice system. However, due to insufficient funding of the courts, in practice such implementation varies. In particular, some courts are not sufficiently equipped with technical means (for example, scanners or video conferencing systems) and staff. Given this fact, a person is often facing difficulties with reviewing case materials, since they are not fully scanned, whereas for cases that were heard several years ago, one will not be able to access the materials online at all.

Figure 37 (47*) Digital solutions to conduct and follow court proceedings in criminal cases, 2021:



Note: Maximum possible score is 6 points. For each criterion, 1 point was given if the possibility of corresponding digital solution exists in all criminal cases, and 0.5 point as awarded if the possibility exists only in some types of cases.

⁴⁷ If the opposing party does not have a registered e-cabinet, there is a general rule that the person is required to send a copy of procedural documents being submitted to a court by mail.

Similarly to civil, commercial, and administrative cases, the UCITS system provides broad opportunities for the use of digital solutions in criminal cases, in particular, the opportunity for the victim or the accused to submit procedural documents to the court or review the materials of their case. At the same time, there are similar problems for criminal cases as for civil cases – namely, not all case materials are scanned, and therefore remote access to all materials is often not guaranteed.

At the same time, compared to the EU states, it is possible to highlight shortcomings in the digitalization of the Ukrainian criminal justice system. In particular, according to the State Judicial Administration, the video conferencing system does not have the technical ability to simultaneously ensure a person's participation in the hearing while being outside the court premises (remotely) and confidential communication between the defendant and the attorney during a remote hearing⁴⁸. Thus, if the defendant participates in a hearing from the pre-trial detention center while the defense attorney is in the courtroom, the attorney cannot promptly and confidentially consult with the defendant during the hearing trial, which significantly narrows the possibilities and quality of defense.

Similarly, persons in custody have virtually no access to information technologies while preparing for hearings, which worsens their access to justice and leads them to rely solely on their attorney to prepare their defense. At the same time, in most EU countries, such access is available for suspects/defendants.

Recommendations:

- develop software that would ensure the possibility of confidential communication between the suspect/defendant and the defense attorney during a remote hearing;
 - provide the persons in custody with the opportunity to use information and communication technologies to prepare for hearing.
-

⁴⁸ State Judicial Administration of Ukraine Response from July 19, 2022 No. inf/C273-22-308/22.

access to judgements

Figure 38 (48*) Online access to published judgments by the general public, 2021 (civil/commercial, administrative and criminal cases, all instances):

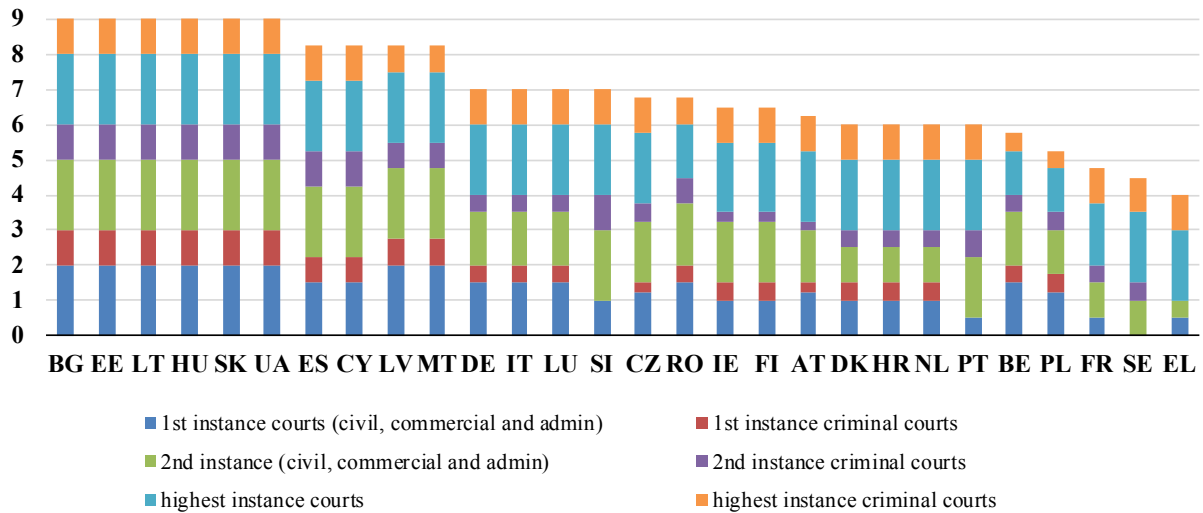
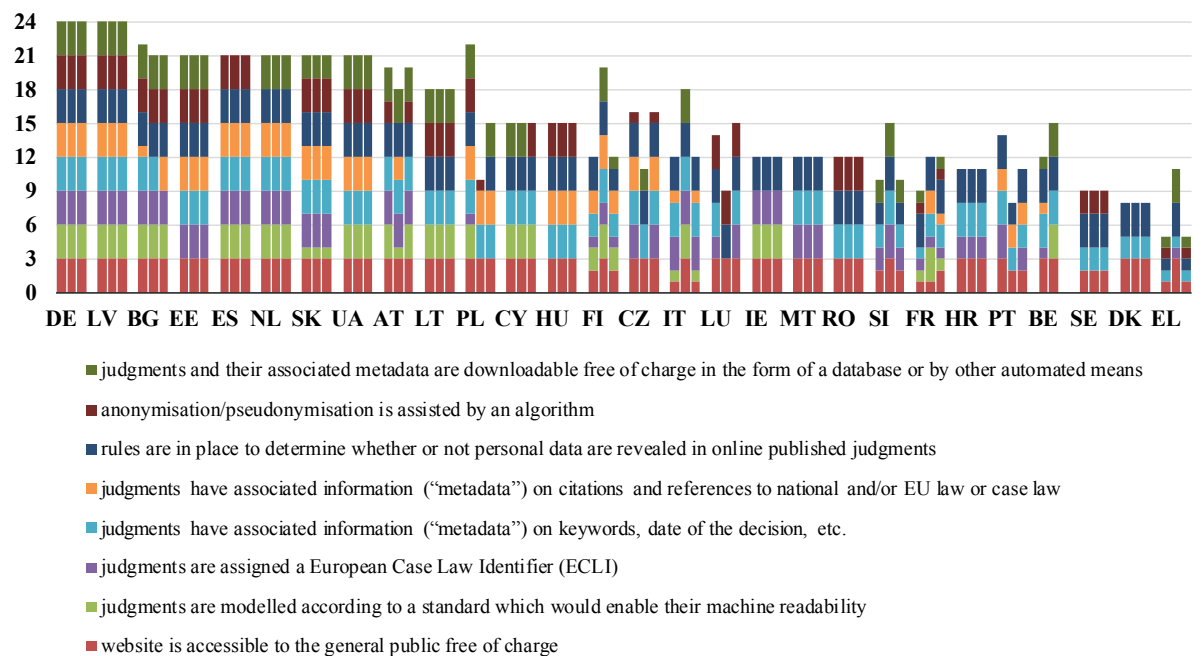


Figure 39 (49*) Arrangements for producing machine-readable judicial decisions, 2021 (civil/commercial, administrative and criminal cases, all instances):



Note: For each state, three columns reflect implemented arrangements for the following categories of cases (from left to right): 1) civil/commercial cases; 2) administrative cases; 3) criminal cases. Maximum possible score is 24 points. For each of the three instances, 1 point is given if all judicial decisions are covered.

According to the Law of Ukraine “On Access to Court Decisions”, judgements are open and must be made public in electronic format no later than the next day after they were issued and signed. Online access to judgements is provided through the Unified State Register of Court Decisions⁴⁹, access to which is open and free of charge. All judgements and dissenting opinions of judges are entered into the register (currently, the register contains more than 100 million judgements and dissenting opinions). Moreover, both judgements on the merits of the case (i.e., decisions based on the results of case consideration), and interim court decisions (for example, resolution on opening proceedings, securing a claim, scheduling a hearing) are published in the register.

The format for maintaining the Unified State Register of Court Decisions allows for use of software for processing published decisions. Registry data is also published in an open data format. Using the registry data, several services were developed in Ukraine to improve the work with caselaw⁵⁰. For example, the “Court in Your Hand” platform provides advanced capabilities for searching the judgements (for example, using the legislation and practice of the European Court of Human Rights as a refining search filter). Furthermore, within this platform the “WINCOURT” service is implemented, which allows to upload a complaint, a response to a complaint, an appellate complaint, or a judgement and to get a forecast regarding the case outcome, statistics on similar judgements, or recommendations on legislation⁵¹.

As evidenced by *Figure 38 (48*)*, only five EU member states provide online public access to court decisions of all tiers and in all categories of disputes, and according to *Figure 39 (49*)*, only half of the states actively work on ensuring machine readability of court decisions. Thus, once again, compared to the EU members, the digitalization and openness of the Ukrainian justice is at a high level.

⁴⁹ Unified State Register of Court Decisions // Available at: <https://reyestr.court.gov.ua/>.

⁵⁰ Legal Sector // Available at: <https://diia.data.gov.ua/value/law>.

⁵¹ “Court in Your Hand” Platform // Available at: <https://conp.com.ua/>.

CONCLUSIONS FOR SECTION 2

1. Only the poorest citizens in Ukraine de facto enjoy the right to free legal aid to protect their interests in court. Even a person who receives the minimum wage does not have this right. This situation differs from the general trend among the EU countries, in which a person has the right to free legal aid even if his/her income is significantly higher than the poverty threshold.
2. The Ukrainian justice is cheap for the case participants, but expensive for the state. Despite the fact that amount of the court fee for applying to a Ukrainian court is one of the lowest among the EU countries, it also acts as a restraining factor for applying to court with minor claims. In combination with the underdeveloped alternative dispute resolution mechanisms in Ukraine, this situation worsens access to justice. Furthermore, such cheap cost has another drawback – the state takes care of the lion's share of the judicial system's expenses, while income from court fees was only 20% of total amount of budget allocations for the courts of the first and appellate instances in 2021.
Compared to the EU countries, Ukraine has one of the highest percentages of the share of GDP spent on courts (0.42%), although when calculated per capita, the expenditures on courts are more than seven times below the European average (EUR 13 compared to EUR 92). More than 90% of the funds allocated to the courts are spent on the salaries of judges and court staff, and only 2% goes to development expenses.
3. The ratio of the number of judges to the population in Ukraine is almost twice lower than the European average. In particular, in 2020, there were slightly more than 12 working judges per 100,000 residents in Ukraine (17 judges if calculated based on the approved number of staff judicial positions), which is one of the lowest indicators among the EU countries. Similarly, the number of lawyers in Ukraine is significantly below the European average (only 106 lawyers per 100,000 residents, compared to the average of 190 lawyers).
4. The Ukrainian legislation permits the use of a number of mechanisms for alternative dispute resolution (arbitration, arbitration courts, mediation); however, in practice, the level of public awareness of such mechanisms (and therefore the frequency of their use) is very low. Despite more than a four-year existence of reconciliation with the participation of a judge, this rather progressive institution has not become widely used. In essence, non-governmental organizations are engaged in the development of alternative dispute resolution methods in Ukraine, and the state's interest regarding this subject is minimal.
5. The Ukrainian justice is not completely adapted to the needs of the persons with disabilities. In particular, the state implements special measures to ensure unimpeded access to justice for persons with disabilities, but due to the problems of

judicial system financing and inconsistent state policy, these measures are not fully implemented. To a large extent, civic organizations deal with this issue.

6. The establishment of child-friendly justice is also at a relatively early stage. Although Ukraine has ratified most of the international documents related to the rights of the child, in practice, the adaptation of justice to the needs of children is ongoing. The premises of courts and police authorities are mostly not adapted for the stay of children, and gaps in legal regulations do not allow to reduce the number of contacts of children with justice. Also, the results of conducted surveys showed that there is a high demand for training on child-friendly justice among legal professionals.
7. Compared to most of the EU states, sociological surveys and studies regarding the functioning of the judicial system and the level of satisfaction with judicial services are regularly conducted in Ukraine at the national, regional, and local levels. However, such surveys are conducted at the initiative of non-governmental institutions, which imposes certain limitations on monitoring the dynamics of changes in respondents' attitudes to certain aspects of justice system functioning.
8. Digitalization of the Ukrainian justice is at a very high level. In essence, a person does not even have to leave their home to apply to a court, pay the court fee, attend the hearing, and receive the decision. Furthermore, special resources provide unhindered, 24-hours, free online access to both information on the judicial system's functioning and various legal consultations, as well as to court decisions of various instances. Despite the progressive legislation in this area, in practice, due to the lack of funding, there are frequent instances where it is impossible to fully use all available tools.
9. The use of blockchain and artificial intelligence technologies, which are already used in the EU states, by courts in their current activities may be a promising direction for further digitalization of the Ukrainian justice.
10. At the same time, a catastrophic situation has occurred with the security of electronic communications tools used by the courts and prosecutor's offices.

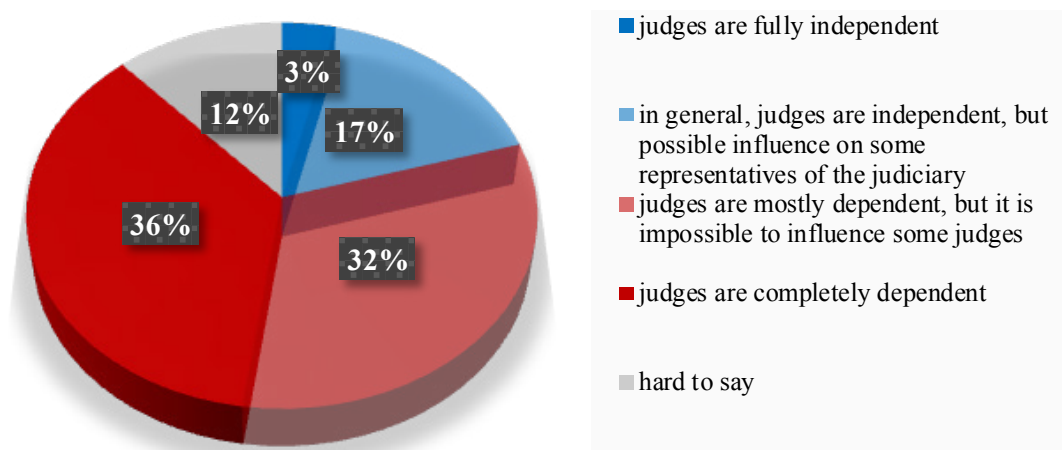
SECTION 3.

INDEPENDENCE

3.1. Perceived judicial independence and effectiveness of investment protection

Note. Ukrainian justice system is not assessed within the framework of Eurobarometer, so we used the data from national sociological surveys to describe *Figures 40 (50*) – 45 (55*)*.

Figure 40 (50*) How the general public perceives the independence of courts and judges⁵².



The data of sociological studies conducted in recent years show that the majority of Ukrainian citizens do not perceive the judicial system as independent. According to the survey conducted in 2019, more than 67% of citizens consider judges to be mostly or completely dependent, and only a slightly more than 20% – as mostly or completely independent. The attitude towards the independence of judges among those who were directly involved in court proceedings was somewhat better; more than 42% of respondents noted that judges are mostly independent, and a little less than 45% – that judges are mostly dependent⁵³. According to another survey conducted in 2019, only 14% of citizens noted that the situation with judicial independence had improved over the past three years. Instead, 46% of the surveyed respondents indicated that the situation has not changed, and 20% noted that judges, on the contrary, have become more dependent⁵⁴. In the following years,

⁵² The chart shows data from the Report Based on the Results of a Study “Citizens’ Attitudes to the Judicial System” (2020) // Available at: <https://rm.coe.int/zvitsud2020/1680a0c2d7>.

⁵³ Report Based on the Results of a Study “Citizens’ Attitudes to the Judicial System” (2019) // Available at: <https://rm.coe.int/report-razumkov-final/16809537f0>.

⁵⁴ Judicial Reform in Citizens’ Eyes: What Could Positively Affect the Trust in Courts? (2019) // Available at: <https://rpr.org.ua/news/sudova-reforma-ochyma-hromadyan-scho-mozhe-pozytyvno-vplynuty-na-doviru-do-sudu/>.

the situation also had not changed significantly, since according to a 2021 survey, 75% of respondents did not agree with the statement that the courts are completely independent and not influenced by politicians, authorities, and oligarchs⁵⁵.

As for the EU states, the situation is a complete opposite. In 17 states, more than 50% of respondents rate the independence of courts and judges as very good and fairly good (the highest result is in Finland, at almost 90%), while in 7 more countries, this opinion is shared by 30% to 50% of respondents, and only in three countries (Slovakia, Poland, Croatia), less than 30% of those surveyed consider judges to be independent.

Figure 41 (52*) How companies perceive the independence of courts and judges:

the situation with perception of the independence of the judicial system by companies is not better. According to a survey conducted in 2020, on average, less than 20% of those surveyed consider the courts to be independent from the authorities, and business representatives assess the impartiality of the Ukrainian judicial system at 2.69 points out of 5 possible (where 5 points means that the judicial system is completely impartial). At the same time, compared to 2016, this indicator has slightly improved (in 2016, it was 2.56 points, in 2017 – 2.5 points, in 2018 – 2.58 points, and in 2019 – 2.55 points)⁵⁶.

In general, a negative assessment of the independence of the judicial system by the public and business representatives correlates with a low level of trust in the courts. In recent years, courts in Ukraine keep ranking in the lowest positions in terms of trust rating compared to other state institutions (according to a 2021 survey, almost 75% of citizens tend to not trust the judicial system)⁵⁷.

Figure 42 (51*, 53*) Main reasons among the general public/companies for the perceived lack of independence:

among the reasons that influence the perceived lack of independence of judges, court users mentioned interference or pressure from the authorities, politicians, and oligarchs (75%), economic or other specific interests (72%)⁵⁸, corruption, and bribery⁵⁹. Overall, 42% of the Ukrainian citizens do not believe in the possibility of obtaining a fair and legal judgement, and almost 80% believe that the person with more money or power has a better chance to win in court⁶⁰.

⁵⁵ Survey of the Population of Ukraine Regarding Judicial and Other Branches of Government, Judicial Independence and Accountability, Corruption Perceptions, and Readiness to Report on Corruption Incidents (2021) // Available at: https://newjustice.org.ua/wp-content/uploads/2021/06/2021_Survey_Population_Report_UKR.pdf.

⁵⁶ Court Index: Wave Eight, 2020 // Available at: https://golaw.ua/wp-content/uploads/2015/06/eba-court-index_ua_2021.pdf.

⁵⁷ Trust in Social Institutions and Politicians, Electoral Tendencies of the Citizens of Ukraine (2021) // Available at: <https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/dovira-do-instytutiv-suspilstva-ta-politykiv-elektoralni-orientatsii-gromadian-ukrainy>.

⁵⁸ Survey of the Population of Ukraine Regarding Judicial and Other Branches of Government, Judicial Independence and Accountability, Corruption Perceptions, and Readiness to Report on Corruption Incidents (2021) // Available at: https://newjustice.org.ua/wp-content/uploads/2021/06/2021_Survey_Population_Report_UKR.pdf

⁵⁹ Court Index: Wave Eight, 2020 // Available at: https://golaw.ua/wp-content/uploads/2015/06/eba-court-index_ua_2021.pdf.

⁶⁰ 80% of Ukrainians Believe Those with More Money or Power Have More Chances to Win in Court // Available

Compared to the EU member states, the level of independence of the judiciary in Ukraine is one of the lowest in Europe, as assessed by the public and business representatives. It should be noted that as a result of a series of decisions of the European Court of Human Rights, Ukraine significantly improved its legislation and procedures aimed at ensuring greater independence of judges, including through the adoption of constitutional amendments in 2016. At the same time, despite high constitutional safeguards for independence of judges and fairly favorable legislation, the problem of the lack of judicial independence persists. The reason for this is informal influences and connections in the judicial system, which have a corrupt nature. Integrity has not yet become a value that unites all judges in the struggle for independence. Judicial self-governance bodies, having gained a decisive influence on the career and disciplinary responsibility of judges, have used this power not so much to affirm the independence and integrity of the judicial corps, but to strengthen the negative phenomena that existed in the justice system. Therefore, the relaunch of these bodies, which started in August 2021, remains an urgent issue.

Figure 43 (54*, 55*) **How companies perceive the effectiveness of investment protection by the law and court and main reasons among companies for their perceived lack of effectiveness of investment protection:** there are no any investors surveys regarding the quality of the justice system in Ukraine conducted at the state's initiative on a regular basis. According to results of surveys conducted by non-governmental professional organizations, "efficiency" of the judicial system is one of the reasons behind foreign companies' fears to invest in Ukraine.

According to the fifth annual survey of foreign investors, which is regularly conducted by the European Business Association, the Center for Economic Strategy, and Dragon Capital, distrust for the judicial system led the anti-rating of obstacles to foreign investment in 2020, displacing widespread corruption from the top spot (in previous years (2016-2019), distrust of courts always ranks second)⁶¹. On a 10-point scale, respondents rated distrust for the judicial system as an obstacle to investment at 8.5 points. At the same time, the relaunch of the court system was viewed by the investors as one of the steps that will have a positive impact on the investment climate.

Similar results were received in a survey by the American Chamber of Commerce in Ukraine conducted in 2021. In particular, 56% of respondents recognized that the Ukrainian courts are the biggest obstacle to doing business (this is the highest indicator out of other institutions). At the same time, 93% of companies noted that the implementation of real and effective judicial reform, rule of law, fair justice, and elimination of corruption is the number one strategic step that the Ukrainian government should undertake to achieve economic growth, improve business climate, and attract foreign investment⁶². Thus, inefficiency of the Ukrainian judicial system is one of the key obstacles for foreign investments.

at: <https://dif.org.ua/article/80-ukraintsiv-vvazhayut-shcho-bilshe-shansiv-vigrati-u-sudi-mae-toy-u-kogo-bilshe-groshey-chi-vladi>.

⁶¹ Fifth Annual Survey of Foreign Investors (November 2020) // Available at: https://dragon-capital.com/content/uploads/2020_ForeignInvestorSurvey_Presentation_ua.pdf.

⁶² 90% of Businesses Forecast Upbeat Financial Health of their Companies at the End of 2021 – New Survey by the American Chamber of Commerce in Ukraine and Citi Ukraine // Available at: <https://chamber.ua/news/90->

By contrast, according to Eurobarometer, business rather highly assess the level of investment protection by the legislation and courts in the EU states. In 16 states, more than 50% of surveyed company representatives are confident in the security of their investments. In 10 other states, the level of confidence is from 30 to 50%. Only in Poland, less than 30% of investors tend to believe that their investments are effectively protected by the legislation and courts.

Among the key reasons that affect companies' perception of ineffectiveness of the protection of their investments, Eurobarometer outlines the following: 1) unpredictable, non-transparent administrative practice and difficulties with appealing of administrative acts in courts; 2) frequent changes in legislation or concerns about the quality of the legislative process; 3) difficulties in obtaining fair compensation/adequate property protection when something goes wrong; and 4) difficulties in ensuring the observance of rights in court due to concerns about the quality, efficiency, or independence of the judicial system.

3.2. Structural independence

Figure 44 (56*) National security checks on judges: authorities involved and timing: as part of the selection procedure, candidates for the position of a judge who have successfully passed the selection exam undergo a special vetting procedure. As part of this vetting, the High Qualification Commission of Judges sends requests for verification of relevant information to the authorized bodies. The list of bodies to which requests are sent is determined by the Commission, taking into account the information contained in the candidates' personal files. As a rule, such requests are also sent to the Security Service of Ukraine, which, as a general rule, verifies whether a person has access to state secrets and military obligation⁶³. As part of such verification, the Security Service reviews its available information regarding the candidate and does not conduct any interviews with the candidate.

Following the appointment to the position of a judge, the Security Service has the right to review a person only if such a person needs to obtain access to state secrets. In other cases, the Service does not have the authority to review a judge.

In most EU countries, the national security service does not have the authority to review judges at all – neither before they are appointed to a position nor in respect of sitting judges. This is primarily due to the fact that verifications conducted by entities outside of the judicial system carry the risk of interfering with judicial independence. Only in eight EU countries is the national security service involved in verification of judicial candidates (in four countries, this is only possible on the basis of a separate request, and in the other

of-businesses-forecast-upbeat-financial-health-of-their-companies-at-the-end-of-2021-new-survey-by-the-american-chamber-of-commerce-in-ukraine-and-citi-ukraine/?fbclid=IwAR1N1s0UpjkEckjpvIGyJScRogwZeYk6CpE_PV2M_Pptjg6uSu-nCnBBm9M.

⁶³ Resolution of the Cabinet of Ministers of Ukraine No. 171 of Mar. 25, 2015 "On Approving the Procedure for Conducting Special Vetting of the Persons Applying for Positions of Responsibility or Heightened Responsibility and Positions of High Corruption Risk, and Amending Certain Resolutions of the Cabinet of Ministers of Ukraine" // Available at: <https://zakon.rada.gov.ua/laws/show/171-2015-%D0%BF#Text>.

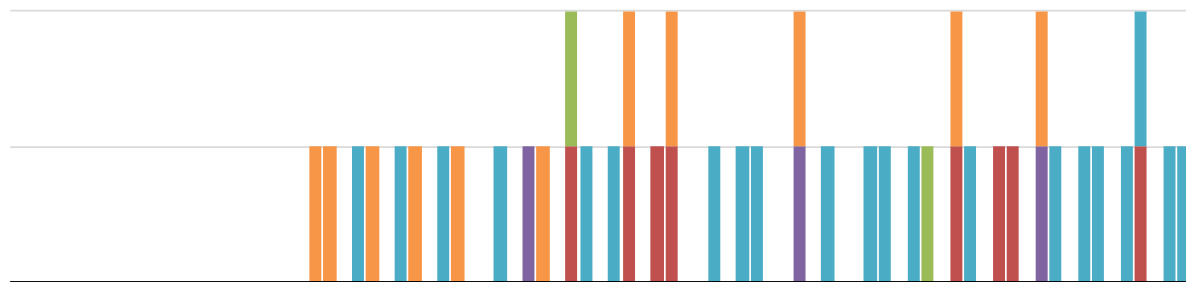
four – on a regular basis). Only in Croatia judges undergo regular review by the national security service. At the same time, in our opinion, the mechanism that exists in Ukraine does not interfere with judicial independence, given the method and content of review, and is necessary to guarantee the security of the state.

Figure 45 (57*) **Possibility of higher/Supreme Courts to take decisions on the consistency of case-law of lower courts on their own initiative:** in Ukraine, the Supreme Court ensures uniform application of the legal norms by courts of different specializations. The exercise of this authority is carried out through several mechanisms. Primarily, the Supreme Court is a cassation-level court, and its opinions on the application of legislative provisions, as formulated in the Court's resolutions, must be considered by other courts when applying the relevant provisions. The application of such opinions by the courts of the first and appellate instances will play an important role in case of future cassation appeals against their judgements. For example, to appeal a court decision using a cassation procedure, a person must either provide a reasoning that the appellate court applied the legislative provision without taking into account the opinion of the Supreme Court contained in its resolution or justify the need to deviate from the Supreme Court's opinion that was applied by the appellate court in deciding the case. The law even provides for a special review mechanism if the Supreme Court wishes to depart from a legal opinion which it has previously issued.

If a case was not brought before a court in a procedurally authorized manner, the Supreme Court cannot provide binding guidelines or recommendations regarding its consideration. The Supreme Court, on its own initiative, can only summarize judicial practice, publicize its own legal positions, and provide advisory clarifications on the application of legislation when deciding court cases.

In most of the EU states, the supreme courts do not have the right to provide lower-tier courts with recommendations or guidelines on deciding the cases on their own initiative. Only in four countries the supreme courts are empowered to provide general guidelines to courts on their own initiative, and in another four countries – to provide binding guidelines for all courts/judges regarding the manner in which the cases must be decided. In our opinion, the mechanism of ensuring consistency of judicial practice by the Supreme Court which exists in Ukraine sufficiently ensures the independence of judges in the administration of justice, making it impossible for the Supreme Court to provide guidelines on its own initiative regarding the consideration of a specific case.

Figure 46 (58*) Safeguards relating to temporary employment of judges/prosecutors as politicians/ministers/government officials/cabinet members/in other political offices:



BE CZ EL LU MT RO UA BG DK DE EE IE ES FR HR IT CY LV LT HU NL AT PL PT SK SI FI SE

- no specific rules in place, but the general ethical norms apply
- notification/declaration of the new temporary employment to a specific body by the judge/prosecutor
- cooling-off period required before the person can return to their position of a judge/prosecutor
- authorisation from a body needed for the judge/prosecutor to leave their position temporarily

Note: the left column reflects the availability of safeguards relating to temporary employment of judges in a political office, and the right column reflects this for prosecutors.

In Ukraine, a judge/prosecutor must be politically neutral; that is, they cannot belong to any political party or show allegiance to it, or participate in political actions. Violation of these requirements results in disciplinary liability. Temporary appointment of judges/prosecutors to political positions is also not allowed. Such appointment is possible only after the removal of a judge/prosecutor from the position held. These restrictions are intended to ensure the impartiality and independence of judges/prosecutors in the performance of their functions.

At the same time, in most of the EU countries, a judge/prosecutor can temporarily become employed in a political position and then return to the administration of justice/execution of prosecutorial functions. Only six EU states do not allow such temporary employment. In our opinion, such situation negatively affects the impartiality and independence of judges/prosecutors, since even after being removed from a political office, from an outsider's point of view, a judge/prosecutor may be perceived as having retained political connections, which casts doubts on the impartiality of this person during the administration of justice/execution of prosecutorial functions.

safeguards relating to the functioning of national prosecution services

Figure 47 (59*) Authority reviewing a prosecutor’s decision not to prosecute: according to the provisions of the criminal procedure legislation, the adopti: according to the provisions of the criminal procedure legislation, the adoption of a separate decision on the launch of criminal proceedings is not envisioned in Ukraine. As a general rule, the investigator, inquirer, or prosecutor immediately, but not later than 24 hours after submitting a statement about the commission of a criminal offense or after independently discovering from any source the circumstances that may indicate the commission of a criminal offense, shall enter relevant information into the Unified Register of Pre-Trial Investigations and start an investigation⁶⁴. At the same time, if there are procedural grounds (for example, lack of sufficient evidence to prove a person’s guilt in court and lack of opportunity to obtain it), a prosecutor may close the criminal proceedings. Such a decision of the prosecutor may be reversed by a superior prosecutor or by court.

Almost all EU states provide for review of a prosecutor’s decisions not to prosecute. At the same time, in most countries such oversight is carried out by a superior prosecutor.

Figure 48 (60*) Bodies with power to conduct criminal investigation

| | BE | BG | CZ | DK | DE | EE | IE | EL | ES | FR | HR | IT | CY | LV | LT | LU | HU | MT | NL | AT | PL | PT | RO | SI | SK | FI | SE | UA | |
|-------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--|
| Police | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Public prosecutor | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Investigative judge/magistrat | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gendarmerie | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Military bodies | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Tax authority | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| National security agency | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

According to provisions of criminal procedure legislation, pre-trial investigations in Ukraine are carried out by the National Police units, the Security Service of Ukraine, the State Bureau of Investigation (investigation of crimes committed by officials who have a particularly responsible position, judges, and law enforcement officers, as well as war crimes, etc.), the National Anti-Corruption Bureau of Ukraine (investigation of high-ranking corruption cases), and the Economic Security Bureau of Ukraine (investigation of crimes that encroach on the functioning of the state’s economy (for example, tax and duty evasion)).

⁶⁴ Criminal Procedure Code of Ukraine, Art. 214 // Available at: <https://zakon.rada.gov.ua/laws/show/4651-17#n622>.

*Independence of Bars and lawyers***Figure 49 (61*)** Independence of Bars and lawyers, 2021:

The 2012 reform of the bar in Ukraine changed the previous Soviet concept, which was contrary to the European standards – the state stopped controlling the activities of the lawyers. Instead, the bar authorities were clearly regulated by the Constitution and the new law, namely: the bar received professional self-governance, the ability to independently manage access to the profession, to resolve issues of disciplinary liability of lawyers, to maintain the Unified Register of Lawyers of Ukraine, etc. Furthermore, representatives of the profession received the right to independently establish professional rules.

According to the Constitution of Ukraine, the bar operates to provide professional legal assistance to citizens and legal entities. All lawyers of Ukraine must be members of the National Bar Association of Ukraine. The independence of the bar is guaranteed by Art. 131-2 of the Constitution of Ukraine. The activity of the bar is also regulated by the Law of Ukraine “On the Bar and Advocates’ Activities”, which was adopted in 2012. In accordance with the Law, self-governance of the bar is based on the principles of election, publicity, binding nature of the decisions of the bar’s self-government bodies for lawyers, accountability, and the prohibition for the bar’s self-governance bodies to interfere the professional activities of the lawyers. Only lawyers of Ukraine can participate in the work of self-governance bodies of the bar and be elected to their membership.

Guarantees of bar activity are set forth the Article 23 of the Law, in particular: any interference and obstruction of a lawyer’s practice is prohibited; the life, health, honor and dignity of a lawyer and his/her family members, as well as their property are under the protection of the state; lawyer confidentiality is protected and interference in a lawyer’s private communication with the client is prohibited; prohibition on identifying a lawyer with the client; etc. Also, the law provides for special guarantees during searches: a motion for a search warrant and other investigative actions against a lawyer can only be submitted by the Prosecutor General of Ukraine, his/her deputies, and prosecutors of regional level and

the cities of Kyiv and Sevastopol; a search warrant decision by the investigating judge must specify the list of property that is planned to be searched during the investigative action; a representative of a regional bar council must be present when a lawyer is searched; etc.

Thus, the legislation of Ukraine meets the international standards for the independence of legal profession and protection of lawyer's confidentiality. Compared to the EU member states, Ukraine is at a fairly high level in terms of guaranteeing the independence of the legal profession at the legislative level. However, in practice, there are problems with ensuring compliance with the guarantee of confidentiality of lawyer-client relationship which, in particular, is confirmed by the information from the Committee for the Protection of Lawyers' Rights⁶⁵. Thus, searches in the offices and residences of lawyers are not infrequent, and documents or items containing attorney-client privilege are not only examined by investigators, but can also be seized, as the search warrant decision by the investigating judge is not required to contain a justification as to why the documents or property that is planned to be searched do not contain a lawyer's confidential information. Moreover, there are cases of when representatives of the bar council are not notified or are notified not in a timely manner by the law enforcement authorities of the search, or are prevented from participating in investigative actions.

Furthermore, there are also problems with the bar's self-governance. The bar has never actually become an independent, self-governing organization. Led by a narrow circle of lawyers, the Bar Council remains influential through its control over the qualification and disciplinary bodies of lawyers and over membership fees paid by all lawyers⁶⁶.

⁶⁵ Report of the Committee to Protect the Rights of Lawyers and Advocate Activity for 2021 // Available at: https://unba.org.ua/assets/uploads/c80276feb6ac85f7b4f2_file.pdf.

⁶⁶ Ukraine and the Association Agreement: Monitoring of Implementation in 2014-First Half of 2021 // Available at: https://ucep.org.ua/wp-content/uploads/2022/02/zvit_ucep_ukr_final.pdf.

CONCLUSIONS FOR SECTION 3

1. The data from sociological surveys conducted in recent years prove that the majority of Ukrainian citizens do not perceive the judicial system as independent. Similar results were also received from surveys of business representatives, and in 2020, distrust of the judicial system was mentioned as a key obstacle to foreign investment by foreign investors. Among the main reasons for this perception are the existence of political interference and corruption among the judiciary. According to a 2021 sociological survey, almost 80% of citizens believe that the richer or more influential party will win in court.
2. From the point of view of institutional aspects of ensuring the judiciary's independence, the legislation of Ukraine generally meets international standards. The 2016 constitutional amendments minimized the influence of political bodies on the activities of the judicial system, giving complete power to the judicial governance authorities. At the same time, unsuitable legislative mechanisms for the formation of such bodies in practice have led to the fact that their activities merely preserved the negative phenomena that existed in the judicial system, which resulted in the adoption in 2021 of legislative amendments aimed at their complete reboot.

CONCLUSIONS AND RECOMMENDATIONS

The assessment results showed that, compared to the judicial systems of the EU member states, the Ukrainian justice system has both weak and strong points. The “strengths” of the Ukrainian justice include:

- being cheap for case participants. The amount of the court fees that must be paid when applying to court is several times below that in many EU states;
- high level of digitalization. One does not even need to leave home to apply to court, pay the court fee, participate in a hearing, and receive a judgement based on the results of hearing of the case;
- high level of online availability of information about the judicial system. In Ukraine, unhindered, free, 24-hours online access is provided both to legal consultations on the most common issues and to information about the courts’ activities, as well as to judgements of various court tiers. Furthermore, online broadcasts of individual court hearings are public available (as a rule, this applies to hearings that have significant public interest);

Among the “weaknesses” of the Ukrainian justice are the following:

- insufficient level of human and financial resources. In 2020, there were slightly more than 12 working judges per 100,000 residents in Ukraine, which is one of the lowest indicators among the EU countries. Furthermore, although the state spent 0.42% of GDP on courts (one of the highest indicators among the EU countries), it was only EUR 13 per resident (the lowest indicator among the EU countries). In combination with the fact that only 2% of court expenses are directed to development, as well as frequent non-targeted and ineffective use of the limited resources that are allocated, this impedes the development of the Ukrainian justice system;
- insufficient development of alternative dispute resolution methods. Various alternative dispute resolution methods provided for by the Ukrainian legislation (arbitration, arbitration courts, mediation) are rarely used by ordinary citizens in practice;
- adaptation to the needs of persons with disabilities. Due to insufficient financing of the judicial system and inconsistent state policy, measures directed at ensuring barrier-free access to justice have not been fully implemented;
- child-friendliness. Although Ukraine has ratified most of the international documents

related to the protection of children's rights, the adaptation of justice to the needs of children is still at a relatively low level in practice. At the same time, in recent years, the work on this issue has significantly intensified;

- accessibility for persons who do not speak the state language. The websites of the vast majority of courts and even the official web portal "Judiciary of Ukraine" do not have an English-language version;
- low level of trust in courts by citizens, trial participants, businesses, and foreign investors.

It should be noted that in terms of key indicators, the Ukrainian justice system does not fall behind the EU members' systems, and for some indicators (e.g., digitalization or publicity) it is even among the leaders. Of course, the reform of the Ukrainian judicial system should begin with the relaunch of the key bodies of judicial self-governance – the High Qualification Commission of Judges of Ukraine and the High Council of Justice – that are responsible for the integrity of the judicial corps and the protection of independence of judges, since the trust in courts depends on the performance of each judge and the ability of the system to punish those judges whose actions discredit its authority. This reform is already underway. At the same time, it would be appropriate to start working now on the implementation of certain thematic and institutional projects that could help improve the Ukrainian justice, notably:

Thematic projects:

- reviewing the minimum income level that entitles one to obtain free secondary legal aid, as well as granting the courts with discretionary powers to decide on ensuring the provision of such aid to a person depending on his/her financial condition and life circumstances;
- reviewing the amount of court fees in order to ensure a balance between compensation of the costs for consideration of the case and effective access to justice;
- conducting informational and educational campaigns among the public and court visitors regarding alternative dispute resolution methods, the basics of the functioning of the Ukrainian justice, and citizens' rights (via an online course format);
- introducing child-friendly justice trainings into the training programs for judges, prosecutors, lawyers, and police officers;
- regulating the legal status and procedures for engaging and verifying qualifications of sign language interpreters;
- updating the official web portal "Judicial Power of Ukraine" by:
 - updating the information content, primarily in the section containing information for citizens;
 - creating a mobile version of the portal;
 - creating a separate section on alternative dispute resolution methods;
 - adaptation to the needs of visually impaired persons (including by introducing the necessary functionality);

- creating an English-language version to publish basic information about the activity of the judicial system of Ukraine;
- introducing the practice of preparing annual reports on the state of ensuring access to justice for persons with disabilities;
- creating a web portal about justice for children, with content adapted to the needs of children of different age groups;
- introducing technologies to ensure secure remote work of judges and court staff.

Institutional projects:

- developing a system for monitoring the justice activity, which would include the operational collection and automated analysis of statistical data (including by separate categories of cases or persons appealing to court), organizing and conducting sociological studies and surveys of users of court services and professional lawyers;
- conducting an audit of the judicial system for its “barrier-free” nature (including the official websites of the courts) and developing, based on its results, a strategy for ensuring unimpeded access to justice for persons with disabilities and standards for court interaction with persons with disabilities;
- modernizing the court financing mechanism by introducing transparent procedures for the formation of budget requests and allocation of funds, as well as control over the effectiveness of expenditures;
- developing the concept of digitalization of the judiciary, to include provisions for the implementation of artificial intelligence and blockchain technologies in current activities;
- developing a system of secured communication for interaction among justice system entities;
- creating an alternative (out-of-court) dispute resolution mechanism (for example, the institute of justices of the peace) for consideration of minor cases.