

**STRATEGY  
OF JUSTICE SECTOR REFORM  
2015-2020**

**CHAPTER 1.  
GENERAL PROVISIONS**

The Strategy for Sustainable Development “Ukraine 2020” defines the objective, axes, road map, top-priorities and indicators of the appropriate defence, socio-economic, institutional and legal conditions of development of Ukraine.

Among immediate priorities for action, the special attention is focused on judicial reform *aiming* to establish such an order which will ensure the due level of legal culture in the society, the social actors’ activities based on the rule of law and human rights and freedoms protection and, if violated, the possibility of rapid, fair and adequate restoration thereof.

Judicial system of Ukraine and related legal institutes (OR: *justice sector as a whole*) exist for protection of the rights, freedoms and legitimate interests of a person and a citizen, the rights and legitimate interests of legal entities, the interests of the State by timely, efficient and fair dispute resolution based on the rule of law.

The fundamental principles of judicial reform are defined in this Strategy of Justice Sector Reform 2015-2020 (hereinafter – the Strategy).

The Strategy aims to develop priorities in reforming the judiciary – justice sector by way of constitutional amendments, while undertaking immediate efforts to support positive changes in operation of relevant legal institutes .

The interventions, activities, expected outcomes and indicators of justice sector reform implementation will be enlisted in the Action Plan which will be developed and approved for implementation of this Strategy.

The implementation of this Strategy will result in effective, efficient and well-coordinated operation of justice sector, its liability to the citizens of Ukraine, its freedom of any political impact and its compliance with EU standards and best practices, the activity thereof being based on the rule of law.

## **CHAPTER 2.**

### **OBJECTIVE AND MISSION OF THE STRATEGY**

#### ***Objective of the Strategy is:***

defining priorities in justice sector reform for practical implementation of the rule of law and ensuring the judiciary which will comply with public expectations of independent and fair court, European system of values and standards of human rights protection.

#### ***Mission of the Strategy is:***

- outlining the problems and defining the reasons thereof to be eliminated by way of reforming the justice sector;
- defining axes, activities and stages of reforming the justice sector;
- ensuring proper coordination and strategic planning of the reform process;
- identifying indicators to develop an appropriate Action Plan for its implementation; establishing expected outcomes and indicators of justice sector reform implementation;
- increasing public confidence in the judiciary and related legal institutions in a whole due to carried out activities.

## **CHAPTER 3.**

### **ANALYSIS OF THE SITUATION**

According to the Constitution, Ukraine is a State of law in which human right and freedoms and their safeguard determine the content and axe of the state policy. Promotion and protection of human rights and freedoms are the main duty of the State. Ukraine recognizes and respects the rule of law.

However, today the state of justice in Ukraine does not allow considering national judicial system is able to perform its duties.

The main reasons for such a situation are:

- Low legal culture and legal consciousness of the society.
- Corrupted judicial system.
- Judges' dependence of the executive and legislative branches, in particular, constitutional provisions slowing down the increase of the judges' independence
- Low efficiency of procedural tools for protection of rights and freedoms of individuals. Absolute priority given to enhancement of the court's jurisdiction to all and any legal relation
- Underdeveloped system of ADR
- Underdeveloped methods of defining the best quantity of judges and court staff in accordance with the workload.
- Lack of the mechanisms for establishment of functional balance of the judges' workload, which results in lower quality of justice.
- Lack of unified methodological approaches in planning of court expenses.
- Lack of unified and consistent court practice.
- Lack of or underuse of information systems' capacities (e-justice system) lack of holistic and unified electronic case management system.
- Inappropriate workload of the judges and court staff.

- Underdeveloped budget planning and management in the judiciary.
- Underdeveloped human resource planning in the judiciary.
- Low confidence to the judicial system in a whole and to the judges in particular.
- Low publicity of the justice sector.

Existing *legal representation and enforcement systems* have also showed lack of operational capacity, including:

- Discrepancy in the formal status of the advocate and actual conditions of the advocates' activity, including underdeveloped ensuring of the advocates' rights and professional guarantees in practice.
  - Lack of proper budget and financial management, communication capacities of the Bar self-governance.
  - Inefficiency of the disciplinary oversight, unclear ethical standards of the advocates' activity.
  - Insufficient professional training of the advocates.
  - Lack of comprehensive approach and smooth balance in distribution of responsibilities in legal aid system.

There are considerable shortcomings in the *system of court decision enforcement*, including:

- Low level of actual enforcing court decisions by the State Executive Service and Treasury Service. Lack of efficient bailiffs' motivation system.
  - interaction between bailiffs and other public and private institutions.

There are shortcomings in functioning of *PPO and criminal justice* as related legal institutes, including:

- Insufficient structural independence in PPO combined with impunity and insufficient accountability, lack of compliance between PPO functions and European standards
  - Lack of strategic planning, proper budget and financial management, low communication capacities.
    - Lack of operational independence and integrity of prosecutors, need in more developed in more developed performance management tools, greater ethical and disciplinary rules
      - Underdeveloped internal and external oversight tools within the fight against corruption.
      - 
      - Obstacles for structural autonomy of investigative bodies.
      - Underdeveloped formal and practical channels of communication (including data exchange networks) between executive bodies and PPO, between public authorities and European/international partners.
        - Lack of proper IT-infrastructure and capacities for using information and e-justice systems.
        - Lack of adversarial approach in criminal proceedings, absence of professional liability for violation of human rights and neglect of adversarial principle.
          - Inconsistency of new procedural powers and actual institutional functions of pre-trial and trial actors. Inconsistent use of procedural regulations by PPO.

- Lack of individualised, proof-based approach in prevention of crimes, rehabilitation and resocialisation. Limited use of ADR and lack of positive practice in application of probation mechanisms.

Besides, there are systemic problems in *strategic planning* and *legislative drafting*, including:

- Excessive focus on short-term decisions in legislative drafting, lack of systemic vision in democratisation of the justice sector in long-, medium- and short-term perspective.
  - Lack of proper analysis and research support of the reform process, lack of strategic planning.
  - Lack of proper regulatory and financial feasibility of the scheduled reforms.
  - Underdeveloped M&E mechanisms.
  - Insufficient level of coordination and consultations between responsible stakeholders, key players and civil society institutes.
- Lack of proper dynamics in approximation to EU legislation.

## **CHAPTER 4. PILLARS AND STAGES OF REFORM**

### ***Pillars of reform***

Justice sector reform will be held within the following axes:

- Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges
  - Improving Competence of Judiciary
  - Increasing Transparency and Accountability of Judiciary
  - Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions
  - Increasing Transparency and Publicity of Justice
  - Strengthening Bar and Legal Aid
  - Improving Enforcement System
  - Strengthening PPO
  - Enhancing Fairness and Defence Rights in Criminal Proceedings
  - Increasing Effectiveness of Justice Sector in Fight Against Organised Crime and Corruption
  - Increasing Effectiveness in Prevention of Crime and Promoting Rehabilitation in Execution of Sanctions
- Improving Reform Coordination and Interoperability of Justice Sector Information Systems

### ***Stages of reform***

The justice sector will be reformed in two stages:

- *first stage* – immediate renovation of legislation aiming to restore public trust in Ukrainian judiciary;
- *second stage* – systemic changes in regulatory framework, including by introducing amendments to the Constitution of Ukraine, and comprehensive building of institutional capacities-

## **CHAPTER 5.**

### **SYSTEM OF TASKS, ACTIVITIES AND RESULTS**

#### **1) Increasing Independence of Judiciary, Streamlining Judicial Governance and System of Appointment of Judges**

- Transparent internal review system of professional suitability within the judiciary in place, using objective criteria and fair procedures;
- Review of the appointments systems, ensuring that all cases of appointment or transfer to a particular judicial post are held upon merits-based criteria and competition basis, and that lifetime appointment to a judicial post is guaranteed with no probationary period;
- Establishing the institute of the judges' detachment to other courts for regulation of their workload;
- Development of impartial and transparent procedures for the dismissal or termination of office of a judge;
- Reducing the likelihood of outside interference in the administration of justice by efficient and practical mechanism of liability for intervening in the administration of justice, and safeguards against any possibilities of political influence over the procedure of judges' appointment and dismissal, holding the judges liable for the legitimate exercise of their functions;
- Optimising the organisational forms and activities of judicial governance bodies that will contribute to independence of the judiciary in a whole and will ensure clear separation of their powers; awarding the bodies of judicial self-governance with clearly defined responsibilities to guarantee the independence of judges, to ensure functional activity of courts and judges, and represent their interests, in particular, vest with them the powers to represent the judiciary branch as a whole;
- Enhanced requirements, including ethical ones, for members of the judiciary governance bodies:
  - at the first stage* – by improving legislative regulation of the selection procedure of the members of such bodies by congresses of judges, advocates, representatives of law HEIs and scientific institutions according to the rule of law and the principles of publicity and political neutrality;
  - and then* – streamlining the bodies responsible for forming of the judicial corps, including, eventually merging the High Council of Justice and the High Qualifications Commission of Judges, and possibly other judiciary governance bodies into a single body with joint powers;
- In the *medium to long-term perspective*, additional improvements of strategic planning, financial and communication capacities of the judicial governance system, in order to make sure that the judiciary is governed more efficiently, that its budgeting process is based on performance and results, and that it speaks with one and effective voice when it comes to initiatives that directly affect the administration of justice.

#### **2) Improving Competence of Judiciary**

- Further efforts in performance management required to make sure that competitions are held in all cases of appointment to a particular judicial post, while making sure that judges are always evaluated and promoted on the basis of the same, transparent criteria; establishing the system of

qualifying certification of judges and of their regular assessment, introduction of the statutory requirement of increasing competence as one of the main criteria for promotion of judges, and other steps;

- Improving the system of initial training, including by strengthening the formal link between the initial training and the appointment of judges, introducing efficient mechanism of scrutinising the detailed information about a judicial candidate from the point of view of integrity and other qualities, revision of the requirements to the candidate's age and professional experience, and other steps;

- Improving capacities and distribution of the court staff;

- Comprehensive strengthening of the National School of Judges and the continuous training system;

- Development of the mechanisms to seek greater uniformity of practice through strengthened research and analysis capacities of the higher courts, streamlining the roles of the Supreme Court and other higher jurisdictions, ensuring their close cooperation with scientific institutions (National Academy of Legal Sciences of Ukraine, high legal educational institutions).

### **3) Increasing Accountability of Judiciary**

- Development of relevant integrity-check oversight mechanisms, notably extended declarations of asset, income and expenditures by the judges and their family members, introduction of proportional penalties for failure to declare or incomplete or false declaration, practical and effective investigation mechanisms of corruption and other serious offences committed by judges, including by way of effective system of authorising application of intrusive measures against an allegedly corrupt judge and reviewed regulatory framework on immunities, allowing only functional immunities of judges to be retained;

- Ensuring efficient investigation of corruption and other serious offenses committed by the judges.

- Transmission to the authorities responsible for the formation of the judicial corps and judicial discipline liability law granting consent to take precautions associated with imprisonment judge

- Improving ethical rules and their foreseeability;

- Improvement of the disciplinary framework, including proportionate system of disciplinary penalties, revision of the limitation period for bringing a judge to disciplinary liability, improved disciplinary proceedings by reason of the development of the mechanism to prevent a person under investigation from bringing court proceedings, development of the efficient mechanism of appeal against the decisions of the bodies conducting disciplinary proceedings;

- Determining exhaustive list of clear-cut grounds or circumstances enabling reprimand for the judge's breach of oath;

- Development of internal oversight tools, including improving regulatory base on the status and duties of judicial inspection, introduction of the “judge's dossier”.

#### **4) Increasing Efficiency of Justice and Streamlining Competences of Different Jurisdictions**

- Revision of the courts network by development of clear-cut criteria and mechanisms to delineate competences of administrative, commercial and general (civil and criminal) jurisdictions; optimisation of the courts network after careful gap analysis and impact assessment, with interests of efficiency and fairness duly taken into account; consolidation of certain elements of the system at appropriate levels (in particular, creation of inter-district courts, consolidation of appeal regions);
  - Increasing efficiency in management of court resources by optimising administrative staffing of courts depending on workload of judges in these courts;
  - Increasing use of court fees and other paid services to cover expenses of the justice sector; higher court fee rates in property and other types of civil litigation, while retaining adequate degree of access to justice. Establishment of a mechanism determining the amount of court fees by the subject of an appeal to the court and by the subject of the claim, declaration or appeal.
  - Undertake measures to ensure the attractiveness and prestige of professional work in the judiciary, including by improving their socio-economic guarantees;
  - Improvement in use of information systems (IS) for greater delivery of e-justice services introduction of electronic management information systems in courts, including full electronic case management and tracking (before higher review instances), e-notification, e-summons, e-trial (in some cases), e-payment, random case assignment, audio or video recording of all hearings, internal jurisprudence data-base information system, legislative data-base information system; decreasing of the courts' workload, equal and impartial distribution of cases between judges, including the determination of a judge and (or) a panel of judges at all stages of proceedings; Step-by-step implementation of e-justice tools that will allow to users to go to court, to pay court fee, to participate in the proceedings and to obtain the necessary information and documents in electronic version.
  - Mechanisms in place to ensure timely resolution of disputes and counteract abuse of procedural rights through imposing effective procedural restrictions on liable parties for failure (without good reason) to demonstrate 'best effort', provide or conceal evidence etc.;
  - Enhancing the means of alternative (out-of-trial) dispute resolution, including through practical implementation of mediation, arbitration, and conciliation; enhancement of the list of categories of cases to be resolved by arbitrators or to be considered by simplified proceedings; establishing effective procedural mechanisms to prevent consideration of cases in the absence of the litigation between parties;
  - Definition of categories of cases in each jurisdiction in which the reduced number of stages of appeal. Reducing the burden on the courts.
  - Development of the system of review of judicial decisions and re-opening of cases to improve accessibility and efficiency of justice, reduce the courts' workload, promote uniformity of practice and better reasoning of court decisions. Improvement of the procedural powers of the cassation;
  - Development of socio-economic conditions at judiciary;
  - Implementation of the instruments and methodology for evaluating the operation of the judiciary according to EU standards.

## 5) Increasing Transparency and Publicity of Justice

- Promotion of access to information; balancing statutory framework on confidentiality with the right to a fair trial and the interest of transparent justice; including by establishing clear legislative criteria for closed proceedings;
- Extension of individual rights regarding transparency of judicial governance and publicity of courts proceedings; ensuring greater openness of information about the judiciary governance bodies, courts, stages of proceedings and their decisions;
- Better public access to open court hearings and court decisions.

## 6) Strengthening Bar and Legal Aid

- As an *immediate priority*, determining the types of legal assistance that may be provided by the advocates only which will allow enhancing general quality of legal assistance and quality of justice as a whole, not limiting participants to a court proceedings in their right for access to justice;
- Strengthening of the Ukrainian National Bar Association as an institution to make sure that the Bar operates effectively, manages the legal profession and represents the collective interests of advocates;
- Ensuring the balance of powers between bar governance bodies, including qualification and disciplinary commissions of advocates; improving the system of accountability of the bar self-governance bodies, increasing the responsibility of their members;
- Strengthening professional and ethical requirements to advocate activity, including for persons intending to become an advocate and disciplinary oversight of the profession; clarifying the reasons for bringing an advocate to disciplinary responsibility, improving the rules of disciplinary proceedings against an advocate, differentiating the types of penalties that may be applied to an advocate;
- Development of initial training system, including procedures for taking the Bar exam, serving the internship, developing the institute of assistant to an advocate;
- Improving the continuous training system of advocates;
- Improving the system of respecting the status of advocates, effective mechanism of bringing State officials to liability for violation of guarantees of independent advocacy. strengthening guarantees for the protection of confidentiality.;
- Improving socio-economic, financial, and operational conditions for the exercise of legal profession, by introducing the system of advocates' professional civil liability insurance, granting the advocates with the right to use the simplified system of taxation accounting and reporting;
- Strengthening the legal professional privilege;
- Strengthening information systems management for better provision by advocates of e-justice services;
- Facilitating the access of citizens to legal aid through improvement and respect of greater quality and delivery standards for legal aid; Extension of legal aid to areas of representation beyond criminal cases, improving coverage in the regions, enhancing the quality of services;
- Ensuring proper financing of the legal aid system from both State and private funding sources.



## **7) Improving Enforcement System**

- Establishing unified operational mechanism for enforcement bodies;
- Development of the institution of private bailiffs, including by creating self-governance system, mechanism of admission to the profession, system of oversight and revoking of licences, putting in place professional civil liability insurance;
  - Creation of equal competition between private and State-run limbs of enforcement system.
- Striking the balance between the powers of private and public bailiffs;
  - Revision of the principle of remuneration of bailiffs to improve enforcement;
  - Developing initial and continuous trainings according to clearly defined and properly systematised objectives and tasks, revision of the requirements to bailiffs; Harmonised ethical and disciplinary rules for State-run and private bailiffs; Less formalised and better streamlined stages of enforcement proceedings and terms of enforcement procedures;
    - Promotion of balance in respect of creditor's and debtors' rights; including by practically enabling bailiffs to reach debtors assets while putting in place safeguards against abuse, effective incentives for voluntary enforcement of court decisions and sanctions against unwilling debtor;
    - Strengthening information systems management for better provision by bailiffs of e-justice services.

## **8) Strengthening PPO**

- Ensuring greater institutional independence of PPO; Streamlining the responsibilities of PPO and limiting their application in accordance with the recommendations of the Council of Europe.
  - Creation and effective operation of PPO self-governance bodies, as additional safeguards of PPO independence.
    - Striking the balance between independence, competence, accountability and efficiency of PPO, including by introducing changes in the prosecutorial governance set-up, performance management and professional and continuous training systems
      - Ensuring greater functional autonomy of prosecutors from improper internal influence;
      - Ensuring smooth balance between investigation functions of PPO and other law enforcements bodies;
      - Improving the ethical and disciplinary frameworks for prosecutors, and improved internal oversight mechanisms, including by introducing extended declaration of revenues and expenditures by the prosecutors and their family members;
        - Ensuring practical and effective investigation of corruption and other serious offences committed by prosecutors.

## **9) Enhancing Fairness and Defence Rights in Criminal Proceedings**

- Providing the defendant with a wide range of procedural rights at pre-trial, trial stages and on appeal, ensuring equality of arms in handling of evidence, greater judicial oversight of remand as intrusive measures;
  - Formalisation of standards of proof for greater clarity and foreseeability or procedural law and practice;

- Extension of jury trials to cover a wide range of crimes;
- Promotion of balance between respect of the victim's right for access to justice and adversarial framework of criminal proceedings by:
  - granting the victim with additional procedural rights,
  - improving the regulations on remand at trial stage of criminal proceedings,
  - imposing obligatory participation of the defence in all and any criminal proceeding under the contract, and in simplified proceedings – in certain cases.

#### **10) Increased Effectiveness of Justice Sector in Detection and Prevention of Organised Crime and Corruption**

- Development of internal and external oversight mechanisms for increasing accountability and dealing with corruption within the judiciary and prosecution;
  - Promoting greater application of research, analysis and risk management to guide crime detection and prevention
  - Improving substantive and procedural legal framework to bring Ukraine closer to EU *Acquis* in criminal justice, most notably the legislation in the field of combatting organised crime, including development of effective mechanisms and procedures to recover proceeds of crime;
  - Enhancing inter-agency cooperation in detection and prevention of crime at the domestic and international levels, including enhanced cooperation with Eurojust, other EU agencies and Member States.

#### **11) Increasing Effectiveness in Prevention of Crime and Promoting Rehabilitation in Execution of Sanctions**

- Development and practical application of modern approaches to penitentiary management. Further reduction of overcrowding, improvement of prison infrastructure and private sector service provision,
  - Development of ethical and disciplinary framework and internal oversight mechanisms of penitentiary institutions;
    - Further individualisation of sentencing, risk management and improvement in prison security arrangements
    - Development of mechanisms for combatting and prevention of ill-treatment in prison establishments through external oversight and independent monitoring
    - Development of regulatory and institutional framework for probation services, including supervised release on parole;
    - Transformation and development of the existing penitentiary service employees into a functional modern probation authority; ensuring advanced infrastructure for the probation service.

#### **12) Improving Reform Coordination and Interoperability of Information Systems in Justice Sector**

- Development of central and local levels of justice sector reform coordination mechanisms,

- Development of strategic planning
- Improvement in management and interoperability of information systems by the courts, PPO, penitentiary and other justice sector services,  
Development of European and international justice cooperation mechanisms, including signature and review of bilateral cooperation agreements with EU MS in sphere of justice.

## **CHAPTER 6. STRATEGIC PLANNING AND COORDINATION**

Strategic planning and sector reform coordination are of paramount significance in order to make sure that the sector policy development process is sufficiently inclusive and productive.

Strategic planning will ensure step-by-step implementation of the tasks and activities of the justice sector reform. Its content, stages and challenges shall be discussed by professional communities and remain in the focus of their attention at the implementation stage for flexible correction, if needed.

Reform coordination envisages comprehensive cooperation of all branches of power and judicial authorities in accordance with the Action Plan which will be developed and approved for implementation of this Strategy. Coordination will be held at central, institutional and regional levels.

## **CHAPTER 7. FINANCIAL SUPPORT OF THE STRATEGY IMPLEMENTATION**

The Strategy provides a range of financial expenses to achieve the goals.

Required financial and human resources should be taken into account while designing step-by-step implementation of the Strategy.

Implementation of the Strategy will be funded from the following sources:

- State budget in so far as it concerns the funds for institutional operation;
- Foreign donor projects and programmes of technical and financial assistance;
- Other sources within law

## **CHAPTER 8. REGULATION FRAMEWORK OF THE STRATEGY IMPLEMENTATION**

Regulation framework of the strategy shall be ensured by way of drafting and adoption of legal acts with accordance to the established procedure.

## **CHAPTER 9. INDICATORS FOR THE STRATEGY**

Implementation of the Strategy envisages key indicators for evaluating the implementation of reforms and programmes.

The Action Plan will define the actions, expected results (outputs, outcomes, impact) and means to implement the Strategy. Impact indicators will include, in particular:

- perception of public trust in the judiciary in a whole;
- confidence of professionals (advocates, lawyers) in the judiciary and other justice institutions;
- indicators of better performance by the justice sector, attested by improved standings of Ukraine in various relevant international rankings and.