



Analysis of the Ukrainian Regulatory Framework regarding the Status of the Assistant Judge and its Compliance with the Standards and Recommendations of the Council of Europe

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The Analysis was developed within the framework of the Council of Europe project “Support for judicial institutions and processes to strengthen access to justice in Ukraine”

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Abbreviations

CoE – Council of Europe

CCJE - Consultative Council of European Judges

ECHR- European Convention on Human Rights

HR – Human Resources

The Analysis was developed within the framework of the Council of Europe project “Support for judicial institutions and processes to strengthen access to justice in Ukraine” implemented in cooperation with the Council of Judges of Ukraine by the CoE international consultant Mrs Marina Naumovska-Milevska.

The aim of this Analysis is to assess the status of the of the Ukrainian regulatory framework in case of judicial assistant in light of their compliance with the Council of Europe standards and the best practices of the member States of the Council of Europe. The emphasis of the Analysis is put on the status, duties, rights and responsibilities of judicial assistants in Ukraine. The Analysis also includes recommendations as to further development of the legislation on the status of the judicial assistants.

The consultant would like to express its gratitude to the persons and institutions for their contribution during the meeting held on 30th of November 2021, especially to the representatives from the Council of Judges of Ukraine, the Verkhovna Rada of Ukraine, the Supreme Court, the High Council of Justice, the Association of Assistant Judges of Ukraine; the Associations for the Development of Judicial Self-Government of Ukraine from different regions as well as the representatives from the CoE Project Office in Kyiv.

Executive Summary

1. In most of European judicial systems, judges in their adjudicative work are supported by legally trained judicial assistants¹. Till recently, the attention and priorities of most of the judicial reforms were predominantly put on judges and prosecutors as the key players within judiciary. Consequently, much latter then judges and prosecutors, most of the EU countries started regulating the status, duties, rights and responsibilities of their judicial assistants.
2. Judicial assistants are an important part of the judiciary which help to unburden judges from non-judicial tasks. Competent judicial assistants can provide valuable support to judges and thereby help to improve the quality of judicial decisions. Then again, the work of judicial assistants is dual; on the one hand they help speed up the work of the courts and consequently reduce backlogs and on the other hand they help judges in preparing judgements/decisions of a higher quality.
3. Legal systems differ in many aspects and, even within the same judicial system, the court structure and staffing might vary. The circumstances in which judicial assistants are employed and function are generally truly diverse. Moreover, within one legal system, different approaches may be used by different courts, which can also be said in the case of the Ukrainian judiciary.
4. The role and influence of this category of assistants within judiciary has been the subject of academic discussion in the US for a long time now and is more and more gaining interest in Europe as well, particularly after the adoption of the CCJE Opinion 22 on “The Role of the Judicial Assistants”² (hereinafter Opinion 22).
5. Just like Opinion 22, this Analysis understands judicial assistants as being professionals with a legal education who support judges in their adjudicative work. Court staff who take on purely administrative duties, but also court clerks and court registrars, are outside the scope of Opinion 22 and of this Analysis.
6. Judicial assistants support judges at all courts and instances, or panels of judges, in their adjudicative work. In some countries judicial assistants only work at the highest courts and/or the constitutional court and/or at specialised courts. The support of judges by judicial assistants is a rather recent phenomenon, and in most countries judicial assistant positions were introduced in order to cope with court’s backlog and increase court efficiency. Such persons are called: Judicial Assistants; Law Clerks; Legal Officers; Secretaries; Wissenschaftliche Mitarbeiter; Gerichtsschreiber; G  f  rendaires; Greffiers; or Assistant Judges, as it is the case in Ukraine.
7. The Ukrainian authorities have invested significant efforts into reforming the judiciary and this is to be acknowledged. The legislative reform that was implemented in the period 2014-2018 is closely aligned with CoE standards and as a result has a positive impact on the public trust in the judiciary.
8. In the case of the judicial assistants one could say that compliance with CoE standards is generally achieved at the legislative level, i.e. judicial assistants were formally introduced in the Ukrainian judicial system with the legislative changes in 2002³. However, further improvements in the legal framework are necessary, especially in regard to defining their status, introducing competitive selection process and securing adequate reimbursement for judicial assistants, in order to secure that best candidates enter and are kept within Ukrainian judicial service.

¹ Judicial Assistant or Assistant Judge terms used in this document have the same meaning. Assistant Judge is used to keep the authenticity of the English translation of this post in the Ukrainian legislation

² CCJE Opinion No. 22 (2019) “The Role of the Judicial Assistants”

<https://rm.coe.int/opinion-22-ccje-en/168098eecd>

³ introduced by the Law of Ukraine “On the Judicial System of Ukraine”

9. Judicial assistants undertake a wide range of tasks, from mere legal research to almost independent decision making. This high degree of involvement in the judicial process raises many questions about their status and role in the judiciary.
10. The Analysis elaborates several key areas relevant for the Assistant Judges status and it is organized in 6 parts:
 - Part I – Institute of the Assistant Judge in Ukraine
 - Part II – Status, Selection, Remuneration and Tenure of the Assistant Judges
 - Part III– Duties and Responsibilities of the Judge Assistants in Ukraine
 - Part IV– Professional Conduct
 - Part V – Conclusions and
 - Part VI - Recommendations
11. This Analysis main goal is to provide an insight into judicial assistant (judge's assistants) scheme within Ukrainian judicial system and its compliance with Council of Europe standards and best practices of member States. Based on the Analysis bottle necks are identified as well as further steps to improve the situation.
12. The methodology of the assessment was based primarily on the analysis of English translations of the excerpts of relevant laws and secondary legislation, which were provided by the CoE project office in Ukraine⁴, against the background of the CoE standards, recommendations and best practices of the member States. The information gathered from the legislation was crosschecked with the feedback provided from the representatives of the institutions present to the online meeting held on 30th of November 2021. The list of the stakeholders which took part in the meetings is provided in the Annex 2.
13. This Analysis also takes into consideration strategic documents and reports related to the judicial system in Ukraine. Websites of relevant judicial institutions were consulted too. The list of documents analysed and used for the elaboration of the Analysis is attached as the Annex 1.
14. For each of the elaborated areas, Ukrainian legal framework was assessed and possible steps for further improvements identified in a form of specific recommendations. They are organized under 5 topics: Status of the Assistant Judges; Selection and Appointment of the Assistant Judges; Remuneration/Salary of the Assistant Judges; Organization of the Assistant Judges – Pool of Assistants; and Career Development of the Assistant Judges; and are elaborated in detail in part VI of this document.
15. Finally, the identified pitfalls and proposed recommendations aim at encouraging Ukrainian authorities to take further steps and bring performance improvements with regard to the status of the judicial assistant. They are just a first step in defining the most suitable model of an assistant judge for the justice system in Ukraine.

⁴ The list of reviewed legal acts is provided by the CoE project in Ukraine and are given in Annex 1

Part I – Institute of the Assistant Judge in Ukraine

16. In most European countries judicial assistants exist though their role, status, competencies and rights vary significantly; from those that work solely on drafting judgements to those that do mostly legal research and preparatory work for reaching the final judgement, from those that have a status of a civil/judicial servant to those that employees of the state. However, their role, duties and responsibilities are always regulated by law. On the surface, these judicial assistants are as different as their legal systems in which they are employed. However, looking closely, common features can be identified to analyse and compare judicial assistant schemes across courts and legal systems.
17. The institute of the “assistant judge” was firstly introduced by the Law of Ukraine “On the Judicial System of Ukraine” back in 2002, almost 20 years ago. However, its actual implementation started few years later, in 2005. The need for its introduction, like elsewhere, was caused by judge’s workload and court backlogs. On one side judges had to be freed from the routine technical work in the preparation and consideration of court cases and on the other side judiciary had to increase its efficiency and reduce huge court backlogs.
18. The institution of an assistant judge – their status and conditions of work is determined with the Ukrainian legislation. Firstly, the Law of Ukraine “On the Judiciary and the Status of Judges”, provides the legal base for the establishment of the position of an assistant judge. According to art. 157 of the same Law, “Every judge shall have an assistant, whose status and conditions of work shall be determined by this Law and the “Provision (Regulation) on the Assistants Judge” (hereinafter “Provision”) approved by the Council of Judges of Ukraine.” Furthermore, the legal status of judge assistants is defined by the Article 92 of the Law of Ukraine “On Civil Service”, while different aspects of their duties, responsibilities and rights are regulated by the Labour Code, Rules of Conduct for Court Employees and other regulatory legal acts on remuneration of employees of executive support services.
19. In 2018 the “Provision on the Assistants Judges” has been developed and adopted by the Council of Judges of Ukraine. This regulation is the key legal document, which establishes the general principles, the role, responsibilities and the rights of a person holding the position of an assistant judge.
20. From the legislative point of view, one could say that by regulating the status of the judicial assistants, compliance with CoE standards is generally achieved at the legislative level. Though some improvements are necessary to enhance professionalism of judicial servants.
21. The Council of Judges of Ukraine and The State Judicial Administration of Ukraine proposed to develop and adopt a separate law, which should regulate the specific legal aspects of the executive support service staff in the Ukrainian judicial system. However, till this day, the initiative has not been effected.

Classification of the Assistants Judges

22. In most of the CoE member States, judicial assistants work at all courts and instances, though their duties and titles may differ from one court to another. In some States, they are only engaged at the higher courts and constitutional court (Austria, Cyprus, Denmark, Germany), or only at the constitutional court (Italy), or at specialised courts (Albania, Administrative Courts). In Bulgaria, for instance, judicial assistants only work at courts with a particularly high workload as determined by the Supreme Judicial Council.

23. In similar fashion, the Ukrainian legislator makes distinction between judicial servants working in different courts and court instances. According to the “Provision on Assistant Judges” there are five categories (classifications) of assistant judges, dependent on the court/institution of their employment. Namely, the Provision distinguishes:
- a. Assistant judge
 - b. Assistant presiding judge
 - c. Assistant deputy presiding judge
 - d. Assistant judge/member of the Council of Judges of Ukraine
 - e. Assistant clerk of the Judicial Chamber of the Court of Appeal
24. The positions of assistant judges fall under the positions of the executive support services to which the Law of Ukraine “On Civil Service” does not apply, except for Article 92 of the Law of Ukraine “On Civil Service” which defines the positions of executive support services. The employment contract, extension, grounds for dismissal and termination, are governed by the Labour Code of Ukraine.
25. Scattering around the provisions governing the judicial assistants’ role in different laws and bylaws, makes the status of the judicial assistant vague and lowers the weight of the position they hold.

Organization of the Assistant Judges

26. There are three different ways of organising the work of judicial assistants within European judiciaries: a judicial assistant or a number of them working with one judge (cabinet system⁵); judicial assistants assigned to a panel of judges (panel system⁶) and judicial assistants organised in a pool and working on cases with different judges (pool system⁷). The States also combine the systems or have in different court different ways of organizing the work of judicial assistants. For instance, in Austria for educational purposes the cabinet system is organized at the Constitutional Court, while at the Supreme Court pool system is employed. Or it is also possible to build teams of judicial assistants for special cases as it is sometimes the case in Azerbaijan and Finland. Many countries use different systems at different courts.
27. Ukrainian legislation provides, that every judge has an assistant, meaning one assistant is assigned to an individual (respective) judge. Each judge selects his/her assistant independently. Additional assistants may be appointed only in exceptional cases. In addition, upon request, a presiding judge may fill the position of an additional assistant designated for a deputy presiding judge until this vacant position of deputy presiding judge is filled. Also, in agreement with the Chairperson of the Council of Judges of Ukraine, a judge/member of the Council of Judges of Ukraine may get an additional assistant. On extraordinary occasions, a clerk of the Judicial

⁵ [130] Summary of the responses to the questionnaire for the preparation of the CCJE Opinion No. 22 (2019)

“Austria for education and at Constitutional Court, Azerbaijan, Belgium gréffier; Bosnia and Herzegovina Constitutional Court; Croatia; Cyprus, Georgia one assistant per judge at first instance, two per Judge at Supreme and Constitutional Court, at second instance one per judge and one extra per chamber; Germany Constitutional Court, Ireland Superior Court, Latvia plus several for whole court; Lithuania except Supreme Court, Malta, Moldova, Poland; Russia, UK Court of Appeal 1/1 at SC, the more junior judges share one, moreover there is a pool for dealing with permissions to appeal; Ukraine 1/1, those judges with highest workload may have two, judges select them themselves.”

⁶ [131] *ibid*

“Andorra first instance; Belgium usually référendaire; the Netherlands: 1,5 - 2 per judge for a team of judges who work in a special area of law; Switzerland, first and second instance and formally Federal Court; Czech Republic, Finland sometimes to judicial assistants assigned to one case, two judicial assistants for three judges; Germany Federal Courts, Iceland, Romania, Slovenia, first instance 0,51 judicial assistants per judge, in district courts 0,81, in high courts 0,52 and in the Supreme Court 1,47, at SC every judge has one; panel system also at Constitutional Court; Spain traditionally panel but now more and more service units for whole court; Sweden.”

⁷ [132] *ibid*

“Andorra second instance; Austria, Supreme Administrative Court, practice at other courts varies; Bosnia and Herzegovina, Bulgaria: determined by the internal rule of the president of the respective court; Denmark, Finland, Ireland first instance Research Office, Latvia plus one per judge individually; Lithuania Supreme Court, Luxembourg, Monaco, Norway ratio 1/1 at the Supreme Court 5/1, 4/1 at Court of Appeals; Spain new organisation model.”

Chamber or a judge with the heaviest judicial workload may get an additional assistant. And finally, each judge in the Constitutional Court of Ukraine has one judicial assistant and two research consultants, which are appointed by the chief of staff of the court based on the proposal of the judge.

28. Pool system allows assistants and judges to work with different people and gain more varied experiences but also it is a flexible mechanism which allows better mobilization as well as rotation of judicial assistants. In addition it can help in balancing the inconsistencies in workloads which put judges in unequal situation in cases when judge's business changes, as for example, judge is no longer engaged in any additional duties in self-governance, or the excessive workload for which additional assistant was appointed no longer exists (e.g. overflow of pension fund cases) but additional assistant stays and does not want to be reassigned to another judge.
29. Assistant judges are employees of the executive support services within the court administration, and their tenure is connected with the judge they are assigned to. For the preparation and organisational support of the judicial process they are only accountable to the respective judge, his/her immediate superior. However, in regard to all other issues, such as compliance with labour discipline, an assistant judge shall be accountable to the court administrator within the limits of his/her competence. The court administrator shall create appropriate conditions for an assistant judge to exercise the official duties and upgrade the level of professional competence in the National School of Judges of Ukraine if/when necessary. The court administrator shall also supervise the compliance of an assistant judge with the internal labour regulations of the court and the Rules of Conduct for Court Employees. Although, this type of duality exists in most of the European countries, it seems that in the Ukrainian situation, it is very often a reason for misunderstandings and misinterpretations between judges and court administrators.
30. The current number of judicial assistants according to the majority of stakeholders is sufficient, currently there are more assistants than judges. Namely, there are 5989 judge's assistants in Ukraine. They serve 5022 judges. They are organized in the public association "The Association of Judicial Assistants of Ukraine" which was established in 2016 with a goal to protect the rights and interests of the members of this profession. The main tasks of this organization are the creation of an independent platform for initiating legislative changes that improve the legal status of judicial assistants, increase their professional level, communicate with representatives of other legal professions, modernize approaches at work to the level with European standards of foreign colleagues, as well as highlight complex issues in the media.
31. According to the current standing of the Association of Judicial Assistants of Ukraine they identified and articulated three main challenges which need immediate attention: the status of the judge assistant; increase in wages and the holiday benefits.
32. On the other side, in many courts there is a constant shortage of staff, as a result of the unattractive conditions under which judicial assistants and other court staff work. They often leave the service for a civil servant positions or apply for judge/prosecutor position. The number of supporting staff on the other side, depends on the judge workload, as well as on the additional duties of the judge. Having in mind that due to heavy workload some judges can have additional assistants, this possibility sometimes creates inconsistencies in their workloads which put judges in unequal situation. Judge situation in terms of workload changes, in cases when a judge is no longer engaged in any additional duties in the judicial self-governance bodies, or the incoming overflow of cases for which additional assistant was hired have significantly reduced and the backlog no longer exists, but additional assistant stays in its

position, because assistants cannot be employed temporarily. The problems arise when the judge is reluctant to give up his/her additional assistant to another judge or the assistant is not willing to be reassigned to another judge. Though the legislation allows this mobilisation within judiciary, in practice this is not very appreciated change.

33. The employment of a judicial assistant is often restricted to a specific time, more precisely, depends on the term of a respective judge. In that line, they can have long-term or short-term engagements, e.g for those assistants working for a newly appointed young judge it can be a lifetime appointment and for those working for a judge near retirement age it can be a short-term appointment. After the legislative changes in 2015, judicial assistants in Ukraine, lost their status of a civil servant and are now so called “political advisors” as a part of the “executive support services”, whose positions and duration depend on the term of a respective judge. These unfavourable working conditions demotivate judicial assistants and may increase the risks of corruption.
34. The assistant judge model that is employed in Ukraine which looks like a cabinet system, is more likely to build a higher degree of trust between judges and their personal judicial assistants. Furthermore, judges in most cases turn into mentors to judicial assistants, through on the job coaching and mentoring. This further enhances skills and prepares judicial assistants to become judges which on the other hand has educational purposes of the whole process. Although the level of mentorship much depends on the individual style and character of judges, meaning it is not formal nor regulated. Furthermore, working as judicial assistant reduces the initial training time organized by the National School of Judges of Ukraine, in cases when judicial assistants apply for judge’s position.
35. Though, it is also possible that this type of cabinet system might lead to a higher degree of dependence between judicial assistants and judges. The close ties between them open the door for influence in the decision-making process which could be considered as violation under Article 6 of the ECHR.
36. Pool system on the other hand allows assistants and judges to work with different people and gain more varied experiences. It is also a flexible mechanism which allows better mobilization as well as rotation of judicial assistants. In addition pool system can help in balancing the inconsistencies in workloads which put judges in unequal situation in cases when judge’s business changes, as for example, judge is no longer engaged in any additional duties in self-governance, or the excessive workload for which additional assistant was appointed no longer exists (e.g. overflow of pension fund cases) but additional assistant stays and does not want to be reassigned to another judge.

Part II- Status, Selection, Remuneration and Tenure of the Assistant Judges

Status of the Assistant Judges

37. There are different examples about the status of the judicial assistants in Europe, which could be clustered under three major models: internship, scribes and seconded judges. In the “internship model”, young graduates serve as judicial assistants for a short time, usually up to five years, to gain insights “from behind the bench”. Thus, such work has an educational purpose, even though it may also speed up the court’s work. Such internship positions serve as a foundation for another job (judge, prosecutor, lawyer) rather than a career on its own. The “scribe” position offers a lifelong career on its own with possibilities for advancement, more vertical than hierarchical, with potentially substantial duties in the judicial process. And lastly,

judicial assistants can also be young judges (Germany) who are seconded to higher courts to gain experiences and qualify for promotion. Interns and seconded judges have in common that they serve only for a short time as judicial assistants. The difference is, however, that seconded judges have more experience in the judiciary and a different status. They do not only learn at higher courts, but also bring valuable experiences from lower courts.

38. During the last six years the status of the judge assistant in Ukraine has been dramatically changed. Namely, after the adoption the Law of Ukraine “On the Civil Service” in 2015, the judge assistants lost their status of a civil (public) servants and became staff (employees) of the executive support services⁸. By losing this status of a civil servant, they also lost some benefits typical for a civil servant, most relevant being; duration of the maternity/paternity leave; sick leave; holidays; job certainty; and adequate remuneration. This kind of unfavourable working conditions may increase the risks of corruption for judicial assistants and thus negatively affect a judicial system, as stated in Opinion 22. The absence of the status of civil servant also leads to potential risks related to the Article 6 of the ECHR, associated with the decision-making process especially having in mind the level of involvement of Ukrainian judge assistants in drafting court judgments/decisions.

Selection and Appointment of the Assistant Judges

39. With regard to the selection and recruitment of judicial assistants besides the typical requirements such as “*a transparent process based on objective, merit-based criteria taking into account experience, qualifications, legal skills, integrity, communication skills and motivation*”, the recommendations of the CCJE Opinion 22 also include that the selection should be made by the judiciary and in cases where judicial assistants are appointed to work with an individual judge, the judge should also be involved in the selection process. Therefore, the judiciary itself, not the executive, should be responsible for the selection of their staff members. In addition, the judiciary is best suited to select candidates with the qualities and skills necessary to support the court.
40. In the majority of the CoE member States, judicial assistants are selected after an advertisement through public competition, often including an interview with members of the judiciary. (The Netherlands). In Poland, the selection competition is organized by the Ministry of Justice. In some countries, a judge can select his or her judicial assistants or is at least participate and be heard in the process. (Malta, Germany (Constitutional Court), Switzerland Federal Court)
41. While the process of selection of judges in Ukraine is rather rigorous, complex and lengthy, the process of selection of judicial assistants on the other hand almost does not exist. According to the Art. 157 of the Law of Ukraine “On the Judiciary and the Status of Judges”, only three formal requirements are prescribed for a person to become eligible for a position of a judge assistant. Consequently, the judge assistant: 1. shall be a citizen of Ukraine, 2. having a degree in Law, and 3. be fluent in the official language. Assistants of justices of the Supreme Court in addition to these preconditions, should also have at least three years of professional experience in the field of law. The assistant judge is appointed by the court administrator of the respective court based on the proposal of the judge. “7. *Judges shall independently*

⁸ Article 92 § “1. The positions of executive support services include advisers, assistants, commissioners and Spokesperson of the President of Ukraine, employees of the Secretariats of the Chairperson of the Verkhovna Rada of Ukraine, his/her First Deputy and Deputy, employees of the Secretariats of Parliamentary Factions (Parliamentary Groups) in the Verkhovna Rada of Ukraine, employees of the executive support services of the Prime Minister of Ukraine and other members of the Cabinet of Ministers of Ukraine, assistant consultants of Members of Parliament of Ukraine, assistants and academic advisers of judges of the Constitutional Court of Ukraine, assistant judges, as well as positions of executive support services in other state authorities.”

*select their assistants. Assistant judge shall be appointed and dismissed by the court administrator of the relevant court upon the judge's application.*⁹

42. Judge's application shall not be considered only in cases when an applicant fails to submit all the necessary documents and/or has submitted documents¹⁰ that do not meet the established requirements. Also, the court administrator shall refuse to sustain the judge's application for appointment to the position of an assistant judge if an applicant fails to meet the requirements set forth by § 2 of the Article 157 of the Law of Ukraine "On the Judiciary and the Status of Judges". The cases where an applicant for the position of an assistant judge can be refused according to the Provision are:
- *"is recognised as legally incompetent or whose legal capacity is limited in accordance with the procedure established by law;*
 - *has a criminal record for committing a premeditated crime, if such a criminal record is not removed from official records or removed in accordance with the procedure established by law;*
 - *under a court's decision, he/she is deprived of the right to engage in activities related to the performance of state functions, or to hold relevant positions;*
 - *has an outstanding administrative penalty for a corruption or corruption-related criminal offence;*
 - *is a citizen of another state."*
43. It seems that the position of the judge assistant is in fact the first step towards the post of a professional judge, since one can gain enormous legal experience by working as a judge assistant. It also has educational purpose since it gives an adequate weight in the further career development. Namely, working as a judge assistant shortens the period of initial training at the National School of Judges necessary for those judicial assistants who wish to become professional judges.
44. Opinion 22 supports judicial assistants becoming judges and encourages judiciaries to recognize and promote this way of educating future judges. To build on their experience, gained during court work, can reduce training needs and help develop an efficient court system, is stated further in the Opinion.
45. To secure external but also internal independence of the judiciary, involving the respective judge in the selection process is more than welcomed, especially, having in mind the proximity of judicial assistants to the adjudicative process. Judicial assistants work closely with judges who must be able to rely on their trustworthiness, competence and motivation. This is especially important in the Ukrainian case, where judicial assistants are assigned to an individual judge and are involved in the decision-making process.
46. However, the appointment to the position of the assistant judge is carried out without a competitive selection process, simply by written application of the respective judge, implemented by the order of the court administrator of the particular court. The Personnel Management Department only checks the compliance of the submitted documents with the requirements established by law. To secure that the best candidates enter judicial service, the selection of candidates for judge assistant post should be made through a transparent and competitive process based on objective, merit-based criteria.

⁹ Para 7, Provision on Assistant Judges

¹⁰ As identified under part "II. Qualification requirements", of the "Provision on Assistant Judges"

Remuneration/Salary of the Assistant Judges

47. In all CoE member States the state directly or via the court system pays judicial assistants. Some countries have an independent court budget from where all judicial posts are paid, some are paid directly through the treasury system of the Ministry of Finance. The only exception is in the UK with the pilot judicial assistants' scheme at the Commercial Court, which was funded by the Commercial Bar.
48. The salary scale of judicial assistants in the CoE Member States varies; from 20% of the judge salary in Poland, to 90% of the judge salary in Slovenia. Though one could say the most common judicial assistant salary is between 35-40% of the judge salary. See the comparative table in the Annex 3.
49. Alike, the judge assistants in Ukraine are paid by the State. The position of the assistant is under the scope of the Governmental legal acts on the remuneration of the executive support services staff which include the positions of assistants in the judiciary system.
50. According to the Provision, remuneration of an assistant judge shall be fixed in accordance with the Laws of Ukraine "On the Judiciary and the Status of Judges", "On Labour Remuneration" and regulatory legal acts of the Cabinet of Ministers of Ukraine regulating the terms of remuneration of employees of executive support services, including in the judiciary.
51. Their current salary ratio is approximately 1/6 in relation to the first instance judge salary, and 1/12 in relation to the salary of the Supreme Court judge. Though the percentage is not fixed in any regulation, just current practice.
52. On the other hand the Provision provides that the judge assistant shall also be entitled to supplement for the labour intensity and a supplement for performing especially important work for up to 100% of their salary or in case of late completion of tasks, deterioration of the quality of work and violation of labour discipline, supplements for labour intensity and performing especially important work shall be cancelled or their amount reduced. Assistants are also entitled to financial assistance for solving social and welfare issues in the amount not exceeding the average monthly salary of an assistant judge and to a supplement as a percentage of the official salary by virtue of service duration in the state authorities in the amounts defined by the Provision. Specific terms, procedure and supplements awarded to an assistant judge are defined in the bonus-related regulations in force in the relevant court.
53. Furthermore, they are also entitled to a supplement as a percentage of the official salary by virtue of long service in the state authorities in the following amounts: *"10 per cent of the official salary for more than 3 years of service, 15 per cent of the official salary for more than 5 years of service, 20 per cent of the official salary for more than 10 years of service, 25 per cent of the official salary for more than 15 years of service, 30 per cent of the official salary for more than 20 years of service, 40 per cent of the official salary for more than 25 years of service; financial aid for health care during the provision of annual leave in the amount not exceeding the average monthly salary of an assistant judge"*, though as explained by the representatives from the Association, this topping up was never paid, hence it is only part of the Provision, which is a secondary legislation.
54. The application of these incentives or disciplinary actions to an assistant judge are carried out by the court administrator of the relevant court in agreement with the judge, based on the procedure regulated in the Labour Code of Ukraine. Though this joint competence of the judge and the court administrator often lead to

disagreements between judges and court administrators, they can also be seen as a proper use of checks and balances in the judicial assistant performance.

55. The longer assistants work at courts, the more important it is that their work is paid adequately. Therefore, their remuneration should be proportional to the age of service. Not only should the value of the work done by judicial assistants be properly recognized and acknowledged through salary incentives, but risks of corruption might arise as a result of underpaid judicial assistants.

Tenure of the Assistant Judges

56. There are different approaches when it comes to the length of time for which judicial assistants can be employed. In most of the CoE member States, serving as a judicial assistant can be a permanent career, although the position is not primarily designed as a permanent career, in practice judicial assistants may stay for a long time or even until retirement. In other countries, serving as a judicial assistant is a short-term position, which also has an educational aspect as a part of the initial training programme.
57. Ukraine has a rather unique position when it comes to the tenure of the assistant judge. According to the Provision¹¹, an assistant judge shall be appointed to the position for the term of office of his/her immediate superior (respective judge that primary submitted the application requiring an assistant), not exceeding the period of tenure of the immediate superior. Meaning that a mandate of a judge assistant collates with a mandate of a respective judge.
58. In the case of more than two months absence of a respective judge, as well as from the moment of termination of the powers of a judge on the administration of justice, or dismissal of a judge from a judge position, judicial assistant, consensually, upon the order of the court administrator, may be transferred to another position of the court which does not belong to civil service positions.
59. In addition, in certain cases, the assistant can be assigned for a certain period, as an additional assistant to another judge (judges), who has the highest judicial workload, upon the order of the court administrator, which is again based upon the submission of the application from the respective judge and the assistant's personal consent.
60. If there is no consent of the assistant to be transferred to another position of the court or to serve as an additional assistant to another judge, or if there is no opportunity to transfer to another position in the court, he/she is going to be dismissed.
61. Both systems of long-term and short-term engagements have their advantages and disadvantages. Long-term engagements produce experienced judicial assistants that can work on routine cases more independently which can make courts more efficient. However, if/when judicial assistants become very experienced, they might have too much influence in the adjudicative process. This would be problematic considering the guarantees of Article 6 of the ECHR emphasized above. If serving as a judicial assistant has an educational purpose, it is especially important that judicial assistants move on. Moreover, a regular change among judicial assistants can help courts and judges to stay more dynamic and connected with new developments. On the other side, short term engagements suffer from frequent changes of the new assistants

¹¹ paragraph 8, part II. "Qualification requirements. Procedure for appointment, tenure and dismissal of an assistant judge" of the "Provision on Assistant Judge"

which must be trained and need time to become helpful. Tying these two mandates (terms) together, puts the efficacy in the administration of justice on a very weak knee.

62. Also, the stay of judicial assistants in the same role should not be too long. If judicial assistants stay for a long time, they gain valuable experience courts do not want to lose. Therefore, member States which consider the position of the judicial assistant as the permanent career, often provide the opportunity for advancement and an increase in pay. (Andorra; Croatia, Cyprus, Lithuania, Moldova, Poland, Romania, Slovenia, Spain, Switzerland). Another way of advancement may be promotions from lower to higher courts as judicial assistant. (Bosnia and Herzegovina, Georgia, Slovenia). In the Netherlands, the only opportunity to move is horizontally, to other areas of law. In Slovenia, where vast majority of judicial assistants usually become judges, many judicial assistants were stuck in their position because of a lack of new positions for judges. To motivate judicial assistants, the Government introduced possibilities for advancement among judicial assistants.
63. In light of these various experiences, Opinion 22 recommends that the *“member States consider regulating the status of judicial assistants, taking into consideration their selection, remuneration, evaluation, organisation, training needs and career. The benefits of short-term or long-term engagements of the judicial assistants are well known and it is left to the Member States to find the balance in the duration of their engagements according their individual needs and traditions.”* However, the CCJE Opinion 22 also emphasizes that *“the time of work should not be too short, so that judicial assistants can provide support of high quality and gain valuable insights.”*

Part III– Duties and Responsibilities of the Assistants Judges in Ukraine

64. The role of judicial assistants and their working relationships with judges change with increasing duties. In most judicial systems, judicial assistants draft decisions/judgements. Thus, the level of their involvement in drafting judgements differs. The involvement of judicial assistants is low in Ireland and the UK, where judicial assistants do not draft judicial decisions/judgements. In countries where judicial assistants are involved in deliberations, hearings and even decide cases, their contribution becomes visible to other judges and even the public. However, the roles of judges and judicial assistants remain distinct and their relationship hierarchical even if the actual influence of judicial assistants continuously grows.
65. Opinion identifies two categories of judicial assistants based on their involvement in different stages of the judicial process, making distinction between:
- **the judicial assistants which work is related to the decision-making process** (Organising papers and researching facts; Drafting decisions or writing memos with a proposal for a decision; Independent work on cases; Work in the selection of cases for appeal or constitutional review; and
 - **the judicial assistants which work is outside decision-making process** (Legal research; Writing the official record of court hearings; Writing the official record of court hearings; Preparing decisions for publication; Preparing information for the media).
66. However as stressed in the recommendations of Opinion 22 the decision-making is at the heart of the judge's duties in all legal systems and the role of the judicial assistant is to support judges in their role, not replace them. The drafting of the

judgment must build on the judge's decision-making¹² in every aspect of the case. CCJE Opinion 22 also recommends that duties and responsibilities related to judicial decision-making process should be regulated, and if/when delegated to judicial assistants "*judges must command the law and facts in a way that judicial decisions remain fully theirs*". In that line, the Opinion reaffirms that the decision-making is not the privilege of judges which can be delegated at will but is at the heart of their duties in a society based on the rule of law.

67. Duties and responsibilities of the judge assistant in Ukraine are regulated in several legal documents. First the § 4 of the Article 157 Laws of Ukraine "On the Judiciary and the Status of Judges" states: "*4. The assistants of judges involved in the preparation of cases for the review shall be accountable to the respective judge only.*"

68. Second, procedural laws governing different jurisdictions (Article 66 of the Civil Procedure Code of Ukraine, Article 62 of the Code of Administrative Proceedings of Ukraine and Article 63 of the Economic Procedure Code of Ukraine) also define in general, the competencies of an assistant judge.

69. However, duties defined by these procedural laws instead of identifying the specificities of different procedures of the jurisdiction (specialization) repeat the same wording. Namely, according to all these procedural acts, provisions read the same, namely that assistant judge shall:

"1) take part in the registration of court cases, prepare draft requests, letters, other files related to the consideration of a particular case, enforcement documents by order of the judge;

2) prepare copies of court rulings for filing them to the litigants in the case and other parties to the case participating in the court proceedings in accordance with the requirements of the procedural legislation, ensure that copies of court rulings are filed when due;

3) execute other judge's orders concerning the consideration of court cases.

3. Assistant judge shall be entitled to exercise the powers of a court clerk by order of the judge (presiding over the Judicial Panel). During the exercise of such powers, an assistant judge may be challenged on the grounds defined by this Code for challenging a court clerk."

70. And finally, duties and responsibilities of judge assistant are listed in the key by-law the "Provision on the Judges' Assistants". This document makes distinction of their tasks with regard to five categories of assistants as listed in this Provision.

Namely, **judge's assistant** main tasks are to:

- "select legislative acts and files of case law that are necessary for the consideration of a particular court case;
- participate in the preliminary preparation of court cases for consideration, in the registration of court cases, prepare drafts of court decisions, requests, letters, and other files related to the consideration of a particular case by order of the judge;
- prepare copies of court rulings for filing them to the case litigants and other parties to the case participating in the proceedings in accordance with the requirements of the procedural legislation, ensure that copies of court rulings are filed when due;

¹² CCJE Opinion No. 11 (2008), paras 21-23

- monitor the timely conduct of expert studies ordered in the cases by expert institutions, the timely execution of judge’s rulings on compulsory summoning by law enforcement agencies, and in case of non-compliance with such rulings prepare drafts of relevant reminders, etc.;
- prepare draft instructions of the court on the performance of certain procedural actions by courts of other states, on the delivery of court documents in civil, economic, administrative and criminal cases, on the extradition of offenders to the territory of Ukraine;
- facilitate the registration and execution of instructions of courts of foreign states in accordance with the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases, and other international legal treaties of Ukraine on legal aid ratified by the Verkhovna Rada of Ukraine;
- perform other judge’s instructions concerning the consideration of court cases.”

71. It seems that these duties are the same for all court instances and specializations, though the consultant can’t confirm this, hence job descriptions (which also define tasks of an assistant) were not made available. However, from the discussion made during the meeting, no major differences are present in the job descriptions for judge assistants of different courts.

72. On the other side, **assistant presiding judge, assistant deputy presiding judge, clerk of the Judicial Chamber by order of the presiding judge, deputy presiding judge, clerk of the Judicial Chamber** shall:

- “provide organisational and analytical support for the activity of the presiding judge, deputy presiding judge, clerk of the Judicial Chamber of the Court of Appeal;
- prepare information content, speeches, draft reports, co-reports, instructions related to the operation of the court and the Judicial Chamber;
- summarise the information related to the implementation of orders and rulings issued by the presiding judge (deputy presiding judge, clerk of the Judicial Chamber), the Court Assembly, the Judicial Chamber Assembly;
- provide the interaction of the presiding judge, deputy presiding judge, clerk of the Judicial Chamber with law enforcement and other state authorities, public organisations, and in the absence of a judge rapporteur or spokesperson, provide the interaction with the media on the administration of justice and prepare respective information;
- arrange admitting visitors to the presiding judge, deputy presiding judge, clerk of the Judicial Chamber, participate in interacting with visitors;
- perform the functions specified for an assistant judge.”

73. This second category of assistants in terms of duties and responsibilities, besides legal content work they also provide organizational tasks but also tasks related to public relation in case of an absence of an assigned spokesperson.

74. And finally, **assistant judge/member of the Council of Judges of Ukraine** shall:

- “fulfil all instructions of the judge related to the exercise of his/her powers as a member of the Council of Judges of Ukraine;
- address issues related to the implementation of measures to provide the independence of courts;
- analyse and summarise challenging issues of legal protection of judges, social protection of judges and their families;
- process information and introduce suggestions for the development and organisation of implementation of measures to ensure the independence of courts and judges, upgrade the state of organisational support for the activities of courts;

- prepare draft appeals on the activities of courts to the state authorities and local self-government bodies;
- prepare information for consideration of issues related to the settlement of conflicts of interest in the activities of judges, prepare draft decisions and appeals related to these issues;
- keep records and collect statistics, prepare reports, draft responses to appeals received by the Council of Judges of Ukraine.
- execute other instructions and orders of the judge related to the activities of respective committees and joint activities of the Council of Judges of Ukraine;
- perform the functions specified for an assistant judge.”

75. Assistant judge/member of the Council of Judges of Ukraine, on the other side has completely different tasks. Their key tasks focus on keeping and strengthening the independence of the judiciary by dealing with issues such as: measures to keep the independence of courts, legal and social protection of judges, preparing information related to settlement of conflict of interest and keeping records and statistics regarding court efficiency and judicial performance.

76. Furthermore, an assistant judge can be present in court hearings but that is not their duty. Also, on the other side in case of deliberation, according to the Ukrainian legislation one of the guarantees of judicial independence and impartiality is the secrecy of deliberation room. The judicial assistant is not a judge therefore, she/he is not a part of a judicial panel and accordingly is not allowed to participate in the discussions on the case issues and adoption of certain judgment in the deliberation room.

77. In that line, the primary role of the Ukrainian judge assistant in general is to minimise the time that judge would spend on less relevant issues. In fact, by drafting the judgments, the assistant does not act as a judge but facilitates his/her work. Although, tasks as: selection the legislation, the case law, drafting requests, letters, and other materials, related to the proceedings, drafting the judgments and other procedural documents that are adopted by a judge, have direct impact on the judgments, they do not take over judge’s responsibility of a final saying in the decision making process. The judge has the final responsibility and a right to adopt the draft prepared by the assistant with or without changes.

78. Moreover, hence assistants are not present in the deliberations, judges must either draft decisions themselves or supervise the drafting process closely in order to make sure that the decision reflects the deliberations. Leaving judicial assistants outside the deliberation room could therefore function as an (informal) safeguard to prevent judges from passing important duties to their assistants. Judicial assistants are not present in deliberations in most of the CoE member States, even if they draft complete judgments. It would be interesting though, to inquire if it would be easier for the judicial assistants who draft judgments to fully reflect judges’ discussion in their work in cases where they are present to hearings and in the deliberations.

79. Looking at the type of duties, Ukrainian assistants could be put under the category of judicial assistants which work is closely related to the decision-making process. However, they also have tasks that are outside decision-making process and some administrative tasks too, making their list of tasks as one of the most numerous and diversified among their European colleagues.

80. In practice, these duties depend on the workload and are divided among the judge and his/her assistant in different ways. The role of an assistant judge also encompasses the tasks of a court clerk, they may act as a secretary of a court session, in case of the absence of a court secretary, upon an order of their respective judge.

81. In relation to the distinction made in Opinion 22, regarding the involvement of an assistant judges in the decision-making process, one could say that in the case of Ukraine assistant judges have combined duties and accordingly their responsibilities include tasks from the two categories of judicial servants identified under the Opinion 22. Namely, their **work is related to the decision-making process**, but also, they have tasks that are **outside decision-making process**.

Part IV– Professional Conduct

82. Judicial assistants involved in the drafting process of decisions, carry out important duties within the judiciary. Their conduct can directly influence the confidence of society and parties seeking justice. The parties coming to court will expect impartiality not only from the judge hearing their case but also from a judicial assistant supporting the judge working on the case.
83. The requirements for independence and impartiality are relevant only to judges. The main goal of the assistants' work is to perform tasks that assist judges. Since the judge's assistant does not consider the case and does not take any decisions, they are not under the rules of independence and impartiality.
84. In the absence of special Code of Ethics (conduct) for Assistant Judges in Ukraine, the principles of confidentiality, conflict of interest and professional conduct, are regulated with different regulations. In particular, Section 2 “Personal Ethics” of the Rules of Conduct for Court Employees, and Articles 22-26 of the “Provision on Assistant Judges”. Consequently, an assistant judge shall bear disciplinary, civil, administrative or criminal liability if found in a breach of provisions prescribed by the applicable law.
85. Although there are important differences in the role of judges and judicial assistants pointed out before, many principles expressed in the CoE standards concerning ethical and professional conduct of judges are also relevant for judicial assistants. Judicial assistants must act with integrity, propriety and impartiality. They must perform their duties diligently and with high competence.
86. In terms of confidentiality and recusal Opinion 22 asks for the same safeguards for judicial assistants like those already available for judges, presuming that judicial assistants are involved in the judicial decision-making process.
87. Therefore, the CCJE in its Opinion 22 recommends developing standards of ethical and professional conduct for judicial assistants reflecting their role and duties.

Part V – Conclusions:

The conclusions made below are based on the analysis of the excerpts from the relevant legislation governing judicial assistants provided by the CoE project office in Ukraine. The information gathered was crosschecked with the feedback provided by the representatives from the relevant institutions during the online meeting held on 30th of November 2021 regarding the status quo of the judicial assistants in Ukraine.

88. With the implementation of the judicial reform in Ukraine, significant progress in the judiciary as a whole has been achieved, and this has to be acknowledged. The legislative reform that was implemented in the period 2014-2018 is very much aligned with CoE standards¹³, though, it seems that the implementation struggles. From the legislative point of view, one could say that compliance with CoE standards and recommendations is generally achieved by introducing judicial assistants in the Ukrainian judicial system with the Law of Ukraine “On the Judicial System of Ukraine” in 2002.
89. However, further improvements would be necessary and not only in the implementation per se, but also in complete revision of the legal framework regulating judicial assistants. The judicial assistants’ status is vague, a selection process does not exist, and remuneration is not adequate for their duties and responsibilities.
90. Legal provisions regulating the status and the role of the judicial assistants are numerous and scattered around several different laws, starting with the Law of Ukraine “On the Judiciary and the Status of Judges” procedural laws (the Civil Procedure Code of Ukraine, the Code of Administrative Proceedings of Ukraine and the Economic Procedure Code of Ukraine) the Law of Ukraine “On Civil Service”, the Labour Code, the Law on Labour Remuneration legal acts on remuneration of employees of executive support services but also several bylaws such as the “Provision (Regulation) on the Judge Assistants” and the Rules of Conduct for Court Employees. Regulating the status and the role of judicial assistant in several legal acts results into repeated provisions which brings confusion and opens a door for “law collision”.
91. As regard to the status of the judicial assistants, the situation is even more problematic. In the last six years the status of the judge assistant in Ukraine has been noticeably changed. Namely, after the adoption the Law of Ukraine “On the Civil Service” in 2015, the judge assistants lost their status of a civil (public) servants and became staff (employees) of the executive support services¹⁴. By losing the status of a civil servant, they also lost the most benefits typical for a civil servant, most relevant being; duration of the parental leave; sick leave; holidays; job certainty; and adequate remuneration.
92. The second thing that strikes the eye is the selection and appointment of the judicial assistants. The selection procedure is not transparent, (without public competition) and it is not based on objective, merit-based criteria taking into account candidate qualifications and professional skills. Judicial assistants are appointed simply by written application of the respective judge, implemented by the order of the court

¹³ <https://rm.coe.int/doc-01-assessment-part-1/168097a779>

¹⁴ Article 92 § “1. The positions of executive support services include advisers, assistants, commissioners and Spokesperson of the President of Ukraine, employees of the Secretariats of the Chairperson of the Verkhovna Rada of Ukraine, his/her First Deputy and Deputy, employees of the Secretariats of Parliamentary Factions (Parliamentary Groups) in the Verkhovna Rada of Ukraine, employees of the executive support services of the Prime Minister of Ukraine and other members of the Cabinet of Ministers of Ukraine, assistant consultants of Members of Parliament of Ukraine, assistants and academic advisers of judges of the Constitutional Court of Ukraine, assistant judges, as well as positions of executive support services in other state authorities.”

administrator. Consequently, their appointment and their status diminish the professionalism required for this post.

93. Furthermore, the tenure of the judicial assistant is connected with the tenure of the respective judge, which can be very short or very long, but still uncertain. For those assistants assigned to a newly appointed young judge it can be a lifetime appointment and for those working for a judge near retirement age it can be a short-term appointment.
94. Additional assistants that are assigned upon request of judges with higher workload, very often put judges in an unequal position especially when the need for the additional assistant no longer exists and the second assistant is still on duty for this judge. The reluctance for change (loss of the support of the additional assistant or transfer to work with another judge) is present both among judges and judicial assistants.
95. The work of the Ukrainian judicial assistants is closely related to the decision-making process. Yet, they also have tasks that are outside decision-making process and some administrative tasks as well, making their list of tasks as one of the most numerous and diversified among their European colleagues. Consequently, the reimbursement is inadequate to the scope of duties and responsibilities assigned to the judicial assistants. Therefore, the post of the judicial assistant is unattractive and often qualified and competent judicial assistants leave the service as soon as they get the necessary experience and/or find better job.
96. This kind of unfavourable working conditions under which judicial assistants function in Ukraine, may increase the risks of corruption and thus negatively affect the judicial system, as stated in Opinion 22. The absence of the status of a civil servant also leads to potential risks related to Article 6 of the ECHR, associated with the right of the parties to an independent and impartial tribunal, especially having in mind the level of involvement of Ukrainian judicial assistants in drafting judgments/decisions.

Part VI – Recommendations:

The recommendations proposed here are aimed at encouraging Ukrainian authorities to take further steps to improve the status of judicial assistants by defining the most suitable model of an assistant judge for the justice system in Ukraine. They are in line with the CoE standards, particularly CCJE Opinion 22 “on the Role of Judicial Assistants”, also considering the best practices of the member State and having in mind the judicial system of Ukraine.

Status of the Assistant Judges

1. The status of assistant judges, taking into consideration their selection, employment, training, career development, dismissal, remuneration, appraisal, organization, duties, rights and judicial ethics, should be considered to be regulated with a special law to give importance to the assistant judge post adequate to their duties and responsibilities and to eliminate possibilities for derogating the provisions defined now by the secondary legislation.
2. The rights and benefits of the assistant judge should be set at least as the rights and benefits of the civil servant. This especially in regard to the holidays, sick leave, parental leave and job certainty. But also, in regard to improving the position and enabling full professional development and a clear career path for the judicial assistants.

Selection and Appointment of the Assistant Judges

3. The judicial assistants should be selected in a transparent process (through public competition) based on objective, merit-based criteria taking into account candidate qualifications and professional skills.
4. The body responsible for the selection of judicial assistants could be a body/institution with administrative/organisational duties in judiciary as for example the State Judicial Administration. A separate Selection Commissions could be established on the level of its territorial units/departments to organise the selection process for that territorial unit and to select judicial assistants to be added to the pool from which they will be employed later. Decentralized approach should be utilized to better meet the local needs of each court.
5. Objectiveness could be secured by a mixed composition of these Commissions including both administrative as well as judicial members. For example, the Head or other responsible of the SJA Territorial Unit (Department) the head of the Court (Court Manager), HR Representative, and a judge for example the representative from the Congress of Judges (from the court under the relevant SJA territorial unit).
6. When a need for judicial assistant arises, respective Judge/Justice can make the selection for their permanent and additional assistant from this pool of judicial assistants established at the level of their territorial unit the qualifications of which were already determined via the selection process.

Remuneration/Salary of the Assistant Judges

7. To secure that the best candidates enter judicial service and accompany judges in their work, their status and their remuneration should be fixed in legislation adequate

to the competencies prescribed by law. Having in mind the current tasks of the Ukrainian assistant judges as well as their proximity to the decision-making process, their remuneration should be reflected adequately in the salary scale. Therefore, significant increase of the current salary fixed in a percentage in relation to a judge salary would be recommended. For more details, see the comparative table in the Annex 3.

8. Furthermore, their remuneration should be proportional to the experience and age of service. The longer assistants work at courts, the more important it is that their work is paid adequately.

Organization of the Assistant Judges – Pool of Assistants

9. The system of a “pool of assistants” could be considered for both **permanent** and **additional** assistant judges. Though after judicial assistant is selected as a permanent judicial assistant, she/he will no longer be part of the pool. In cases when the judge’s mandate ends, a judge changes position or jurisdiction or upon judicial assistant’s request, the permanent judge assistant could return to the pool of judicial assistants and be reassigned to another judge/justice.
10. No distinction should be made between different judicial assistants in terms of their status, rights and responsibilities once employed by a court. Only that some assistants could be assigned to a judge permanently and other temporarily which will make the second more flexible to change posts. Nevertheless, the same possibility should also be given to the permanent assistants to allow mobility and changes when necessary.
11. Pool system allows assistants and judges to work with different people and gain more varied experiences but also it is a flexible mechanism which allows better mobilization as well as rotation of judicial assistants. In addition it can help in balancing the inconsistencies in workloads which put judges in unequal situation in cases when judge’s business changes, as for example, judge is no longer engaged in any additional duties in self-governance, or the excessive workload for which additional assistant was appointed no longer exists (e.g. overflow of pension fund cases) but additional assistant stays and does not want to be reassigned to another judge.
12. Pool of assistants’ model requires good planning of HR resources on the level of court as well as on the level of SJA territorial units. Nevertheless, mobility within the whole country should be possible and person already in the pool could be shared between territorial units when needed.

Career Development of the Assistant Judges

13. Compulsory hours of an in-service (continuous) training should be provided to assistant judges so they can be up to date with the trends and novelties in the legislation and judicial practice.
14. The work as assistance judge could be a step-in carrier development to become a judge. The years of practicing as an assistant judge should be considered for a reduced initial training programme for those judicial assistants applying for a judge position. Though some induction training for assistant judges aspiring to become judges would still be necessary, as for all the other candidate judges.

Annex 1 - Reviewed documents

Legal acts:

- Law of Ukraine “On the Judiciary and the Status of Judges”;
- Civil Procedure Code of Ukraine;
- Code of Administrative Proceedings of Ukraine;
- Economic Procedure Code of Ukraine;
- Law of Ukraine “On Civil Service”;
- Labour Code of Ukraine;
- Provision (Regulation) on the Assistant Judge; and
- Rules of Conduct for Court Employees.

Council of Europe documents:

- Opinion n°22 (2019) on the role of judicial assistants
- Opinion N° 3 (2002) on ethics and liability of judges
- Opinion n°11 (2008) on the quality of judicial decisions

Assessments:

- assessment of the impact of the transfer to the three-level system of courts, the situation with trust to the judiciary and the changes introduced to the system of judicial discipline;
- assessment of legislative changes with regard to the judicial appointment, career, dismissal of judges, the self-governance of the judiciary, and on the procedural connection between the judiciary and the bar;
- assessment of the participation of the CSOs in the selection and assessment of the judiciary, the system of training and assessment of judges, the system of judicial administration and the powers of court presidents;

Web pages:

<https://court.gov.ua>

<https://www.coe.int/en/web/programmes/ukraine>

<https://www.coe.int/en/web/cepej/cepej-stat>

<https://www.coe.int/en/web/ccje/opinion-no.-22-on-the-role-of-court-clerks-and-legal-assistants-within-the-courts-and-their-relationships-with-judges>

Annex 2 - Comparative Table of Salaries of Judicial Assistants in Europe-Approximative¹⁵

Country	Judicial assistant salary in relation to judge salary – basic courts	Judicial assistant salary in relation to judge salary – appeal courts	Judicial assistant salary in relation to judge salary – higher courts
Bosnia and Herzegovina	50%	50%	> 50%
Finland	35-45%	60-70%	50-60%
Norway		50%	30%
Slovenia*	65% - 80%	73%-92%	56/67% - 80/88%
Switzerland	50-75%	40-65%	35-65%
Georgia	50%	50%	50%
Poland	25%	25%	25%
Latvia	40-60%	40-60%	40-60%
Lithuania	33%	33%	33%
Czech Republic	25-30%	25-30%	25-30%
Denmark	“dommerfuldmægtig” in the Supreme Court		33%

* Slovenia has given a very detailed table

Slovenia	Min. salary grade	Value (EUR)	Max. salary grade	Value (EUR)
Senior justice adviser	36	1.737,79	46	2.572,34
Justice councilor II	42	2.198,84	52	3.254,84
Justice councilor I	45	2.473,41	55	3.661,25
Local court judge	47	2.675,25	52	3.254,84
District court judge	50	3.009,28	54	3.520,44
Judge at the High Court	55	3.661,25	58	4.118,41
Judge at the Supreme Court	60	4.454,47	61	4.632,64

¹⁵ Source – CCJE, countries' replies to the CCJE Questionnaire for the preparation of the Opinion 22 (2019) "On the Role of Judicial Assistants "