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Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights

Report

Court statistical data
on the length of proceedings
in civil, commercial, and administrative cases

Executive summary

July 2020, Kyiv

1. This report is prepared within the framework of the Council of Europe Project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights" (the Project), which is funded by the Human Rights Trust Fund and implemented by the Justice and Legal Co-operation Department of the Council of Europe. The author of the report is Mr Roman Kuybida, PhD in Law, Deputy Chairman of the board of the Centre for Political and Legal Reforms.

2. In view of the decision of the Committee of Ministers of the Council of Europe adopted on 3-5 December 2019,[1] the Supreme Court Working Group tasked with solving issues pertaining to the excessive length of court proceedings requested that the Project conducted a comprehensive analysis of the statistical data produced by the State Judicial Administration of Ukraine on the current average length of proceedings in civil, commercial, and administrative cases.

3. This report aims to clarify the issues raised in the decision of the Committee of Ministers of the Council of Europe regarding the statistical representation of changes in the administration of justice by civil, commercial, and administrative courts that occurred after the introduction on 15 December 2017 of the new versions of the Code of Civil Procedure of Ukraine, the Code of Commercial Procedure of Ukraine, and the Administrative Court Procedure Code of Ukraine.

4. The objectives of this report are as follows:

   - to analyse the current system of collecting and synthesising statistical data in civil, commercial, and administrative cases;

   - to compare the official statistical data of the State Judicial Administration of Ukraine on the length of court proceedings in civil, commercial, and administrative cases before the introduction of the new versions of the procedural codes (2016, 2017) and after that event (2018, 2019);

   - to assess whether the new mechanisms introduced by the new procedural codes have affected the average trial length;

   - to identify opportunities for improvement or differences affecting the length and effectiveness of trials;

   - to provide recommendations for improving the current system of statistical data collection so that the overall picture of the length of proceedings becomes clear.

Collection, synthesis, and analysis of court statistical data

5. In practice, the State Judicial Administration of Ukraine organises the collection of statistical data from local and appellate courts only, while the Supreme Court and highly specialised courts (currently only the High Anti-Corruption Court) maintain court statistics of their activities separately. This situation does not seem to be in line with the law of Ukraine "On the Judiciary and the Status of Judges", which holds the State Judicial Administration of Ukraine responsible for maintaining court statistics at the national level. Also, this situation does nothing to promote more uniform approaches to collecting the data on the judicial activity of courts at various levels.

Mechanism for collecting and sythesising court statistics

6. The current mechanism for statistical data collection highlights the following flaws:

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[1] 1362 DH meeting - 3-5 December 2019 - H46-34 *Merit group (Application No. 66561/01) and Svetlana Naumenko group (Application No. 41984/98) v. Ukraine*, CM/Del/Dec(2019)1362/H46-34 // http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-34E.

- the lack of a centralised, uniform, and fully automated system for collecting court statistics (a centralised system is used only for collecting and disclosing data pertaining to local and appellate courts);
- the lack of a single database of court statistics: statistical data are compiled in various unrelated Excel tables, which creates a gap between the data for individual cases and the synthesised statistical data, and prevents the automatic processing of statistical data (in particular, the use of filters needed to search for specific information);
- the collection of statistical data only for a calendar year, which prevents the comparison of data from different periods within a calendar year or between several years (to track the impact of legislation, for example);
- the lack of a convenient search engine for statistical information;
- statistical information is not published as open data, which makes it impossible to create effective automated tools for the analysis of court statistics.

Some statistical data are not reflected in the statistical report format at all but are mentioned for the first time only in analytical (descriptive) reports. Analytical reports sometimes use different figures for the same issues, or these figures differ from those provided in statistical reports.

Statistical data on the length of court proceedings

7. Statistical data on the length of proceedings is grouped by courts (court levels), and therefore do not allow us to monitor compliance with reasonable time limits in resolving cases from the first complaint reaching a court to the final judgment of the case. Therefore, these data are not sufficiently informative to enable any conclusions to be drawn with regard to upholding reasonable time limits for proceedings.

8. A comparison of statistical information on the length of proceedings does not confirm the hypothesis that the introduction of new versions of procedural codes has significantly improved compliance with the time limits for proceedings. On the contrary, there is evidence to suggest some deterioration regarding compliance with the time limits for proceedings, although this is not necessarily due to the new procedural codes. It is quite likely that the reorganisation processes taking place in the judiciary have had more impact on it.

Legislative novelties aimed at reducing the length of court proceedings

9. Statistical data that would enable us to track the effectiveness of innovations contained in the new versions of procedural codes are mostly fragmentary or absent. The analysed data allowed us to establish that the share of civil cases considered under the writ procedure has increased significantly (almost twofold), from 12-13% in 2016-2017 to 19-22% in subsequent years; the share of commercial cases considered in this way has also been quite high and has shown a tendency to increase after the introduction of this institute in 2018, even though it has remained lower (7-9% in 2018-2019).

10. There are grounds to conclude that the institute of exemplary cases is effective in administrative proceedings, since each judgment in an exemplary case allows for speedier final judgments in thousands of cases. At the same time, the court statistical data show that the procedural institute of judge-mediated dispute resolution is used very rarely. However, this kind of data has only been collected since 2019.

Recommendations

11. The problems highlighted in the system of court statistics pertaining to civil, commercial, and administrative cases, which were identified while working on this report, allow us to formulate the following recommendations:

    1) to designate a single body that shall accumulate all court statistics;

    2) In the short term (1 year):

- to publish and present all available statistical information as open data;

- to unify the parameters of statistical reports in different categories of cases where such uniformity is called for, supplementing them with additional indicators; in particular, with those that would allow tracking of the use of new procedural institutes;

- to introduce the calculation of the length of proceedings throughout the system (and not only on individual levels), based on the data from the Unified State Register of Court Decisions on each case (each case has a unique number) regarding the date of the first and last decision in it irrespective of the court level, and visualising the results obtained;

3) in the medium-term (2 to 3 years):

- to establish a unified database for court statistics;

- to fully automate the system of collecting and processing statistical data, making it end-to-end (the data from the statistical cards of each case, synthesised by various parameters, should automatically be provided on request through a convenient, multifunctional search interface with the ability to use various filters or search criteria);

- to visualise court statistical data as well as court performance indicators, which are automatically calculated on the basis of that data.