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REPORT

**on the results of a sociological survey on the factors that lead to the
excessive length of judicial proceedings and mechanisms aimed at
addressing the prolonged consideration of cases**

Summary

Kyiv – 2021

*Project “Further support for the execution by Ukraine of judgments in respect of Article 6 of the
European Convention on Human Rights”, which is funded by the Human Rights Trust Fund*

The Supreme Court requested an expert assistance in the format of a sociological study to identify the extent and impact of the main factors causing the excessive length of judicial proceedings, as well as establishing mechanisms to address this problem. This assistance is provided through 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). The Project is funded by the Human Rights Trust Fund and implemented by the Department for Implementation of Human Rights Standards, Justice and Legal Co-operation of the Council of Europe. The Project engaged experts from the Ukrainian Centre for Economic and Political Studies named after Oleksandr Razumkov (Razumkov Centre) to carry out this sociological study.

The sociological study aims at identifying the main factors leading to the excessive length of court proceedings and establishing effective mechanisms to address the prolonged consideration of cases.

To achieve this objective, the sociological study covers the following tasks:

- to assess the impact on the length of court proceedings of amendments to procedural codes aimed at accelerating the consideration of cases;
- to estimate how the judicial reform initiated in 2020 and the COVID-19 pandemic affected the length of proceedings;
- to identify the main factors that lead to the protraction of cases and excessive length of court proceedings;
- to determine the mechanisms that may reduce the length of court proceedings.

The target audience of the sociological study included two categories of respondents: judges and court officials (court staff managers/deputy managers, judicial assistants, court session secretaries, court masters, academic advisors).

The survey was conducted from 9 April till 15 May 2021 in all oblasts of Ukraine, except for the occupied territories of Donbas, Crimea, and Sevastopol.

The information was collected through a combined method involving an online survey and a face-to-face interview. The sample frame was 836 judges and 949 court officials interviewed in courts of three instances and all jurisdictions throughout Ukraine (except for the occupied territories of Donbas, Crimea, and Sevastopol).

The online survey was conducted through a Google Form, the link to which was sent to 727 judicial institutions; also, respondents were able to send the completed questionnaire to the e-mail address of the Razumkov Centre.

The online survey was conducted by following a unique link to the questionnaire. Respondents completed the online questionnaire containing precise instructions on the number of possible answers. The questionnaire itself was automatically programmed with the logic of transition through different questions depending on the answers to previous questions.

Face-to-face interviews were conducted by interviewers from the Razumkov Centre's sociological service during in-person visits to the courts (by prior arrangement with the respondents of both categories – judges and court staff).

Based on the conducted survey, the following findings can be drawn:

- The main reason for the excessive length of court proceedings, according to the respondents, is an inadequate number of judges in courts (the workload of judges). The second most important reason cited by the respondents is the failure of the state to act as an official communicator between the court and the parties. The third – is the conduct of the defendant. The fourth one – is the circumstances caused by the COVID-19 pandemic.
- Other important reasons that lead to the excessive length of court proceedings are imperfection of national legislation; the conduct of the applicant; the lack of court officials; the conduct of state representatives; the technical condition of courtrooms; the importance of the subject matter of the dispute for the applicant.
- Respondents mentioned the following circumstances that were caused by the pandemic and negatively affect the length of court proceedings: disease or self-isolation of litigants; quarantine restrictions; non-appearance of litigants, applications for postponement of court dates; problems with transport. Judges mentioned difficulties with ensuring online video conferencing and changes in legislation much less often.
- Most of the respondents indicated that the maximum length of court proceedings in their judicial practice was 1 to 2 years or 2 to 5 years. The mean value of the maximum length of court proceedings is 2.8 years.
- Half of the respondents consider the length of court proceedings to be excessive if it lasts for more than 1 year.
- To overcome the excessive length of court proceedings, respondents mostly propose the following remedies: filling judicial vacancies, increasing the number of judges, reducing the workload of judges, improving legislation, increasing the liability of parties for abusing procedural rights, improving the mechanism for delivering judicial notices, increasing the funding of the judicial system, ensuring an adequate level of remuneration for court officials.
- Only 14% of judges and 13% of court officials believe that the state must pay monetary compensation to the applicant in case of the excessive length of court proceedings in his/her case. The relative majority (50% of judges and 44.5% of court officials) answer negatively to this question.
To some extent, this position can be explained by the fear of penalties and sanctions that may be imposed on the judges whose actions caused the state to pay compensations.
- Judges and court officials are rather pessimistic about changes in the situation of the excessive length of court proceedings that happened for the last three-four years ; the share of those indicating deterioration of the situation in this area exceeds the share of those indicating improvement of the situation (this primarily apparent from assessments of judges). Judges of general courts are the ones who mention the deterioration of the situation most often.
- Respondents most often cite understaffing of courts and the resulting increase in the caseload of judges as a reason for the negative change. Those who believe that the situation has improved most often attribute this to amendments made to procedural codes during this period.
- Judges and court officials have a low opinion of the impact of the measures implemented under the new judicial reform cycle (which began after the new President of Ukraine was elected in 2019) on ensuring a reasonable length of court proceedings.
- Least often, judges and court staff positively assess the impact of measures that are somehow related to questioning the actions of the judge in the case.

- All groups of respondents indicated that one of the main reasons for the excessive length of court proceedings is the “imperfect national legislation”.
- To improve the situation with the “excessive length” of court proceedings, it is proposed to amend Article 55 of the Constitution of Ukraine by supplementing it with certain provisions, which would guarantee the right of everyone to “a fair and public hearing within a reasonable time by an independent and impartial tribunal” based on the context of part 1, Article 6 “Right to a fair trial” of the European Convention on Human Rights. The provisions of Article 56 of the Constitution of Ukraine should be supplemented with a reference to “the courts”. Amendments should also be made to some procedural norms, in particular, Article 122 of the Code of Administrative Procedure, Articles 2, 121, 205, 275 of the Civil Procedure Code of Ukraine, and 114, 308, 318, 347 of the Criminal Procedure Code of Ukraine.