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Recent Developments in the Ukrainian Judicial System and the Impact of International and European Law

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Ukraine's judicial system is still shackled by its Soviet past. Despite gaining independence in 1991, it is not surprising that this new sovereign state could not usher in overnight a new judicial system firmly based on the rule of law and the separation of powers. The author assesses current reform efforts in the Ukrainian justice sector in light of several European Union and Council of Europe recommendations for further steps in the constitutional development of Ukraine. Key reforms are analysed including the implications of the "small justice reform" of 2002 and the draft law on the judiciary and the status of judges. As Ukraine does not have an explicit strategy on Justice and Home Affairs, which makes any such analysis of recent justice reforms more difficult, its obligations in this area under several EU-Ukraine treaties and joint projects will be analysed.

Keywords: *Ukraine; judicial system; key reforms; EU and international obligations*

I. Introduction

Ukraine's judicial system is still shackled by its Soviet past. Despite gaining independence in 1991, it is not surprising that this new sovereign state could not usher in a new legal reality together with its new constitution.[1] Constituting the Ukrainian state was not an abstract process, upon which a new legal and administrative order could be imposed overnight. Ukraine has decades of Soviet influence to undo. As a consequence, the Ukrainian judicial system was not created completely from scratch, but grew in substance from the Soviet justice apparatus. This resulted in key characteristics of the Soviet justice system, such as the inadequate provision for the rule of law and a lack of separation of powers, being able to survive in the newly developing Ukrainian judicial system. Nevertheless, Ukraine has gone through a remarkable change since its independence from a socialist Soviet Republic to a modern market-orientated European state. The Ukrainian justice system equally reflects this transformation. The new constitution of 1996 brought with it a restructuring of the Ukrainian

judicial system, and the justice reform of 2002 focused on implementing further procedures in accordance with the rule of law. The political commotion that followed the "Orange Revolution" of 2004 has, however, in some respects impeded the development process towards a modern justice system based firmly on the rule of law and bogged down the wider transformation process.[2] The remaining deficiencies in the Ukrainian justice system have been highlighted by several different parties. The European Union, the UN Development Programme, the World Bank, and other organisations have in recent years made recommendations for further steps in the constitutional development of the Ukrainian justice system.[3] It is in this context that this article draws on aspects of European and International law to examine the current developments and challenges for the Ukrainian judicial system.

II. Development of the Ukrainian Judicial System since 1990

Political and economic developments in the past two decades have had a considerable impact on the Ukrainian justice system and explain the state it finds itself in today. Therefore, what follows is a brief account of the most significant developments that influenced the Ukrainian judicial system.

1. Ukraine's Political Development since Gaining Independence

In August 1991, the Ukraine's Supreme Soviet declared the country's independence. Immediately after gaining independence, a parliamentary commission was tasked with developing a new constitution, a multi-party system, and legal guarantees for minorities. On 28 June 1996, after years of political wrangling between the Verkhovna Rada (parliament) and the president, a new constitution was adopted.[4] The new constitution remodelled Ukraine into a semi-presidential republic and was geared towards establishing a stable political system. At the same time, the old Soviet Ukrainian constitution of 20 April 1978 was abolished. The new constitution provides for a pluralistic political system with a comprehensive catalogue of fundamental and human rights; and it grants in particular, aside from political and civic rights, social and cultural rights. Despite the new constitution, Ukrainian domestic politics in the 1990s and the beginning of the twenty-first century appeared unpredictable. This still seems to be the case now, despite a certain degree of democratisation of political proceedings and culture. The Orange Revolution at the end of 2004 and beginning of 2005 brought to a close the presidency of Kuchma after two terms in office and installed President Yushchenko. Following Kuchma's administration, which stood for concentration of power, corruption, encouragement of oligarchs, electoral manipulation, and other undemocratic conduct, the change of government stood for a change of regime; and President Yushchenko announced far-reaching reforms of the political system. On 1 January 2006, a constitutional amendment came into force that curtailed presidential powers

and transferred important areas of competence to the prime minister and the Verkhovna Rada.[5] Ukraine's new political leadership promised to subject its activities to the rule of law and proclaimed this as being the foundation for the prosperous development of the country. Additionally, the Orange Revolution led to a renunciation of Ukraine's strategic orientation towards the Russian Federation (RF) and the Commonwealth of Independent States (CIS). In 2008, this culminated in the declaration of Yushchenko's secretariat that Ukraine was not a member of the CIS, as it had not ratified the CIS treaty, and as a result it could not leave the Commonwealth it had never joined.[6] While the president has not publicly commented on this view, the Ukrainian foreign secretary, Ohrysko, sees Ukraine as a participating state, but not a member state of the CIS.[7] Meanwhile, Ukrainian parliamentarians have introduced a draft bill into the Verkhovna Rada revoking the agreement on the establishment of the CIS.[8] One may suspect populist political motives behind such moves, rather than the official state doctrine of Ukraine. However, such conduct displays at least a clear renunciation by the pro-Western leadership of the Russian-dominated CIS. Since the Orange Revolution, the Ukrainian leadership has been working avowedly towards rapprochement with the European Union. An association agreement, if not EU membership itself, are aims of the current Ukrainian foreign policy.[9] Since the regime change of the Orange Revolution, however, political reality has not changed substantially, despite some democratisation tendencies. Unpredictability still dominates daily political life in Ukraine. Under these circumstances it is understandable that, among others, the EU still criticises certain shortcomings of the Ukrainian judicial system.

2. Ukraine's Economic Development since Gaining Independence

The economic development of Ukraine since gaining independence accompanied its political development. From various quarters comes the view that Ukraine was not disadvantaged in its inheritance dispute over Soviet remnants, as much of Soviet industry was based on Ukrainian territory. It is, for instance, estimated that about 20 per cent of the technical resources of the Soviet Union's research sector was taken over by Ukraine.[10] Despite this, Ukraine has had to battle with substantial economic challenges in the years after gaining independence and has yet to achieve the gross domestic product (GDP) of Soviet times.[11] In the first fourteen years of independence, Ukraine operated a kind of hybrid system between Soviet "infusion" and free market orientation. It was only towards the end of the 1990s that Ukraine was able to stabilise its economy. In the period between 2000 and 2006, Ukraine achieved an average annual economic growth of more than 7 per cent. However, from 2007 onwards, the Ukrainian economy was characterised by an economic overheating, which took its toll on Ukraine as the international financial crisis unfolded. The decline of steel prices, as well as increasing gas prices from Russia, has stopped economic growth for now, and a recession seems likely.[12] The economic situation is only indirectly related to the state of the judicial system, but as a political environment

based on the rule of law can only develop in an economically stable country, Ukraine's economic development and prosperity is of fundamental significance for the stability of the political system and the judicial apparatus. The global economic crisis and its anticipated knock-on effect on Ukraine is not conducive to democratic reform efforts. The hope remains that Ukraine's political system harbours sufficient stability to withstand the economic challenges of the global economy.

3. Development of the Justice Sector since Gaining Independence

In 2005, the government announced extensive reforms of the justice sector in the course of the country's political renewal. These will be looked at here together with the preceding reform efforts since gaining independence.

A. Restructuring of the Judiciary with the Introduction of the 1996 Constitution

In 1990, a few months before the independence declaration, Ukraine introduced new legislation on the judiciary that would free the judiciary of subordination to the Soviet administration. Since then there have been numerous reform efforts in the justice sector, including a new constitution in 1996. The constitution initiated a number of important changes and laid the foundation for further justice reforms. In particular, appellative courts and over-arching special tribunals were created. Beyond this, the right to issue arrest warrants was transferred from the prosecution service to the judge. Initially, a transition period of five years was provided for, in which the necessary reforms and laws should be implemented. As, however, the relevant provisions were not adopted within the appropriate time period, the courts operated for several years under the Soviet framework.

B. The Law on the Judiciary of Ukraine and the "Small Justice Reform" of 2002

The Law on the Judiciary came into effect in Ukraine in 2002 and ushered in a "small justice reform." The law received parliamentary approval by the Verkhovna Rada in 2001 and came into effect on 1 June 2002. It provides for the organisation of the judiciary and its administration in accordance with the rule of law subject to Art. 8 of the 1996 constitution. The law, in particular, provides for the establishment of local administrative courts within three years. This, however, could not be fully realised by 2005.[13] Arts. 12, 15, and 32 of the law govern appeal procedures for civil and criminal matters. Beyond this, Arts. 14 and 17 strengthen the judges' capacity to self-govern, which is indispensable for the judiciary's independence. Art. 130 of the law establishes an academy for judges that shall play an important role in training and appointing judges. While the Law on the Judiciary of Ukraine was able to transform certain aspects of the justice sector, it largely remained behind EU requirements.[14]

C. Hints at Reform of Ukraine's Judiciary

Following the "small justice reform" in 2002, new reform initiatives were developed in the Ukrainian justice sector. The president introduced a commission for strengthening

democracy and the rule of law to advise on reform efforts. The commission developed a strategy to ensure compliance with the principles of a fair trial in accordance with European standards, which was passed by presidential decree on 10 May 2006.[15] President Yushchenko has also recently introduced numerous legislative proposals, including an amendment to the law on the judiciary and the law on the status of judges.[16] It remains to be seen how these new laws will take effect once they come into legal effect.

D. Current Justice and Home Affairs Policy

Apart from certain programmes, legislative proposals, and international obligations, there is no explicit Ukrainian policy on Justice and Home Affairs. The Ukrainian government, in particular, does not pursue a coherent strategy with justice reform as its aim. The lack of an explicit strategy is a substantial hurdle in the assessment of the current situation in the Ukrainian justice sector. The untenable legislative situation aside, it is nevertheless possible to assess the working relationship that the government and the Verkhovna Rada has to the judiciary.

a. The relationship between government and judiciary. The Ukrainian government in principle subscribes to the rule of law and recognises the need for a stable judiciary. In light of this, relations between government and the judiciary are developing in a climate of mutual respect and without open interference or meddling. While a coherent strategy of reform is absent, some reform initiatives are being passionately discussed by government and the judiciary. The relationship between government and judiciary was reflected in a draft paper on the establishment of a stable judiciary in Ukraine in line with European standards, which was passed by the president in 2006.[17] The draft paper—which has still not been implemented—provides for the implementation of long-term strategies and legislative projects that should align Ukraine with European *best-practice* norms. Beyond this, the general committee on democracy, human rights, and humanitarian affairs is currently discussing and considering changes to chapter VIII of the Ukrainian constitution. Despite the generally positive relationship between government and the judiciary, relations are strained in cases where the government disregards the judiciary's requirements, such as over funding levels.[18] The government needs to pay more attention to the requirements of the judiciary, and communication between the two should take place on an equal footing. It seems clear that the need for reform is now accepted on all sides in the justice sector, and government recognises the necessity of coherent sectoral policies.[19] This principally positive attitude to reform by actors in the justice sector is a pre-condition for a justice reform in accordance with European norms.

b. Verkhovna Rada–justice sector relations. Less positive than relations between government and the justice sector is the relationship of the Verkhovna Rada to the justice sector. The primary reason for this is the legislative inactivity and parliamentary delay of many of the reform bills on the justice sector, such as the law on the judiciary

of Ukraine and the law on the status of judges.[20] While a legislative dragging of feet will definitely not lead to a complete standstill of the judicial system, as its day-to-day running is governed by the constitution, but it may reduce reform speed and lead to an atmosphere of distrust between the judiciary and the Verkhovna Rada. This remains a serious impediment to the positive climate needed so desperately for nurturing and supporting reform. Beyond that, the budget allocation by the Verkhovna Rada for the justice sector remains a constant bone of contention between the two bodies. While Art. 130 of the constitution and Art. 120 of the law on the judiciary guarantee an appropriate level of funding, matters are complicated by the Verkhovna Rada's insufficient response to the judiciary's budgetary needs. Today, the salaries of judges are at least paid in full and on time (although the salaries of judges are not competitive for suitably qualified candidates). From the judiciary's perspective, due to its unpredictable conduct, the Verkhovna Rada continues to be somewhat of an obstacle to the future of a modern and efficient justice system.[21]

III. Ukraine's Relations to the EU and Its Obligations under International Law with Special Regard to the Justice Sector

In view of Ukraine's alignment towards the EU, it is appropriate to illustrate Ukraine's relations to the EU and to go into the justice sector–relevant aspects. Ultimately, Ukraine's accession to the EU will boil down to its accepting the entire *acquis communautaire*. The two central pillars of relations between Ukraine and the EU are the development and support of democratic principles and human rights and the establishment of a free market system, which will have consequences for the Ukrainian justice sector.[22] EU relations to Ukraine rest to a large extent on a number of bi- and multi-lateral treaties. Of relevance to the justice sector are principally the Partnership and Cooperation Agreement of 1998 (PCA),[23] the EU-Ukraine Action Plan of the European Neighbourhood Policy of 2005 (ENPAP),[24] and the EU Action Plan on Justice and Home Affairs of 2001 (APJI).[25] The relevance of these three treaties for the Ukrainian justice sector will be briefly discussed now, as well as Ukraine's other most important obligations under international law, in particular obligations under the European Convention on Human Rights (ECHR) and the right to a fair trial guaranteed under Art. 6 of the ECHR.

1. Partnership and Cooperation Agreement of 1998

Ukraine was the first country of the former Soviet Union to conclude a Partnership and Cooperation Agreement with the EU and its Member States in June 1994. The agreement emphasises the recognition and respect of mutual values as a fundamental element of relations and provides for a framework of political dialogue. Beyond this,

it emphasises the most important common aims in terms of harmonious economic relations, sustainable development, and cooperation in a number of areas. It also supports Ukraine's effort towards democracy. The Partnership and Cooperation Agreement also provides for an institutional framework for the pursuit of these aims. It is an important instrument in bringing Ukraine in line with the legal parameters of the European internal market and the global trade system.[26] For the justice sector, in particular, the agreement emphasises the over-arching significance of the rule of law and respect of human rights, especially those of minorities, and the establishment of a multi-party system with free and democratic elections, as well as economic liberalisation with the aim of introducing a free market economy. Under Art. 1 of the PCA, the aims of the partnership include supporting Ukraine in its democratic reform efforts. Art. 6 of the PCA refers to political dialogue between the two parties and obliges both respect for and promoting the principles of democracy and human rights. In principle, the terms of the PCA do not expressly regulate justice reform in Ukraine, but they do indirectly oblige Ukraine to adhere to and respect democratic general principles and human rights, as well as establishing an independent justice system in accordance with the rule of law. As is explained in more detail below, Art. 2 of the PCA refers explicitly to international legal conventions that provide for a justice system firmly rooted in the rule of law. It can therefore be established that the PCA requires and obliges Ukraine indirectly to create a justice system that is in accordance with the rule of law.

2. European Neighbourhood Policy's EU-Ukraine Action Plan of 2005

The EU-Ukraine Action Plan of the European Neighbourhood policy serves the purpose of bringing about the terms of the Partnership and Cooperation Agreement. It is aimed at promoting and supporting Ukraine's further integration into the economic and social structures of the EU. It creates a comprehensive framework for the EU's cooperation with Ukraine and identifies important areas of reform. It also aims at promoting the harmonisation of Ukrainian legal provisions in line with EU standards and thereby creating a solid basis for Ukraine's further economic integration with Europe. An EU-Ukraine free trade area has the potential of improving mutual trade investment and growth by harmonising those norms related to the economy and trade. The Action Plan comprises in particular also cooperation on justice affairs with the aim of implementing a comprehensive reform of the justice sector to ensure its independence, impartiality, and efficiency. In particular, chapter 2.1 of the Action Plan sets out that Ukraine shall continue its internal reforms based on strengthening democracy, rule of law, respect for human rights, the principle of separation of powers, and judicial independence. Law and justice reforms are explicitly mentioned to ensure the judiciary's independence and to strengthen its administrative capacities. The principles

of impartiality and effective criminal prosecution are to be strengthened. In addition, the implementation of recent reforms in the law and justice sector according to European standards is to be ensured. The reform of the criminal prosecution system is to be continued in line with the Council of Europe's Action Plan. Judgments of the European Court of Human Rights must be implemented effectively. The education and professional development of judges, prosecutors, and judicial officers must be improved, especially on human rights. Beyond this, Ukraine has committed itself to continue the fight against corruption and to ensure the protection of human rights pursuant to European and international standards. The development of civil society, freedom of speech and media, the protection of minority rights, the prevention of ill treatment by public authorities, non-discrimination on grounds of gender, the protection of children's rights and trade unions' rights, as well as cooperation with the international criminal court are also all provisions of the agreement, which at least indirectly have an influence on reforms of the Ukrainian justice sector. As far as the protection of intellectual property is concerned, Ukraine has committed itself to ensuring a level of protection that corresponds to that of the EU, in particular by expanding the relevant judicial offices. Public tenders need to be subject to independent judicial scrutiny. Chapter 2.4 of the Action Plan refers to the EU Action Plan on Justice and Home Affairs with Ukraine of 10 December 2001,[27] which was agreed upon as a mutual frame of reference in this field and provides for an annual review of priorities. All in all, the EU-Ukraine Action Plan prepared under the European Neighbourhood Policy sets out a number of commitments to harmonise Ukraine's justice sector with international and European standards.[28]

3. The EU Action Plan for Justice and Home Affairs with Ukraine from 2001 (Updated 2007)

The EU Action Plan on Justice and Home Affairs with Ukraine from 10 December 2001 stipulates cooperation between the EU and Ukraine in the justice sector. In particular it covers the development of principles of the rule of law, access to justice, independence of the judicial system, and responsible governance. In addition, the Action Plan provides for the creation of an appropriate legal framework in which effective cooperation in the areas of justice and home affairs can take place in line with international and EU standards, as well as ensuring the efficient implementation and application of these standards. Ukraine is compelled to sensitisation in the areas of human rights and the rule of law and to foster transparency. The Action Plan obliges Ukraine to ratify and fully implement various international agreements, which are of particular importance in the fight against illegal immigration, organised crime, and corruption. Furthermore, the better regulation of the issue of migration and the use of appropriate measures in the areas of border control, expulsion, and the issuing of visas is being demanded to prevent Ukraine from increasingly being used

as a transit point for illegal immigrants into the EU. Cross-border and organised crime, in particular in the areas of human trafficking, drugs, stolen vehicles, and stolen nuclear material, as well as money laundering and the threat posed by international terrorism, should be fought against together. In particular, the Action Plan refers to a number of European and international agreements and standards in all problem areas that Ukraine should effectively implement.

A. The Re-working of the EU-Ukraine Action Plan on Freedom, Security and Justice Challenges

The Action Plan was revised in 2006 and was ratified as the EU-Ukraine Action Plan on Freedom, Security and Justice Challenges and Strategic Aims in 2007.[29] The revised Action Plan reinforced that one of the biggest challenges and strategic aims for cooperation between the EU and Ukraine is to develop and ensure the application of the principles of the rule of law and the independence and efficiency of the judiciary including access to justice and good governance. In chapter IV, subsection 1, the revised Action Plan explicitly goes into the area of justice. In particular, it points out that the objectives are based on and refer to the 2005 EU-Ukraine Action Plan. In addition, Ukraine's intention and obligation to ensure impartiality, independence, and competence of judges and to implement the strategy on judicial reform entitled "Concept for the Improvement of the Judiciary in order to Ensure Fair Trial in Ukraine in Line with European Standards" was affirmed again. Ukrainian efforts to establish a system of administrative courts should be supported, and the capacity of the court system in general should be improved. The Action Plan introduces special training for judges and candidate judges. There should also be improvements in the recruitment system and career of judges (based on objective criteria), which should enhance their independence, impartiality, and efficiency. An independent commission to handle disciplinary proceedings for judges and an independent and stronger professional bar association are to be established. A national database should electronically record all court decisions in Ukraine.[30] Subsection 2 of chapter IV deals with judicial cooperation, in particular on criminal and civil matters. In the area of criminal law, it is understood that Ukraine should adopt the amended Criminal Procedural Code of Ukraine, as well as develop other legislative measures promoting judicial cooperation with other states.[31] A network of contact points for the rapid exchange of information on mutual legal assistance and judicial cooperation related to cross-border offences should be established. Cooperation based on the contact points established in Eurojust and the Ukraine General Prosecutor's Office should be developed and the agreement between Eurojust and Ukraine finalised. In the area of civil law, the granting of legal assistance and the protection of children's rights through acceding to particular international conventions is to be improved. Furthermore, the Action Plan provides for the reform of the Ukrainian penitentiary system in line with European and international standards.

B. Implementation of the EU-Ukraine Action Plan

To monitor and support the agreed objectives, a catalogue of implementing instruments and measures will be agreed upon. In particular, the implementation of the Action Plan will be checked through a detailed scoreboard, which is regularly updated by the Ukrainian authorities in cooperation with the EU. The priorities for cooperation in the areas of justice and home affairs are fixed each year by the justice and home affairs minister at an EU-Ukraine meeting. In the conclusion of the May 2008 meeting, the importance of the recently started reforms in Ukraine towards an independent, impartial and efficient justice system was again referred to. The reforms are essential for the development of a democratic society based on the principles of the rule of law.[32]

4. The New EU-Ukraine Association Agreement

In Brussels on 5 March 2007, negotiations over a new agreement between Ukraine and the EU began. This agreement was supposed to replace the partnership and cooperation agreement of 1998 and deepen and promote relations between Ukraine and the EU.[33] At the same time, negotiations started over the establishment of an improved free trade area. At the EU-Ukraine summit in September 2008, under the French presidency of the EU, although the direct accession perspective of Ukraine into the EU was ruled out, the foundation for a new deepened EU-Ukraine agreement was laid. The new association agreement provides for privileged relations between Ukraine and the EU.[34] While there was a certain disappointment in Ukraine over denial of a direct accession perspective, the new improved agreement should be seen as a chance to get successively closer to the EU. The new and extended association agreement will take Ukraine out of the group of countries that have a partnership and cooperation agreement with the EU but, in fact, have no realistic chance of accession in the future. The agreement can provide incentives for further reforms and for the transformation into a modern society.[35]

5. Joint Projects of the Council of Europe and the European Commission in the Justice Sector

Since 1995, over fifteen joint cooperation projects of the Council of Europe and the European Commission with Ukraine were set up. The following three projects relate to the justice sector.

A. International Cooperation in Criminal Matters in Ukraine (UPIC)[36]

The UPIC project is directed towards strengthening the legal basis for cooperation and the institutional capacities of judicial and law enforcement authorities in Ukraine. It ran from 2005 until the end of 2008 and tackled in particular organised and other forms of serious crime. Within the scope of the project, Ukraine should ratify and

implement its international obligations in this area. Part of the project was also the training and development of tools for key institutions responsible for internal cooperation. Furthermore, direct cooperation with counterpart institutions from other European countries was planned.

B. Support for Good Governance: Project against Corruption in Ukraine (UPAC)[37]

Given the serious threat to Ukraine from various forms of corruption, the UPAC project aims at strengthening Ukrainian institutions' capacities in their anti-corruption efforts. It comprises three components: strengthening of capacities in the fight against corruption, creation of a strategic and institutional framework against corruption, and promoting the effective enforcement of anti-corruption legislation. The project began in 2006 and ran until June 2009.

C. Project against Money Laundering and Terrorist Financing in Ukraine (MOLI-UA 2)[38]

This project concentrates on the prevention and combat of money laundering and the financing of terrorism in Ukraine in accordance with European norms and proven practices. It in particular seeks to support Ukraine in implementing Directive 2005/60 of 26 October 2005 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005. Support is focussed on key institutions of the anti–money laundering system of Ukraine, developing the necessary organisational and technical infrastructure, and the implementation process. The MOLI-UA 2 project ended in April 2009.

6. The EU's Eastern Partnership and Its Effect on the Ukrainian Justice Sector

Since the end of 2008, discussions have been increasingly frequent in the EU over the establishment of a so-called Eastern Partnership, which was finally agreed upon in a joint declaration at the EU Prague Summit on 7 May 2009. On the basis of the European Neighbourhood Policy, deeper relations in various areas should be entered into from May 2009 with Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. New association agreements and further integration measures should facilitate approximation towards European standards. Of relevance in particular is cooperation over democratisation, good governance and stability, economic integration and convergence with EU sectoral policies, energy security and contacts between people, as well as economic and social development. In the justice sector, so-called mobility and security packages cover the fight against illegal migration; modernising the asylum system according to EU standards; the creation of integrated structures of

border control and administration; as well as the extension of specific competencies of the police and the judiciary, especially in the fight against corruption and organised crime. Association agreements in these areas shall increase the mobility of people within the Eastern partnership area and simultaneously contribute to stability and security in the partner countries, as well as along the EU borders. It remains to be seen which exact contractual relations will be agreed upon in the Ukrainian justice sector.[39]

7. Ukraine's Obligations under International law in the Judicial Sphere

Article 2 of the Partnership and Cooperation Agreement (PCA) between the EU and Ukraine declares respect for democratic principles and human rights, as defined in the Helsinki Final Act of 1975 and the 1990 Charter of Paris, as an essential part of the agreement. Both international law frameworks contain fundamental judicial rights and refer in turn to the Universal Declaration of Human Rights of 1948, which explicitly covers certain judicial fundamental rights. The Universal Declaration of Human Rights, for example, grants in Art. 8 the right to legal recourse and in Art. 10 the right to a fair trial. In addition, Ukraine signed in 1995 the European Convention on Human Rights and Fundamental Freedom that took effect in Ukraine on 11 September 1997. Ukraine is thus bound by Art. 6 ECHR, which guarantees the right to a fair trial. Although Ukraine in principle recognises the application of Art. 6 ECHR on its territory, it reserves the right to apply valid Ukrainian criminal procedure rules instead of Art. 6(3d) ECHR. This primarily means applying the following rules: Art. 263 of the Ukrainian criminal procedure rules (rights of the defence lawyer during proceedings), Art. 303 of the criminal procedure rules (examining witnesses), Art. 43 of the Ukrainian criminal procedure rules (rights of the defendant), Art. 431 of the Ukrainian criminal procedure rules (rights of the suspect), and Art. 142 of the Ukrainian criminal procedure rules (cautioning the defendant on his or her rights during the investigation). Furthermore, Ukraine is party to the International Pact on Civil and Political Rights of 19 December 1966, which, for instance, commits Ukraine under Arts. 2, 9, and 14 to abide by certain judicial principles and guarantee certain judicial rights. Overall, it can therefore be concluded that Ukraine is bound by international law to provide comprehensive protection of judicial fundamental rights. An evaluation of the implementation of these international obligations in the Ukrainian justice sector and the changes that were thus made to the legislature, executive, and judiciary is now required.

8. The Future of EU-Ukraine Relations and the Consequences for the Justice Sector

The existing cultural and political proximity of Ukraine to the EU since the collapse of the Soviet Union is expressed in a number of different agreements and obligations.

Close contractual relations are now in place. New association agreements within the scope of the EU's eastern partnership will further deepen this relationship. Ukraine must use the coming years and the period of negotiating the new association agreements to demonstrate to the EU its willingness to adopt the standards of the *acquis communautaire*. Ukraine will in particular have to show its willingness to reform its justice sector, which is a pre-condition for any further-reaching relationship with the EU—whether this leads to accession talks or not. Continuity and sustainability of changes to the political, economic, and justice sectors can only be convincingly demonstrated by Ukraine if its deficiencies in relation to international and European standards are tackled aggressively and head-on. This process should not be motivated by the prospect of EU accession but by the recognition that the intended reforms are per se necessary for Ukraine and have the very real potential of being fruitful for its citizens.

IV. Recent Developments and Problems of the Ukrainian Justice Sector

In light of Ukraine's international commitments and its domestic reform efforts in the justice sector, the "small justice reform" of 2002 can only be seen as the beginning of the reform process in the Ukrainian justice sector. Further reform efforts are necessary to bring the Ukrainian justice sector in line with international standards. The following shall therefore set out the most important legislative reform proposals in the Ukrainian justice sector.

1. Amendment of the Law on the Judiciary of Ukraine and the Law on the Status of Judges of Ukraine

The Ukrainian president announced among other things the amendment of the Law on the Judiciary and the Law on the Status of Judges and put forward reform proposals. In 2006 and 2007, the proposals for amendment were met with intense debate and criticism. However, due to political tensions and the constitutional crisis of 2007, the legislative review process came to a halt. By decree of the ministerial cabinet, a working group under the leadership of the justice secretary was therefore established that included members of the Supreme Court, the Academy of Judges, the state judicial administration, and the Centre for Political Reform. The working group was tasked with producing a combined version of the legislative amendments and introducing these in a second reading in the Verkhovna Rada.

A. Substance of the Legislative Proposal for an Amendment of the Law on the Judiciary of Ukraine

The legislative proposal for an amendment of the Law on the Judiciary of Ukraine is aimed at bringing the organisation of the courts of law in line with European standards.[40]

This includes the introduction of higher courts with civil and criminal jurisdiction, as well as the introduction of appellate courts and the incremental removal of military courts. Furthermore, the powers of the court president shall be considerably reduced, for example in respect of the distribution of cases and awards, suspension from work, and the solving of housing and social security questions. The Academy of Judges shall continue to remain under the control of the state court administration; and the position of the High Council of Justice, except for improved representational rights, shall remain unchanged. The legislative proposal also provides for the introduction of higher courts for criminal and civil proceedings to strengthen the role of the Supreme Court as the highest appellate court. Despite the efforts to review and improve the Law on the Judiciary of Ukraine, the legislative proposal bears certain deficiencies in respect of the system of judicial self-administration. The system is still widely viewed as extremely complex and unwieldy. In addition, several provisions of the proposal remain problematic, as the following comments shall highlight.[41]

a. Article 18—Establishment of courts. The procedure under Art. 18 of the draft amendment of the Law on the Judiciary of Ukraine, which governs the establishment of courts, is fairly complicated. Courts are established and dissolved by the president of Ukraine upon submission of the minister for justice, having consulted the president of the Supreme Court, president of the relevant high specialised court, and the head of the state judicial administration. While this procedure seems at first glance duly balanced between the judiciary and the executive, it appears that the decisive role for the establishment and dissolution of courts rests with the state president. The procedure also bears the real risk of creating tensions due to the involvement of various court presidents. The involvement of the High Council of Justice should also be striven for.

b. The competences of the special courts and the Supreme Court. Also problematic are Arts. 34 and 36 of the draft amendment, which provide for the issue of recommendatory explanations by the high specialised courts and the Supreme Court. These shall serve the purpose of ensuring the uniform application of the law in judicial practice. The specific arrangements and force of these explanations are still unclear, as higher courts tend to make their contribution to a uniform application of the law through considering individual appeal cases and not through the interpretation of abstract standards.

c. Accountability of the state judicial administration. The powers of the state judicial administration are very broad, but the extent of its competences under Art. 90 of the legislative proposal can as a whole be accepted because, through the establishment of the state judicial administration, non-executive tasks will be transferred to the judicial organs. Nonetheless, the distribution and delineation of powers between the state judicial administration, the Ministry of Justice, and the presidents of the

courts should be further clarified to ensure an independent and effective working of the justice system. A provision is also under discussion that would extend the Council of Judges' control of the state judicial administration. This discussion demonstrates the direction that Ukraine's justice sector is moving towards an independent judiciary.

d. The court system. Ukraine's court system sometimes appears to the foreign observer as very complicated. Notwithstanding, the draft amendment does not necessarily provide for a simplification of the complex structures. For example, the draft amendment provides for the establishment of various courts of cassation on top of the existing framework of four instances, which are in turn each divided into commercial, civil, administrative, and criminal courts. As a more complicated structure may lead to delays in proceedings, a three-tier system of instances according to the European model is also being discussed in Ukraine. This, however, would require an alteration of Art. 125 of the Ukrainian constitution.

B. Substance of the Draft Amendment of the Law on the Status of Judges

The draft amendment of the law on the status of judges provides, among other things, for an improved system of training and recruiting of judges.[42] The selection of judges in the future should be determined by a transparent and competitive process at the Ukrainian Academy of Judges.[43] It will be crucial in particular to set up and clearly define the requirement of practical professional experience, which is indispensable for the role of a judge. The draft amendment furthermore provides for disciplinary procedures against judges, whereby a list of conclusive reasons for the commencement of disciplinary proceedings against judges will be introduced into the law.[44] Notwithstanding, the draft amendment also contains a number of measures that appear problematic. The following shall serve to highlight this.[45]

a. Immunity. While Art. 3 of the draft amendment provides that all state institutions are under an obligation to respect and not to violate the judiciary's independence, as a guarantee it remains too vague. In particular, there are no sanctions for violations against the protection of the independence of the judiciary, so that the de facto enforcement of its independence is not justiciable. Under Art. 5 of the draft amendment, display of contempt towards a judge by the parties to a proceeding may lead to liability, and yet there are no instruments in place to enforce this liability. For the protection of judges against all forms of external pressure or influence, clear punitive and criminal sanctions need to be introduced that act in response to any attempt to subvert the judiciary's independence. Thus, further discussion and reform is required on this matter.

b. Appointment of judges. The appointment of judges to a permanent post is a highly political matter in Ukraine. The fact that under Art. 36 of the legislative proposal the appointment process involves hearings in which members of parliament

may publicly question candidates contributes to the politicisation of the appointment of judges. The opportunity for members of parliament to politically influence the process is clear. Despite awareness of the problem of the political dependence of judges in the appointment process, various legislative amendments have not redressed this issue. Those involved in the legislative process have to date always been careful in refraining from influencing the process of judicial appointments. Notwithstanding, the draft amendment provides for a stronger involvement of the High Council of Justice in the selection process of judicial candidates. It is proposed that responsibility for the selection of judicial candidates be transferred to a commission that should oversee the judicial selection for the entire Ukraine. The commissions shall replace the regional selection commissions that are currently widespread. There will be fourteen members in the new commission, consisting of eight judges, two members of the Verkhovna Rada, the president of Ukraine, the ombudsman, and one member each appointed by the Ministry of Justice and the lawyers' professional association. The commission will be ranked alongside the High Council of Justice and will function as an independent organ of the court's self-administration. The reform of the selection process for candidates for judicial office by creating a new commission is undoubtedly a significant step in the right direction for the Ukrainian justice sector and a milestone towards judicial independence. Nevertheless, it is vital that judicial independence is strengthened not only in respect of the selection of judges but especially in the day-to-day work of judges. The political influence on the judiciary must be curbed and controlled in all areas.

2. Reform Proposals for the Administrative and Commercial Procedure Rules

The Ukrainian procedure rules often assign parts of a legal dispute to different courts. This can lead to contradictory decisions and a substantial degree of legal uncertainty. In particular, the jurisdiction of the trade court and the newly created administrative court is often not clearly delineated between the two bodies. A particular obstacle is the trade code law, which is based on a Soviet-planned economy and often fails to clearly assign the matter of dispute to a trade or administrative regulatory sphere. Moreover, under Soviet trade law, a clear distinction was drawn between the conduct of ordinary persons and those with a separate (corporate) legal identity, something that cannot be sustained in a modern economic order. Thus, besides the amendment of the law on the judiciary and of the status of judges, a number of further legislative changes that affect procedural rules are under discussion within the Verkhovna Rada. Among these is a legislative proposal for the amendment of the administrative and commercial procedure rules.[46] This legislative proposal should help separate and demarcate the jurisdiction of the trade law and administrative courts, as well as clarify any definitional issues that might arise in the

course of introducing the new administrative court and its delineation to the commercial courts. The changes would affect in particular Art. 12 of the Commercial Procedure Rules and govern the jurisdiction for disputes in relation to the transfer of assets (including public and communal property) in favour of the trade courts.[47] A further draft for an amendment to the Commercial Procedure Rules is currently under discussion.[48] While the legislative proposal leaves the fundamental principles of the commercial procedure rules untouched, it does provide for improvements of specific trade law–related procedural issues. Alongside the fundamental disentanglement of the jurisdiction of the trade and administrative courts, the legislative proposal extends the competences of the trade courts. Not only the status of the parties to the dispute, but also the dispute matter, shall be relevant for the allocation of jurisdiction. Under the legislative proposal, trade courts will be responsible for hearing disputes where only one party has the status of a trader, in disputes between bond holders and share holders, in disputes between shareholders and the general assembly, as well as in disputes involving other enterprises insofar as they affect the enterprise (except for employment law–related matters).

3. Draft Paper for the Reform of Legal Aid in Ukraine

On 9 June 2006, the Ukrainian president adopted a draft paper on the reform of legal aid, which marked an important step for easier access to justice in Ukraine.[49] The draft paper shall form the basis for a new system of legal aid in Ukraine. High standards shall guarantee effective access to legal advice for parties without means. It contains general organisational principles and the provision and financing of the legal aid system across all jurisdictions and determines the amount of legal aid and eligibility criteria, as well as regulating the voluntary contribution of lawyers. The draft paper may well be a significant step for bringing about access to justice and the rule of law in Ukraine. However, this progress can only be measured against the actual implementation of the legislative proposal.

4. Evaluation of Legislative Activity in the Ukrainian Justice Sector

A positive attitude towards reform in the Ukrainian justice sector can be seen to a certain extent in view of the amendments of existing legislation and new legislative proposals. Apart from the mentioned reform proposals—the implementation of which is in itself subject to the Damocles sword of unpredictable Ukrainian domestic politics—it cannot be expected that the reform process will accelerate in the near future. Constitutional changes and other legislative changes would mark important steps on the path towards the rule of law. Nevertheless, the mentioned reform efforts do indicate in principle willingness for reform. The points of discussion that have been highlighted here show that the Ukrainian judiciary would like to be measured against the

rule of law and, as far as is politically feasible, to hold future legal developments to this European rule of law standard. On Ukraine's journey into the European community of values, which is defined by high legal standards, effective implementation of all of the discussed legislative proposals is essential. Any delay in these reforms will block the establishment of a modern judiciary that is committed to the rule of law. All political parties and powers, irrespective of where they sit in the political spectrum, should be interested for the sake of Ukraine in an independent judiciary that is committed to the rule of law and thus push for further reform. It should be noted that beyond the mentioned legislative proposals, several other proposals of reform of individual judicial organs have been put forward. All these proposals should be considered as a whole and widely discussed, not limited to forums where particular private interests might be asserted.

V. Conclusion: The Ukrainian Justice Sector in Good Shape?

Ukraine's existing justice system can hardly be described as stable and committed to the rule of law. At the same time, the current reform efforts—if implemented according to plan—do reveal attempts by the Ukrainian judiciary and in particular its courts to establish working practices based on the rule of law, which are akin to those of an effective judicature by European standards. The amendments of the law on the judiciary and the law on the status of judges do not imply radical reforms of the Ukrainian justice system, as its constitutional basis remains untouched. Yet the careful and tentative orientation towards reform is not insignificant for its reliability. A complete revision of the entire court system may undo the hard-won achievements and balances. It remains therefore to hope that the Ukrainian legislature, while eyeing the goals to be achieved, in particular those resulting from international and European obligations, will also keep in mind the already achieved steps on its journey towards an effective justice system that is committed to the rule of law. The disparity of interests between the various actors—government, Verkhovna Rada, and the justice sector—has hindered a coordinated reform effort of the justice sector. An examination of the statutory basic principles and the current working practices of the Ukrainian justice sector shows a number of key areas that need to be reviewed and improved in the course of the legislative reform process in order to safeguard a stable justice sector that is committed to the rule of law. According to the country strategy paper of the European Union for the period 2007 to 2013 that is prepared under the European Neighbourhood Policy, a thorough revision of the Ukrainian judiciary is necessary. In the following summary, the most crucial areas of reform in the justice sector are presented.[50]

1. The Ukrainian court system needs to be reformed to ensure a clear allocation of jurisdiction between the specialist courts and the general courts.

2. The Ukrainian justice system (and in particular the administrative courts) needs to be adequately staffed and funded.
3. The influence of the executive on the judiciary must be reduced. A start would be to, for example, transfer responsibility for the state judicial administration from the executive to the judiciary.
4. The rules of the court self-administration should be clarified in order to strengthen the court self-administration.
5. Political influence on the judiciary must be reduced; its independence and impartiality should be promoted, and fighting corruption should be a priority issue.
6. The training and qualifications of judicial staff should be improved.
7. The ethical standards and the accountability of judges should be strengthened.
8. The prosecution service should be strengthened by implementing an effective working manner in line with the rule of law.
9. Law journals and other legal media should be supported to create an open dialogue on current legal and judicial questions.
10. The public should be made aware of the workings of the justice system and the rights of every citizen through an effective publicity campaign.
11. The legislative reform proposals from the last years in the justice sector, which could not be adopted because of a lack of political will, should as soon as possible be taken up again and discussed with a focus on fulfilling the international and European legal obligations of Ukraine.

Notes

1. See Serhij Holovaty, "Der Aufbau des neuen Rechtssystems in der Ukraine" [The Building of a New Legal System in Ukraine], in Mark M. Boguslawskij and Rolf Knieper, eds., *Wege zum neuen Recht* [Paths to New Law] (1998), 97; for law during the system change in Eastern Europe in general, see Herbert Küpper, *Einführung in die Rechtsgeschichte Osteuropas* [Introduction to the Legal History of Eastern Europe] (2005), 668–86.

2. On the development of the rule of law in Ukraine, see Jürgen Thomas, *Stärkung der Rechtsstaatlichkeit in der Ukraine* [Strengthening the Rule of Law in Ukraine], *WiRO* (2008), 291–6.

3. See Blue Ribbon Analytical and Advisory Centre, "BRAAC Policy Recommendations on Economic and Institutional Reforms 2007," http://brc.undp.org.ua/img/publications/Policy%20Recommendations_ENG.pdf (accessed 23 Nov. 2009). On the contribution of NGOs to justice reforms in Ukraine, see both Lothar Jahn, "Die Förderung der Rechts- und Justizreform in den Transformationsländern durch die Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)" [Support of Legal and Justice Reforms in the Transformation Countries by the German Society for Technical Cooperation], in Mark M. Boguslawskij and Alexander Trunk, eds., *Reform des Zivil- und Wirtschaftsprozessrechts in den Mitgliedstaaten der GUS* [Reform of Civil and Economic Procedure Law in the CIS Member States] (2004), 178–83; and Stefan Hülshörster, "Die Arbeit der Deutschen Stiftung für internationale rechtliche Zusammenarbeit im Bereich der Justizreform in Mittel-, Ost-, und Südosteuropa, dargestellt am Beispiel Ukraine" [The Work of the German Foundation for International Legal Cooperation in the Area of Justice Reforms in Central, Eastern and Southeastern Europe, shown through the Example of Ukraine], in Boguslawskij and Trunk, *Reform des Zivil- und Wirtschaftsprozessrechts in den Mitgliedstaaten der GUS*, 168–76.

4. The text of the constitution is available in English online at http://www.rada.gov.ua/const/conengl.htm (accessed 23 Nov. 2009). On the civil procedural implications, see Vjačeslav Komarov, "Aktuelle Probleme der Reform zivilprozessrechtlicher und arbitrageprozessrechtlicher Gesetzgebung in der Ukraine" [Current Problems of the Reform of Civil Procedure and Arbitration Law in Ukraine], in

Boguslawskij and Trunk, *Reform des Zivil- und Wirtschaftsprozessrechts in den Mitgliedstaaten der GUS*, 127–46.

5. On civil procedure innovations, see R. Khanyk-Pospolitak, "Novelties of the New Civil Procedure Code of Ukraine," *Kieler Ostrechts-Notizen* [East Law Notes] 1 (2008): 32–6.

6. Russische Agentur für internationale Informationen (RIA Nowosti) [Russian Agency for International Information], Report on 13 Aug. 2008, http://de.rian.ru/postsowjetischen/20080813/116015311.html (accessed 23 Nov. 2009).

7. RIA Nowosti, Report on 19 Aug. 2008, http://de.rian.ru/postsowjetischen/20080819/116139800.html(accessed 23 Nov. 2009).

8. RIA Nowosti, Report on 14 Aug. 2008, http://de.rian.ru/postsowjetischen/20080814/116044573.html (accessed 23 Nov. 2009).

9. On the relationship of Ukraine to the EU, see Wolfgang Tiede and Sabina Krispenz, "Die Ukraine auf dem Weg in die Europäische Union" [Ukraine's Journey towards the EU], *Osteuropa-Recht* [East European Law] (2008): 417, also the Internet page of the European Commission on its external relations: http://ec.europa.eu/external_relations/ukraine/index_en.htm (accessed 23 Nov. 2009).

10. On this and the Ukrainian research sector overall, see Igor Yegorov et al., *Science Profile of Ukraine-British Council* (Kiev, 2003), 3.

11. See Yegorov, "INNO-Policy Trend Chart—Policy Trends and Appraisal Report Ukraine 2007," p. i, http://www.inco-bruit.eu/documents/Deliverable%204.2%20-%202007%20Ukraine%20Inno-Policy%20TrendChart%20Country%20Report.pdf (accessed 23 Nov. 2009).

12. On the current economic situation in Ukraine, see International Monetary Fund, "World Economic Outlook (WEO), Financial Stress, Downturns and Recoveries" (October 2008), 72, http://www.imf.org/external/pubs/ft/weo/2008/02/index.htm (accessed 26 Nov. 2009).

13. In 2005, the Code of Administrative Proceeding of Ukraine no. 2747 IV was passed, which provides for the establishment of administrative courts and an administrative court of justice and sets out the competences of the administrative courts and the administrative process. Twelve out of twenty-seven planned local administrative courts have been established. The administrative proceeding code is available in English online at http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?user=annot (accessed 26 Nov. 2009).

14. For more on this, see section III.

15. Presidential Decree no. 361/2006 from 10 May 2006. Available online in Ukrainian at http://www.president.gov.ua/ru/documents/4333.html (accessed 6 Dec. 2009).

16. On the amendments of the law on the judiciary and the law on the status of judges, see section IV.1.

17. See the Presidential Decree no. 361/2006 from 10 May 2006 on the establishment of a justice sector in Ukraine in line with European standards. Available online in Ukrainian at http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=361%2F2006 (accessed 27 Nov. 2009).

18. The administrative court of justice had the following funds available: 75 million UAH in 2008, 60 million UAH in 2007, and 50 million UAH in 2006. The court administration received 2.5 billion UAH in 2008, 1.6 billion UAH in 2007, and 1.4 billion UAH in 2006. The highest court of justice received 122 million UAH in 2008, 107 million UAH in 2007, and 128 million UAH in 2006. Although these amounts seem relatively high, they cover only around 50 per cent of the actual financial requirements of the justice sector. Thus, the budget for the court administration covers only 65 per cent of its actual financial outgoings. The technical facilities of the courts are also lacking.

19. For example, see the round table discussion in the *Journal of the Centre for Justice Studies*, no. 11 (2008), "Conceptual Framework for the Justice Sector," p. 3. Available online in Ukrainian at http://www.judges.org.ua/article/Visnik11.pdf (accessed 27 Nov. 2009).

20. On the amendments of the law on the judiciary and the law on the status of judges, see section IV.1.

21. On this point, see the reasoned opinion of the highest court of justice from 18 Apr. 2008 on achievements in the justice sector in 2007 and changes that must be undertaken in 2008. Available online in Ukrainian at http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0001700-08 (accessed 27 Nov. 2009).

22. See the website of the Delegation of the European Commission to Ukraine: http://www.delukr.ec.europa.eu/page36480.html (accessed 27 Nov. 2009).

23. Available online at http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_111612.pdf (accessed 27 Nov. 2009).

24. Available online at http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf (accessed 27 Nov. 2009).

25. Available online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003XG0329(01):EN:NOT (accessed 27 Nov. 2009).

26. Ukraine became the WTO's 152nd member on 16 May 2008.

27. On the EU Action Plan on Justice and Home Affairs with Ukraine, see section III.3.

28. For the most recent update of the European Neighbourhood Policy to Ukraine, see the Memo of the EU External Relations Commissioner Ferrero-Waldner from 23 Apr. 2009. Available online at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/189&format=HTML&aged=0&language=EN&guiLanguage=en (accessed 28 Nov. 2009).

29. Available online at http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_jls-rev_en.pdf (accessed 28 Nov. 2009).

30. See the now established national data bank online in Ukrainian at http://www.court.gov.ua/ (accessed 28 Nov. 2009).

31. For example, the second protocol to the European Convention on Mutual Assistance in Criminal Matters. Available online at http://conventions.coe.int/Treaty/EN/Treaties/Html/182.htm (accessed 6 Dec. 2009).

32. See the press release of the Slovenian Presidency of the EU 2008: http://www.eu2008.si/en/News_and_Documents/Press_Releases/May/0522Ukraine.html (accessed 28 Nov. 2009).

33. Key documents on the planned Association Agreement and on the progress in EU-Ukraine relations are available online at http://ec.europa.eu/external_relations/ukraine/docs/index_en.htm#progress (accessed 28 Nov. 2009).

34. See the Joint Declaration on the EU-Ukraine Association Agreement from 9 Sept. 2008: http://www.eu2008.fr/webdav/site/PFUE/shared/import/09/0909_UE_Ukraine/UE_Ukraine_association_agreement_EN.pdf (accessed 28 Nov. 2009).

35. For more details on the development of the contractual relationship between the EU and Ukraine, see Tiede and Krispenz, "Die Ukraine auf dem Weg in die Europäische Union," 417.

36. For more information, see the Internet portal of UPIC: http://www.coe.int/t/dghl/cooperation/economiccrime/JudicialCooperation/projects/upic/upic_en.asp (accessed 30 Nov. 2009).

37. For more information, see the Internet portal of UPAC: http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/upac/upac_en.asp (accessed 30 Nov. 2009).

38. For more information, see the Internet portal MOLI-UA 2: http://www.coe.int/T/DG1/LegalCooperation/Economiccrime/moneylaundering/Projects/MOLI%20UA-2/moliua2_en.asp (accessed 30 Nov. 2009).

39. For more on the Eastern Partnership, see Wolfgang Tiede and Jakob Schirmer, "Die Östliche Partnerschaft der Europäischen Union im Rahmen des Gemeinschaftsrechts" [The Eastern Partnership of the EU in the Context of Community Law], *Osteuropa-Recht* [East European Law] (forthcoming).

40. The text of the amendments to the Law on the Judiciary of Ukraine is available online from the Venice Commission at http://www.venice.coe.int/docs/2007/CDL(2007)040-e.pdf (accessed 30 Nov. 2009).

41. See the Comments of the Venice Commission on the amendments to the Law on the Judiciary of Ukraine and the Law on the Status of Judges of Ukraine, available online at http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp (accessed 30 Nov. 2009).

42. Although more than two hundred law schools now exist in Ukraine, only a few offer practical courses on the role of the judge in society.

43. Arts. 8 and 9 of the Law on the Status of Judges governs the selection of judges. Before the first appointment as judge, candidates must pass a pro forma exam before the Exams Commission and be nominated by the High Council of Justice for recommendation by the president. All other judge selections

(except for constitutional courts) are made by parliament on the advice of the head of the Supreme Court of Justice and the head of the High Qualifications Commission of Judges. This process is non-transparent, ineffective, and not designed to be an open competition.

44. The public perception of judges in Ukraine is in part extremely negative. Corruption allegations and the view that court proceedings are not carried out in line with the rule of law are frequent, as the following press report in Ukrainian suggests: http://rus.newsru.ua/ukraine/02feb2009/zvilnyt.html (accessed 1 Dec. 2009). At the fifth congress of Ukrainian judges in 2002, a code of professional ethics was adopted, but this is still only a moral declaration of intent since violations are not sanctioned.

45. See the Opinion on the Draft Law on the Judiciary and the Draft Law on the Status of Judges of Ukraine by the Venice Commission, available online at http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp (accessed 1 Dec. 2009).

46. Draft Law no. 1403 of 30 Sept. 2008.

47. However, the Ukrainian parliament can overrule the jurisdiction for matters of dispute related to property; see http://dom.ria.ua/news/133889 (accessed 1 Dec. 2009).

48. Draft Law no. 2178 of 6 Mar. 2008.

49. The draft paper is available online at http://www.legislationline.org/documents/action/popup/id/7060 (accessed 1 Dec. 2009).

50. See the Blue Ribbon Analytical and Advisory Centre, "BRAAC Policy Recommendations on Economic and Institutional Reforms 2007," http://brc.undp.org.ua/img/publications/Policy%20Recommendations_ENG.pdf (accessed 1 Dec. 2009).

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