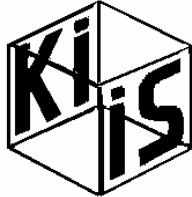


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FINAL REPORT
SURVEY ON CORRUPTION AND SERVICE DELIVERY
IN THE JUSTICE SYSTEM IN UKRAINE

*The survey was funded through the
EC/CoE Joint Programme
"Strengthening Democratic Stability in Ukraine"*

Kyiv, 2006

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Introduction

The main objective of this survey was to map the stated perceptions of and experience of the general public, citizens involved in court proceedings and members of the legal profession regarding corruption and the functioning of the Ukrainian justice system, with a particular focus on court proceedings.

The survey was funded by the European Commission/Council of Europe Joint Programme for Strengthening of Democratic Stability in Ukraine and supported by the UNDP Mission in Ukraine. It was carried out by the Kiev International Institute of Sociology, in collaboration with the Ministry of Justice of Ukraine, which participated in the survey design and questionnaire development and invited outside experts to help with research activities. The survey was conducted from 17 February to 22 May 2006.

The research was comprised of three polls, carried out among the following groups:

- ♦ the general public – perceptions, attitudes and experience (1028 respondents);
- ♦ the public in courts – perceptions and experience (2047 respondents);
- ♦ members of the legal profession – perceptions and experience (966 respondents).

The report was drafted by Anna Martynkiv (KIIS Project Coordinator) and Dmytro Khutkyi (KIIS Junior Research Assistant), and redrafted and edited by Quentin Reed.

1. Summary of findings

The main findings of the survey were the following.

1. Ukrainian citizens have very high perceptions of corruption in society in general, and a very high degree of tolerance of corruption. Almost half of citizens are willing to bribe if it is expected, and one-fifth admitted to giving a bribe in the previous year.
2. Most of the one-tenth of citizens who had come into contact with courts in the previous year expressed reasonable satisfaction with the functioning of courts, and corruption was not regarded as one of the most serious problems of the justice system. Nevertheless, over half of citizens involved in court proceedings perceive corruption to be widespread among court officials, and judges were regarded as the most corrupt justice officials.
3. One-third of citizens would not turn to the courts to solve a problem, and citizens would prefer to seek help from family and friends.
4. The length of court proceedings was cited by both ordinary citizens and citizens involved in court proceedings as the most serious problem of the justice system – citizens generally make around 5 visits to court before judgement is passed, and proceedings last on average 8 months.
5. Over half of citizens involved in court proceedings felt insufficiently informed about court proceedings and the rights and duties of participants.
6. A very significant proportion of defendants in court cases believe the court was bribed by their opponent, especially in criminal cases. However, two-thirds did not believe the court was biased or under pressure.
7. Around one-third of citizens involved in court proceedings use mediators. One-fifth to one-third of these citizens believe that their mediators make informal payments during court proceedings, and one-third are confident such payments ensure a favourable outcome to court proceedings.
8. There are big differences between the opinions of judges, prosecutors and lawyers concerning corruption and other problems of the justice system. These differences reflect a tendency of each of these sub-groups to assess positively their own institution and assess negatively the institutions of the others. Generally, however, very large proportions of all three groups regarded the adequacy of court facilities, remuneration of justice officials and enforcement of court decisions as big problems.

2. Survey of the general public

Respondents were asked a number of questions about their perceptions of corruption in Ukraine, attitudes to its acceptability and their recent experience of corruption. They were also asked about their perception of service quality and levels of corruption in a range of selected institutions, including the courts, prosecutor's office and police.

2.1 General perceptions and attitudes to corruption

Some 86% believe that corruption is widespread in Ukraine, and over half believe it can be substantially reduced.

Responses indicate a high degree of tolerance of corruption in general and a high perception of the effectiveness of corruption in solving problems, although they do not give a clear indication of how much citizens actually have to bribe. The acceptance of cash, gifts or other favours by senior and local state officials is deemed acceptable by 63% of citizens, and the same proportion believe that one should offer cash or a gift to an official one has contacts with in order to successfully solve a problem. Only 24% disagreed that it is acceptable for MPs or ministers to accept cash or gifts, and 19% disagreed in the case of ministry or local officials. 38% of respondents agreed that the officials whom they approached expected to receive cash or gifts. However, while 44% said they would be willing to do offer cash or a gift to an official, only 21% agreed with the statement that they had actually passed cash or gifts to officials in the past year.

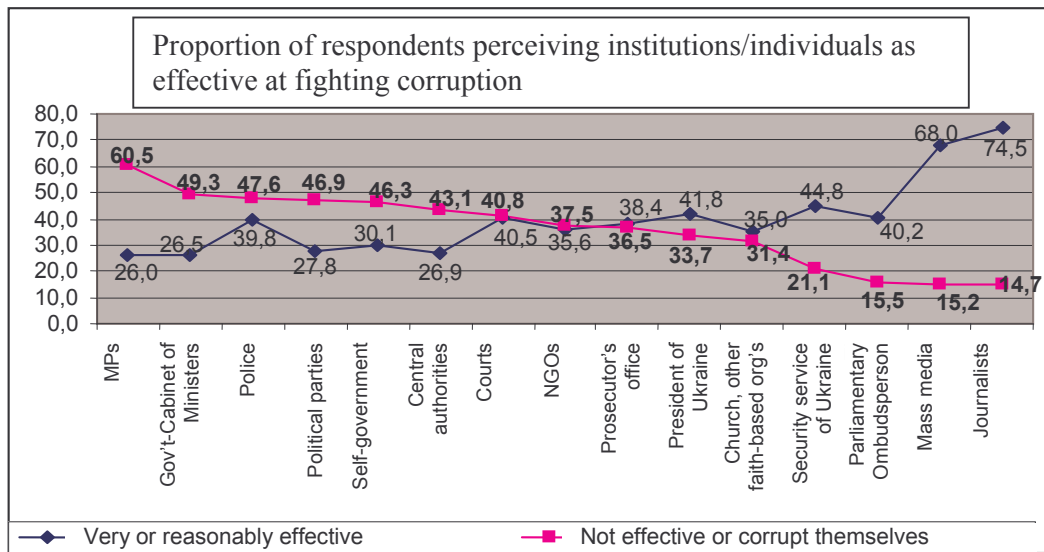
Table 2.1.1 Agreement of respondents with statements regarding corruption in Ukraine.

	Agree	Neither agree, nor disagree	Rather disagree
Corruption in Ukraine is widespread	85.6	9.0	5.5
For a matter to be resolved successfully the official in a relevant position should be offered cash or a gift	63.2	14.4	22.4
Accepting cash, gifts or favours offered by individuals or organisations is deemed acceptable for members of legislature or government ministers	62.7	13.1	24.1
It is acceptable for officials in the ministries, oblast or local councils to take cash, gifts or favours from individuals and organisations	62.7	18.2	19.1
Fellow citizens would obey the law only when it suits their personal ends	55.9	15.6	28.5
The extent of corruption in Ukraine can be reduced substantially	54.2	20.2	25.6
If an official expects me to offer cash for my matter to be resolved, I will do it	44.4	16.1	39.5
Usually, the officials to whom I addressed myself expected, or hinted at being offered, cash or gifts	37.9	24.9	37.1
Younger officials are more corrupt than older ones	37.8	26.8	35.5
In the past year, there was at least one occasion when I had to pass cash or gifts to officials whom I contacted	20.6	6.5	72.9

2.2 Perceptions of effectiveness of institutions and officials in tackling corruption

According to respondents, the institutions or groups that are effective in fighting corruption are journalists (75%), the media (68%)¹ and the Security Service of Ukraine (45%). Around an equal 40% of the respondents believe the President, courts, Commissioner for Human Rights, police and Prosecutor’s Office help to combat corruption. By contrast, 61% of respondents believe that members of the Verkhovna Rada (Parliament) of Ukraine are ineffective and/or corrupt themselves, while 49% believe the same about the Government. The courts received a mixed assessment at best: they are regarded as effective by a similar proportion of respondents as those regarding them as ineffective/corrupt (41%).

Chart 2.2.1: Citizen perceptions of the effectiveness of different organisations and officials at fighting corruption

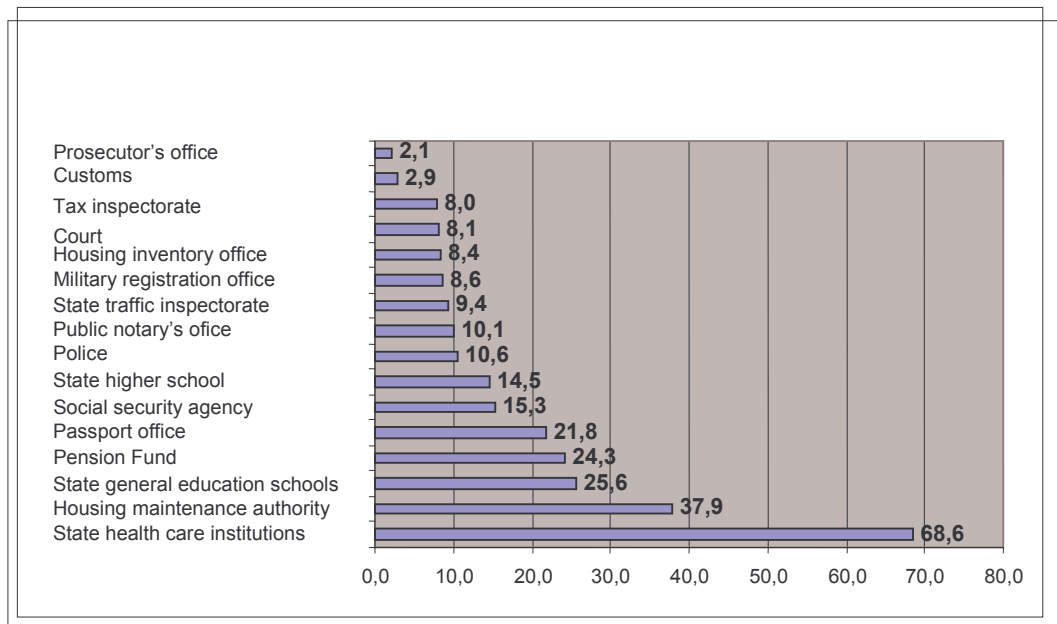


¹ Journalists and media were separated as two different categories on the assumption that journalists may have and express different views from the media for which they work.

2.3 Quality of services and levels of corruption in government institutions

In the past year, some of 8% of the public stated they had approached the courts. This compares for example with 69% who came into contact with state health care establishments, 38% for housing maintenance authorities or ZhEKs, 26% for state institutions of general education, 22% for passport registration offices, 15% (social security agencies), 11% (police), 10% (state notaries) or 9% (traffic inspectorate) (see Chart 4.1.1).

Chart 2.3.1: Proportion of respondents coming into contact with selected public institutions in the past year



Rating of services provided

Those who had come into contact with these institutions were asked to rate the quality of services provided against a standard 5-point scale, from 1 (completely dissatisfied) to 5 (completely satisfied). A positive rating was given to state notaries, passport registration offices, pension funds, the tax inspectorate, military registration office, social security agencies, housing inventory offices, and both general and higher education institutions. State health care institutions, the state traffic inspectorate, police, courts, the prosecutor's office and custom authorities were given a satisfactory rating. A poor rating was given to housing maintenance authorities ('ZhEKs').

Perceived corruption

Likewise, all respondents rated the level of corruption in each institution using a 5-point scale, where 1 stands for 'not in the least prevalent', 2 – 'not prevalent for most part', 3 – '50/50', 4 – 'prevalent for the most part', and 5 – 'very widespread'. Respondents believe corruption to be prevalent for the most part in the state traffic inspectorate, police, customs, courts, higher education, the tax inspectorate, prosecutor's office, and health care. It is deemed to have a '50/50' prevalence in military registration offices, housing inventory offices (HIOs), general education, state notary offices and ZhEKs. Corruption was perceived to be 'not prevalent for the most part' in pension funds, social security agencies and passport registration offices.

A fairly strong inverse correlation exists between the quality of services delivered by an institution and the level of perceived corruption: the lower is the rating of quality of service, the higher is the extent of perceived corruption. The only exception to this are ZhEKs; if they are excluded, the correlation between service quality

and corruption would have been even stronger. While correlation does not necessarily causality, these results do indicate that corruption and poor service quality go hand-in-hand.

Table 2.3.2: Average rating of service quality and corruption in selected institutions

	Average rating of service quality*	Average rating of corruption**
State traffic inspectorate	2.9	4
Police	2.9	3.9
Customs	2.5	3.9
Courts	2.7	3.8
State institutions of higher education	3.5	3.8
Tax inspectorate	3.8	3.8
Prosecutor's offices	2.6	3.7
State health care institutions	3.1	3.6
Military registration offices	3.7	3.4
Housing inventory offices (HIOs)	3.5	3
State institutions of general education	3.5	3
State notary offices	3.9	3
Housing maintenance authorities (ZhEKs)	2.2	2.8
Social security agencies	3.6	2.5
Passport registration offices	3.9	2.5
Pension fund	3.8	2.4

*1 – completely dissatisfied with services provided; 5 – completely satisfied with services provided.

**1– not widespread at all, 2 – not very widespread, 3 – 50/50, 4 – rather widespread, 5 – very widespread

The state traffic inspectorate, tax inspectorate and passport registration office were perceived to be slightly more corrupt by those who had *not* come into contact with them than by those who had. By contrast, those who *had* dealt with ZhEKs perceived them as significantly more corrupt than those who had not. Perceptions of corruption did not vary by gender, education or standard of living. Younger people had higher perceptions than older people of corruption in general education, passport offices, military registration offices, pension funds, social security agencies, state notary offices and ZhEKs. Perceptions of corruption varied considerably by region, with the exception of courts, ZhEKs and pension funds; respondents in Western Ukraine reported the highest perceptions of corruption in all other institutions, while those from Central Ukraine reported the lowest perceptions.

2.4 Willingness to seek legal redress

In order to gain a further indication of the confidence of citizens in courts, respondents were asked if they would seek redress in court if they were faced with a problem; for illustration, respondents were provided with the examples of illegal disappropriation of property, unlawful dismissal from work, or violation of the right to freedom of speech or faith. 68% stated that they would do so, while the remaining 32% would not. 8% of respondents had been to court in the past year, but the proportions expressing a willingness to seek redress in court were the same within this sample of those who had been to court as it was for the total sample.

Respondents who were not willing to seek redress in court were asked about the reasons they would not do so. Responses suggest there is no dominant reason, although the length of court proceedings was stated as a reason by significantly more respondents (16%) than other reasons. The need to make informal payments (bribes) ranked as a relatively widely perceived reason (stated by 13% of respondents), as were too high court fees, unfair court decisions and inefficient enforcement of court decisions. In general, inefficiency appears to be a more important reason than corruption for unwillingness to go to court.

Chart 2.4.1: Reasons cited by citizens for unwillingness to seek redress in court



Alternative strategies for solving problems

Citizens who said they would not seek redress in court were asked what strategy they would employ to solve a problem. A quarter said they found it difficult to say or did not know. The most preferred strategy stated was to resort to the help of a relative or friend, followed by seeking the assistance of 'someone in a position of authority' or a lawyer. Less than 5% would seek the assistance of an 'official' or 'politician', and only 2% would turn to a security company. Presumably, some of those who would seek redress through a lawyer should be regarded as potentially being willing to go to court – increasing the proportion of all respondents who would be willing to seek redress in court.

2.5 Awareness of court activities

Of those respondents who have never been to court, only 11% of the respondents feel they know enough about the functioning of courts. A little more than a half of all respondents would like to know more and just over a third said they know nothing at all about the functioning of courts. Perhaps more surprisingly, only one-fifth of those respondents who have been to court felt they know enough about how courts function; almost 60% of these would like to know more. These responses are similar to the responses in the survey of citizens in courts (see Section 3) and could be an indicator of a lack of transparency in the functioning of courts.

3. Survey of citizens involved in court proceedings

3.1 General information on citizens and experience of judicial proceedings

2109 citizens who were involved in legal proceedings of some kind since April 2005 were interviewed. 63% were plaintiffs and 37% defendants. Almost one-third were involved in first instance court proceedings, followed by pre-trial proceedings and judgement (one-fifth each), appeal and filing of cases. The overwhelming majority of cases were civil (68%), followed by criminal (17%), administrative (10%) and commercial (5%) cases. Almost three quarters of respondents were involved in litigation with other individuals, while smaller proportions were involved in legal proceedings against organisations (19%) or the state (8%).

Almost half of respondents (46 %) used mediators, including legal intermediaries and lawyers. Intermediaries are most often used for criminal cases (in 60% of cases), and least often in administrative cases (30%). The higher the educational level and income of respondents, the more likely they were to use intermediaries.

The average length of judicial proceedings in total was approximately 8 months. Cases which had reached the stage of pre-trial consideration had lasted on average 5 months, those reaching court hearing and judgment approximately 8 months, cases in court of appeal 17 months and those on appeal at a court of arbitration 20 months. The shortest proceedings are in administrative cases (4 months total on average); civil and commercial cases take twice as long, and criminal cases take 10 months on average.

The average number of times when claimants/respondents had to go personally to a court, is 6.4. The average number of visits when the 5% of outlying cases is excluded, is 4. Citizens involved at the stage of filing cases had been to court 2.7 times on average; naturally, the average number of visits rises the later the stage of proceedings, to an average of almost 13 times for those involved in appeal proceedings. In civil or criminal cases people had been to court on average 7 times, while in administrative or commercial cases they had been 4 times.

The average court fees paid (not including the cost of a lawyer) according to respondents was 391 UAH, if two cases of extremely high stated expenses (UAH 400,000 and 1 million) are excluded, and 160.4 UAH if 5% of outlying cases are excluded.

Table 3.1.1 Average length of proceedings, average number of visits to court and average court fees

Court proceedings that have reached stage:	Total length of proceedings (months)	Total number of visits to court	Average court fees up to this stage (UAH)
Filing	1.2	2.7	97.2
Pre-trial consideration	4.6	4.1	178.8
Hearings	8.1	5.3	487.6
Adjudgment	7.7	4.9	371.7
Appeal in appellate court	17.2	12.6	637.1
Appeal in court of arbitration	19.6	17.3	286.2
Other	20.4	26.8	793.3
Total	8.3	6.4	391.2

Note: court fees exclude two extreme cases (of fees of 400,000 and 1 million UAH).

Citizens who used mediators make about twice as many visits to court on average (12) and pay on average more than four times as much in official expenses (661 UAH). This likely reflects the fact that more complicated cases are more likely to make necessary the assistance of lawyers or other mediators, increase the number of visits to court and thereby the size of official fees.

3.2 Opinions on problems of the justice system

Respondents were asked which from a list of problems of the judicial system they believe are the most serious (they were allowed to choose more than one). The problem mostly commonly perceived was lengthy proceedings (by 10% of respondents). Corruption among judges ranked sixth with 7%. Lack of an effective system of enforcement of court decisions was deemed a serious problem by 6%, while 5% identified the dependence of judges on executive authorities as a serious problem. 1.2 % of the respondents consider that there are no problems in the judicial system. Other problems each scored less than 5 %, including high ‘informal’ payments (3.5 %) and corruption in the course of filing applications (3.0 %).

Less than one-third of citizens involved in court proceedings consider themselves sufficiently aware about the judicial process, his/her rights in it and the responsibilities of court officials at all levels. Twice as many respondents felt well-informed in Western Ukraine. The smaller the community, the more respondents feel well-informed.

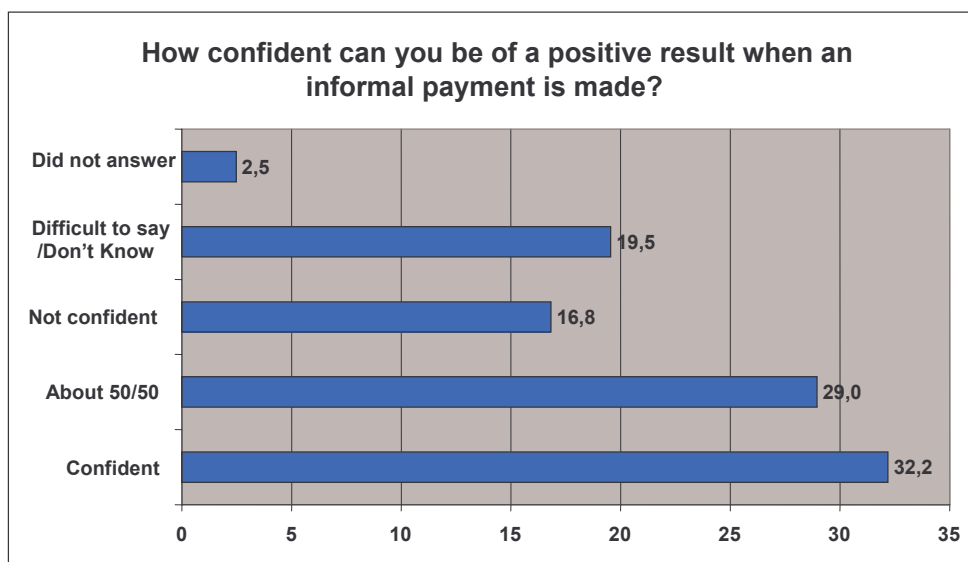
3.3 Corruption and undue influence in court

Almost half of the respondents (and over half of participants in criminal proceedings) believe that corruption among court officials is widespread and only 11% consider it not to be widespread. Almost a quarter considered the prevalence of corruption to be ‘50/50’. Only one fifth of respondents believed that the court had been bribed by their opponent, although a much higher proportion of those involved in criminal cases believed this. Over two-thirds do not believe the court is biased or under pressure.

One fifth of respondents who used mediators believed that the money they paid to these mediators included money used to make informal payments to court officials of the court, while 60% of respondents stated they did not think such payments were made. The respondents who believed informal payments were made estimated on average that half of their payments to intermediaries were used as informal payments.

One-third of respondents – and over 40% of those involved in criminal cases - believed that one may be confident of a positive result in court if one makes an informal payment. A little less than a third hold that one may only be sure ‘50/50’.

Chart 3.3.1: Citizen perceptions of the effectiveness of informal payments to secure a positive court decision



3.4 Satisfaction with court services

Respondents were asked to estimate the quality of court services against a standard five-point scale (where 1 means 'completely dissatisfied' and 5 'completely satisfied'). The average rating of respondents was 2.9, or 'neither satisfied, nor dissatisfied'. 37% of citizens stated that they were 'neither satisfied, nor dissatisfied' with the quality of such services, 32% were dissatisfied and 30% satisfied. Satisfaction with court services is inversely correlated to the extent of perceived corruption, the length of proceedings, number of visits to the court and amount of official expenses. Plaintiffs and defendants showed similar degrees of satisfaction, while parties to criminal proceedings were most dissatisfied. Respondents using mediators were much more dissatisfied than those who did not.

4 Survey of the legal profession

In the third part of the survey, members of the legal profession were asked a number of questions about their beliefs concerning problems of the justice system, corruption in the justice system and desirable reforms. Three groups were targeted: lawyers (and their assistants), prosecutors (including their assistants) and judges (including their assistants).

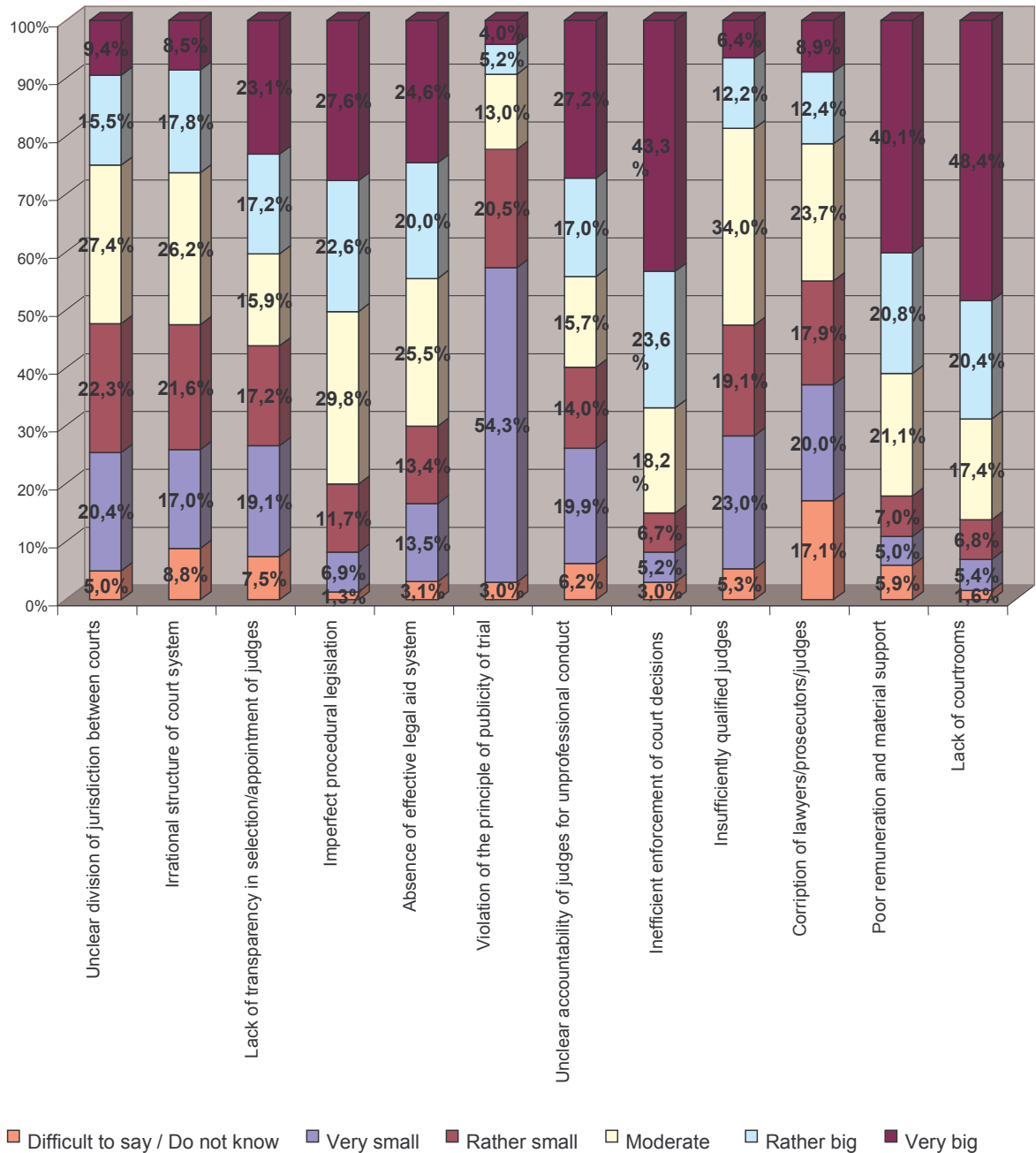
4.1 Opinions on the justice system and its problems

Respondents were asked to assess four aspects of legal proceedings - competence, speediness, integrity and accessibility, and then asked to assess the severity of selected problems in the judicial system. The main results were as follows

- The integrity and speediness of legal proceedings were criticised the most: 37 % and 43% of respondents respectively rated them as 'rather low' and 'very low'. By contrast, competence and accessibility were similarly rated by only 12% and 19% of respondents, with almost all other respondents rating them neutrally or positively.
- The biggest problems of the judicial system (to which ratings of 'rather big' and 'very big' were assigned by respondents) were perceived to be insufficient provision of courtrooms (69% of respondents and especially judges), poor enforcement of court decisions (67% and especially lawyers), a low level of remuneration and material support for lawyers, public prosecutors and judges (61% and especially prosecutors), and imperfect procedural legislation (50% and especially lawyers).
- Corruption of judges, prosecutors and lawyers was rated mostly as a rather small or very small problem, although 21% of respondents rated it as a rather big or very big problem.

It is important to note that different categories of the legal profession had significantly different opinions, and respondents tended to reply to all questions in a way that favourably reflected on their particular profession. For example, twice as many judges as prosecutors viewed shortage of courtrooms as a 'very big' problem. Differences in responses between judges, prosecutors and lawyers is a clear characteristic of this survey in general, and are most striking in responses to questions concerning corruption in the justice system summarised later.

Graph 4.1.1 : Assessment of severity of different problems of justice system by members of the legal profession

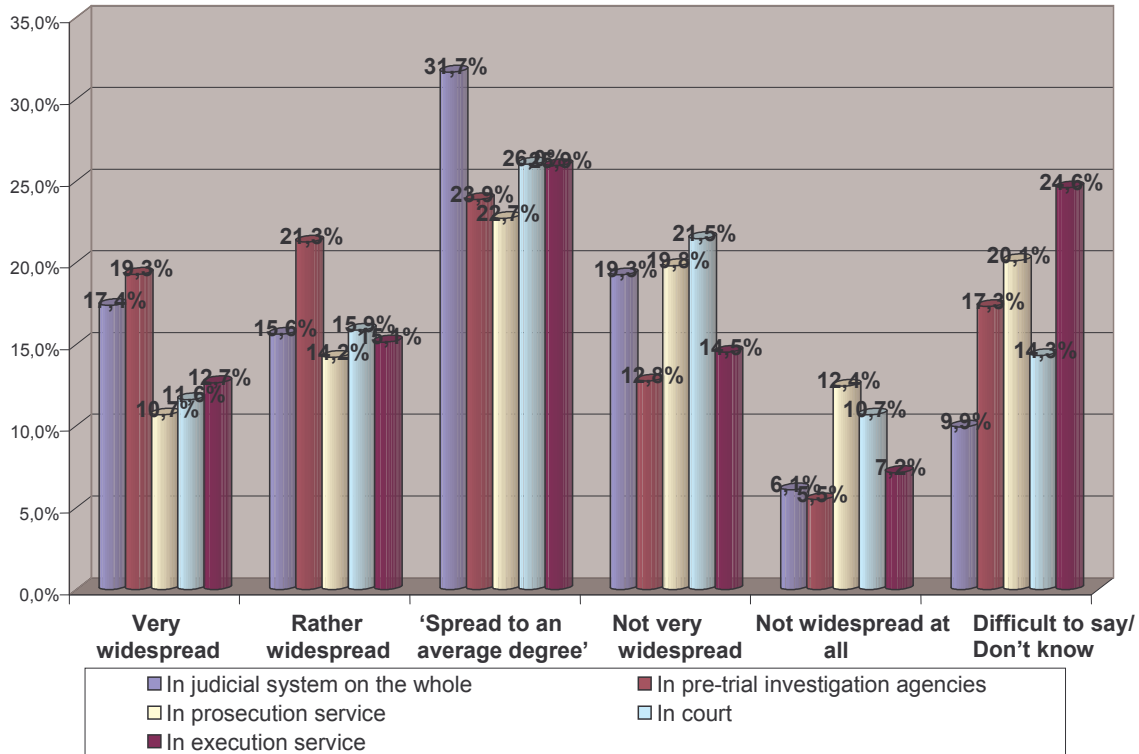


4.2 Corruption in the justice system

When asked directly ‘How widespread do you think corruption is in the Ukrainian justice system’, 50% of members of the legal profession stated that it is rather or very widespread. When asked for their opinion on the incidence of corruption in particular areas of the justice system, a lower proportion - one third - of respondents stated that corruption is rather or very widespread. Judges perceived corruption to be much less widespread than the other two categories of legal professionals. Not surprisingly, the legal profession as a whole estimated corruption to be least widespread in the prosecution service and the courts. The tendency towards ‘positive self-assessments’ was confirmed by the breakdown of answers across different groups. Judges perceived corruption to be less widespread within their own institutions and higher in the prosecution service than prosecutors, and

vice versa. Similarly, the most corrupt institution was perceived to be pre-trial investigation – an area whose main participants, the police, were not surveyed.

Graph 4.2.1 Extent of corruption in different areas of judicial system perceived by members of the legal profession



Trends in corruption in the justice system. Respondents were also asked about their opinion about trends in corruption over the past year. The great majority either perceived no change or were unable or unwilling to answer, while small and roughly equal proportions believe there had been a small increase or decrease.

Corruption in different types of court proceedings. Administrative proceedings were rated as the least corrupt: 34% of respondents estimated corruption there as 'not very widespread' or 'not widespread at all'. Commercial proceedings were rated as the most corrupt, with 39% of respondents viewing corruption there as 'rather' or 'very' widespread.

Incidence of corruption at different stages of judicial procedures. Respondents were asked for their opinion on which stage or stages of the judicial process are most affected by corruption. Again, particular professional groups labelled as corrupt stages of the judicial process in which they do not play a key role. The most commonly expressed view was that corruption is most widespread during pre-trial investigation (40% of respondents), followed by the view that corruption 'is equally widespread at all stages of legal proceedings' (38%) – a view that does not imply a judgment about actual levels of corruption at all. The institutional bias of responses is shown dramatically by the fact that just 1% of judges believed that corruption is most widespread at the stage of court proceedings, compared to 26% of prosecutors.

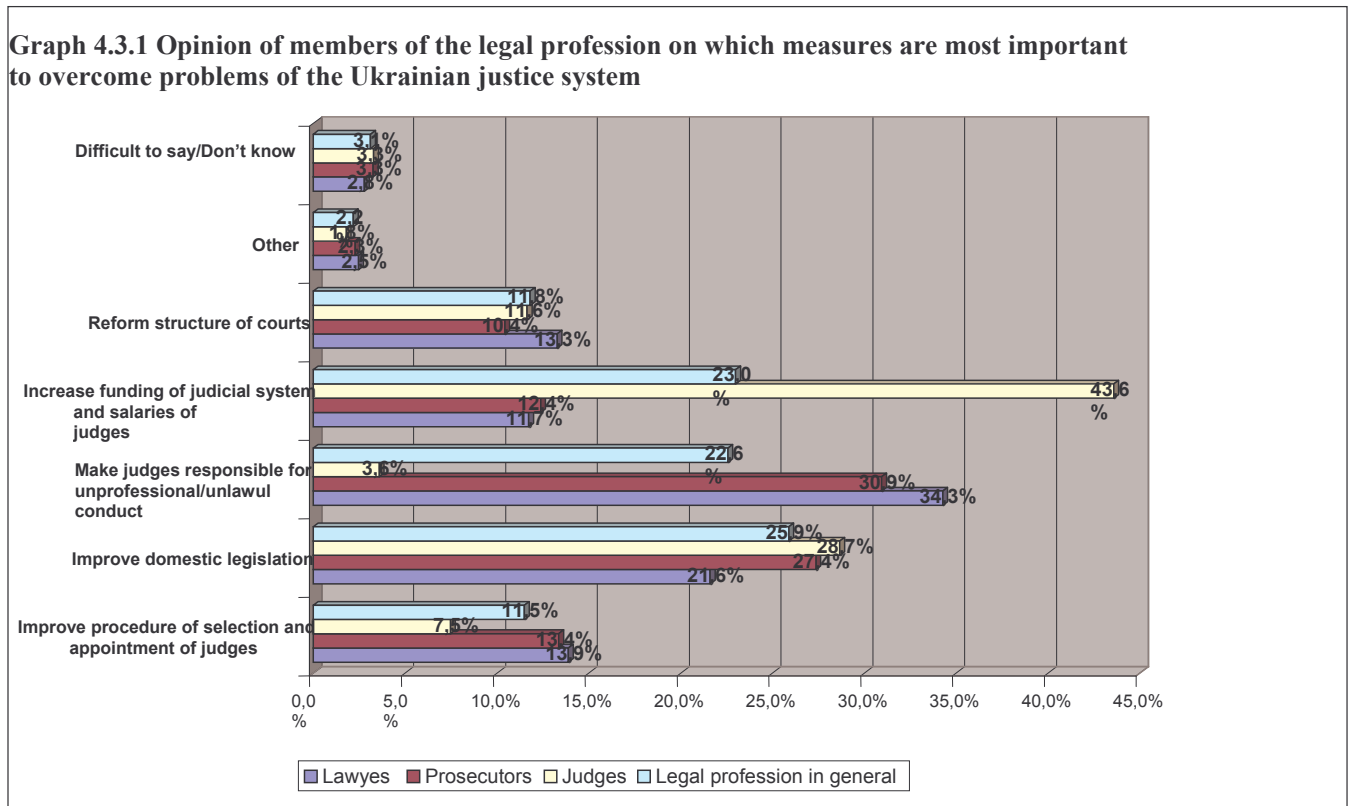
Personal experience of corruption. Respondents were asked directly whether they ever received informal payments from clients in court and what is the average amount of such payments. Not surprisingly, 90% of respondents either stated they never receive informal payments or did not know. 10% of the members of the legal profession (92 respondents), lawyers, public prosecutors and judges alike, stated that they do accept some

informal payments. However, the majority of these respondents were lawyers – where informal payments are not illegal.

Causes of corruption in the justice system. Respondents were asked for their opinion on the main causes of corruption in the Ukrainian justice system. Again, respondents chose responses that did not reflect badly upon their own professional group. Over half of respondents – and almost two-thirds of judges and prosecutors - said the principal cause of corruption in the judicial system is ‘low remuneration’. The second most important reason cited (by one-third of respondents) was ‘imperfect legislation’

4.3 Reforms

Respondents were asked to list measures they view as of major importance in tackling the problems of the justice system. On average, members of the legal profession most often selected the following measures as being of major importance: improvement of legislation (26% of respondents), increasing funding of the judicial system and salaries of judges (23%), and the introduction of mechanisms to bring judges to responsibility for unprofessional and unlawful actions (23%). Again, the three groups showed major differences in opinion. For example, judges were much more in favour of increasing funding and their own salaries than prosecutors and lawyers and far less in favour of making judges more accountable.



Conclusions

This survey yielded interesting indicators of the situation of the Ukrainian justice system, and in particular on corruption. As in many other surveys, the findings appear to confirm a big gap between *perceptions* of rampant corruption and much lower *actual* levels of corruption, both in general and in the justice system in particular. Concerning the justice system, the survey indicates that while corruption is an important problem, its actual incidence may not be as high as is often assumed. Citizens appear to be reasonably satisfied with the functioning of courts, and perceive the most serious problems of the justice system not to be corruption the length of judicial processes, poor enforcement of court decisions and lack of resources.

Last but not least, the survey of representatives of the legal profession – which yielded a systematic tendency of both judges and prosecutors to each assess their own institutions positively and assess the other much more negatively, underlined very clearly the drawbacks of asking professionals to assess their own profession. As with many other surveys that attempt to gain information about corruption, the lesson of this survey is that much more attention needs to be paid to defining the precise objectives of a survey and designing a questionnaire to pursue those objectives in full knowledge of the advantages and disadvantages of different questionnaire strategies.