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FAIR, ACCOUNTABLE, INDEPENDENT, AND RESPONSIBLE (FAIR) JUDICIARY PROGRAM IN UKRAINE

**QUARTERLY PROGRESS REPORT
OCTOBER TO DECEMBER 2012**

Contract No. AID-121-C-11-00002

January 16, 2013

This publication was produced for review by the United States Agency for International Development. It was prepared by Chemonics International Inc.

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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PROJECT BACKGROUND

Chemonics International signed the USAID Fair, Accountable, Independent, and Responsible (FAIR) Judiciary Program in Ukraine contract on September 19, 2011. FAIR is designed to build on initiatives implemented by the USAID Combating Corruption and Strengthening Rule of Law in Ukraine (UROL) project from 2006-2011.

The major goal of the FAIR project is to support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary. The project focuses on four main objectives:

- Development of a legislative and regulatory framework for judicial reform that is compliant with European and international norms and supports judicial accountability and independence;
- Strengthening the accountability and transparency of key judicial institutions and operations;
- Strengthening the professionalism and effectiveness of the Ukrainian judiciary;
- Strengthening the role of civil society organizations as advocates for and monitors of judicial reform.

FAIR by the Numbers

- 410 courts covering every region of Ukraine received assistance
- Supported 15 key government justice sector institutions
- Targeted programming provided to nine civil society organizations
- Promoted four changes in Ukrainian legislation to enhance judicial independence
- Trained 1,039 judges and judicial personnel
- 59 trainers qualified under Training of Trainers Program
- 399 justice sector personnel engaged for long-term strategic planning for the judiciary
- Trained 220 judges in judicial self-governance mechanisms
- Supported 2 national tests of 3,476 and 2,339 judicial candidates accordingly

SUCCESS STORIES AND NOTABLE ACHIEVEMENTS

On November 13 and 14, 2012, the Council of Judges of Ukraine (COJ) with FAIR support conducted an international conference on “Judicial Ethics: Maintaining Public Trust and Confidence.” The conference was aimed at discussing proposals on the new draft of the Code of Judicial Ethics prepared pursuant to the assignment of the COJ and approved based on the results of seven regional discussions conducted with FAIR support from May to October 2012. Conference speakers included members of the COJ, specialized councils of judges, representatives of high judicial bodies, Supreme Court, High Council of Justice (HCJ), High Qualifications Commission of Judges (HQC), National School of Judges (NSJ), judges of trial and appellate courts, representatives of civil society organizations, international donor organizations, academia, and representatives of judiciaries in Europe and the United States. Keynote speaker Judge of the United States District Court for the Northern District of Georgia William Duffey emphasized the special status of judges as compared with the officials of other branches of power in any country and the need to develop a culture of ethical conduct in the judicial community alongside with developing the rules of ethics. *“Why am I here? It is because judicial independence, your right and what citizens expects of you to be the place where they can go when they felt like they have been wronged, when they feel like they need a decision to which they were entitled. But the place where they can go with the result they can get will be what they think is fair, impartial and uninfluenced*

by outside sources. What you are doing today is not about rules and codes of conduct. It is about whether you are willing to commit and create a culture within the judiciary, whether you set your self-interest aside and put before the interest of the institution of the courts of Ukraine," said Judge Duffey. During the conference, the participants provided the following recommendations to improve the draft Code of Judicial Ethics: (1) review the Code to eliminate ambiguities; (2) include of judicial competency principles to maintain consistency with national legislation; (3) specify activities for which a current judge may receive payment; and (4) specify the provisions of the Code preventing a judge and/or his/her family members to accept gifts, loans and testaments. Participants also stressed the need to establish a committee within the COJ which would interpret provisions of the Code and develop a commentary to the Code of Judicial Ethics that would facilitate interpretation and improve practical implementation in day-to-day operations. In his closing remarks the First Deputy Chief Justice of the Supreme



Participants of the conference on "Judicial Ethics: Maintaining Public Trust and Confidence" discuss the draft Code of Judicial Ethics in order to define key ethical rules for judges in Kyiv on November 13 and 14, 2012.

Court of Ukraine, COJ Chair Yaroslav Romaniuk summarized: *"It was important for the Council of Judges as a body assigned with developing a new draft of the Code of Judicial Ethics to hear the opinions of judges and scholars from all regions of Ukraine. We are grateful for this. We will thoroughly analyze the conclusions and proposals of the participants of regional discussions and the international conference, and based on this, we will prepare a final draft of the Code for its approval by the Congress of Judges of Ukraine."*

As a result of the conference, the amended draft Code of Judicial Ethics was approved by the COJ on December 21, 2012 and will be submitted to the Congress of Judges of Ukraine scheduled for February 22, 2013 for adoption. FAIR will continue to support the COJ and NSJ in implementing the Code of Judicial Ethics.

PROJECT ACTIVITIES

As outlined in the contract, the following section contains a discussion of accomplishments, milestone progress, indicator progress, and upcoming plans for each Expected Result from October 1 through December 31, 2012. Changes from the activity schedule compared to the work plan and problems requiring resolution or USAID intervention are discussed if they are applicable. Views expressed by project counterparts do not necessarily represent those shared by the FAIR team.

EXPECTED RESULT 1.1: UKRAINIAN JUDICIAL REFORM LEGISLATION RECEIVES FAVORABLE COMMENTS FROM THE VENICE COMMISSION AS MEETING INTERNATIONAL STANDARDS AND REFLECTS DOMESTIC AND INTERNATIONAL EXPERT INPUT

ACCOMPLISHMENTS: During the reporting period, the FAIR team worked with a variety of partners on improving the legislative and regulatory framework for the judiciary. The FAIR team

continues to regularly monitor legislative initiatives to analyze potential impact on the judiciary and launch public discussion where needed to prevent backsliding. This activity was going on in parallel with efforts regarding the constitutional reform (see Expected Result 1.2) to put additional stress on enacting justice sector improvements.

Under this Expected Result FAIR was also working with its partners to assist them in their sector activity promotion.

On October 5, 2012, upon HCJ request FAIR provided financial and technical support to conduct Scientific and Practical Conference on “Constitutional and Legal Status of the High Council of Justice: Theory and Practice”, which was held in the premises of the National University “Odessa Law Academy”. Conference objectives included: (1) collect the academic community’s opinions and research regarding the roles and responsibilities of the HCJ; (2) discuss possibilities to improve the status, composition and activity of the HCJ; (3) and develop recommendations regarding the status, composition and powers of the HCJ to provide the Constitutional Assembly with the relevant recommendations. This conference was the first of the number planned by the HCJ events in the frame of the HCJ 15th anniversary celebration. The second event will be the international conference in March 2013 to continue discussion on the scope of HCJ authority to become a top level judicial system self-government body.



FAIR COP David Vaughn (right) and HCJ Head Volodymyr Kolesnychenko (center) during the Scientific Practical Conference on “Constitutional and Legal Status of the High Council of Justice: Theory and Practice” in Odesa on October 5, 2012.

FAIR short-term local expert Olena Ovcharenko reviewed HQC regulation on transferring judges within their first appointment term to increase transparency of the process. As a part of her assignment Ms. Ovcharenko along with FAIR representatives participated in the Second Annual International Conference “The High Qualifications Commission of Judges of Ukraine: European Course of Ukraine Reform in Action” conducted by the HQC jointly with German Foundation for International Legal Cooperation on October 29, 2012. FAIR is finalizing the expert report and will submit it shortly for the HQC leadership consideration.

In accordance with transitional provisions of the Law on Bar and Advocates Activity, during September and October 2012 local defense bars self-government and self-regulating bodies were elected. The First Congress of Advocates of Ukraine was held on November 17, 2012. Congress made decision to create the Ukrainian National Bar Association with mandatory membership of all practicing lawyers who are holders of the local bars licenses obtained since 1992 (nearly 38, 000 members). Lidya Izovitova, Deputy Head of the HCJ, was elected by Congress delegates’ majority as the Head of the Ukraine National Bar Association and Bar Council, and all top level governing bodies were formed (Bar High Qualifications Commission, Bar Council and Bar Audit Commission). FAIR Deputy Chief of Party Natalia Petrova is the member of the Ukrainian Bar Council as a representative of Kyiv City Bar 5,300 members. In addition, FAIR works closely with the Ukrainian National Bar Association and Bar Council of Ukraine to support their efforts in

drafting subsidiary legislation/internal regulations to implement the provisions of the Law on the Bar and Advocates Activity.

On November 29 and 30, 2012, FAIR in cooperation with Organization for Security and Co-operation in Europe (OSCE) Project Coordinator in Ukraine and German Foundation for International Legal Cooperation supported the International Scientific and Practical Conference on “Role of Administrative Case Law and its Impact on Public Law Development” conducted by the High Administrative Court of Ukraine (HAC). The objectives of the conference were to: (1) learn the interrelation between the establishment of administrative justice and level of human rights protection in public law relations; (2) discuss the administrative justice models in terms of distribution of powers between different jurisdictions; (3) learn the impact of the European Court of Human Rights decisions on the domestic remedies system improvement and protection of human rights and fundamental freedoms in the court. Almost 150 participants attended the conference, including the HAC judges, chief judges of appellate and circuit administrative courts of Ukraine, members of the HAC Scientific and Advisory Board, representatives of the judiciary, leading national scholars in the field of administrative law as well as foreign participants, in particular leadership and representatives of high-level judicial bodies rendering administrative justice of the CIS and Eastern European countries, judges and experts from Germany, the USA, France, Sweden and Lithuania. FAIR contributed with U.S. Pro Bono Expert federal court Judge Philip Pro participation, who delivered the presentation on the role of the United States administrative law system and judicial control over its decisions in protecting the rights of foreigners and stateless persons.

Milestone Progress ER 1.1

- Draft amendments to the Law on the Judiciary and Status of Judges (amended according to Venice Commission recommendations) introduced to the President’s office for consideration.
- Draft Law on the Bar and Advocates Activity was submitted to the Verkhovna Rada of Ukraine on April 28, 2012, adopted on July 5, 2012, in force from August 15, 2012.
- Held two public discussions on pending judicial reform legislation. (*December 20 and 21, 2011, Conference on Judicial Reform in Ukraine and International Standards for Judicial Independence; October 5, 2012, Conference on Constitutional and Legal Status of the High Council of Justice: Theory and Practice*).
- Concept Paper on Legal Education Reform developed and presented to the members of the Working Group on Legal Education Reform in Ukraine.
- International conference on “Role of Administrative Case Law and its Impact on Public Law Development” conducted.
- Recommendations to improve HQC Regulation on transferring judges within term of their first appointment developed.

FAIR continues to work with the Legal Aid Coordinating Center leadership to bring the text of the Law on the Free Legal Aid and its implementation in line with Council of Europe (COE) recommendations and international standards and to develop secondary legislation.

The Government of Ukraine continues its efforts in developing and establishing the free legal aid system. In 2012, 27 nationwide Secondary Legal Aid regional centers were established, and 2,500 defense lawyers who are legal aid providers were selected on competitive basis. Effective January 1, 2013, regional Secondary Free Legal Aid Centers will be ready to process requests from law enforcement agencies to provide free legal aid services in criminal cases and in cases of administrative detention and arrest. Following a short period of operations, legislative work will continue to address identified gaps and contradictions. To support these efforts FAIR issued an RFA to assist the Legal Aid Coordinating Center to launch a public awareness campaign to inform the public about the government-funded legal aid system. Additional information can be found under Expected Result 4.2.

On October 25 and 26, 2012, FAIR demonstrated its commitment to support the legal education reform by taking part in the International Conference on “European Integration of the Ukrainian Higher Education in the Context of the Bologna Process”. During the conference the participants discussed the accomplishments and challenges of the Bologna process requirements in Ukraine,

the quality assurance tools development, interaction between higher education institutions and labor-market etc. Among the participants of the conference were European and Ukrainian experts, representatives of the EU Education, Audiovisual and Culture Executive Agency.

On November 8 and 9, 2012, FAIR in cooperation with the OSCE Project Coordinator in Ukraine, supported a regular meeting of the Working Group on Legal Education Reform in Ukraine aimed at: (1) getting familiarized with the need to reform the national legal education system according to Ukraine's commitments in the field of implementation of recommendations and qualifications framework of the European Higher Education Area (EHEA) and Bologna Process basic requirements; (2) learning other countries best practices in organization and administration of higher legal education system; (3) discussing an expediency/possibility of professional associations' engagement into legal specialties accreditation process and American Bar Association's experience in accreditation of the U.S. law schools; (4) agreeing upon the next steps regarding legal education reform process in Ukraine and ways to improve training programs for law students. Among the participants of the meeting were the deans of the leading laws schools, Ukrainian and international experts, representatives of the Ministry of Justice and Ministry of Education. During the meeting, FAIR short-term education experts Ivan Babyn, Catherine Carpenter (USA, via Skype) and Georgian expert David Kereselidze (Georgia, via Skype) made their presentations that were received with a great interest and resulted in active discussion. The participants agreed to conduct next meeting in February 2013 with the participation of the law school deans from all over the regions of Ukraine. Such meeting is seen as a platform to share the Working Group accomplishments, present a Concept Paper on Legal Education Reform based on analysis of legal education problems in Ukraine, and discuss the Agenda of All-Ukrainian Conference on the state of legal education in Ukraine, preliminary planned for April 2013.

In the frame of these efforts, FAIR will step in to contribute to the draft Law on the Higher Education, which is now reviewed by the Cabinet of Ministers of Ukraine with respect to accreditation process improvement and quality of education assurance.

SCHEDULE CHANGES: FAIR conducted most as scheduled. Minor changes in implementation were required as a result of the pace of the partners' activities.

PROBLEMS: The lack of political will, an unpredictable Parliament, and weak judiciary leadership with a lack of initiative in the process are the major challenges judicial reform is facing. FAIR continues to work on promoting and fostering key reform components and focuses its efforts on building consensus and mutual understanding among stakeholders.

PLANS: During the next quarter, FAIR will continue to work on building consensus among key partners to bring the Law on the Judiciary and Status of Judges in line with the Venice Commission recommendations, by advocating for the passage of amendments through inclusive interactions among international experts, civil society, and key policymakers. In the next reporting period, FAIR will focus mainly on monitoring and analyzing justice sector related legislative initiatives. FAIR will develop comments

and recommendations concerning additional amendments on an as-needed basis to be presented to the Verkhovna Rada Justice and Rule of Law Committee in order to ensure European and Ukrainian experts' opinion and international standards and best practices consideration.

Performance Indicators ER 1.1

Indicators status for this ER remains the same as 2012 annual data: number of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance – 4; number of revised provisions enacted that reflect Venice Commission recommendations – 4; percentage of Venice Commission recommendations adopted – 18%.

Efforts will also be directed to the development of secondary legislation to properly implement the provisions of the Law on the Judiciary and Status of Judges and other key reform initiatives. For

example, the 2011 Law on the Prevention of Corruption and the Law on Access to Court Decisions are opportunities for FAIR to improve judicial transparency and accountability and further bring the justice sector in line with international standards.

Likewise, there is a room to collaborate with American Bar Association Rule of Law Initiative (ABA/ROLI) and USAID Access to Justice and Legal Empowerment Project (LEP) on the Law on Free Legal Aid and the Law on the Bar and Advocates' Activity, and with the OSCE Project Coordinator in Ukraine on the draft laws on higher education and legal education reform issues in particular.

EXPECTED RESULT 1.2: CONSTITUTIONAL REFORM RELATED TO THE JUDICIARY IS PURSUED IN AN INCLUSIVE MANNER

ACCOMPLISHMENTS: : On October 17, 2012, the Constitutional Assembly Commission on Justice conducted a meeting to discuss the draft Law of Ukraine “On Amending the Constitution of Ukraine Regarding Strengthening Judicial Independence” submitted by the President of Ukraine. This draft law is addressing the number of issues identified by Venice Commission experts which prevent moving forward in bringing the judiciary operation in full compliance with Ukrainian government commitments to the Council of Europe.

Milestone Progress ER 1.2

- Concept paper for the Constitutional Assembly is approved by the President of Ukraine.
- Council of Europe expert Lorena Bachmaier developed and presented the Opinion on the Constitution of Ukraine with a Focus on Rule of Law Principle.

Members of the Commission agreed with certain draft provisions including: (1) keeping political authorities out of forming the judicial corps; (2) creation, re-organization, and elimination of courts according to the law; (3) increase of age limit for judicial position to 30 years; (4) increase of the required record of professional service to 5 years; (5) giving judges a possibility to work until they turn 70 years; and (6) increase the judicial representation in the HCJ membership.

At the same time, the proposal to cancel the five-year term of the first-time appointment to judicial position seems continues to be debated. In opinion of the Commissioners, this term is an important anti-corruption mechanism in the operations of the Ukrainian judiciary. The proposed change to form the judicial corps exclusively by the President of Ukraine with the right to appoint all judges to positions and dismiss them from their positions is unacceptable as well as a new approach to lift judicial immunity by the HCJ upon HQC submission. Considering grounds for dismissal of a judge from the position (part 5, Article 126), the Commission questioned the expediency of such ground for judge's dismissal from the position as the breach of oath.



AIR Expert Lorena Bachmaier Winter (right) during her presentation on the Roundtable on “Conceptual Issues of Improving Constitutional Principles of the Justice in Ukraine” in Kyiv on December 6, 2012.

On December 6, 2012, the Constitutional Assembly conducted the third plenary meeting with many non-Assembly members being present. According to the agenda, Head of the Constitutional

Assembly, first President of Ukraine Leonid Kravchuk informed the Constitutional Assembly members that the Administration of the President of Ukraine developed draft law to amend the Constitution of Ukraine with regards to judiciary. This draft law and its provision were the key points of discussion during the meeting.

Secretary of the Constitutional Assembly Maryna Stavniichuk outlined agenda items for the plenary meeting which resulted in a lively discussion focusing on the judiciary and law enforcement. The agenda of the plenary meeting included presentations of the Head of the Constitutional Assembly Commission of the Judiciary Vasyl Malyarenko, Advisor to the President of Ukraine and Chief of the Department of the Judiciary at the Presidential Administration Andrii Portnov, and Head of the Constitutional Assembly Commission of the Law Enforcement Vasyl Tatsii.

In his presentation Mr. Malyarenko outlined the challenges that Ukrainian judiciary is facing, including critical overload of judges, low financing, and low public trust; presented the Concept of Improving the Constitutional Regulation of Justice in Ukraine approved at the meeting of the Commission on Justice of the Constitutional Assembly on December 4, 2012; and reviewed the mentioned draft law, developed by the Administration of the President. According to Mr. Malyarenko, the draft law contains some very positive changes though it is fragmentary and inconsistent. It can be taken into consideration later, when the text of the changes to the Constitution will be developed on the basis of the Concept. Mr. Portnov in his presentation introduced the draft Law on Introducing Changes to the Constitution of Ukraine Regarding Strengthening Guarantees of Judicial Independence. Mr. Portnov as a draft law key developer underlined that drafters are open for discussion and constructive criticism. Mr. Tatsii presented the conceptual approaches to the Constitutional reform in the law enforcement area.

As a result of Constitutional Assembly plenary session, consensus was reached on the need to identify the most acceptable means to safeguard judicial independence through separation of power, and a system of checks and balances.

One of the key issues of the Constitutional Assembly operation is its openness and transparency. Upon the recommendation of the President of the European Commission José Manuel Barroso, who welcomed and supported the establishment of the Constitutional Assembly in Ukraine, the plenary meetings are now broadcasted live on the web.

Later on December 6, 2012 the Constitutional Assembly leadership conducted a roundtable on “Conceptual Issues of Improving Constitutional Principles of the Justice delivery in Ukraine” with Venice Commission experts’ participation and FAIR cooperation. The presenters of the roundtable were: Vasyl Malyarenko, Chairman of the Commission on Judiciary, Constitutional Assembly of Ukraine; Hanna Suchocka, Vice-President of the Venice Commission, Ambassador of Poland to the Holy See; Petro Pylypchuk, Chief Justice of the Supreme Court of Ukraine; Lorena Bachmaier, FAIR short-term Constitutional Law Expert, Madrid University Law professor, Spain; Volodymyr Kolesnychenko, Chairman of the HCJ.

In her presentation FAIR expert Lorena Bachmaier identified current Constitutional provisions that should be reviewed to ensure legal certainty, predictability, and clarity. Ms. Bachmaier’s assessment contains recommendations to be considered by Constitutional Assembly in the Concept Paper on Constitutional Reform content development.

The next steps under this Expected Result will be the academic assessment of the concept papers from the Human Rights, Law Enforcement and Justice Commissions expected early next year.

Finally, during this reporting period, FAIR accommodated Constitutional Assembly needs in developing and supporting an independent website to ensure an independent channel for civil society education and active engagement in the Constitutional reform process, by issuing an RFP and selected the sub-contractor. Additional information can be found under Expected Result 4.2.

According to the work plan, FAIR will support the constitutional process with a grant-funded information campaign on Constitutional Assembly activities in order to educate public with active media involvement on the needs for constitutional changes. This campaign will include four nationwide public events. During this reporting period, FAIR issued the relevant RFA and selected a grantee. Additional information can be found under Expected Result 4.2.

SCHEDULE CHANGES: Progress is being made under this task since the Constitutional Assembly began working on a periodic basis. FAIR will design and implement activities based on ongoing developments.

PLANS: During the next quarter, FAIR will focus on continuing cooperation with the Constitutional Assembly to follow its needs satisfaction to move forward on the development and discussion of constitutional amendments. FAIR experts will work to support the Constitutional Assembly activity by providing independent assessment of the concept papers quality along with recommendations on the Constitutional process improvement.

Performance Indicators ER 1.2

During this reporting period FAIR supported 2 plenary meetings of the Constitutional Assembly contributing to the indicator “Number of working sessions on Constitutional reform between lawmakers and civil society organizations” which status increased to 3. The status of the indicator “Number of civil society organizations who have experience in constitutional reform participating in public events on the Constitution” changed from a 7 as of September 30, 2012 to 7. No changes occurred this quarter on indicator “Number of project-supported communication products issued by civil society organizations on constitutional reform.”

EXPECTED RESULT 2.1: UKRAINIAN JUDGES ARE APPOINTED ON OBJECTIVE, KNOWLEDGE- AND PERFORMANCE-BASED CRITERIA

ACCOMPLISHMENTS: During this reporting period, FAIR jointly with the HQC focused on analyzing the results of the second national judicial selection process and organizing the third national anonymous test of the judicial candidates.

In October 2012, the HQC evaluated the case studies written by the judicial candidates as the part of the qualification exam conducted on September 11, 19 and 20, 2012. FAIR short-term Judicial Testing and Training Expert Sergiy Mudruk provided methodological support to the HQC commissioners and guided them during the evaluation process. Under Mr. Mudruk expert support the HQC developed and approved special criteria for evaluating each out of four case studies.

Milestone Progress ER 2.1

- Held Three working meetings with HQC
- HQC formed working group to improve selection procedures for the first appointment of judges.
- Completed Gap analyses of the judicial vacancy application, test administration, and scoring processes.
- Developed recommendations for improving the judicial vacancy application, test administration, and scoring processes.
- Drafted Handbook for test items developers.
- Held training on developing test questions for evaluating skills at high cognitive levels for developers of test items.

Starting from October 22, 2012, the HQC conducted series of meetings to interview shortly every candidate who participated in the qualification exam (<http://vkksu.gov.ua/ua/news/staut-vidomimi-imeni-pretendentiv-u-suddi/>). On November 12, 2012, the HQC adopted decision according to which a candidate should get 60 points to pass successfully the qualification exam and posted the list of the candidates with their results on the official web-site (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/rezultaty-skladennya-kvalifikatsiy-nogo-ispitu-11-19-ta-20->

veresnya-2012-roku/). More than 1,100 candidates successfully passed the second nationwide judicial selection process conducted by the HQC and now are ready to fill nearly 1,000 vacant judicial positions.

On November 5 to 7, 2012, the HQC and NSJ under the FAIR support conducted a two-day training for developers of test questions and case studies (<http://nsj.gov.ua/news/1861/show/>). During the event, FAIR short-term Judicial Testing and Training Expert Leonid Sereda taught the participants methodology of case study development and evaluation, methodology of developing test items to evaluate high cognitive levels for judicial qualifications exams, and psychometrical results of the 2012 initial anonymous test and qualification exam.

On November 5, 2012, the HQC announced the third national judicial selection process (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/ogoloshennya/rishennyam-vidshoi-kvalifikatsiynoi-komisii-suddiv-ukraini-vid-5-listopada-2012-roku-ogolosheno-provedennya-doboru-kandidativ-na-posadu-suddi-vpershe/>). The third judicial selection process will include a new stage – six-month initial training for judicial candidates who will successfully pass an anonymous test. The training will be organized by the NSJ and conducted by law schools. Preparing for the implementation of special training the HQC approved on October 9, 2012 the Regulation on the procedure of conducting special training for judicial candidates and its schedule. It is important to note that according to the schedule, the training candidates will improve their theoretical knowledge and develop competencies needed for a judge such as (i) ability to apply knowledge in practice and correctly draft procedural documents, (ii) ability to effectively listen, (iii) communicative skills, (iv) ability to resist influence and pressure and (v) to resolve conflicts, together with ability to think logically and analytically.

On November 27, 2012, FAIR issued the RFA # 11-FAIR-11-2012 on Civil Society Involvement in Analysis to Identify Current Judicial Qualifications (Competencies) under which FAIR will award grant to Ukrainian CSO to support the testing and qualification of candidates for judicial offices (http://www.fair.org.ua/index.php/index/tender_single/65). Grant award under this program will support civil society involvement to promote and ensure the selection and quality of those persons to be appointed on judicial positions. Aspired CSOs should submit their application by December 27, 2012. During the next reporting period, the tender committee will review and consider applications and will identify a successful grantee.

On December 20, 2012, the HQC with the FAIR expert support conducted the third national anonymous judicial test (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/ogoloshennya/ogoloshennya-provedennya-anonimnogo-testuvannya-ispitu-kandidativ-na-posadu-suddi-na-viyavleniya-rivnya-ih-zagalnih-teoretichnih-znan-u-galuzi-prava-20->



Ihor Samsin, Head of the HQC, opens security packs with the test during the third national anonymous test of judicial candidates in Kyiv on December 20, 2012.

grudnya-2012-roku-u-misti-kievi/). 2,339 Ukrainian aspiring judicial candidates participated in the test, 67 eligible candidates did not show up for the test.

“With support from FAIR many valuable achievements were made. The HQC hope that our fruitful cooperation will continue”, said Anatolii Martsynkevych, Deputy Head of the HQC.

On December 21, 2012, judicial candidates test results were posted on the HQC official website: (<http://vkksu.gov.ua/ua/dobir-kandidativ-na-posadu-suddi-vpershe/rezultati-anonimnogo-testuvannya-ispitu-gruden-2012/skanovani-ta-obrobleni-rezultati-anonimnogo-testuvannya-ispitu-2012/>).

Finally, FAIR signed a contract with *Spolucheni Svity* (Converging Worlds) company to produce a success story video on ways of ensuring transparency and objectivity of judicial selection and appointment process. Representatives of the HQC, CSO, FAIR and judicial candidates participated in filming.

PROBLEMS: The third national judicial selection process announced by the HQC on November 5, 2012 includes a new stage to be implemented by the HQC decision which is a six-month initial training for judicial candidates. The NSJ will organize and control the process of training. Yet the training will be conducted by the four law schools in Kyiv, Kharkiv, Lviv and Odesa to be selected by the HQC together with the NSJ. This approach contradicts the European standards which suggests that the initial training of judicial candidates should be conducted within the judiciary solely by the school of judges. FAIR will continue to promote implementation of this standard into Ukrainian legislation.

PLANS: In the next quarter, FAIR plans the following activities:

- Start to conduct survey among court staff, court users, and judges for the selection criteria analysis (December 2012 and ongoing);
- At HQC’s request, conduct a working meeting to discuss results of the second national judicial selection results and present expert and independent monitor reports and recommendations regarding improving the process. Promote implementation of experts’ recommendations into regulations governing the judicial selection process (December 2012 to March 2013);
- At the requests of the HQC and NSJ conduct a review of the Test Developers Handbook. Adapt Handbook approaches and methodologies to mirror current judicial candidate testing objectives and guidelines. (October 2012 to March 2013);
- Investigate with HQC and stakeholders possible approaches in automating the judicial qualification exam (December 2012 to February 2013);
- Conduct assessment of software and hardware needs of the HQC in automating the case study evaluation process and draft report with the recommendations and necessary steps to automate the qualification exam. Present and discuss the report with the HQC (December 2012 to March 2013);

Performance Indicators ER 2.1

FAIR made significant measurable changes this quarter on ER 2.1. “Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance” increased from 2 to 17, this quarter data counts 6 judicial selection criteria, 8 criteria to evaluate case studies and 1 regulation on judicial training. FAIR improved judicial qualification exam procedure contributing to the indicator “Number of procedures within the judicial appointment process improved with project support”, and trained 11 judicial test developers making progress regarding the indicator “Number of judicial test developers trained with project support.”

- In cooperation with the HQC, develop a draft of a standards manual for anonymous test administrators (proctors) (October 2012 to March 2013); and
- Produce a final version of the success story video on ways of ensuring transparency and objectivity of judicial selection and appointment process (February 2013).

EXPECTED RESULT 2.2: UKRAINIAN JUDGES ARE DISCIPLINED IN TRANSPARENT PROCESSES

ACCOMPLISHMENTS: During this reporting period, FAIR continued supporting the HQC in developing clear judicial discipline procedures. To achieve this goal, FAIR involved experts to analyze the draft Instruction on Verification Procedure and Decision-Making in Disciplinary Proceedings against Judges and develop recommendations on its improving. As a result of joint efforts on developing clear judicial discipline procedures, on October 16, 2012 the HQC approved the Procedure of Verification and Decision-Making in Disciplinary Proceedings against Judges, and Preparation and Retaining Documents (Procedure).

The Procedure contains certain provisions recommended by FAIR experts, in particular:

- Clear requirements for self-recusal of disciplinary inspector;
- Procedure for using videoconferences to make investigations more efficient;
- Requirements to compose minutes of interviewing witnesses, interviewing a judge; and
- Samples of minutes, written conclusions and other documents.

Milestone Progress ER 2.2

- Documented current practice within the judicial discipline process.
- Presented Amendments to the Draft Regulation on the Judicial Discipline Inspector Service for HQC consideration.
- Finalized and Presented Draft Regulation on the Judicial Discipline Process for HQC consideration (achieved, although this document is now called a Procedure).
- Developed training curriculum and manual for judicial discipline inspectors.
- Developed import module enabling the posting of judicial discipline decisions to the HQC website.
- Delivered 45 Laptops to the HQC and improved procedure of judicial misconduct complaints verification and consideration.

According to the Procedure Preparation, and Retaining Documents disciplinary inspectors have to draft a number of procedural documents while conducting a verification of judicial misconduct. As the HQC itself cannot provide all disciplinary inspectors with computers, the HQC leadership requested FAIR's assistance in solving this problem. In order to make the disciplinary inspectors' activities more effective and to meet international standards on conducting judicial misconduct investigations, in the previous reporting period FAIR issued the RFP for delivery of laptops for the HQC. Based on this procurement, FAIR delivered 45 laptops to the HQC so that all disciplinary inspectors and Head of Service of Disciplinary Inspectors will have laptops and the HQC session hall also will be equipped with laptops. The HQC IT specialists conducted training for disciplinary inspectors on how to use laptops properly in order to improve judicial misconduct investigations.

In order to support the HQC in analyzing decisions by the institutions overseeing complaints alleging judicial misconduct, and based upon those findings support development of continuing training for judges on the issues which are identified as most problematic for Ukraine's judges, FAIR issued an RFA and grant to monitor judicial discipline decisions (HQC judicial discipline decisions and appeals on HQC judicial discipline decisions submitted to the HCJ and HAC) and based on the findings recommend amending the curricula for judicial trainings. FAIR expects to choose the grantee in January 2013.

CHANGES: In the previous reporting period, FAIR involved U.S. Business Processes Management Expert Pamela Daniels to document current practices of the judicial discipline and selection processes in Ukraine. After analyzing the HQC's business processes, Ms. Daniels suggested developing a unified, integrated database to manage the data related to judicial discipline

processes, judicial candidates' selection, judicial training, and transferring. The HQC recognizes the value of a high-volume electronic document management system to manage their functions and operations more efficiently, effectively, and transparently. FAIR agreed with the HQC and planned to involve a subcontractor to develop the database in November 2012. However, the HQC does not have a clear understanding of usage the database and may fail to design important tools of the database. Therefore, FAIR decided to assist the HQC in developing terms of reference first and then to consider the possibility and need of developing the database during the next quarters.

PLANS: During the next reporting period, FAIR plans the following activities in order to achieve the Expected Result 2.2:

- Work with the HQC to develop the terms of reference for a unified integrated database to manage the judicial discipline process, judicial candidate selection, judicial training, and transferring processes;
- Work with the HQC to update the FAIR developed Manual on Judicial Discipline Procedure;
- Support the HQC IT Department in making the appropriate settings in the case management system in order to enable installing the FAIR developed modules;
- Support the HQC in updating the curricula for disciplinary inspectors training and conduct a two-day training for disciplinary inspectors; and
- Update and disseminate a leaflet on judicial discipline procedure, distribute it to all courts.

Performance Indicators ER 2.2

FAIR supported developing and promoted approval of 1 procedure that contributes to the indicator "Number of criteria, standards and regulations adopted to govern judicial misconduct investigations". "Per cent of judicial misconduct complaints submitted to the HQC using the standardized form" this quarter is 8.3% (cumulative LOP is 8.7%). "Number of government institutions placing judicial misconduct complaint form on their website" is 2 "Per cent of judicial discipline decisions posted on HQC website" is 44% this quarter, cumulative LOP 76%.

EXPECTED RESULT 2.3: THE REGULATORY AND INSTITUTIONAL FRAMEWORK FOR JUDICIAL ACCOUNTABILITY AND INTEGRITY IS STRENGTHENED

ACCOMPLISHMENTS: During the reporting period, FAIR continued assisting the COJ in amending the Code of Judicial Ethics to bring it in line with European standards of judicial conduct and Ukrainian legislation.

With FAIR's support, the COJ launched two more regional discussions on the draft Code aimed at presenting it to judges and obtaining their support in developing amendments to the draft in Kharkiv and Donetsk on October 1 and 3, 2012, respectively. These events gathered judges from all regions in Ukraine and enabled the participants to discuss the provisions of the draft Code and suggest improvements. Participants of the regional discussions recommended distinguishing between one-time and systematic violations of the Code's provisions, and defining in the text of the Code which violations are subject to disciplinary sanction, defining the "financial interest" concept, regulating judicial presence in social networks.

As a result of these regional events, the draft Code was widely discussed and accepted by the judicial community. Judges participating in all regional roundtable discussions supported the suggestion that the new Code be based on the U.N. Bangalore Principles of Judicial Conduct and developed recommendations to the draft Code.

The amended draft Code of Judicial Ethics that reflects recommendations developed during the regional discussions was discussed at the above mentioned International Conference on Judicial Ethics that was held in Kyiv on November 13 and 14, 2012. Recommendations suggested by

Milestone Progress ER 2.3

- Held 7 stakeholder discussions on draft Code of Judicial Ethics.
- Revised amendments to Code of Judicial Ethics submitted to COJ for approval.
- Supported COJ International Conference on Judicial Ethics.

participants of the conference and international experts were reflected in the draft Code of Judicial Ethics.

PLANS: During the next reporting period, FAIR plans the following activities in order to achieve the Expected Result 2.3:

- Support COJ leadership in finalizing the draft Code in preparation for consideration and adoption by the Congress of Judges of Ukraine in February 2013;
- Work with the COJ on the Action Plan for implementing the Code of Judicial Ethics;
- Support the NSJ in reflecting the proposed changes to the Code in the training curricula of the judicial ethics course to be introduced to judicial initial and ongoing training program;
- Support the COJ in the publication of the newly adopted Code along with commentary in the amount necessary to provide each judge with a copy; and
- Analyze the Law of Ukraine on the Rules of Ethical Conduct for Public Servants on its compatibility with international standards of judicial independence and impartiality and suggest relevant amendments.

Performance Indicators ER 2.3

During the reporting period 57 judges provided their feedback to the new draft Code of Judicial Ethics through two discussions in Kharkiv and Donetsk contributing to the indicator “Number of judges providing feedback to revisions of judicial self-governance mechanisms”, cumulative number is 220 judges.

EXPECTED RESULT 3.1: THE SKILLS AND COMPETENCIES OF UKRAINIAN JUDGES ARE BOLSTERED THROUGH MODERN, DEMAND-DRIVEN INITIAL AND ONGOING JUDICIAL TRAINING PROGRAMS

ACCOMPLISHMENTS: During the reporting period, FAIR continued to support the NSJ in developing its capacity to accomplish the provisions foreseen by the Law on the Judiciary and Status of Judges to ensure the training of highly skilled personnel for judicial system of Ukraine.

At the HQC and NSJ’s requests, FAIR assisted these institutions in implementing the recommendations provided by FAIR experts in the NSJ’s Institutional and Training Needs Assessment Report. These recommendations foreseen activities to improve the operations of the NSJ with FAIR support, including developing a mission statement, strategic plan for the next three years, and action plan for the upcoming year; audit of the NSJ leadership’s management skills; and enhancing the NSJ’s capacity to develop its faculty and design, implement, and evaluate training programs.

To support the institutional development of the NSJ, FAIR awarded a grant to Ukrainian NGOs and on October 1, 2012, signed an agreement with selected grantee - All-Ukrainian Charitable Fund “Ukrainian Legal Foundation” to develop new and/or update the existing curricula for initial and ongoing trainings for judges on the following topics: 1) Rule of law and human rights, with practical emphasis on the European Convention on Human Rights and Fundamental Freedoms on the case-law of the European Court of Human Rights; 2) Judicial proceedings and opinion writing and on judicial ethics. On November 2 and 15, 2012, FAIR organized working meetings with grantee, NSJ and HQC representatives to coordinate this activity. During these meetings the Grant Program Implementation Plan was approved.

Milestone Progress ER 3.1

- Institutional needs assessment of the NSJ completed (achieved).
- Judicial training needs assessment completed on behalf of the NSJ (achieved).
- Second edition of the Judicial Opinion Writing Handbook published (ongoing).
- Benchbook printed (ongoing).
- Three curricula for the initial training on Rule of Law and Human Rights, Opinion writing, and Judicial Ethics are developed and presented to the key stakeholders (ongoing).
- Curriculum on Rule of Law and Human Rights for on-going training is developed and presented to the key stakeholders (ongoing).
- Curricula on Opinion Writing and Judicial Ethics for ongoing training are updated and presented to the key stakeholders (ongoing).

As it was mentioned in the annual report, FAIR local experts prepared the final version of the second edition of the Judicial Opinion Writing Handbook. After its reviewing by Ukrainian judges and NSJ faculty, FAIR issued an RFP and will sign a subcontract with selected applicant - Private enterprise "Dream Art" for preparing an electronic version of this Handbook, saving it on CD-R (2000 copies) and disseminating to the relevant stakeholders in January 2013. This Handbook will help augment professionalism of judges, specifically their skills to clearly and correctly compile judicial opinions, identifying the essence of the issue, logically put down their thoughts, give legal justification and keep the proper style of the opinion.

In addition, on November 26, 2012, FAIR awarded a grant to Ukrainian NGOs to assist in improving professionalism and efficiency of the Ukraine's judiciary through the development and publishing of "The Judge's Book". FAIR will sign an agreement with selected applicant in January 2013. The Book will serve as a resource for the readers to better understand the philosophy of judging and as a benchbook for Ukrainian judges to be used in their everyday (both professional and personal) life.

FAIR continued to support Ukrainian judges in preparing to address the challenges they faced after the new Criminal Procedure Code (CPC) came into force in November 2012. Thus, judges sitting on criminal cases and investigate judges need intense training on the application of the new code.

On October 23, 2012, FAIR supported the NSJ in conducting a seminar on implementation of the new CPC. 200 participants including deputy chief judges of appellate courts and chiefs of the criminal chambers of all appellate courts, lawyers and representatives of law enforcement bodies of all regions of Ukraine attended this event. The goal of the seminar was to discuss the roles of participants in criminal proceedings, their particularities and to build effective long-term cooperation between them to ensure proper implementation of the CPC and secure human rights protection (more information can be found at <http://nsj.gov.ua/news/1817/show/>). *"Discussion of the controversial provisions of the new Code and development of common approaches to their interpretation are the main conditions for effective work of this document"*, said Ihor Samsin, Head of the HQC.

Cooperating with the U.S. Department of Justice Overseas Professional Development and Training (OPDAT) FAIR organized two coordinating meetings with the High Civil and Criminal Court (HCCC) and NSJ to reach consensus on further cooperation.

On November 9, 2012, USAID ODG Democracy

Project Management Specialist Oleksandr Piskun, FAIR COP David Vaughn and DCOP Natalia Petrova met with Acting Chief Judge of the HCCC Stanyslav Mishchenko to discuss the current activity and future plans for cooperation. Viktor Kapustynskii, HCCC Chief of Staff, judges Olha Diomina and Natalia Marchuk also were present at the meeting. Judge Mishchenko proposed to create a working group to coordinate joint activities implementation. The HCCC is interested in the international experts support in the new CPC application, further training on interpretation of its provisions and development of the relevant curriculum, as well as implementation of alternative dispute resolution methods in civil process (more information can be found at



FAIR COP David Vaughn; HQC Head, Justice Ihor Samsin; Justice of the Supreme Court Bohdan Poshva; Acting Chief Judge of the HCCC Stanislav Mischenko; Acting Rector of the NSJ Natalia Shuklina and Vice-rector of the NSJ Oksana Kuchynska during the seminar on implementation of the new CPC in Kyiv on October 23, 2012.

http://sc.gov.ua/ua/golovna_storinka/kerivnik_proektu_usaid_spravedlive_pravosuddja_devid_von_pozitivnij_dosvid_vssu_slid_zaprovadzhuвати.html).

On December 3, 2012, FAIR COP David Vaughn and DCOP Natalia Petrova jointly with Resident Legal Advisors, OPDAT Mary Butler and John C. Engstrom met with 22 judges of the Criminal Chamber of the HCCC. During the meeting, OPDAT and FAIR representatives introduced the main ideas (a quick, practical guide to help trial judges deal with situations they are likely to encounter on the bench), audience (newly appointed and experienced judges), structure and content of the CPC based Benchbook for Ukrainian judges prepared by Ukrainian experts invited by the OPDAT. After incorporating suggestions and recommendations from the HCCC judges the abovementioned Benchbook will be printed by FAIR and disseminated to judges who are hearing criminal cases (more information can be found at

http://sc.gov.ua/ua/golovna_storinka/trivaje_robota_nad_stvorennjam_posibnika_dlja_suddiv_z_pi_tan_zastosuvannja_polozhen_kpk.html).

PROBLEMS: FAIR is the only international project which provides technical assistance in judicial reform area in Ukraine. In May 2012, representatives of the Canadian International Development Agency (CIDA) announced the potential 5 year Project with the NSJ “Judicial Education for Economic Growth”. To ensure an effective cooperation with common local partners FAIR needs to coordinate efforts with the CIDA Project. The Kick – off Steering Committee of this Project is planned for March 2013. Slow process of its implementation complicates application of some FAIR activities.

PLANS: During the next quarter, FAIR will:

- In cooperation with the OPDAT, NSJ and HCCC work to develop, print and present to the relevant stakeholders the CPC based Benchbook;
- Work with the selected grantee, NSJ and HQC to develop the texts of a Judge’s Book;
- Provide expert support to the NSJ leadership to develop NSJ Mission statement, Action plan for 2014 and Strategic Plan for 2014-2016;
- Work with the NSJ to develop a distance learning capacity;
- Continue work with NSJ and All-Ukrainian Charitable Fund “Ukrainian Legal Foundation” to develop new and/or update the existing curricula for initial and ongoing trainings for judges: on rule of law and human rights, with practical emphasis on the European Convention on Human Rights and Fundamental Freedoms on the case-law of the European Court of Human Rights; on judicial proceedings and opinion writing and on Judicial ethics;
- Support the NSJ through legal editing and preparing of an electronic version of the curricula on Rule of Law and Human Rights, Judicial Opinion Writing, Judicial Ethics, and Communications (Public Outreach in Courts) for initial and on-going trainings;
- Assist NSJ to develop two week training program for ongoing training for judges, who are the first year on the bench;
- Work with the NSJ and relevant practitioners of Ukraine on designing a model program for initial training, based on the EU Twinning project “Support to the Academy of Judges of Ukraine”; and
- Support the NSJ in securing quality control of training courses for judicial candidates.

Performance Indicators ER 3.1

FAIR made measurable progress during this reporting period under the Expected Result 3.1. FAIR trained 174 judges and judicial personnel contributing to the indicator “Number of judges and judicial personnel trained with USG assistance”. This number includes 25 judges contributing to the indicator “Number of judges trained with USG assistance.” No changes on other indicators related to ER 3.1 occurred this quarter and their status remains the same as annual 2012.

EXPECTED RESULT 3.2: JUDICIAL OPERATIONS ARE EVALUATED AND FUNDED ACCORDING TO AN OBJECTIVE ASSESSMENT OF NEEDS AND PERFORMANCE

ACCOMPLISHMENTS: During October – December 2012, FAIR continued working with the State Judicial Administration of Ukraine (SJA) and COJ on developing objective criteria to measure and improve court performance and building the capacity of the SJA to use court performance data to develop a viable long-term plan for the further development of the judiciary and to formulate and substantiate needs-based budget requests.

FAIR built its activity on the outcomes of its first program year when FAIR supported Court Performance Evaluation (CPE) Working Group developed draft framework for court performance standards with defined four quality areas and court performance measurement tools, and selected thirteen courts for pilot testing of court performance standards and tools. Each of the thirteen courts selected evaluation team consisting of judges and court staff. The evaluation teams conducted internal evaluation of efficiency of court administration through survey of judges and court staff based on the following performance evaluation criteria: fairness and reasonability of distribution of workload and responsibility, establishment of proper working conditions for judges and court staff, level of implementing/using the potential of judicial self-government, efficiency of utilization of the available resources, leadership style, observance of ethical standards of judges and court staff, social and psychological environment in court team.

The evaluation teams also conducted the internal evaluation of the timeliness of court proceedings using expert observation of documentation for selected cases (100-150 per each pilot court) and based on the following criteria: compliance with procedural timelines (determined by the procedural legislation, as well as bylaws on case management), and compliance with and reasonability of timelines established by the court. The third measurement area of the internal court performance evaluation is quality of court decisions. The evaluation teams randomly selected from 100 to 150 decisions per each pilot court, reviewed them and evaluated using standard quality scales based on the following performance criteria: reasonability of the decision, due application of law, understandability, adherence to formal requirements, standard of speech and style of presentation.

Simultaneously the thirteen courts mentioned above participated in the external court performance evaluation using CRC surveys as described in details under the Expected Result 4.3 section of this report. CRC surveys measure court performance based on the following criteria: citizens access to court, level of comfort in the courthouse, timeliness of case disposition, full and understandable information, reasonability and understandability of court decision, judges and court staff performance. Certain court performance criteria are cross-cutting in regards to internal and external court performance evaluation: timeliness of court proceedings, reasonability and understandability of court decision.

Milestone Progress ER 3.2

- Developed draft framework for court performance standards and defined four quality areas (achieved).
- Identified 13 courts to pilot court performance standards (achieved).
- Performance measurement tools (with sub-criteria and indicators) are developed for each quality area in the framework (achieved).
- 46 representatives of pilot courts and the SJA trained in implementation of court performance evaluation (achieved).
- National court performance standards formulated and defined (ongoing).
- Court performance standards and court performance evaluation framework presented to the COJ and SJA for approval (ongoing).
- Completed assessments of the budgeting and budget justification processes; drafted recommendations for improving each (achieved).
- Prepared methodology for the collection of statistical data and a set of relevant tools required to develop case weighting standards and submitted to the SJA/COJ for review (achieved).
- Case weights resulting from case weighting study discussed, validated and submitted for SJA/COJ review (ongoing).

At the moment of preparation of this quarterly report nine courts fully completed pilot testing of CPE framework including assessment, data collection, data entry, analysis and report preparation. Two courts completed all steps from the assessment to data analysis and now are in the process of report preparation. Two courts completed their assessments and now are in the process of entering and analyzing the data.

Despite the fact that not all courts completed report on pilot testing of CPE framework, FAIR started the process of updating framework and tools based on the available results. FAIR experts revised the CPE framework draft, made it more simple and easy for practical implementation and, based on piloted four court performance quality areas and twenty four criteria, started formulating court performance standards and their definitions.

In this reporting period FAIR also assisted the SJA in improving the process of judicial statistics data collection and analysis. Per SJA request, FAIR supported training for judicial statistic specialists. On December 18 and 19, 2012, training for judicial statistics specialists representing appellate courts of general jurisdiction took place where 55 trainees received new knowledge and skills in data collection, data entry, data analysis and statistical annual report preparation using SJA's developed and implemented computer software. Training for judicial statistics specialists representing administrative courts took place on December 20 and 21, 2012 with participation of 35 trainees. More than 90% of judicial statistics trainees reported that the new knowledge and skills they received are useful for their day-to-day work and will make the process of preparation annual statistical reports more efficient. Immediate impact of this training session also is that it provided a platform to court statistics practitioners to underline gaps and issues in existing software and address them to representatives of software developers for immediate solution.

During this reporting period, FAIR also continued to support the implementation of the case weighting study, designed by short-term case weighting expert Dr. Elizabeth Wiggins of the Administrative Office of the U.S. Courts. On October 19, 2012, FAIR launched the second round of the case weighting study, under the framework of each all the judges of 80 pre-selected courts from all of Ukraine were to provide daily information on their caseload and other activities related to consideration of cases and court administration. The judges were also polled with regard to procedural rules, working conditions, adequacy of facilities, hardware, court administration issues, as well as other factors likely to influence their work. FAIR also decided to incorporate a gender component into the framework of the study in order to compare the caseload of male and female judges who participated in the survey. The survey ended on November 30, 2012. To-date, all the data resulting from the survey with the exception of the end of study questionnaire (which we are in process of collecting) has been processed by FAIR and transferred to Dr. Elizabeth Wiggins for analysis. FAIR expects to receive the first results in January, 2013.

It is also worth noting, that in line with the recommendations provided by Markus Zimmer, the Territorial Department of the SJA in Odesa Oblast started negotiations with local banks in order to locate bank cash desks within the premises of all courts of Odesa, and in case the facility does not allow this – pay terminals, which will allow paying



Participants of the training for judicial statistics specialists in Irpin on December 20 and 21, 2012.

court fees without leaving the court building. FAIR will monitor progress in this area and provide support in case of necessity.

FAIR also started working with the SJA in order to prepare the program for the training on preparation of budget requests and court audits, which is currently tentatively scheduled for March 2013.

PROBLEMS: Implementation of developing CPE framework is behind the schedule by three months. The development of CPE framework and start of its pilot testing took place in accordance with the Work Plan, however, the pilot testing in courts and preparation of reports by courts took longer than planned due to the several reasons:

- Developed CPE framework is too detailed, comprehensive and overwhelming with indicators. FAIR experts raised this issue with the CPE Working Group and suggested to cut the volume of data, but CPE Working Group members choose to test the framework in current large version and make cuts if necessary based on the results of pilot testing;
- Pilot courts do not have sufficient number of court staff to rapidly implement current internal evaluation modules, specifically, to enter the data, to calculate indicators and to analyze them. This factor of delay is reinforced this quarter by the 2012 Parliament Elections when courts experienced larger workload;
- Courts are not used to measure their own performance with indicators, thus calculating simple things like per cent, average value or simple index score sometimes is an issue for court staff; and
- Changing leadership in some pilot courts (e.g. appointment of the new Chief Judge or new Chief of Staff) caused temporary burdens of new leaders' lack of understanding of court performance evaluation pilot program and the role of pilot court in this process.

To overcome the issues of these delays, FAIR put more efforts to help pilot courts to process and analyze performance data, to calculate indicators and prepare reports about the pilot testing of court performance framework. Additionally, FAIR established working relationship with the new chief judges of those pilot courts where leadership changed. For the future, FAIR will facilitate simplifying current draft of CPE framework and provide additional training for court staff in performance measurement, specifically, data processing and analysis.

The processing of data for the case weighting study is complicated by the huge number of input logical errors revealed when FAIR ran the results through a set of checks. Most of those errors are mere typos, however, they all have to be corrected manually, which means that FAIR may experience a delay with the completion of the study. Nevertheless, FAIR currently aims to present the results of the study at the next Congress of Judges currently scheduled on February 22, 2013. In January 2013, FAIR will conduct a preview presentation for the members of the COJ and SJA in order to validate the results of the survey. However, due to the constraints mentioned above, we may have to revisit certain aspects of the study after the presentation.

PLANS: In the next quarter, FAIR plans the following activities in order to achieve the Expected Result 3.2:

- Assist four out of thirteen pilot courts in preparing reports on testing court performance evaluation framework and tools; prepare summary report on this process (January to February 2013);
- Support up to 3 meetings of the Working Group for Developing Court Performance Evaluation System consisting of representatives of the COJ, SJA, courts and CSOs; receive

inputs from the working group members on the results of court performance evaluation framework and tools pilot testing in Ukrainian courts (February-March 2013);

- Complete formulating court performance standards and their definitions (January-February 2013);
- Finalize court performance evaluation framework for presentation to the COJ and SJA (February-March 2013);
- Through involved in the working group meetings representatives of the COJ and SJA agree upon the strategy for approval court performance standards with the COJ and SJA (February-March 2013);
- Prepare and facilitate a roundtable discussion of the results from piloting the court performance evaluation standards, framework and tools involving the SJA, COJ, HCJ, higher courts, MOJ. Update the framework based on the discussion if necessary (March 2013);
- Submit standardized court performance evaluation framework to the COJ for approval; through the working group members – representatives of the COJ facilitate the review of court performance evaluation standards and framework by the COJ and its approval for implementation in Ukraine (March 2013);
- Assist the SJA in conducting an assessment of compliance of the Ukrainian judicial statistics with European standards of statistical data quality (EUROSTAT) and stakeholder needs for judicial statistics data (March 2013); and
- Facilitate the roundtable discussion on improving Ukrainian judicial statistics to comply with international standards (March 2013).
- Conduct one three-day training for court and SJA staff on how to prepare budget requests and conduct internal court financial audits (up to 125 participants) (March 2013);
- Complete the case weighting study that is currently underway for the 665 trial courts of general jurisdiction, take into account gender in the course of measuring workload, and present results to the SJA/COJ for approval (January 2013);
- Discuss resulting case weights in two regional focus groups (February 2013); and
- Finalize and present resulting case weights to the SJA/COJ for approval (February and March 2013).

Performance Indicators ER 3.2

During reporting period FAIR involved 13 courts in the process of pilot testing of court performance evaluation system contributing to the indicator “Number of courts involved in piloting court performance standards.” 8 CSOs completed CRC surveys in 34 courts, CRC data shows “Annual citizen report cards score of participating courts” is 0.82. No changes made this quarter on indicators “Number of court performance standards adopted” and “Number of data-fed analytical techniques incorporated into judicial budgeting.”

EXPECTED RESULT 3.3: THE SJA’S CAPACITY TO REPRESENT AND SUPPORT THE DEVELOPING NEEDS OF UKRAINE’S JUDICIARY IS STRENGTHENED

ACCOMPLISHMENTS: During this quarter, after an international conference on strategic planning in December 2011, 5 focus group discussions, an open space event and 12 regional discussion of a draft strategic plan, the Council of Judges approved the Strategic Plan for the Ukrainian Judiciary for 2013 to 2015 on December 21, 2012. The Strategic Plan outlines five core values, namely, independence, integrity, professionalism, fairness and equality and openness and accessibility, and seven strategic issues for the judiciary over the next three years. FAIR will continue to support

Milestone Progress ER 3.3

- Developed and discussed with FAIR support Strategic Plan for the Ukrainian Judiciary for 2013 to 2015 approved by COJ (achieved).
- Printed manual on Human Resource Management and sent to all courts (achieved).
- Three trainings on Human Resource Management for court chiefs of staff conducted (ongoing, 2 out of 3 conducted).

the COJ and SJA in implementing the Strategic Plan for the Ukrainian Judiciary, including development of an action plan to implement the plan.

Throughout this reporting period, FAIR also worked jointly with the SJA to help design an appropriate organizational structure and policies within the SJA for the support of IT, procurement, capital improvement, human resources, statistical collections and analysis activities within the courts. In close cooperation with SJA and the State Enterprise “Information Court Systems” FAIR updated the draft Court Automation Strategy with several projects reflecting the current plans and policies of the SJA. FAIR then proceeded with conducting the first in the series of three focus



Judge Anatoliy Babiy speaking at the focus group discussion of the draft Court Automation Strategy in Odesa on December 7, 2012.

group discussions of the draft with judges and court staff, which took place in Odesa on December 7, 2012. In the course of the discussion FAIR collected information on the current state of affairs in the field of IT in the courts of Odesa, as well as information on the expediency and urgency of the action steps proposed in the draft. FAIR also collected information on new ideas and initiatives to be incorporated into the draft Strategy.

In the course of the discussion, Anatoliy Babiy, Judge of Odesa Court of Appeals and member of the Council of Judges of General Jurisdiction Courts of Ukraine stressed the importance of making the COJ aware of current issues in the courts. *“I believe that the information, collected in the course of these focus group discussions, should be transferred to the Council of Judges of Ukraine to make them aware of all existing issues. I also think it is high time we complete the development of this Strategy and start working towards its implementation”*, said Mr Babiy. FAIR intends conducting two more focus groups in Lviv and Donetsk during the next reporting period.

In the course of the discussion, Anatoliy Babiy, Judge of

On December 5, 2012, FAIR completed the printing of the Human Resource Management manual for chief judges and court staff. The manual is a compendium of best Ukrainian and international HRM practices, and includes a huge number of practical tips, examples as well as sample forms designed by Ukrainian courts. FAIR initially printed 1000 copies of the manual to be distributed to the courts. In case of positive feedback, FAIR plans to increase the number of copies to ensure a broader



UACA President Olga Kakaulina giving training to chiefs of staff of Zhytomyr Oblast in Buzova Village, Kyiv Oblast, on November 23, 2012.

coverage. The manual has been delivered to the SJA on December 7, 2012 and its dissemination to the courts is currently in progress.

FAIR also worked jointly with the Ukrainian Association for Court Advancement (UACA) in order to conduct the three trainings on Human Resource Management which have originally been planned for October and November 2012. On November 21 to 23, 2012, the UACA conducted the first training for court chiefs of staff of Zhytomyr Oblast, and on December 5 to 7, 2012 the second, for chiefs of staff of Cherkasy Oblast. Both trainings included over 30 participants and were highly evaluated by the audience. Issues discussed on the trainings included court administration, staff management, conflict resolution, gender issues and personal development. FAIR plans to conduct the last training in early January 2013, due to a conflict of schedules with the events planned by the NSJ.

This quarter, FAIR also finalized and presented to the SJA the reports prepared by short-term experts Jesper Wittrup and Markus Zimmer as part of the structural analysis of the SJA. The reports were well received, however, the SJA has asked FAIR for some additional time to decide how to continue cooperation in this area. FAIR expects receiving updates around January 10, 2013.

SCHEDULE CHANGES: FAIR does not foresee any significant changes of schedule, with the exception of the last HRM training to be conducted by the UACA in January due to the circumstances outlined above. However, FAIR expects the last training to take place in early January, thus completing this activity.

PLANS: In the next quarter, FAIR plans the following activities in order to achieve the Expected Result 3.3:

- Work with the COJ and SJA on developing an action plan for implementing the Strategic Plan for the Ukrainian Judiciary for 2013 to 2015;
- Support the COJ and SJA in the publication of the newly adopted Strategic Plan for the Ukrainian Judiciary for 2013 to 2015;
- Design functional descriptions, structure, and staff qualifications requirements for the establishment (re-design) of departments for Human Resource Management, Court Automation and Strategic and Long-Term Planning at the SJA;
- Continue dissemination of HRM manuals prepared by FAIR to the courts;
- Conduct one HRM training for court chiefs of staff;
- Conduct two focus group discussions on the draft National Court Automation Strategy and promote approval of the Automation Strategy by the SJA's Innovations Working Group, the COJ and the SJA;
- Upon approval of the Automation Strategy, convene an oversight council composed of members of SJA, COJ, and FAIR to develop evaluative selection criteria and identify the best way to use the funding available to support the court automation process; and
- Based on decision of the council, available funding, and USAID approval, initiate the procurement process, including receipt of approvals and conduction of a tender(s).

Performance Indicators ER 3.3

During this reporting period FAIR supported sub-groups for developing strategic plan of the SJA Working Group for Innovations and SJA Department for Court Statistics contributing to the indicator "Number of project-supported organizational structures within the SJA", cumulative number is 8. 17 justice sector personnel contributed to drafting strategic plan, which increases the status of indicator "Number of justice sector personnel constructively engaged in long term strategic planning for the judicial branch" to 399. Strategic Plan for Judiciary contributes to the indicator "Number of project-supported new or improved policies within the SJA."

EXPECTED RESULT 4.1: CIVIL SOCIETY AND THE PUBLIC HAVE EFFECTIVE MEANS TO ENGAGE IN DIALOGUE WITH DECISION MAKERS REGARDING JUDICIAL REFORM

ACCOMPLISHMENTS: During the reporting period, FAIR has redrafted the RFA on civil society involvement on proposed and pending judicial reform legislation to foster public input in the lawmaking process. Although a significant part of draft legislation was adopted by the previous Parliament convocation, FAIR opted to redraft the RFA to accommodate possible PM changes following parliamentary elections. To foster better results and increase cost efficiency, grant activities should include a research on the status and content of pending judicial reform legislation and associated roundtables. Such research should include analysis of the amendments to the Law on the Judiciary and Status of Judges on how these amendments reflect Venice Commission Recommendations.

Milestone Progress ER 4.1

- Conducted meetings with potential CSO grantees regarding research on pending legislation.
- Prepared RFA on pending legislation.

PROBLEMS: Despite the necessity for such research and appropriate grant activity, unfortunately, it could not be implemented and prepared during the reporting period as the authority of the Verkhovna Rada of 6th convocation expired and accordingly to the parliamentary rules, “The bills introduced but not adopted in first reading before the expiry of powers of the Verkhovna Rada of the respective convocation deemed to be withdrawn.” Therefore, the major part of pending judicial reform legislation is considered withdrawn and will not be considered by Verkhovna Rada of the 7th convocation.

Performance Indicators ER 4.1

No changes occurred this quarter under the indicator “Number of project-supported public events organized by Civil Society Organizations on judicial reform.”

PLANS: FAIR will continue this activity when there will be substantial judicial reform legislation registered in the Parliament. In the meantime, FAIR will support at least one joint event with CSO representatives and lawmakers during the next reporting period.

Also, FAIR will continue to support public hearings, roundtables, fairs and other events that will help to connect lawmakers with citizens in forums to offer input on legislative provisions.

EXPECTED RESULT 4.2: THE UKRAINIAN PUBLIC IS ENGAGED IN THE JUDICIAL REFORM PROCESS THROUGH CIVIC EDUCATION AND ADVOCACY ACTIVITIES

ACCOMPLISHMENTS: During October – December 2012, FAIR continued supporting civil society involvement in judicial and constitutional reform process. FAIR supported the Constitutional Assembly in improving communications and interaction with civil society by awarding the grant on civil society involvement in constitutional reform process. In November 2012, FAIR signed the grant agreement with Non-Government Organization “Fund for Facilitation of Constitution Reforms in Ukraine”. The objective of this grant is to improve the effectiveness of interaction between civil society and decision-makers, and to support civil society involvement in Constitutional reform process. This is necessitated by the need to conduct public education efforts to explain why without respective changes to the Constitution of Ukraine the completion of the judicial reform is not possible in order to bring it to Council of Europe standards.

Milestone Progress ER 4.2

- Initiated development of two new civic education materials.
- Finalized and submitted Public Information Officer job instructions to the COJ.
- Finalized and submitted Guidelines on Courts and Media Relations to the COJ.
- COJ Communications strategy approved.
- Court communications manual and court communications training curriculum finalized.

Also, FAIR supported the Constitutional Assembly in development of a website to ensure civil society engagement in the Constitutional reform process. Appropriate RFP was released, and Limited Liability Company “New Strategies Group” was selected as the Subcontractor to develop the concept and prototypes, design and website programming (including modules) of the Constitutional Assembly website together with detailed documentation on developing individual modules, user instructions, user manual provided and training on website maintenance.

FAIR also supported Ukrainian civil society by releasing a grant announcement to Ukrainian CSOs to develop and implement effective public awareness campaign on the legal aid system, which will be developed to complement the provisions of the new Criminal Procedure Code and the Law On Free Legal Aid, and promote effective interaction between its main participants. This RFA is also targeted at supporting 27 centers of secondary legal aid in order to build effective long-term cooperation with officials of agencies authorized to arrest and detain, courts, lawyers, local authorities and CSOs to ensure proper implementation of mentioned laws and human rights by providing timely access to quality secondary legal aid.

During the reporting period, FAIR also awarded a grant on public awareness campaign on citizens’ rights, responsibilities and benefits of judicial reform. The All-Ukrainian Charitable Organization “Ukrainian Legal Aid Foundation” was selected as a grantee. The objectives of the grant activity are to raise public awareness about achievements, novelties and the benefits of the judicial reform, citizens’ rights, responsibilities, and to disseminate public awareness materials such as articles, public service announcements (PSAs), brochures and leaflets covering the most pressing issues of the judicial reform process.

As a part of support to judicial self governance bodies and civil society involvement in judicial reform process, FAIR provided the COJ with assistance in developing the COJ Communications Strategy that was successfully approved by the COJ during the reporting period (COJ meeting on November 30, 2012). As a part of the approved COJ Communications Strategy, FAIR agreed to assist the COJ in developing a website. The appropriate RFP was prepared and released.

In December 2012, FAIR finalized the manual and curriculum on Public Relations in Courts (the updated name). Both were significantly improved by FAIR legal staff, COJ, NSJ, and CJS staff. The expert from Karazin National University also contributed to the final versions of both materials.

Finally, FAIR supported inter-project cooperation within USAID projects network. In particular, FAIR supported USAID Access to Justice and Legal Empowerment Project (LEP) eighth quarterly meeting in Uzhhorod, providing presentations on the CRC methodology and CSOs engagement in judicial reform process. One of the presentations can be found at <http://prezi.com/fldxfxuievza/expected-result-41/?kw=view-fldxfxuievza&rc=ref-18726258>.



Judge Hanna Fazykosh from the Appellate Court of Uzhhorod oblast (left) and FAIR DCOP Natalia Petrova (right) during the LEP eighth quarterly meeting in Uzhhorod on October 24-25, 2012.

FAIR also successfully engaged Judge Hanna Fazykosh from the Appellate Court of Uzhhorod oblast who made a presentation for CSO representatives on specifics of court proceedings.

PROBLEMS: The development and update of the public awareness materials for the judiciary (including the development of the new brochure on the new CPC) was expected to be accomplished by external legal expertise. Though the only proposal received was from the Center for Legal and Political Consultations (CPLC). After a round of negotiations conducted between FAIR and CPLC, the contract was not signed, as the proposed budget did not meet FAIR's requirements.

The OPDAT representatives proposed to develop the brochure on the new CPC through available resources of the U.S. Department of Justice. FAIR is waiting for the go-ahead from the OPDAT and exploring possibilities to update these brochures and other public awareness materials through in-house legal expertise resources or through identifying alternative external legal experts.

PLANS: In the next quarter, FAIR plans the following activities in order to achieve the Expected Result 4.2:

- Support the Constitutional Assembly public awareness campaign grantee with Constitutional Assembly's Communications strategy and public awareness campaign development and implementation (November 2012 to June 2013);
- Assist the Subcontractor to accomplish the Constitutional Assembly website development by the end of the next reporting period (November 2012 to February 2013);
- Select the CSO grantee and assist the CSO in developing and implementation of an effective public awareness campaign on the legal aid system (December 2012 to June 2013);
- FAIR will finalize the grant agreement with the grantee "Ukrainian Legal Aid Foundation" to develop and implement public awareness campaign covering most pressing issues of judicial reform processes (January to June 2013);
- Select the Subcontractor for the COJ website development. It is expected that the subcontractor will develop the COJ website by the Congress of Judges in February 2013 (January to March 2013);
- Seek for NSJ approval of both Manual and curriculum to become the part of NSJ educational activities. The approved materials will be published and disseminated together with the brochure on good practices in court communications (January to March 2013); and
- Support inter-project cooperation within USAID projects network by providing assistance and facilitation with judiciary representatives involvement in appropriate CSO events and forums (January to September 2013).

Performance Indicators ER 4.2

No changes occurred this quarter under the indicators "Number of media outlets used by project-supported CSOs to disseminate judiciary related information" and "Number of courts offering CSO-produced legal education materials to court visitors."

EXPECTED RESULT 4.3: CIVIL SOCIETY ORGANIZATIONS HAVE MEANS AND OPPORTUNITIES TO EFFECTIVELY MONITOR THE IMPLEMENTATION OF JUDICIAL SECTOR REFORMS AND PROVIDE OVERSIGHT TO JUDICIAL OPERATIONS

ACCOMPLISHMENTS: During the reporting period, FAIR continued implementation of the Citizen Report Cards (CRC) Grant Program aimed at measuring public satisfaction with court performance. CRC grantees prepared analytical reports on CRC survey results for 21 out of 34 pilot courts. Also, in December 2012, CRC CSOs conducted 7 roundtables to present CRC survey results and recommendations on improving court services in the following 21 courts:

- Chernivtsi Oblast Court of Appeals
- Hlybotskyi Raion Court of Chernivtsi Oblast
- Pershotravnevyi District Courts of Chernivtsi City
- Shevchenkivskyi District Courts of Chernivtsi City
- Lychakivskyi District Court of Lviv City
- Drogobytzkyi City-Raion Court
- Chervonograd City Court of Lviv Oblast'
- Prymorskyi District Court of Odesa City
- Khmelnytskyi Circuit Administrative Court
- Zakarpatskyi Circuit Administrative Court
- Lviv Circuit Administrative Court
- Kharkiv Appellate Administrative Court
- Kharkiv Circuit Administrative Court
- Volyn Oblast Court of Appeals
- Lutsk City Raion Court
- Kovel City Raion Court of Volyn Oblast
- Ivanychivskyi Raion Court of Volyn Oblast
- Vinnytsia Circuit Administrative Court
- Vinnytsia Appellate Administrative Court
- Khmelnytska Oblast Court of Appeals
- Kamyanets-Podilskyi City Raion Court

Milestone Progress ER 4.3

- CRC surveys extended to 8 new regions and 25 new courts.
- CRC surveys conducted in 34 courts in 13 regions of Ukraine.
- Selected (competitively) CSO partner to administer the pilot court administration certificate program
- 21 CRC analytical reports and 243 recommendations on court service improvement presented to 21 CRC partner courts at 7 regional roundtables.
- Over fifty court administrators submitted the applications for participation in the court administration certificate program.
- FAIR signed the agreement with the Michigan State University (MSU) to support the pilot court .administration certificate program implementation.
- FAIR issued RFA on monitoring of judicial discipline decisions.

Representatives of courts, SJA territorial offices, CSOs including those representing people with disabilities, media and advocates attended the roundtables and participated in discussion of the CRC results. In general, courts positively perceived the CSOs' recommendations based on collected CRC data and mentioned that such surveys help them to identify areas where courts should focus their efforts to improve court performance. *"The state provides services for citizens. The quality of these services should be on a high level. This survey (CRC) showed what we should work on to improve court services,"* said Serhiy Gyrych, Chief Judge of Lychakivskyi District Court in Lviv. *"Such actions (CRC Surveys) help to set priorities in funding of this or that court"*, summarized Yuliya Popovych, Head of the SJA Territorial Office of Lviv Oblast. Topics and issues discussed during the roundtables the most frequently included access to court facilities and court services for people with disabilities, timeliness of court decisions, budget deficit of the judiciary and increase of the professional level of court staff. It is worth mentioning that, generally, scores for court performance quality of new CRC courts are higher in 2012 compared to those in 2009 when the CRC program started. In 2009 the scores ranged from 0.49 (lowest) out of maximum 1 to 0.78 (highest), in 2012 from 0.64 to 0.92.



Yaroslav Grybalsky, representative of the National Assembly of Disabled of Ukraine in Lviv Region at the regional CRC roundtable in Lviv on December 14, 2012.

Additionally, on November 22, 2012, FAIR jointly with the COJ and Centre for Judicial Studies conducted a roundtable on “Accessibility, Independence and Fairness of Justice in Ukraine: Presentation and Discussion of the Monitoring Results”. At the roundtable, FAIR presented the 2012 CRC Survey results for 34 courts and CRC methodology at the national level. The Centre for Judicial Studies presented results of the monitoring of the status of judicial independence in Ukraine in 2012 and national polling of court visitors. Members of the COJ, specialized councils of judges, representatives of the Presidential Administration, high judicial bodies, Supreme Court of Ukraine, HCJ, HQC, SJA, Ministry of Justice, CSOs, chief judges of Ukrainian courts, MPs and academicians participated in the roundtable. The media also attended the event. FAIR received feedback on the CRC survey from representatives of the judiciary and civil society organizations such as Razumkov Center which conducts public opinion polls on various topics including those related to the judiciary.

During this period, FAIR in cooperation with the SJA and NSJ set up an Expert Council to coordinate and plan the activities on design and implementation of the innovative court administration certificate program supported by FAIR. This program is aimed at increasing the knowledge, skills, and abilities of 40 competitively selected Ukrainian court administrators. The Expert Council consists of the representatives of FAIR, NSJ, SJA, Kharkiv City Public Organization “Institute of Applied Humanitarian Research” and FAIR short-term expert. Deputy Head of the SJA Volodymyr Pivtorak was appointed as a Head of the Expert Council. The Expert Council conducted five meetings during this period. As a result of the meetings, the Expert Council prepared and finalized an application form for participants of the program, evaluation form, instruction and announcement on selecting the participants for the court administration certificate program. Also, the Expert Council reviewed the competencies for a court administrator and started to identify the Ukrainian faculty. On November 5, 2012, the SJA posted on its web-site the announcement on the selection of participants for the court administration certificate program. Besides, the SJA supported dissemination of the announcement to all courts through the SJA territorial offices. As of December 25, 2012, over 50 court administrators submitted applications to participate in the program. Additionally, FAIR signed a fixed-price subcontract with Michigan State University (MSU) School of Criminal Justice to support the implementation of the court administration certificate program. The MSU will share their comprehensive experience in design and implementation of the programs on judicial administration, faculty and materials. The MSU will provide 60 contact hours training and capstones experience to 40 Ukrainian court administrators who will receive the certificates upon successful completion of the program.

Also, under Expected Result 4.3 FAIR has issued two RFAs to: (1) conduct the monitoring of judicial discipline decisions submitted to the HCJ and HAC (November 2012); (2) evaluate implementation of the FAIR CRC program and prepare an assessment report on equal access to justice for persons with disabilities (December 2012). The first of the above mentioned RFAs is linked to the Expected Result 2.2.

Finally, FAIR signed a contract with the *Spolucheni Svity* (Converging Worlds) company to produce a success story video on use of CRC to improve court performance. Four CRC pilot courts and three partner CSOs as well as representatives of the SJA, COJ, FAIR and court users participated in filming in November and December 2012.

PLANS: During the next quarterly period, FAIR will complete activities under the CRC Grant Program, continue implementation and design of the court administration certificate program and launch new grant programs to evaluate CRC implementation and produce the assessment report on access to justice for persons with disabilities. The major activities will include the following:

- Conduct 5 regional roundtables to present CRC survey results and recommendations to the remaining 12 out of 34 CRC partner courts (January-February 2013);

- Finalize course plan, identify faculty, and develop courses and materials for the court administration certificate program (January-March 2013);
- Michigan State University (MSU), in cooperation with Kharkiv City Public Organization “Institute of Applied Humanitarian Research,” will provide faculty development training under the court administration certificate program (February 2013);
- Select up to 40 participants nationwide for the court administration certificate program in cooperation with the SJA, NSJ, and Kharkiv City Public Organization “Institute of Applied Humanitarian Research” (January-February 2013);
- Select an NGO to conduct the monitoring of judicial discipline decisions (January 2013);
- Begin implementation of the grant on monitoring of judicial discipline decisions (March 2013);
- Select up to three partner NGOs to evaluate the implementation of the FAIR CRC program and prepare the assessment report on equal access to justice for persons with disabilities (February 2013);
- Launch grant programs on evaluation of the CRC implementation and preparation of the assessment report on access to justice for persons with disabilities; and
- Produce final version of the Success Story Video on Use of Citizen Report Cards to Improve Court Performance (February 2013).

Performance Indicators ER 4.3

We measure progress under the Expected Result 4.3 with the indicators “Number and percentage of courts in which there are active CSO court performance evaluation programs”, this quarter we count 34 courts which is 4.5% of all courts in Ukraine, participate in this year CRC survey program. Other indicator under this ER is “Percentage of partner Civil Society Organizations’ performance improvement recommendations implemented by judicial institutions” remains on its baseline status of 30%. New data is not available till March 2013.

DONOR COORDINATION

During this reporting period, the FAIR team hosted three Rule of Law donors and implementers meetings:

- The meeting on October 3, 2012 focused on the role of civil society in judicial reform in Ukraine, including encouraging dialogue between civil society and decision makers on draft and pending judicial legislation, involvement of the public in the judicial reform process through civic education and advocacy activities, and providing civil society organizations with means to advocate for and monitor the judiciary. Featured speakers included Natalia Vereshchynska, Director of the Center for Judicial Studies, Iryna Soldatenko, Associate Professor of the Karazin Kharkiv National University Department of Applied Sociology, Oleksandr Serdyuk, Director of Analytical Centre of the Institute of Applied Humanitarian Research, and Vasylyna Yavorska, Rule of Law Program Manager of the International Renaissance Foundation.
- On November 7, 2012, Judge Nadiya Stefaniv, Chief Judge of Ivano-Frankivsk Oblast Court of Appeals, discussed their efforts to improve the quality of court services. The meeting also included a presentation by Volodymyr Kupriy, Executive Director of the “CCC Creative Center”, on NGO partnership with the Ivano-Frankivsk Oblast Court of Appeals as a part of the pilot program “Using Citizen Report Card Surveys to Improve Court Performance”.
- On December 5, 2012, Serhiy Trotsenko, Head of the Department of Innovations and Free Legal Aid System Development of the Coordinating Center for Legal Aid Providing, provided information on the center’s activities and plans on forming the legal aid system.

Also during this reporting period, the FAIR team attended Parliamentary Technical Assistance Organization Coordination Meetings in October, November and December 2012.

Finally, in November 2012, FAIR provided a list of nominees for the Open World Local Legislators (Local and regional governments) Program in 2013, and four out of five advised by FAIR nominees were approved by the vetting committee in December 2012. Also in December 2012, FAIR provided a list of nominees for the Open World Civic Rule of Law Program in 2013 and the vetting committee will take place at the beginning of 2013.

DELIVERABLES

FAIR submitted the following deliverables this reporting period:

- FAIR Work Plan for the period of October 1, 2012 to March 31, 2013;
- Report on the State Judicial Administration of Ukraine: Structural Assessment and Recommendations;
- Report on Analysis of the Organization of Court Administration in Ukraine;
- Report on the Results of the Monitoring of the Anonymous Test for Candidate Judges Conducted on June 5, 2012 with the Recommendations on Improving the Rules of Anonymous Test Administering, Evaluation and Scaling;
- Communications Strategy for the Council of Judges.

LOE UTILIZATION

ANNEX A: PERFORMANCE MANAGEMENT AND EVALUATION SUMMARY

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
Program Goal: Support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary										
1. Number of legal institutions and associations supported by USG	Oct'11	30	24	22	24	19	19	30	25	This reporting period, FAIR counts 8 governmental judicial institutions namely: Constitutional Assembly, State Judicial Administration of Ukraine, High Qualifications Commission of Judges of Ukraine, National School of Judges of Ukraine, Supreme Court of Ukraine, High Administrative Court, High Council of Justice, Council of Judges of Ukraine; and 11 non-governmental legal associations: National Bar Association, Bar Council of Ukraine, Ukrainian Association for Court Advancement, Center for Legal Reform and Legislative Drafting, Charitable Organization "Your Right", Regional Public Charitable Foundation "Law and Democracy", Association of Volyn Youth Right Protection, Podillya Human Rights Foundation, TORO Creative Union), Institute for Applied Humanitarian Research, Ukrainian Legal Foundation.

¹ Cumulative project end targets revised based on 2012 results.

² "Cumulative to date" actual data in this table are only those that related to FAIR project. It means that "Baseline" data does not impact the cumulative to date numbers if baseline was calculated under the previous USAID project. However, upon completion its base period FAIR will recalculate cumulative project end base period data with inclusion of baseline data related to FAIR-predecessor project.

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
Objective 1: The legislative and regulatory framework for judicial reform complies with European and international norms and supports judicial accountability and independence										
2. Number of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance	Oct'11	8	2	4	2	0	0	14	4	No changes occurred this quarter. Indicator status remains the same as annual 2012.
Expected Result 1.1: Ukrainian judicial reform legislation receives favorable comments from the Venice Commission as meeting international standards and reflects domestic and international expert input										
3. Number of revised provisions enacted that reflect Venice Commission recommendations	Oct'11	0	22	4	18	0	0	22	4	No changes occurred this quarter. Indicator status remains the same as annual 2012.
4. Percentage of Venice Commission recommendations adopted	Oct'11	0	80%	15%	65%	0	0	80%	15%	No changes occurred this quarter. Indicator status remains the same as annual 2012.
Expected Result 1.2: Constitutional reform related to the judiciary is pursued in an inclusive manner										
5. Number of project-supported communication products issued by civil society organizations on constitutional reform	Oct'11	0	2	0	4	0	0	4	0	No changes occurred this quarter. Activity delay, outcomes expected in Jan – March, 2013

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
6. Number of working sessions on Constitutional reform between law makers and civil society organizations	Oct'11	0	2	1	3	2	2	4	3	This reporting period we count two meetings of the Constitutional Assembly which FAIR supported: 2 nd meeting on September 21, 2012 (not counted in FY2012 annual report) and 3 ^d meeting on December 6, 2012.
7. Number of civil society organizations who have experience in constitutional reform participating in public events on the Constitution	Oct'11	0	15	7	30	11	11	30	11	This quarter number counts civil society organizations whose representatives participate in the Constitutional Assembly activity.
Objective 2: The accountability and transparency of key judicial institutions and operations are strengthened										
8. Number of new properties and functions surrounding judicial selection and discipline introduced to HQC website with project support	Oct'11	0	10	1	14	0	0	15	1	No changes occurred this quarter. Indicator status remains the same as annual 2012.
Expected Result 2.1: Ukrainian judges are appointed based on objective, knowledge- and performance-based criteria										

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
9. Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance	Oct'11	2	10	2	18	15	15	20	17	This quarter FAIR counts the following criteria and procedures approved by the HQC: - 6 judicial selection criteria: 1) theoretical legal knowledge, 2) ability to apply knowledge in practice and correctly draft procedural documents, 3) ability to effectively listen, 4) communicative skills, 5) ability to resist influence and pressure, 6) ability to resolve conflicts, altogether with ability to think logically and analytically; - 8 criteria to evaluate case studies during judicial qualification exams (2 criteria for each case study); - regulation on the procedure of conducting training for candidate judges.
10. Number of procedures within the judicial appointment process improved with project support	Oct'11	0	4	4	5	1	1	9	5	This quarter FAIR supported improving judicial qualification exam procedure.
11. Number of judicial test developers trained with project support	Oct'11	0	20	11	20	11	11	25	18	During the reporting period project trained 11 justice sector personnel, representatives of the National School of Judges of Ukraine and High Qualifications Commission of Judges of Ukraine as judicial test developers (November 5-7, 2012)
Expected Result 2.2: Ukrainian judges are disciplined in transparent processes										

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
12. Number of criteria, standards and regulations adopted to govern judicial misconduct investigations	Oct'11	0	4	0	8	1	1	8	1	FAIR supported the developing of the Procedure of Verification and Decision-Making in Disciplinary Proceedings against Judges, and Preparation and Retaining Documents. Procedure approved on October 16, 2012.
13. Per cent of judicial misconduct complaints submitted to the HQC using the standardized form	Oct'11	2%	3%	8,9%	10%	8,3%	8,3%	10%	8,7%	During this reporting period HQC received 6,286 judicial misconduct complaints, including 521 using the standardized form which (8,3%). Cumulatively during the period of performance HQC received 18,339 Complaints including 1,591 using the standardized form (8,7%).
14. Number of government institutions placing judicial misconduct complaint form on their website.	Oct'11	1	1	2	1	2	2	1	2	High Qualifications Commission of Judges (HQC) and High Council of Justice (HCJ) have judicial misconduct complaint form on their websites. Links are http://vkksu.gov.ua/ua/distsiplinarne-provadjennya/zayava-shodonepravomirnoi-povedinki-suddi/ and http://www.vru.gov.ua/complaint
15. Per cent of judicial discipline decisions posted on HQC website	Nov'11	47%	80%	81%	100%	44%	44%	100%	76%	During this reporting period HQC made 39 judicial discipline decisions and 17 are posted on the website (44%). Cumulative numbers are Cumulatively, during 2011-2012, HQC made 272 judicial discipline decisions, 206 (76%) of them are on HQC website.

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
16. Number of judicial disciplinary inspectors trained with project support	Nov'11	0	30	2	30	0	0	30	0	No changes occurred this quarter. Indicator status remains the same as annual 2012.
Expected Result 2.3: The regulatory and institutional framework for judicial accountability and integrity are strengthened										
17. Number of judicial self-governance mechanisms revised with project support	Oct'11	0	1	0	3	0	0	3	0	FAIR supported the Draft Code of Judicial Ethics and it's currently is under public discussion. We expect the approval of the new Code in 2013 by the Congress of Judges.
18. Number of judges providing feedback to revisions of judicial self-governance mechanisms	Oct'11	0	100	160	100	57	57	200	220	During the reporting period 57 judges provided their feedback to the new draft Code of Judicial Ethics through two discussions in Kharkiv and Donetsk. During the period of performance FAIR involved 220 judges in this process through 7 discussions.
Objective 3: The professionalism and effectiveness of the Ukrainian judiciary are strengthened										
19. Number of USG-assisted courts with improved case management	Oct'11	14	20	22	20	22	22	30	22	Citizen report cards (CRC) surveys conducted in 34 cooperating courts identified improving case management in at least 22 courts according to court user responses. Indicator status remains the same as annual 2012.
Expected Result 3.1: The skills and competencies of Ukrainian judges are bolstered through modern, demand-driven initial and ongoing training programs										

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
20. Number of judges and judicial personnel trained with USG assistance	Oct'11	2,946	300	875	400	174	174	3,500	1,039	FAIR trained 174 judges and judicial personnel during the reporting period including 79 men and 95 women (45% and 55% accordingly) during the reporting period. Training events include trainings on judicial statistics, judicial test developing and new Criminal Code. Cumulative number for FAIR project is 1,039 including 476 men (46%) and 565 women (54%)
21. Number of new legal courses or curricula developed with USG assistance	Oct'11	8	3	3	3	0	0	14	0	No changes occurred this quarter. Indicator status remains the same as annual 2012.
22. Number of TOT trainers created	Oct'11	187	30	59	30	0	0	70	0	No changes occurred this quarter. Indicator status remains the same as annual 2012.
23. Number of judges trained with USG assistance	Oct'11	1,700	200	664	300	25	25	2,200	677	FAIR trained 25 judges during the reporting period including 21 men and 4 women (84% and 16% accordingly) on new Criminal Code application. Cumulative FAIR number is 677 judges trained including 373 men (55%) and 304 women (45%).
Expected Result 3.2: Judicial operations are evaluated and funded according to an objective assessment of needs and performance										
24. Number of court performance standards adopted	Oct'11	0	0	0	5	0	0	5	0	Draft of the court performance measurement framework developed and based on 4 standards. Draft framework currently is under pilot testing. Adoption of the framework is expected in April – June 2012.

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
25. Number of courts involved in piloting court performance standards	Oct'11	6	12	13	12	13	13	12	13	13 courts involved in the process pilot testing of court performance standards and evaluation modules. 9 courts completed the pilot testing and prepared reports, 4 courts are underway.
26. Annual citizen report cards score of participating courts	Oct'11	.77 (out of max score of 1)	.82	.82	.87	.82	.82	.87	.82	8 CSOs completed citizen report cards surveys in 34 courts. Average weighted index score for 34 courts is 0.82
27. Number of data-fed analytical techniques incorporated into judicial budgeting	Oct'11	0	3	0	3	0	0	3	0	Case weighting research is underway. No changes occurred this quarter. Indicator status remains the same as annual 2012.
Expected Result 3.3: The SJA's capacity to represent and support the developing needs of Ukrainian judiciary is strengthened										
28. Number of project-supported organizational structures within the SJA for the support of information technology, procurement, capital improvement, human resources, statistical collections and analysis activities within the courts	Oct'11	1	7	7	7	2	2	7	8	During this reporting period FAIR supported sub-groups for developing strategic plan of the SJA Working Group for Innovations and SJA Department for Court Statistics.

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
29. Number of project-supported new or improved policies within the SJA for the support of information technology, procurement, capital improvement, human resources, statistical collections and analysis activities within the courts.	Oct'11	0	4	0	7	1	1	7	1	This quarter we count “Strategic plan for Judiciary” developed with FAIR support and approved by the Council of Judges of Ukraine.
30. Number of justice sector personnel constructively engaged in long term strategic planning for the judicial branch	Oct'11	0	200	389	0	17	17	200	399	During this reporting period FAIR engaged 17 justice sector personnel in strategic planning for the judicial branch through focus group discussion in Odessa.
Objective 4: The role of civil society organizations as advocates for and monitors of judicial reform is strengthened										
Expected Result 4.1: Civil society and the public have effective means to engage in dialogue with decision makers regarding judicial reform										
31. Number of project-supported public events organized by Civil Society Organizations on judicial reform	Oct'11	0	10	0	20	0	0	20	0	Activity delay. No changes occurred this quarter. RFA issues, related outcomes expected in 2013.

PERFORMANCE INDICATORS	BASELINE DATA		2012		2013			Cumulative Project End Base Period		Notes and Explanations
	Month/Year	Value	Annual Target	Annual Actual	Annual Target	Actual this quarter	Annual Actual	Target ¹	Actual ²	
Expected Result 4.2: The Ukrainian public are engaged in the judicial reform process through civic education and advocacy activities										
32. Number of media outlets used by project-supported CSOs to disseminate judiciary related information	Oct'11	0	50	0	50	0	0	50	0	Activity delay. No changes occurred this quarter. RFA issues, related outcomes expected in 2013.
33. Number of courts offering CSO-produced legal education materials to court visitors	Oct'11	0	20	0	30	0	0	30	0	Activity delay. No changes occurred this quarter. RFA issues, related outcomes expected in 2013.
Expected Result 4.3: Civil society organizations have means and opportunities to effectively monitor the implementation of judicial sector reforms and provide oversight to judicial operations										
34. Number and percentage of courts in which there are active CSO court performance evaluation programs	Oct'11	20 (2,6%)	20 (2,6%)	34 (4,5)%	34 (4,5)%	34 (4,5)%	34 (4,5)%	34 (4,5)%	34 (4,5)%	8 FAIR CSO partners completed the implementation of external court performance evaluation by way of citizen report cards (CRC) surveys in 34 courts. It's 4.5% of all courts in Ukraine.
35. Percentage of partner Civil Society Organizations' performance improvement recommendations implemented by judicial institutions	Oct'11	30%	40%	30%	50%	0	0	50%	30%	No changes this reporting period. CSO partners prepared more than 300 recommendations to courts to improve performance and presented them to courts. Monitoring of implementation scheduled for 2013. Indicator status remains the same as annual 2012.