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

**QUARTERLY PROGRESS REPORT
JANUARY TO MARCH 2014**

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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 conducted from 2006-2011. In September 2013, USAID extended the FAIR program for an additional three years from October 1, 2013 to September 30, 2016.

The overall 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 constitutional, legislative and regulatory framework for judicial reform that is compliant with European and international norms, and that 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 2012- March 2014

- 475 courts covering every region of Ukraine received assistance.
- Supported 15 key government justice sector institutions.
- Targeted programming provided to 14 civil society organizations.
- Promoted six amendments in Ukrainian legislation to enhance judicial independence.
- Trained 1,316 judges and judicial personnel.
- 149 trainers qualified under Training of Trainers Program.
- Developed 11 new legal courses and curricula including first-time for Ukraine Court Administration Certificate Program.
- 399 justice sector personnel engaged in long-term strategic planning for the judiciary.
- Supported two national tests of 3,474 and 2,348 judicial candidates accordingly.
- 942 judges selected through new merit-based procedure.
- Engaged 4,970 citizens in the process of monitoring and oversight of court performance.
- Involved 64 courts in the process of complex court performance evaluation.
- Supported the development of more than 900 civil society recommendations to courts to improve court functions.

SUCCESS STORIES AND NOTABLE ACHIEVEMENTS

From February 19 to 20, 2014, FAIR conducted a Reunion Workshop for graduates of the 2013 Court Administration Certificate Program implemented by FAIR in cooperation with Michigan State University (MSU), the State Judicial Administration (SJA) and National School of Judges (NSJ) in Ukraine. During the workshop, graduates collected and reported status updates on capstone projects; identified facilitators and barriers to ongoing project implementation; identified best practices and conditions for best practices; and developed recommendations for continuous judicial administration education, training, and professional development. Participants for the workshop were court administrator-graduates and faculty members of the 2013 Court Administration Certificate Program, representatives of the SJA, NSJ, MSU, the National Law University named after Yaroslav Mudryi, and FAIR.

Prior to the reunion workshop, the graduates completed the written survey. Of those 40 students graduated from the judicial administration certificate program in June 2013, 37 remained in court administration positions and completed the survey. Survey showed that all students applied what they learned from the certificate program. The evidence supports this statement—the students followed their strategic plans, which were based on the program courses. The students’ analytical skills were improved. This impression is supported by the students identifying what they encountered and determining why certain responses and barriers were in play in the strategic planning process. Perhaps more importantly, they were able to problem-solve many of the challenges they encountered, as evidenced by the actions they took. They were also able to determine when some situations were beyond their control and offered potential remedies.

The following factors were identified and need to be considered if more advancement is desired:

- Consistent, coordinated, and comprehensive education in judicial administration for chiefs of staff (court administrators), deputy chiefs, chief judges, deputy chief judges, court personnel, and judges in leadership roles in councils and committees representing the judiciary;
- Clarification on the roles, responsibilities, and authorities between the chief judges and chiefs of staff is required for professionally managed courts, which can result in executive leadership teams within the courts;
- Job classification review with appropriate salary compensation packages and job performance requirements;
- A forum for information exchange, dissemination of best practices, networking, and mentoring for chiefs of staff;
- A functioning court administration association led by a Board of Directors comprised mostly of chiefs of staff;
- Appropriate funding for court facilities - buildings, technologies, and security; and
- A campaign to increase the public’s knowledge about the courts, and the public’s rights and responsibilities under the Ukraine constitution.



A group discussion during the Reunion Workshop for graduates of the 2013 Court Administration Certificate Program in Lviv on February 19 to 20, 2014.

In conclusion, the survey results demonstrated that the students remain committed and hopeful but realistic about the judicial culture, environment, and resource limitations. As a group, they show no sign of giving up or giving in to the factors that militate against implementing and sustaining contemporary judicial administration in Ukraine. Therefore, they need action from those entities that can provide resources and leadership such as SJA, NSJ, Council of Judges of Ukraine (COJ),

and other groups and entities who share the same interest in and passion for the rule of law and access to justice, such as colleges, universities, law schools, and civil society organizations.

During the workshop, FAIR conducted a leadership retreat forum for the purpose of crafting the future of judicial administration. To that end, the students used the topics from the survey research and those topics that emerged from their meetings to begin their futures thinking and action planning. As a group, the students made decisions about their priorities and formed topical planning groups to outline their approaches. This format reinforced that they were being given the leadership role. Four action agendas emerged from their planning:

1. Employees' performance and relations inside the court;
2. Forming a positive image of a court;
3. Representing the interests of court staff at judicial self-governance bodies; and
4. Forming a team in court, roles, and relations.

The topics show an acute understanding of the leadership and management challenges faced by chiefs of staff in courts across Ukraine. The plans also clearly demonstrated that the students understand the impact of these deficiencies on public access, trust, and confidence; court operations; recruiting and retaining high-quality employees; and long-term issues related to moving the courts toward international standards for high-performing courts. Item three, representing the interests of court staff at judicial self-governance bodies, is a new topic and demonstrated that the students are developing more advanced strategic thinking, want to be heard in the higher leadership levels, and are eager to impact policy.

Olga Pasichnyk, Chief of Staff of the Odesa Circuit Administrative Court, highlighted:

“I am extremely grateful to [the] FAIR Project for valuable knowledge we received during the two week program. It was thanks to the program that I realized I can make a difference, achieve changes for the better both professionally and in terms of self-fulfillment. My capstone was devoted to professional development programs for court staff to improve court services and access to justice. Together with my colleagues we are putting the above program into practice and I hope that court visitors have noticed the first results of the program.”

Alla Kovtun, Chief of Staff of the Zarichnyi District Court of Sumy City, shared her impression on participation in the program:

“The training course helped me develop strategic thinking. I used to have [an] infinite number of ideas but before my participation in the program I failed to sequence the needed activities to put those ideas into practice. After half year implementation of my program, which was devoted to improving public trust to courts and improving its authority, I can say that changes did occur and they are visible both to employees of our court and to outsiders. Now many of my colleagues from other courts are turning to me for help and advice.”

Volodymyr Kutsenko, Head of the SJA Territorial Department in Odesa Oblast, emphasized that

“Court administration in Ukraine started three years ago, it is very young and is only stating to develop. However, there was no opportunity before this program to get systematic knowledge needed for fulfilling the duties of a court staff manager. Within two weeks of participating in the program I conceived so many ideas that it took a year to implement them on a new professional level. I believe this program has a great future and

the next step for us, the program participants, should be spreading the knowledge received, methods and approaches among our colleagues in regions. To improve the court system on the whole the knowledge should not only be applied by participants in their courts but also disseminated further.”

The goal of forming leaders out of the first student cohort is taking hold. Additional support is needed as is more information about how decisions are made at the upper-levels, who gives the orders, and what political and bureaucratic systems need to be influenced to get the desired results. Additionally, the graduates need more mentoring and coaching related to critical thinking and systems development both of which are required for change to occur.

FAIR will continue to support the Court Administration Certificate Program in Ukraine in cooperation with the SJA, NSJ, and US and Ukrainian universities based on the lessons learned and engaging the graduates of the pilot program as faculty members.

PROJECT ACTIVITIES

Pursuant to section F.5.C.1 of the contract, the following section contains a discussion of accomplishments, progress in milestone, progress in indicators, and upcoming plans for each Expected Result from January 1 through March 31, 2014. Changes from the activity schedule outlined in the work plan and problems requiring resolution or USAID intervention are discussed if applicable.

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 continued to work with partners on improving the legislative and regulatory framework for the judiciary. The FAIR team regularly monitored legislative initiatives to analyze potential impacts on the judiciary. This activity was accomplished in parallel with efforts regarding constitutional reform (see Expected Result 1.2) to utilize available resources and promote justice sector progressive changes. Under this Expected Result, FAIR also worked with its partners to assist them in accomplishing their workplans.

As a result of political crisis, the new majority in Parliament emerged with a new composition of government of Ukraine forming in late February 2014. The number of unexpected initiatives and challenges appeared. FAIR is assessing how it can address them.

The Parliament dismissed 5 out of 6 judges of the Constitutional Court of Ukraine (CCU), appointed by the quota of the Parliament (there are 18 CCU judges: the Parliament, the President and Congress of Judges appoint 6 judges each.) Back in 2010, the CCU dealt with the constitutional reform of 2004 and cancelled it. The Parliament found this to be the ground for dismissal of judges appointed by its quota due to breach of oath. Following this decision, the Verkhovna Rada requested the judicial community do the same (see the Resolution of February 24, 2014) and to convene an extraordinary session of the Congress of Judges. The COJ unanimously agreed to announce the 12th (extraordinary) session of the Congress of Judges where delegates have to deal with justice system quota representatives – Constitutional Court judges – regarding their accountability for 2004 constitutional reform cancellation and among other agenda items to discuss ways of restoring public trust in the judiciary. The mentioned Verkhovna Rada Resolution was critically received by CCU judges. The COJ of Ukraine meeting witnessed a split among the judiciary with respect to the issue of legality of the February 24, 2014 Verkhovna Rada Resolution. Constitutional Court Judge Oleh Serhiychyk presented a unanimous opinion of Constitutional

Court judges that, due to substantive and procedural legal flaws, the Resolution is illegal by all means. Thus, CCU judges called upon the COJ of Ukraine to protect them against Verkhovna Rada attacks and not to schedule the 12th (extraordinary) Congress of Judges.

In parallel, the Ministry of Justice (MOJ) was developing the Bill “On the Restoration of the Public Trust in the Judiciary” with an aim to clean up the judicial corps and remove judges who undermined the role of the court system in democratic society and under the external pressure have been making rule of law principle contradicting decisions during mass protest periods, putting innocent people into jail, imposing groundless administrative sanctions, etc. On March 3, 2014, the draft law was supported by the Cabinet of Ministers of Ukraine and on March 11 was registered with Parliament. The draft law envisages the list of grounds for vetting judges and dismissal for misconduct and disrespect to human rights during the litigation, as well as a number of initiatives to make the system of judicial self-governance bodies both effective and efficient by avoiding duplication of competences and streamlining decision-making processes. Six more similar drafts have been developed by majority coalition members, but consensus was found and they agreed upon the unified group of authors for this bill. On March 27, 2014, the consolidated draft law “On the Restoration of the Public Trust in the Judiciary” went through the first reading. Council of Europe (COE) ad hoc experts opinions on the content of MOJ bill was rendered with a number of reservations made regarding the challenges for judicial independence in that matter. European standards for lustration of any public officials in new democracy countries require fair trial and due process guaranties. In the Ukrainian context regarding attempts to lustrate judges, judges have to be entitled to the right to counsel and the right to challenge the decision against them.

With regard to these fast legislative developments the FAIR Project will monitor closely the recent initiatives and proposed changes to legislation. FAIR staff and experts are ready to consult the standing parliamentary committee on the standards in lustration for public officials, including judges, and at the same time provide expert support to justice system representatives on the development of arguments to secure due process guarantees and make lustration of judges a fair and transparent process.

During the reporting period, in order to support the goal under component 1.1.2. FAIR was working with local expert law professor Mykola Khavronyuk, who was involved on a short term basis to develop the content of legislation amendment proposals to introduce changes into the current legal framework to fill the gaps and bring certain legal provisions on judicial disciplinary process in compliance with rule of law principles in light of the European Court on

Milestone Progress ER 1.1

- Drafted 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 three 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; March 21, 2013 Conference on Role and Place of High Councils of Justice in Forming the Judicial Corps).
- Concept Paper on Legal Education Reform developed and presented to the members of the Working Group on Legal Education Reform in Ukraine.
- The Third Annual Conference on “Judicial Training Standards: International Best Practices and Objectives for Ukraine” conducted in cooperation with the NSJ.
- FAIR has launched research on European judicial self-governance standards and best practices.
- 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.
- Concept paper on amendments to the Law on Access to Court Decisions developed.
- International conference on “Role of the Supreme Court in a Democratic Society” conducted.
- The Law on Amending Certain Legislative Acts of Ukraine concerning Realization of State Anti-Corruption policy adopted.

Human Rights (ECHR) decision in case “Oleksandr Volkov versus Ukraine”. The expert completed the task by identifying the scope of legislative norms to be amended or changed, using the previous relevant results of the analysis of the same case done by FAIR Local Judicial Operations Expert Olena Ovcharenko and developed a draft law on introducing changes to the identified laws. FAIR will present this draft law to the relevant Verkhovna Rada Committee and will advocate its passing through Parliament.

Also, with FAIR’s focus on legal education reform, participated in a number of events dedicated to higher education reform in Ukraine. FAIR has been participating in ongoing public discussions of higher education reform—particularly the issues which are important to legal education reform—such as an educational law and policy seminar organized on a regular basis by the USAID, American Councils, and USETI Alliance. The last seminar was held at the Taras Shevchenko National University of Kyiv on February 11, 2014. Policymakers, professors, and experts from civil society organizations participated in the discussion devoted to correlation between labor market expectations and higher education outcome, and shared their views on the way in which education reform in Ukraine should be realized to ensure this correlation by using foreign countries’ experience as a model to follow. The discussion resulted in a common understanding among all the participants that there are almost no links established at the moment between education institutions and labor market associations in Ukraine. The event participants agreed that there is an urgent need to ensure in legislation the academic, administrative, and financial autonomy for higher educational establishments. The second point was that, in order to meet labor market expectations, law schools have to be familiar with a legal profession qualification framework, which is yet to be developed. It will assist in introducing relevant changes into educational programs to not only provide students knowledge, but foster their skills/abilities to create favorable conditions for allying the labor market with higher education system operation.

One of the ways to do this is to involve employers and other legal education stakeholders in the process of developing a legal profession qualifications framework as an intrinsic part of the state standard of legal education. To this end, FAIR has developed and published a RFA calling on civil society organizations to design a survey to determine key legal education stakeholders’ expectations as to law schools graduates’ knowledge, skills, abilities, and attitude to the profession necessary to meet high demands of a modern labor market.

Another platform to discuss higher education reform issues was an event at the Institute for Legislation working under the auspices of the Verkhovna Rada. The seminar was held on March 28, 2014, to discuss the content of possible amendments to the draft law on higher education (registration No. 1187-2) in light of priorities pertaining to different education fields as well as current problems in establishing appropriate relations between the state and higher educational establishments who enjoy autonomy. FAIR provided seminar participants with its vision as to possible ways in which these issues ought to be addressed in the legal education sphere.

Considering different aspects of legal education reform-related activities FAIR was involved in during base period, the project decided to undertake concrete steps to study legal education quality in Ukraine’s current state with the aim to demonstrate the problem areas and seek improvement along with modernization. There is an idea to implement a pilot project conducting external on-site assessment of legal education quality assurance mechanisms put in place at one of the leading Ukrainian law schools.

During the reporting period, FAIR visited the Ivan Franko National University of Lviv to meet with Andrii Boiko, Dean of the Law Faculty, and discussed the prospects of mutual cooperation to implement the pilot project at this law school as well as to turn the law faculty into an academic home for the Court Administration Master Program. As a result of the meeting, both cooperation

components were agreed upon and laid down in a draft protocol of cooperation between FAIR and the Ivan Franko National University of Lviv which will be signed next quarter.

To implement this pilot project tentatively scheduled for April – May, 2014, FAIR was working to identify subject matter experts and managed to involve three international legal education experts, namely Delaine R. Swenson (Poland), Finlay C. Young (UK), and Catherine Carpenter (USA). To provide the experts with the Ukrainian context, assist them in their work on the one hand and to foster domestic skills in this area on the other, FAIR also is engaging two Ukrainian legal education specialists.

Given a leadership change in the MOJ and Ministry of Education (MOE), both of which have competence in legal education policy area, FAIR has decided to build good working relations with both ministries' leadership to strengthen the effectiveness of FAIR efforts to promote legal education reform.

PROBLEMS: Although developed draft laws on the judiciary provide applicable mechanisms to transform the existing judicial system into a properly functioning one based on European values, recent events point to a lack of political will to adopt relevant legislation. With a new Parliamentary majority, joining into a Cooperation Agreement with the European Union (EU), taking into account a declared intention to align the country with European values, and permanent CSO pressure in place over the policy makers there is a hope that the GOU will undertake relevant measures to finalize judicial reform accordingly. In the face of such political transformation FAIR will continue to advocate for legislative measures that will legally support the process of reforming the judiciary in Ukraine.

Although the draft law on higher education (registration No. 1187-2) provides for applicable mechanisms to transform the legal education in Ukraine in the light of best practices of education management and education quality assurance, the process of considering amendments proposed to the bill is likely to be protracted in spite of the presence of political will to adopt it. FAIR will use this opportunity to advocate for legislative amendments necessary to ensure the high quality of legal education.

Current national security challenges coupled with the leadership change in both the MOJ and MOE may affect the priority and timeline for setting a legal education standard with development of a legal profession qualifications framework as its intrinsic part. To address this problem, FAIR will engage civil society institutions to support MOJ and MOE efforts to develop the legal profession qualifications framework by assisting them in analyzing a modern labor market's demands on law graduates as well as advocating for academic curricula review to meet such demands.

SCHEDULE CHANGES: FAIR conducted most activities according to schedule. However, actual legislative changes are still pending due to the political developments caused by nation-wide protests and major political changes, and the discouraged judiciary corps expecting the lustration process. FAIR continues to work on promoting and fostering key reform components and focuses its efforts on building consensus and mutual respect among stakeholders.

PLANS: In order to provide the GOU with a list of recommendations to revise the Law on the Judiciary

Performance Indicators ER 1.1

To build a foundation for a more accountable and independent judiciary FAIR supported 7 governmental legal institutions and 2 non-governmental legal association this quarter.
"Number of laws, regulations, and procedures designed to enhance judicial independence supported with USG" assistance did not change this quarter and remains at level of September 2013 baseline and is equal 13.
There are no changes in status of the indicators "Number of revised provisions enacted that reflect Venice Commission recommendations" and "Percentage of Venice Commission recommendations adopted," which are equal 3 and 6% accordingly.

and Status of Judges, FAIR will submit legislative initiatives to proceed with amendments to the Law on the High Council of Justice and to the Law on the Judiciary and Status of Judges, and will provide technical assistance on standards, criteria, procedure for judicial lustration or vetting development.

Also, FAIR is ready to tailor its plans to the changing current situation and replace with other activities the work on the list of the amendments. This might be needed to reflect necessary proposed constitutional changes in the Judiciary section as was expected a few months before; however, the proposed constitutional changes may not be passed in the Rada at the moment because of the new approach to Constitutional reform. At the same time, the issue of constitutional reform necessity for the full range of judicial reform in the country is on the agenda. FAIR will support public debates regarding the best options for rules on the Congress of Judges delegates nomination/selection/election, full time jobs for High Council of Justice (HCJ) members related provisions, the scope of needed internal processes, criteria for administrative posts in the judiciary, etc. It will be done in light of the best European practices through various discussion forums and public awareness activities, including but not limited to policy roundtables with participation of international and domestic experts, civil society, and key policy makers. FAIR is planning to conduct at least two public discussions on the pending and adopted draft laws related to the judiciary, including: 1) judicial reform related issues and 2) expert discussion on the factors that affect Ukrainian judiciary accountability and independence.

In order to develop a more comprehensive vision of creating a model Ukrainian law school FAIR will launch a pilot project to support a comprehensive external on-site assessment of legal education quality assurance policy present in one of the leading Ukrainian law schools, namely the law faculty of the Ivan Franko National University of Lviv. This assessment will result in concrete recommendations to develop a model action plan to enhance the quality of legal education within the law school under assessment as well as other Ukrainian law schools.

To build a bridge between a modern labor market and legal education establishment, FAIR will support a survey whereby employers interested in legal profession specialists' expectations as to law graduates' possessed knowledge, skills, abilities, and approach to the profession will be studied, analyzed and presented to the MOJ, MOE, law schools representatives, and general public. The expected outcome is that this will attract legal education stakeholders' attention to consider modern labor market demands in the legal industry, as well as advocate for necessary changes in academic curricula.

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

ACCOMPLISHMENTS: Improved by the end of 2013, text of a concept paper on all Constitutional Changes was ready to be considered by the Constitutional Assembly (CA) plenary session. Due to current political situation the CA was not able to conduct its meetings during the reporting period. Immediately after the Cabinet of Ministers of Ukraine on November 21, 2013 announced decision to skip the signature of the EU Association Agreement some prominent CA members (scholars, CSO representatives) withdrew their membership from the Assembly, which paralyzed the Assembly's operations. During that period of time FAIR kept in contact with the CA leaders to follow the political development and provide support in constitutional reform finalization on a need-driven basis. The change of course in Ukraine's effort to integrate with Europe resulted in almost three months of mass protest confrontations and complicated political life in the country. Constitutional Assembly activity was frozen. As a result of the political crisis, a new majority in Parliament was formed in late February, declaring the need to reform the country and announced pre-term Presidential elections for May 25, 2014 due to self-removal of the former President from his office. The Parliament voted with 345 out of 450 votes to bring back into force constitutional

text of December 2004, relating to Parliament’s authority in state rulings. A new government was appointed to run the country. New political situations brought up the same issue – the need of Constitutional reform. CA activity became questionable. A draft Concept Paper that they developed was lacking the inclusiveness, as opposition by that time was not willing to contribute to Yanukovich’s advisory body activity as they have seen the CA.

On March 4, 2014, the Verkhovna Rada adopted the Resolution No. 849-VII to establish the Interim Special Commission of the Verkhovna Rada of Ukraine on the preparation of a bill on amendments to the Constitution of Ukraine. The Commission consists of 15 MPs – different political forces in Parliament representatives, including today a minority of region and communist party representatives, namely Serhii Hrynevetskyi (Party of Regions), Vitalina Dzoz (Party of Regions), Nestor Shufrych (Party of Regions), Oleksandr Feldman (Party of Regions), Andrii Pyshnyi (All-Ukrainian Union ‘Batkivshchyna’), Serhii Terokhin (All-Ukrainian Union ‘Batkivshchyna’), Leonid Yemets (All-Ukrainian Union ‘Batkivshchyna’), Valerii Karpuntsov (‘Udar’ Party), Oleh Helevei (All-Ukrainian Union ‘Svoboda’), Adam Martyniuk (Faction of the Communist Party of Ukraine), Volodymyr Pylypenko (‘Economic Development’ Group), and Oleh Zarubynskyi (‘Sovereign European Ukraine’ Group). On its first meeting the Commission gave a floor to Maryna Stavniichuk, CA Secretary, who presented the key points of the CA draft Concept paper. It seems that Commission members will at least familiarize themselves with such paper content to move forward. FAIR has established individual contacts with some members of the Commission, namely Mr. Karpuntsov and Mr. Yemets.

In mid-March 2014, FAIR sent a letter to the Head of the Interim Special Commission Ruslan Knyazevych offering the mutual cooperation Commission may benefit from. In particular, FAIR notified Mr. Knyazevych on the materials developed within the frame of cooperation with the CA and now available for new Commission members. These are prepared by foreign experts (Lorena Bachmaier and Evgenii Tanchev) in 2012-2013 with an independent assessment of the current Constitution of Ukraine content, identified constitutional gaps, inconsistencies of specific constitutional provisions with the rule of law principle. FAIR is open for any idea from the Commission side regarding involvement of additional experts outside of Justice sector chapters.

PROBLEMS: Progress has been slowed under this task due to massive anti-government protests, major changes in

Milestone Progress ER 1.2

- Independent Madrid University Law professor Lorena Bachmaier developed and presented the Expert Opinion on the Constitution of Ukraine Gap Analysis with a focus on Rule of Law Principle implementation.
- The draft law “On Amending the Constitution of Ukraine Regarding Strengthening Judicial Independence” is developed by the Presidential Administration and submitted to Verkhovna Rada first reading consideration.
- The Concept Paper on Improvement the Constitutional Regulation of Justice in Ukraine was incorporated into the draft General Concept Paper of Constitutional Changes to be presented during the 4th CA plenary meeting.
- Independent Madrid University Law professor Lorena Bachmaier developed and presented the Expert Opinion on the improved Concept Paper on Justice Sector Amendments.
- The draft Concept Paper on entire Constitutional Changes was discussed at the June 21, 2013 CA plenary session and was sent for further improvement.
- The CA coordination bureau adopted decision No. 21 to recommend the CA to approve a revised improved content of the draft General Concept Paper of Constitutional Changes.
- The European Commission for Democracy through law (Venice Commission) issued the Opinion on the draft law on Amendments to the Constitution to Strengthen the Independence of Judges.

Performance Indicators ER 1.2

During this reporting period, the status of the indicators “Number of working sessions on Constitutional reform between law makers and civil society organizations” and “Number of civil society organizations that have experience in constitutional reform participating in public events on the Constitution” did not change and stays at the level of September 2013 baseline, which equal 6 and 16 accordingly. In order to strengthen measuring performance under the ER 1.2 FAIR introduced in fiscal year 2014 the indicator “Number of revised provisions in the Constitution enacted that reflect inputs from project-supported public discussions”. The draft law that will contribute to this indicator approved at the first reading.

government, alteration in the parliamentary majority and Russian invasion on the Ukrainian territory. The regular government operations have been redesigned and the CA operation in fact was stopped. FAIR continues to adjust its work based on ongoing developments and pace of partner activities.

SCHEDULE CHANGES: FAIR delayed or had to cancel some planned activities due to political instability in the country. However, actual legislative changes, especially in the area of judicial lustration/vetting judicial independence and judicial self-governance are still urgent. Therefore, FAIR efforts should be concentrated on promoting key judicial reform components.

PLANS In order to pursue constitutional reform in general and related to the judiciary specifically FAIR will work in coordination with the Parliamentary Constitutional Commission members, civil society and professional organizations representatives to conduct up to four public discussion on the need to amending the constitution of Ukraine, referring to the relevant draft Concept Paper developed by the CA in 2013 along with feedback received from independent experts. FAIR will focus on the substance of the existing Bill “On Amending the Constitution of Ukraine Regarding Strengthening Judicial Independence”, which received positive CCU opinion and passed first reading in 2013 in order to identify the area for its improvement.

FAIR will conduct a series of working meetings with the coalition members in the Verkhovna Rada to discuss the scope of needed potential legislative changes resulted by the above mentioned amendments.

FAIR will also contribute to building dialogue between CA members Parliament Constitutional Commission members on needed constitutional changes in relation to the judiciary areas (human rights, law enforcement) in order to promote implementation of the rule of law principle as much as possible.

Finally, FAIR will work on a regular basis with the Parliament Interim Special Commission to support the preparation of a bill on amendments to the Constitution of Ukraine to discuss the lessons learned and relevant experience from foreign countries to be incorporated in the Constitutional process in Ukraine.

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

ACCOMPLISHMENTS: During the reporting quarter, FAIR continued assisting the High Qualifications Commission (HQC) in developing clear standards for transferring judges. With this purpose FAIR received the USAID approval for short-term Legal and Judicial Expert Graham Taylor, who provided expertise on international and European standards for transfer of judges. Graham Taylor examined the transferring procedures in France, Lithuania, Germany, Sweden and Poland. FAIR will provide the results of the research to the HQC in April.

Also, FAIR awarded a grant to International Public Organization “Universal Examination Network” to conduct the second part of the in-depth Judicial Practice Analysis among judges of commercial and administrative courts under Annual Program Statement (APS) on “Strengthening the Role of Civil Society Organizations as Advocates for and Monitors of Judicial Reform” The grantee will conduct a survey among judges of commercial and administrative specializations to identify judicial qualifications (competencies), a list of personal and ethical standards that ideal judicial candidates should have and methods to evaluate them and to identify topics for training based on the input from sitting judges.

In addition, on January 21, 2014, the FAIR team and the leadership of the HQC conducted a working meeting to discuss the progress and needs for further cooperation. While opening the meeting Justice Samsin, Head of the HQC, stated that:

“HQC with FAIR support did a lot in developing and implementing transparent, objective, knowledge- and performance-based judicial selection criteria and procedures through an anonymous test and qualifications exam. Three rounds of the judicial selection processes held with the active FAIR support to improve the testing and selection process. At the same time there is a need to improve some procedures. In particular to automate the qualification exam”

During the meeting, the following needs related to judicial selection processes and procedures were identified:

- The need to automate the judicial qualification exam;
- The need to improve the content of the judicial qualification exam after the Judicial Practice Analysis is completed;
- The need to support the NSJ in creating a quality pool of judicial test items writers and training for them;
- The need to update the manual for proctors/administrators of the judicial anonymous test;
- Training for the HQC members on the methodology of test items and case study writing evaluation;
- The need to update the manual for proctors/administrators of the judicial qualification exam; and
- The need to finalize the list of personal and ethical standards that ideal judicial candidates should have, and methods to evaluate them after the Judicial Practice Analysis will be completed.

As a result of the meeting FAIR and HQC developed a draft Action Plan of Cooperation for 2014 outlining joint activities, deadlines and responsible persons from both FAIR and the HQC.

Finally, during the reporting quarter, FAIR continued assisting the HQC in automating the judicial qualification exam. For this purpose FAIR short-term local Judicial Exam Automation Expert Boris Shuster updated his Report with recommendations and necessary steps to automate the qualification exam and sent it to the HQC for further consideration.

Milestone Progress ER 2.1

- Held Three working meetings with the HQC.
- HQC formed a 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.
- Conducted psychometrical analysis of the qualification exam and initial test.
- Held training for the HQC members on case study writing evaluation methodology.
- Developed recommendations for improving the judicial vacancy application, test administration, and scoring processes.
- Drafted a Handbook for test item developers.
- Held training on developing test questions for evaluating skills at high cognitive levels for developers of test items.
- Drafted a Manual for anonymous test administrators (proctors).
- Drafted Report with the recommendations and necessary steps to automate qualification exam.
- Held Analysis of Judicial Practice; presented and promoted its results.
- The EU and International standards and best practices for transferring judges identified

Performance Indicators ER 2.1

No changes in indicator status occurred this quarter on this ER. Cumulative status of the indicator “Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance” remains 17. Cumulative data for the indicator “Number of procedures within the judicial appointment process improved with project support“ remain 5. The indicator “Number of Ukrainian judges appointed through project-supported objective, merit-based judicial selection process” increased this quarter by 62 and changing. This number however includes the previous quarter data since it was not available in time. Cumulative data for this indicator is 942.

PROBLEMS: Political developments in Ukraine, possible lustration process within the judiciary and changes of the HQC’s composition after the Congress of Judges which is taking place on April 7 make many processes within the HQC pending. If the composition of the HQC changes, new members and employees will be hired with old members and staff resigning from the Commission. Thus, FAIR will face challenges of building relationships with newly appointed members and staff members of the HQC and educating them on the issues related to proper implementation of the judicial selection process. At the same time, the political will of the new government for changes within the judiciary and within a short term requires from FAIR to take quick, adequate and effective decisions to assist new government to implement changes within Rule of Law principles.

PLANS: During the next quarter, FAIR under Expected Result 2.1 will focus on:

- Supporting the International Public Organization “Universal Examination Network” to conduct the second part of the in-depth Judicial Practice Analysis;
- Providing the HQC with recommendations on improving the judicial transfer process based on researches provided by experts Graham Taylor and Olena Ovcharenko;
- Establishing jointly with the HQC a Working group to develop the Implementation Plan for Automating the Judicial Qualification Exam;
- Updating, publishing and disseminating a manual of expert recommendations for test item developers;
- Conducting a training for test item developers on standards and methods for developing test items; and
- Updating, publishing and disseminating the Proctor’s manual for judicial anonymous testing.

EXPECTED RESULT 2.2: UKRAINIAN JUDGES ARE DISCIPLINED IN TRANSPARENT PROCESSES

ACCOMPLISHMENTS: During the reporting period, FAIR continued collaborating with the HQC in improvement of judicial disciplinary practices in line with the best international and European standards. To reach this goal, in January FAIR focused on elaborating and putting forward joint activities with the HQC for the year 2014. On January 21, 2014, FAIR leadership conducted the meeting with Justice Ihor Samsin, Head of the HQC, several members of the HQC, and heads of the HQC departments to discuss priorities and the ways of collaboration between the organizations with regard to the judicial discipline process. Within the scope of proposed actions, the HQC confirmed its interest in: (1) developing and implementing the integrated electronic instrument for automating the current business processes of the HQC, namely, record keeping, judicial selection, transfer, disciplinary liability procedures, and dismissal of judges; (2) elaboration of the Manual for Disciplinary Inspectors; and (3) organization of initial and ongoing training for judicial discipline inspectors.

On February 14, 2014, FAIR representatives and short-term Local Database Management Expert Boris Shuster had a meeting with the representatives of the HQC

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 importing and search modules enabling the posting of judicial discipline decisions to the HQC website and their search tools.
- Delivered 45 Laptops to the HQC and improved procedure of judicial misconduct complaints verification and consideration.
- Involved a local expert to design terms of reference of a unified integrated database to manage the judicial discipline and selection processes developed.
- Monitoring of judicial discipline decisions and appeals on HQC judicial discipline decisions was conducted through a grant funded activity by an NGO.

Secretariat, Head of the Service of Disciplinary Inspectors, and IT Department to discuss the draft Terms of Reference for the unified integrated database and the respective electronic documents' management system. The parties exchanged their views and proposals on the priorities and feasibility of implementation of the above mentioned database and e-system, and agreed on the following points:

- System allows creation of judicial filing cabinet to collect judge profiles based on existing information that reflects her/his professional career, starting from judicial candidate selection through retirement/dismissal. Collection and storing of judicial personal data shall conform to the Law "On Protection of Personal Data". System shall provide due technical instruments to prevent unauthorized access to judicial personal data. Judicial filing cabinet shall correspond with effective database of judges operating with the SJA;
- System provides for classification of e-documents and search them by details;
- Separate module is to be designed for document management and control; and
- System shall have specific services related to the judicial qualification exam, first appointment of judges, their life-time election, judicial transfers, as well as specific electronic register of judicial vacancies.

Based on the results of the above mentioned meeting with HQC responsible officers and Instruction of Office Management of the HQC, Mr. Shuster adapted the Terms of Reference to be presented to the HQC in April 2014.

In order to support the HQC in improving its regulations governing investigation of judicial misconduct, FAIR short-term Legal and Judicial Expert Graham Taylor conducted comparative research of effective judicial disciplinary procedure rules applied in Germany, France, Lithuania, Sweden and Poland. The findings will be summarized and presented to the HQC during a training seminar for judicial discipline inspectors scheduled to take place in April-May 2014.

In addition, FAIR outlined results of the roundtable "Theoretical and Practical Aspects of Judicial Disciplinary Proceedings" held on November 21-22, 2013 in Svalyava (Zakarpattya Region) concerning interpretation of legal grounds of judicial disciplinary liability, as well as procedural and institutional aspects of holding judges liable for disciplinary misconduct. On the base of this outline FAIR will tailor the proposals for amendments to internal HQC regulations concerning judicial disciplinary procedure and to Section VI of the Law "On the Judiciary and Status of Judges" ('Judicial Disciplinary Liability') to be presented at the above mentioned training seminar.

PROBLEMS: Significant political changes that happened at the beginning of 2014 have considerably affected the Ukrainian judiciary and all related authorities. In the middle of April new members of the HQC shall be appointed. Afterwards FAIR will present its activities and initiatives to the new leadership and members of the HQC. So far, it is difficult to predict what policies and priorities the new composition of the HQC will follow in its activity, and thus FAIR joint actions with the HQC may be reviewed.

Performance Indicators ER 2.2

The indicator "Number of criteria, standards and regulations adopted to govern judicial misconduct investigations" did not change and remains 7 as in the previous quarter. "Per cent of judicial misconduct complaints submitted to the HQC using the standardized form" this quarter is 15% against 10% previous quarter. "Per cent of judicial discipline decisions posted on HQC website" is 67% this quarter which is lower than the previous quarter. The decrease happened due to the technical and organizational issues within the HQC.

SCHEDULE CHANGES: FAIR planned to support the HQC in elaborating rules and framework of the disciplinary inspectors' training and performance evaluation, as well as in working out proposals for public awareness enhancement of judicial discipline accountability. Accomplishment of these activities was postponed to the later periods due to the urgent need to draft proposals on amendments to the Law "On the Judiciary and Status

of Judges”, and to study and compare draft laws “On Restoration of Trust in the Judiciary of Ukraine”.

PLANS: During the next quarter, FAIR under Expected Result 2.2 will focus on:

- Presenting to the HQC final version of the Terms of Reference for developing of unified integrated database and electronic documents` management system;
- Publishing on the FAIR website Request for Proposals for elaboration, installation and testing of the software for unified integrated database;
- Organizing training seminar for judicial discipline inspectors;
- Presenting to the HQC the results of comparative research of judicial discipline procedures applied within selected European countries;
- Finalizing recommendations on amendment of regulations governing judicial misconduct investigations; and
- Finalizing the Manual for Disciplinary Inspectors as a complementary instrument to facilitate preliminary screening of complaints against judges, verification of facts of judicial misconduct, and related procedural aspects.

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 implementing the Code of Judicial Ethics, strengthening judicial self-governance, and promoting court system reform in Ukraine according to European standards.

On March 19-21, 2014, FAIR held a hands-on workshop for the NSJ to develop an on-line course on judicial ethics for judges and judicial candidates, contributing to further implementation of the Code of Judicial Ethics. Now the on-line course is being tested by the workshop participants. It is expected that the on-line course will be ready to be used by the NSJ by the end of June 2014 (see more on this issue under Expected Result 3.1).

Given the COJ’s reluctance to work on a Commentary to the Code of Judicial Ethics exacerbated by political turmoil, during the reporting period FAIR did not have a chance to meet with the COJ leadership to support the COJ in the establishment of a working group on developing the Commentary. Despite unfavorable conditions, FAIR has started negotiations with experts able to provide a comprehensive annotation to the Code coupled with case studies elaborating on international and European standards for judicial ethics and, therefore, will be able to provide expeditious support to the COJ once its reluctance to establish the working group is gone. In particular, FAIR expects to involve Pavlo Pushkar, Senior Lawyer at the European Court of Human Rights, so that Mr Pushkar can equip the Commentary with references to and analysis of the Court’s clear-cut case law, including cases against Ukraine, related to judicial ethics. Bearing in mind a special status of the Court’s case law in Ukraine, a substantial injection of the Court’s case law into the Commentary will significantly elevate its authority. In addition, FAIR is also contemplating the possibility to involve Mark Harrison, Chair of the American Bar Association’s Commission on the Model Code of Judicial Conduct, an eminent expert who can bring US experience on the matter to the Commentary.

As regards enhancing the role of judicial self-governance, FAIR has completed the research on European judicial self-governance standards and best practices. The research results will be presented to all the stakeholders. Having accomplished the research on judicial self-governance, FAIR has come up with an idea of gradual transformation of the Ukrainian system of judicial self-governance regarding what can be done to enhance the role of judicial self-governance without changing the Constitution should be done first (tactical support). The preparation of a concept

paper and constitutional amendments necessary to build a proper system of judicial self-governance should follow (strategic support).

As far as the tactical support is concerned, FAIR has analyzed a draft law on strengthening judicial self-governance in Ukraine (registration No. 3678) amending the Law on the Judiciary and Status of Judges in light of Venice Commission recommendations, developed amendments to this draft law, and started to advocate for enhancing the role of judicial self-governance. To this end, FAIR has discussed this draft law and amendments proposed with the Civil Society Working Group on Judicial Reform emerged from the Civil Society Sector of Maidan's initiative called the Reanimation Reforms Package. FAIR together with the EU Project to Support Justice Sector Reforms (represented by Virgilijus Valancius, Key Expert on Independent Judiciary) have been regularly attending the working group's meetings to support this initiative. The working group is also supported by the New Citizen Partnership which provides media support. As a result, the draft law under consideration has now been put high on the Verkhovna Rada's agenda. In addition, as far as functioning of the judiciary is concerned, during the reporting period FAIR has prepared systemic amendments to the Law on the Judiciary and Status of Judges to improve the law in light of European standards. Once the work on this bill is finalized, it will be presented for the Verkhovna Rada's consideration.

Milestone Progress ER 2.3

- Seven stakeholder discussions on draft Code of Judicial Ethics held.
- Amendments to Code of Judicial Ethics revised and submitted to COJ for approval.
- COJ International Conference on Judicial Ethics supported.
- Congress of Judges adopted the Code of Judicial Ethics.
- Experts to support a working group on developing a Commentary to the Code of Judicial Ethics preselected.
- Research to assess HCJ needs with regards to possible new composition and functions is in progress.
- Research on European judicial self-governance standards accomplished.
- Amendments to the Law on the Judiciary and Status of Judges to improve judicial self-governance developed and advocated for.
- Comparative analysis on best practices related to status, ropes, functions and responsibilities of advisory committees on ethics or equivalent institutions in democratic countries is accomplished
- On-line training program on judicial ethics for judges and judicial candidates is developed and now in the process testing.

As for strategic support, FAIR has developed an idea of significant optimization of the Ukrainian system of judicial self-governance by establishing the High Council for the Judiciary with the State Judicial Administration (SJA) as its apparatus to replace the HCJ, HQC, and COJ altogether. Not only would this optimization correspond to the European standards of judicial self-governance, but it would also help to decrease the costs of running the system of judicial self-governance. Accomplishment of this task requires a great deal of institutional analysis and expertise on merging state institutions coupled with strategic planning, legal framework development, and advocacy. At this stage the Civil Society Working Group on Judicial Reform can be used as a good forum to discuss this initiative.

Turning to institutional aspects of judicial self-governance, FAIR has been continuing its work to establish structural units within the COJ, including an Advisory Committee on Ethics. To this end, FAIR is going to use international expertise on the matter, which is expected to be provided by one US and one Polish judge knowledgeable about workings of analogous Committees in respective countries. Furthermore, FAIR has accomplished a study on best international and European operation standards for Committees on Judicial Ethics. The research findings will be presented to the COJ as soon as the COJ is ready to work on the establishment of structural units within the COJ and be provided with possible modes of the Advisory Committee on Judicial Ethics.

Performance Indicators ER 2.3

No changes occurred this quarter under the ER2.3. Code of Judicial Ethics remains the changed the only data for the indicator "Number of judicial self-governance mechanisms revised with project support". The work on developing the Commentary to the Code of Judicial Ethics is in progress.

As regards FAIR's cooperation with the HCJ, following the conclusion of the protocol of cooperation between FAIR and the HCJ on February 4, 2014, FAIR, due to the HCJ leadership links with Victor Yanukovich, Ex-President of Ukraine and protracted political instability in the country, has suspended its activities aimed to assist in assessing HCJ needs regarding possible new composition and new functions and help in developing an HCJ Strategic Plan. FAIR will resume its cooperation with the HCJ once political circumstances are changed. Meanwhile FAIR has started to analyze best practices of judicial appointment and judicial discipline processes in order to provide the HCJ with them when the cooperation is resumed.

Finally, on March 18, 2014, the Annual Conference of Judges of General Courts took place at the Supreme Court of Ukraine. Fifty-five delegates from all oblasts of Ukraine, Crimea, and Sevastopol participated in this conference. More than 30 invited guests, including judges from administrative and commercial courts, higher court, media, civil society, and international organizations (including representatives of FAIR) observed the Conference. The issues discussed at the Conference included the following: 1) the Council of Judges of General Courts report on the judicial self-governance activity in 2013; 2) the SJA report on funding the judiciary in 2013 and budget for the judiciary for 2014; 3) the current political situation in Ukraine including Russia's military aggression to Crimea; 4) issues of potentially upcoming lustration of judges according to the draft law "On the Restoration of the Public Trust in the Judiciary"; and 5) list of delegates for the upcoming Congress of Judges. Among the last year achievements, newly elected Head of the Council of Judges of General Courts Mr. Gvozdyk mentioned court performance evaluation systems supported through the USAID-funded FAIR project. Regarding the draft law "On the Restoration of the Public Trust in the Judiciary", conference speakers including Head of the HQC Justice Samsin, Head of the COJ Justice Onopenko and invited guest - the European Commission for the Efficiency of Justice (CEPEJ) representative George Stawa mentioned that the current draft law is not in compliance with European standards of judicial independence and contradicts to the Constitution of Ukraine. In this regard FAIR could help to consult all interested stakeholders on the issue of lustration for judges.

PROBLEMS: FAIR foresees that COJ will continue to stay reluctant to establish a working group on developing a Commentary to the Code of Judicial Ethics. To overcome this predicament, FAIR will launch comprehensive consultations with the COJ leadership to try to persuade them that the Commentary is a necessary prerequisite for the Code of Judicial Ethics to function effectively.

FAIR anticipates that the COJ may appear to be unwilling to conduct an internal reform as far as the establishment of its structural units is concerned. To overcome this difficulty FAIR will hold comprehensive consultations with the COJ to impress upon the COJ leadership that the internal institutional transformations are vital to the judicial self-governance capacity building. Furthermore, the establishment of the Advisory Committee on Ethics is necessary to ensure effective implementation of the Code of Judicial Ethics.

FAIR also foresees that the political circumstances may remain unfavorable to its further cooperation with the HCJ. To ameliorate this situation, FAIR will continue to contemplate the ways to reform the HCJ to enhance its independence and efficiency in line with European standards.

FAIR anticipates that its ambitious proposal to establish the High Council for the Judiciary with the SJA as its apparatus to replace the HCJ, HQC, and COJ altogether will be perceived by FAIR's partners as too hard to implement within a relatively short time span. To tackle this problem, FAIR will start comprehensive consultations with the judiciary stakeholders to advocate for implementation of the European understanding of judicial self-governance mandate and

optimization of the judicial self-governance system by creating a single body representing the judiciary at the national level, which will be ultimately responsible for ensuring judicial independence.

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

- Support the COJ and the NSJ in developing an online training program on Judicial Ethics (linked to the Task 3.1.5);
- Support the COJ in the establishment of a working group on developing a Commentary to the Code of Judicial Ethics;
- Work with the COJ and promote the establishment of structural units within the COJ;
- Advocate for legislative amendments related to improve judicial self-governance, including COJ roles and responsibilities (Linked to Task 1.1.1);
- Assist in assessing HCJ needs with regards to possible new composition and new functions. Familiarize the HCJ with the best practices of judicial appointment and judicial discipline process;
- Assist the HCJ in developing a strategic plan regarding financial and human resource management, public outreach, etc; and
- Assist in developing a legal framework and concept for establishing the High Council for the Judiciary (Linked to ERs 1.1 and 1.2).

EXPECTED RESULT 3.1: THE SKILLS AND COMPETENCIES OF UKRAINIAN JUDGES AND COURT STAFF ARE BOLSTERED THROUGH MODERN, DEMAND-DRIVEN TRAINING PROGRAMS.

ACCOMPLISHMENTS: During this reporting period, the FAIR team continued to support the NSJ in its institutional development and enhancing its capacity to conduct effective strategic planning processes to meet the training needs of different audiences.



Participants of the Hands-on seminar for developers, trainers-moderators and administrators on Judicial Ethics on-line course are developing syllabus of the course in Pidhirtsi village, on March 19 to 21, 2014.

In support of the 11th Congress of Judges' decision on adopting the Code of Judicial Ethics, on March 19 to 21, 2014, FAIR jointly with the NSJ conducted a Hands-up Seminar for developers, trainers, moderators and administrators of an online course on judicial ethics. In his opening speech, Rector of the NSJ Mykola Onishchuk stated that introduction of distance learning methodology into the NSJ training system is one of the priorities identified in the NSJ Strategic Plan for 2014-2018. Member of the HQC Mykola Melnyk expressed his willingness to implement a distance

course on "Judicial Ethics" as soon as possible to engage a large number of judges in passing it. During the seminar, participants reviewed basic modules of the course to see if the lecture and information materials are sufficient, if case studies and tests have a clearly formulated content. They also developed unified criteria and evaluation tools for on-line training in general, as well as

practical assignments. The participants familiarized themselves with technical design and content of the course of the Internet distance learning management platform Moodle.

The course is based on the distance learning methodology and model curricula introduced by FAIR Judicial Education Expert Hope Kentnor in February 2013 and the FAIR Judicial Ethics Curriculum updated by the grantee Ukrainian Legal Foundation. FAIR also engaged Training Programs Development Expert Ihor Katerniak to assist in developing the course using the web-based distance learning platform Moodle. During the seminar, Mr. Katerniak also shared with participants his experience gained as a result of developing and piloting an online course on “Court and Community Communications”. This event helped build a team of judges-trainers for the course. Prior to launching this course, the NSJ is going to pilot it with FAIR support in mid-May this year. This distance learning course is the first step towards on-line education for judges. More information can be found at the following link: <http://www.nsj.gov.ua/ua/news/chergoviy-krok-do-zaprovadjennya-distantiynih-form-navchannya-u-natsionalniy-shkoli-suddiv-ukraini/>.

During this reporting period, FAIR coordinated with the USAID Participant Training Program to conduct a regional study tour to Poland on Improving Public Satisfaction with Court Services through Professional Development of Court Staff in Partnership with Judicial Institutions, Associations and Universities. The coordination included support in evaluating, interviewing and selecting participants for the program from Kharkiv and Odesa regions. In addition to the group of 10 participants competitively selected in Kharkiv and Odesa regions by the USAID Participant Training Program, FAIR planned to support the participation of up to three SJA and NSJ representatives. However, due to political situation, NSJ representative refused to participate in the program. For the same reasons the SJA assigned only one representative, Olga Rafalska, Specialist of the International Relations Department. The study tour group included court administrators, staff of the Territorial Department of the SJA, faculty members of the Territorial Department of the NSJ, representatives of the

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 (achieved).
- 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 (achieved).
- Curriculum on Rule of Law and Human Rights for on-going training is developed and presented to the key stakeholders (achieved).
- Curricula on Opinion Writing and Judicial Ethics for ongoing training are updated and presented to the key stakeholders (achieved).
- Develop E-version of the Curricula on Rule of Law and Human Rights, Opinion Writing, Judicial Ethics, and Communications (Public Outreach in Courts) for initial and on-going trainings and disseminate between NSJ faculties and its branches (achieved).
- Draft NSJ Strategic Plan for 2014 – 2016 reviewed and adopted by the HQC (achieved).
- Online course on Judicial Ethics for judges and judicial candidates in cooperation with the NSJ and the HQC developed (ongoing).
- Online course on Court and Community Communications in cooperation with the NSJ and the SJA developed and piloted (achieved).
- Selected (competitively) CSO partner to administer the pilot court administration certificate program.
- Over fifty court administrators submitted the applications for participation in the court administration certificate program.
- FAIR signed the agreement with Michigan State University (MSU) to support the pilot court administration certificate program implementation.
- 40 court and SJA staff competitively selected nationwide for participation in the pilot court administration certificate program.
- MSU developed ten courses with teaching materials for the pilot court administration certificate program in cooperation with MSU.
- FAIR in cooperation with MSU, SJA and NSJ conducted the court administration certificate program faculty development training.
- 10 subject curricula on the court administration certificate program adapted to Ukrainian context.
- 40 court and SJA staff participated in court administration certificate program and earned certificates from Michigan State University.
- Court administrator manual based on court administration certificate program curricula developed and published.
- 8 representatives of NSJ, SJA, and graduates of the court administration certificate program participated in the IACA international conference.
- SJA representative participated in the visit to Poland regarding institutional best practices and lessons learned in court administrator training.

Ukrainian Association for Court Advancement (UACA) and academics. Six members of the delegation were graduates and faculty members of the FAIR 2013 Michigan State University (MSU) Judicial Administration Certificate Program implemented in 2013.

In Poland the delegation exchanged experience and best practices in court administration and management with representatives of the National School of Judiciary and Public Prosecution (NSJPP), Czesotchowa Regional Court and the Voivodship Administrative Court in Krakow. During the visit to above mentioned institutions participants got familiar with the following topics:

- Role and brief description of history of the National School, rationale for establishment of the institution;
- Need and role of the NSJPP in the process of education of candidates for judges and prosecutors, as well as their further training;
- Description of main elements of centralized training compared to local training centers, including differences and supplementing features of the system;
- Definition of persons working as court staff in Poland and their administrative and judicial tasks; presentation of information desk in courts;
- Overview on daily operations, scope of responsibilities and tasks of the court staff in Poland;
- Daily work of court administrators and how to provide timely and effective services;
- Court administration in administrative courts, differences with the regional level, e-court system, HR management, issues of internal control and auditing; and
- Role and tasks of the judicial association, its involvement in consultation of training programs and the dialog with government, including the Ministry of Justice.

Upon the end of the program participants prepared six-month action plans using SMART method (S-specific, M - measurable, A - applicable, R - realistic and T – time-frames).

PLANS: During the next reporting period, FAIR is planning to conduct the following activities in order to achieve Expected Result 3.1:

- Continue to work with the NSJ in developing the capacity for distance learning by providing technical support to the NSJ to integrate a distance learning methodology; procuring a server and laptops for NSJ; and assisting the NSJ in developing the curricula for courses offered through distance learning;



Visit to Czesotchowa Regional Court (Poland) on March 12, 2014.

Performance Indicators ER 3.1

FAIR made measurable progress during this reporting period under the Expected Result 3.1. FAIR trained 70 judges and judicial personnel this quarter contributing to the indicator “Number of judges and judicial personnel trained with USG assistance”. FAIR made progress on the indicator “Number of new legal courses or curricula developed with USG assistance,” as the new on-line training course was approved by the NSJ and successfully piloted. In addition, this quarter FAIR trained 19 trainers for the judicial ethics on-line training course contributing the indicator “Number of ToT trainers created.” The FAIR-supported Strategic Development Plan for the NSJ remains the only contribution to the indicator “Number of project-supported new or revised policies for judicial and court staff training institutions” which stays at the same level as the previous quarter.

- Continue to support the NSJ in incorporating the proposed changes in the training curricula of the judicial ethics course, which will be introduced to the judicial training programs. Finalize the Judicial Ethics on-line curriculum in order to pilot it to verify the readiness of the course for launching;
- Assist the SJA and NSJ in identifying faculty and develop materials for second in-class of the Judicial Administration Certificate program (April –June 2014); and
- Conduct workshop for faculty to design the second in-class Judicial Administration Certificate program (June 2014).

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

ACCOMPLISHMENTS: During the period from January to March 2014, FAIR built its programming upon the achievements made over the last two years. These achievements include the development and successful pilot testing of the draft Court Performance Evaluation (CPE) System, the developing concept paper for judicial statistics reform, the completion of the case weighting study for general courts and developing recommendations for improving court budgeting.

Clear, commonly understood and practical court performance standards, criteria and indicators will support the effective and transparent resource planning in the Ukrainian court system including budget preparation, forecasting, and financial controls from one point and, from another point, will supply the roadmap for court managers to improve court services for citizens for further increasing public trust in the judiciary.

Despite of the challenges resulted from the political instability and civil unrest, in this reporting period, FAIR achieved positive outcomes of its activity in the area of developing and implementation of standard-based Court Performance Evaluation (CPE) system.

As FAIR reported in previous quarterly reports, the Council of Judges of General Courts approved the FAIR-developed draft of CPE system in 2013 and requested the COJ to consider the CPE system and approve it in order to further facilitate the implementation of the CPE system by all courts of Ukraine under the SJA leadership and COJ oversight. However, at this point the COJ has other priorities due to the rapid political changes in Ukraine, and it has caused delays in reviewing of the CPE system.

Meanwhile, the Council of Judges of General Courts decided to be pro-active in this regards. Considering its previous approval of the CPE system draft and its decision to include court performance evaluation process in the annual work plans of general courts, the Council of Judges of General Courts on February 13, 2014 considered and approved the list of performance indicators for general local and appellate courts. The list of indicators is based on the FAIR-developed CPE system, specifically on its part that preliminary named “Basic CPE System” and it includes the following indicators:

- 1) Backlog of cases at the beginning of reporting period;
- 2) Number of new cases initiated during the reporting period;

Milestone Progress ER 3.2
<ul style="list-style-type: none"> • Court performance evaluation system developed and tested in 30 Ukrainian pilot courts (achieved). • Performance indicators for general courts developed and approved by the COJ (achieved). • Concept paper for judicial statistics reform finalized (achieved). • National court performance standards formulated and defined (ongoing). • Standard-based court performance evaluation system presented to the COJ and SJA for approval (ongoing). • Court Performance Evaluation (CPE) system approved by the COJ (ongoing). • Developed electronic publication of CPE system available on-line (ongoing). • Case weights resulting from case weighting study discussed, validated, and submitted for SJA/COJ review (ongoing). • Terms of reference for judicial resource management system developed (ongoing). • Concept paper for judicial statistics reform approved by COJ (new).

- 3) Number of cases considered during the reporting period
- 4) Backlog of cases at the end of the reporting period;
- 5) Number of decisions cancelled by the appellate or higher court;
- 6) Number of user complaints regarding court performance;
- 7) Average number of cases reviewed during the reporting period per one judge;
- 8) Total number of incoming documents during reporting period;
- 9) Average number of incoming documents per one court staff individual;
- 10) Number of court staff per one judge;
- 11) Clearance rate, indicator recommended by the European Commission for the Efficiency of Justice (CEPEJ);
- 12) Number of cases considered per one judge;
- 13) Per cent of decisions cancelled by the appellate or higher court;
- 14) Number of court hearings using video-conferencing;
- 15) Number of individuals called at court hearings using sms-messages;
- 16) Availability of court web-page with minimum information required by law available; and
- 17) Conducting court user satisfaction surveys and publishing their results on court web-pages.

The indicators from 1) to 5), 7) and from 11) to 13) from the listed above are also part of the Concept Paper for the Judicial Statistics Reform. In the previous quarterly report for October – December, 2013 FAIR reported about its developing this Concept Paper and its preliminary approval by the SJA. On February 13, 2014, the Council of Judges of General Courts considered the Concept Paper and approved it.

The importance of the court performance indicators approval together with the Concept Paper for the Judicial Statistics Reform is the moving forward from the old-fashion “soviet style” collecting administrative data to modern performance measurement within the Ukrainian judiciary, where the most significant changes are:

- Calculating court performance data based on the actual number of judges and court staff instead of the previously-used planned numbers of personnel increases the transparency of justice system;
- Introduction of CEPEJ-recommended indicators measuring the efficiency in delivery of justice will give the possibility for not only better management of court systems but also for comparing the Ukrainian justice system with other justice systems from other Council of Europe member states; and
- Mandatory conducting user satisfaction surveys by courts themselves or, as an alternative, participation in court user satisfaction surveys conducted by other entities (for example, Citizen Report Cards surveys implemented by NGOs) leads to increased public trust in the judiciary.

During this quarter, FAIR continued working with the COJ and SJA on the implementation of the case weighting study designed by short-term international pro bono Case Weighting Expert Dr. Elizabeth Wiggins of the Administrative Office of the U.S. Courts. FAIR received the final report on case weighting in early January this year, and upon having it translated, submitted copies to the SJA and COJ. As a final step in the process, FAIR aims to conduct a focus group discussion of the case weights in order to adjust the values for those case types, for which the team was not able to collect sufficient statistical data due to their low frequency. FAIR will then submit the results to the COJ for approval.

FAIR also worked with short-term expert Elaine Borakowe to complete the preparation of a manual on case weighting, which could be given to the SJA and COJ should they need to

undertake additional case weighting efforts. The manual was completed and translated by FAIR, and will be submitted to the SJA in the following weeks.

The SJA also requested FAIR assistance with the development of a software application for judicial resource management to be used in each court. FAIR agreed to support this process via the development of a Terms of Reference (ToR) document for this system, and hired short-term local expert Boris Shuster to complete this assignment. Mr. Shuster is currently working on this document, and FAIR expects it to be completed by the end of April 2014. Upon the development of the ToR, FAIR will determine the possibility to provide any further support with this issue.

PROBLEMS: On January 24, 2014 SJA Head Ruslan Kyryliuk resigned from office as a result of failure to resolve issues connected with salary payments to judges and court staff. So far, given the political turmoil in the country, the judiciary has failed to appoint a new head of the SJA. FAIR expects the appointment to take place over the next couple of months, however, it is not clear which course and initiatives will receive support of the new SJA management.

SCHEDULE CHANGES: The civil unrest and political crisis started in the end of 2013 and became very intense in January – February 2014. The fall of Yanukovich’s regime and, further, Russia’s invasion of the sovereign territory of Ukraine had an impact on scheduled FAIR activity during this quarter under all Expected Results. Regarding ER 3.2, FAIR had to postpone the survey regarding user satisfaction with court services and trust in courts initially planned for March 2014. After consultations with the Council of Judges of General Courts FAIR set the new date for this survey around the last decade of June 2014.

FAIR also experience delay with promoting the CPE system approval by the COJ. As it mentioned above, the COJ is currently occupied with other priorities linked to the recent changes in Ukrainian political scene.

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

- Promote CPE system approval by the COJ through direct communication with COJ members and organized meetings and presentations as necessary;
- Develop an electronic publication of the CPE system and assist the COJ to distribute this publication to Ukrainian courts (pending of COJ approval of the system);
- Develop guidelines for general courts on the implementation of a court user satisfaction survey;
- Assist the COJ of General Courts and the SJA in conducting a survey on user satisfaction with court services and trust in courts; develop data collection processing tools and data quality control mechanism;
- Develop guidelines for general courts on the implementation court performance indicators;
- Support pilot testing of approved court performance indicators in all general courts of Odesa Oblast;
- Discuss the resulting case weights with judges in a focus group;
- Finalize and present resulting case weights to SJA/COJ for approval;
- Finalize and submit to the SJA the training course on case weighting based on the methodology designed by FAIR;

Performance Indicators ER 3.2

In this reporting period, the status of FAIR indicators under the ER 3.2 stays the same as the last quarter since no related changes occurred. However, COJ of General Courts approved 17 court performance indicators for general courts. In addition, we made a preliminary agreement for piloting court performance indicators in 33 courts of Odessa Oblast. Thus, next quarter we expect significant changes under the indicators “Number of court performance indicators implemented” and “Number of courts implementing project-supported performance measurement system.”

- Based on the results of the previous case weighting study, initiate a similar effort for the administrative courts of Ukraine; and
- Complete the development of the ToR for the software application for judicial resource management upon receipt of all relevant documentation from the SJA.

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

ACCOMPLISHMENTS: Throughout the reporting period, FAIR worked jointly with the SJA in order to prepare an agreement between SJA, FAIR, and the State Enterprise “Information Court Systems” (ICS) on the installation of 42 information/pay terminals which would allow citizens to pay court fees directly at the courts and receive information on court operations. The purpose of the agreement is to ensure that the pay terminals procured by FAIR will be used in the best interests of court users and in line with all requirements of Ukrainian law. FAIR expects signing the agreement by the end of April 2014.

FAIR also provided the SJA with a set of international court building standards. FAIR identified two documents from California and Utah, which contained standards for the courts of these jurisdictions. Additionally, at SJA’s request FAIR drafted a concept for online payment of court fees, which FAIR is currently reviewing and plans to submit to the SJA over the next couple of weeks. FAIR will then discuss with the SJA the possibility to launch the online payment service via the web-portal of the judiciary of Ukraine.

PROBLEMS: The above-mentioned change in SJA’s management opened for FAIR a new window of opportunity, potentially allowing us to review certain policies related to court administration and management, including IT, judicial statistics, etc. Provided the political will is in place, FAIR will make use of this opportunity by identifying areas of concern jointly with judicial self-governance bodies and assisting them in updating and reviewing key policies.

SCHEDULE CHANGES: FAIR does not foresee any significant changes of schedule.

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

- Support the drafting of the implementation plan for the Strategic Plan for the Judiciary;
- Announce a tender and procure pay terminals for electronic court fee collection;

Milestone Progress ER 3.3

- Strategic plan drafted and discussed by key stakeholders (achieved).
- Content for SJA manual on human resources determined (achieved).
- Strategic Plan for the Judiciary finalized and submitted for COJ and SJA approval (achieved).
- Congress of Judges adopted the Strategic Plan for the Judiciary (achieved).
- Manual on human resources printed and sent to all courts (achieved).
- Three HRM trainings conducted for chiefs of staff (achieved).
- 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 prepared and submitted to the SJA for implementation (cancelled).
- National Court Automation Strategy approved by the SJA’s Innovations WG (achieved).
- Concept for collection of electronic court fees drafted and submitted to SJA (achieved).
- Implementation plan for the Strategic Plan for the Judiciary prepared, discussed, and approved (ongoing).
- Pilot project for electronic court fee collection via pay terminals implemented (ongoing).
- Concept for online payment of court fees developed (achieved).

Performance Indicators ER 3.3

No changes this quarter occurred under the indicator “Number of data-fed analytical techniques incorporated into judicial budgeting”, however case weighting studies completed and we expect its implementation in 2015 budgeting period. No changes occurred under the indicators “Number of project-supported new or improved policies within the SJA” and “Percent of courts with capacity to receive court fees through electronic terminals.”

- Conduct workshop jointly with COJ of General Courts and SJA to identify problems in court administration and management (including the work of the automated case management system, statistics, case management, etc), and
- Based on the outcomes of the workshop support the establishment and operations of working groups dealing with court IT, statistics, etc, including a working group on updating the Regulation on electronic case management in the courts. Conduct up to 3 working group meetings and present updated policies to COJ and SJA for approval.

EXPECTED RESULT 3.4: THE CAPACITY OF COURTS AND JUDICIAL INSTITUTIONS TO COMMUNICATE EFFECTIVELY WITH THE PUBLIC IS ENHANCED, LEADING TO GREATER PUBLIC APPRECIATION OF THEIR ACTIVITIES

ACCOMPLISHMENTS: During the reporting period, FAIR published and disseminated an assessment report prepared by FAIR Distance Learning Expert Ihor Katernyak and FAIR Legal and Training Specialist Iryna Zaretska on the successful launch of the pilot distance learning course for court staff with the State Judicial Administration on “Courts and Community Communications” as mentioned in the previous quarterly report. The report highlighted the need to give participants more time to complete the course from 10 days as piloted to 3 weeks. It also recommended the inclusion of more practical exercises and supplemental materials to complement course materials. FAIR is using these lessons learned in designing the pilot online course on judicial ethics with the National School of Judges as presented under Task 3.1 above.

At the same time, FAIR worked on updating the in-class curriculum and manual on “Courts and Community Communications” to support future planned regional training programs for Public Information Officers (PIOs) nationwide. The curriculum and manual as well as the design of the regional training programs will be finalized during the next reporting period.

PLANS: During the next quarter, FAIR will:

- Revise and finalize the curriculum and manual on Courts and Community Communications
- Design a series of regional trainings for PIOs nationwide with COJ and SJA involvement using the manual, curriculum, and online distance learning course Courts and Community Communications developed by FAIR (April to June 2014); and
- Assist the SJA in providing courts with information kiosks that will include all civic education materials on judicial reform and public information materials on court operations (Linked to Expected Results 3.3 and 4.1.) (April to June 2014).

Milestone Progress ER 3.4

- Finalized and submitted Public Information Officer job instructions to the COJ (achieved).
- Finalized and submitted Guidelines on Courts and Media Relations to the COJ (achieved).
- COJ Communications strategy approved by Congress of Judges of Ukraine (achieved).
- COJ website developed (achieved).
- Court communications manual and court communications training curriculum developed and approved by NSJ (achieved).
- CA website developed (achieved).
- Concept of Judiciary press-center establishment finalized and approved (partially achieved – the concept is finalized but is not yet approved).
- Distance learning course on Court and Community Communications for court staff launched (achieved).
- First PIO training conducted (achieved).

Performance Indicators ER 3.4

No changes this quarter occurred under the indicators “Number of communication strategies implemented by courts and judicial institutions” and “Number of courts offering legal education materials to court visitors”.

EXPECTED RESULT 4.1: CIVIL SOCIETY AND THE UKRAINIAN PUBLIC ARE ENGAGED IN THE JUDICIAL REFORM PROCESS

ACCOMPLISHMENTS: During the reporting period, FAIR continued to disseminate through the Project’s website, CSOs networks, and civic websites the Annual Program Statement (APS) "Strengthening the Role of Civil Society Organizations as Advocates for and Monitors of Judicial Reform" announced in November 2013 and which is open till November 20, 2014. Under this APS FAIR has awarded three grants: to International Public Organization “Universal Examination Network” for the grant activity titled “Civil Society Involvement in Practice Analysis of Judicial Qualifications (administrative and economic specialization)” related to the implementation of Expected Result 2.1; to Regional Public Charitable Foundation “Law and Democracy” for the grant activity titled “Ensuring Equal Access to Justice for People with Special Needs” under Expected Result 4.2. Within the implementation of Expected Result 4.1 FAIR supported the grant “The Judicial System and Freedom of Peaceful Assembly in Ukraine”. This grant activity will be implemented by the NGO “Institute of Republic” that is a coordinator of the All-Ukrainian Initiative “For Peaceful Protest!” The NGOs defined that the main problem in the sphere of peaceful assembly is the absence of a special law on freedom of assembly as well as the low level of knowledge of the judges on the European Court of Human Rights decisions on freedom of assembly. The CSO coalition will discuss the peace assembly issues during public events, cooperate with the Verkhovna Rada Committee on Human Rights, National Minorities and International Relations and Association of Cities of Ukraine, coordinate working group established at the Verkhovna Rada Committee. In case a new law will be adopted the Institute will develop or review a course for judges on implementation of a newly adopted law and European practices in cooperation with the NSJ. The Institute will also conduct an information campaign and prepare information materials.

On January 14, 2014, FAIR conducted a training on “Interpersonal Communications” and made presentations "Courts and the Public: Civilized Engagement" covering new aspects of implementing citizen report cards (CRC) methodology in Ukrainian courts, and “Structure and Functions of the Verkhovna Rada” for Parliamentary interns. Interns take internship at all parliamentary committees and units, they represent different regions of Ukraine. The Internship Program is supported by USAID and administered by the Alumni Association Interns' League. Young specialists actively participated in the events and were very interested in the

Milestone Progress ER 4.1

- Conducted meetings with potential CSO grantees regarding research on pending legislation.
- Prepared APS on pending legislation
- Updated some materials on access to justice
- 3 grants awarded that engage civil society and the public in the judicial reform process

In progress

- At least two new civic education materials on judicial reform developed and disseminated.
- At least two joint events CSOs and Parliament held.
- Specialized research and policy proposals related to pending judicial reform legislation developed.
- The mechanism of sustainable advocacy campaign for pending judicial reform legislation adoption prepared.



FAIR Chief of Party David Vaughn presented to students legal profession opportunities during the 4th All-Ukrainian Winter Law School on February 7, 2014.

content of presentations. The interns of the Committee on the Rule of Law and Justice and the Committee on Legal Policy expressed their readiness to actively participate in FAIR public events.



Deputy Chief Judge of the Ivano-Frankivsk Oblast Appellate Court Hanna Fazikosh shared her perspective on the profession of judge with participants of the 4th All-Ukrainian Winter Law School on February 7, 2014.

From February 7 to 9, 2014, FAIR participated in the work of the 4th All-Ukrainian Winter Law School initiated by the Coordination Council of Young Lawyers under the Ministry of Justice. This year about 50 persons participated in the School, among them are active students, legal clinics managers and staff, representatives of law school student self-government, young practicing lawyers from various regions of Ukraine. They attended different training and master classes to improve the practical skills and theoretical knowledge in the area of law, learned the practitioners' advice and established cooperation among law student organizations. FAIR representatives gave

presentations at master classes on the following topics: "Judicial Reform in Ukraine: Challenges, Results and Opportunities", "Legal Profession, Judicial Practice and Rule of Law", "Court Monitoring with the Help of CRC Methodology" and informed the school participants about the opportunity for young lawyers to take part in the Parliamentary Internship Program supported by USAID. The project also invited Judge Hanna Fazikosh, Deputy Chief Judge of the Ivano-Frankivsk Oblast Appellate Court, to share her perspective on the status of judicial reform in Ukraine.

SCHEDULE CHANGES: An APS presentation for CSOs was scheduled for February 27 but postponed for April because of political situation.

PLANS: During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 4.1.

On April 15 to 16 2014, FAIR will conduct the postponed APS presentation for CSOs with aim to orient potential grantees to the grant-making process, requirements of a given grant solicitation, the process and the criteria for selection. In the framework of this event FAIR plans to conduct a training session on judicial reform progress and ways of CSOs involvement. More than 60 civic activists from different regions of Ukraine are interested in participation. Finally, FAIR team will continue to update FAIR public awareness materials on access to justice.

Performance Indicators ER 4.1

No changes this quarter occurred under the indicators "Number of public events on judicial reform organized by CSO" and "Number of CSO-produced policy proposals related to pending judicial reform legislation", the CSOs are in the process of applying to FAIR Annual Program Statement to start the related activities.

EXPECTED RESULT 4.2: CIVIL SOCIETY ORGANIZATIONS HAVE MEANS AND OPPORTUNITIES TO EFFECTIVELY MONITOR THE IMPLEMENTATION OF JUDICIAL SECTOR REFORMS AND PROVIDE OVERSIGHT TO JUDICIAL OPERATIONS

ACCOMPLISHMENTS: In March 2014, in the framework of the APS FAIR awarded grant to Law and Democracy NGO (Lviv) to conduct monitoring of the access of courts and court services for disabled people by lobbying for changes to legal framework. The grant activity will include monitoring of the access to justice for persons with disabilities in 20 courts, producing audio and Braille script materials on judiciary, preparation of changes to normative and legal acts to improve

access for justice for disabled people and lobbying the above-mentioned legislative changes. Duration of the project is 12 months.

FAIR also continues updating and finalizing the CRC manual. During this reporting period, FAIR identified content gaps, approved table of contents, and finalized best practices from CRC partner NGOs to be included into manual.

PROBLEMS: Acting SJA leadership does not support initiatives on conducting Citizen Report Card (CRC) surveys in courts by NGOs. According to the SJA, courts are able to conduct CRC surveys by themselves and do not need engagement of civil society organizations. As soon as the new leadership is appointed, FAIR plans to discuss this issue with the SJA again. Therefore, the planned CRC activities are postponed approximately until the end of the 2014.

PLANS: During the next reporting period, FAIR plans the following activities:

- Conduct monitoring of the access to courts and court services for people with disabilities (April 2014 –September 2014);
- Complete updating CRC manual (June 2014); and
- Conduct two webinars on CRC methodology (June 2014).

Milestone Progress ER 4.2

- CRC surveys extended to 8 new regions and 25 new courts.
- 34 courts in 13 regions of Ukraine took part in CRC surveys.
- FAIR issued RFA on monitoring of judicial discipline decisions.
- 8 CSOs presented 34 CRC analytical reports and 319 recommendations on court service improvement to 34 CRC partner courts at 13 regional roundtables.
- FAIR selected CSO to conduct monitoring of judicial discipline decisions competitively selected.
- Assessment report on impact of the CRC program implementation produced.
- Assessment report on equal access to court facilities and services for persons with disabilities produced.
- Results of assessment report on equal access to court facilities and services for persons with disabilities presented at the conference on “Access to Justice and Court Services”.
- NGO selected to implement grant program to increase disabled people’s access to courts

Performance Indicators ER 4.2

No changes this quarter occurred under the indicators “Number and percentage of courts in which there are active CSO court performance evaluation programs”, “Number of people engaged in the monitoring and performance oversight of Ukrainian courts” and “Percentage of partner Civil Society Organizations’ performance improvement recommendations implemented by judicial institutions”. The status of these indicators remains at the level of September 2013.

DONOR COORDINATION

During this reporting period, the FAIR team hosted two Rule of Law Donors and Implementers Meetings:

- On February 5, 2014, Ihor Koliushko, former MP, former Advisor to President Yuschenko, expert on public law, Chairman of the Board of the Center for Political and Legal Reforms (CPLR), shared his views on the challenging issues of constitutional reform and possible implications for civil society should the Verkhovna Rada adopt amendments to laws regarding non-governmental organizations and media that receive foreign funding.
- On March 5, 2014, Egor Sobolev, a civic activist nominated by the “Maidan” All Ukrainian Association to head the Lustration Committee, founder of the “Svidomo” Bureau of Investigative Journalism and one of the leaders who established the new political force “Volia”, shared his views on the operations of the Lustration Committee and approaches to developing lustration mechanisms.

DELIVERABLES

FAIR submitted the following deliverables this reporting period:

- Concept for Electronic and On-line Payment of Court Fees;
- Manual for Conducting Objective Time Studies and Case Weighting;
- Case Weighting Report for General Jurisdiction Courts;
- Court Buildings Standards for the States of California and Yutah; and
- Final Assessment Report on Professional Development Needs of Ukraine Court Administrators and Impact of the 2013 Judicial Administration Certificate Program.

LOE UTILIZATION



ANNEX A: PERFORMANCE MANAGEMENT AND EVALUATION SUMMARY

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
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	Sept 2013	31 ¹	10	24	9	17	24	24	30	This quarter FAIR supported 7 governmental judicial institutions and 2 non-governmental legal associations
Objective 1: The constitutional, 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 (FAF)	Sept 2013	13 ²	3	6	0	0	3	0	9	No changes this quarter
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	Sept 2013	3	10	20	0	0	12	12	47	No changes this quarter
4. Percentage of Venice Commission recommendations adopted	Sept 2013	6% ³	21%	48%	0	0	26%	26%	100%	No changes this quarter
Expected Result 1.2: Constitutional reform related to the judiciary is pursued in an inclusive manner										

¹ Total since 2006 counts support by the USAID Ukraine Rule of Law Project (UROL) and FAIR

² Total since 2006, includes 8 under the UROL Project and 5 under the FAIR Project

³ 6% baseline is 3 Venice Commission recommendations addressed by changes in laws out of total 47 recommendations provided

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
5. Number of working sessions on Constitutional reform between law makers and civil society organizations	Sept 2013	6	10	20	0	0	TBD	TBD	TBD	No changes this quarter
6. Number of civil society organizations who have experience in constitutional reform participating in public events on the Constitution	Sept 2013	16	16	20	0	0	TBD	TBD	TBD	No changes this quarter
7. Number of revised provisions in the Constitution enacted that reflect inputs from project-supported public discussions	Sept 2013	0	0	7	0	0	0	0	7	Draft law developed and approved in the first reading. However due to the political crisis and further return to the 2004 Constitution, the draft is still under the consideration
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 management system with project support	Sept 2013	1	0	10	0	0	0	0	10	No changes this quarter
Expected Result 2.1: Ukrainian judges are appointed based on objective, knowledge- and performance-based criteria										
9. Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance	Sept 2013	17	2	3	0	0	5	0	25	No changes this quarter

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
10. Number of procedures within the judicial appointment process improved with project support	Sept 2013	5	2	4	0	0	TBD	TBD	TBD	No changes this quarter
11. Number of Ukrainian judges appointed through project-supported objective, merit-based judicial selection process	Sept 2013	880	0	100	62 ⁴	942	100	100	1200	No changes this quarter
Expected Result 2.2: Ukrainian judges are disciplined in transparent processes										
12. Number of criteria, standards and regulations adopted to govern judicial misconduct investigations	Sept 2013	1	7	7	0	0	TBD	TBD	TBD	No changes this quarter
13. Percent of judicial misconduct complaints submitted to the HQC using the standardized form	Sept 2013	9,3%	10%	12%	15%	12,8%	15%	20%	20%	HQC informed that during the period from January 1 to March 31, 2014 it received 4454 judicial misconduct complaints and, approximately 15% of them were using the standardized form.
14. Percent of judicial discipline decisions posted on HQC website	Sept 2013	77,7%	80%	85%	67%%	72%	100%	100%	100%	HQC informed that during the period from January 1 to March 31, 2014 the HQC made 12 judicial discipline decisions. 8 of them are posted on the HQC web-site (67%)
Expected Result 2.3: The regulatory and institutional framework for judicial accountability and integrity is strengthened										
15. Number of judicial self-governance mechanisms revised with project support	Sept 2013	1	1	4	0	0	TBD	TBD	TBD	No changes this reporting period. FAIR promotes the developing the Commentary to the Code of Judicial Ethics.

⁴ Data for the period from October 1, 2013 to February 20, 2014. The data for previous quarter was not available in time.

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
16. Number of judges providing feedback to revisions of judicial self-governance mechanisms	Sept 2013	220	50	80	0	0	TBD	TBD	TBD	No changes this reporting period.
Objective 3: The professionalism and effectiveness of the Ukrainian judiciary are strengthened										
17. Number of USG-assisted courts with improved case management (FAF)	Sept 2013	30	17	40	0	0	50	60	70	No changes this reporting period, court performance evaluation system partially implemented in 33 courts of Odessa oblast, improvements are expected in 3-6 month from this reporting period.
Expected Result 3.1: The skills and competencies of Ukrainian judges and court staff are bolstered through modern, demand-driven training programs										
18. Number of judges and judicial personnel trained with USG assistance (FAF)	Sept 2013	3,737 ⁵	110	300	70	230	300	300	4,500	This quarter FAIR trained 70 justice sector personnel (73% women and 27% of men) in topics of court administration and training judicial ethics on-line (TOT). This number includes 8 judges (5 women and 3 men) and 62 judicial personnel (46 women and 16 men).
19. Number of new legal courses or curricula developed with USG assistance	Sept 2013	17 ⁶	2	5	1	2	1	1	24	This quarter FAIR completed and piloted the online course on judicial ethics.

⁵ Total since 2006 under the USAID Ukraine Rule of Law Project (2,946) and the USAID FAIR Justice Project (1,206), double counting excluded

⁶ Total since 2006 under the USAID Ukraine Rule of Law Project (8) and the USAID FAIR Justice Project (9)

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
20. Number of TOT trainers created	Sept 2013	82	35	35	19	70	27	TBD	TBD	This quarter FAIR trained 19 justice sector personnel as trainers for the judicial ethics on-line course. This number includes 12 women and 7 men.
21. Number of project-supported new or revised policies for judicial and court staff training institutions	Sept 2013	0	2	2	0	1	TBD	TBD	TBD	No changes this quarter. Semi-annual data refers to the Strategic Development Plan for the National School of Judges of Ukraine
Expected Result 3.2: Judicial operations are evaluated and funded according to an objective assessment of needs and performance										
22. Number of court performance standards adopted	Sept 2013	0	7	7	0	0	0	0	7	No changes this quarter. Approval delay due to the issues related to the Council of Judges of Ukraine.
23. Number of court performance indicators implemented	Sept 2013	7	14	14	7	7	14	31	31	No changes since baseline. General courts implement 7 indicators approved by the Council of Judges of General Courts, 9 more are approved but not implemented yet. FAIR provides technical assistance to courts through the COJ of General Courts.
24. Number of courts implementing project-supported performance measurement system	Sept 2013	31	20	40	0	33	50	100	100	No changes this quarter. 33 general courts of Odessa Oblast implemented FAIR-supported Court Performance Evaluation System, although it's internal part. Cumulative number LOP is 64.

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
25. Average annual citizen report cards score of participating courts	Sept 2013	.80 (out of maximum score of 1)	0.80	.80	N/A	0.8	.82	.84	.84	No change since the baseline. We plan to support the next round of CRC survey in April-June 2014.
Expected Result 3.3: The SJA's capacity to represent and support the developing needs of Ukrainian judiciary is strengthened										
26. Number of data-fed analytical techniques incorporated into judicial budgeting	Sept 2013	0	0	1	0	0	3	0	4	Case waiting studies completed, we expect its implementation for the 2015 budgeting period.
27. 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	Sept 2013	2 ⁷	0	3	0	0	3	2	10	No changes this quarter. Concept paper for the judicial statistics reform is drafted but is now under the consideration of the specialized councils of judges. Approved by the Council of Judges of General Courts.
28. Percent of courts with capacity to receive court fees through electronic terminals	Sept 2013	0	0	5%	0	0	6%	8%	8%	No changes this quarter. Concept paper developed and courts selected.
Expected Result 3.4: The capacity of courts and judicial institutions to communicate effectively with the public is enhanced, leading to greater public appreciation of their activities										
29. Number of communication strategies implemented by courts and judicial institutions	Sept 2013	4	4	8	0	0	10	20	30	No changes this quarter. Activity delay.
30. Number of courts offering legal education materials to court visitors	Sept 2012	19	0	41	N/A	N/A	45	60	60	Not applicable to this quarter according to the Work Plan.
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 Ukrainian public are engaged in the judicial reform process										

⁷ Baseline counts Strategic Plan for the Judiciary (approved in 2012) and Court Automation Strategy (approved in 2013)

PERFORMANCE INDICATORS	Baseline		Targets 2014		Actual 2014		Targets LOP			Notes and explanations
	Month/Year	Value	Semi-annual (1)	Annual	This quarter	Semi-Annual	Annual 2015	Annual 2016	Cumulative Project End	
31. Number of public events on judicial reform organized by CSO	Sept 2013	11 ⁸	5	10	0	0	10	10	30	No changes this quarter. Activity delay.
32. Number of CSO-produced policy proposals related to pending judicial reform legislation	Sept 2013	1	0	1	0	0	TBD	TBD	TBD	No changes this quarter.
Expected Result 4.2: Civil society organizations have means and opportunities to effectively monitor the implementation of judicial sector reforms and provide oversight to judicial operations										
33. Number and percentage of courts in which there are active CSO court performance evaluation programs	Sept 2013	51 (6.8%)	N/A	80 (13%)	N/A	N/A	100 (13%)	100 (13%)	100 (13%)	Not applicable to this quarter according to the Work Plan.
34. Number of people engaged in the monitoring and performance oversight of Ukrainian courts	Sep 2013	4,973	N/A	8,000	N/A	N/A	10,000	10,000	10,000	Not applicable to this quarter according to the Work Plan.
35. Percentage of partner Civil Society Organizations' performance improvement recommendations implemented by judicial institutions	Sept 2013	39%	N/A	45%	N/A	N/A	50%	55%	50%	Not applicable to this quarter according to the Work Plan.

⁸ Only FAIR project data