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

**QUARTERLY PROGRESS REPORT  
OCTOBER TO DECEMBER 2015**

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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. On December 18, 2014, USAID further added work related to lustration and vetting to the scope of the FAIR program to support the implementation of the newly adopted Law on the Purification of Government.

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 five 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.
- Supporting the implementation of the Law on the Purification of Government.

### FAIR by the Numbers October 2011- December 2015

- 593 courts covering every region of Ukraine received assistance.
- Supported 22 government justice sector institutions.
- Targeted programming provided to 46 civil society organizations.
- Promoted eleven amendments to Ukrainian legislation to enhance judicial independence.
- Trained 2,108 judges and judicial personnel.
- 193 trainers qualified under the Training of Trainers Program.
- Developed 12 new legal courses and curricula, including a first ever in 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 respectively.
- 942 judges selected through new merit-based procedures.
- Engaged 20,800 citizens in the process of monitoring and oversight of court performance.
- Involved 383 courts in the process of court performance evaluation.
- Supported the development of more than 900 civil society recommendations to courts to improve court functions.

## SUCCESS STORIES AND NOTABLE ACHIEVEMENTS

Under Objective 3: The professionalism and effectiveness of the Ukrainian judiciary are strengthened, FAIR accomplished an important achievement in this reporting period. On December 18, 2015, the

National School of Judges (NSJ) and FAIR presented the deskbook “To Be A Judge”, which is a result of NSJ’s cooperation with FAIR and was printed during this reporting period. This publication is based on the “Judge’s Book” developed by the U.S. National Judicial College and designed to improve awareness of judges of their unique role in a democratic society. The Ukrainian deskbook will also help guide legal professionals in their professional development and transition from being a lawyer or a prosecutor to being a judge. The publication consists of stories written by 20 Ukrainian judges, both experienced and young, from various regions of Ukraine and of various jurisdictions. The goal of the authors was to create a “judge’s story” revealing the backstage of the judge’s profession and demonstrating how judges themselves perceive their position and its challenges. The authors succeeded in rendering the essence of changes awaiting a lawyer and those closest to him/her (family and friends) after receiving a judicial appointment. It is expected that the book will significantly contribute to increasing public awareness about the role of judges.

The presentation was held with the participation of authors Olga Shapovalova, retired Supreme Court of Ukraine (SCU) Justice and NSJ faculty member, Larysa Denysenko, a human rights activist and a writer, as well as Mykola Onishchuk, NSJ Rector, and David Vaughn, FAIR Chief of Party (COP), during the International Conference “National Standards of Judicial Education: Ensuring Human Rights Protection,” which was conducted with the support of the Organization for Security and Co-operation in Europe (OSCE), FAIR and the Canadian Embassy’s Judicial Education for Economic Growth Project. The pool of authors also included Oksana Syroid, currently Deputy Speaker of the Verkhovna Rada of Ukraine, and Irina Fadeyeva, a psychologist.



FAIR COP David Vaughn (left) signs the deskbook “To Be A Judge” for Council of Judges Member, Judge Oleksandr Sasevych of the Lviv Circuit Administrative Court (right) after the presentation during the NSJ’s International Conference “National Standards of Judicial Education: Ensuring Human Rights Protection” on December 18, 2015 in Kyiv.

The book is meant for wide audience, first and foremost focusing on judicial candidates and newly appointed judges. It will be used by the NSJ in developing and implementing professional development programs, and it will be disseminated among Ukrainian judges with FAIR support. The deskbook is also available on the FAIR website, at

[http://www.fair.org.ua/content/library\\_doc/usaidd\\_JudgeBook\\_170x240\\_015\\_Interactive.pdf](http://www.fair.org.ua/content/library_doc/usaidd_JudgeBook_170x240_015_Interactive.pdf), and

additional information about this activity can be found at the following link:

[http://www.fair.org.ua/index.php/en/index/news\\_single/260](http://www.fair.org.ua/index.php/en/index/news_single/260).

In addition, in this reporting period, within the framework of a grant activity under 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, FAIR grantee NGO “Law and Democracy” presented the results of their project on monitoring access to courts and court services by persons with disabilities during a hearing of the Verkhovna Rada Committee on Veterans, Combatants, Participants of Antiterrorist Operation, and Persons with Disabilities (the Committee), which focused on equal access to justice for persons with disabilities. “Law and Democracy” representative Andriy Buryi,

who prepared the monitoring report covering 20 courts in 10 regions, highlighted recommendations on



FAIR COP David Vaughn speaking at the meeting of the Verkhovna Rada Committee on Matters of Veterans, Combatants, Participants of Antiterrorist Operation, and Persons with Disabilities on November 25, 2015.

how to improve access to court premises and court services for disabled persons. These included proposals to amend the legal framework to improve accessibility, as well as recommendations for individual courts and the judiciary as whole to promote better outreach, including developing audio and Brail brochures and leaflets and proposals to install ramps, lifts, and special marking for people with impaired sight to reduce physical barriers. The State Judicial Administration (SJA) later noted that only 17 percent of court buildings (115 out of 677) are architecturally adjusted to meet the needs of persons with disabilities. In addition to infrastructural inaccessibility, others during the hearing added that there are not enough sign language interpreters and technical equipment in

judicial institutions to allow people with impaired hearing and sight to review court files and related materials. Committee Member Glib Zagoryi emphasized how difficult it is for persons with disabilities to access information online, including websites that do not meet their needs. Committee Chair Oleksander Tretiakov urged government representatives to not only identify the problems, but to find solutions. He added that the Committee is always ready to respond to proposals from government and civil society to introduce changes to legislation to remove any barriers standing in the way of persons with disabilities accessing justice. The over 20 recommendations developed by “Law and Democracy” and its partners were included in the Committee’s final report on the hearing. Additionally, FAIR COP David Vaughn presented the project’s history on working to promote better access to courts for persons with disabilities, beginning with identifying problems with access through court user satisfaction surveys to training court staff on how to better serve the needs of disabled persons. The following participants attended the Committee hearing: the President’s Commissioner for the Rights of Disabled Persons, representatives of the Ministry of Social Policy, SJA, State Architecture and Construction Inspection Agency, Coordination Center for Legal Aid under the Ministry of Justice, Verkhovna Rada Ombudsman Office, and civil society organizations that represent the interest of disabled persons. More information on these activities can be found at the following links: [http://komvti.rada.gov.ua/komvti/control/uk/publish/article?art\\_id=55222&cat\\_id=50461](http://komvti.rada.gov.ua/komvti/control/uk/publish/article?art_id=55222&cat_id=50461); [http://komvti.rada.gov.ua/komvti/control/uk/publish/article?art\\_id=55469&cat\\_id=50461](http://komvti.rada.gov.ua/komvti/control/uk/publish/article?art_id=55469&cat_id=50461).



Communications session of the professional development training program for the personnel of the Ministry of Justice on October 19, 2015 in Kviv.

Finally, under Expected Result 5.3: Improved Knowledge, Skills and Abilities of Key Stakeholders and Personnel to Conduct the Lustration and Vetting of Public Officials and Judges Professionally, Fairly and, FAIR continued to

support the Ministry of Justice (MOJ) in enhancing the knowledge and skills of its employees in the justice sector through training programs. From October 19 to 21, 2015, FAIR organized the second and final session of the “Professional Development Training Program for the Personnel of the MOJ”. The participants of the program were 72 heads and deputy heads of the MOJ regional departments and managers at the MOJ’s State Enforcement Agency. This session included a module on effective communication and one on the strategic planning. During the first module participants learned theoretical and practical aspects of assertiveness, verbal and non-verbal communication, business letter writing and feedback – all of which will be used as tools of effective professional communication both with clients and with colleagues. The second module included strategic management analysis and planning skills aimed to teach participants practical technics of strategy development and implementation. Deputy Minister of Justice Gia Getsadze and FAIR COP David Vaughn participated in the closing of the training and an award ceremony for distinguished participants. This is the first short-term comprehensive professional development program for civil servants in Ukraine, implemented with FAIR support by the Ernst and Young Academy of Business. All 72 participants evaluated the program content, training techniques, and trainers’ performance positively. FAIR is planning to organize a follow-up meeting for the program participants in the next reporting period.

## **PROJECT ACTIVITIES**

Pursuant to section F.5.C.1 of the contract, the following section contains a discussion of accomplishments, progress in milestones and indicators, and upcoming plans for each Expected Result from October 1 through December 31, 2015. Changes from the activity schedule outlined in the work plan and, if applicable, problems requiring resolution or USAID intervention are discussed.

### **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 its partners to improve the legislative and regulatory framework for the judiciary. FAIR also monitored legislative initiatives and analyzed their potential impact on judiciary operations, continued its efforts to promote and contribute to inclusive judicial reform. During this reporting period, most of the planned justice sector reform activities were conducted under Expected Result 1.2 as they are related to the Constitutional reform process.

Within the scope of Expected Result 1.1, FAIR supported the activities of and participated in the meetings of the National Council of Reforms and the Judicial Reform Council by providing expert opinions and subject recommendations. On November 9, 2015, the National Council of Reforms conducted its 14<sup>th</sup> meeting. The participants of the meeting discussed the current status, progress made, challenges and ongoing plans for judicial reform. President of Ukraine Petro Poroshenko chaired the meeting and in the opening remarks emphasized that proceeding with judicial reform remains a crucial task.

On November 11, 2015, a Judicial Reform Council meeting took place. The participants of the meeting discussed the current status of the implementation of the Justice Sector Reform Strategy, the implementation of the Law on Ensuring Right to a Fair Trial, and the amendments to procedural

legislation, and identified the next steps on the judicial reform. As the result of this meeting, it was agreed that: (1) the package of relevant legislation to implement the future Constitutional amendments should be developed and processed in a timely manner; (2) the Council should monitor the implementation of the judges' evaluation program; (3) a working group should be formed to support the development of the necessary amendments to support the judges' evaluation program; (4) the drafts of the amendments to the procedural legislation need to be improved by the working group, which developed them.

In parallel, some additional legislative initiatives were registered in the Verkhovna Rada to amend the Law on the Judiciary and Status of Judges, as well as other relevant laws. On October 15, 2015, Member of Parliament (MP) Leonid Yemets submitted the draft Law on Amending the Law on Ensuring Right to a Fair Trial, (regarding the ensuring the rights of judges, who work in the courts that have closed operations because of natural disasters, military, and anti-terroristic operations) (No. 3328). Currently, the judge can assigned to another court in case of emergency for the six months. This draft law proposes to remove the provisions on the six-month limitation for the mentioned above attachment or the judges from areas affected by the natural disasters, military, and anti-terroristic operations. The current regulation, according to the author of the draft Law, precludes judges from being paid regularly and jeopardizes judicial guarantees. Further, on November 5, 2015, MP Dmytro Shpenov registered in the Verkhovna Rada the draft Law on Amending Some Legislative Acts of Ukraine (regarding bringing the standards of justice in line with the international principles) (No. 3414). The draft aims to amend the Law on the Judiciary and Status of Judges, the Law on the High Council of Justice, and the Law on the Purification of Government by specifically proposing to:

- Eliminate the initial qualification evaluation system for judges as it, according to the author of the draft Law, hinders the judicial independence principle;
- Remove transfer to a lower level court from the list of disciplinary sanctions for judges;
- Exclude judicial position from the list of those public officials subject to a ban under the Law on the Purification of Government, as the draft Law is not in line with the principle of judicial irremovability;
- Eliminate the regular judicial evaluation by other judges and NGOs;
- Review the list of grounds for disciplinary liability, and specifically exclude: the absence of arguments in the judicial decision; failure to inform the judicial self-governance bodies about unlawful influence or the conflicts of interest; discrepancy between the judge's expenses and his/her income; and the usage of the judicial position for the unlawful enrichment;
- Decrease the time limit for bringing a judge under disciplinary liability from 3 years to 1 year;
- Establish timelines for the High Council of Justice's (HCJ) consideration of the submission for the initial appointment of judges (1 month) and for judges brought forth to take the oath in front of the President of Ukraine (3 months);
- Amend the appeal procedure of the High Qualifications Commission (HQC) decisions.
- Prolong the validity of the qualifications exam result of the judicial candidates, who are on the reserve list until November 12, 2016.

On December 22, 2015, the draft Law on Amending the Law on the Judiciary and Status of Judges, (regarding access to the judicial positions) (No. 3697) was registered in the Verkhovna Rada of Ukraine by MP Oleksandr Suhoniako. This draft law proposes to introduce the possibility for judicial candidates

to undergo a part-time 18-month training at the NSJ at their own cost instead of completing the established by the Law on the Judiciary and Status of Judges full-time 12-month initial training.

The analysis of the abovementioned draft laws and the practical implementation of the legislation shows that the Law on Ensuring Right to a Fair Trial has some gaps, which need to be addressed. Through numerous discussions with FAIR, project partners complained about there are significant inconsistencies in the laws currently in place. In order to address this issue, FAIR has decided to adopt a comprehensive, holistic approach. Olena Ovcharenko, short-term FAIR expert with the extensive research and teaching experience, was engaged to review the Law on Ensuring Right to a Fair Trial to identify the gaps, inconsistencies and areas for the possible improvement. Within the scope of this assignment, Ms. Ovcharenko will develop a list of recommendations to amend the Law on the Judiciary and Status of Judges, the Law on the High Council of Justice, as well as other relevant legislation.

In order to address the poor quality of legislative drafting which can be tracked during the recent years, FAIR initiated and organized on December 16, 2015 the first ever in Ukraine one-day workshop for staff lawyers of the Verkhovna Rada Main Legal Department, Legal Review and Analysis Department, and all major committees on December 16, 2015. Sanja Popovich, a pro bono FAIR Expert, former senior legal consultant for the OSCE Mission to Kosovo, shared with the participants of the event information and advice on the modern tools of legal drafting, legal analysis, sources search, and review of the bills. It is anticipated that such trainings will increase the quality and impact of the expertise that the participants of the training provide on daily basis in legislative drafting. The event received positive feedback and raised a high level of interest from the participants. During the next reporting period, FAIR will further cooperate with the Verkhovna Rada to implement a series of advanced-level trainings to foster the improvement of the practical skills and legal knowledge of its legal team members.

In the this reporting period, FAIR involved Ukrainian local expert Law Professor Mykola Khavroniuk to support the State Judicial administration (SJA) in developing regulations to ensure a balanced approach to court premises' and judges' security policy with respect to the open court principle. The need to develop such regulations emerged with the adoption of the Law on National Police, which authorized the SJA to operate the court system safety program with a para-military division in close cooperation with the Ministry of Interior. Professor Khavroniuk, as a member of the working group aimed at developing the regulations on the Court Security Service, provided an overview of other countries' experience in this area in order to that international best practices are drawn upon. The working group finalized the regulations, and on November 6, 2015 they were approved by the SJA. FAIR will provide further support to its partners in the practical implementation of the Court Security Service and based on need, in the development of relevant regulations with respect to the rule of law principle.

Further, pursuant to the Task 1.1.4, FAIR continued to support the inclusive development of key reform initiatives in the rule of law sector. Specifically, after consultations with Government of Ukraine stakeholders and relevant non-governmental organizations, FAIR decided to support local legislative initiatives on alternative dispute resolution (ADR) methods. In July 2015, FAIR awarded a grant to the National Association of Mediators of Ukraine (NAMU) to implement the Project *"Promoting Practical Implementation of Mediation and Establishing Interaction with the Justice System in Ukraine."* On October 1 and 2, 2015, jointly with this grantee, FAIR supported the Lviv Mediation Forum. The event brought together about 100 mediators and experts from all over Ukraine to discuss the current status of the mediation and its prospects in Ukraine.

### Milestone Progress ER 1.1

- Drafted amendments to the Law on the Judiciary and Status of Judges (amended according to Venice Commission recommendations) and introduced it 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 20-21, 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; and December 4, 2014, Stakeholders' Platform Meeting "Lustration of Judiciary: Ukrainian and International Practices").
- The Third Annual Conference on "Judicial Training Standards: International Best Practices and Objectives for Ukraine" conducted in cooperation with the NSJ.
- 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.
- The Law of Ukraine on the Restoration of Trust in the Judiciary of Ukraine adopted on April 7, 2014.
- Draft amendments to the Law on the High Council of Justice developed and introduced for the consideration of HCJ staff and newly appointed members of the HCJ.
- Chief Justice Yaroslav Romaniuk took part in the Conference of Chief Justices of Central and Eastern Europe (June 22-25, 2014, Tbilisi, Georgia).
- The Draft Law No. 1497 On Amending the Law on the Judiciary and Status of Judges and Other Legislative Acts Regarding the Improvement of the Basis for Organization and Functioning of the Judiciary with Respect to European Standards registered in the Verkhovna Rada.
- The Draft Law No. 1656 On Ensuring the Right for the Fair Trial Standards registered in the Verkhovna Rada.
- The Law on Ensuring the Right to Fair Trial adopted.
- Draft Concept Paper on Legal Education Reform developed and presented to the members of the Working Group on Legal Education Reform in Ukraine.
- International Conference "Improvement of Legal Education in Ukraine: Fundamentals" held at the Yaroslav Mydryi Kharkiv National Law Academy.
- Legal job market survey as to the legal employers' expectations regarding law graduates' knowledge, skills, professional attitudes, and values conducted and the results thereof presented to the MOE, MOJ, and the public.
- Methodology for Independent External On-site Assessment of Legal Education Quality (Methodology) developed, submitted to the MOE and MOJ, and publicly presented to the leadership of Ukraine's law schools.
- On-site legal education quality assessment of the LNU Law School and the CNU Law School conducted and respective assessment reports developed and publicly presented.
- 15 faculty members from ten Ukrainian law schools trained on using the Methodology.
- Nine LNU Law School faculty members received basic training on developing quality test items.
- Strategic Plan and Action Plan for the LNU Law School developed and publicly presented.
- International Conference "Modern Trends in Legal Education" held at the LNU Law School.
- Rule of Law Lecture Series launched at the UCU Rule of Law Center, four rule of law lectures delivered in Lviv and broadcast online.
- Taras Shevchenko Kyiv National University Law School team and Kyiv-Mohyla Law School teams reported on their participation in international student competitions in law.
- Draft National Legal Education Standard (bachelor's degree) internationally reviewed, the expert reports with recommendations on improving the draft in light of international standards and best practices of education quality assurance presented and publicly discussed.
- Chief Justice Yaroslav Romaniuk took part in the Conference of Chief Justices of Central and Eastern Europe (October 11-14, 2015, Brijuni, Croatia).
- Recommendations for improving regulations and policies regarding access to courts developed.

There are a couple legislative initiatives in Ukraine seeking to establish the legal framework for ADR. FAIR engaged international experts Ales Zalar and Bill Marsh to provide practical support and subject matter expertise in the legislative drafting process. The experts conducted a comparative analysis and, following a comprehensive review of the Ukrainian draft laws, developed policy recommendations on the way mediation would best be implemented within the Ukrainian legal framework. Mr. Zalar and Mr. Marsh also assisted Ukrainian partners in the development of a modern, comprehensive regulatory framework for mediation, which would encourage disputants to opt for mediation during the pre-filing (before court action) and/or the post-filing (during litigation) phases of a dispute. Mr. Zalar, during his stay in Ukraine in October 2015, took part in the Lviv Mediation Forum where he presented his experience in court-related mediation practice in the European Union (EU) countries and contributed to the discussion regarding some of the controversial provisions of draft laws on mediation, registered in the Parliament. On October 19-21, 2015, Mr. Marsh visited Kyiv to meet with the Ukrainian stakeholders, including members of Parliament, experts, and mediators to present the policy recommendations about the possible ways the mediation could be successfully implemented in Ukraine.

On December 17, 2015, the improved draft Law on Mediation (No. 3665) was registered in the Verkhovna Rada, and during the next reporting period, FAIR will continue its efforts to support its adoption and reform initiatives in ADR more broadly.

During this reporting period, FAIR also worked on improving legal education in Ukraine, which continues to face serious challenges in meeting the labor market's demands for of legal professionals. FAIR's efforts to address these challenges included supporting the Ministry of Education and Science (MOE), MOJ, leading law schools, and professional associations of lawyers through the following activities: (1) identifying legal education reform needs and providing expert support to address them; (2) developing the draft National Legal Education Standard; (3) designing and implementing the pilot admission exam for master's programs in law; (4) engaging Ukrainian lawyers' professional associations in the legal education reform process; (5) engaging law schools in implementing pilot projects on developing Codes of Conduct for their law schools' students, teachers, administrators, and support staff as well as on designing an international on-line anti-corruption course, partnering with a leading US law school; (6) organizing faculty trainings aimed at fostering higher quality of knowledge and skills measurements in legal education as well as the usage of adult teaching methodologies.

On November 9, 2015, FAIR jointly with the MOE, MOJ, and the OSCE Project Coordinator in Ukraine, conducted a roundtable discussion to present the draft National Legal Education Standard (Bachelor's Degree), and both FAIR and OSCE international experts shared their assessment reports on the draft Standard. FAIR International Legal Education Experts, Prof. Bernd Heinrich (Germany) and Prof. Delaine Swenson (USA), presented to the leadership of the MOE and leading law schools representatives their comments on the draft's compatibility with European and international standards, as well as best practices in legal education quality assurance and recommendations on how to improve the draft Standard. The experts posed serious questions as to the current structure of Ukraine's legal education, questioning the relevance of the Bachelor's Degree in Law for the available positions on Ukrainian legal job market.

Based on the expert recommendations, on November 20, 2015, FAIR officially addressed the MOJ by bringing to its attention this issue and suggesting a cooperative process in reaching a political decision on the introduction of a holistic legal education in Ukraine based on the Master's Degree in Law –

similar to the training of medical doctors, veterinarians, and pharmaceutical professions in the country. In this activity, FAIR will partner with the Young Lawyers' Coordination Council, which operates under the MOJ's auspices. FAIR plans to hold a series of consultations with legal education stakeholders, including both the MOJ and MOE, law schools, law students' and professional lawyers' associations, culminating with a roundtable discussion at the MOJ aiming to identify the optimal architecture of Ukraine's legal education.

Building momentum and using the opportunity to influence change in public policy on legal education quality control mechanisms, FAIR has committed to provide support to the MOE, the MOJ, and leading law schools in designing and implementing the first ever in Ukraine pilot admission exam for applicants to master's degree programs in law in 10 volunteering law schools in 2016. On December 10, 2015, FAIR in cooperation with the Ukrainian Standardized External Testing Initiative (USETI) Alliance, and the OSCE Project Coordinator in Ukraine supported the MOE, the Ukrainian Center for Education Quality Assessment, and the MOJ in organizing a roundtable discussion with representatives of the volunteering law schools to discuss the pilot project's concept, subject areas, testing methodology, the development of a database of quality test questions, as well as implementation issues related to conducting an external independent exam, which would be akin to the Law School Admission Test (LSAT) in the United States. At this event, the MOE announced that the pilot exam which will take place in 2016 is aimed to ensure fair and corruption-free admission to the master's degree programs. The MOE plans to launch a compulsory examination of this kind in law schools nationwide in 2017.

As the Pilot Master Program in Law admission exam is going to be conducted in multiple choice questions (MCQ) format, the establishment of the test items database will require a collaborative effort of up to 80 test item writers to develop peer-review and test thousands of legal test items. On December 28-29, 2015 in Kyiv, FAIR in cooperation with the MOE and the Universal Examination Network, conducted a basic training for 28 test item writers on developing, peer-reviewing, and approving test items to ensure their quality for the purposes of the pilot exam as well as to enhance the overall psychometric culture in Ukraine's law schools. Before that, on December 16-17, 2015 in Poltava, the OSCE Project Coordinator in cooperation with the Universal Examination Network used FAIR's materials to provide a basic training for the first 17 test item developers.



Roundtable discussion with Ukraine law school leaders, volunteering to participate in the launched by the MOE pilot admission exam for master's degree programs in law on December 10, 2015 in Kyiv.

Further, FAIR is promoting the idea to engage Ukrainian lawyers' professional associations in the legal education reform process. In support of this, the project designed a concept for a model Legal Education Policy Committee within a lawyers' professional association and shared this document with the Association of Ukrainian Lawyers and the Association of Ukrainian Advocates to stimulate such an activity

On November 23-25, 2015, in cooperation with the NSJ, FAIR involved 15 law professors from the Lviv National University Law School (LNU), Chernivtsi National University Law School (CNU), and the Rule of Law Center at Ukrainian Catholic University (UCU) in a training-of-trainers (TOT) program for judges-trainers. This training became their first experience with a practical improvement of teaching skills based on modern interactive pedagogical techniques focusing on adult learners.

FAIR also worked to build on the progress in legal education quality assurance made in cooperation with both LNU and CNU in past reporting periods. On October 20-21, 2015, FAIR provided training opportunities for the LNU test item writers team to assist them with further expert support in deepening their understanding of international standards and best practices for the development, peer-review, approval, and calibration of quality test items, as well as for the development of a good quality test item database. In addition, within the scope of the program to improve the quality of computer-based legal testing at the LNU, FAIR provided expert support to LNU in the creation of statistical analysis modules in the university computer-based testing system to build at the school's technical and statistical capacity to produce psychometrical data after each testing.

In this reporting period, FAIR supported both LNU and CNU's initiatives in developing draft Codes of Conduct for students, teachers, administrators, and support staff (Law School Code of Conduct). FAIR short-term International Legal Education Policy Expert Thomas Rice is supervising this activity by guiding both universities' working groups on international best practices. Dr. Rice also proposed that these law schools' students join online the anti-corruption course he is teaching at the Washington & Lee Law School (W&L) in Lexington, Virginia, US and to prepare a harmonized syllabus on the subject. Local LNU and CNU professors, Ms. Svitlana Khyliuk and Mr. Serhiy Nezhurbida respectively, will be facilitating the LNU and CNU students' learning in this online course.

Also within this reporting period, FAIR continued to support the UCU Rule of Law Center in implementing the Rule of Law Lecture Series. On November 10, 2015, FAIR conducted the fifth event in the series. FAIR International Legal Education Experts, Prof. Heinrich and Prof. Swenson, delivered their lectures titled "The Prosecution of Corruption under the rule of Law – a German Perspective" and "The Role of Civil Society in Guaranteeing the Rule of Law" respectively. This event raised public awareness about contemporary developments in ensuring the rule of law through best practices of civil society engagement and prosecution of corruption. Broadcast live online, the lectures attracted over 100 unique viewers. Such events help to strengthen both the understanding of as well as respect for the rule of law among Ukrainian law students, academics, legal practitioners, and public officials.

#### Performance Indicators ER 1.1

- To build a foundation for a more accountable and independent judiciary, FAIR supported 9 governmental judicial institutions and 15 non-governmental legal associations during this reporting period.
- During the reporting period, FAIR supported the implementation of previously adopted the Law on the Right to Fair Trial, the Law on Restoration Public Trust in the Judiciary, the Law on Purification of Government and the Justice Sector Reform Strategy. The cumulative status of the indicator "Number of laws, regulations, and procedures designed to enhance judicial independence supported with USG assistance," remains 19.
- The indicator "Number of revised provisions enacted that reflect Venice Commission recommendations" did not change this quarter and remains 30 as in the end of FY2015.
- The "Percentage of Venice Commission recommendations adopted" did not change this quarter and remains 64%.

**SCHEDULE CHANGES:** The activities planned for this reporting period are conducted in accordance with adjustments in project partners' activity plans stemming from Ukraine's changing political situation.

**PROBLEMS:** This reporting period was mostly dedicated to the development of constitutional amendments, thus most of the activities were conducted under Expected Result 1.2.

The LNU Law School has experienced a protracted leadership transition since Mr. Andrii Boiko left his deanship for an office at the HCJ in June 2015. On December 17, 2015, the LNU Academic Council elected the new LNU Law School Dean Volodymyr Burdin, however, in his Election Program he did not demonstrate any interest to move forward with reforms, and even expressed an intention to interrupt “donor-driven experiments” in his law school. FAIR has sent a formal letter to Mr. Burdin and Ms. Maria Zubrytska, LNU Vice-Rector on Academic Matters and International Cooperation, reassuring Mr. Burdin of the project’s readiness to build on the progress in the area of legal education quality assurance already achieved in cooperation with the LNU Law School, based on the Protocol of Cooperation signed between the LNU and FAIR on March 31, 2014. No official reply has been received yet.

**PLANS:** In the next reporting period, FAIR plans the following activities in order to achieve Expected Result 1.1:

- FAIR will continue to analyze both registered bills and newly adopted legislation to ensure their proper implementation with the aim to identify the gaps and shortcomings that need to be addressed. FAIR will work with its partners in the legislative area to ensure that the new laws are adopted in line with the rule of law principle; and
- FAIR will continue to assist the MOE, MOJ, leading law schools, and professional associations of lawyers in their efforts to reform legal education through expert support in public policy-making to modernize Ukraine’s legal education and the development and implementation of relevant pilot projects to this end.

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

**ACCOMPLISHMENTS:** During this reporting period, FAIR worked with its partners to raise public awareness about the substance of constitutional reform and to promote the adoption of the proposed constitutional amendments. The Constitutional Commission approved the final text of the draft amendments to the Constitution in the justice sector on September 4, 2015 and FAIR continued to support the series of regional public discussions on the topic. This reporting period, the discussions were organized in Kharkiv, Odessa, and Lviv with the participation of students, legal scholars, judges, experts, media, and CSO activists. The members of the Constitutional Commission Judiciary Working Group presented to the audience a summary of the proposed amendments, including: (1) cancelling the initial 5-year appointment and introducing a life-time appointment for newly appointed judges; (2) limiting the judicial immunity to a functional one; (3) reconsidering the new composition and scope of authority of the HCJ; and (4) increasing the age and length of professional experience requirements for judge candidate. The participants of the events demonstrated a strong interest in the proposed amendments and put forward questions along with pro and con arguments, which to a constrictive discussion on the suggested transitional provisions.

The constitutional reform issues were on the political agenda not only for the Constitutional Commission, but for other state bodies as well. On October 21, 2015, during its plenary meeting, the Cabinet of Ministers of Ukraine approved the key elements of the proposed amendments to the current Constitution in the justice sector. Specifically, these elements are: (1) a three-tier court system; (2) the creation of courts by the law; (3) the establishment of a unified collegial body to deal with the selection, career, and discipline of judges; and (4) the complete renewal of the judicial corps.

Meanwhile, the Venice Commission experts reviewed the proposed bill and on October 23, 2015 adopted the final Opinion on the Proposed Amendments to the Constitution of Ukraine as of the September 4, 2015 text. Per the Venice Commission Opinion, the submitted text of the constitutional amendments prepared by the Working Group on the Judiciary of the Constitutional Commission of Ukraine is very positive, well-drafted, and deserves to be fully supported. Along with the proposals put forward by the Constitutional

Commission, the Venice Commission considered the Reanimation Package of Reform (RPR) ideas as well. Among the RPR ideas that were positively assessed by the Venice Commission are: (1) the liquidation of the higher specialized courts along with the preservation of the administrative courts as an autonomous system; (2) the suggestion to reorganize the courts (review the court system structure) in Ukraine with the possibility of simultaneous reappointment of the judges, who could choose to retire or to apply for a new appointment on a competitive basis. Thus, the Venice Commission did not reject the idea on the judicial corps renewal.

The Venice Commission especially emphasized the following positive changes in the final proposed amendments: (1) clarification that the President shall have no power to dismiss the judges; (2) the preservation of the Verkhovna Rada' role in establishing the High Council of Justice as a mode to keep the balance of power; and 3) the provision about “no less than forty-five People’s Deputies” to seek an opinion of the Constitutional Court on the constitutionality of questions to be put to an all-Ukrainian referendum.

#### Milestone Progress ER 1.2

- Independent Madrid University Law Professor Lorena Bachmaier developed and presented her expert opinion on the Constitution of Ukraine Gap Analysis with a focus on the rule of law principle implementation.
- The draft law on Amendments to the Constitution Strengthening the Independence of Judges is developed by the Presidential Administration and submitted to the Verkhovna Rada for first reading consideration.
- The concept paper Improvement of the Constitutional Regulation of Justice in Ukraine was incorporated into the draft General concept paper of Constitutional Changes to be presented during the fourth CA plenary meeting.
- Independent Madrid University Law Professor Lorena Bachmaier developed and presented her expert opinion on the improved concept paper on Justice Sector Amendments.
- The draft concept paper on 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 that the CA approves the revised and improved content of the draft general concept paper on Constitutional Changes.
- The European Commission for Democracy through Law (the Venice Commission) issued an opinion on the draft law on Amendments to the Constitution Strengthening the Independence of Judges.
- Two meetings with the Interim Special Commission members were held to provide them with expert recommendations regarding areas to be addressed in implementing the rule of law principle in the constitutional reform process.
- Four public discussions held on the Proposed Amendments to the Constitution (June 8, 2015 in Rivne, June 9, 2015 in Ivano-Frankivsk, June 10, 2015 in Uzhhorod, and June 24, 2015 in Dnipropetrovsk).
- Information campaign *Judging Justly: Informational Campaign for Raising Awareness about Constitutional Reform Related to the Judiciary* is developed and launched.

However, the Venice Commission also noted that all decisions on the judges' career (promotions, transfers, dismissals) must belong to the HCJ and not to a political institution, if true independence of judiciary is to be achieved, and therefore strongly recommended ensuring this is the case. The only Venice Commission recommendation made in the Preliminary Opinion of July 24, 2015 that has not been followed pertains to the method of appointment and dismissal for the Prosecutor General, which stay within the power of the President of Ukraine upon the Verkhovna Rada consent, but without requiring a qualified majority, which should be necessary.

Following the final Opinion of the Venice Commission, on October 28, 2015, the Constitutional Commission Judiciary Working Group called a meeting to discuss it. The Working Group members agreed upon almost all the issues raised and amended the text of the proposed amendments accordingly. A few issues, however, remained open and had to be considered additionally, either by the working group or by the Constitutional Commission.

On October 30, 2015, the Constitutional Commission held its meeting and discussed the proposals for the justice sector amendments developed by the Judiciary Working Group. The meeting was headed by Speaker Volodymyr Groisman and sought to finalize the Venice Commission recommendations. During the meeting, member of the Constitutional Commission and Member of Parliament Leonid Yemets stated that the People's Front Party would insist on their initial proposal to find a way to dismiss all judges and appoint new ones. This initiative was not approved as it is not in line with international standards, as was highlighted by the Venice Commission. Unfortunately, no final decision was made about the liquidation of high courts and as it stands, this issue is left for the legislative level and will be decided by a specific law in the future. The proposals developed by the working group were approved and sent to the President of Ukraine to be considered and then submitted to the Verkhovna Rada.

On November 25, 2015, President Petro Poroshenko submitted the draft Law on Amending the Constitution (regarding justice) No. 3524 to the Verkhovna Rada. On December 22, 2015, the Parliament agreed to put this law on the agenda, and it was sent to the Constitutional Court to review and verify its compliance with articles 157 and 158 of the Constitution of Ukraine. After the Constitutional Court review, the Verkhovna Rada will vote on the law in the first reading during the January 2016 plenary session.

In addition, FAIR also provides support also to the Constitutional Commission Human Rights Working Group, which had to reopen its activity on the proposals to amend the Constitution in the human rights area due to the recent developments. Namely, the President of Ukraine submitted for consideration by the Working Group two issues identified by collective petitions, supported by thousands of Ukrainians at the newly launched <http://petition.president.gov.ua/>: 1) the right to bear arms, and 2) LGBT rights to be protected by the Constitution of Ukraine. As both of these issues are highly disputable, the Head of the Working Group decided to conduct public events to discuss them.

In support of this initiative, on October 27, 2015, FAIR supported a Conference on the right to bear arms as a right to self-defense guaranteed by the Constitution. Participants discussed the pros and cons of the right to freely bear arms along with the duty of the government to exercise gun control, the European and international standards in this area, and potential challenges and threats. The event created a platform for exchanging opinions, to look for better solutions, and to launch a dialogue between the supporters and opponents of the issue. United States District Court Chief Judge Rosanna Malouf Peterson shared her home country experience regarding the free possession of firearms. United States

Court of Federal Claims Senior Judge Bohdan A. Futey presented the US experience in the introduction of gun control policy. The discussion resulted in a decision to establish a sub-working group, which will consider the necessity of Constitutional provisions on these issues and develop a draft law on civil firearms. FAIR will provide further support on an as-needed basis.

On December 18, 2015, FAIR conducted a Conference on minority and indigenous people’s rights as part of the series of events on the Constitutional amendments in the human rights protection field. Participants included academics, members of the Constitutional Commission, civil rights activists, international and Ukrainian experts, and media representatives. During the event, the participants discussed the issues of the LGBT community, discrimination issues, and the possibility to address them in line with international standards. As a result of the conference, the participants agreed that the SOGI (sexual orientation and gender identity) criteria for discrimination will not be added to the Constitution, but will definitely fall under the term “other” in the relevant list.

In the previous reporting period, FAIR issued a request for application (RFA) for an information campaign in the constitutional reform area in order to ensure that the public is aware of the constitutional reform process and the developed proposals for constitutional amendments, as well as to understand their content and importance. Ukrainian NGO Internews was competitively selected to run this campaign. On November 5, 2015, a Grant Agreement was signed for the implementation of the project *“Judging Justly: Informational Campaign for Raising Awareness about the Constitutional Reform Related to Judiciary.”* Per the Grant Agreement, the project objectives are: (1) identification of efficient information messages aimed at raising awareness of the target audience about judiciary reform by conducting focus groups discussion; (2) raising awareness of the general public about the contents and progress of the constitutional reform process in the field of judiciary by means of production and nationwide broadcasting of relevant videos, as well as publication of press materials on the subject; (3) capacity building for journalists enabling them to cover the topic of constitutional reform in the judiciary by conducting targeted trainings for the journalists of regional and national media outlets; and (4) drawing broader public attention to the progress of the constitutional reform in the judiciary by highlighting changes in the process of reform and its successes through media materials.

On November 20, 2015, FAIR initiated a meeting with Internews representatives and representatives of the Presidential Administration (APU). The main topic of the discussion was the planned activity under this FAIR grant. FAIR, Internews, and APU identified the areas of cooperation and agreed to coordinate their efforts. Specifically, it was agreed that APU will share their ideas and vision about the information campaign messages, FAIR and Internews will work to address APU’s vision and recommendations (such as the timing of the video production, the number of the regional journalists participating in the trainings, etc.). Currently, Internews is in the process of developing the first information video and conducting focus group meetings to develop efficient information messages aimed at raising awareness of the target audience about judicial reform.

**PROBLEMS:** Constitutional reform is a controversial and challenging issue, and FAIR is working to create a neutral platform for discussions with the participation of all stakeholders to ensure that the process is

Performance Indicators ER 1.2
<ul style="list-style-type: none"><li>• During this reporting period, FAIR supported three regional discussions on Proposed Amendments to the Constitution in contributing to the indicator “Number of USG-supported public sessions held regarding proposed changes to the country’s legal framework.”</li><li>• There is no increase on the indicator “Number of revised provisions in the Constitution enacted that reflect inputs from project-supported public discussions” this reporting period although the related activities are in progress.</li></ul>

conducted in an inclusive manner.

**PLANS:** The main priority for the next reporting period is to ensure that all proposed changes to the respective sections of the Constitution are in line with international and European standards. FAIR will continue to work with its partners and all key stakeholders to ensure the constitutional reform process is inclusive and transparent, and previously provided relevant expert opinions are taken into consideration. One of the key activities for the next reporting period will be raising public awareness about the content of the proposed changes as well as the legislative process of their adoption.

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

**ACCOMPLISHMENTS:** According to Article 102 of the Law on the Judiciary and the Status of Judges, the HQC shall be composed of 14 members. By November 13, 2015, twelve members of the HQC had been appointed. On November 13, 2015, the Congress of Judges appointed two remaining members to the HQC. As of the date of this report, all 14 members of the HQC have been appointed, and the HQC is fully formed in accordance with the new Law provisions.

Given the number of significant new authorities delegated to the HQC by the new Law on the Judiciary and Status of Judges – keeping judges’ dossiers, conducting the initial qualifications evaluation of all sitting judges, and evaluating judges’ qualifications to determine their professional level for transfers, lifetime appointments, and disciplinary sanctions, among others – FAIR continued to support the HQC in developing and implementing a sound framework and procedures for judicial performance evaluation in line with international and European standards.

On December 11, 2015, the Council of Judges (COJ) approved the Procedures and Methodology for Judicial Performance Evaluation and Regulations for Examination developed by the HQC. These regulations set

out procedures for: (1) qualifications evaluation of judges being considered for lifetime appointment; (2) initial qualifications evaluation of all sitting judges; and (3) qualifications evaluation resulting from a disciplinary sanction. According to these new procedures, initial qualifications evaluation of all sitting

#### **Milestone Progress ER 2.1**

- Held three working meetings with the HQC.
- The 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 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.
- Drafted a manual for anonymous test administrators (proctors).
- Drafted a report with recommendations and necessary next steps to automate the qualification exam.
- Conducted an Analysis of Judicial Practice, and presented and promoted its results.
- Identified EU and international standards and practices for transferring judges.
- Developed a manual for test items writers based on the training and expert materials developed in the previous reporting period.
- Updated manual for anonymous judicial test proctors (administrators).
- Conducted workshop on “Judicial Selection and Discipline: Best Achievements, Experience of the HQC and its Activity under New Conditions”.
- Held Analysis of Judicial Practice (Administrative and Commercial specializations), presented and promoted the results.
- Conducted international roundtable on "Judicial Performance Evaluation".
- Sub-agreement to purchase equipment for automating the judicial qualifications exam awarded.
- 8 trainings for test item developers conducted.

judges will encompass the following stages: (1) a test of legal knowledge, including the case law of the Supreme Court and European Court of Human Rights; (2) a case study; (3) a review of the judge's dossier; and (4) an interview with HQC members. The HQC will now set deadlines and schedules for the qualifications evaluation process. FAIR experts provided recommendations to improve the draft procedures and methodology, many of which were considered as the document was finalized, such as (1) improving the structure of the document and providing a separate qualifications evaluation procedure for judges being considered for lifetime appointment and transfer, an initial performance evaluation of all sitting judges, and a qualifications evaluation resulting from a disciplinary sanction; (2) connecting the evaluation criteria with the evaluation methods applied by the HQC for the qualifications evaluation procedure and to distinguish between the qualitative and quantitative indicators applied; (3) describing in more detail the three evaluation methods: an exam, review of the judge's dossier and interview with a judge, etc.

This reporting period, at the request of the HQC and the NSJ, FAIR provided a report on international best practices and lessons learned on the preferred approaches and practical usage of the four types of regular evaluations provided by the new Law on the Judiciary and the Status of Judges: (1) by teachers (trainers) of the NSJ based on the results of trainings; (2) by other judges; (3) by the judge him/herself; and (4) by NGOs; as well as a report on international best practices and lessons learned on usage of other methods for judicial performance evaluation. The research for both reports was conducted by Dr. Pim Albers, FAIR short-term international expert on judicial evaluation. Dr. Albers also provided expert analyses and recommendations on the: (1) draft regulation on procedure and methodology of regular evaluation and self-evaluation of a judge; (2) draft questionnaire for evaluation of a judge based on NSJ training results; (3) draft questionnaire for evaluation of a judge by peer judges of a relevant court; (4) draft judicial self-evaluation questionnaire; and (5) draft questionnaire for regular evaluation of a judge by CSOs based on the results of an independent evaluation of the judge's work during public trials. These draft documents were developed by the NSJ at the request of the HQC.

This reporting period, FAIR continued to assist the HQC in developing and implementing transparent, objective, knowledge- and performance-based judicial selection criteria and procedures through an anonymous test and qualifications exam for judicial candidates.

The new Law on the Judiciary and the Status of Judges includes changes to the judicial selection procedures, such as providing anonymous testing to evaluate the personal moral and psychological qualities of judicial candidates. On October 7, FAIR conducted a meeting of key Ukrainian stakeholders and decision makers, including HQC and NSJ representatives, with Dr. Frank van Luijk, director of the consulting company LTP Business Psychologists (the Netherlands). The meeting presented the Dutch experience in standardizing procedures for judicial selection, including psychological testing for judicial candidates, and discussed ways to implement psychological testing of judicial candidates in Ukraine. In addition, at the NSJ's request, Dr. Van Luijk provided additional information on the instruments used in the Netherlands to identify the psychological and moral qualities of judicial candidates, as well as samples of different tests. On December 7, the HQC led a joint meeting with representatives of FAIR and the Faculty of Psychology of Taras Shevchenko National University of Kyiv to discuss the prospects for development and implementation of psychological testing for judicial candidates. The HQC, FAIR and the Faculty of Psychology agreed to cooperate and coordinate further activities regarding the development of psychological testing for judicial candidates.

This reporting period, FAIR also moved forward with the FAIR-HQC joint activities on automating judicial exams, including the exam for evaluating judges. At the HQC’s request, FAIR assigned local IT expert Mr. Oleksandr Bunke to draft the Terms of Reference (TOR) for manufacturing software for the qualifications exam for judicial selection and the exam for judicial performance evaluation. On December 24, 2015, the expert submitted to FAIR the draft TOR, which was then reviewed and approved by the HQC IT department. This TOR will be included as part of the general TOR for the HQC business processes automation (linked to Expected Results 2.2 and 3.3). More information can be found under Expected Result 2.2.

**SCHEDULE CHANGES:** FAIR has postponed to March 2016 accomplishment of the activity related to providing the HQC with research on international best practices and lessons learned through the actions of judicial authorities during unforeseen emergency situations, in order to identify and engage the ideal expert for the assignment. The activity will take place once an expert has been located and contracted.

<p style="text-align: center;"><b>Performance Indicators ER 2.1</b></p> <ul style="list-style-type: none"> <li>• This quarter the HQC approved FAIR-supported Regulations (1) on Procedure and Methodology for Judicial Performance Evaluation and (2) on the Procedure of Exam Taking and Methodology of its Assessment during Judicial Performance Evaluation increasing the cumulative status of the indicator “Number of merit based criteria or procedures for justice sector personnel selection adopted with USG assistance” to 20.</li> <li>• The indicator “Number of Ukrainian judges appointed through project-supported objective, merit-based judicial selection process” remains the same as in the previous quarter, 942.</li> </ul>
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**PLANS:** During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 2.1:

- Conduct research on international best practices and lessons learned through the actions of the judicial authorities during unforeseen emergency situations;
- Translate the “Standards for Educational and Psychological Testing” developed jointly by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME) for the HQC and NSJ during the process of developing and evaluating test items and testing applications;
- Support the HQC and NSJ in developing tests for judicial selection and evaluation;
- Support the HQC and COJ in developing professional standards for judges, such as a Qualifications Framework (to improve the legislation, to insure fair, transparent and standardized judicial selection and performance evaluation); and
- Support the HQC in conducting a business process analysis and adapting the Terms of Reference and software production for automating HQC internal business processes.

**EXPECTED RESULT 2.2: UKRAINIAN JUDGES ARE DISCIPLINED IN TRANSPARENT PROCESSES**

**ACCOMPLISHMENTS:** In this reporting period, FAIR continued working with the HQC to assist in improving judicial disciplinary procedures in line with international standards and best practices.

In order to support the HQC in improving the processes for admissibility screening and preliminary analysis of complaints and investigations of judicial misconduct, in October and November 2015 FAIR organized publication of the Manual for Conducting Disciplinary Proceedings against Judges. Ukrainian publishing company “Istyna” was selected through an open tender to publish the manual. One hundred fifty copies were published, each accompanied by the e-version on CD. This manual is a brand new for Ukraine that will serve as a practical tool for the authorities responsible for conducting disciplinary proceedings against judges. The manual lists excerpts from the international standards related to judicial discipline procedures and incorporates selected best practices, including the Rules of Procedure of Judicial Inspection Unit with the Department of Justice of the UN Mission in Kosovo, provided by FAIR short-term international expert Judge Jose Manuel Cardoso, Judge of the Court of Appeal of Lisbon Judicial District (Portugal).



The manual also contains a list of international and national legal sources and case law, as well as sample documents to be prepared over the course of judicial disciplinary proceedings. Among the authors of the manual were FAIR local experts Mr. Vasyl Filatov, ex-Justice of the Supreme Court of Ukraine; Ms. Oleksandra Yanovska, Ph.D. in Law, Professor with the Taras Shevchenko National University of Kyiv; FAIR DCOP Nataliya Petrova; and FAIR Judicial Accountability Specialist Anna Sukhova. At the beginning of December 2015, FAIR submitted 80 copies of the manual to the HQC to be disseminated among the HQC members, inspectors and representatives of the HQC Secretariat. On December 1 and 2, 2015, several copies of the manual were delivered to NSJ trainers and representatives during the pilot course “Judicial Disciplinary Liability,” designed by the NSJ with the support of the Ukrainian-Canadian Project “Judicial Education for Economic Growth”. In January 2016, FAIR plans to submit 15 copies of the manual to the HCJ to be used during disciplinary proceedings against judges of the Supreme Court of Ukraine (SCU) and the high specialized courts.

At the specific request of the HQC leadership, FAIR engaged local experts Ms. Lidia Moskvych and Mr. Ivan Nazarov, both Ph.D.’s in Law and Professors with the Yaroslav Mudryi National Law University, Kharkiv, to review the new edition of the HQC Rules of Procedure, which were adopted on April 3, 2015. The Rules of Procedure is an internal HQC instrument that details the procedures and functions of the HQC provided for by the Law on the Judiciary and Status of Judges, and was amended to reflect and incorporate the changes introduced by this Law on February 12, 2015. The scope of the experts’ assignment included analysis of the Rules of Procedure with regard to legislative drafting techniques, conformity with current laws and regulations, and compliance with European standards and recommendations. Upon completion of the review and analysis, the experts produced a report with recommendations to improve the Rules of Procedure, including disciplinary proceedings against judges of the first instance and appellate courts, with a specific focus on the judges’ procedural rights, respect of confidentiality and ensuring better public awareness about judicial disciplinary procedures. On December 24, 2015, FAIR submitted the experts’ report for consideration by the HQC leadership and members. During the next reporting period, FAIR will monitor the status of the recommendations’ implementation into the HQC Rules of Procedure.

During the reporting period, FAIR proceeded to support the HQC in building capacity of its departments and services. In particular, FAIR continues to assist the HQC in organization of initial and ongoing trainings for inspectors of the Services of Inspectors. For this purpose, FAIR recruited local expert Ms. Nataliya Akhtyrskya, Associate Professor with the Taras Shevchenko National University of Kyiv, following the HQC's approval of the draft curricula and training process schedule and frequency specifications. Ms. Akhtyrskya previously worked with FAIR to help design the first drafts of the curricula. The curriculum for initial training contains 33 training topics on general and judicial discipline issues, as well as 'self-check' questions and a list of legal sources and case law. The curriculum for ongoing training includes 28 topics and 9 case studies. In January 2016, Ms. Akhtyrskya will review and finalize the draft curricula, elaborate on teaching methodology, and structure the training process for the HQC inspectors' initial and ongoing training. The HQC is ready to launch the trainings in January, to be held twice a month on the base of the HQC, taking into account the regular HQC meeting schedule.

#### Milestone Progress ER 2.2

- Documented current practices 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; the 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 on the HQC website and search tools.
- Delivered 45 laptops to the HQC.
- Improved procedures for judicial misconduct complaints verification and consideration.
- Developed and presented terms of reference for a unified integrated database to manage HQC business processes, including judicial discipline and selection processes.
- Conducted monitoring of judicial discipline decisions and appeals of HQC judicial discipline decisions.
- Developed standards and best practices for conducting preliminary screening of complaints and investigations of judicial misconduct.
- Submitted recommendations for amending the regulations governing judicial misconduct investigations, consideration of the disciplinary cases, and drafting the decisions (ongoing).
- Developed and presented recommendations for selection and performance evaluation of disciplinary inspector candidates.
- Published and presented the Manual for Disciplinary Inspectors.
- Finalized and presented curricula for initial and ongoing trainings of discipline inspectors (ongoing).
- Designed the structure of the initial and ongoing trainings of discipline inspectors (ongoing).
- Delivered 13 laptops, 15 desktop computers, server, 4 scanners, printer and software for generation of bar codes.
- Developed module for publishing HQC decisions on the official website (ongoing).
- Developed HQC business process analysis; adapted TOR and produced software for automating business processes (ongoing).
- Conducted monitoring of judicial discipline decisions and appeals of HQC and HCJ judicial discipline decisions (ongoing).

FAIR continues to work jointly with the HQC to increase public awareness about judicial discipline issues and ensure transparency and openness of its activities and procedures. However, the HQC does not have consistent policies and procedures related to informing the public about judicial discipline issues. Moreover, some of the HQC procedures effectively interfere with judges' rights to privacy and confidentiality. The HQC's only internal instrument to regulate these processes is the Procedure of Publishing Information on the HQC Official Website, which was approved by the HQC on July 9, 2015. However, this Procedure addresses only technical and operational issues, not the deeper questions of public disclosure or privacy. At the HQC's request, FAIR has received preliminary consent from Ms. Reiko Callner, Executive Director of the Washington State Commission on Judicial Conduct (USA), to develop recommendations for the HQC regarding basic principles, rules, and procedures for disclosing information on judicial disciplinary procedure and decisions in disciplinary cases, as well as archiving and ensuring public access to such information.

A related task concerns designing technical tools to ensure effective and timely publication of HQC decisions in judicial disciplinary cases on its website. To assist in this process, FAIR engaged local IT expert Mr. Oleksandr Bunke to draft the Terms of Reference (TOR) for manufacturing software to run a separate module compatible with the HQC website to post HQC decisions in judicial disciplinary cases. On December 16, 2015, the expert submitted to FAIR the draft TOR, which was subsequently reviewed and approved by the HQC IT Department.

This TOR will be included as part of the general TOR designed by FAIR IT expert Mr. Boris Shuster in 2013-2014 to support the HQC in automating its internal business processes. Although this task has been on hold since April 2014, on December 10, 2015, the HQC leadership specifically asked FAIR to resume cooperation on this project. Following this request, on December 24, 2015, FAIR, under Task 2.2 and in coordination with Tasks 2.1 and 3.3, issued a Request for Proposals to openly compete the provision of services for the corresponding business process analysis, adaptation of the TOR, and production of the software for the HQC. The total amount of these provisions is not to exceed 2,160,000.00 UAH. The respective announcement can be found here:

[http://www.fair.org.ua//index.php/index/tender\\_single/137](http://www.fair.org.ua//index.php/index/tender_single/137)

In order to improve judicial discipline practices, in November 2015, FAIR issued a Request for Applications for a grant to monitor the decisions and appeals in HQC and HCJ judicial disciplinary cases. On December 16, 2015, FAIR selected the Institute of Applied Humanitarian Research (Kharkiv) to conduct this research and draft a report with recommendations for the HQC and HCJ, as well as for the NSJ, on topics to include in the judicial trainings curricula. The grantee is expected to examine approximately 350 HQC and HCJ decisions imposing disciplinary sanctions on judges and dismissals to open disciplinary cases on complaints of judicial misconduct, as well as decisions by the High Administrative Court of Ukraine (HAC) on the appeals of judges subject to disciplinary sanctions. By the end of April 2016, FAIR expects to receive the finalized analytical report from the grantee and to present the results of the research to stakeholders.

**Performance Indicators ER 2.2**

- Number of criteria, standards and regulations adopted to govern judicial misconduct investigations remains 1.
- Percent of judicial misconduct complaints submitted to the HQC using the standardized form this quarter is 35%, cumulative status of the indicator is 14,5%.
- Percent of judicial discipline decisions posted on the HQC website is 0% this quarter, since the HQC stopped posting its decisions on the website.

**SCHEDULE CHANGES:** FAIR postponed to January and February 2016 accomplishment of the Task 2.2.6 related to providing the HQC with recommendations on procedures for publishing and archiving information about judicial misconduct and discipline, including storing and providing public access to such data, due to the fact that Ms Victoria Henley, the intended expert for this assignment, was not available. Therefore FAIR needed extra time to search for and communicate with another expert to invite for cooperation.

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

- Continue to support the HQC in finalizing curricula for initial and ongoing trainings of inspectors, and structuring the training process and teaching methodology;

- Disseminate the Manual for Conducting Disciplinary Proceedings against Judges among the HCJ members and representatives of Secretariat;
- Assist the HQC in developing recommendations to amend the Procedure of Verification and Decision-Making in Disciplinary Proceedings against Judges, Formalization and Storage of Relevant Documents;
- Support the HQC in drafting procedures for publishing and archiving information about judicial misconduct and discipline, including storing and providing public access to such data;
- Assist the HQC in monitoring decisions and appeals in judicial disciplinary cases; and
- Support the HQC in conducting a business process analysis, adapting the Terms of Reference, and producing software for automating HQC internal business processes.

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

**ACCOMPLISHMENTS:** During the reporting period, FAIR assisted the COJ in implementing the Code of Judicial Ethics, strengthening judicial self-governance, and promoting court system reform in Ukraine to align it with European standards.

Specifically, FAIR provided support to the COJ-established working group responsible for developing a Commentary to the Code of Judicial Ethics. FAIR expert Olha Shapovalova, a local judicial education and judicial ethics expert and retired SCU Justice, finalized the draft Commentary and submitted it to the COJ for approval.

FAIR also began organizing a study tour to the United States to share US practices of managing judicial self-government bodies and their respective committees with COJ and SJA members. FAIR negotiated and signed a Memorandum of Understanding with the Open World Leadership Center to outline details of the tour. The tour is planned to take place from April 20-30, 2016 and include eight newly-elected COJ members as well as two representatives of the SJA. During the tour, the delegation will visit judicial institutions in Washington D.C., as well as in the states of Maryland and Virginia. FAIR has already received the list of proposed candidates for this trip and is currently working on pre-screening the candidates against OWP criteria, as well as on designing the agenda of the tour.

In addition, FAIR completed purchasing and delivery of additional computers and

#### **Milestone Progress ER 2.3**

- Seven stakeholder discussions on draft Code of Judicial Ethics held.
- Amendments to the 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 regard to its possible new composition and functions in progress.
- Research on European judicial self-governance standards completed.
- 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, roles, functions, and responsibilities of advisory committees on ethics or equivalent institutions in democratic countries completed.
- Amendments to the HCJ Internal Regulations proposed.
- Online training program on judicial ethics for judges and judicial candidates developed.
- Rules of Procedure for the Congress of Judges improved and adopted by the Congress.
- Rules of Procedure for the COJ developed.
- Comparative analysis of decision-making procedures within the judicial self-governance institutions conducted (ongoing).
- Commentary to the Code of Judicial Ethics developed (ongoing).
- Internal decision-making regulations for the HCJ improved in accordance with European standards (ongoing).
- Newly elected HCJ members trained in international and European best practices for the High Councils of Justice (ongoing).

printers for the extended staff of the HCJ. Video and audio equipment for the HCJ session hall to provide quality online broadcasting of the HCJ sessions, thereby safeguarding the transparency of HCJ’s operations, will be installed over the next reporting period.

Finally, FAIR continues to support the HCJ in developing its 2015-2019 Strategy Plan. FAIR, together with the EU Project “Support to Justice Sector Reforms in Ukraine,” discussed the current composition of the working group for the development of the HCJ Strategy Plan (WG). At the time of writing, two members of the HCJ and the Head of the HCJ International Cooperation Department were recommended to be members of the WG. However, based on the results of the discussion, the following composition of the WG was to be recommended to the HCJ: two HCJ members, one of whom is the Head of the HCJ or his Deputy, and three staffers. This idea was presented to and accepted by the Head of the HCJ, Mr. Ihor Benedysiuk. FAIR will continue cooperation with the HCJ and the EU Project to establish the new composition of the WG, conduct an orientation for the new members, and develop an action plan for WG activities.

<p style="text-align: center;"><b>Performance Indicators ER 2.3</b></p> <p>Number of judicial self-governance mechanisms revised with project support did not change this reporting period. The cumulative number is 5 and it includes:</p> <ul style="list-style-type: none"><li>• Code of Judicial Ethics</li><li>• Rules of Procedure for the Congress of Judges</li><li>• Rules of Procedure for the COJ</li><li>• Regulations on Appointments</li><li>• Dismissal of Constitutional Court Justices and Creation of COJ Committees.</li></ul>
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**SCHEDULE CHANGES:** Due to delays with the election of the complete membership of the new COJ, the work on the Commentary to Code of Judicial Ethics has been stalled due to the absence of the committee members responsible for this work. However, FAIR expects that this activity will be completed shortly, since several key members of the COJ Ethics Committee have been re-elected, thus preserving the institutional memory.

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

- Continue supporting the COJ working group to develop the Commentary to the Code of Judicial Ethics;
- Support the COJ Judicial Ethics Committee in developing its capacity to implement the Code of Judicial Ethics;
- In partnership with Open World Leadership Center, support participation of 8 newly-elected COJ members and 2 SJA representatives in a study tour to the United States and share the US experience of managing judicial self-government bodies and their respective committees with the delegation; and
- Support the HCJ in establishing the new composition of the WG for the development of the HCJ Strategy Plan. Conduct an orientation meeting for the new WG members and support them in developing an action plan for the WG activities.

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

**ACCOMPLISHMENTS:** The FAIR team continued to assist the NSJ in the professional development of judges and court staff, and in forming a pool of judge-trainers for teaching new topics. FAIR also

continued to work with the NSJ, SJA, and U.S. and Ukrainian universities to further develop continuous court administration education in Ukraine.

On October 1-2, 2015, FAIR collaborated with the OSCE and German Fund for International Legal Co-operation to support the HAC in conducting an international conference on human rights and administrative justice in Ukraine, covering fair trial standards, access to public information, peaceful assembly, and related case-law of the European Court of Human Rights. The conference included administrative court judges, academics, and representatives of civil society, who identified ways to improve administrative justice in Ukraine in line with European standards. The HAC published all materials and presentations from the conference.

After the adoption of the new Law of Ukraine “On Local Elections” on July 14, 2015, FAIR started a series of nationwide regional seminars for judges of administrative and local courts in four appeal administrative circuits of Ukraine. These seminars commenced on September 25, 2015 in Lviv for judges of Lviv, Zakarpatia, Ivano-Frankivsk, Volyn, and Ternopil regions. FAIR continued this work in Kyiv on October 13, 2015 for judges of Kyiv city, Kyiv, Chernigiv and Cherkasy regions; in Zhytomyr on October 15, 2015 for judges of Zhytomyr and Rivne regions; and in Vinnytsia on October 16, 2015 for judges of Vinnytsia, Khmelnytsky and Chernivtsi regions. These events were

#### Milestone Progress ER 3.1

- Institutional needs assessment of the NSJ completed.
- Judicial training needs assessment completed on behalf of the NSJ.
- Second edition of the Judicial Opinion Writing Handbook published.
- Three curricula for the initial training on Rule of Law and Human Rights, Opinion Writing, and Judicial Ethics developed and presented to key stakeholders.
- Curriculum on Rule of Law and Human Rights for ongoing training developed and presented to key stakeholders.
- Curricula on Opinion Writing and Judicial Ethics for ongoing training updated and presented to key stakeholders.
- 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 ongoing trainings developed and disseminated between NSJ faculties and its branches.
- Draft NSJ Strategic Plan for 2014 – 2016 reviewed and adopted by the HQC.
- Online course on Judicial Ethics for judges and judicial candidates in cooperation with the NSJ and the HQC developed and piloted.
- Online course on Court and Community Communications in cooperation with the NSJ and the SJA developed and piloted.
- Electronic and printed versions of the Judge’s Book produced.
- Training programs for 15 judges and 25 court staff on mediation conducted.
- TOT program for 10 judge-trainers for teaching the interactive online course on “Environmental protection and human rights” conducted.
- Selected (competitively) CSO partner to administer the pilot court administration certificate program.
- 40 court and SJA staff competitively selected nationwide for participation in the pilot court administration certificate program.
- 40 court and SJA staff participated in court administration certificate program and earned certificates from MSU.
- Court administrator manual based on court administration certificate program curricula developed and published.
- 8 representatives from the NSJ, the SJA, and graduates of the court administration certificate program participated in the IACA international conference.
- Reunion Workshop for graduates of the 2013 Court Administration Certificate Program conducted.
- SJA representative participated in a visit to Poland regarding institutional best practices and lessons learned in court administrator trainings.
- Training of trainers on adult teaching skills for 15 competitively selected graduates of the 2013 Judicial Administration Certificate Program conducted.
- Advanced training of trainers program for current faculty of the Judicial Administration Certificate Program conducted.
- 40 court administrators for the second round of the Court Administration Certificate Program competitively selected.
- The second round of the Court Administration Certificate Program conducted in cooperation with the NSJ, the SJA and MSU.
- The Judicial Administration Certificate Program for 40 Chief Judges conducted in cooperation with the MSU, the NSJ, and the SJA.
- Success story video on the Court Administration Certificate Program produced.

co-organized by FAIR, the EU and COE Project “Consolidation of Justice Sector Policy Development in Ukraine,” and the COE Project “Reform of the Electoral Practice in Ukraine”, together with the HAC and the NSJ. They gave an opportunity for the participants to become more familiar with the norms of the above-mentioned Law and contributed to the unified application and interpretation of this legislation. FAIR is also providing the participants in the regional seminars with a set of materials comprised of the text of the Law of Ukraine “On Local Elections” and an analytical report, “Ukraine’s Court Performance Quality Elections Disputes,” which includes an analysis of the quality of court decisions on election disputes with quantitative and qualitative evaluation and monitoring of court proceedings. The report was developed by the FAIR grantee “Institute of Applied Humanitarian Research.” The participants also received the texts of all presentations made by experts. Two hundred fifty five judges from 161 courts in 14 regions participated in these seminars. More information can be found at the following links:

<http://nsj.gov.ua/ua/news/zastosovuemo-viborche-zakonodavstvo/>;

<http://nsj.gov.ua/ua/news/osoblivosti-zastosuvannya-viborchogo-zakonodavstva/>;

<http://www.vaas.gov.ua/news/viborche-zakonodavstvo-tema-dlya-obgovorenniya/>; and

[http://voas.gov.ua/news/podiy/shchoyno\\_u\\_prim\\_shchenn\\_v\\_nnitskogo\\_apylyats\\_ynogo\\_adm\\_n\\_strativ\\_nogo\\_sudu\\_rozpochavsya\\_sem\\_nar\\_na\\_te/](http://voas.gov.ua/news/podiy/shchoyno_u_prim_shchenn_v_nnitskogo_apylyats_ynogo_adm_n_strativ_nogo_sudu_rozpochavsya_sem_nar_na_te/).

FAIR also continued to support the NSJ’s working group of developers of the Judicial Ethics course for newly-appointed judges. On October 28-29, 2015, FAIR, jointly with the NSJ, conducted a test run of the course in its Dnipropetrovsk regional branch. To finalize work on this course, on November 19-20, 2015, FAIR supported the NSJ in conducting a training of trainers (TOT) for judge-trainers based on Judicial Ethics curricula for newly appointed judges developed through cooperation between FAIR and the NSJ. More information can be found at the following links: <http://nsj.gov.ua/ua/news/printsipti-suddivskoi-etiki/>; <http://nsj.gov.ua/ua/news/suddya-priklad-neuhilnogo-doderjannya-visokih-etichnih-standartiv/>.

From November 23-25, 2015, FAIR conducted a TOT program for judge-trainers, who will teach a new course on the rule of law and human rights at the NSJ, as well as law professors from the LNU Law School, CNU Law School, and the Rule of Law Center at UCU. This training gave the participants hands-on experience implementing new skills and know-how related to effective and interactive adult teaching.



Participants of the working group meeting of the Judicial Administration online course developers on December 3, 2015 in Kyiv.

As a result of the successful Michigan State University (MSU) Judicial Administration Certificate Program implemented in Ukraine by the SJA, NSJ, and FAIR, in partnership with MSU, the NSJ requested FAIR’s support in developing an online course on judicial administration for court staff. On December 3, 2015, FAIR assisted the NSJ in conducting the first working group meeting of developers for this online course. The 17 working group members, including graduates and faculty of the MSU program, developed learning objectives and the overall structure of each of the eight training modules. The working group will now work on finalizing materials for the expected

launch of the program online in mid-2016.

On December 7-8, 2015, FAIR grantee “Environment-People-Law,” in cooperation with the NSJ, piloted a course, “Environmental Protection and Human Rights,” with the participation of administrative court judges. During this initial training program, participants learned about the Aarhus Convention, which established a number of rights of the public (individuals and their associations) with regard to the environment, including access to environmental information and public participation in environmental decision-making. The program also covered the case law of the European Court of Human Rights and the interrelation of human rights and the environment. More information can be found at the following link: <http://epl.org.ua/en/events/2053-successful-approbation-of-the-course-environmental-protection-and-human-rights>.

To finalize materials, case studies, and the online communication course design, FAIR supported the NSJ on December 23, 2015 in conducting a working group meeting for developers and trainers of this course (linked to Expected Result 3.4).

During the reporting period, FAIR, together with MSU, presented the results of the Judicial Administration Certificate Program for chief judges and court administrators at the International Organization for Judicial Training (IOJT) 7<sup>th</sup> International Conference on the Training of the Judiciary in Recife, Brazil on November 8-12, 2015.

FAIR also continued to support the professional education and development of Ukrainian court administrators. Taking into account the high demand from the SJA, the NSJ, and courts, in December 2015 FAIR signed a subcontract with MSU to conduct the third round of the judicial administration certificate program for 40 competitively selected court administrators in cooperation with the SJA, the NSJ, and Ukrainian universities.

Finally, FAIR produced a success story video “Court Administrator: Developing the Profession in Ukraine.” The video reflects the results of the successfully implemented two rounds of the judicial administration certificate program in 2013 and 2015. The video is intended for use during international conferences and at FAIR and FAIR partners’ events to raise awareness on the development of the court administrator profession among representatives of the judicial bodies and Ukrainian universities. The video can be found at the following links:

<http://www.fair.org.ua//index.php/index/video/14> (long version, 13 min., with Eng. subtitles);

<http://www.fair.org.ua//index.php/index/video/13> (long version, 13 min., Ukr.);

<http://www.fair.org.ua//index.php/index/video/15> (short version, 5.5 min., with Eng. subtitles);

<http://www.fair.org.ua//index.php/index/video/12> (short version, 5.5 min., Ukr.).

**SCHEDULE CHANGES:** FAIR rescheduled the faculty and materials development workshop for the third round of the judicial certificate administration program from December 2015 to February 2016 to accommodate the finalization of the subcontract with MSU.

**PLANS:** During the next reporting period, FAIR is planning the following activities to achieve Expected Results 3.1:

- Continue to work with the NSJ in developing a distance learning program and curricula for courses offered through distance learning;
- Under the third round of the judicial certificate administration program, conduct faculty and materials development workshop (February 22-26, 2016);
- Competitive selection of 40 court administrators for the third round of the judicial certificate administration program in cooperation with the SJA and the NSJ (March 2016); and
- Implementation of the third round of the judicial certificate administration program for 40 competitively selected court administrators in cooperation with the SJA, the NSJ, and Ukrainian Universities (March 21-April 1, 2016).

#### Performance Indicators ER 3.1

- Number of USG-assisted courts with improved case management this quarter remains 43. It refers to those courts where FAIR installed the information kiosks with pay terminal capacity to receive court fee and two pilot paperless e-courts.
- Number of judges and judicial personnel trained with USG assistance is 479 (43% men and 57% women). This number includes 298 judges and 181 judicial personnel and training topics include Communications, Judicial Ethics, Election Law, Test Items Development and TOT for Adult Teaching Methods.
- Number of new legal courses or curricula developed with USG assistance remains the same as in the end of previous quarter, the cumulative number is 12.

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

**ACCOMPLISHMENTS:** During the quarter October – December 2015, FAIR built its programming upon the previous project achievements. From project inception, FAIR has been working with the COJ and SJA on developing and pilot testing a Court Performance Evaluation (CPE) system for Ukraine. After the COJ’s final consideration and approval the CPE System in April 2015, FAIR continued working with the COJ, SJA, and selected courts in order to assist implementation of the CPE System in Ukrainian courts.

As FAIR has already reported, the approved CPE system is comprised of three evaluation modules: Court Administration, Case Disposition Timeliness, and Court User Satisfaction. In addition, the approved CPE System combines three mechanisms for court performance evaluation: (1) internal court performance evaluation through (a) survey of judges and court staff, and (b) expert analysis of case files; (2) external court performance evaluation through Citizen Report Card (CRC) surveys of court users; and (3) analysis of available court statistics. The proposed CPE system includes 35 performance indicators to measure court compliance with 19 evaluation criteria under six areas of evaluation formulated according to the current Ukrainian legal and regulatory provisions and in accordance with the general principles of court operations in democratic societies which establish the obligation of the judicial bodies to orient their operations toward meeting public expectations for a fair, accountable, and efficient judiciary. In addition, the CPE system provides two levels of evaluation mechanisms: basic court performance evaluation through eight mandatory indicators and complex evaluation using the three modules described above. The COJ recommends that Ukrainian courts implement the complex evaluation at least once every three years, but it also requires Ukrainian courts to implement the eight basic court performance indicators regularly and report on them every six months.

During this reporting period, FAIR monitored courts implementing the approved CPE system at both levels – complex and mandatory. FAIR monitored the CPE implementation through court observation

webpages at the portal [www.court.gov.ua](http://www.court.gov.ua) and through direct communication with the courts. The results of this monitoring as of December 31, 2015 are the following:

- 143 courts (18.6% of all courts in Ukraine) implement basic court performance indicators, including clearance rate, case backlog, and judicial caseload. However, only 27 of 143 courts are able to calculate and report on the average duration of court proceedings, which is also one of the basic performance indicators.
- 63 courts implemented the Court Administration CPE module through survey of judges and court staff in connection with analysis of court statistics.
- 313 courts (40.8% of all courts in Ukraine) implement court user satisfaction surveys using CRC methodology.
- Only 30 courts have the knowledge and skills necessary to implement all CPE modules, including the 13 courts where FAIR conducted the pilot testing of CPE System in 2012-2013. Seventeen courts have implemented the CPE system using only their own resources, without FAIR support.
- The total number of courts with any CPE experience is 374 (48.8% of all courts in Ukraine). This figure includes the above-listed courts implementing the CPE system at its basic level (e.g. mandatory court performance indicators) and/or those implementing the CPE system at its complex level with full or selected CPE modules (for example, only user satisfaction surveys or only surveys of judges and court staff).

#### Milestone Progress ER 3.2

- Court performance evaluation system developed.
- Performance indicators for general courts developed, approved by the COJ and implemented by Ukrainian courts.
- Performance indicators for all courts developed, approved by the COJ and implemented by Ukrainian courts.
- Four court performance standards formulated, defined, and approved by the COJ.
- Standard-based Court Performance Evaluation (CPE) system developed and approved by the COJ.
- COJ becomes a member of the International Consortium for Court Excellence.
- Ukrainian delegates, including members of newly elected COJ, participate in the International Conference for Court Excellence and present the Ukrainian CPE system to the international judicial community. (ongoing)
- Case weights resulting from case weighting study discussed, validated, and submitted for SJA/COJ review.
- Human resource management software for the SJA procured, installed, and operational.
- Electronic publication of CPE system available online. (ongoing)
- Guidelines for courts on implementation CPE system developed, published, and distributed to courts. (ongoing)
- CPE system published and distributed to all courts, also available online. (ongoing)
- Terms of reference for judicial resource management system developed, RFP for development issued (TOR developed, software development cancelled).
- Procure and provide the SJA with an unlimited license for human resource management software. (ongoing)
- Case weighting study for administrative trial courts designed and approved by the COJ. (revised)
- CPE system implemented in at least 80 courts. (ongoing)
- All courts of Ukraine implement mandatory court performance standards. (ongoing)
- Concept for judicial statistics report approved by the COJ. (ongoing)
- Case weighting study and implementation scheduled, designed, prepared, and approved by the COJ. (ongoing)
- Training curricula for the National School of Judges of Ukraine (NSJ) on court performance evaluation developed. (ongoing)
- 80 judges and court staff trained on the implementation the CPE system. (ongoing)

It is a significant achievement to have 374 courts implement the CPE System in its first approved year. However, FAIR-funded CRC surveys in Ukrainian courts, implemented jointly by courts and FAIR

CSO partners through grant-making mechanisms, have significantly contributed to this number. It is understood that without FAIR funding, the number of courts implementing the CPE system would be much lower.

The key issues for implementing the CPE system in Ukrainian courts using their own resources are the following:

- The majority of Ukrainian courts at the moment do not have enough human resources and technical capacity to implement the CPE system, even at its basic level.
- The current operational status of the Case Management System (CMS) in Ukrainian courts does not fully support the implementation of the CPE system. Calculation of some performance indicators, such as the aforementioned average duration of proceedings, is complicated because the CMS does not function properly in all courts.
- Court leadership (e.g. chief judges, deputy chief judges, chiefs of staff) does not always understand the benefit of using the CPE system not only for reporting, but also for management purposes.

Taking into consideration the above-listed issues, in this reporting period the FAIR team started developing a supporting package for Ukrainian courts to increase their capacity to implement the CPE system for management and reporting purposes. This package includes the Guidelines for courts on implementing the CPE system and using it for management and reporting, recommendations to the COJ and the SJA on promoting CPE system implementation in Ukrainian courts and holding trainings for judges and court staff on CPE system implementation and usage. In the next quarter, FAIR plans to complete the development of this package and begin its implementation in cooperation with the COJ and the SJA.

As FAIR previously reported, the CPE system approval by the COJ drew the attention of the International Consortium for Court Excellence (Consortium) - a network of groups and organizations from Europe, Asia, Australia, and the United States that developed the International Framework for Court Excellence (IFCE) – the global quality management system aimed at helping courts to improve their performance. With FAIR support, the COJ applied for membership to the Consortium, knowing that the CPE system addresses seven of the eleven global measures recommended by the IFCE, particularly, court user satisfaction, court access fees, case clearance rate, on-time case proceedings, case backlog, employee engagement, and cost per case. The Consortium subsequently approved the COJ for membership in October 2015. In order to support the COJ integration into the Consortium and promote the Ukrainian CPE system, FAIR proposed sending a Ukrainian delegation to the “Judiciary of the Future” International Conference on Court Excellence, which will take place in Singapore on January 28-29, 2016. This event is being organized by the State Courts of Singapore, which is one of the founding members and signatories of the Consortium. FAIR and the COJ will present a paper entitled “Court Performance Evaluation as Tool to Promote Judicial reform and Build Public Trust and Confidence in the Judiciary,” at the Conference. The paper will address the following topics:

- 1) Brief description of the CPE system for Ukrainian courts, including criteria, indicators and performance evaluation tools.
- 2) Overview of how IFCE measures have been incorporated into the CPE System.

- 3) Implementation of the CPE system, including basic level implementation with eight mandatory indicators and complex level implementation with 40 indicators. This also includes the role of each CPE level in advancing better court management, efficiency in the delivery of justice, and improved communications with the public.
- 4) Financial aspects related to implementation of the CPE system, including opportunities for courts themselves and implications for the overall government budget in general.
- 5) Challenges and opportunities for the future of court performance evaluation in Ukraine.

The Ukrainian delegation includes leaders of the newly elected COJ who promoted CPE system approval and who are committed to further promotion of CPE implementation in Ukrainian courts, namely, Chair of the COJ and judge of the SCU, Justice Valentyna Simonenko; and Chair of the COJ Committee for Judicial Administration, Judge Grygoriy Aleynikov of the Zaporizhzhya Oblast Court of Appeals. The delegation will also include representatives of those courts implementing the CPE system, Judge Ivan Kolesnyk of the Commercial Court of Dnipropetrovsk Oblast and also a member of the COJ Committee for Judicial Administration; and Judge Anatoliy Babiy of the Odesa Oblast Court of Appeals who also actively participated in developing the CPE system as the Co-Chair of the Working Group for Court Performance Evaluation from 2012-2014. FAIR Monitoring, Evaluation and Court Performance Specialist Tomas Verteletsky and FAIR Legal and Judicial Administration Specialist Sergii Suchenko will accompany the Ukrainian delegation to ensure seamless design and implementation of the program, including interpretation support. Previous FAIR experience has demonstrated that participation at such conferences has a positive impact on promoting legal and judicial reforms in Ukraine.

In this reporting period, FAIR continued to capitalize on the successful development of the case weighting study for the trial courts of general jurisdiction by committing to conduct a similar study for the remaining courts of trial and appellate instance. In cooperation with the SJA, FAIR developed an updated methodology for the study in order to use the information from the electronic case management system (CMS) of the courts directly, and received approval from the SJA to proceed with the study. Over the course of November 2015, 90 appellate and trial courts of specialized jurisdiction returned the questionnaire forms developed by FAIR regarding their judges' caseload. FAIR also received information from these courts' CMS regarding the overall duration of proceedings grouped by type of case. The data from the CMS and the questionnaires are currently being analyzed by FAIR experts, and FAIR expects to have the draft case weights ready by mid-January 2016. FAIR will then proceed with discussing the results of the study with all the stakeholders, as well as validating them through comparison of the actual caseload of the courts.

FAIR also advocated for the implementation of the case weighting study results by the SJA. According to the SJA, the results of the study will be used for standardizing the caseload of judges in the courts, as well as for case assignment purposes.

In addition, FAIR also supported the procurement and installation at the SJA's central office and in all courts nationwide of the Human Resource Management System "Kadry-Web", a web-based solution which would allow the SJA and other judicial institutions to keep electronic records of all court employees, including judges, as required by the new Law on Ensuring the Right to a Fair Trial. FAIR also procured Oracle licenses and server equipment, which are required to run the software. This hardware and software will enable judicial dossiers to be kept electronically in a centralized manner, providing for quick registration of data and data exchanges.

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

- In cooperation with the COJ and the SJA, develop plan for implementing the approved CPE system in Ukrainian courts;
- Finalize the Guidelines for courts on implementing the CPE system and using it for management and reporting;
- Finalize the publication of the CPE system, including definitions for CPE criteria and indicators, as well as the measurement tools and guidelines to use them; assist in the distribution of the electronic publications to all Ukrainian courts;
- Finalize the CPE training module for judges and court staff;
- Using the developed CPE training module, conduct two trainings for at least 50 judges and court staff in total;
- Continue providing expert support and direct consultations to courts implementing the CPE system;
- Start publishing the best international practices of court performance evaluation;
- In cooperation with the COJ, finalize the Paper “Court Performance Evaluation as Tool to Promote Judicial reform and Build Public Trust and Confidence in the Judiciary” for the International Conference for Court Excellence in Singapore on January 28-29, 2016. Support participation of COJ representatives in the Conference. Present paper jointly with the COJ;
- Finalize the case weighting study for courts of all jurisdictions using data from the court case management system based on the outcomes of the case weighting study conducted by FAIR for trial courts of general jurisdiction, and the manual on case weighting prepared by FAIR;
- Provide support to the newly established budget committee within the COJ. Work with the Committee to revise existing regulations related to budget, caseload management, and procurement; and
- Support the SJA and COJ in using the results of the case weighting study conducted by FAIR for general jurisdiction trial courts in order to determine the number of judges required by the court system.

**Performance Indicators ER 3.2**

- The indicator “Number of court performance standards adopted” remains four, the same as in the end of the FY2015.
- Ukrainian courts implement 21 performance indicators including those approved by the COJ in 2015 and those approved by the COJ of general courts in 2013. This is the status of the indicator “Number of court performance indicators implemented” in this reporting period.
- 352 courts implementing CPE system modules “User Satisfaction with Court Services” and basic court performance indicators contributing to the indicator “Number of courts implementing project-supported performance measurement system.” The cumulative LOP status of this indicator is 383.
- Average annual citizen report cards score of participating courts this quarter is 0.81. This score is based on analysis of 2015 CRC surveys in 183 courts.

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

**ACCOMPLISHMENTS:** Over the previous period, FAIR purchased computer equipment for the Kyivskiy District Court of Odesa City and Ovidiopol Raion Court of Odesa Oblast. This equipment allows the conversion of filed court documents into a digital format to be used for court case management, thus reducing the workload of court administrative offices, as well as the expenses associated with paper case management. The Kyivskiy District Court of Odesa City and Ovidiopol Raion Court of Odesa Oblast have already processed 185 and 56 e-based claims respectively, and provided positive feedback on the project, as it saves judges’ time and expedites court proceedings. As a side outcome of the project, the

Kyivskiy District Court of Odesa City introduced electronic data exchange with the Main Office of the State Migration Service in Odesa Oblast. The electronic exchange reduced the time required to receive data from around one month to three days for more than 300 information requests about registered places of residence. In order to capitalize on the innovations introduced by the new system and support the SJA’s plans to move towards paperless court case management, as well as to provide court users with accessible means of filing court documents, during this phase FAIR procured equipment for the Odessa Court of Appeals, allowing the transfer of electronic case files from the two trial pilot courts to the appellate instance.

During this reporting period, FAIR continued its cooperation with the Judicial Reform Council of Ukraine (JRC) and the Presidential Administration of Ukraine in order to revise the Court Automation Strategy, previously developed by FAIR and prepared as a concept for reforming the logistical infrastructure of the judiciary of Ukraine as part of the ongoing judicial reform efforts. On December 28, 2015, the JRC conducted its last meeting this year. The agenda of the meeting included, inter alia, approval of the Concept for Improvement of the Infrastructure for Logistical and Administrative support of the Judiciary, prepared by FAIR in cooperation with the Presidential Administration. The JRC provided positive feedback on the technical part of the Concept regarding business process analysis and automation, however, some of the members expressed concerns regarding the proposed changes to the structure of financing of the courts, especially the role of the COJ in the budgeting process, as well as with regard to the proposed increased role of the HCJ. As a result, the Council decided to approve the Concept as a baseline and will discuss these provisions the following year.

- 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).
  - Up to two working group meetings conducted to revise court administration and management policies (achieved).
  - “Paperless court” project implemented in up to three courts in Odessa and fully operational (achieved).
  - Court Automation Strategy updated and presented to the Administration of the President of Ukraine (achieved).

Finally, in order to support the use of CRC surveys in the Kyiv courts, based on the courts’ written agreement to participate in the CRC initiative, FAIR procured server hardware for Shevchenkivskiy and Holosiyivskiy courts of the City of Kyiv, as the courts’ current hardware is obsolete and does not meet the requirements of the electronic case management system or provide sufficient computing power to handle additional data processing.

**SCHEDULE CHANGES:** FAIR continues to experience delays with the launch of the electronic pay terminals in all 42 courts countrywide (Lviv, Odessa, Kyiv, Kharkiv and Dnipropetrovsk oblasts), due to the failure of the SJA to complete the testing of the payment software in due course.

In addition, FAIR received an urgent request from the HQC to support the development of case management software for this institution. In discussions with the representatives of the HQC and the Presidential Administration, FAIR determined that doing so would only be possible if FAIR shifts resources from the business process analysis (BPA) for all the general jurisdiction courts nationwide, which was planned earlier. Thus, based on the agreement of all the parties FAIR, re-allocated the resources to support the HQC, and had to cancel the BPA for the courts.

**PROBLEMS:** The finalization of the electronic pay terminals project continues to be delayed by the SJA. According to FAIR communications with the SJA management, all works was to be completed by the end of 2015 at the latest, however, FAIR has repeatedly seen changes in the deadlines for the last several months. In the case the terminals do not go fully operational in January 2016, FAIR will work with the SJA to address this issue.

#### Performance Indicators ER 3.3

- No changes this reporting period occurred under the indicator “Number of data-fed analytical techniques incorporated into judicial budgeting,” the status of this indicator remains 1 and it refers to the Case Weighting Study for the General Courts.
- The indicator “Number of project-supported new or improved policies within the SJA” did not change this quarter and remains three as in the end of FY2015.

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

- Work with the SJA to complete the implementation of the pilot project for electronic collection of court fees via procurement of electronic pay terminals to be used for fee collection, as well as for providing information to court users, and outreach activities.
- Provide support to the administration committee established within the COJ. Work with the committee to revise existing and establish new policies in the field of court automation as needed.
- Continue working with the Administration of the President of Ukraine, to update and revise the Strategy for Automating Ukraine's Judiciary based on feedback from JRC members.

#### **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 this reporting period, FAIR published and disseminated the updated version of the manual on Courts and Community Communications. The updated manual includes references to the most recent legislation, sample documents, practical and up-to-date recommendations by many renowned lawyers and communication specialists, Ukrainian courts best practices, and materials provided by Gary Hengstler, the former director of the Reynolds National Center for Courts and the Media (USA). At least two copies of the manual have reached each of the 680 courts that operate in Ukraine at the moment according to the information provided by the SJA. Thus, each Public Information Officer (PIO) and judge-speaker can now consult it during their day-to-day activities.

FAIR is also working on updating the in-class curriculum “Courts and Community Communications,” which will be finalized during the next quarter.

On October 11-16, 2015, FAIR conducted a series of regional trainings for PIOs and judge-speakers nationwide with the NSJ, COJ, and the SJA. One day trainings were conducted on the basis of the updated manual. Specifically, the trainings were conducted on October 12, 2015, in Lviv, on October 14, 2015, in Kharkiv, and on October 16, 2015, in Odesa. The purpose of the trainings was to share the US and Ukrainian best practices and lessons learned in building effective court communication with the public, and to enhance the communications skills of judges and of PIOs. Along with national specialists on court communication, the trainings were conducted by international experts David Remondini, Chief Deputy Executive Director, Division of State Court Administration, Indiana Supreme Court (USA), and Leah Gurowitz, Director of Governmental & Public Relations, D.C.

Courts (USA) and Soren Sonderstrup, Acting Head of Press and Public Information Office /Media Information Analysis Officer of the European Union Advisory Mission. The trainings were preceded by roundtables with representatives of local mass media on ways to establish a dialog and constructive cooperation between courts and mass media. The roundtables were conducted on October 11, 2015, in

Lviv, on October 13, 2015, in Kharkiv and on October 15, 2015, in Odesa. In total, 135 PIOs and judges participated in the trainings, and 40 journalists participated in the roundtables.



Representatives of Kyiv courts received copies of the Courts and Community Communications manual on November 6, 2015 at the Kyiv City Territorial Department of the SJA.

learning course on Courts and Community Communications were finalized. The NSJ plans to launch the online course in February 2016.

**Milestone Progress ER 3.4**

- A conference on “Strengthening Public Trust in the Judiciary through Effective Court Communications” conducted.
- 3 grants to regional CSOs enhancing communication skills of PIOs and court staff awarded.
- Participation of Ukrainian delegates at the second and third “Judicial Images” international workshop supported (October 16-17, 2014 in Budapest, Hungary, and June 25-26, 2015 in London, UK).
- COJ website is more informative and user-friendly.
- Court communications manual and court communications training curriculum published and disseminated to each of the 680 courts that operate in Ukraine at the moment according to the information provided by the SJA.
- 3 one day regional trainings for PIOs conducted in Lviv, Kharkiv and Odesa; the trainings were preceded by roundtables with representatives of local mass media (135 PIOs and judges participated in the trainings and 40 journalists participated in the roundtables).
- Civic education materials on judicial reform and public information materials on court operations updated.

Also in this reporting period, FAIR made progress in supporting the NSJ in conducting the second round of the online distance learning course on Courts and Community Communications. As mentioned under Expected Result 3.1, on December 23, 2015, FAIR organized a working group meetings with the NSJ, which was attended by 18 participants. At the meeting, NSJ plans for conducting the second round of the online distance



Unexpected interview exercise for judge-speakers at one-day training on court communication with the public for PIOs and judges-speakers conducted by FAIR on October 14, 2015 in Kharkiv.



Roundtable for local journalists conducted on October 13, 2015, in Kharkiv.

- class curriculum on Court and Community Communications;
- Conduct four trainings for judges and PIOs in Kyiv on Court and Community Communications;
- Update Courts and Media manual for journalists;
- Continue supporting the NSJ in conducting the second round of the online distance learning course on Courts and Community Communications; and
- Assist the HCJ in elaborating the Communications Strategy.

To boost transparency and accountability, FAIR also assisted the COJ in further improving its website by making it more informative and user-friendly. Kitsoft IT Company, which was selected by FAIR together with the COJ leadership, completed the improvements to the COJ website.

In addition, during this reporting period, FAIR continued supporting two grantees in developing the capacity of courts in two regions to effectively communicate with the public. In particular, the Sumy City non-governmental organization “Center for Regional Policy Studies” completed its online training course on Court and Community Communications for PIOs in the Sumy region. Charity foundation “CCC Creative Center,” Cherkasy continues implementing its grant project to monitor the informational content on the courts’ websites and compliance with national legislation to ensure access to public information.

**PLANS:** During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 3.4:

- Finalize the updated version of the in-

**Performance Indicators ER 3.4**

- Number of courts offering legal education materials to court visitors remains 42 as last quarter. It refers to information and pay terminals FAIR provided to selected courts contain the electronic versions of all civic education materials developed by FAIR and FAIR’s CSO partners.
- Number of communication strategies implemented by courts and judicial institutions did not change this quarter.

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

**ACCOMPLISHMENTS:** During the reporting period, FAIR supported the Kharkiv City civic organization “Institute for Applied Humanitarian Research” to implement a follow-on grant on “Monitoring of Court Performance and Decisions Related to Elections in Ukraine: Local Elections 2015.” The findings and recommendations that resulted from monitoring 770 election court cases under the previous grant were used by the HAC and the NSJ for educating judges of general courts before local elections in October 2015.

On October 27-28, 2015, FAIR, in cooperation with OSCE, conducted the “Justice and Civil Society Forum: Building a Partnership to Promote Public Trust and Confidence” to share best practices and lessons learned in promoting civil society engagement in justice sector reform, including success stories in building an effective dialogue between justice sector institutions and civil society organizations. Approximately 150 representatives of the judiciary and civil society discussed current challenges and future opportunities for civil society engagement in justice sector reform. During the second day of the event, participants developed a set of 22 recommendations on “Ways of Efficiently Engaging Civil Society in Implementing Judicial Reform” which addressed issues such as enforcing court decisions through judicial and civil society oversight; alternative ways of ensuring fair conflict resolution through strategic court cases; court compliance with international legislation, in particular that of the European Court of Human Rights (ECHR); mediation as a means of restoring trust in the judiciary; supporting court access for people with disabilities;



Justice Valentyna Simonenko spoke at the Civil Society Forum on October 27, 2015 in Kyiv.

engaging civil society organizations in training for judges; avoiding gender discrimination in courts; and other related topics.

On October 29-30, 2015, FAIR grantee All-Ukrainian Civic Organization “Association of Judges of Ukraine,” in partnership with Lviv Oblast Appellate Court, conducted an international conference in Lviv to discuss the implications of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) in court proceedings. Judges from Ukraine, Moldova, Poland, and Armenia, as well as academics and public activists, participated in the event. The participants discussed their

### Milestone Progress ER 4.1

- Conducted meetings with potential CSO grantees regarding research on pending legislation.
- Prepared APS on pending legislation.
- Updated 14 leaflets on access to justice.
- 19 grants awarded that engage civil society and the public in the judicial reform process.
- Two new civic education materials on judicial reform developed and disseminated (ongoing).
- Specialized research and policy proposals related to pending judicial reform legislation (ongoing).
- Two joint events with CSOs and Parliament conducted.
- Mechanism of sustainable advocacy campaigns for pending judicial reform legislation adoption prepared and ongoing.

Ukraine also conducted a roundtable “On Participation of Judges in Law Drafting Process” on December 6, 2015. The Association invited MP Iryna Lutsenko to introduce her amendments to the Civil Proceedings Code regarding human rights protections during investigative actions and to discuss these amendments with judges of the general courts, appellate court, and human rights defenders.

From December 9-11, 2015, FAIR supported the forum “Lawyers to Society” as part of the MOJ’s Ukrainian Week, including presenting and disseminating public awareness materials, brochures, leaflets, posters, and videos on judiciary and court procedures, accessing free legal aid, and public engagement in evaluating the performance quality of courts. Throughout the forum, representatives of 30 law firms provided free legal aid to approximately 600 visitors. Young lawyers and students also participated in trainings and master classes conducted by experienced lawyers.

**Performance Indicators ER 4.1**

The indicator “Number of CSO-produced policy proposals related to pending judicial reform legislation” remains the same as in the end of the FY2015, the cumulative number for this indicator is three.

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

- FAIR will continue to support civic coalitions in producing proposals related to judicial reform legislation and mechanisms of sustainable advocacy campaigns for pending judicial reform legislation adoption (linked to ER 5.4);
- FAIR will continue to update public awareness materials on court operations;
- FAIR will continue to support the All-Ukrainian Civic Organization “Association of Judges” to conduct research on implementation of recommendations of the International Association of Judges and the European Association of Judges, and to provide recommendations on current Ukrainian legislation regarding judicial reform; and
- FAIR will continue to support the CSOs “Women’s Perspective” (Lviv) and “Public Alternative” (Kharkiv) to conduct monitoring of court decisions regarding gender discrimination in civil and criminal processes, focusing on the transparent application of Ukrainian gender legislation and international laws.

**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:** During the reporting period, FAIR selected three NGOs to monitor the implementation of the CSO recommendations provided to the courts of Kyiv, Lviv, Odesa, Sumy, Ivano-Frankivsk, Chernivtsi, and Cherkasy oblasts following completion of the CRC surveys, and to develop CRC methodology sustainability by building capacity within CSOs and courts to conduct CRC surveys without donor support. Five NGOs are continuing to conduct a survey using the CRC methodology to measure citizen satisfaction with court performance in all the courts of Ternopil, Khmenlntyskiy, Chernihiv, Volyn, and Kherson oblasts in cooperation with the courts and the SJA.

On December 9-10, 2015, FAIR, together with the Organization for Security and Cooperation in Europe (OSCE) Project “Safeguarding Human Rights through Courts” and the OSCE Office of Democratic Initiatives and Human Rights (ODIHR), conducted a training on trial monitoring for 22 competitively

selected civic activists from 10 different regions of Ukraine. The participants learned best practices on designing, implementing, and evaluating trial monitoring programs based on OSCE ODIHR experience and materials, such as how to clearly define objectives and outcomes of trial monitoring programs as a justice sector reform tool. Participants also discussed selected international fair trial standards as they relate to trial monitoring.

During the reporting period, the results of the CRC surveys on Public Satisfaction with Court Performance from nearly every court in Cherkasy, Lviv, Ivano-Frankivsk and Odesa oblasts were presented. On October 9, 2015, FAIR grantee CSO “Center on Social Adaptation” (Cherkasy), in cooperation with the Appellate Court of Cherkasy oblast, conducted a roundtable to present the results of the CRC survey on Public Satisfaction of Court Performance, conducted in 26 courts of the Cherkasy region. On November 30, 2015, FAIR grantee CSO “Your Right” (Lviv), in cooperation with the Appellate Court of Lviv oblast, conducted a roundtable to present the results of CRC survey conducted in 32 courts of the Lviv region. On December 15, 2015, FAIR grantee “Charitable Foundation Oriyana,” in cooperation with the Appellate Court of Ivano-Frankivsk oblast, conducted a roundtable to present the results of the CRC survey conducted in 20 courts of the Ivano-Frankivsk region. On December 25, 2015,



Left to right: FAIR COP David Vaughn (second from the left), Chief of Appellate Court Bohdan Grynovevskiy, sociologist Nadia Melnyk, and Judge Oksana Melenko discussed CRC results in Ivano-Frankivsk oblast on December 15, 2015 in Ivano-Frankivsk.

#### Milestone Progress ER 4.2

- CRC surveys extended to 5 new regions and 110 new courts.
- FAIR awarded grants to 12 CSOs to conduct CRC surveys in all the courts of Ivano-Frankivsk, Lviv, Cherkasy, Chernivtsi, Odesa, Sumy, Ternopil, Khmelnytskyi, Chernihiv, Volyn, Kherson, and Kharkiv Oblasts.
- 19 CSOs presented 55 CRC analytical reports and 2,570 recommendations on court service improvement to 212 CRC partner courts at 19 regional roundtables.
- Assessment report on impact of the CRC program implementation produced.
- Assessment report on equal access to court facilities and services for people with disabilities produced.
- Results of assessment report on equal access to court facilities and services for people with disabilities presented at the conference on “Access to Justice and Court Services.”
- NGO selected to implement grant program to increase access to courts for people with disabilities.
- Monitoring of the access to courts and court services for people with disabilities conducted in 20 courts.
- Audio and Braille materials on the judiciary prepared.
- Public awareness and lobbying campaign on legislative changes to improve access to justice for people with disabilities conducted.
- NGOs selected to develop a manual on court staff’s communication skills and work with people with disabilities in cooperation with the NSJ.

FAIR grantee Charitable Foundation “Creative Center CCC,” in cooperation with the Territorial Department of the State SJA of Odesa Oblast, conducted a roundtable to present the results of the CRC survey conducted in 27 courts of Odesa oblast. The grantees also shared recommendations for improving the quality of court performance based on the data collected during the CRC survey. Representatives of the CRC courts, the Territorial Department of the SJA in Cherkasy, Ivano-Frankivsk, Lviv, and Odesa oblasts, CSOs, media, and FAIR representatives attended the roundtables.

During the reporting period, FAIR provided expert support to the selected five NGOs to conduct CRC surveys in Chernihiv, Kherson, Ternopil, Volyn, and Khmelnytska oblasts and several courts in

Mykolaiv and Kyiv Cities in cooperation with the courts and the SJA. On December 24, 2015, FAIR conducted a training on data entry and analysis for data operators of NGOs implementing the CRC surveys.

In addition, the NGO “Law and Democracy” prepared audio materials based on updated FAIR informational materials on court operations for people with disabilities. The materials will be disseminated among courts and judicial bodies, and the SJA plans to post the materials on the Ukrainian judiciary website.

In October 2015, FAIR selected a grantee to develop a manual on improving court staff’s communication skills and work with people with disabilities in cooperation with the NSJ. During this quarter, the grantee, in cooperation with representatives of organizations for people with disabilities, developed the draft manual for further finalization by the NSJ, and made plans for conducting TOT.

**PLANS:** During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 4.2:

- FAIR continues to provide support to eight FAIR-supported CSO: five conducting CRC surveys in five new oblasts (Ternopil, Khmenlnytskiy, Chernihiv, Volyn, and Kherson), and three monitoring CRC survey recommendation implementation in the seven oblasts where CRC were previously conducted between February and September 2015 (Kyiv, Lviv, Odessa, Sumy, Ivano-Frankivsk, Chernivtsi, and Cherkasy);
- FAIR expects that the results of the CRC surveys in Ternopil, Khmenlnytskiy, Chernihiv, Volyn, and Kherson will be presented in March – April 2016;
- Conduct TOT for up to 15 faculty members through a grant on improving court staff communication skills in working with people with disabilities (January 2016); and
- Conduct two trainings for up to 60 court staff members on improving court staff communication skills in working with people with disabilities (February-March, 2016).

<b>Performance Indicators ER 4.2</b>
<ul style="list-style-type: none"><li>• During this quarter, CRC surveys take place in 110 courts (14% of all courts in Ukraine). The cumulative data for the indicator “Number and percentage of courts in which there are active CSO court performance evaluation programs” increased to 313 this quarter, which is 40% of all courts in Ukraine. It refers to courts where CRC surveys took place during FAIR life of project.</li><li>• Number of people engaged in the monitoring and performance oversight of Ukrainian courts this quarter is 3,140, the cumulative life of project number is 20,816.</li><li>• The data for the indicator “Percentage of partner Civil Society Organizations’ performance improvement recommendations implemented by judicial institutions” is not available this quarter, data collection is still in the process.</li></ul>

**EXPECTED RESULT 5.1: THE LAW ON THE PURIFICATION OF GOVERNMENT AND RELEVANT LEGISLATIVE FRAMEWORK IMPROVED**

**CURRENT STATUS OF AFFAIRS AND KEY ACHIEVEMENTS:** The FAIR team supported Ukrainian policymakers and the judiciary to analyze gaps in lustration and judicial vetting procedures within a framework of European standards and best practices.

On October 22, 2015, the Constitutional Court of Ukraine (CCU) continued hearings on the Law on the Purification of Government, featuring claims of unconstitutionality of certain provisions of the Law by

the Supreme Court of Ukraine (SCU) and 47 Members of Parliament. The hearings lasted for two days. On the first day, two members of parliament and representative of the SCU argued that the Law contravened the rule of law since there is no presumption of innocence based on individual liability rather than collective responsibility. On October 23, 2015, another member of parliament and a representative of the Verkhovna Rada in the CCU defended the contested provisions of the Law. In addition to that defending member of parliament filed a written petition to force the recusal of seven Justices of the CCU. The CCU announced a recess in the hearing for an unspecified time to study and consider the petition.

FAIR engaged Professor Viacheslav Navrotskyi to analyze court practices and case law during the period from November 2013 to February 2014 to determine, based on publicly available information, whether or not select cases resulted in illegal detentions of activists during the 2014 Revolution of Dignity. Additionally, FAIR expert Roman Veresha is analyzing the administrative caseload of the above mentioned period to identify whether verdicts handed down to the Automaydan activists were legal and met the gravity of the charge. Both of experts came to the following conclusions:

- A. Judges were knowingly and openly violating Maidan activists' right to a fair trial and their civil liberties;
- B. Cases were built around falsified prosecutorial evidence;
- C. Judges were intentionally violating requirements of local legislation and European Convention of Human Rights while illegally detaining Maidan activists;
- D. Detention was a tool of repression, used by the criminal investigation and prosecutorial bodies;
- E. Administrative verdicts applied to Automaidan activist did not meet the gravity of the violation;
- F. A vast number of administrative charges were illegally applied to Automaidan activists.

#### Milestone Progress ER 5.1

- Draft legislative recommendations on the needed amendments to the Law on the Purification of Government formulated and submitted to Ukrainian counterparts.
- Amendments to the Law on the Purification of Government in the context of existing legislation and recommendations to improve it in line with international and European standards supported (ongoing).

Both experts come up with the following set of recommendations:

- A. Initiate investigations against judges and prosecutors involved in analyzed decisions;
- B. Facilitate the HCJ in initiating and investigating cases against judges involved in Maidan cases;
- C. Facilitate civil society organizations in taking on an active role in initiating/monitoring cases against those judges and prosecutors;
- D. Change the Criminal Procedural Code of Ukraine to:
  1. Prohibit conducting criminal case hearings after nightfall;
  2. Investigations conducted at night should be well-grounded, properly justified, and exclusive to the situation;
  3. Grounds for extension of the detention period should be properly established and strongly justified.

On December 9, 2015, these conclusions and recommendations were presented and discussed at the roundtable “The Role of Judges in Deciding Cases During Mass Protests in Ukraine” (<http://www.vru.gov.ua/news/1224>; <http://vkksu.gov.ua/ua/news/widbuwsia-kruglij-stil-diskusija-rol-suddiw-pri-wirishienni-spraw-pid-tchas-masowich-protiestiw-w-ukraini-za-utchasti-tchlieniw-komisii/>;

<http://court.gov.ua/226749/>). In addition to the experts presentations, a renowned European judicial reform and vetting expert. Pavol Zilincik, shared the results of a comparative analysis of judicial independence and accountability best practices in Eastern European countries, specifically in Bosnia and Herzegovina, Slovak Republic, and Estonia. Representatives of the MOJ, SCU, HCJ, COJ, HAC, the



FAIR Expert Pavol Zilincik (center) highlighted the importance of the Code of Judicial Ethics in holding judges accountable during the discussion on “The Role of Judges in Deciding Mass Protest Cases in Ukraine” on December 9, 2015.

Interim Special Commission for Vetting Judges (ISC), SJA and leading NGOs in the field attended the event. Based on the discussions, participants agreed with the experts’ conclusions as reasonable, but could not build consensus around further steps and recommendations. Thus, it was decided to conduct small group discussions with four target groups – Judiciary, Legislators (representatives of Verkhovna Rada and Presidential Administration), Lawyers and leading NGOs in the area – over the next reporting period to develop recommendations on judicial vetting with each group separately. Those recommendations will be unified and presented during the follow-up roundtable devoted to the role of judges over 2014 Revolution of Dignity. The roundtable

will also focus on the consolidated efforts between judiciary and public to oversee judicial vetting, tentatively scheduled for February 11, 2016.

Additionally, FAIR involved Mr. Markiyana Halabala and Mr. Volodymyr Moisyk to analyze the verdicts and other relevant materials of the HCJ, HJC, ISC – as well as relevant court decisions – in order to identify which risk factors allowed for interference during the judicial process during the period from November 2013 to February 2014, and why judges were handing down verdicts that violated relevant procedural codes and the rule of law. Outcomes of the expertise will be presented during the next quarter at the above mentioned roundtable.

Finally, FAIR completed proofreading the book “*Crimen Laesae Iustitiae: Criminal Liability of Judges and Prosecutors for Court Crimes under German, Austrian and Polish Law*,” by Professor Witold Kulesza, which will provide Ukrainian counterparts with relevant judicial vetting and lustration materials. Additionally, FAIR completed the draft copyright agreement between FAIR and the Lodz University, Poland in order to publish the book. Also, FAIR made contact and will be engaged with Professor Hans Petter Graver of the University of Oslo, Norway, who is a leading expert in judicial accountability and the author of numerous related publications, including the book “*Judges Against Justice: On Judges*

#### Performance Indicators ER 5.1

- Provided support to the GOU on the implementation of financial disclosure for public officials, which contributes to the indicator “Number of USG-supported anti-corruption measures implemented.”
- Number of recommendations to improve the Law on the Purification of Government and relative legislative framework remains 42 as in the end of FY2015.
- Percent of recommendations formulated that are passed into law or adopted as regulations is 0 since all recommendations formulated are now under the consideration by law and policymakers. 10 FAIR-developed recommendations to amend the Law on the Purification of Government included in the current Draft Law.

*When the Rule of Law is Under Attack,*” which was published earlier this year. The author provided the project with a few chapters of his book, which were most relevant to the current lustration tendency in Ukraine. They were translated into Ukrainian and presented to FAIR key counterparts during the above-mentioned roundtable “The Role of Judges in Deciding Cases During Mass Protests in Ukraine.” FAIR engaged Professor Graver to conduct an analysis on judicial purification and self-purification issues in Ukraine, and to provide recommendations to improve the current legal framework regarding the vetting of judges, specifically with respect to judicial independence and accountability. Results of expertise will be presented during the next reporting period.

**PLANS:** During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 5.1:

- Support the amendment of the Law on the Purification of Government to ensure it is harmonized with current domestic legislation and in line with international and European standards, including the case law of the ECHR and Venice Commission recommendations;
- Analyze the COJ and ISC practices to identify factors that impact judicial independence in Ukraine, address the identified gaps in the context of European standards and practices as well as the newly adopted changes to the Law on the Judiciary and Status of Judges and other related legislative acts;
- Conduct one-on-one and/or small group discussions with representatives of the Presidential Administration, Parliament, MOJ, judiciary, NGOs and other key stakeholders improving of the lustration and judicial vetting legislation; and
- Publish the book *Crimen Laesae Iustitiae* by Witold Kulesza.

## **EXPECTED RESULT 5.2: INSTITUTIONS, PROCEDURES AND REGISTRY FOR THE LUSTRATION AND VETTING OF PUBLIC OFFICIALS AND JUDGES STRENGTHENED**

**ACCOMPLISHMENTS:** During this reporting period, FAIR focused on supporting the MOJ, HQC, HCJ and other key counterparts in developing internal procedures for lustration and judicial vetting.

The mandate of the ISC, created by the Law “On Restoration of Trust in the Judiciary”, expired on November 12, 2015. However, at that moment the ISC still had 265 pending cases against judges, where no decision was held. According to the Law, these materials should be transferred to the HCJ, but since a vast majority of the materials are against trial and appellate court judges, the council has no authority over them.

<p style="text-align: center;"><b>Milestone Progress ER 5.2</b></p> <ul style="list-style-type: none"><li>• Recommendations for improving procedures for vetting developed.</li><li>• Assessment of the Registry conducted (ongoing).</li></ul>
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On November 6, 2015, FAIR supported a consensus building meeting between representatives of the HCJ and the ISC to discuss amendments to the Law on the Restoration of Trust in the Judiciary and Law on the Purification of Government, including issues related to strengthening the status and extending the term of the ISC and procedures for transferring 265 pending ISC cases against judges to the HCJ. As a result of the discussion, the HCJ and ISC agreed to establish a joint working group to develop a concept and recommendations for the Parliament to consider in amending lustration legislation. The working group includes Oleksiy Muraviov, Andriy Boiko and Alla Lesko of the HCJ and the ISC’s Oleg Pervomayskiy, Petro Verishko and Mykola Tytarenko.

On November 9, 2015, FAIR representative participated in the meeting of the Working Group, established jointly by the HCJ and ISC, on developing a concept and recommendations for the Parliament to consider in amending lustration legislation. Oleksiy Muraviyov and Alla Lesko of the HCJ, Oleg Pervomayskiy, Maryna Solovyova and Mykola Tytarenko of the ISC, and the Deputy Director of the Lustration Department, Kateryna Zhurba, attended the meeting. During the discussion, the HCJ representatives proposed not to extend the ISC term since both constitutional disciplinary institutions – the HCJ and HQC – are properly functioning now



Representatives of the HCJ and ISC during the discussion on November 7, 2015 in Kyiv.

and there is no need for an additional one. Also, the urgent need to stipulate clear procedure for transferring 265 pending ISC case against judges to the HCJ was stressed. However, the ISC members insisted on the need to extend the ISC mandate, arguing that the ISC was created as a result of public demand, and only with the express purpose of vetting judges. The HCJ scope, it was argued, only has authority over disciplining judges. Based on the discussions, parties did not reach consensus and the members of working ground decided to abolish the ISC.

On November 23, 2015, FAIR met with the Head of the ISC, Mr. Volodymyr Moisyk; the ISC Secretary, Ms. Maryna Solovyova; and the ISC member, Petro Veryshko, to once again discuss the future of the ISC. At the end of the discussions, participants of the meeting agreed that FAIR will support drafting the amendments to the Law “On Restoration of Trust in the Judiciary” which proposes to extend the ISC mandate, eliminating the one-year deadline for official investigation and change the procedure for appointing ISC members. The law would rescind appointment authority of the Government Agency for Anti-Corruption Policy and replace it with the Ombudsmen. FAIR drafted amendments and transferred them to the ISC members for comments. During the next reporting period, FAIR will continue to cooperate with policymakers to discuss prospective draft law (the activity is directly linked with the Expected Result 5.1. efforts).

In addition, FAIR short-term international expert, Mr. Radoslaw Peterman, Head of the Lustration Department within the Institute of National Remembrance in Poland, continued assessing the MOJ Unified Registry of Persons to Whom Provisions of the Law on Purification of Government Have Been Applied (the MOJ Registry), and presenting related international materials and internal regulations. FAIR plans to present the expert’s findings during the roundtable devoted to the role of judges during 2014 Revolution of Dignity, where he will discuss the methods of judicial vetting basing on consolidated efforts of the judiciary and public society, tentatively scheduled for February 2016 (activity is directly linked with the Expected Result 5.1 efforts).

Finally, in this reporting period, FAIR continued building relationships with the newly appointed members of the HCJ. On October 8 – 9, 2015, the HCJ conducted an orientation workshop, “The High Council of Justice: Results, Experience, Challenges and Solutions for Ukraine,” for the newly elected HCJ members. This event helped to ensure a proper transition of HCJ institutional memory and provide new HCJ members with best practices from EU member states, including best practices related to judicial appointment and discipline (linked to Expected Result 2.3). The event was supported by FAIR, the EU Project, “Support to Justice Sector Reforms in Ukraine”, the COE Project, “Strengthening the System of Judicial Accountability in Ukraine”, the COE Office in Ukraine EU and the COE Joint Project “Consolidation of Justice Sector Policy Development in Ukraine”. Seminar participants discussed the issues of the HCJ’s status and power in light of judicial and constitutional reforms underway in Ukraine, examples of European and international standards for judicial appointments and discipline, and international experience and practices of similar bodies with similar powers. They discussed the ways to improve the HCJ business processes, specifically, the introduction of strategic planning, processes automation, professional development of staff, as well as the scope of changes needed for institutional development of HCJ. The seminar agenda included presentations from foreign experts, including judges, representatives of similar institutions from Lithuania, Georgia, Rumania, Moldova, Bosnia, Portugal, France, Italy and the United States. Participants included members of the HQC, COJ, SJA, NSJ, justices of the SCU, and judges of the HAC, representatives of the HCJ Secretariat, members of the Interim Special Commission on Judicial Vetting, and representatives of the international programs and projects.

**PLANS:** During the next reporting period, FAIR plans the following activities in order to achieve Expected Result 5.2:

- Conduct an expert analysis of existing regulations adopted pursuant to the Law on the Purification of Government with recommendations for their improvement; and
- Present an assessment of the Registry during the roundtable devoted to the role of judges during the 2014 Revolution of Dignity, and methods of judicial vetting basing on the consolidated efforts of the judiciary and public society, tentatively scheduled for February 11, 2016. This event will help to ensure transparency of vetting procedures and public access to lustration information, while securing the protection of personal data and



Oleksii Filatov, Deputy Head of the Presidential Administration of Ukraine, Secretary of the Constitutional Commission speaking on the HCJ seminar on October 8, 2015.

#### Performance Indicators ER 5.2

- Number of recommendations to improve the Registry formulated with project support and adopted as regulations is 0 for this reporting period.
- Number of procedures for lustration and vetting developed with project support is 2 for this reporting period; FAIR supported development and adoption of the Procedure and Methodology of the Judicial Performance Evaluation and Regulation for Examination of the Sitting Judges.
- «Number of judicial performance indicators to evaluate sitting judges in Ukraine developed with project support» increased from 0 to 10 this quarter meeting FY2016 target. FAIR-supported Regulations on Judicial Dossier defines 10 performance indicators for judges, which became part of the Judicial Performance Evaluation Regulations.

reputation of individuals undergoing lustration verification.

**EXPECTED RESULT 5.3: IMPROVED KNOWLEDGE, SKILLS AND ABILITIES OF KEY STAKEHOLDERS AND PERSONNEL TO CONDUCT THE LUSTRATION AND VETTING OF PUBLIC OFFICIALS AND JUDGES PROFESSIONALLY, FAIRLY AND IMPARTIALLY**

**ACCOMPLISHMENTS:** This reporting period, FAIR continued to support the MOJ in enhancing the knowledge and skills of employees in the justice sector through training programs. More information can be found in the “Success Stories and Notable Achievements” section of this Quarterly Report.

**PLANS:** During the next reporting period, FAIR is planning the following activities to achieve Expected Result 5.3:

- Organize follow up meeting of the Modern Management Training Program for the MOJ managers; and

**Performance Indicators ER 5.3**

- Number of training days provided to executive branch personnel this reporting period is 3 and it refers to the Effective Communication and Strategy Implementation trainings which are part of the larger FAIR-supported Organizational Development and Capacity Building Training for the Ministry of Justice of Ukraine.
- Number of training programs on lustration and vetting processes compliance with European standards and practices did not change in this reporting period and remains four. This number counts Organizational Development Training for the Ministry of Justice of Ukraine, study tour to Poland on lustration best practices and lessons learned, the study tour to the Czech Republic on lustration approaches, and training on gender issues for the Ukrainian government.
- This reporting period FAIR trained 66 GOU representatives contributing to the indicator “Number of people trained with newly developed programs on implementation the lustration and vetting.”
- Percent of people trained who improved knowledge and skills to proceed with lustration and vetting in this quarter is 100%.

**Milestone Progress ER 5.3**

- Training program for the MOJ Department on Lustration conducted.
- Expert discussion on lustration and vetting with the MOJ Lustration Department and Public Council on lustration organized.
- Resource materials assembled and disseminated. (ongoing)
- Ukrainian delegation supported in participation at a conference and study visit to Romania. Follow-up event conducted.
- First session of the Modern Management Training Program for the MOJ personnel conducted.

- Assemble resource materials to support members of the Public Council on Lustration and staff of the MOJ Department on Lustration.

**EXPECTED RESULT 5.4: PROMOTE PUBLIC AWARENESS AND CIVIL SOCIETY ENGAGEMENT IN THE PROCESS OF LUSTRATION AND VETTING OF PUBLIC OFFICIALS AND JUDGES TO BOLSTER PUBLIC TRUST AND CONFIDENCE**

**ACCOMPLISHMENTS:** FAIR continues to support civil society engagement in the lustration and vetting process. During this reporting period, FAIR supported ten CSOs in monitoring and raising public awareness of the lustration and vetting process; and two CSOs in monitoring and raising public awareness of the MOJ administrative services.

The CSOs that implement public awareness campaigns on lustration focused on organizing trainings for local activists, students, media and public servants, which aimed to explain how to monitor the lustration and vetting process and communicate to the Lustration Department at the MOJ the monitoring results. In addition, numerous thematic information materials were developed and distributed to the public at large.

The two CSOs that focused activity on the vetting and lustration process monitoring cooperated to develop and test the methodology of judge' performance evaluation by civil society organizations according the Law on the Judiciary and Status of Judges. The expert group, in consultation with the HQC and NSJ, developed the draft of the questionnaire. Students of law faculties, which volunteered for the project in the Sumy region, tested the questionnaire and provided recommendations for its improvement to the expert group.

In response to the CSOs' request, FAIR extended its grant activity to monitor the ISC. As the ISC accreditation expired and its decisions were handed over to the HCJ for consideration, the project focused on an analysis of the ISC decisions and on civic monitoring of the HCJ's consideration of the ISC decisions. The monitoring methodology and the questionnaire was developed and tested during the HCJ meetings. It is expected to receive the monitoring results in the next reporting period.

**Milestone Progress ER 5.4**

- Six civil society organizations supported in implementing public awareness campaign on lustration and vetting process.
- Four civil society organizations supported in implementing monitoring and overseeing of lustration and vetting process.
- One civil society organization supported in implementing monitoring of administrative services provided by the MOJ.
- One civil society organization supported in raising public awareness on administrative services provided by the MOJ.
- National survey on public opinion regarding democratic, economic, and judicial reforms, including implementation of the Law on Purification of Government analyzed and presented.
- Organization to implement judges opinion regarding the judicial reform in Ukraine, the restoration of Ukraine's citizens trust in the Judiciary, implementation of the Law of Ukraine "On the Restoration of Trust in the Judiciary", "On Purification of Government" and "On Fair Trial" selected.
- Surveys of court staff implemented and shared with judicial stakeholders.

On October 27, 2015, at the Justice and Civil Society Forum organised by FAIR, activists of the FAIR grantees organised the session “Civil Society Engagement in the Lustration and Vetting of Public Officials and Judges”. During the panel, they shared initial results of the monitoring and public



Lustration session at the Justice and Civil Society Forum on October 27, 2015 in Kyiv.

awareness activities, and provided recommendations on better cooperation between CSOs and justice sector. In addition, a former ISC member, representatives of CSO “Automaidan”, Reanimation Package Reform, and Anti-Corruption Action Center participated in the session to provide the lustration and vetting process with a broader perspective on the scope of understanding of CSO involvement in the process of purifying the government.

Midterm results show that CSOs supported by FAIR successfully shared experience, cooperated, and took the first steps in building a substitutable coalition of activists involved in

overseeing the process of purifying the government in Ukraine. FAIR will continue to support their activity in the next reporting period.

FAIR continues to support CSOs in monitoring and raising public awareness of administrative services provided by the MOJ to increase transparency in the administrative service processes and ensure further improvement of the MOJ service providing.

The CSO the Center for Ukrainian Reform Education (CURE), in consultation with the MOJ, designed a public awareness campaign on the MOJ administrative services, including electronic registries that provide online access to services limiting opportunities for corruption.

On October 6, 2015, the campaign was presented to the public at large with a press conference. Deputy Minister of Justice Gia Getsadze, Deputy Mission Director at USAID Regional Mission for Ukraine, Belarus, and Moldova John Panel, FAIR COP David Vaughn, and the President of CURE Iryna Movchan shared upcoming public awareness initiatives and plans for future cooperation with the media. Also, CURE produced a short video about the professional development training program for MOJ managers. The video was shared with FAIR partners and the public at large and can be found at: [https://www.youtube.com/watch?v=ET\\_arDmEsgw](https://www.youtube.com/watch?v=ET_arDmEsgw).

The CSO Center for Policy and Legal Reform (CPLR), in consultation with the MOJ, developed a methodology for the MOJ services monitoring. The monitoring was conducted in Odesa, Lviv, Kharkiv, Dnipropetrovsk regions, and in Kiev city. Monitors interviewed 4,510 clients of the MOJ administrative services to evaluate the quality and level of citizens' satisfaction with the services; developed and presented recommendations to the MOJ on its improvement. The results of the survey will be presented during the next reporting period.

FAIR's local experts, Oleksandr Serdyuk and Maryna Ogay, analyzed the results of the national survey on public opinion regarding lustration, political, economic, and judicial reforms. As a result of the analysis, they developed recommendations to CSOs and other stakeholders on how to plan and implement public awareness and monitoring campaigns on lustration with respect to public knowledge, expectations, and trust in government institutions and the judiciary.

FAIR continued its efforts to organize a national survey of judges' opinion on the judicial reform process in Ukraine. The survey included questions on respondents' opinions regarding the restoration of Ukraine's citizens trust in the Judiciary, the implementation of the Law of Ukraine "On the Restoration of Trust in the Judiciary", "On the Purification of Government" and "On Fair Trial". FAIR in consultation with local and international experts developed and presented the survey questionnaire at the COJ meeting. The COJ showed interest in the survey and expressed its opinion on the questionnaire's content and methodology. According to the COJ recommendations, FAIR improved the questionnaire, issued the RFP and selected the company that will implement the survey in the next reporting period pending final approval from the COJ.

Finally, during the quarterly reporting period, FAIR designed and implemented a survey for court staff on the improvement of court administration and on professional development (Linked to Expected Result 3.1). FAIR subcontractor, Kyiv International Institute of Sociology, interviewed 1,001 court staff representatives in 157 courts jurisdictions of all levels in 24 regions of Ukraine. Additionally, Kyiv

International Institute of Sociology interviewed 55 court staff graduates of the Judicial Administration Certificate Program implemented in 2013 and 2015 with the support of FAIR and in cooperation with the SJA, NSJ and Michigan State University. The main survey results were the following:

- The diving motivation for court staff to work in the courts is the possibility of professional development, and satisfaction with the results of their work.
- Court staff members are mostly satisfied with their working conditions, and other aspects such as: working place convenience and comfort, the quality of the equipment, stationery and Internet access. However, they are not satisfied with their salaries and benefits
- The majority of the respondents are satisfied with their relationships with colleagues and with the attitude of their leadership (Chief of Court Staff and Chief Judge).
- The majority of court staff representatives assess the work performance of Chief Judge and Chief of Court Staff very high
- Despite of the high extent of satisfaction regarding the working conditions, more than a half of respondents see problems in the court system. The main problems are the incentive/reward system, the disaggregation of duties among the employees, and the lack of opportunities for the professional development.
- Respondents also mentioned problems such as: no clear disaggregation of duties between Chief Judge and Chief of Court Staff, and double subordination of Chief Judge’s assistants.
- According to the respondents, the majority of court buildings are not adjusted to meet the needs of persons with disabilities.
- While addressing the question about the positive changes that should be done to improve the effectiveness of court staff work, almost all the respondents mentioned decent salary level, benefits, and better funding for courts. Despite the quite low salaries, court staff members expresses a desire to continue their work at the judiciary at their positions, or have great desire to make a career at a court instead of becoming a judge.
- The majority of respondents consider themselves as representatives of the juridical profession, rather than simply a court administrator. Among those who consider a court administrator as a representative of an established profession, most respondents agree that the position requires specialized higher education.
- The majority of court staff has a need to continue professional development. Most of the Chiefs of Court Staff and their Deputies are interested in obtaining training on the following topics: Human Resource Policy in a Court, Human Resource Management, Internal and External Communications, Finance and Budget, and Resources and Strategic Planning. The rest of the court staff are interested in increasing their knowledge in Social Psychology, Personal Development, Team Building and Business Writing in Ukrainian.

**Performance Indicators ER 5.4**

- Number of project-supported public events on lustration and vetting involving CSO activists is one in this reporting period and it refers to CSO-organized session “Civil Society Engagement in the Lustration and Vetting of Public Officials and Judges” at Justice and Civil Society Forum.
- Number of CSOs participating in and contributing to the process of lustration and vetting is 10 this quarter.
- The indicator “Percent of Ukrainian citizens who are confident that lustration and vetting are properly implemented and lead to purification of government” remains 17% as in the end of FY2015.

FAIR has shared the survey results with courts, the SJA and the NSJ. Also, FAIR will present the survey findings during future events and will use it for design and implementation of the new trainings and professional development programs for court staff.

**PLANS:** During the next reporting period, FAIR is planning the following activities to achieve Expected Result 5.4:

- Support ten CSOs in implementing activities related to monitoring the public awareness about lustration and vetting processes;
- Support two CSOs in monitoring and raising public awareness of services provided by the MOJ; and
- Conduct a national survey of judges' opinions regarding judicial reform in Ukraine, the restoration of Ukraine's citizens trust in the Judiciary, implementation of the Law of Ukraine "On the Restoration of Trust in the Judiciary", "On the Purification of Government" and "On Fair Trial".

## **DONOR COORDINATION**

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

- On October 7, 2015, Frank Van Luijk, Director of the Consulting Company "LTP Business Psychologists" (the Netherlands), shared the experience of the Netherlands in standardizing procedures for judicial selection, including psychological testing of judicial candidates; and Ondrej Vosatka, Coordination and Cooperation Officer of the European Union Advisory Mission (EUAM), and Robert Boer, Head of the Administration of Justice Advisory Unit of the EUAM, introduced the participants to the EUAM law enforcement donor coordination initiative.
- On November 4, 2015, Igor Benedysiuk, HCJ Chair, provided an update on the first results of the new HCJ composition and shared his views regarding issues and priorities facing the HCJ.
- On December 2, 2015, Olga Bulka, Deputy Chair of the SJA, provided rule of law donors with an update on the results and priorities for the SJA.

In addition, FAIR representatives participated in the meeting on International Parliamentary Technical Assistance Coordination conducted by the USAID RADA Program in November 2015.

## **DELIVERABLES**

FAIR submitted the following deliverable this reporting period:

- Expert Analysis of the HQC Rules of Procedure (Ukr.);
- Concept of Optimizing the Infrastructure of Providing Support to the Judiciary and Implementing Procedural Tools of Electronic Justice (Ukr. and Eng.);
- Analytical Report on Results of the Survey of Court Staff (Ukr.);
- Final Report on the 2015 Judicial Administration Certificate Program (Eng.);

- Analysis of the Monitoring Results on Access to Courts and Court Services by Persons with Disabilities (Ukr. and Eng.);
- Analysis of the Practice of Custodial Measures Enforcement During the “Revolution of Dignity” Events (Ukr. and Eng.);
- Report on International Best Practices and Lessons Learned on the Preferred Approaches and Practical Usage of Regular Evaluations Provided by the New Law on the Judiciary and the Status of Judges (Ukr.);
- Review of the Draft Procedure and Methodology of Regular-evaluation and Self-evaluation of a Judge and the Surveys for Regular Evaluations (Ukr.);
- Training materials prepared by the Ernst and Young Academy of Business for the professional development training program of the MOJ managers - Session 1(Ukr.) and Session 2 (Ukr.);
- Brochure prepared by the Ukrainian Coalition for Legal Aid “Civilized Lustration” (Ukr.);
- Radio ad prepared by the Center for Ukrainian Reforms Education about the MOJ services (Ukr.);
- Video prepared by the Center for Ukrainian Reforms Education about the MOJ professional development training program (Ukr. and Ukr. with Eng. subtitles); and
- Analytical Report “National Survey on Public Opinion Regarding Democratic, Economic and Judicial Reforms, Including Implementation of the Law on Purification of Government” (Ukr. and Eng.)

## LOE UTILIZATION

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## ANNEX A: PERFORMANCE MANAGEMENT AND EVALUATION SUMMARY

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
<b>Program Goal: Support legislative, regulatory and institutional reform of judicial institutions in order to build a foundation for a more accountable and independent judiciary</b>								
1. Number of legal institutions and associations supported by USG	Dec 2014	38 <sup>1</sup>	37	24	25	42	45	This quarter FAIR supported 9 governmental judicial institutions and 16 non-governmental legal associations this quarter.
<b>Objective 1: The constitutional, legislative and regulatory framework for judicial reform complies with European and international norms and supports judicial accountability and independence</b>								
<b>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</b>								
2. Number of laws, regulations and procedures designed to enhance judicial independence supported with USG assistance (FAF)	Dec 2014	17 <sup>2</sup>	3 (4) <sup>3</sup>	3	0 (4)	19 (19) <sup>4</sup>	25	In this reporting period FAIR supported the implementation of previously adopted the Law on the Right to Fair Trial, the Law on Restoration Public Trust in the Judiciary, the Law on Purification of Government and the Justice Sector Reform Strategy.
3. Number of revised provisions enacted that reflect Venice Commission recommendations	Dec 2014	6	24	10	0	30	36	No changes this reporting period. The status of the indicator is the same as in the end of FY2015.

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

<sup>2</sup> Total since 2006, includes 8 under the UROL Project and 9 under the FAIR Project

<sup>3</sup> The first number – 3 – is the number of adopted laws, regulations and procedures. The second number (in parentheses) is the number of implemented laws regulations and procedures and includes units from the previous reporting period.

<sup>4</sup> Total since 2006, includes 8 under the UROL Project and 11 under the FAIR Project

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
4. Percentage of Venice Commission recommendations adopted	Dec 2014	12% <sup>5</sup>	51%	21%	0%	64%%	77%	No changes this reporting period. The status of the indicator is the same as in the end of FY2015. Out of 47 Venice Commission recommendations to the legislation related to the judiciary, Ukrainian law makers adopted 24 in this reporting period which represents 51% of total. Note that 14 of them addressed in full and 10 of them addressed partially.
<b>Expected Result 1.2: Constitutional reform related to the judiciary is pursued in an inclusive manner</b>								
5. Number of USG-supported public sessions held regarding proposed changes to the country's legal framework.	Dec 2014	6	5	3	3	8	11	This quarter FAIR supported three regional discussions on Proposed Amendments to the Constitution in Kharkiv, Odesa and L'viv.
6. Number of revised provisions in the Constitution enacted that reflect inputs from project-supported public discussions	Dec 2014	0	0	7	0	6	7	Activity is in progress, proposed Constitutional amendments formulated and approved by the Constitutional Court and Judicial leadership. Draft Law is in the Parliament.
<b>Objective 2: The accountability and transparency of key judicial institutions and operations are strengthened</b>								

<sup>5</sup> 12% baseline refers to 6 Venice Commission recommendations addressed by changes in laws dated 2013-2014 in ratio to total 47 recommendations provided

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
7. Number of new properties and functions surrounding judicial selection and discipline introduced to HQC management system with project support	Dec 2014	1	0	3 <sup>6</sup>	0	1	10	No changes since the previous reporting period. Activity is in the process including automating judicial exam, judicial performance evaluation and internal business processing.
<b>Expected Result 2.1: Ukrainian judges are appointed based on objective, knowledge- and performance-based criteria</b>								
8. Number of merit-based criteria or procedures for justice sector personnel selection adopted with USG assistance	Dec 2014	17	1	0	2	20	25	This quarter HQC approved FAIR-supported Regulations (1) on Procedure and Methodology for Judicial Performance Evaluation and (2) on the Procedure of Exam Taking and Methodology of its Assessment during Judicial Performance Evaluation
9. Number of Ukrainian judges appointed through project-supported objective, merit-based judicial selection process	Dec 2014	942	0	50	0	942	1042	No new judges appointed this quarter.
<b>Expected Result 2.2: Ukrainian judges are disciplined in transparent processes</b>								

<sup>6</sup> FY2016 target revised based on the FY2015 results

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
10. Number of criteria, standards and regulations adopted to govern judicial misconduct investigations	Dec 2014	1	0	7 <sup>7</sup>	0	1	8	No changes this quarter. Developing standards for conducting preliminary screening of complaints and investigation of judicial misconduct, amending the regulations governing judicial misconduct investigation and developing standards and criteria for selection, training, and performance evaluation of disciplinary inspector candidates are in the process.
11. Percent of judicial misconduct complaints submitted to the HQC using the standardized form	Dec 2014	11%	29%	20%	35%	14.5 <sup>8</sup> %	20%	For the period from October 1'16 to December 31'16 HQC received 2,914 judicial misconduct complaints, out of them 35% are on standardized form.
12. Percent of judicial discipline decisions posted on HQC website	Dec 2014	79,5%	0%	100%	0%	55%	100%	HQC stopped publishing judicial discipline decision on its website due to management issues. FAIR is working with the HQC to enable this we-site function.
<b>Expected Result 2.3: The regulatory and institutional framework for judicial accountability and integrity is strengthened</b>								
13. Number of judicial self-governance mechanisms revised with project support	Dec 2014	5	1	3	0	5	8	No changes since the last quarter. FAIR is working on the Commentaries to the Code of Judicial Ethics and improving Internal Decision-Making Regulations for the High Council of Justice.
<b>Objective 3: The professionalism and effectiveness of the Ukrainian judiciary are strengthened</b>								

<sup>7</sup> FY2015 target revised based on FY2014 actual indicator status

<sup>8</sup> Cumulative LOP data as of December 31, 2015

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
14. Number of USG-assisted courts with improved case management (FAF)	Dec 2014	62	66	60	43	63	80	No changes this quarter. The indicator status remains the same as previous quarter. Improved case management in 42 courts where FAIR supported the establishing of information kiosks with pay terminal capacity to receive court fees and two pilot paperless e-courts. However, we are in the process of monitoring the impact of Court Performance Evaluation System on case management and expect significant increase of this indicator next quarter.
<b>Expected Result 3.1: The skills and competencies of Ukrainian judges and court staff are bolstered through modern, demand-driven training programs</b>								
15. Number of judges and judicial personnel trained with USG assistance (FAF)	Dec 2014	4,331 <sup>9</sup>	695 48.5% men and 51.5% women	300	479 (43% men and 57% women)	2,108 <sup>10</sup> (44% men and 56% women)	4,700 <sup>11</sup>	This quarter FAIR trained 479 justice sector personnel (206 men and 273 women) in topics of Communications, Judicial Ethics, Elections Law, Test Items development. This number includes 298 judges (142 men and 156 women).
16. Percent of judges and judicial personnel trained with USG assistance reporting application of skills and knowledge gained in their judicial practices or teaching activities.	Dec 2014	78%	80.3%	88%	N/A	78%	85%	This quarter data is not available because the next post-training survey of FAIR training participants is scheduled for February-March 2016.

<sup>9</sup> Total since 2006 under the USAID Ukraine Rule of Law Project (2,946) and the USAID FAIR Justice Project (1,630), double counting excluded

<sup>10</sup> Cumulative LOP number refers only to the USAID FAIR Justice Project from October 2011 to September 2014

<sup>11</sup> Taking into account that this is FAF indicator, the cumulative project end target includes the USAID Ukraine Rule of Law Project and the USAID FAIR Justice Project

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
17. Number of new legal courses or curricula developed with USG assistance	Dec 2014	19 <sup>12</sup>	2	1	0	21	22	No changes this quarter. The status of indicator remains the same as the end of FY2015
<b>Expected Result 3.2: Judicial operations are evaluated and funded according to an objective assessment of needs and performance</b>								
18. Number of court performance standards adopted	Dec 2014	0	4	3	0	4	7	In 2015 the COJ approved FAIR-developed Court Performance Evaluation System, and based on the system approved the following court performance standards: 1) Number of cases where overall consideration timeline exceeds one year (backlog): close to zero; 2) Clearance Rate: 96-102%; 3) Conducting user satisfaction survey in courts every three years; 4) Publishing user satisfaction survey results on court website. No changes this quarter since the end of FY2015.
19. Number of court performance indicators implemented	Dec 2014	17	21	31	21	21	31	During this reporting period, FAIR monitored the implementation of performance indicators by Ukrainian courts. One of the findings of this monitoring is that 143 courts implement basic (mandatory) performance indicators including clearance rate, average caseload, backlog, average duration of proceedings and others. See sample at <a href="http://yg.ko.court.gov.ua/sud1028/pokaznik/">http://yg.ko.court.gov.ua/sud1028/pokaznik/</a>

<sup>12</sup> Total since 2006 under the USAID Ukraine Rule of Law Project (8) and the USAID FAIR Justice Project (11)

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
20. Number of courts implementing project-supported performance measurement system	Dec 2014	64	218	350 <sup>13</sup>	352	383	400 <sup>14</sup>	In this reporting period, we count the basic court performance indicator implementation in 143 courts, external court performance evaluation through citizen report cards (CRC) in 281 courts of Ivano-Frankivsk, L'viv, Odesa, Sumy, Kharkiv, Khmelnytsky, Cherkasy, Chernivtsi, Chernihiv, Volyn, Ternopil Oblasts. Courts overlap, the single-counted number is 352 for this quarter.
21. Average annual citizen report cards score of participating courts	Dec 2014	.80 (out of maximum score of 1)	.83	.82	.81	.81	.82	These quarter indicator data represents 183 courts where FAIR supported the implementation of CRC surveys in FY2015. FAIR finished data collection and processing for these courts. The cumulative LOP data also includes 15 courts from FY2014. Those courts that started CRC surveys in FY2016 are not included in this indicator since their data is not yet available.
<b>Expected Result 3.3: The SJA's capacity to represent and support the developing needs of Ukrainian judiciary is strengthened</b>								
22. Number of data-fed analytical techniques incorporated into judicial budgeting	Dec 2014	1	0	3 <sup>15</sup>	0	1	4	No changes this reporting period after the case waiting studies for general first instance courts completed and approved by the COJ, however this technique has not yet incorporated in the process of judicial budgeting.

<sup>13</sup> 2016 target revised based on 2015 actual data

<sup>14</sup> Cumulative Project End target revised in FY2016 due to success of external court performance evaluation programs (CRC).

<sup>15</sup> 2016 target revised based on 2015 actual data

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
23. 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 <sup>16</sup>	1	4 <sup>17</sup>	0	3	7	No changes this reporting period.
<b>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</b>								
24. Number of communication strategies implemented by courts and judicial institutions	Dec 2014	4	2	3	0	4	9	No changes this reporting period.
25. Number of courts offering legal education materials to court visitors	Dec 2014	42	43	60	43	43	60	This quarter data counts 42 courts where FAIR provided information and pay terminals and two pilot paperless e-courts. One court overlap between two activities, thus the single-counter number is 43.
<b>Objective 4:</b>								
<b>Expected Result 4.1: Civil society and the Ukrainian public are engaged in the judicial reform process</b>								

<sup>16</sup> Baseline counts Strategic Plan for the Judiciary (approved in 2012) and Court Automation Strategy (approved in 2013)

<sup>17</sup> 2016 target revised based on 2015 actual data

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
26. Number of CSO-produced policy proposals related to pending judicial reform legislation	Dec 2014	2	2	0	0	3	3	No changes since the previous reporting period. Cumulative data refers to the following FAIR-supported CSO policy : Institute of Republic proposal to judicial reform legislation, Ukrainian Legal Aid Foundation proposal related to the secondary legal aid in Ukraine and CSO Reform Package following the 2014 Revolution of Dignity.
<b>Expected Result 4.1: Civil society and the Ukrainian public are engaged in the judicial reform process</b>								
27. Number and percentage of courts in which there are active CSO court performance evaluation programs	Dec 2014	47 (6%)	197 (26%)	85 (11%)	<b>110 (14%)</b>	<b>313 (41%)</b>	120 (16%)	This quarter data includes 110 courts in Ternopil, Khmenlnytskiy, Chernihiv, Volyn and Kherson oblasts. In addition FAIR CSO partners completed the analysis of 2015 CRC surveys in 183 courts of L'viv, Chernivtsi, Kharkiv, Sumy, Ivano-Frankivsk, Cherkassy and Odessa Oblasts. Cumulative LOP data includes CRC surveys of 2012, 2013, 2014, 2015 and 2016.
28. Number of people engaged in the monitoring and performance oversight of Ukrainian courts	Dec 2014	7,173	12,793	8,500	<b>3,140</b>	<b>20,816<sup>18</sup></b>	12,000	This quarter CRC surveys take place in 110 courts (see above), but data collection has not yet been completed. This quarter data of 3,140 citizens is undercounted in FY2015 and is referred to 43 courts out of 183 courts where FAIR CSO partners completed CRC surveys in FY2015, but in the previous report, the data was not yet available.

<sup>18</sup> 21,916 includes citizen report cards (CRC) surveys conducted in 2012 (34 courts), 2013 (17 courts), 2014 (15 courts) and 2015 (183 courts).

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
29. Percentage of partner Civil Society Organizations' performance improvement recommendations implemented by judicial institutions	Dec 2014	39%	N/A	55%	N/A	39%	50%	Data not available this quarter. Analysis of CSO recommendations implementation is still in the process.
<b>Objective 5: The Lustration and Vetting of Public Officials and Judges Implemented Fairly, Transparently and Effectively and in Compliance with International and European Standards</b>								
30. Number of USG-Supported anti-corruption measures implemented (CCF Indicator)	Dec 2014	0	1	1	0	1	1	Indicator status does not change since FY2015. Cumulative LOP data refers to public officials financial disclosure.
<b>Expected Result 5.1: The Law on the Purification of Government and Relative Legislative Framework Improved</b>								
31. Percent of public officials and judges screened through vetting procedure in accordance with the Law on Purification of Government	July 2015	11.9% / 0.2% <sup>19</sup>	24.6% / 0.2% <sup>20</sup>	N/A	10.7% / 0.03%	35.3% / 0.23%	N/A	As of January 18, 2016 Ministry of Justice Department for Lustration screened through vetting procedures 134,224 officials and judges which is 35.3% of public officials and judges applicable for vetting according to the Law on Purification of Government.

<sup>19</sup> Baseline percentage corrected October 20, 2015. Denominator used is 380,257, based on 2015 annual data from the Ukrainian State Statistics Service [www.ukrstat.gov.ua](http://www.ukrstat.gov.ua)

<sup>20</sup> Indicator figure is 24.6%, the second figure (in parentheses) is dismissed public officials as the result of screening.

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
32. Percent of judges screened for corruption and participation in politicized justice in accordance with the Law on Restoration Trust in the Judiciary	July 2015	3.5%	3.5%	N/A	0%	3.5%	N/A	Interim Special Commission of the High Council of Justice has expired mandate since July 2015, thus no judges were screened for corruption and participation in politicized justice since that period of time. Cumulative LOP data refers to 331 judges screened as of July 2015.
33. Number of recommendations to improve the Law on the Purification of Government and relative legislative framework formulated	Dec 2014	0	42	N/A	0	42	10	No changes since the previous quarter. The indicator status refers to 20 recommendations to improve the Law on Purification of Government, 15 recommendations to improve the Law on Restoration Public Trust in the Judiciary and 7 recommendations to improve regulations on lustration and vetting.
34. Per cent of recommendations formulated that are passed into law or adopted as regulations	Dec 2014	0	0%	N/A	0	0	70%	Developed recommendations are currently under the consideration.
<b>Expected Result 5.2: Institutions, Procedures and Registry for the Lustration and Vetting of Public Officials and Judges Strengthened</b>								
35. Number of institutions that implement vetting and lustration of public officials and judges supported by the project	Dec 2014	0	3	3	2	3	3	This quarter data refers to the Ministry of Justice Lustration Department for Lustration and High Qualifications Commission of Judges of Ukraine.

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
36. Number of judicial performance indicators to evaluate sitting judges in Ukraine developed with project support	Dec 2014	0	0	10	10	10	10	The following judicial performance indicators became part of FAIR-supported Regulations on Judicial Dossier: total number of considered cases, total number of cancelled decisions, availability and number of decisions that led to Ukraine's violation of international laws, number of changed decisions, timeliness of court proceedings, average duration of preparation of decisions, judicial caseload, number of judicial misconduct complaints, availability of disciplinary cases, financial disclosure.
37. Number of recommendations to improve the Unified Registry of Vetted Persons functioning formulated with project support and adopted as regulations	Dec 2014	0	0	N/A	0	0	7	No changes this quarter. Registry assessment and developing recommendations is in progress.
38. Number of procedures for lustration and vetting of public officials developed with Project support	Dec 2014	0	0	3 <sup>21</sup>	2	2	3	FAIR supported development and adoption of the Procedure and Methodology of the Judicial Performance Evaluation and Regulation for Examination of the Sitting Judges.
<b>Expected Result 5.3: Improved Knowledge, Skills and Abilities of Key Stakeholders and Personnel to Conduct the Lustration and Vetting of Public Officials and Judges Professionally, Fairly and Transparently</b>								

<sup>21</sup> 2016 target revised based on 2015 results

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
39. Number of training days provided to executive branch personnel with USG assistance	Dec 2014	0	13	12	3	16	50	In this reporting period, we count Effective Communication and Strategy Implementation trainings which are part of the larger FAIR-supported Organizational Development and Capacity Building Training for the Ministry of Justice of Ukraine.
40. Number of training programs on implementation the lustration and vetting processes in compliance with international and European standards developed with project support	Dec 2014	0	4	0	0	4	4	No changes in this reporting period. Cumulative Project End data counts Organizational Development Training for the Ministry of Justice of Ukraine, study tour to Poland on lustration best practices and lessons learned, the study tour to the Czech Republic on lustration approaches, and training on gender issues for the Ukrainian government.
41. Number of people trained with newly developed programs on implementation the lustration and vetting processes in compliance with international and European standards	Dec 2014	0	145 (51.7% women, 48.3% men)	70	66 (38% women, 42% men)	154 (49% women, 51% men)	100	In this reporting period, FAIR trained 66 representatives of the Ministry of Justice in Effective Communication and Strategy Implementation.

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
42. Per cent of people trained who report improved knowledge and skills to proceed with lustration and vetting public officials in compliance with international and European standards	Dec 2014	0	97%	90% <sup>22</sup>	100%	99%	80%	According to post training evaluations all participants of Organizational Development Training for the Ministry of Justice increased their knowledge and skills to proceed with administrative services including vetting of public officials.
<b>Expected Result 5.4: Promote Public Awareness and Civil Society Engagement in the Process of Lustration and Vetting of Public Officials and Judges to Bolster Public Trust and Confidence</b>								
43. Number of project-supported public events on lustration and vetting process involving civil society activists	Dec 2014	0	0	26 <sup>23</sup>	1	1	26	This quarter data refers to the Justice and Civil Society Forum, particularly CSO-organized session “Civil Society Engagement in the Lustration and Vetting of Public Officials and Judges” attended by civil activists and representatives of the Government of Ukraine.
44. Number of civil society organizations participating in and contributing to the process of lustration and vetting of public officials	Dec 2014	0	10	5	10	10	9	FAIR supported ten CSOs in monitoring and public awareness activities regarding lustration and vetting process.

<sup>22</sup> 2016 target revised based on 2015 result

<sup>23</sup> 2016 target revised based on 2015 results

PERFORMANCE INDICATORS	Baseline	Value	Actual 2015	Target 2016	Actual 2016		Target Cumulative Project End	Notes and explanations
	Month/Year				This quarter / annual 2016	Cumulative LOP		
45. Per cent of Ukrainian citizens who are confident that the lustration and vetting processes are properly implemented and lead to purification of government	Dec 2014	0	17%	Increase <sup>24</sup>	N/A	17%	Increase	No changes in this reporting period. The related activity is scheduled for May-June 2016.

<sup>24</sup> Since this indicator data is coming from the national public survey, no numerical target set for this indicator. FAIR sets only qualitative target.