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FAIR JUSTICE PROJECT

March 1 to 28, 2016

Newsletter

Legislative and Other Rule of Law News

Draft Law on Amending the Law on the Judiciary and Status of Judges Registered in Parliament

On March 4, 2016, the draft law On Amending Some Legislative Acts of Ukraine regarding the Improvement of Some Legislative Provisions on the Judiciary and Status of Judges (No. 4180) was registered in the Verkhovna Rada. The authors of the draft law are MP Serhii Aliekseyev (Petro Poroshenko Block), MP Oksana Syroyid (Samopomich), MP Ivan Krulko (Batkivshchyna), and MP Leonid Yemets (People's Front). The draft law proposes to amend the Law on the Judiciary and Status of Judges as well as the Code on Administrative Adjudication, Civil Procedural Code, Administrative Offence Code, Criminal Procedure Code, Law on High Council of Justice, and Law on State Service to: (1) improve procedures for judicial qualifications evaluation; (2) introduce new procedures for first judicial appointment; (3) improve life-time appointment procedure; (4) introduce additional mechanisms to ensure the integrity and transparency of the judiciary; and (5) introduce procedures for "renewal" of the judicial corps. FAIR experts positively evaluated the draft law as it sets out clearer procedures for appointment and qualifications evaluation of judges, such as improvement of the judicial dossier content, and establishes improved ways to promote judicial professionalism and integrity, including introduction of a declaration of integrity, declaration of kinship, and monitoring of the judges lifestyle. Draft law is available [here](#).

Constitutional Court Reviews Procedures for Amending the Constitution

On March 18, 2016, the Constitutional Court of Ukraine (CCU) publicly announced its decision of what is meant by "the following session of the Verkhovna Rada" in Article 155 of the Constitution which requires constitutional amendments be considered during two separate sessions in order to be formally adopted. The CCU concluded that "the following regular sessions" of the Parliament is "the regular session that is scheduled in accordance with the requirements" of the Constitution and Rules of Procedure of the Parliament. According to the CCU, the draft law on amending the Constitution, which was preliminarily approved by the Rada in the first reading on February 2, 2016, can be adopted at any following session in contrary to the next immediate session, as was interpreted previously. Additionally the CCU confirmed the right of the Parliament to change its Rules of Procedure in accordance with the new interpretation of the Constitutional provision. [Read more here.](#)

High Qualifications Commission of Judges Continues Qualifications Evaluation of Judges

In March 2016, the High Qualifications Commission of Judges (HQC) continued the process of initial qualifications evaluation of judges who have submitted applications for lifetime appointment. On March 1, 2 and 3, 2016, 55 judges divided into three groups completed an anonymous written test, prepared a case study and discussed the results with members of HQC Qualifications Chamber. Later on March 9 and 10 and March 15 to 18, the HQC Qualifications Chamber conducted interviews with judges from the same groups on the results of a review of their judicial dossiers. As of March 22, 2016, the HQC decided that 46 judges proved their ability to administer justice and 9 judges were suspended from the bench and sent to the National School of Judges to undertake additional training that will be followed by a repeated qualifications evaluation. The HQC postponed rendering decisions on 10 judges due to the need for additional review of their dossiers. By the end of March 2016, the HQC plans to complete the initial qualifications evaluation of all 100 judges who submitted applications for lifetime appointment. The USAID FAIR Justice Project (FAIR) provided technical assistance to the HQC to support the video and audio recording and broadcasting of the initial qualification evaluation process.

Constitutional Court Continues Consideration of the Law on the Purification of Government

On March 22, 2016, the Constitutional Court of Ukraine (CCU) resumed its hearing on the Law on Purification of Government initiated by two submissions of the Supreme Court of Ukraine (SCU) and submission of 47 members of Parliament regarding the unconstitutionality of certain provisions of the law. The hearing started with consideration of a petition on the recusal of seven justices of the CCU submitted by MP Egor Sobolev (Ob'ednannya "Samopomich"). This petition argued that these seven justices have conflict of interests and should be lustrated themselves for supporting ex-President Yanukovich "regime" by granting him broader authority. The CCU rejected this argument due to what it decided were "improper grounds for recusal". MP Sobolev, MP Leonid Yemets and Ministry of Justice (MOJ) Lustration Department Chair Tetiana Kozachenko immediately left the courtroom after the decision on the petition was announced. The CCU later in a closed session considered holding them in contempt of court for leaving the court without permission. As the open hearing continued, representative of the Presidential Administration Rostyslav Meheenko stated that generally President Poroshenko supports the law, but recognizes that it needs be improved. Vadym Demchenko of the High Administrative Court argued that the law violated judicial independence by imposing disciplinary liability on judges for their legal opinions in rendered court decisions. In addition, Mr. Demchenko also argued that the scope of authority of the MOJ Lustration Department was unconstitutional. Judge Bogdan Monich of the Council of Judges (COJ) highlighted the COJ's interest in "purifying" the judiciary. He nevertheless insisted that the law violated the rule of law as it is not based on individual responsibility but collective justice and does not guarantee the presumption of innocence. Arkadiy Bushchenko of the Ukrainian Helsinki Union on Human Rights insisted that the rights of public servants should be strictly separated from human rights which are not breached by the law. A number of other experts testified that the constitutionality of the law should be based on the Constitution and not Venice Commission recommendations which are not binding on Ukraine. Finally, former CCU Justice Ivan Dombrovskiy highly criticized the quality of all three constitutional submissions for their poor quality of legal arguments. As the CCU concluded this open hearing, the court indicated the date and time for issuing its final opinion will be announced separately. [Read more here.](#)

FAIR Updates

Dr. Pim Albers Delivered Sixth Rule of Law Lecture at Ukrainian Catholic University



On March 2, 2016, the USAID FAIR Justice Project (FAIR) jointly with the Ukrainian Catholic University (UCU) Rule of Law Center in Lviv conducted the sixth rule of law lecture. FAIR Expert Dr. Pim Albers of the Netherlands delivered a lecture on the "Rule of Law and Reforming the Judiciary: Should This Be Based on International Standards or Is an 'A la Carte Solution' Required?" The purpose of this event was to raise public awareness about contemporary developments in ensuring the rule of law through best practices in judicial reform. It also helped to strengthen the understanding of the rule of law among the over 60 Ukrainian law students, academics, legal practitioners, and public officials who participated. The lectures, which were broadcast live online, attracted over 100 unique viewers. The rule of law lecture series promotes quality legal education and contributes to efforts to advance legal and judicial reform in Ukraine in line with international and European standards. Dr. Alber's presentation is available [here](#) and complete lecture at <https://www.youtube.com/watch?v=rytyiRDvljw>.

Judges and Court Staff of Kyiv Region Trained on Improving Access to Justice for Persons with Disabilities

On March 3, 2016, USAID FAIR Justice Project (FAIR) grantee Law and Democracy Foundation in cooperation with National School of Judges (NSJ) continued its series of regional training programs on improving access to courts and court services for persons with disabilities for judges and court staff of the Kyiv region and representatives of the State Judicial Administration. This innovative series of programs is based on a new curriculum developed by the Law and Democracy Foundation.

High Qualifications Commission of Judges and National School of Judges Review Challenges and Learn International Best Practices Related to Regular Judicial Performance Evaluation

On March 4, 2016, the USAID FAIR Justice Project (FAIR) jointly with European Union (EU) Project “Support to Justice Sector Reforms in Ukraine”, Council of Europe (COE) Project “Support to the Implementation of the Judicial Reform in Ukraine” and COE and EU Joint Project “Consolidation of Justice Sector Policy Development in Ukraine” supported the High Qualifications Commission of Judges (HQC) and National School of Judges (NSJ) in conducting a roundtable on regular judicial performance evaluation in Ukraine.

Participants discussed how to best develop and implement four types of regular evaluation of judges as required by the Law on the Judiciary and the Status of Judges, specifically evaluation (1) by the NSJ trainers based on the results of judicial training; (2) by other judges of the relevant court (peer evaluation); (3) by a judge him/herself (self-evaluation); and (4) an independent evaluation of a judge’s performance during public court sessions by NGOs. Representatives of the HQC, NSJ, Council of Judges, State Judicial Administration, and NGOs participated in the event. In addition to Ukrainian experts, the roundtable included European experts from Austria, the Netherlands, Lithuania and Belgium. Speakers universally stressed the importance of judicial performance evaluation not only for judges themselves, but also for society as a whole. The discussion also focused on the importance of developing and implementing a system of regular judicial performance evaluation in Ukraine in compliance with European standards, in particular considering the objective for such evaluation – helping individual judges identify areas for improvement, highlight strengths and weaknesses, encourage further professional development. Participants also highlighted that regular judicial performance evaluation should be transparent and objective and not as a tool to punish judges. The HQC will further develop draft regulations regarding regular judicial performance evaluation based on recommendations from the roundtable.



FAIR Expert Pim Albers (second from the right) during the roundtable on “Regular Judicial Performance Evaluation of Judges in Ukraine: Key Aspects of Implementing the Law on the Judiciary and Status of Judges” on March 4, 2016 in Kyiv.

Ukrainian Judges Learn European Experience in Promoting Judicial Independence and Accountability

From March 6 to 13, 2016, a ten member Ukrainian delegation that included representatives of the High Council of Justice (HCJ), High Qualifications Commission of Judges (HQC) and Council of Judges (COJ) visited Belgium and the Netherlands as part of the USAID Participant Training Program with support from the USAID FAIR Justice Project (FAIR). The visit focused on ways to promote better understanding of judicial independence and accountability through European standards and best practices. Participants visited the office of the European Network of Councils for the Judiciary, High Council of Judiciary of Belgium, Belgian College of Courts and Tribunals, Belgian Judicial Training Institute, Brussels Court of First Instance and Dutch Council for the Judiciary. As a result of the training, participants drafted an action plan to be implemented within the next six months to strengthen judicial independence and enable judges and judicial personnel to respond more effectively to public demand for greater judicial accountability. Activities



Judge Tetyana Chumachenko, COJ Member, receives certificate of participation at the USAIDPTP “Judicial Independence and Accountability – Two Inseparable Parts of Democratic Development” on March 11, 2016 in The Hague.

identified in the action plan include drafting amendments to the Law on the Judiciary and Status of Judges regarding judicial selection, as well as implementing the measures to enhance judicial ethics and to increase accountability and transparency of the judiciary.

First Ever Monitoring of Court Decisions Based on Gender Discrimination Presented in Lviv

On March 10, 2016, the USAID FAIR Justice Project (FAIR) grantee Women's Perspective Center (WPC) conducted a roundtable to present its findings of a review of court decisions based on gender equality and non-discrimination. WPC noted that despite the fact that Ukraine has undertaken international, constitutional and legislative obligations to protect women's rights and ensure equality between men and women, there are few discrimination cases in courts which may reflect obstacles that women face when defending their rights in courts. For example, from 2006 to 2015, judges referred to the Law on Equal Rights and Opportunities for Women and Men in 131 cases and only 31 cases are about the protection against gender discrimination. The level of application of international documents is also very low, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and European Court of Human Rights decisions are very rarely cited in judgements. After discussing the results of the monitoring program, judges, lawyers, and civil society representatives alike agreed that judges need more training on the application of legislation regarding gender rights and equality. On March 11, 2016, WPC with the Lviv Regional Department of the National School of Judges conducted such a training program for judges from western Ukraine. [Watch the video from a press conference that preceded the roundtable here.](#)



Left to right: David Vaughn, FAIR COP; Halyna Fedkovych, Lawyer, CSO Women's Perspective Center; Oksana Polna, Director, NSJ Lviv Department during the press conference on March 10, 2016 in Lviv.

FAIR Supports USAID University Day at Donetsk National University



DNU Law Department students participating in the FAIR's interactive session during the USAID University Day on March 14, 2016 in Vinnytsia.

On March 14, 2016, the USAID FAIR Justice Project (FAIR) participated in the USAID University Day at Donetsk National University (DNU) which is currently relocated in Vinnytsia. FAIR delivered presentations that focused on judicial and constitutional reforms and improving the quality of legal education to meet job market demands. FAIR disseminated public awareness materials, including brochures, leaflets and videos on the judiciary and judicial reform. Over 40 law students participated in FAIR's interactive session during the event. [Watch the video from the event here.](#)

FAIR Contributes to Forum of the UN Commission on the Status of Women

From March 14 to 18, 2016, USAID FAIR Justice Project (FAIR) representatives participated in the NGO Forum conducted in New York as part of the 60th Session United Nations (UN) Commission on the Status of Women entitled "Women's Empowerment and the Link to Sustainable Development". Since January 1, 2016, a new set of 17 Global Sustainable Development Goals came into force with the fifth goal being gender equality.

Under this goal over the next fifteen years countries will try to eliminate all forms of discrimination and violence against women and girls, including through education of men and boys. During sessions, participants highlighted that justice is the foundation for gender equality and women's empowerment. FAIR representatives contributed to sessions on “Women, Peace, Security and Sustainable Development” on March 17, 2016 and “Ensuring the Sustainable Development Goals for Women Displaced by Conflict in Ukraine, Georgia and Armenia” on March 18, 2016 initiated by the World Federation of Ukrainian Women's Organizations (WUWFO) and Permanent Mission of Ukraine to the United Nations. They presented the situation in Ukraine regarding women's access to justice and the results of the monitoring of court decisions based on the application of gender discrimination legislation. Participants from UN member countries called states, international organizations and civil society to increase women's access to justice from the local to national levels, especially during conflict and post-conflict periods, to protect women - internally displaced persons (IDPs) and increase gender awareness of justice authorities. [Read the draft conclusions of the 60th Session of the UN Commission on the Status of Women here.](#)

Civil Society Monitoring of the Quality of MOJ Services Presented in Kyiv

Nearly 85% of users of Ministry of Justice (MOJ) administrative services were generally satisfied with their quality. However, only one third or 30% of respondents were fully satisfied with the registration of real estate due to long queues and unexpected demands for additional documents that were included in the law or informational materials. These results were released on March 15, 2016 during a presentation and discussion of the [findings of user satisfaction surveys on the quality of MOJ administrative services.](#)

This first ever pilot survey involved over 4,500 users of MOJ services between October and November 2015 in Dnipropetrovsk, Lviv, Odesa, and Kharkiv regions, as well as Kyiv City conducted by the Center for Political and Legal Reforms (CPLR) and its regional counterparts with support of the USAID FAIR Justice Project (FAIR).

Acting Mission Director at USAID Regional Mission for Ukraine, Moldova and Belarus John Pennel stated that civil society involvement in overseeing reform of the justice sector is critical to the success of the reform process. “Better services will increase accountability and severely limiting opportunities for corruption. More openness will make administrative services more easily accessible, user friendly, and customer-oriented. But the central measure of their success will be improved Ministry of Justice services as acknowledged by Ukrainians,” he noted.



Minister of Justice Pavlo Petrenko speaking at the presentation of civil society monitoring results of the quality of MOJ's administrative services on March 15, 2016 in Kyiv.

According to Minister of Justice Pavlo Petrenko, the government should collaborate with the public and consider their opinion in improving the efficiency of their own work. “Through joint efforts we are going to change this country every day, and this change will be experienced by every common citizen. They will experience the change that will allow them register a company in 24 hours without queuing, register an apartment without offering a bribe of UAH 500, and obtain any information via the Internet without corruption and any obstacles. The government may be called of high quality and successful only when it provides services and comfort to each person instead of creating problems,” stated Minister Petrenko.

During in-person interviews, users evaluated services provided by territorial justice departments such as: civil registration, registration of real estate, business registration, and legalization of public associations. Users of MOJ services rated the professionalism of its staff the highest at 94%. The lowest rates at 64% were given to the convenience and level of comfort at facilities where services are provided. Among the five issues where up to one third of the respondents were dissatisfied included: lack of free access to toilets, inconvenient fee payment procedures,

problems with accessing free forms, as well as queuing time exceeding 30 minutes. In that regard, 8% of respondents in Kyiv City and Odessa Oblast were queuing for even more than 2 hours. In addition, most of the respondents (58%) were dissatisfied with conditions for provided services to persons with disabilities.

Based on these findings, CPLR experts developed recommendations for the MOJ to improve services, including ensuring free access and adequate conditions for persons with disabilities, providing all registration services at "single-entry" units, increasing reception hours to 40 hours per week, installing payment terminals or establish bank units, ensuring possibility of payment services via the Internet and availability of free forms online, improving the quality of information on official websites, avoiding queues and reducing time of service, delivery, and training staff on communications and public relations. CPLR submitted these recommendations to the MOJ's central office and heads of regional departments, including local authorities in the pilot study areas. All project materials, including full reports and sociological data can be found at the CPLR website at www.pravo.org.ua.

Policymakers, Representatives of Professional Associations, Employers and Academics Discussed the Optimal Structure of Legal Education in Ukraine

On March 18, 2016, the USAID FAIR Justice Project (FAIR) supported the Ministry of Justice (MOJ) and the Ministry of Education and Science (MOE) in conducting a roundtable discussion entitled "Optimal Structure of Legal Education in Ukraine: Two-Tier Model ("Bachelor – Master") or Cross-Cutting Master Program?". Representatives of three key groups of legal education stakeholders: policymakers, professional associations of lawyers, and academics shared their views on the future of legal education reform in Ukraine in light of modern job market demands while also discussing possible public policy solutions for improving the quality of legal education.

"Imperfection of the legal education system is conditioned by two factors. Partially – by corruption and backwardness of legal education, its failure to meet modern needs of employers. Legal business is dissatisfied with the general level of legal education and believe that it neither gives profound new knowledge nor develops practical skills," stated Deputy Minister of Justice Sergii Petukhov when opening the event. He emphasized that the issue of legal education is critically important for the MOJ as well as for the development of the country.

According to Inna Sovsun, First Deputy Minister of Education and Science, a modern system of legal education should be created by joint efforts of the academic community, employers, and government. "The objective of this roundtable is to learn and hear as much information and arguments on the issue as possible in order to make the right decision matching public interest," she said. Ms. Sovsun also informed participants about the development of national standards for legal education – a first for Ukraine. "Currently we are creating academic and methodological committees. Many people are taking part in the competitive selection of committee members. We shall do our best to engage in this work the most trained and qualified," she added.



Participants of the roundtable on "Optimal Structure of Legal Education in Ukraine: Two-Tier Model ("Bachelor – Master") or Cross-cutting Master Program?" on March 18, 2016.

Participants concluded that the current two-tier legal education system for preparing lawyers has substantial flaws. Graduates with a bachelor's degree have limited opportunities for entering legal practice in key legal professions, such as judges, advocates, public prosecutors, or public notary, where a master's degree is required. Introduction of a master's degree as a base degree for lawyers in Ukraine as with doctors, pharmacists, and veterinarians, is a necessity to meet modern job market expectations some participants argued. This step will allow for increasing base requirements for law schools as well as minimizing the amount of time and other resources needed to prepare a quality legal professional to modern job market demands.

Roundtable participants also noted that there is an urgent need to establish an inclusive MOJ-MOE working group on developing a Legal Education Reform Strategy and Action Plan. The working group would develop a comprehensive vision for introducing a master's degree as a base degree for lawyers, including the assessment of the impact on Ukraine's legal education system, possible risks and ways to eliminate or minimize them. The working group would also conduct a thorough analysis of legal job positions available for graduates with a bachelor's degree and respective job descriptions. Based on the analysis results, the working group will ultimately provide recommendations regarding necessary changes in the National Classification of Professions and Positions and related legislation. Read more here at http://www.fair.org.ua/index.php/index/news_single/274; <https://minjust.gov.ua/ua/news/48154>.

FAIR and MSU Launch Third Round of Joint Judicial Administration Certificate Program

On March 21, 2016, another group of forty competitively selected court administrators from throughout Ukraine started their participation in the third round of the Judicial Administration Certificate Program implemented by the USAID FAIR Justice Project (FAIR) in cooperation with the State Judicial Administration (SJA) and National School of Judges (NSJ) with Michigan State University (MSU). This first phase of the program includes two-weeks of comprehensive in class training on modern court administration and management. MSU faculty co-teach with Ukrainian faculty 10 courses on purposes and responsibilities of courts; leadership; resources, budget and finance; information technology management; human resource management; caseload management; visioning and strategic planning; court and community communications; education, training and development; and essential components of courts. After completing coursework, participants will prepare court improvement projects and receive MSU and NSJ graduation certificates in June 2016.



Participants of the third round of the Judicial Administration Certificate Program during the session "Purposes and Responsibilities of Courts" on March 21, 2016 in Kyiv.

Upcoming Events

Key Ukrainian Policymakers to Learn German Best Practices and Standards for Legal Education

From April 4 to 8, 2016, the USAID FAIR Justice Project (FAIR) in a partnership with the German Foundation for International Legal Cooperation will conduct a study program in Germany with site visits to Bonn, Düsseldorf, and Cologne. This event will provide eleven key legal education policymakers, opinion leaders, and experts that represent the Ministry of Education and Science, Ministry of Justice, Parliamentary Committee on Science and Education, Parliamentary Committee on Legal Policy and Justice, High Council of Justice and leading law schools with hands-on experience related to German best practices and standards for legal education in preparing high quality lawyers and judges. The program includes on-site visits to the Ministry of Justice of Northern Rhine Westphalia and its Judicial Examination Office in Düsseldorf, the Law School at the Frydrych Wilhelm University of Bonn, and the Higher Regional Court of Cologne. The program also provides for working meetings at key legal education related institutions in North Rhine Westphalia.

Dr. William Pomeranz to Deliver Seventh Rule of Law Lecture at Ukrainian Catholic University



On April 11, 2016, the USAID FAIR Justice Project (FAIR) jointly with the Ukrainian Catholic University (UCU) Rule of Law Center in Lviv and the Kennan Institute (US) will conduct the seventh rule of law lecture. Kennan Institute Deputy Director William Pomeranz will deliver a lecture on “Reforms of the Ukrainian Procuracy”. The purpose of this lecture is to raise public awareness about contemporary developments and best practices related to public prosecution reforms. The event will help strengthen both understanding of and respect for the rule of law among Ukrainian law students, academics, legal practitioners, and public officials. Venue: Conference Hall of the Ukrainian Catholic University, 35a Khutorivka Str., Lviv. Registration is available at <http://www.goo.gl/forms/B8AELiu2eL>. The lecture begins at 4:00 PM and will be broadcast live online at www.tvoemisto.tv/on-line/.

USAID FAIR Justice Project
36 Ivana Franka Str., office 3, Kyiv, 01030
+38 (044) 581-3303
office@fair.org.ua, www.fair.org.ua

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