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FAIR JUSTICE PROJECT

November 24 to December 15, 2015

Newsletter

Legislative and Other Rule of Law News

Congress of Judges Elects Remaining Members of the Council of Judges

On November 24, 2015, after two rounds of voting, the 13th Congress of Judges finally ended with the election of the remaining 7 of the 33 total members of the Council of Judges (COJ). The COJ later re-elected Supreme Court Justice Valentyna Simonenko as chair with Judge Bohdan Monich of Zhytomyr Administrative Court of Appeals elected as deputy chair and Judge Oksana Marchenko of the Kyiv City Commercial Court as secretary. The COJ will now focus on important judicial self-governance issues related to performance evaluation of judges, judicial ethics, and court budgeting and automation. [Read more here.](#)

President Poroshenko Submits Draft Constitutional Amendments Related to the Justice Sector to the Verkhovna Rada

On November 25, 2015, President Poroshenko submitted to the Verkhovna Rada draft constitutional amendments related to the justice sector which were approved by the Constitutional Commission on October 30, 2015. The National Reform Council recommended that the Parliament consider these draft amendments in the first reading during its current session. The proposed amendments aim to improve the constitutional framework for the justice sector and ensure the right to fair trial by an independent and impartial court within a reasonable time. Adoption of this bill will bring the Ukrainian judiciary more in line with European standards by depoliticizing judicial selection and discipline, strengthening judicial independence and self-governance, raising professional standards for judges, and limiting of judicial immunity. [Read more here.](#)

Council of Judges Approves Procedures for Judicial Performance Evaluation

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 High Qualifications Commission of Judges (HQC). These regulations set out procedures for: (1) qualifications evaluation of judges being considered for lifetime appointment and transfer; (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 judges will encompass the following stages: (1) a written test of legal knowledge, including the case law of the Supreme Court and European Court of Human Rights; (2) a written case study; and (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. Decisions related to evaluations will be posted on the HQC's website within two working days of issuance. Notices regarding initial qualifications evaluation will be sent by the HQC directly to judges by email. FAIR experts provided recommendations to improve the draft procedures and methodology with the HQC considering many of them in finalizing the document, such as (1) to improve the structure and provide separately the procedure for qualifications evaluation of judges being considered for lifetime appointment and transfer, initial performance evaluation of all sitting judges, and qualifications evaluation resulting from a disciplinary sanction; (2) to connect the criteria with the evaluation methods that the HQC should apply for the qualifications evaluation procedure and to distinguish between qualitative indicators and quantitative indicators applied; (3) to describe in more detail evaluation methods, etc. [Read more here.](#)

FAIR Updates

FAIR Conducts Training of Trainers Program for Judges and University Professors

From November 23 to 25, 2015, FAIR together with the National School of Judges (NSJ) conducted a training of trainers 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 Lviv National University Law School, Chernivtsi National University Law School, and the Rule of Law Center at Ukrainian Catholic University. This training provided participants with new teaching skills based on modern pedagogical techniques focusing on adult learners.

Verkhovna Rada Hearing Addresses Access to Justice for Persons with Disabilities

On November 25, 2015, FAIR supported a [hearing of the Verkhovna Rada Committee on Veterans, Combatants, Participants of Antiterrorist Operation, and Persons with Disabilities \(Committee\)](#) focusing on equal access to justice for persons with disabilities. The Committee hearing included the President's Commissioner for the Rights of Disabled Persons, representatives of the Ministry of Social Policy, State Judicial Administration, 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.



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.

At the hearing FAIR presented the results of its monitoring report on [access to courts and court services by persons with disabilities in Ukraine](#). FAIR Chief of Party David Vaughn presented the project's history on working to promote better access to court 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. Andriy Buryi of the Law and Democracy Foundation, which prepared the monitoring report covering 20 courts in 10 regions, highlighted recommendations to improve access of disabled persons to court premises and court services. This included proposals to amend the legal framework to improve accessibility and recommendations for individual courts and the judiciary as

whole to promote better outreach, including developing audio and Brail brochures and leaflets. This extended to proposals to install ramps, lifts and special marking for people with impaired sight to reduce physical barriers. The State Judicial Administration later noted that only 17 % 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 the needs of disabled persons. Committee Chair Oleksander Tretiakov charged government representatives to not only to identify the problems but find solutions. He added that the Committee stood always ready to respond to proposals from government and civil society to introduce changes to legislation to remove to the greatest possible extent any barriers standing in the way of persons with disabilities accessing justice. The more than 20

recommendations developed by FAIR and its partners were including in the Committee's final report on the hearing.

Results of Citizen Report Card (CRC) Surveys for All Courts in Lviv Region Presented

On November 30, 2015, FAIR together with its grantee "Your Right" (Lviv) presented the results of CRC court user satisfaction surveys for all 32 courts in the Lviv region in cooperation with the Lviv Court of Appeals and the Territorial Department of the State Judicial Administration. This included recommendations to improve the quality of court performance by providing more timely information about court processes and hearings, adequate space for waiting for court hearings and preparing documents, and better access for persons with disabilities. An overarching theme across all courts in the region was improving court communications and outreach with the public at large. The Lviv courts performed fairly well during this round of surveys with an average score of 3.98 out of 5 with a number of courts improving their performance, namely, the Lviv District Administrative Court which scored 3.76 in 2012 and 3.98 this year, and the Drohobych City Rayon Court which improved performance from 3.44 to 4.13 during the same period.

State Judicial Administration Presents Results for 2015 to Rule of Law Donors

On December 2, 2015, State Judicial Administration (SJA) Deputy Chair Olga Bulka provided rule of law donors with an update on the results and priorities for the SJA. Ms. Bulka listed key objectives to include: (1) reorganizing courts based on expected constitutional and administrative reforms; (2) optimizing court staffing needs (number of judges and staff per court) based on caseload norms using a methodology developed by FAIR; (3) developing, implementing and evaluating a unified system for strategic planning for the judiciary with an emphasis on performance and financial resources management; (4) promoting participation of the judiciary in all stages of the budgeting process; (5) providing courts with material resources in line with European standards; and (6) improving procedural laws to permit greater use of information technology – eCourt applications. Ms. Bulka also identified areas for donor support, including providing the judiciary with court recording equipment, supporting alternative types of hearing for courts, improving access to justice for persons with disabilities based on FAIR recommendations, developing and defending court budgets, and introducing a single system for accounting assets.



Deputy Chair of the State Judicial Administration (left) during the Rule of Law Donors and Implementers Meeting on December 2, 2015.

National School of Judges Begins Development of Comprehensive Online Course on Judicial Administration for Court Staff

On December 3, 2015, FAIR supported the National School of Judges (NSJ) in conducting the first working group meeting to develop a full online course on judicial administration for court staff. This pilot program is based on the successful Michigan State University (MSU) [Judicial Administration Certificate Program](#) implemented in Ukraine by the State Judicial Administration (SJA), NSJ and FAIR in partnership with MSU. The 17 working group members, including graduates and faculty of the MSU program, developed learning objectives and the overall structure of each of the 8 training

modules. The working group will now work on finalizing materials for the expected launch of the program online in mid-2016.

National School of Judges Pilots Course on Environmental Protection and Human Rights

On December 7 and 8, 2015, FAIR grantee “Environment-People-Law” in cooperation with the National School of Judges (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.

Civil Society Experts and Judges Discuss the Role of the Judiciary in Deciding Maidan Protest Cases



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

decisions regarding peaceful assembly, detention and administrative violations from the period of the Maidan protest. The experts concluded that motions to detain protesters presented by prosecutors and approved by courts contained gross mistakes, including lack of proper justification and other significant procedural violations. Overall, the experts noted that all these violations were caused by “abuse of judicial office” and manipulation of the Criminal Procedure Code (CPC) and not by poorly drafted legislation. Experts also provided recommendations to improve current legislation to prevent such abuses in the future. These recommendations include changes to the CPC strengthening protection of defendant’s rights in the criminal process. Following expert proposals, participants identified and discussed threats to judicial independence, factors that influence judges in decision making, reasons for violation of oath by judges, and possible ways of “self-purification” within the judiciary. They also learned about experience of judicial vetting in other European countries, namely, Bosnia and Herzegovina, Slovak Republic and Estonia.

On December 9, 2015, FAIR supported an expert discussion on the role of judges in deciding Maidan protest cases between November 2013 and February 2014. The discussion included representatives of the Ministry of Justice Lustration Department, Interim Special Commission for Vetting Judges, High Council of Justice, Council of Judges, High Qualifications Commission of Judges, Prosecutor General, Supreme Court, high court judges and civil society activists. FAIR experts Prof. Viacheslav Navrotskyi of the Lviv National University Law School and Prof. Roman Vereshko of the Advocates Academy of Ukraine presented their analysis of randomly selected court

Civic Activists Learn How to Best Design, Implement and Evaluate Trial Monitoring Programs based on European Standards

On December 9 and 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. They learned best practices on how to design, implement and evaluate trial monitoring programs based on OSCE ODIHR experience and materials. This included 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.



Participants of the training on trial monitoring on December 10, 2015.

FAIR Contributes to the Ministry of Justice’s Ukrainian Law Week

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

Ministry of Education Launches Pilot Entrance Exam for Master’s Degree Programs in Law

On December 10, 2015, the Ministry of Education and Science (MOE) in cooperation with FAIR, Ministry of Justice (MOJ), Ukrainian Center for External Education Quality Testing, Ukrainian Standardized External Testing Initiative (USETI) Alliance, and the OSCE Project Coordinator in Ukraine hosted a roundtable discussion with representatives of 23 Ukrainian law schools that volunteered to be part of a pilot independent entrance exam of applicants to master’s degree programs in law. The MOE announced that this pilot exam would take place in 2016, ensuring fair and corruption-free admission to master’s degree programs in these self-selected law schools. Roundtable participants worked together to discuss the pilot project’s concept, subject areas, testing methodology, developing 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.

Results of Citizen Report Card (CRC) Surveys for Courts in Ivano-Frankivsk Region Presented

On December 15, 2015, FAIR grantee Oriyana Foundation in cooperation with the Ivano-Frankivsk Court of Appeals conducted a roundtable to present the results of CRC surveys of court user satisfaction with court performance conducted in 20 courts of Ivano-Frankivsk region. The grantee also shared the recommendations for improving the quality of court performance based on the data collected during the survey. Representatives of the CRC courts, Territorial Department of the State Judicial Administration in Ivano-Frankivsk, civil society organizations, media and FAIR attended the roundtable.

Upcoming Events

Deskbook “To Be A Judge” To Be Presented



On December 18, 2015, the National School of Judges (NSJ) and FAIR will present the deskbook “To Be A Judge”. 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 deskbook will also help guide legal professionals shift from being a lawyer or prosecutor to being a judge. The authors and editors include Deputy Speaker of Parliament, Oksana Syroid, NSJ Rector Mykola Onishchuk and FAIR Chief of Party David Vaughn. This presentation will take place during the NSJ’s International Conference on Standards of Judicial Education conducted with support of the Organization for Security and Co-operation in Europe (OSCE), FAIR and the Canadian Embassy’s Judicial Education for Economic Growth Project.

Lviv National University Law School to Further Develop Testing Skills

On December 22 and 23, 2015, FAIR will conduct a two-day training program for developing test items for the faculty at Lviv National University (LNU) Law School. FAIR Local Test Item Policy Development Expert Serhiy Mudruk will provide participants with support in deepening their understanding of international standards and best practices of the development, peer-review, approval, and calibration of quality test items, as well as forming a quality test item database. FAIR will also provide expert support to LNU in creating of statistical analysis modules in the university computer-based testing system to build technical and statistical capacity at LNU as well as to establish the LNU Center for Excellency in Legal Testing.

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