



October 8 to 30, 2015

## Newsletter

### Legislative and Other Rule of Law News

#### ***Constitutional Commission Conducts Public Discussions on Amendments Related to the Judiciary***

The Constitutional Commission in cooperation with the USAID FAIR Justice Project (FAIR) conducted public discussions on draft amendments to the Constitution related to the judiciary in Odesa on October 7 and Lviv on October 12. These events included judges, students, legal scholars, and civil society representatives together with members of Constitutional Commission's Working Group on the Judiciary. During the events, working group members presented a summary of constitutional amendments aimed at increasing judicial independence by eliminating the initial five-year appointment and introducing life time appointment for all judges, limiting the judicial immunity, and strengthening the composition and scope of authority for High Council of Justice. This presentation was followed by an open discussion on the most controversial issues, including the reappointment of all judges and the role of the President in the selection and transfer of judges.

#### ***Cabinet of Ministers Approves Key Elements of Constitutional Amendments Related to the Judiciary***

On October 21, 2015, the Cabinet of Ministers of Ukraine approved [the key elements of the concept to amend the Constitution of Ukraine in the justice sector](#). These elements included: (1) a three-tier court system (not the current 4-tier system); (2) creation of courts by law (not by Presidential decree); (3) establishment of the unified body for judicial selection, transfer and discipline (not both the High Qualifications Commission of Justice and High Council of Justice); and (4) reappointment of all judges. The Ministry of Justice provided the Constitutional Commission with these recommendations (source: [Web-portal of Ukrainian Government](#)).

#### ***Constitutional Court Continues Its Consideration of the Law on the Purification of Government***

On October 22, 2015, the Constitutional Court of Ukraine (CCU) continued its [hearing of the on the Law on the Purification of Government](#) initiated by submissions of the Supreme Court of Ukraine (SCU) and 47 Members of Parliament regarding the unconstitutionality of certain provisions of the Law. The hearing lasted for two days. On the first day, MP Yuriy Myroshnychenko and MP Vasyl Nimchenko (Oppositional Blok) and representative of the SCU Justice Oleksandr Volkov argued that the Law contradicts the rule of law as it does not provide for the presumption of innocence and focuses on collective guilt rather than individual responsibility. On October 23, 2015, MP Egor Sobolev (Ob'ednannia "Samopomich") and Mr. Anatoliy Selivanov, representative of the Verkhovna Rada in the CCU defended the contested provisions of the Law. MP Sobolev filed written a petition on recusal of seven Justices of the CCU namely Chief Justice Yuriy Baulin, Justice Sergiy Vdovychenko, Justice Vasyliy Bryntsev, Justice Natalyia Shaptala, Justice Mykhail Zaporozhets, Justice Oleh Sergiychuk and Justice Mykhail Gultay. The CCU announced a recess in the hearing for an unspecified time to study and consider the petition.

#### ***Venice Commission Adopts Final Opinion on Proposed Constitutional Amendments Related to the Judiciary***

On October 23, 2015, the Venice Commission adopted the final [Opinion on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary as Approved by the Constitutional Commission on September 4, 2015](#). According to the Venice Commission, the latest version of constitutional amendments prepared by the Working Group on the Judiciary of the Constitutional Commission of Ukraine is very positive and well-drafted, and deserves to be fully supported. The Venice Commission considered the proposals approved by the Constitutional Commission along with the Reanimation Package of Reform (RPR) recommendations. RPR recommendations that were positively perceived by the Venice Commission included the liquidation of higher specialized courts along with the preservation of the administrative courts as the autonomous system and the reorganization of courts by law with the possibility of simultaneously reappointing judges, who could choose to retire or apply for the new appointment. The Venice Commission especially outlined the positive changes in the proposed amendments:

- the President shall have no power to dismiss the judges;
- the Verkhovna Rada shall have to say in deciding on the composition of the High Council of Justice;

- “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.

The Venice Commission stressed however that all decisions on the judges’ career (promotions, transfers, dismissals) must belong to the High Council of Justice and not to a political institution, if a truly independent judiciary is to be achieved. Moreover, The Venice Commission strongly recommended securing that. The only recommendation made in the Preliminary Opinion of July 24, 2015 that has not been followed regarding the Prosecutor General related to the method of his/her appointment and dismissal, which are in the hands of the President of Ukraine with the consent of the Verkhovna Rada, but “without a qualified majority, which instead would be necessary” (source: [website of the Venice Commission](#)).

## FAIR Updates

### ***Newly-Elected Members of the High Council of Justice Learn International and European Standards and Best Practices Related to Judicial Selection and Discipline***

On October 8 and 9, 2015, the High Council of Justice of Ukraine (HCJ) conducted a seminar supported by the USAID FAIR Justice Project, EU Project “Support to Justice Sector Reforms in Ukraine”, COE Project “Strengthening the System of Judicial Accountability in Ukraine”, the Council of Europe Office in Ukraine EU and Council of Europe Joint Project “Consolidation of Justice Sector Policy Development in Ukraine”. Seminar participants discussed the issues of the HCJ status and powers in the light of judicial and constitutional reforms undergoing in Ukraine; learned European and international standards for judicial appointments and discipline, international experience and practice of similar bodies with similar powers; disputed about the ways to improve the HCJ business processes, specifically 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 presentation of foreign experts: judges, representatives of similar institutions from Lithuania, Georgia, Rumania, Moldova, Bosnia, Portugal, France, Italy and the United States. Participating in the event were: HCJ members, leadership of the High Qualifications Commission of Judges of Ukraine, Council of Judges of Ukraine, Supreme Court of Ukraine, judges of the High Administrative Court of Ukraine, HCJ Secretariat staff, former members of Interim Special Commission on Vetting of Judges of General Jurisdiction Courts, representatives of State Judicial Administration of Ukraine, National School of Judges of Ukraine, international donor projects and initiatives. Read [more](#)



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

### ***Regional Trainings on “Court and Community Communications” Conducted in Lviv, Kharkiv and Odesa***



Giving interview exercise during the training on communications in Kharkiv on October 14, 2015.

In October, FAIR has conducted a series of one-day regional trainings for judges-speakers and courts’ public information officers (PIOs) in Lviv (on October 12), Kharkiv (on October 14) and Odesa (on October 16). The trainings were aimed to share the US and Ukraine best practices and lessons learned in building effective court communication with the public, and enhance the communications skills of judges and PIOs. The trainers were international communication experts, including David Remondini, Chief Deputy Executive Director, Division of State Court Administration, Indiana Supreme Court, USA, 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, as well as local specialists on court and community communication. Each of the trainings was attended and very well received by approximately 50 participants. All three trainings were preceded by roundtables with local media representatives on the ways of establishing a dialog and constructive cooperation between courts and the media.

## ***Chief Justice Romaniuk Signs Regional Statement of Principles on the Independence of the Judiciary***

From October 11 to 14, 2015, FAIR supported the participation of a delegation from the Supreme Court of Ukraine at the CEELI Institute's Annual Conference of Chief Justices of Central & Eastern Europe which was conducted in Brijuni, Croatia. The conference brought together chief justices from 17 countries in Central and Eastern Europe to discuss challenges in building effective judiciaries that support and uphold the rule of law. This year's conference saw the culmination of work over the past three years with the signing of the [Statement of Principles of the Independence of the Judiciary \(Brijuni Statement\)](#). As noted by the host Chief Justice Branko Hrvatin of the Supreme Court of Croatia, the Brijuni Statement represents a "clear commitment by the Judges of Central and Eastern Europe to the Rule of Law." The Brijuni Statement reaffirms the fundamental principles of judicial independence and integrity, and adds to the body of international instruments that recognize that true judicial independence, both institutional and individual, is indispensable to the successful functioning of the judiciary under the rule of law. Ukrainian Supreme Court Chief Justice Romaniuk contributed significantly to the Brijuni Statement with more than 15 of his proposed amendments being incorporated into the final document. These included recommendations related to the judicial selection, discipline and evaluation, assignment of cases and interaction with the media.



Chief Justice of the SCU Yaroslav Romaniuk signing the Statement of Principles of the Independence of the Judiciary during the Conference of Chief Justices of Central & Eastern Europe in Croatia on October 14, 2015.

## ***Judges Trained on New Local Elections Law***

In October, 2015, FAIR in cooperation with the European Union (EU) and Council of Europe (COE) Project "Consolidation of Justice Sector Policy Development in Ukraine" and COE Project "Reform of the Electoral Practice in Ukraine" supported the High Administrative Court of Ukraine and the National School of Judges of Ukraine in conducting a series of 3 seminars for administrative and local courts judges from Kyiv, Chernigiv, Cherkasy, Vinnytsia, Khmelnytsky, Chernivtsi, Zhytomyr and Rivne regions on implementing the new Law of Ukraine on Local Elections. The seminars were conducted in Kyiv (on October 13), Zhytomyr (on October 15) and Vinnytsia (on October 16).

## ***FAIR Expert Bill Marsh to Develop Policy Recommendations on Mediation***

On October 19-21, 2015, FAIR expert Bill Marsh visited Kyiv to have the meetings with the Ukrainian stakeholders - members of Parliament, experts and mediators. Mr. Marsh is a leading, experienced international mediator and mediator trainer with 25 years of experience designing and delivering training on mediation and conflict management systems for governments and international bodies. He is a former advisor to the European Commission on policy issues for the development of mediation systems in member states, and designed a system of Social Dispute Resolution in the former Soviet Union. Mr. Marsh was also a chair and organizer of the first Inter-Governmental Mediation Workshop – a 16-Government Mediation Consultation between EU, NATO, and former CIS states. He has delivered trainings on mediation/negotiation to thousands of participants in political, religious and commercial disputes, and trainings for governments and NGOs. The main aim of the involvement of Mr. Marsh is to conduct a comparative analysis and, following a comprehensive review of the Ukrainian draft laws. He will develop policy recommendations on how mediation would best be implemented within the Ukrainian legislative framework. Mr. Marsh will also assist FAIR partners to develop a modern,



FAIR Expert Bill Marsh (right) during the meeting in the Legal Policy and Justice Committee of the Parliament on October 20, 2015 in Kyiv. The picture of Mykola Bilokopytov.

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.

### ***Ministry of Justice Leaders Completed the Modern Management Skills Training Program***



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

On October 19-21, 2015, FAIR organized the second and final session of the professional development training program for the personnel of the Ministry of Justice (MOJ). This is the first in Ukraine short-term comprehensive program of professional development for civil servants implemented with FAIR support by the Ernst and Young Academy of Business. 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. During this session, they gained knowledge and practical skills of effective communication and strategic planning. Deputy Minister of Justice Gia Getsadze and FAIR Chief of Party David Vaughn participated in the closing of the training and awarding ceremony.

ministries: every two weeks we offer new online services to our citizens. We are out of unnecessary functions to serve better to our citizens. Now we have to take care of so-called content – staffing for these reforms, – said Gia Getsadze. - Such professional development training programs should be systematic for employees of the Ministry of Justice.” Read [more](#)

“The Ministry of Justice has become the most electronic ministry, the leader among other

### ***Lviv National University Law School Gains Expertise in Developing Tests of Legal Knowledge***

On October 20 and 21, 2015, FAIR conducted a training for the team of the Ivan Franko Lviv National University (LNU) Law School test item developers to provide them with further expert 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 and maintaining a quality test item database. FAIR also provided expert support to the LNU in the creation of statistical analysis modules in the LNU computer-based system to build technical and statistical capacity at the LNU.

### ***The Second Edition of the Compendium of European and International Adjudication Standards Published***



On October 22, 2015, FAIR Chief of Party David Vaughn participated in the presentation of the second edition of the compendium of [European and international standards in the field of adjudication](#) that includes baseline documents on the functioning of the judiciary, approved by the United Nations and the European Union (EU) institutions, the European Commission for the Efficiency of Justice (CEPEJ) and the Consultative Council of European Judges (CCJE). This compendium was prepared and published jointly by the EU Project “Support to Justice Sector Reforms in Ukraine” and FAIR. Its presentation was conducted during the International Conference “Property Right: European Experience and Ukrainian Realities” organized by the Supreme Court of Ukraine, OSCE, EU Project “Support to Justice Sector Reforms in Ukraine”, Government of Canada and Taras Shevchenko National University of Kyiv.

### ***Justice and Civil Society Forum Builds Partnerships in Promoting Public Trust and Confidence***

On October 27 and 28, 2015, FAIR in partnership with OSCE Project Co-ordinator in Ukraine Project “Safeguarding Human Rights Through Courts” conducted a Justice and Civil Society Forum: Building a Partnership to Promote Public Trust and Confidence. The forum provided a platform for civil society representatives active in justice sector reform to network and share their experiences and best practices. About 150 participants of the event included representatives of civil society organizations, judiciary and international projects and programs that work to support judicial reform in Ukraine.

The Supreme Court Justice Valentyna Simonenko, Chair of the Council of Judges; Zenoviy Kholodnyuk, Chair of the State Judicial Administration; Jed Barton, USAID/Ukraine Mission Director; David Vaughn, FAIR Chief of Party; and Olena Lungol, National Expert of the OSCE Project Co-ordinator in Ukraine Project “Safeguarding Human Rights Through Courts”, opened the forum.

Welcoming the participants Jed Barton said, “An effective dialogue between justice sector institutions and civil society will increase public trust and confidence and USAID is proud to be a part of this endeavor. I commend you and thank you for your work to reform the judiciary. A strong civil society is an essential component to advancing democracy and human rights in Ukraine and USAID stands ready to support this and other Ukrainian-led reform efforts.”



Participants of the Justice and Civil Society Forum working in the open space format on October 27, 2015 in Kyiv.

International experts from Poland, Moldova, Bosnia and the USA also participated in the forum and shared best practices in court monitoring and judicial reform implementation. Judge Bohdan Futey, United States Court of Federal Claims, delivered a keynote address on “Promoting Judicial Transparency and Openness”. During the forum, the participants developed a set of recommendations for promoting civil society engagement in justice sector reform.

### ***National School of Judges Tests Judicial Ethics Course for Newly Appointed Judges***

On October 28 and 29, 2015, FAIR supported the National School of Judges of Ukraine in conducting a test run of the Judicial Ethics course for newly appointed judges in its Dnipropetrovsk regional branch.

## **Upcoming Events**

### ***Draft National Legal Education Standard to Be Presented***

On November 9, 2015, FAIR jointly with the Ministry of Education and Science of Ukraine (MOE) and the OSCE Project Co-ordinator will conduct a roundtable discussion to present the draft National Legal Education Standard and both FAIR and OSCE international experts' feedback reports on the draft Standard. FAIR International Legal Education Experts, Prof. Bernd Heinrich (Germany) and Prof. Delaine Swenson (USA), will present to the leadership of the MOE and leading law schools their comments on the draft's compatibility with European and international standards and best practices of legal education quality assurance as well as recommendations on how to improve the draft Standard.

### ***FAIR Experts to Deliver Presentations at the Fifth Rule of Law Lecture Series Event at Ukrainian Catholic University***

On November 10, 2015, FAIR jointly with the Ukrainian Catholic University (UCU) Rule of Law Center in Lviv will conduct the fifth event within the Rule of Law (ROL) Lecture Series. FAIR International Legal Education Experts, Prof. Bernd Heinrich (Germany) and Prof. Delaine Swenson (USA), will deliver 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 is to raise public awareness about contemporary developments in ensuring the rule of law through best practices of civil society engagement and prosecution of corruption. The event will help strengthen both understanding of as well as respect for rule of law among Ukrainian law students, academics, legal practitioners, and public officials. For those unable to attend the lecture in person, FAIR will arrange live broadcasting of the lecture over the Internet. The ROL Lecture Series not only helps promote rule of law, but it also helps improve legal education quality by encouraging reviews of law curricula on rule of law issues as well as the methodology for teaching the rule of law.

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