

# Ukraine

by Oleksandr Sushko and Olena Prystayko

*Capital:* Kyiv  
*Population:* 46.3 million  
*GNI/capita:* US\$7,210

Source: The data above was provided by The World Bank, *World Bank Indicators 2010*.

## Nations in Transit Ratings and Averaged Scores

|                                     | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------------------------|------|------|------|------|------|------|------|------|------|------|
| Electoral Process                   | 4.00 | 4.50 | 4.00 | 4.25 | 3.50 | 3.25 | 3.00 | 3.00 | 3.50 | 3.50 |
| Civil Society                       | 3.75 | 3.75 | 3.50 | 3.75 | 3.00 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 |
| Independent Media                   | 5.25 | 5.50 | 5.50 | 5.50 | 4.75 | 3.75 | 3.75 | 3.50 | 3.50 | 3.50 |
| Governance*                         | 4.75 | 5.00 | 5.00 | 5.25 | n/a  | n/a  | n/a  | n/a  | n/a  | n/a  |
| National Democratic Governance      | n/a  | n/a  | n/a  | n/a  | 5.00 | 4.50 | 4.75 | 4.75 | 5.00 | 5.00 |
| Local Democratic Governance         | n/a  | n/a  | n/a  | n/a  | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 |
| Judicial Framework and Independence | 4.50 | 4.75 | 4.50 | 4.75 | 4.25 | 4.25 | 4.50 | 4.75 | 5.00 | 5.00 |
| Corruption                          | 6.00 | 6.00 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 |
| Democracy Score                     | 4.71 | 4.92 | 4.71 | 4.88 | 4.50 | 4.21 | 4.25 | 4.25 | 4.39 | 4.39 |

\* Starting with the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

## EXECUTIVE SUMMARY

---

Ukraine is a “young democracy” with a pluralistic and competitive political order, relatively free media, and basically secure human rights. Yet the country’s system of governance is fragile and inefficient, demonstrating an evident deficit of rule of law. Since independence in 1991, Ukraine has held four presidential (1991, 1994, 1999, 2004) and five parliamentary (1994, 1998, 2002, 2006, 2007) elections. Its fifth presidential election will be held in January 2010. The constitution, adopted in 1996 and amended in 2004, stipulates a de facto “dual executive,” where power is shared between the president and the prime minister. Victor Yushchenko, the third president of Ukraine, came to power in January 2005. The current Parliament (*Verkhovna Rada*) was elected in September 2007 and the Cabinet of Ministers (government), led by Prime Minister Yulia Tymoshenko, has been in power since December 2007. It remained in power during 2009 but was consistently challenged by the fragility of the parliamentary coalition, which de facto, has no majority in Parliament.

In 2009, the struggles within Ukraine’s political institutions became even more evident with the onslaught of the global economic crisis, which resulted in a 14 percent decrease in GDP in Ukraine. The fractured Parliament failed to reach a consensus by the year’s end on long overdue constitutional and judicial reforms. In July, Parliament passed a new concept on reforming local self-government and adopted an anticorruption package, but the political will to implement these measures remains in question. On October 19, at the launch of the 2010 presidential campaign, the Constitutional Court of Ukraine ruled several provisions of the amended Law on Presidential Elections, which had been adopted in August, unconstitutional. Pressure increased on journalists over the course of the year to cater to media owners and interest groups in the form of “written-to-order” articles, which, coupled with the lack of a public broadcaster, raised concerns ahead of the 2010 election campaigns.

**National Democratic Governance.** In 2009, Parliament failed to achieve a consensus on proposed drafts for constitutional reform. Political actors attempted to use these reforms to strengthen their political standing rather than improve the balance of power between existing institutions. Despite the formal existence of a coalition (comprised of Our Ukraine, Bloc of Yulia Tymoshenko, and Lytvyn Bloc), in effect Ukraine is ruled by a minority government, as nearly half of the Our Ukraine faction does not identify with the nominal coalition and does not support it by vote. A number of ministers (finance, foreign affairs, defense, transport and communication) were dismissed by Parliament during the year, yet only a

replacement for the foreign minister was appointed in October, leaving several government seats vacant. *Due to the inability of the government to reach a consensus to fill institutional gaps and achieve an efficient system of checks and balances, Ukraine's rating for national democratic governance remains at 5.00.*

**Electoral Process.** The election campaign for the Ukrainian presidency began on October 19, 90 days prior to elections slated for January, 17, 2010. Prime Minister Tymoshenko and opposition Party of Regions leader Victor Yanukovich were marked as major contenders. The government imposes no administrative restriction on political activity and candidates enjoy equal access to national electronic and print media. On August 21, 2009 Parliament approved (and surpassed a presidential veto of) an amendment to the Law on Presidential Elections, shortening the campaign period from 120 to 90 days; abolishing the requirement for candidates to collect supporter signatures; introducing a high fee of UAH 2.5 million (US\$300,000) for balloting (to be returned if the candidate reaches the second round); and eliminating absentee ballot provisions. The Constitutional Court, however, ruled several provisions of the new law unconstitutional, including a provision banning the submission of complaints to the Central Electoral Commission on election day. At the same time, the court ruled constitutional the provision cancelling the use of absentee ballots. *Ukraine's rating for electoral process remains at 3.50*

**Civil Society.** The third sector remains a visible actor in Ukraine, with nearly twice as many groups registered in 2009 than 2004. The government formally recognizes the importance of civil society in their programs and rhetoric, but nongovernmental organizations (NGOs) continue to suffer from outdated legislation, a restrictive definition of "nonprofit activity," and dependence on foreign funding. Ukrainian NGOs are prohibited from generating income, even to support legitimate statute-based aims. In October, a group of public activists announced a campaign to increase pressure on Parliament to adopt a new Law on Civic Organizations, submitted to Parliament in November 2008. *Due to the lack of political will to fulfill government obligations to update legislation pertaining to civil society, despite the European Court of Human Rights ruling that the current legislation does not meet Council of Europe standards, and government assertion that this is a top priority, Ukraine's rating for civil society remains at 2.75.*

**Independent Media.** Ukraine's media sector is mostly free at the national level, but local and regional sectors still lack independence and need restructuring. The launch of the 2010 presidential election campaign once again brought into focus widespread and growing corruption in media as indicated by a large number of "written-to-order," biased stories on political competitors. Nationwide television channels largely provide balanced news coverage, but in a few cases, television channels (such as Inter) showed political leanings connected to the interests of the channels' owners. A lack of political will continues to prevent the creation of public television. The advertising market in 2009 suffered from the economic crisis,

undermining the financial independence of media. As real salaries decreased and jobs disappeared, journalists became more sensitive to the policies and interests of media owners. Yet, despite the crisis, a number of new media projects, such as TVI and the analytical newspaper *Levy Bereh* appeared in both national and regional markets. *Ukraine's rating for independent media remains at 3.50.*

**Local Democratic Governance.** 2009 was an important year for local government in several respects. Early local council elections were held nationwide, and in July, the government passed the Law on Concept of Local Self-Government Reform, expanding the powers of local self-government bodies. The results of local elections showed general disappointment with the main political parties, which failed to receive a majority of votes in many places. The debate on an optimal election system at the local level continued in 2009. In March, nationwide municipal hearings were held on the president's initiative to address a number of shortcomings in Ukraine's administrative/territorial formation and the interference of executive bodies in the sphere of local self-government competences. *Despite some positive steps, questions remain as to the will to implement reform at the local level, and as a result, Ukraine's rating for local democratic governance remains unchanged at 5.25 points.*

**Judicial Framework and Independence.** The Ukrainian judiciary is plagued by a low level of public trust in the judicial system, violations of the right to adequate judicial defence, corruption, ineffective procedures of judicial examination, and a lack of professionalism. Insufficient financing and the politicization of the judiciary lie at the root of these problems. Although improvement of the legislative framework of the judiciary was marked as a priority for the Ministry of Justice in 2009, little was achieved. A number of legislative initiatives have not been approved, and the judiciary lacks unity. With the exception of some progress made in the investigation of the 2000 murder of Ukrainian journalist, Georgiy Gongadze, very few positive developments took place in the country's judicial system. *Due to the lack of action, despite declarations of priority in securing sufficient funding for its functioning and independence, and in eradicating corruption within the judiciary, Ukraine's rating for judicial framework and independence remains at 5.00.*

**Corruption.** Corruption is pervasive throughout Ukrainian society and manifests itself most predominantly through a lack of official transparency and a high level of influence of oligarchic groups. On a positive note, Ukraine fully introduced a standardized test as a requirement in the admissions process for institutions of higher education. Additionally, Parliament introduced a package of three anticorruption laws which would put the country's anticorruption legislation in line with European requirements; however, the enforcement of this package was postponed from January 1 to April 1, 2010. *Despite the positive step of adopting new anticorruption laws, the decision to postpone their implementation demonstrates the lack of readiness of the political establishment to seriously take on measures to combat corruption. Hence, Ukraine's corruption rating remains at 5.75 points.*

**Outlook for 2010.** The January 2010 presidential election will shape the near future of democratic development in Ukraine. Current president, Victor Yushchenko, will likely leave office as his term expires, leaving behind a legacy of improved democratic performance within a rather dysfunctional system. He will be succeeded by either Yulia Tymoshenko, the current prime minister and President Yushchenko's Orange Revolution ally, or Viktor Yanukovich, a former president who was removed from power by the Orange Revolution. Constitutional reform is needed, and the president may push for the re-establishment of a presidential republic, especially in the face of a minority government. As the presidential campaign illustrated, erosion of media freedom is possible. It is unlikely that the government will reform the systemically problematic judiciary in the near future. However, the package of anticorruption laws is expected to go into effect unless its enforcement date is once again postponed.

# MAIN REPORT

## National Democratic Governance

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| n/a  | n/a  | n/a  | n/a  | 5.00 | 4.50 | 4.75 | 4.75 | 5.00 | 5.00 |

Democracy stands as a core value of governance in Ukraine, however, the behavior of the country’s major political actors is not always democratic. Politicians often use democratic rhetoric to manipulate the electorate, while in practice not following democratic norms. Additionally, the country has not yet built the stable institutions that would ensure the rule of law and the consolidation of democracy. Strong connections between big business and politics make national politics highly dependent on various business groups.

The constitution is dualistic and its system of checks and balances is inefficient. The constitution empowers the *Verkhovna Rada* (Parliament) to appoint a Cabinet of Ministers (government) after forming a majority coalition. Yet, the president remains a strong political figure, deriving power from leadership in the National Security and Defense Council, the capacity to appoint and dismiss regional executive chiefs (“governors”), and the ability to nominate candidates to the posts of defense and foreign ministers. The Parliament must approve the latter, providing de facto for dual subordination of those ministers to both the president and the prime minister. The president may appeal the constitutionality of government decisions to the Constitutional Court, and thereby suspend decisions deemed unconstitutional. In practice, the president misuses this power to suspend undesired government decisions.

While constitutional reform stood as the main issue in 2009, the major political forces involved ultimately failed to reach consensus. Some elements of the proposed drafts demonstrated the intention of political actors to use reform, via redistribution of power, to strengthen their own standing rather than to create a more equal balance of power.

President Victor Yushchenko pushed his draft for constitutional reform to Parliament in April with little support, and again to the public in August. His proposal called for the establishment of a bicameral Parliament to “unite the representation of political forces with territorial communities and territories,” and the direct election of the lower chamber (300 members of Parliament) on a proportional basis from open party lists.<sup>1</sup> Furthermore, 3 senators from each of the 27 regions would be elected by a majority vote to the upper chamber (Senate).

The Block of Yulia Tymoshenko (BYT) and the Party of Regions (PR), who may constitute a situational majority in the Parliament—thus allowing them to change the constitution without the consent of other parties—proposed reforms without open consultation with the electorate, other parties, or independent experts. Their key reform would provide the party receiving the highest number

of votes in two rounds of elections an absolute majority of at least 226 seats in the Parliament. As the European Commission for Democracy through Law noted, such an amendment would create a system where “a party with quite a low level of support may obtain an absolute majority of the seats.”<sup>2</sup>

Some of the proposed provisions in the BYT-PR draft, including the prolonging of the authority of the current convocation of the Parliament, election of the president by the Parliament (while not changing his power), and a provision which would hold mass media accountable for “disinformation to society” would clearly violate democratic principles.

A consensus was not reached on the draft changes, and on October 22, Parliament removed all drafts on constitutional reform from the agenda (including those of President Yushchenko and the BYT-PR). This process is likely to be reactivated after the 2010 presidential election.

Along with constitutional reform, all pressing institutional reforms have reached a stalemate. Despite constant promises and declarations, the government implemented neither administrative nor judiciary reforms. The central government failed to adequately address new challenges in 2009, such as the economic crisis, a severe budget crisis (which was temporarily overcome due to International Monetary Fund support), a gas crisis, and an H1N1 epidemic.

Despite the formal existence of a coalition of Our Ukraine, BYT, and Lytvyn Bloc, nearly half of Our Ukraine does not support the coalition. As a result, the country is led by a minority government. The ministers of finance, foreign affairs, defense, transportation, and communication were removed by Parliament in 2009, and only the foreign minister was replaced, leaving a number of important cabinet seats vacant.

The government demonstrated a greater openness to public participation in 2009. A number of public councils continued to work with the government and subordinate bodies. However, the Cabinet of Ministers adopted a regulation in November that provided an unrealistic mechanism for the formation of such public councils, requiring nationwide gatherings of nongovernmental organizations (NGOs)—regardless of their professional profile—to elect members of all such councils, thereby undermining their very basis. In some cases, public participation is being imitated (via biased selection of participants by authorities themselves) to lend wider legitimacy to governmental decision-making without real procedural transparency and public involvement.

Parliament makes legislation and serves as a platform for wide political debate on the country's domestic and international agenda. Both governmental and opposition parties use the parliamentary tribunal to deliver their messages to the public. Parliamentary sessions are broadcast on the first channel of the National Radio Company and on the television channel, Rada. However, in 2009 the credibility of Parliament came under question when opposition blockades and the inability of the ruling coalition to make decisions paralyzed its productivity.

The Constitution and the Law on Democratic Control over the Military Sphere provide for democratic oversight of the military and security services. Since

2005, a civilian has held the post of defense minister. Parliament has the capacity to investigate cases of misuse of military and security power.

The national economy is not free from governmental interference. According to the Heritage Foundation and the *Wall Street Journal*’s 2010 annual “Rating of Economic Freedom,” Ukraine scores 46.4, down 2.4 points from the previous year, placing it at 162 among 179 countries ranked on economic freedom in the world. Ukraine is ranked in last place in Europe. The country’s regulatory framework remains burdensome. While foreign investment is officially welcome, corruption and bureaucracy deter many investors. Bureaucratic inefficiency makes many commercial operations difficult.

Electoral Process

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 4.00 | 4.50 | 4.00 | 4.25 | 3.50 | 3.25 | 3.00 | 3.00 | 3.50 | 3.50 |

The presidential electoral campaign was officially launched on October 19, 2009, 90 days prior to actual polling. In practice, however, the campaign started several months earlier with the appearance of campaign billboards and populist rhetoric in the media.

President Yushchenko entered the campaign with three to five percent approval ratings. His major competitors were Yulia Tymoshenko, the current prime minister, and Victor Yanukovych, the leader of the opposition PR. Other politicians, such as Arseniy Yatsenyuk, the former speaker of Parliament, sought to present themselves as viable political alternatives. Another candidate, Serhiy Tigipko, the former chief of the national bank, returned to politics after five years in the private sector.

Yanukovych ran in the highly contested presidential election of 2004 as the “official successor” of President Leonid Kuchma. He was defeated by Victor Yushchenko after massive public protests against election fraud, known as the Orange Revolution, took place. Yanukovych, however, returned as a major political player in 2006–07, when he served as prime minister.

The 2009 campaign through the end of the year was largely free and fair. There was no visible foreign interference in the 2009 election campaign. The government did not limit political activities and, for the most part, the major candidates enjoyed equal access to the national media outlets. However, candidates engaged in vicious mudslinging in attempts to discredit their opponents. Tymoshenko’s closest members of Parliament (MPs) were accused of engaging in pedophilia, while opponents of Yanukovych accused him of the illegal privatization of *Mezhyhiria*, the former governmental headquarters in the Kyiv region.

On August 21, Parliament approved a controversial amendment to the Law on Presidential Elections after overcoming a presidential veto. The law shortened the campaign period from 120 to 90 days, removed the requirement for candidates to collect signatures, introduced a high fee of UAH 2.5 million (US\$300,000) for



balloting (to be returned if the candidate reaches the second round), and abolished absentee balloting.

President Yushchenko claimed that the new law violated the constitution and submitted the matter to the Constitutional Court. The Organization for Security and Cooperation in Europe (OSCE) and the OSCE Office for Democratic Institutions and Human Rights, as well as civil society experts, largely shared President Yushchenko's concerns. In particular, the Committee of Voters of Ukraine (CVU) stated that amendments to the Law on Election of the President of Ukraine "infringe on a fair and democratic election process by restricting voting rights, creating mechanisms for falsification (which allow adding to voters lists on polling day), and limiting public control over the election process."<sup>3</sup>

On October 19, the Constitutional Court ruled that several provisions of the new law on presidential election were unconstitutional. These provisions included, among others, the requirement that Ukrainian citizens wishing to vote abroad must register with diplomatic missions, the prohibition of residents from certain constituencies becoming members of election commissions in other constituencies, and the banning of complaint submissions to the Central Electoral Commission on election day. The court also objected to the provision stating that if a violation is not presented to the court within two days, it would not be considered for appeal at all. Finally, it ruled the provisions that banned court appeals by district electoral commissions against the protocols on vote counting (which banned courts from handling appeals dealing with election disputes) unconstitutional. At the same time, the court upheld the abolition of absentee ballots. The most evident shortcoming of the law is that it prohibits NGOs from observing polling stations.

The CVU worried that, coupled with shortened election terms, a great number of unqualified people affected by the economic crisis would apply to work on various levels for the election commissions, worsening the already poor operation of the commissions. In October, the OSCE (via a project coordinator in Ukraine) and other international organizations launched projects aimed to improve the skills of election commission members and to raise awareness about election rules and procedures.

Ukraine's voter registry remains problematic. According to the CVU, the initial verification of the Unified State Register of Voters revealed significant gaps in the database. By various estimations, the error ratio totals 10–30 percent. According to preliminary data, only 2 percent of voters have verified their personal data in the register. A provision of the Law on Election of the President of Ukraine, which allows adding voters to lists on polling day, could further complicate and weaken the system.

The presidential campaign of 2009–10 also revealed low levels of voter confidence in the country's political leadership. This skepticism was most profoundly illustrated by the appearance of Mr. Protyvsih (his name translates as Against All) on the voting list. Protyvsih had changed his family name in order to attract the attention of voters who were disappointed by the selection of candidates.

## Civil Society

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 3.75 | 3.75 | 3.50 | 3.75 | 3.00 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 |

Though political leaders recognize the importance of civil society in rhetoric, this recognition has failed to translate into consistent, civil society-friendly policy. NGOs are governed by outdated legislation and are dependent on foreign funding.

In 2009, Parliament again failed to provide essential improvements to outdated NGO legislation, and the definition of “nonprofit activity” remained restrictive. Ukrainian NGOs are prohibited from generating income. Only individuals, not enterprises or other collective entities, may establish an NGO. A registered NGO may not operate freely in cities and regions other than that in which they are registered. To receive nationwide status, an NGO must have branches registered in regions throughout Ukraine, which is not the case for most small and medium-size NGOs. It is often much easier and faster to register a company or private entrepreneurship than an NGO, but the situation is gradually improving.

In October, a group of civic activists announced a new campaign to increase pressure on the Parliament to adopt a law on civic organizations, which was first submitted to Parliament in November 2008. The law has since remained with the parliamentary Committee on Legal Policy. The civic initiative highlighted the April 2008 European Court of Human Rights assertion that Ukrainian legislation on civic organizations does not correspond to Council of Europe norms and standards. Despite numerous appeals from NGO leaders, neither the cabinet’s leadership nor the parliamentary majority fulfilled their promises. Civic activists have warned that if the Parliament does not adopt the above law they will appeal to the Council of Europe.

The government does not create arbitrary obstacles to the activities of NGOs and there are no examples of direct pressure aimed at derailing NGO activity. However, there is limited communication between the government and the NGO sector, especially on the local and regional levels. As a result, the influence of NGOs is limited.

The current government has made some efforts to strengthen the role of NGOs in policy making. However, in a number of significant cases, the authorities used handpicked NGOs to legitimize their policy without open consultation or involvement from other NGOs in policy making. The government most closely cooperated with the National Council for Media Freedom and Information Sphere Development, the National Council on Public Administration and Self-Governance, the Council on Ethno-National Policy, the National Commission on Strengthening Democracy and the Rule of Law, and the NGO Expert Council within the European Union–Ukraine Cooperation Committee.

As of January 1, 2009, there are 65,951 NGOs registered in Ukraine; nearly twice as many as in 2004 and many more per capita than in the other Commonwealth of Independent States (CIS) countries, but less than in neighboring European Union (EU) member states.<sup>4</sup> Many registered NGOs are essentially not operational and/or do not carry out significant activities. Most are trade unions, charitable or religious organizations, and ethnic, cultural, youth, professional, and human rights

groups. Ukrainian civil society remains heterogeneous in terms of capacity and the strongest NGOs are based in Kyiv. Most NGOs see themselves as agents of change, applying public pressure to the government and channeling the interests of citizens. At the same time, real NGO activity is rather limited; few people feel that the “third sector” pursues the interests of society as a whole. Many NGOs in Ukraine do not have the professional and financial capacity to ensure efficient management.

The country’s major trade unions are remnants of the Soviet past and are incapable of effectively defending their members. Some recently established professional trade unions—such as the Independent Media Trade Union—try to play a greater role, but the share of journalists involved is rather limited.

In 2009, local special interest groups, including “Defend Old Kyiv,” consolidated to pursue common interests such as protecting the environment, historical sites, and other public areas from construction in the larger cities. Groups were also organized to defend small business interests.

Access to public funds is limited. The economic crisis further weakened the possibility for NGOs to receive donations from public sources. National legislation restricts NGOs’ access to state and local budgets.

Among foreign donors, the U.S. Agency for International Development (USAID) provides the largest contributions to various NGO programs and projects. The George Soros-affiliated International Renaissance Foundation provides more than US\$7 million per year, which is the largest contribution from a private donor. Civil society support also comes from EU funds through the European Instrument for Democracy and Human Rights, but this input was limited to €600,000 (roughly US\$800,000) in 2009. Several German political foundations (Konrad-Adenauer-Stiftung, Friedrich-Ebert-Stiftung, Naumann, and Boell) also support NGOs in Ukraine. States such as Poland and Slovakia, and organizations, such as the Black Sea Trust Fund and the Visegrad Fund, are also contributors to Ukrainian civil society. In November, the EU Eastern Partnership initiative (EaP) created the EaP Civil Society Forum, an international platform that includes the participation of 30 leading Ukrainian NGOs.

Several domestic private funds (Open Ukraine, the Victor Pinchuk Foundation, and the Development of Ukraine Foundation) offer grants to civil society organizations. These funds prioritize social welfare and charitable projects, health and education, and, to a lesser extent, public advocacy, legal and human rights protection, think tanks, and international cooperation.

#### Independent Media

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 5.25 | 5.50 | 5.50 | 5.50 | 4.75 | 3.75 | 3.75 | 3.50 | 3.50 | 3.50 |

Article 34 of the Ukrainian Constitution provides the legal basis for freedom of opinion and speech, and Article 15 prohibits censorship. Print media monopolization is outlawed through Article 10 of the Law on Printed Mass Media.

Ukraine's media sector is mostly free at the national level, but local and regional media outlets have not modernized and lack full and genuine independence.

Citizens enjoy wide-ranging pluralism in electronic and print media. Governmental censorship is not detected. Corruption, which has been intensified by the presidential electoral campaign, is widespread. "Written-to-order" stories are a growing problem. These stories, through which an interest seeks to buy "news coverage," aim to push a positive image of a client, or directly negative or scandalous information about the political competitors of clients.

Nationwide television channels largely provide balanced news coverage; both the ruling party and the opposition had equal access to the media during the campaign. However, instances of biased news coverage were noticeable. Some of the largest national television channels, for example Inter, broadcast biased news coverage reflecting the political interests of the broadcaster's owners, and pre-selected, biased audiences for their live talk shows.

Investigative journalism appears more often in Internet and printed media, but is less welcome on television. In 2009, some well known, investigative journalists led by Yegor Sobolev established *Svidomo* (Consciously), a bureau for investigative journalism.

The 2009–10 presidential campaign has challenged media independence in Ukraine, as the major political actors increasingly use the media to promote their interests and discredit their competitors. On September 23, the State Committee on Television and Radio announced its intention to establish a Channel of Territory Communities on the basis of regional, state-owned television stations controlled by regional administrations. The opposition viewed this move as a means to centralize state-owned, regional television (under full control of the central government) on the eve of the presidential campaign.

The onset of the presidential campaign raised concerns that powerful, moneyed interests could exert disproportionate influence over the media. On October 7, President Yushchenko said he was "very concerned with the current situation" of media freedom in Ukraine. Speaking at a meeting of regional media directors in Kyiv, President Yushchenko said that with every passing day, the "space of openness" is becoming "narrower."<sup>5</sup> However, despite the president's overall friendly attitude toward media independence, he has failed to take the necessary measures to ensure irreversibility of media freedoms in Ukraine. On November 17, the Parliament passed the Law of Ukraine: On Amendments to Article 23 of the Civil Code of Ukraine on Compensation of Moral Damage, authorizing courts to impose financial penalties on journalists for "moral damage" through, for instance, "spreading of untrue information." President Yushchenko, encouraged by the National Commission for Establishing the Freedom of Speech and Development of Information Industry vetoed the law due to the high likelihood that the law would be misused against journalists.

In 2009, independent media watchdogs, such as the Institute for Mass Information, identified three "Predators of the Press-2008": the prosecutor general, for not responding to high-profile crimes against the press; the minister

of the interior, for allowing police clashes with journalists and attacks against photojournalists; and mass media owners, for firing journalists and violating the country's labor laws.<sup>6</sup> Furthermore, the actions of the National Expert Commission on Protection of Public Morality, which has the authority to limit freedom of expression on the basis of violation of moral norms, led to strong criticism and protests from artists, writers and civic activists.

Leading financial and industrial groups own most of the country's media. As a result, media coverage is often biased and subject to the preferences of the outlet's owners. State administrations own regional and local newspapers and television channels and influence the editorial policy of these outlets. A lack of political will continues to prevent the creation of a public television broadcaster.

The 2009 global economic crisis impacted the advertising market, leading to decreases in real salaries, the elimination of jobs in the media sector, and the subjugation of journalists to the policies and interests of the owners of outlets. Some outlets, for example, the weekly magazine *Novynar* (Newsmaker) and the newspaper *15 Minutes*, closed. Other publications drastically reduced content and staff. Yet, in 2009 a number of new media projects emerged. *Levy Bereg* (Left Bank), an analytical newspaper is perhaps the most remarkable newcomer to the national print media market.

Although only 12–14 percent of the population has regular access to the Internet, online publications such as *Ukrayinska Pravda*, *Obkom*, and *Ostrov.org*, maintain significant influence. Media experts detect the visible growth of Internet social and professional networks (Facebook, Twitter, Odnoklassniki), blogs, portals of independent journalism, and video-services in Ukraine.<sup>7</sup> Furthermore, iVox, an online research service, claims that roughly 60 percent of Internet users in Ukraine support civic journalism where users place their content in blogs and forums. They also found that 69 percent of users visit news portals, with more than half visiting Internet media daily.<sup>8</sup>

#### Local Democratic Governance

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| n/a  | n/a  | n/a  | n/a  | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 | 5.25 |

Ukraine is made up of four levels of administrative and territorial formations: the Autonomous Republic of Crimea and *oblasts* (including two cities with *oblast* status, Kyiv and Sevastopol); *raions* (*oblast* districts) and cities with *raion* status; cities; and villages and townships. Each *raion* is divided into a number of village councils. As of January 1, 2009, Ukraine had 24 *oblasts* (plus the Autonomous Republic of Crimea), 490 *raions*, 459 cities, 118 city *raions*, 886 urban-type settlements, 1,321 townships, and 28,480 rural populated localities.

2009 proved to be a significant year for local and regional governance in Ukraine. Early local council elections were held throughout the country during the

year, in which city mayors, village heads, and city council members were elected. The outcomes of local elections revealed low levels of support for the country's main political parties and increased support for alternative political parties, or non-party candidates. In the western city of Ternopil, for example, Freedom—an alternative, nationalist party—and Common Centre—a party stemming from Our Ukraine—gained the most votes, with 35 and 14 percent respectively. The BYT and Our Ukraine fared poorly with 8.1 and 5.5 percent respectively. It is expected that alternative political movements may continue to perform well in the 2010 municipal, parliamentary, and presidential elections.

A long-standing debate on local-level electoral reform continued throughout 2009. A law passed in 2005 establishes proportional elections with “closed” election lists of all members of local councils (except in villages and townships) and all deputies of the Supreme Council of the Autonomous Republic of Crimea. Many, including the Deputy Head of the Presidential Secretariat, Maryna Stavnichuk, believe that the extension of proportional representation to the local level has politicized the local councils.<sup>9</sup> Political party leaders tend to support the proportional system as it enables them to maintain greater control over their parties nationwide. In addition, although the leaders announced their intention to change the legislation in order to “open” election lists, no practical steps were taken.

Crimea was an important issue during 2009. According to the findings of the Razumkov Centre, “the events of 2005–09 in the Autonomous Republic of Crimea bear some resemblance to early 1990s,” including trends of the weak influence of central authorities on local developments, increased pro-Russian activities, and mounting interethnic conflicts.<sup>10</sup> Crimea is largely divided between Russian and Crimean Tatar-groups, allowing for external influence, especially from Russia. Fears of military escalation in Crimea, caused by Russia, proved unfounded in 2009. Crimea is only one element of the Russian approach towards Ukraine with a goal of securing Russian interests in the country. Instead, Russia made efforts to secure its interests at the highest political level during the Ukrainian presidential campaign. Nevertheless, the danger of military escalation in the peninsula remains.

There are a number of shortcomings in Ukraine's administrative and territorial formation. Governmental structures are aware of the problems, as witnessed with the governmental memo “Main Problems of Local Self-Government in Ukraine”.<sup>11</sup> For instance, local self-government in Ukraine is provided through key laws, like the European Charter of Local Self-Government, the Constitution of Ukraine, the Law on Local Self-Government in Ukraine, the Law on Bodies of Self-Organization of the Population; and the Law on Service in Local Self-Government Bodies. However, the overwhelming majority of territorial communities, due to their extreme fragmentation and very weak financial base, proved unable to discharge powers of local self-government. Furthermore, imperfections were noted in the legislation regulating ownership rights and financial and credit activities of local self-government bodies, local taxes, and duties. This leads to conflicts among local self-governing and executive actors. Excessive fragmentation of the present administrative-territorial system is another drawback as the extremely small units lack financial resources.

Despite the constitutional guarantee of regional subsidiarity, Ukraine's executive bodies frequently interfere in the activities of local governments. Such interference results from shortcomings of legal delimitation of powers between the executive branch and local self-governance bodies, and drawbacks in local budgeting and national treasury support for local budgets.

Local bodies in Ukraine neither have adequate funds nor the power to manage budget funds. By law, local budgets consist of general funds, tax revenues, social subsidies, and government grants intended to balance the budget. Many regions create off-budget funds (or charity funds) financed by business and private donations from within the region. The global economic crisis in 2009 proved extremely difficult for local governments; in October, heads of 24 state administrations announced that they were unable to finance their local budgets.<sup>12</sup>

Such policies inhibit local development, as local bodies lack incentives to develop effective social infrastructures. The system of personnel training is also underdeveloped, resulting in unqualified and unprofessional staff. Local governments lack transparency, and the third sector is not utilized to its potential in local development.

The national government made efforts to address these issues in 2009. In March, the president spoke at the All-Ukrainian municipal hearings on the need for reform on all levels. He argued that the basic element of local government must be identified and provided with necessary powers and sufficient funding.<sup>13</sup> This "basic element" was identified as "*bromada*" (a community of people), which elects its head and forms its own executive body. The prime minister and opposition forces were not present at the hearings. This again led to political infighting between these players.

In July 2009, the governmental decree "Concept of Local Self-Government Reform" was passed.<sup>14</sup> According to the Concept, the "creation of conditions for sustainable development of territorial communities as independent and efficient public associations" is to be achieved in four stages. The final stage (2012–14) is to end with the "expansion of powers of local self-government bodies" through constitutional amendments in order to separate the powers of self-governing and executive bodies. While this appears as a positive development, it remains unclear whether or not the Concept will be implemented. Over the past decade, several inconsistent attempts to reform local self-government were introduced and abandoned with party turnover. It is therefore likely that the priority of reforms will change in 2010 with the shift in political power. Finally, there is no mechanism in place to monitor the implementation of these reforms.

The failure of previous reform attempts demonstrates that the shortcomings of local governance in Ukraine will not be solved until a long-term solution identifying an optimal model of state governance and division of powers between the regions and the center is put into place.



## Judicial Framework and Independence

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 4.50 | 4.75 | 4.50 | 4.75 | 4.25 | 4.25 | 4.50 | 4.75 | 5.00 | 5.00 |

The constitution defends fundamental political, civil, and human rights, including freedom of expression, freedom of conscience and religion, freedom of association, and business and property rights. Ukraine has also ratified major international treaties protecting human rights at the global (United Nations) and European levels.

Public trust in the judiciary, however, is very low. Survey results attest to the lack of public trust in the judiciary. A poll carried out by the Razumkov Centre illustrated that while the majority of respondents disapprove of the judiciary, of those who do approve, the approval ratings are in the low single digits.<sup>15</sup> These findings correlate with the data of the U.S. Millennium Challenge Corporation (MCC) Threshold Country Program, which found that, in 2009, trust in the judicial system fell. Nevertheless, despite an apparent lack of trust, citizens and companies report a decrease in corruption in the judicial system.<sup>16</sup>

The Ukrainian judicial system is plagued with a number of problems. In 2009, the court system was critically underfunded. Corruption is pervasive and the courts are not transparent. Court proceedings are unnecessarily long, judicial examination is ineffective, and rulings are not always executed. Judges are poorly trained and subject to a suspect appointment system. Furthermore, the judiciary is highly politicized. In March, participants in parliamentary hearings on the state of the judiciary argued that while “the system of justice existing in Ukraine is deregulated, [it] neither meets European standards nor guarantees the right of the individual to a fair trial.”<sup>17</sup>

There was no breakthrough in 2009 in the provision of equality before the law. Suspects and prisoners are still not safe from arbitrary arrest, long-term detention without trial, searches without warrants, torture, abuse, and excessive delays in the criminal justice system. Many of Ukraine’s citizens feel unprotected before the law. According to Razumkov Centre’s March poll, 34.7 percent of respondents reported that their rights were violated last year. Survey participants ranked observance of basic individual rights at 3.32 points (where 1 denotes that rights are not at all observed, and 5 denotes that rights are well observed) and respect for political rights at 2.77 points.<sup>18</sup>

Although the Ministry of Justice identified the improvement of the legal framework of the judiciary as a priority for 2009, little progress was made. Parliament passed an amendment to the judicial law in October, but did not consider a bill on the status of judges. However, in order to establish uniform functioning of the judiciary, the two bills were merged into one bill entitled “On Judicature and Status of Judges,” and it was recommended for approval in parliamentary hearings. However, the Chairman of the Supreme Court of Ukraine opposed passing the merged law claiming it in fact bars uniformity in judicial practice.<sup>19</sup>



In 2009, the authorities made some progress in the investigation of the 2000 murder of journalist Georgiy Gongadze. In July, Lieutenant General Oleksiy Pukach, the former surveillance chief of the Interior Ministry, was arrested after a long investigation. Though this development was generally viewed quite positively, its timing raised some concerns that the arrest could have been politically motivated.

### Corruption

| 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|------|------|------|------|------|------|------|------|------|------|
| 6.00 | 6.00 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 | 5.75 |

Corruption remains pervasive in Ukrainian society despite long-term efforts to curb it. Transparency International's (TI) 2009 Corruption Perception Index ranks Ukraine 146 out of 180 countries, with 180 being the most corrupt. TI's 2009 Global Corruption Barometer named public officials and civil servants as the most affected by corruption, and that "fewer than 1 in 10 respondents considered government anticorruption efforts to be effective."

The MCC found that from 2007 to 2009 Ukraine experienced a "decrease in actual corruption experiences, but an increase in the perception that corruption is widespread."<sup>20</sup> In 2009, 62.5 percent of respondents indicated that they were involved in corrupt transactions with government officials over the past 12 months, compared with 67 percent in 2007.

The major manifestations of corruption were virtually the same as in 2008. Official bodies remained nontransparent, the government appeared unwilling to fight corruption, and oligarchic groups played a major role in official decision-making and the appointment of officials. The judicial system is ineffective in combating corruption.

In its latest Compliance Report on Ukraine, adopted in May 2009, the Group of States Against Corruption (GRECO) concluded that Ukraine did not sufficiently implement the recommendations made in previous evaluation reports.<sup>21</sup> The evaluators noted that the turbulent political environment in Ukraine makes the necessary adjustments difficult to enact, and that serious commitment on the part of major political actors is required in order to make future progress.

Support for anticorruption legislation increased in 2009. In June, Parliament passed a package of laws expanding the list of entities involved in corrupt activities, establishing anticorruption measures in the civil service, introducing checks on employment procedures for the civil service, banning the acceptance of gifts while carrying out official duties, requiring officials and their close relatives to publically declare their assets, and introducing anticorruption expertise. Furthermore, the package of laws made trade in influence, unlawful enrichment, and commercial bribery criminal activities.

The minister of justice believes that such laws will bring Ukraine's anticorruption efforts into line with international standards. The laws, which have been in

development since 2005, were designed according to the Council of Europe and Financial Action Task Force obligations for Ukraine. Their adoption was encouraged and later praised by the OSCE, the Parliamentary Assembly of the Council of Europe, and GRECO. However, the implementation of the laws was postponed from January 1 to April 1, 2010, after an initial draft suggested postponing it until 2011.

On a positive note, the government made significant achievements in combating corruption in higher education in 2009. Standardized educational testing (SET) was fully introduced this year as part of the admissions process to institutions of higher education, and all students pursuing admittance to such establishments will be required to take a standardized test. Scores are then certified and considered the primary basis for admission. An August 2009 survey revealed that students are now more aware of standardized testing and have greater faith in the higher education admissions process.<sup>22</sup> It also indicated that individuals experience practically no corruption while taking standardized tests.

Job placement procedures at central and local level government bodies lack transparency and public accountability, and qualifications still rate second to personal or party loyalty. On a positive note, there were no examples during the year of authorities limiting media investigations into corruption and bribery. Non-transparent decision-making at local and higher political levels, however, made investigations difficult.

Meanwhile, fighting corruption in Ukraine lacks not only legislative initiatives but implementation. The lack of implementation of legislation that has already been passed, not only in the field of fighting corruption, hinders the prospects of doing away with corruption in the country. The introduction of SET into the Ukrainian educational system was the only fully positive sign in curbing corruption in the state. Despite the adoption of anticorruption laws in June, the decision of the Parliament, supported by the president, to postpone the laws entering into force from January 1, to April 1, 2010 is a negative sign, which demonstrates the political establishment's lack of preparedness for seriously combating corruption in Ukraine.

■ **AUTHORS: OLEKSANDR SUSHKO AND OLENA PRYSTAYKO**

*Dr. Oleksandr Sushko is a research director of the Institute for Euro-Atlantic Cooperation, Kyiv, Ukraine. Dr. Olena Prystayko is a research fellow of the EU–Russia Centre, Brussels, Belgium.*

- <sup>1</sup> Victor Yushchenko, "Ukraine Needs Constitutional Change," April 28, 2009, <http://www.president.gov.ua/en/news/13679.html>.
- <sup>2</sup> Venice Commission, "Opinion on the Draft Law Amending the Constitution of Ukraine Presented by People's Deputies Yanukovych, Lavrynovych, *et al.*" Strasbourg, March 16, 2009.
- <sup>3</sup> Committee of Voters of Ukraine, "Report of the Committee of the Voters of Ukraine on Observation of the Preparations of the Presidential Election in Ukraine," September 22, 2009, [http://www.cvu.org.ua/?lang=eng&mid=fp&id=2367&lim\\_beg=0](http://www.cvu.org.ua/?lang=eng&mid=fp&id=2367&lim_beg=0).
- <sup>4</sup> *Civil Society and the Government*, Data by the State Committee for Statistics of Ukraine, January 1, 2009, [http://civic.kmu.gov.ua/civic/control/uk/publish/article?showHidden=1&art\\_id=114206](http://civic.kmu.gov.ua/civic/control/uk/publish/article?showHidden=1&art_id=114206).
- <sup>5</sup> Radio Free Europe/Radio Liberty, "Ukrainian President Concerned by State of Press Freedom," October 8, 2009, [http://www.rferl.org/content/Ukrainian\\_President\\_Concerned\\_By\\_State\\_Of\\_Press\\_Freedom\\_/1847110.html](http://www.rferl.org/content/Ukrainian_President_Concerned_By_State_Of_Press_Freedom_/1847110.html).
- <sup>6</sup> Institute for Mass Information, "Medvedko, GPO Chief Leading in Predators of the Press-2008 Anti-Rating," April 30, 2009, [http://eng.imi.org.ua/index.php?option=com\\_content&task=view&id=173501&Itemid=57](http://eng.imi.org.ua/index.php?option=com_content&task=view&id=173501&Itemid=57).
- <sup>7</sup> *Telekritika*, "Хто відповідальний за нові медіа?" [Who Is Responsible for the "New Media?"], September 8, 2009, <http://telekritika.ua/internet/2009-09-08/47760>.
- <sup>8</sup> *Telekritika*, "IVOX: Користувачі інтернету підтримують 'громадянську журналістику'" [IVOX: Internet Users Support "Civic Journalism"], December 1, 2009, <http://www.telekritika.ua/news/2009-12-01/49577>.
- <sup>9</sup> Marina Stavnichuk (Deputy Head of the President of Ukraine Secretariat): "Closed" Election System Runs Its Course," *Dzerkalo Tyzhnya*, No. 11 (739) March 28–April 28, 2009, <http://www.zn.ua/1000/1550/65799/>.
- <sup>10</sup> "Topical Problems in Social Relations in the AR of Crimea," *National Security and Defence Magazine*, No. 5, 2009, p.29, [http://uceps.org.ua/eng/files/category\\_journal/NSD109\\_eng.pdf](http://uceps.org.ua/eng/files/category_journal/NSD109_eng.pdf).
- <sup>11</sup> Memorandum of the Ministry of Regional Development and Construction of Ukraine "Main Problems of Local Self-Government in Ukraine," June 3, 2009, <http://www.minregionbud.gov.ua/news/data/attach/2173/2009.06.03-1.doc>.
- <sup>12</sup> "The Governors Worry About Financing the Local Budgets," *newsru.ua*, October 23, 2009, <http://www.newsru.ua/arch/finance/23oct2009/gybernator.html>.
- <sup>13</sup> Media summary of results of All-Ukrainian Municipal Hearings, March 30, 2009, [http://www.municipal.gov.ua/data/loads/oglyad\\_vseykr\\_slyhan\\_zmi\\_30\\_03\\_2009.doc](http://www.municipal.gov.ua/data/loads/oglyad_vseykr_slyhan_zmi_30_03_2009.doc).
- <sup>14</sup> "Concept of Local Self-Government Reform", approved by Cabinet of Ministers Resolution dated July 29, 2009, No. 900, [http://minregionbud.gov.ua/news/data/attach/1671/concept\\_samovrad.doc](http://minregionbud.gov.ua/news/data/attach/1671/concept_samovrad.doc).
- <sup>15</sup> Razumkov Centre public opinion polls, October 19–26, 2009, <http://www.uceps.org/ukr/socpolls.php>.
- <sup>16</sup> Press-Release "Correlation of Perception and Real Experience of Corruption in the Judicial System of Ukraine," August 2009, <http://www.pace.org.ua/content/category/1/1/53/lang/en/>.
- <sup>17</sup> Parliamentary Hearings of March 18, 2009: "On the State of Judiciary in Ukraine," [http://portal.rada.gov.ua/rada/control/uk/publish/printable\\_article?art\\_id=148043](http://portal.rada.gov.ua/rada/control/uk/publish/printable_article?art_id=148043).
- <sup>18</sup> "How Do You Assess Observance of Your Rights in Ukraine? (2006–2009 dynamics)," Razumkov Centre public opinion polls, February 27–March 5, 2009, [http://www.uceps.org/ukr/poll.php?poll\\_id=447](http://www.uceps.org/ukr/poll.php?poll_id=447).
- <sup>19</sup> "On the State of Judiciary," *Dzerkalo Tyzhnya*, No. 11 (739) March 28–April 4, 2009, <http://www.dt.ua/1000/1050/65768>.

- <sup>20</sup> “Corruption in Ukraine”—Comparative Analysis of National Surveys: 2007–2009 for the MCC Threshold Country Program, p.ii, May 20, 2009, [http://www.pace.org.ua/images/stories/2009\\_Corruption\\_in\\_Ukraine\\_Survey\\_\\_\\_Report\\_05-22-09\\_En\\_A4\\_FINAL\\_-\\_rj-sw.pdf](http://www.pace.org.ua/images/stories/2009_Corruption_in_Ukraine_Survey___Report_05-22-09_En_A4_FINAL_-_rj-sw.pdf).
- <sup>21</sup> Joint First and Second Rounds Evaluation Compliance Report on Ukraine, adopted by GRECO at its 42 Plenary Meeting, Strasbourg, May 11–15, 2009, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2009\)1\\_Ukraine\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2009)1_Ukraine_EN.pdf).
- <sup>22</sup> “Corruption in Ukraine. National Study on Corruption during Admission to Higher Education Establishments. Comparison of the 2007, 2008, and 2009 Surveys for the MCC Threshold Country Program,” August, 2009, [http://www.pace.org.ua/images/stories/corruption\\_in\\_Higher\\_Education\\_Report\\_2009\\_ENG\\_Final.pdf](http://www.pace.org.ua/images/stories/corruption_in_Higher_Education_Report_2009_ENG_Final.pdf).