

# Ukraine

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*Capital:* Kyiv  
*Population:* 47.1 million  
*GNI/capita:* US\$6,110

The social data above was taken from the European Bank for Reconstruction and Development's *Transition Report 2007: People in Transition*, and the economic data from the World Bank's *World Development Indicators 2008*.

## Nations in Transit Ratings and Averaged Scores

	1999	2001	2002	2003	2004	2005	2006	2007	2008
Electoral Process	3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	<b>3.00</b>
Civil Society	4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75
Independent Media	5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	<b>3.50</b>
Governance*	4.75	4.75	5.00	5.00	5.25	n/a	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.00	4.50	4.75	4.75
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.25	5.25	5.25	5.25
Judicial Framework and Independence	4.50	4.50	4.75	4.50	4.75	4.25	4.25	4.50	4.75
Corruption	6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75
Democracy Score	<b>4.63</b>	<b>4.71</b>	<b>4.92</b>	<b>4.71</b>	<b>4.88</b>	<b>4.50</b>	<b>4.21</b>	<b>4.25</b>	<b>4.25</b>

\*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

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Political, economic, and social reforms have remained incomplete in Ukraine since late 2004, when the Orange Revolution changed the trajectory of the country's development. The trend toward a pluralistic democracy, human rights, and media freedom is obvious, but the overall quality of these democratic transformations has been challenged by numerous obstacles. Since gaining independence in 1991, Ukraine has witnessed four presidential (1991, 1994, 1999, 2004) and five parliamentary (1994, 1999, 2002, 2006, 2007) elections. The Constitution, adopted in 1996 and amended in 2004, introduced a new model of power in 2006, with stronger roles for the Parliament (Verkhovna Rada) and Cabinet of Ministers (government) and decreasing power for the president. The model introduced a *de facto* "dual executive" dependent on both the president and a parliamentary majority. This dual structure led to infighting and resultant stasis during 2006, which persisted throughout 2007—Viktor Yushchenko's second year in office as the third president of Ukraine. The Parliament was elected by proportional vote in September 2007 following legislative amendments in June. On December 18, a new government of Ukraine was formed, replacing Viktor Yanukovich's (Party of Regions) government, when the newly established Coalition of Democratic Forces—led by Prime Minister Yulia Tymoshenko—obtained a slim majority in the Parliament (the Rada of the sixth convocation), winning 228 out of 450 votes. The pace of governance remained largely stagnant even after the formation of the Coalition of Democratic Forces.

Incomplete reforms introduced after the Orange Revolution resulted in general disillusionment in society, despite relatively steady economic growth. Gross domestic product grew by 6.2 percent in 2007, and nominal monthly wages increased from US\$210 in late 2006 to US\$325 in December 2007. This growth, however, has been substantially challenged by a high inflation rate—10.5 percent, according to the economic survey Consensus Forecast.<sup>1</sup>

**National Democratic Governance.** The constitutional model introduced at the beginning of 2006 was challenged in the spring of 2007 by a serious political crisis, ultimately resulting in early parliamentary elections on September 30. The new Constitution introduced a "dual executive" approach, garnering the risk of permanent conflict between the Office of the President and the Cabinet of Ministers. The potential for conflict became evident after Yushchenko's 2004 presidential election rival, Viktor Yanukovich, was appointed prime minister and subsequently formed a government from his Party of Regions, a party vocal in its opposition to the president. In the early parliamentary elections on September 30, the political forces that supported the Orange Revolution in 2004 obtained a slim majority in

the new Parliament (228 parliamentarians out of 450). Overall, political actors preoccupied themselves with power struggles and pushed legislative reforms from which they stood to benefit instead of focusing on sustainable policy and reforms in 2007. *Ukraine's rating for national democratic governance remains at 4.75.*

**Electoral Process.** Early parliamentary elections took place on September 30, 2007. According to reports by major international observation missions, the elections were free and fair. Parliament passed amendments to the electoral law on June 1, 2007. According to the Ukrainian ombudsperson, this prevented nearly one million people living de facto outside of their place of registration from voting. Ukrainians traveling abroad two months prior to the elections also faced restrictive obstacles to voting.<sup>2</sup> *Owing to the overall free and fair parliamentary elections, Ukraine's rating for electoral process remains at 3.00.*

**Civil Society.** Civil society remains a valuable actor in Ukraine. And despite outdated legislation and dependence on foreign funds, in 2007 it continued to grow very slightly. As of January 2007, the number of officially registered nongovernmental organizations (NGOs) reached 50,706 and involved nearly 20 million members (more than 40 percent of the population). According to Counterpart Creative Center, an organization focused on monitoring and developing the third sector in Ukraine, and Ukrainian experts, only 4,000 functioning NGOs really exist.<sup>3</sup> In January 2007, Kyiv-based NGOs launched a process to elaborate the Civil Society Doctrine—a comprehensive document claiming to identify the third sector's current and long-term priorities, which is slated for translation into legislation in the near future. *Ukraine's rating for civil society remains at 2.75.*

**Independent Media.** At the national level, media freedom appears secure, but local and regional media sectors still lack restructuring and real independence. Neither censorship nor government pressure was detected or reported in 2007. Nonetheless, the influence of political and economic groups remains strong in the media sphere. Ukraine's media sector continued to grow owing to the appearance of new domestic and foreign investments and the development of the advertising market. Also, new independent, quality media projects emerged in 2007, including nationwide daily newspapers, weeklies, and live political shows on television and radio. However, the process of establishing public television remains blocked. *Owing to the growth of Ukrainian media and the appearance of new independent newspapers, weeklies, and non-biased political programs, Ukraine's rating for independent media improves slightly from 3.75 to 3.50.*

**Local Democratic Governance.** The year 2007 was marked neither by the prolongation of the reform proposed by Roman Bezsmertny, deputy prime minister on administrative reform in 2005, nor by the initiation of new reforms. The draft legislation on administrative and territorial changes (a draft Law on the Introduction of Changes to the Constitution of Ukraine on Improvement of the System of Local Government) submitted to the Constitutional Court in 2006 was not considered

by year's end. The new Cabinet of Ministers created on the basis of the Coalition of National Unity claimed the need to strengthen the role of local self-government but did not propose any alternative reform strategies in this regard. *As discussions on reforms and initiatives regarding local governance were notably frozen through 2007, Ukraine's local democratic governance rating remains at 5.25.*

**Judicial Framework and Independence.** The primary shortcomings of the Ukrainian judiciary include lack of public respect for court decisions and the judicial system as a whole, insufficient financing of the court system, and an inefficient and nontransparent process of appointing judges. These problems remained untouched during 2007. The dismissal of the prosecutor general in May, along with the Constitutional Court decision revoking the president's right to appoint and dismiss heads and deputy heads of courts, led to imbalances in the overall judicial framework and raised broad public discussion over the need to reform the judicial system. Unfortunately, preoccupation with the election campaign and the subsequent process of creating a coalition drew main political players away from creating real initiatives. *As the independence of the judiciary at all levels entered into a state of uncertainty and remained there while judicial reforms were ignored, Ukraine's rating for judicial framework and independence deteriorated from 4.50 to 4.75.*

**Corruption.** The year did not feature a significant campaign to fight corruption in Ukraine. The months-long process of preparation for the early parliamentary election and the creation of the coalition put anticorruption measures on the political back burner. The August 2007 adoption of the Decree on Measures Plan on the Implementation of the Concept on a Way to Integrity (Measures Plan) by the Cabinet of Ministers proved the only significant event in this regard. The Measures Plan set a number of concrete benchmarks to be reached by 2010, established the aims of the concept, defined the responsible state bodies, and created an implementation timetable for each of the measures. Despite the adoption of the Measures Plan, corruption remains dominant in Ukrainian society. *Ukraine's rating for corruption remains at 5.75.*

**Outlook for 2008.** The stability of democratic institutions in Ukraine will remain under threat from a frail parliamentary coalition, the Cabinet of Ministers, and the continuous attempts of political forces and leaders to manipulate rules. Early resignation of the government and the disruption of the coalition seem highly plausible. Furthermore, the project of constitutional reform initiated by the president is unlikely to find a consensus among political elites. Various political forces continue to use constitutional reforms as a means to strengthen their political positions. Furthermore, initiatives in the sphere of local governance were not introduced in 2007 and are not expected to be implemented in 2008. Negative trends in the judiciary may lead to a downward spiral for the judicial framework in 2008 in terms of further imbalances and greater loss of independence. The anticorruption activities and initiatives of 2007 will not solve this widespread problem; if left unaddressed, corruption may actually rise in 2008.

# MAIN REPORT

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## National Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007	2008
n/a	n/a	n/a	n/a	n/a	5.00	4.50	4.75	4.75

A new constitutional model introduced on January 1, 2006, was challenged in the spring of 2007 by a serious political crisis, which ultimately resulted in early parliamentary elections on September 30. This crisis focused on the substantial problems of the existing constitutional model, with its number of institutional gaps, deficits, and lack of an efficient system of checks and balances. Formally, the new model appears closer to those of other Central and Eastern European countries and stipulates a substantially stronger role for the Parliament and government while limiting the president's powers. At the same time, the new model introduced a "dual executive" approach, creating the risk of a permanent conflict between the Office of the President and the Cabinet of Ministers. This became evident after President Viktor Yushchenko's 2004 presidential election rival, Viktor Yanukovich, was appointed prime minister and formed a government based on his party, the Party of Regions, which opposed the president.

In 2007, political actors focused their energies on power struggles and pushed legislative reforms from which they stood to benefit (such as the draft law the Cabinet of Ministers adopted in January that introduced further limits to the president's power), instead of advocating for sustainable policy and reforms. Furthermore, at the outset of 2007, continuous attempts by the ruling coalition (Party of Regions, Socialist Party of Ukraine, and Communist Party of Ukraine) to strengthen its position within the Parliament by recruiting "hesitating" members of Parliament (MPs) from the opposition (Bloc of Yulia Tymoshenko [BYT] and Our Ukraine Bloc) also disrupted political processes. The coalition gained a victory in March when the Party of Industrialists and Entrepreneurs, led by Anatoly Kinakh, left Our Ukraine Bloc and joined the ruling coalition. Kinakh later became the economy minister. At the same time, in a move considered an indication of "political corruption" by the opposition, a group of BYT MPs also joined the coalition. Founders renamed the group the Coalition of National Unity.

Leaders of the coalition declared their aim to gain a constitutional majority, or 300 votes, by summer. The president responded by issuing a decree on April 2, 2007, announcing the dissolution of the Parliament (Verkhovna Rada) and scheduling pre-term elections for May 27, 2007. This launched the "active phase" of the political crisis as Yushchenko's opponents immediately challenged the legitimacy of his decree. Furthermore, accusations of corruption disabled the Constitutional Court, the independent arbiter assessing presidential decrees dissolving the Parliament. The duties of the Constitutional Court were suspended by the president.

The next two months were marked with permanent debates, negotiations, and ambivalent decisions that led to a “compromise” that dissolved the Parliament. The final presidential decree on this issue set September 30 as the date for early parliamentary elections. These events demonstrated that major political actors did not follow constitutional norms, but rather toyed with legislative gaps and manipulated the law.

In April 2007, the Parliamentary Assembly of the Council of Europe assessed the political crisis in Ukraine. The report attributed Ukraine’s political instability to “the systematic failure by the successive Ukrainian governments to establish coherent policies backed by substantial legal, administrative, and economic reforms.” It further noted that “the political reforms that would...enable law-based institutions to guarantee democratic rights and freedoms and promote political competition have not been completed to date.”<sup>4</sup>

Throughout the crisis, the Cabinet of Ministers led by Viktor Yanukovich continued its work, but permanent disputes with the president’s secretariat proved that the system of checks and balances did not work efficiently.

One of the evident indications of the national governance deficit was the crisis within the state procurement system. Access to tenders was greatly restricted by procedures introduced in 2005–2006, which blocked a large number of tenders at national and local levels.<sup>5</sup> As the World Bank reported earlier, “Granting a private, non-governmental organization (the Tender Chamber of Ukraine) the authority to make a binding decision in the area of public procurement is inconsistent with international practice.”<sup>6</sup>

On December 27, the president issued a decree establishing the National Constitutional Council (NCC). The president of Ukraine will head the NCC and will be responsible for drafting a new Constitution for Ukraine. Critics of the NCC stress the possibility of using this institution as a tool to push forward the new Constitution via a referendum bypassing the Parliament—an unconstitutional practice that meets neither the requirements of the existing Constitution nor generally accepted democratic practices.

The military and security sectors also suffered from domestic political battles. Formally, the military and security services are under the auspices of the president, who nominates the defense minister and security service chief (who must also be approved by the Parliament). However, transparency and accountability improved within the Ministry of Defense, under the leadership of reformist Anatoly Grytsenko, from February 2005 to December 2007. To create a balance with Grytsenko, Viktor Yanukovich’s government introduced the position of deputy prime minister, responsible for military and security services. The MP from the Party of Regions, former defense minister Oleksandr Kuzmuk, received the position, which was later abolished under Yulia Tymoshenko’s government.

In 2007, Ukraine first witnessed a direct conflict between the security units under presidential oversight (State Department of the Guard Service) and those under the oversight of the Cabinet of Ministers (special unit of the Ministry of the

Interior). In May, at the peak of the political crisis, these units clashed at the Office of the Prosecutor General in an attempt to take control of the building. As a result, both units were withdrawn from the Office of the Prosecutor General.

While the current government has proven more transparent and democratic than those prior to 2004, stable and mature institutions ensuring the rule of law and the irreversibility of democratic changes are still lacking.

The political forces that supported the Orange Revolution in 2004 gained a small victory in the early parliamentary elections of September 30, winning a slim majority in the new Parliament (228 MPs out of 450). The election, however, did not solve the political crisis as such but provided the potential for consensus on further constitutional and legal transformations, if the majority coalition can be sustained.

#### Electoral Process

1999	2001	2002	2003	2004	2005	2006	2007	2008
3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00

The pre-term parliamentary elections took place on September 30, 2007. Despite grave doubts over a possible return to abuse of “administrative resources” to strengthen the electoral positions of their respective political parties, both the presidential administration and the Cabinet of Ministers resisted the temptation, and international organizations declared the September 30 election open and competitive.<sup>7</sup> The election was assessed as in line with Organization for Security and Cooperation in Europe (OSCE) and Council of Europe guidelines, as well as other international standards for democratic elections and national legislation.

The International Election Observation Mission (IEOM)<sup>8</sup> released an official statement on the election process, recognizing both its positive and its negative aspects. The IEOM considered the following as positive outcomes: Only a few isolated incidents interrupted the calm election atmosphere, at which a large number of domestic and international observers were present; the Central Election Commission (CEC) efficiently oversaw the technical aspects of the elections; the District Election Commissions made all preparations in an open manner; local and administrative courts worked to adjudicate cases in a transparent and timely manner; all parties and blocs could convey their messages to the electorate through broad and diverse media coverage, including state media outlets. The IEOM noted a number of shortcomings in the electoral process, including low-quality voter lists; legal provisions allowing political parties or blocs to reorganize or eliminate registered candidates; and delays in Constitutional Court rulings on election-related complaints. The IEOM further expressed concern over measures that excluded voters traveling outside Ukraine for a two-month period prior to the election, the

removal of absentee voting, and campaigning by state and local officials who were not candidates—all in violation of the law.<sup>9</sup> Also noted was the lack of transparency in media ownership, the absence of a public broadcaster and independent media regulatory body, and hidden political advertising.

Ukrainian voters chose from 20 political parties and electoral blocs registered in a generally inclusive process and a free and transparent atmosphere. Major parties and blocs enjoyed equal media access. According to the Committee of Voters of Ukraine, extremely poor-quality voter lists proved the greatest problem but infringed on the rights of all political parties, in all regions of Ukraine, and did not give priority to any one group.<sup>10</sup>

On June 1, 2007, Parliament passed amendments to the electoral legislation. These amendments did not improve election procedures but rather introduced restrictions preventing nearly one million people living *de facto* outside of their place of official residence (according to a statement by the Ukrainian ombudsperson, Nina Karpachova)<sup>11</sup> from voting. Also, people traveling abroad within a two-month period (beginning August 1, 2007) prior to the elections were prohibited from voting.

Ukrainian electoral legislation is usually subject to change prior to elections, making these procedures dependent on the political situation and the interests of parliamentary parties. In general, significant governmental interference was absent from the 2007 elections, although individual cases of abuse of office while campaigning were detected.

The 2007 elections were held according to a proportional voting system. Despite prior experience with the shortcomings of closed party lists, legislators did nothing to change this aspect of the system, nor did they address the lack of transparency in their formation. This resulted generally in parliamentarians lacking close ties to business people, the party, and its ideology.

Five political forces passed the 3 percent threshold to gain seats in the Parliament. These were the Party of Regions, BYT, Our Ukraine Bloc, Communist Party of Ukraine, and Lytvyn's Bloc (see Table 1).<sup>12</sup>

*Table 1.*  
Political Parties Gaining Seats

Party/Bloc	% Votes	Number of Votes	Number of Seats*
1 Party of Regions	34.37	8,013,895	175
2 Bloc of Yulia Tymoshenko (BYT)	30.71	7,162,193	156
3 Bloc "Our Ukraine—People's Self-Defense"	14.15	3,301,282	72
4 Communist Party of Ukraine	5.39	1,257,291	27
5 Lytvyn's Bloc	3.96	924,538	20

The election proved that regional differences still exist in Ukraine. For example, the Party of Regions won 72–73 percent of the vote in the Donetsk and Lugansk oblasts in the east of Ukraine and only 3 percent in Ternopil and the Ivano-Frankivsk oblasts in the west. The BYT received about 53 percent of the vote in the Kyiv region (central Ukraine), 58 percent in the Volyn oblast in the west, and only 4 percent in Donetsk in the east. At the same time, election results marked the softening of some regional discrepancies: The Party of Regions (considered an east-south party) improved its gains in most central and western regions, and the BYT, with its traditional western and central electorate, performed better in the eastern (especially Kharkiv and Dnipropetrovsk) oblasts than in 2006.

In Mariupol (Donetsk oblast, district 48), the Socialist Party of Ukraine (SPU)—led by Oleksandr Moroz, Speaker of the former Parliament who led his party in a “non-orange” political camp in 2006—won with just over 50 percent of the votes, putting the SPU ahead of the Party of Regions. However, in most Donetsk oblast districts, the SPU did not reach the 3 percent threshold. SPU’s unusual victory can be attributed to the strong position of Volodymyr Boyko, an SPU member and industrial magnate from Mariupol. Yet this victory did not help the party cross the 3 percent threshold. Furthermore, the SPU lost nearly all of its traditional central Ukrainian electorate owing to its jump from the “orange” (Yushchenko) to the “white blue” (Yanukovych) camp in 2006.

#### Civil Society

1999	2001	2002	2003	2004	2005	2006	2007	2008
4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75

Civil society plays a valuable role and remains an important actor in Ukraine. Its development, however, suffers from outdated legislation and dependence on foreign funds. As of January 2007, more than 40 percent of the population, or 19,909,038 Ukrainians, were involved in the 50,706 officially registered nongovernmental organizations (NGOs) in Ukraine. However, according to the Counterpart Creative Center (CCC) and Ukrainian experts, only 4,000 NGOs are active.<sup>13</sup> These NGOs vary greatly in their focus and structure, from large trade unions to small think tanks and organizations based on ethnic, cultural, youth, professional, and human rights issues. Yet civil society remains somewhat heterogeneous, with the most influential groups based in the capital (Kyiv), a few regional centers boasting strong NGO networks, and weak structures at the local level.

Some NGOs initiated and continued projects aimed at consolidating third sector activity, such as the Civic Assembly held in Kyiv in July 2007 or the Civic League Ukraine-NATO. Kyiv-based NGOs also launched a process to elaborate the Civil Society Doctrine (a comprehensive document claiming to identify the

third sector's current and long-term priorities) and to work with the Cabinet of Ministers to incorporate this document into future legislation. Large initiatives, or NGO coalitions, often try to establish a permanent connection with top political bodies and officials, but only a few examples of sustainable cooperation at a high level emerged in 2007. NGO experts can engage in a structured dialogue with authorities through public councils held at ministries and parliamentary committees. Yet public councils are not attended by high officials, with the exception of the public councils at the Ministry of Defense and the Ministry of Foreign Affairs, and ministries and parliamentary committees do not meet regularly. Nonetheless, 99 percent of active NGOs polled by the CCC claimed to have had some contact with governmental bodies (including central, regional, and local authorities); 47 percent of these NGOs said they had regular communication—at least once a week—with various authorities.<sup>14</sup>

Authorities do not interfere in NGO activity by levying permanent taxes or by creating additional barriers and obstacles to their registration and functioning. During 2007, NGOs did not express concern over unreasonable checks or attacks from governmental bodies—as was the case until 2004.

International donors continued to provide financial support for the majority of Ukraine's NGOs in 2007. At the same time, the role of national businesses in NGO sustainability has increased: During 2002–2006, more than 50 percent of NGOs received funds from local businessmen and companies.<sup>15</sup> However, a new regulation on public tenders introduced by the Tender Chamber of Ukraine (formally an oversight NGO) has restricted NGO access to public funds through a non-transparent and expensive application scheme. As a result, very few NGOs have succeeded in receiving funds from state or local budgets.

Few NGOs have well-trained, professional staff able to ensure efficient management and fund-raising. Only 61 percent of the organizations polled by the CCC have a permanent staff (full- or part-time). Furthermore, the lack of volunteerism in Ukraine also poses limits to the proper development and functioning of civil society.

Parliament again failed to provide essential improvements to outdated NGO legislation; NGO activity remains regulated by the Law on Citizens Associations, adopted in 1992. The restrictive legal definition of not-for-profit activity offers no clear legal differentiation between profit and income. This prevents NGOs from more active fund-raising among local businesses and poses obstacles to accessing public funds. As a recent study from Razumkov Centre (Ukrainian Center for Economic and Political Studies) described: "Different legislative acts refer to those organizations as 'nonprofit,' 'non-commercial,' 'non-business,' leaving space for variance of such definitions and vague interpretation."<sup>16</sup> In particular, the civil code of Ukrainian NGOs falls within the definition of "non-business partnerships." The business code uses the terms *non-state*, *nonprofit*, and *charity* interchangeably, without defining such organizations in detail. The Law on Taxation of Company Profit uses the term *nonprofit institutions and organizations*.<sup>17</sup>

The state fully respects the right to form and join trade unions, but in practice most trade unions are either old-fashioned, inefficient bureaucratic organizations or controlled by the enterprise's owners (in private industry). Only a few trade unions in Ukraine function efficiently. "Old" trade unions attempt to stifle the efforts of newly emerging unions that stress their interest and clear intent in representing their members.

Extremist and intolerant nongovernmental institutions and organizations represent a small but active part of the third sector. Most of these groups demonstrate a lack of respect for the Ukrainian state and nation. In 2007, authorities in separate regions registered cases of vandalized national symbols and monuments. The most notable case occurred in October when representatives of the Russia-based Euro-Asian Youth Union (and their Ukrainian branch) damaged national symbols on Hoverla, the tallest mountain in Ukraine. Following the incident, Russian leaders of the Euro-Asian Youth Union were denied the right to visit Ukraine.

The rapidly growing media sector appears quite receptive to civil society groups as independent and reliable sources of information and commentary. The presence of NGO experts in both electronic and print media is generally visible, but a large number of NGOs still lack training in media outreach. More than 25 percent of Ukrainian NGOs maintain Web sites, and growing consistently at 15–20 percent per year.

The education system remains mostly free from political influence and propaganda; however, political forces previously "rented" or paid students, especially in big cities, to attend political rallies. This kind of activity has led to the public perception of student activism as a sort of commercial deal.

#### Independent Media

1999	2001	2002	2003	2004	2005	2006	2007	2008
5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	3.50

In the latest Reporters Without Borders Worldwide Press Freedom Index, Ukraine improved its ranking from 105th to 92nd place out of 169 nations; Ukraine stands substantially ahead of Belarus (151), Russia (144), and Turkey (101) but lags behind Georgia (66), Serbia (67), and Armenia (67).<sup>18</sup> Citizens enjoy wide-ranging pluralism in both electronic and print media. However, media freedom in Ukraine at local and regional levels still lacks necessary restructuring and real independence. The government does not censor the private media sector, but regional and local state administrations, acting as owners of numerous newspapers and television channels funded by local and regional budgets, can and do influence editorial policy. The Kyiv municipal media present one clear example of local bureaucratic control. Kyiv city head Leonid Chernovetsky established total control over the editorial policy of the local television company TRK Kyiv, as well as the newspapers *Khreshchatyk* and *Vechirniy Kyiv*, which provided biased information in favor of local leadership.

In most cases, nationwide television channels provide balanced news coverage; representatives of ruling, as well as opposition, parties have equal access to the media. Yet leading financial and industrial groups own most of the nationwide media, which presents grounds for certain biases and subjective preferences. Informal payments from special interest groups also influence the appearance of certain subjects on television. During the election campaign, these groups especially supported widespread, biased reporting and promoted self-censorship. This type of paid information coverage was the most alarming media trend visible in 2007. In November 2007, using the slogan “We are not for sale,” the Independent Media Trade Union announced a campaign against coverage ordered by political and financial interest groups. In an open statement, journalists declared, “Prepaid TV subjects and programs are no longer rare cases. They are becoming an industry that competes with normal news, analysis, and discussions.”<sup>19</sup>

While the advertising market continues to grow and provide new financial opportunities for the independent media sector, the process of establishing a public television foundation remains blocked. Some new independent, quality media projects emerged over the course of the year, including new nationwide daily newspapers, weeklies, and live political television and radio programs.

The most successful initiative in the sphere of print media in 2007 was the establishment of a new nationwide daily newspaper, *Gazeta 24*, funded by a Ukrainian business. The owners and management declared it their aim to reach the high standards of a European daily. Owing to its professional and nonbiased journalism, the newspaper acquired a positive reputation. In October, however, the newspaper’s management, led by well-known journalist Vitaly Portnikov, resigned, accusing the paper’s owners of partisan pressure (owner Volodymyr Kosterin heads the Green Party of Ukraine). At the end of 2007, the future of this newspaper remained uncertain.

In 2007, Ukraine’s media sector also grew in terms of both domestic and international investments. Foreign media enterprises have invested in the Ukrainian media market, mostly supporting entertainment, or “yellow” media, such as the newspaper *Blick*, owned by the Swiss holding company Ringier AG. At the same time, Ukrainian financial-industrial groups strengthened their position within the media market. The Industrial Union of Donbass created a full-fledged print media consortium including *Kyiv Weekly*, *Kommentarii*, the weekly magazine *Delovaya Stolitca*, and other media.

Consolidation of the television market has led to conflicts between management and journalists; the most vocal of such conflicts took place in January 2007, when the majority of journalists working at Inter TV, a channel owned by businessman Valery Khoroshkovsky, abruptly quit.

The majority of Ukrainians enjoy free access to the Internet. Furthermore, the government makes no real attempt to control access to, or the content of, the Internet. Concerns over government Internet control in 2007 proved alarmist and were unconfirmed by any real actions.

## Local Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007	2008
n/a	n/a	n/a	n/a	n/a	5.25	5.25	5.25	5.25

Local governance in Ukraine has a four-level, administrative, territorial structure: the Autonomous Republic of Crimea, oblasts (24), and cities with oblast status (Kyiv and Sevastopol) compose the upper layer; *raions* (oblast districts) and cities with *raion* status form the second; the rest of the cities are third; and villages and townships fourth. Furthermore, each *raion* is divided into a number of local councils (village or small-town councils).

No actions were taken in 2007 to ensure the meaningful participation of citizens in local government decision making. Thus, public participation remains mostly formal. In addition, regional and local authorities remain less transparent in comparison with the central government.

The lack of financial and economic independence for territorial communities presents a problem owing to the ineffective structure of local budgets, which still largely resemble centralized budgets.

Local governance is represented by a dual system of authorities: state administration and a self-governance council. The president appoints the heads of the executive in oblasts and *raions*. Citizens elect top city officials and heads of local councils. The Constitution does not outline precise divisions among bodies at different levels, including administrative bodies such as urban communities, village councils, and township councils.

Following the constitutional reform, the duality of Ukraine's regional self-governance became more evident. On the one hand, regional and local councils, elected by a proportional vote, tried to push through politicized decisions beyond their competences. On the other hand, the Cabinet of Ministers attempted to gain the key role of appointing the heads of administration for oblasts and *raions* by invoking a constitutional provision that states the president may appoint and dismiss these officials only with the approval of the Cabinet of Ministers. This situation, however, simply reflected the ongoing confrontations that occurred in 2007 between the president and the Cabinet of Ministers at the local level.

The duality of authority at the local level also lies in the conflict between the locally elected self-governance authorities and local administrations appointed by the central government. The existing legal framework limits the authority of local self-governance. At the same time, mechanisms guaranteeing that self-governance decisions will coincide with legislation remain weak. Meanwhile, the Cabinet of Ministers claimed the need to strengthen the role of local self-government<sup>20</sup> but did not propose any alternative reform strategies.

Administrative and territorial reforms initiated in Ukraine in 2005 have not been implemented, and new reforms were not introduced in 2007. The Constitutional Court has yet to consider the only draft law on administrative and

territorial changes (a draft Law on the Introduction of Changes to the Constitution of Ukraine on Improvement of the System of Local Government)<sup>21</sup> submitted in 2006. Yet by freezing the discussion on the territorial and administrative rebuilding of Ukraine, representatives of different political forces were able to say that in the midterm, Ukraine missed its opportunity to make essential and necessary reforms in this sphere.<sup>22</sup>

On January 12, 2007, instead of solving the problems resulting from the closed party list, proportional system, the Parliament adopted the Law on Amendment of Some Laws of Ukraine Concerning the Status of Members of the Verkhovna Rada of the Autonomous Republic of Crimea and Local Councils. This law introduced instructions for local council members and reinforced their dependence on political parties and blocs from whose election lists they gained their seats. The new law gave the political party or bloc the discretion to terminate the powers of the council members. Although the introduction of this norm was strongly criticized by the Venice Commission,<sup>23</sup> the upper level of Parliament persisted in moving it forward. At year's end, 12 draft laws awaited parliamentary approval—among them, the Law on Instruction for Parliamentary Deputies.<sup>24</sup>

#### Judicial Framework and Independence

1999	2001	2002	2003	2004	2005	2006	2007	2008
4.50	4.50	4.75	4.50	4.75	4.25	4.25	4.50	4.75

The 2006 Constitution of Ukraine did not change the provisions of the 1996 Constitution in regard to fundamental political, civil, and human rights—including freedom of expression, freedom of conscience and religion, freedom of association, and business and property rights. Furthermore, the major international instruments protecting human rights at global (UN) and European levels have been ratified by Ukraine.

The main shortcomings of the Ukrainian judiciary, including lack of public respect for court decisions and the judicial system as a whole, insufficient financing of the court system, and an inefficient and non-transparent process for appointing judges, remained untouched during 2007. The principle of equality before the law was not reinforced during the year. Different judges can still read and apply Ukrainian law differently, in the same courts, depending on the case. Furthermore, 2007 saw the clear insubordination of the Council of Judges.

Although in 2006 the Constitutional Court obtained a long expected quorum, 2007 proved a destructive year for the institution. Preparations for the early parliamentary elections were extremely problematic. On April 26, 2007, with his second decree on the dismissal of the Parliament of Ukraine, the president abolished his first decree regarding the dissolution of Parliament and the call for early elections, dated April 2, 2007. The second decree set June 24, 2007 as the

date for early parliamentary elections. On April 27, the Constitutional Court of Ukraine registered 160 members of Parliament in compliance with the decree of the Constitution of Ukraine. This started a long process wherein key political players discredited Constitutional Court judges in order to block the Court from making a decision on holding parliamentary elections. The partial acknowledgment of corruption charges against some judges further discredited the Court by raising wide-sweeping suspicion of corruption in Court decisions.

Blocking the Constitutional Court's decision over the parliamentary elections paved the way for early parliamentary elections on September 30 but did not resolve the dispute over the compliance with constitutional norms and the right of the president to introduce such actions. The final decision to hold elections on September 30 was made through an agreement between the president, prime minister, and Speaker of the Parliament on May 27, 2007. As a result, the judicial system of Ukraine was discredited and its lingering problems were brought to light before the Ukrainian public. This situation clearly showed the intent of key political players to use the judiciary as an outlet for internal political disputes and substantially and negatively impacted the public's perception of judicial power.

On May 16, 2007, the President of Ukraine lost the right to appoint or dismiss heads and deputy heads of courts as the result of a decision of the Constitutional Court. With this decision, the Court also directed the Parliament to adopt corresponding legislation to implement the decision. This led to a struggle between the Parliament and Council of Judges over distinguishing the body to appoint judges to administrative positions. Parliament, instead of elaborating and adopting the law according to the Constitutional Court's decision, adopted a decree on May 30 establishing a temporary procedure allowing the High Council of Justice of Ukraine to appoint judges to administrative positions. The following day, the Council of Judges of Ukraine issued a decision giving the right to make such appointments to the Council of Judges. From May 31 through June 1 (just one day), the Council of Judges of Ukraine appointed more than 100 judges to the positions of heads and deputy heads of courts of general jurisdiction. On June 1, Parliament abolished the decision of the Council of Judges with a decree giving the right of appointment back to the High Council of Justice of Ukraine. This decree was reinforced with the Parliament decree dated June 27, 2007. However, the issue of the appointment of judges clearly demonstrated the intention of political players to influence the judiciary through administrative instruments. As a result of Parliament's absence since midyear, the conflict over the appointment of judges to administrative positions remained unresolved at the end of 2007.

The Constitutional Court was not the only institution involved in a fight with the president, the Cabinet of Ministers, and the Parliament. The dismissal of the prosecutor general, Svyatoslav Piskun, with the presidential decree of May 24, 2007, led to a fight before the Office of the Prosecutor General and clearly underlined the immaturity of political forces and key state players. The conflicts between the Constitutional Court and Office of the Prosecutor General led to an imbalance in the overall judicial framework and raised broad public discussion over the need to

reform the judicial system of Ukraine. Unfortunately, preoccupied with the election campaign and the subsequent process of creating a coalition, key political players did not transform talks into real initiatives. Therefore, not only was the opportunity for judicial reform lost in 2007, but the status of the judiciary at all levels entered a state of uncertainty.

#### Corruption

1999	2001	2002	2003	2004	2005	2006	2007	2008
6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75

As was the case in 2006, the year 2007 did not feature a significant campaign to fight corruption in Ukraine. The months-long process of preparation for the early parliamentary elections and subsequent creation of the coalition put anticorruption measures on the political back burner. Consequently, corruption rates stayed at the same level as in the previous year.

Corruption remains an intractable feature of Ukrainian society. In a mid-year survey conducted by the Sociological Service of Razumkov Centre, 23 percent of Ukrainian citizens noted everyday corruption as among the most pressing issues facing society, while 47 percent pointed to corruption at higher political levels. Everyday corruption rated eighth in the list of Ukraine's socioeconomic problems, with corruption among higher politicians rated second on this list.<sup>25</sup>

According to the 2007 national survey on corruption, the vast majority of Ukrainians (77 percent) believe that corruption levels have remained the same or have increased since 2004.<sup>26</sup> Government corruption (90.5 percent) takes fourth place among the most critical problem areas facing Ukrainians. The high cost of living (94.6 percent), crime (92.9 percent), and the high cost and low quality of health care (91.6 percent) are other critical areas.

The year 2007, however, did see some legislative initiatives in the fight against corruption. On August 15, the Cabinet of Ministers of Ukraine adopted the Measures Plan on the Implementation of the Concept on a Way to Integrity (the Measures Plan), by decree, until 2010.<sup>27</sup> The Measures Plan established a number of concrete measures to reach the aims of the concept, defined the state bodies responsible for its realization, and outlined the implementation timetable for each of the measures. Furthermore, the central executive bodies of Ukraine are obliged to provide a report on the implementation of their corresponding parts of the Measures Plan to the Ministry of the Interior by January 20 of each forthcoming year.

Parliament adopted the Law on Ratification of the UN Convention Against Corruption, the Law on Ratification of the Council of Europe Criminal Law Convention on Corruption, and the Law on Ratification of Additional Protocol to the Council of Europe Criminal Law Convention on Corruption, submitted by the president in 2006. Parliament also adopted at its first reading the Law on

Responsibility of Legal Entities for Corrupt Offenses, which envisages assigning responsibility for prosecuting cases of bribery to both central and local authorities; the Law on Principles of Prevention and Countering Corruption; and the Law on Amendment of Some Legislative Acts of Ukraine Concerning Responsibility for Corrupt Offenses. Corresponding draft laws were submitted by the president in 2006, but Parliament used alternative drafts from the representative of the ruling coalition, MP Mykola Dgyga.

In April 2007, Parliament rejected the draft Law on State Committee of Ukraine on Countering Corruption,<sup>28</sup> prepared by the representatives of different factions. At the same time, the Group of States Against Corruption (GRECO), which Ukraine joined in January 2006, made its first evaluation report on Ukraine. GRECO recommended establishing “a body, distinct from the law enforcement functions, with the responsibility of overseeing the implementation of the national anticorruption strategies.”<sup>29</sup> It also stated that the level of corruption in Ukraine threatens the principles of democracy in the country.

Initiatives concerning the division of state power and business were notably absent during 2007. Job placement procedures in central and local government bodies still lack transparency and public accountability. For job seekers, professional qualifications were not prioritized over personal or party loyalty. While no examples of authorities limiting media investigations into corruption and bribery arose in 2007, at the same time, nontransparent decision making at local and higher political levels remained a significant problem and made investigations difficult. Furthermore, no changes were made to grant civil councils, which hold sessions and consultations with authorities from state bodies, much control over policy development and implementation.

What have become known as “corporate raids” remained a growing problem for Ukraine businesses. Together with corporate raiders in the conventional sense, raid groups in Ukraine obtain the property rights of an enterprise by manipulation of the law and the courts, or through the assistance of a state body or law enforcement structure. The existing political and business environment in the state facilitates to a “corporate raids” business culture. Raids became possible, especially, due to an inefficient and corrupt judicial system, high corruption levels, the shortcomings of the legal system (such as lack of protection for business assets), and the weakness of state authorities. According to the Ukrainian Union of Industrialists and Entrepreneurs (the Party of Industrialists and Entrepreneurs is one of many parts of the Union), at the beginning of 2007, around 50 “corporate raid” groups were active in Ukraine. Their activity led to nearly 3,000 seized enterprises. These attacks severely impact both domestic and foreign investments in the economy. The problem is understood by politicians of all main political parties and representatives of authority. At the same time, preventing such practices will prove quite difficult, while the fight for political and economic power and access to the country’s resources continues.

Although 2007 witnessed some legislative initiatives to fight corruption, this intractable feature remains dominant in Ukrainian society. It has become increasingly

clear that anticorruption measures should go beyond legal or administrative means to include a comprehensive approach and should run parallel with serious efforts to raise economic and social standards for the Ukrainian people.

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