

# Ukraine

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*Capital:* Kyiv  
*Population:* 46.5 million  
*GNI/capita:* US\$6,810

The data above was provided by The World Bank, *World Bank Indicators 2009*.

## Nations in Transit Ratings and Averaged Scores

	1999-2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Electoral Process	3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50
Civil Society	4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75
Independent Media	5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50
Governance*	4.75	4.75	5.00	5.00	5.25	n/a	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	5.00
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	5.25	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	5.00
Corruption	6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75
<b>Democracy Score</b>	<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>	<b>4.39</b>

\* 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

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**D**uring its post-Soviet transition, Ukraine has developed 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. The Constitution, adopted in 1996 and amended in 2004, stipulates a *de facto* "dual executive" that is dependent on both the president and the parliamentary majority. Victor Yushchenko, the third president of Ukraine, has been in power since January 2005. The current Parliament was elected in September 2007 by proportional vote with closed party lists and a 3 percent electoral threshold. The government led by Prime Minister Yulia Tymoshenko was appointed in December 2007. It remained stable during 2008 but was consistently challenged by a fragile parliamentary coalition, which finally collapsed in September and then reestablished in a new format in December.

The global economic crisis has severely affected Ukraine. The rapid economic growth of 2000–2007 was replaced by a recession that started in the fourth quarter of 2008. The country's gross domestic product (GDP) in January–September grew about 6.5 percent (as in 2007), but annual outcome reached only 2.1 percent of growth owing to the severe decline that happened in the last three months of the year. Nominal wages, which had been on the rise through September 2008, were substantially challenged by inflation and deep devaluation of the national currency at the end of the year. Ukraine's 22.3 percent inflation rate in 2008 was the highest in Europe.

Ukrainian media have proved to be sufficiently free, with no direct censorship or open governmental pressure detected in 2008 at the national level. However, most media were dependent on owners and informal payments from interest groups for survival, indicating that the media sector still needs strengthening, restructuring, and systemic reforms. The influence of political and economic groups in the media sphere remains strong, and public television has not yet been introduced.

**National Democratic Governance.** Ukraine's constitutional model, introduced in 2006, empowers the Verkhovna Rada (Parliament) to appoint a Cabinet of Ministers (government) after forming a majority coalition. However, the president remains a strong political figure, deriving power from leadership in the National Security and Defense Council and the capacity to appoint and dismiss regional executive chiefs ("governors") based on formal submissions by the government,

which are often de facto ignored. The existing governance model has proved basically plural and democratic but is consistently challenged with a number of institutional gaps, deficits, and an inefficient system of checks and balances. The de facto “dual executive” model has led to evident institutional competition undermining the capacity of state power. Instead of sustainable policy and reforms in 2008, political actors were preoccupied with fighting for power and pushing legislative reforms in their favor (such as the Law on the Cabinet of Ministers, which was changed three times during the year). Stable and mature institutions ensuring the rule of law and the permanence of democratic changes have not yet been built, and the national economy is not free of governmental domination. The slim majority in the current Parliament (227 members out of 450) collapsed in September; a new coalition consisting of Our Ukraine, Bloc of Yulia Tymoshenko (BYT), and Lytvyn Bloc was established on December 9, but the government remained the same. *Owing to the detrimental effects of political competition among top officials and the “war of decrees” waged by the president and Parliament in 2008, Ukraine’s rating for national democratic governance worsens from 4.75 to 5.00.*

**Electoral Process.** In 2008, there was neither a national election nor changes in the electoral legislation in Ukraine. The most noteworthy electoral campaign took place in the capital city of Kyiv after Parliament’s decision to hold pre-term mayoral and city council elections on May 25. Both governmental parties (Our Ukraine and BYT) strongly criticized Kyiv mayor Leonid Chernovetsky, accusing him of corruption. However, with the failure of initiators to nominate a consolidated candidate, Chernovetsky was reelected with 37.7 percent of votes (greater than his first victory in 2006). Chernovetsky’s party also strengthened its positions on the city council and gained almost full control over the majority. The results of the Kyiv elections demonstrated a substantial loss of public confidence in the country’s largest political parties among the capital city voters. According to the Committee of Voters of Ukraine, the Kyiv City Council and mayoral elections were transparent and competitive, although poorly organized. *Owing to irregularities detected in the Kyiv local elections in May 2008, Ukraine’s rating for electoral process worsens from 3.00 to 3.50.*

**Civil Society.** The civic sector remains an important actor in Ukraine, though it continues to suffer from outdated legislation and dependence on foreign funding. The new government made efforts to involve nongovernmental organizations (NGOs) more intensively in advisory activities and provided a role in state public relations programs related to European and Euro-Atlantic integration. A permanent NGO Expert Council was established for Ukraine on the European Union–Ukraine Cooperation Committee. The country boasts a sizable number of registered NGOs (52,693), with 1,791 maintaining national status; however, not all registered NGOs actually operate. Most are trade unions, charitable and religious organizations, and groups involved in ethnic, cultural, youth, professional, and human rights activities. The current authorities do not interfere by levying

permanent taxes or creating additional obstacles to NGO activity. Access to public funds is still rather limited, despite some improvements over previous years. Ukrainian civil society remains heterogeneous, with the most influential NGOs based in Kyiv. Too few organizations have well-trained professional staff capable of ensuring efficient management and fund-raising. The Parliament failed again to provide essential improvements to outdated NGO legislation, and the definition of “nonprofit activity” remains restrictive. Ukrainian NGOs are still prohibited from generating income, even to support legitimate organizational aims. *Ukraine’s rating for civil society remains at 2.75.*

**Independent Media.** Heterogeneous overall, Ukraine’s media sector is mostly free at the national level, but local and regional sectors still lack restructuring and real independence. Citizens currently enjoy wide-ranging pluralism in both electronic and print media. Governmental censorship is not detected, although there is evidence of attempts to influence TV coverage on some sensitive events. At the regional and local levels, state administrations own newspapers and TV channels and affect their editorial policy, which was clearly evident in the Kyiv media during the pre-term municipal electoral campaign. Nationwide television channels in most cases provided balanced news coverage; representatives of the ruling parties as well as the opposition had equal access to the media. Most nationwide media are privately owned by leading financial and industrial groups, which allows conditions for biased content and subjective preferences in media coverage. A lack of political will continues to prevent the creation of public television. The advertising market, which developed at a fast pace in recent years, is expected to suffer from the economic crisis, posing a threat to the financial independence of media. Only a few quality media projects appeared in the national/regional markets in 2008. *Ukraine’s rating for independent media remains at 3.50.*

**Local Democratic Governance.** There were no changes in the administrative and territorial formation of Ukraine in 2008. 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*, based on formal submissions by the government that are de facto ignored. Citizens elect top city (village) officials, but their participation in local government decision making remains mostly formal. Regional and local authorities are less transparent than the central government. In its official program, adopted in January 2008, the Cabinet of Ministers of Prime Minister Yulia Tymoshenko indicated that one of its goals is the reform of local administration and administrative and territorial governance of Ukraine. The draft laws “On Changes to the Law on Local State Administrations” and “On Changes to the Law on Local Self-Governance” were on the list of laws to be adopted by the Parliament with the creation of the Coalition of Democratic Forces. Both drafts passed the first reading in the Parliament and were approved as basis in March 2008, but the respective laws were finally not adopted. Confrontations between the president and the Cabinet of Ministers in

2008 negatively impacted local governance stability. *Although the extreme fragility of local governance is of concern in light of the upcoming presidential campaign in 2009, the existing local system managed to survive the intense confrontations among political elites in 2008; therefore, Ukraine's local democratic governance rating remains unchanged at 5.25.*

**Judicial Framework and Independence.** Ukraine has ratified all major international instruments protecting human rights at the global (UN) and European levels. Constitutional provisions defend fundamental political, civil, and human rights, including freedom of expression, freedom of conscience and religion, freedom of association, and business and property rights. 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 nontransparent process for appointing judges, remained untouched during 2008. No serious discussions on criminal justice reform, such as replacing the Soviet-era criminal procedure code, took place in 2008. There is still no modern law on the Defense Bar, suggesting that legal reform is a far distant priority for political elites. The unprecedented efforts by the president to misuse the courts to push a decision on holding early parliamentary elections reflect a negative trend of politicizing the judicial system. Throughout the year, there was evidence of growing pressure on judicial independence from the executive and legislative branches, which has the potential to degrade state power, the economy, and public administration in Ukraine. *Misuse of the judiciary for political purposes took an unprecedented wide character in Ukraine in 2008; therefore, the rating for judicial framework and independence worsens from 4.75 to 5.00.*

**Corruption.** Apart from some successes in fighting corruption in education, particularly in admissions to institutions of higher learning, 2008 did not feature a significant campaign to fight overall corruption in Ukraine. The intense months-long confrontation between the president and the Cabinet of Ministers put anticorruption measures on the political back burner, along with improvements to local governance, the judiciary, and economic policy. There were no examples in 2008 of authorities limiting media investigations into corruption and bribery. At the same time, nontransparent decision making at the local and regional levels remained a significant problem and made investigations difficult. There was also a notable lack of initiative concerning the division of state power and business during 2008. Despite the years-long fight, corruption remains an intractable feature of Ukrainian society. *Although 2008 witnessed some legislative initiative to fight corruption, confrontations among political elites prevented its implementation; therefore, the corruption rating for Ukraine remains high at 5.75.*

**Outlook for 2009.** The global economic crisis is likely to be the strongest national factor in Ukraine in 2009, even more so than in other states of the region (the International Monetary Fund predicts a GDP decrease of 8–10 percent for Ukraine).

The country's growing unemployment, inflation, and decrease of household incomes will threaten its social security and overall stability, posing additional challenges for national democratic development. Despite the obvious fragility of the parliamentary coalition, it is unlikely that pre-term elections will be held in 2009; with little reasonable chance to improve their positions in the new Parliament, most powerful political players are unlikely to fight for elections. Political forces are more likely to concentrate their efforts on the presidential campaign beginning in 2009 (with elections expected in January 2010). Current president Victor Yushchenko has hypothetical chances to be re-elected. Yulia Tymoshenko and Victor Yanukovych are the most likely to become major contenders, although the crisis may unexpectedly impact the results of the presidential race. The crisis destroys social support of today's main leaders. Therefore, the possibility that a new leader will win the elections should not be excluded. The presidential campaign will be a test for the sustainability and independence of Ukrainian local governance in 2009. 2008 witnessed obvious misuse of judiciary in political interests. If continued, it may lead to serious negative consequences for the Ukrainian statehood in 2009. As there was little success to tackle corruption in recent years, there is not much hope of this happening in the year of the presidential campaign. Introduction of legislation on electronic data reporting of businesses proposed in 2008 deserves special attention, as it could create openings for new government corruption schemes within the Ukrainian economy.

# MAIN REPORT

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## National Democratic Governance

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
n/a	n/a	n/a	n/a	n/a	5.00	4.50	4.75	4.75	5.00

As reflected in the political programs and political rhetoric in Ukraine, there is an acceptance of democracy as the only appropriate system of governance. At the same time, stable and mature institutions that would ensure the rule of law and the consolidation of democratic changes have not yet been built. Ukraine is still a fragile democracy with a strong need to balance power among the branches of governance.

Ukraine’s constitutional model has proved essentially plural and democratic, but it is consistently challenged by a number of institutional gaps, deficits, and the lack of an efficient system of checks and balances. A constitutional amendment implemented in 2006 stipulated that the Verkhovna Rada (Parliament) adopt a Cabinet of Ministers (government), including the prime minister. The Constitution sets out the forming of the majority coalition by party factions (at least 226 out of 450 parliamentarians) as a precondition to appointing the government. Since 2006, the president no longer has the power to appoint or dismiss the prime minister or other ministers but may nominate candidates for foreign and defense minister positions.

However, the president remains a strong political figure through leadership in the National Security and Defense Council (NSDC) and the capacity to appoint and dismiss regional executive chiefs (“governors”) based on formal submissions by the government, which are often de facto ignored. Decisions by the NSDC are obligatory for all executive bodies, including the Cabinet of Ministers. The president also has the power to suspend decisions by the Cabinet of Ministers through appeals to the Constitutional Court on matters considered unconstitutional. In practice, the president has consistently misused this opportunity, suspending any undesired decision taken by the government.

Ukraine’s current government has demonstrated a greater openness to public participation. A number of public councils were established or reactivated at the Cabinet of Ministers and subordinate bodies, and some cabinet meetings have been televised. At the same time, not all governmental decisions have been adopted in a transparent way. In particular, despite progress in removing the nontransparent company, RosUkrEnergo, involved in the Ukrainian gas market, the government still fails to provide sufficient transparency in its energy deals with Russia.

The de facto “dual executive” model (headed by the president and prime minister) has led to institutional competition and an undermining of state power. Instead of concentrating on sustainable policy and reforms, political actors were

preoccupied during the year with fighting for power and pushing legislative reforms in their favor. The Law on the Cabinet of Ministers, which changed three times in 2008, is an example of the political manipulation of basic legislation. Initially, the ruling coalition adopted a draft providing extra power to the President via the NSDC. In early September, one of the governmental parties, Bloc of Yulia Tymoshenko (BYT), made a deal with the opposition Party of Regions to change the law to limit the president's power. Then, in October, in an effort to revive the collapsed coalition, BYT, together with the pro-president Our Ukraine, voted for a return to the previous version of the law. Despite these obvious legislative manipulations, the government submitted no substantive reformist measures to the Parliament, such as draft legislation for administrative, anticorruption, or judiciary reform.

The competition for political power is evident in Ukraine's domestic and foreign policy. Institutional gaps and the lack of good-governance culture are complicated even more by the strong personal conflict and distrust between President Victor Yushchenko and Prime Minister Yulia Tymoshenko. The confrontation became known as the "decrees war," where in its first 100 days, the government of Yulia Tymoshenko received 881 directives, instructions, and other written prescriptions from the president and his secretariat (the previous government of Victor Yanukovich received 231 directives during the same period).<sup>1</sup>

Parliament plays an important role in Ukraine, making principal legislation and serving as a platform for wide political debate on the country's domestic and international agenda. Both governmental and opposition parties use the parliamentary tribune to deliver their messages to the public. Parliamentary sessions are broadcast on the first channel of the National Radio Company and the Rada parliamentary TV channel. As indicated by the parliamentary debates of the sixth convocation, there is an evident lack of political consensus on basic points of the political agenda. The Parliament's slim majority (227 out of 450 members from BYT and Our Ukraine) was turbulent from its establishment in December 2007, then challenged in June 2008 with the withdrawal of two members of Parliament (MPs), and finally dissolved in September with the withdrawal of the entire Our Ukraine faction.

In response to these events, President Yushchenko issued a decree on the dissolution of Parliament on October 9. However, the majority of parliamentary forces did not accept this option and continued to look for an opportunity to reestablish a coalition. The Cabinet of Ministers and Parliament refused to make changes to the state budget for 2008 that would provide expenses to hold pre-term elections. Without such a decision, there was no legal technical possibility to conduct the elections. Thus, for the first time, the president faced an actual inability to use his right to dissolve Parliament, even though it was constitutionally legal.

In mid-November, Speaker of the Parliament Arseny Yatseniuk was voted out with help from MPs close to the president, indicating the continuing deep erosion of Yushchenko's personal entourage and all former members of the "orange" political camp. The new Speaker of the Parliament, Volodymyr Lytvyn, was elected on

December 9, with the announcement of a new coalition consisting of Our Ukraine, BYT, and Lytvyn's Bloc. A formal agreement exists among the three factions, yet not all MPs from the coalition have taken part in its work (Our Ukraine is divided 50/50). As a result, the real number of coalition members is fewer than the minimum requirement of 226 persons, which posed a challenge when the coalition needed to adopt laws by majority rule. The Parliament of the sixth convocation is the least productive among all previous convocations in terms of laws drafted, submitted, debated, and adopted.

The Constitution and Law on Democratic Control over the Military Sphere provide for democratic oversight of the military and security services. Since 2005, Ukraine's defense minister post has been held by a civilian. Parliament has the capacity to investigate cases of misuse of military and security power. At the same time, this capacity has been used for purely political reasons, such as the case against "illegal" sales of weapons to Georgia before and during the Russia-Georgia war in August 2008. The national economy is not free of governmental domination. According to the Heritage Foundation and *The Wall Street Journal's* annual Rating of Economic Freedom published in January 2009, Ukraine not only worsened its position once again, moving from 133rd to 152nd place, but also for the first time in recent years was qualified as an "economically unfree country." This was the result of nontransparent state expenditures, interference of the state in private business operations, and a lack of anticorruption efforts.

#### Electoral Process

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3.50	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50

In Ukraine in 2008, there was neither a national election nor changes to electoral legislation. After the collapse of the ruling coalition in September, President Yushchenko issued a decree in early October stipulating a pre-term election to be held on December 7. However, the BYT faction in the Parliament and the leadership of the Cabinet of Ministers attacked the president's initiative. As a result, Parliament failed to approve amendments to the 2008 state budget necessary to provide for election funding; therefore the elections did not take place. This months-long season of political confrontations was described as a "war of decrees."

Ongoing debates on electoral legislation showed dissatisfaction with the existing election model, which is based on a proportional vote with a 3 percent electoral threshold, closed party lists, and a single national district electoral structure. Opponents of the existing model usually criticized its total dependence on party leaders and nontransparency of party lists; they argued for "open" party lists and multimandate regional electoral districts. During 2008, politically motivated drafts were developed—including one by BYT/Party of Regions MPs offering a two-

round parliamentary electoral system with a “winner take all” principle and another by Party of Regions/Our Ukraine MPs proposing a complicated “open party list” system—but none were adopted.

Several pre-term elections of city mayors and councils were held in Ukraine in 2008: Stakhanov (Lugansk oblast) mayoral election (March 16), Zhashkiv (Cherkasy oblast) mayoral election (May 25), and Rivne City Council and mayoral election (November 30). The most notable contest took place in Kyiv after the Parliament’s decision to hold pre-term mayoral and city council elections in the capital city on May 25. Both governmental parties (Our Ukraine and BYT) strongly criticized Kyiv mayor Leonid Chernovetsky, accusing him of corruption. However, owing to the failure to nominate a consolidated candidate, Acting Mayor Chernovetsky was reelected, obtaining 37.7 percent of votes, a better outcome than his first victory in 2006.<sup>2</sup> His closest competitor, Deputy Prime Minister of Ukraine Oleksandr Turchynov (BYT), lost with 19.12 percent. Vitaly Klychko, considered the favorite to win, took third position with 17.97 percent of votes.<sup>3</sup> Chernovetsky’s personal political bloc also strengthened its positions in the city council (30.45 percent of votes), easily winning a majority along with some aligned, political partners.

Results of the Kyiv municipal elections demonstrated a substantial loss of public confidence in Ukraine’s largest political forces and political leaders among the capital city’s voters. For instance, BYT obtained only 22.79 percent of votes in Kyiv, down from 40 percent in the parliamentary elections of 2007 and 38 percent in the city council elections of 2006. The Kyiv City Council elections also indicated a severe crisis in the pro-presidential political party Our Ukraine, which failed to pass the 3 percent electoral threshold and lost representation in the city council.<sup>4</sup>

According to the Committee of Voters of Ukraine (CVU), the Kyiv City Council and mayoral elections were transparent and competitive, although poorly organized. Parties were unprepared to form election commissions; they breached organizational deadlines and individual procedures, exceeded funding limits, bribed voters, and misrepresented public opinion through the media. Voter lists were of poor quality. Many Kyiv residents failed to check and clarify their personal data; commissions, in turn, did not arrange such verifications. Direct voter bribes were widespread in the final stage of the campaign.

The CVU registered “mild forms” of administrative pressure by all political forces, whose representatives occupy positions with central and municipal authorities. Although no direct pressure upon voters was revealed, the majority of candidates abused their positions in the course of campaigning by using their connection to local administration and monopolizing the political advertising market in some segments (public transport, communal media, and so forth). CVU experts concluded that, given the shortcomings in the Kyiv local elections, Parliament needs to introduce changes to legislation—in particular, lifting restrictive limitations on the use of the electoral fund, changing the principle of formation of the polling station commission, expedite compilation of the voters’ register, and making the penalty for bribing voters more severe.

## Civil Society

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
4.00	3.75	3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75

Civil society remains an important actor in Ukraine, though it suffers from outdated legislation and dependence on foreign funding. The number of nongovernmental organizations (NGOs) registered in Ukraine is quite substantial: 52,693, including 1,791 with national status, involving approximately 20 million members (more than 40 percent of the population). Most are trade unions, charitable and religious organizations, and groups engaged in ethnic, cultural, youth, professional, and human rights activities. The current authorities do not interfere by levying taxes or creating other barriers to NGOs.

The change of the Cabinet of Ministers in December 2007 had a positive effect on the direct relations and general atmosphere between the government and civil society. For the first time, the Cabinet of Ministers' official agenda included a chapter entitled "Civil Society," elaborated primarily by NGOs under the initiative of the Kyiv-based Ukrainian Center for Independent Political Research and its partners. The new government made some effort to involve NGOs more intensively in advisory activities and provided them a role in government-operated public relations programs such as the State Programs of Public Information on European and Euro-Atlantic Integration for the period 2008–2011, adopted in 2008. A permanent NGO Expert Council for Ukraine was established within the European Union–Ukraine Cooperation Committee. A number of public councils and commissions with NGO participation continued to work with the Parliament and executive branch—namely, the National Council for Media Freedom and Information Sphere Development, National Council on Public Administration and Self-Governance, Council on Ethno-national Policy, and National Commission on Strengthening Democracy and the Rule of Law.

Civil society in Ukraine remains heterogeneous, with the most influential NGOs concentrated in the capital, Kyiv. Restrictions posed by legislation prevent some local NGOs from efficient inter-regional and nationwide cooperation, as the law allows NGOs to conduct activities only in the region where they are registered. For instance, an NGO registered in Kyiv cannot operate freely in other cities and regions. To receive nationwide status, an NGO must have branches registered in regions throughout Ukraine, which is not the case for most small and even medium-size NGOs. It is still much easier and faster to register a company or private entrepreneurship than an NGO.

NGO funding in Ukraine is rather unstable; most organizations (73 percent) depend on foreign and local donors, with 25 percent selling their services and only 2 percent declaring state support.<sup>5</sup> NGO access to public funds is still limited, despite some improvements over previous years. In 2007–2008, only 1 percent of state budget expenditures were committed to supporting civil society (compared with the 2–3 percent average in European Union [EU] member states). In previous

years, the level of budget support was even lower (.05 percent); therefore a positive trend is detected.<sup>6</sup> On the other hand, many of these budget expenditures lack sufficiently transparent procedures and competition. The legislation overseeing public purchasing calls for restrictive and expensive procedures, which are inappropriate for most NGOs in Ukraine.

The business sector in Ukraine, however, has shown a greater readiness to support NGOs, and several private funds (for instance, Open Ukraine, Victor Pinchuk Fund, Development of Ukraine) offer grants for civil society organizations. Among their priorities are 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.

Among foreign donors, the George Soros–affiliated International Renaissance Foundation (IRF) continued to play a leading role, providing more than US\$6 million annually to numerous Ukrainian NGOs, community groups, academic and cultural institutions, and so forth.<sup>7</sup> Recently, the IRF received major support from Ukrainian businessman Victor Pinchuk for its rule of law and human rights programs. Civil society support also comes from the United States Agency for International Development and EU funds. The German-based foundations Konrad-Adenauer-Stiftung and Friedrich-Ebert-Stiftung traditionally support NGOs in Ukraine, as do the Heinrich Böll and Friedrich Naumann foundations.

Too few Ukrainian NGOs have well-trained professional staff to ensure efficient management and fund-raising. In 2008, the Parliament failed again to provide essential improvements to outdated NGO legislation; the definition of “nonprofit activity” is still restrictive, prohibiting NGOs from generating income even for legitimate organizational aims.

#### Independent Media

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
5.00	5.25	5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50

Owing to its rapid growth over the last decade, the media market in Ukraine appears successful. The total number of registered TV and radio outlets roughly stands at 1,600 broadcasters, 43 production studios, 13 distributors, and 463 program service providers. There are 15 nationwide television networks, 4 regional television networks, 15 nationwide radio networks, and 8 regional radio networks. As for print media, there are 22,794 registered periodicals, of which, 9,948 are distributed regionally, nationwide, and internationally, and 12,846 are published locally, including 10,740 newspapers and 2,106 journals and magazines. According to experts, however, only about 8,000 periodicals are actually published, including the top-selling newspaper *Fakty (Facts)* with 2.65 million readers, the newspaper *Segodnya (Today)* with 1.33 million readers, *Komsomolskaya Pravda v Ukraine* with 1.08 million readers, and *Express* with almost 800,000 readers.<sup>8</sup>

The legal basis for freedom of opinion and speech in Ukraine is secured in Article 34 of the Constitution, and Article 15 forbids censorship. Some restrictions on freedom of speech are regulated by the Law on Information, Articles 28–37. Article 10 of the Law on Printed Mass Media prohibits print media monopolization. Ukraine’s media sector is mostly free and quite heterogeneous, though some archaic elements inherited from Soviet times remain, especially at the local level. Overall, governmental censorship has not been detected, yet some evidence points to attempts by the central authorities to influence TV coverage of sensitive events.

The most troubling recent trend in Ukrainian media is the evident commercialization of content, including political coverage. The general quality and development of both print and electronic media suffer from paid-for content and publications that may mislead public opinion through the manipulation of facts and assessments. Still, media freedom in Ukraine appears sufficient at the national level, while local and regional media sectors lack independence. The Ukrainian public currently enjoys wide-ranging pluralism in both electronic and print media, and confidence in mass media is relatively high.

At regional and local levels, the state administration is a significant player in media markets by owning newspapers, funding TV channels through the state budget, and affecting editorial policy. In the capital, Kyiv, local public media (newspapers *Khreshchatyk*, *Vechirniy Kyiv*, and *Ukrayinska Stolysia*) were used to promote Acting Mayor Leonid Chernovetsky while attacking his opponents and their parties during the pre-term municipal electoral campaign in May 2008.<sup>9</sup> Yet, in Ukraine there is still insufficient political will to create public television.

In most cases, nationwide television channels provided balanced news coverage, and representatives of the opposition as well as the ruling parties had relatively equal access to the media. Most nationwide media are privately owned by leading financial and industrial groups, causing some experts to declare that “state censorship has been replaced by owner censorship,” as “for most media owners the media are not a way of making profit, but a means of creating favorable public opinion.”<sup>10</sup>

One important TV holding in Ukraine is associated with businessman and head of the Customs Service, Valery Horoshkovsyi. The holding owns TV channels Inter, Enter, and Enter-Film and was recently joined by the Dmitry Firtash–owned K1, K2, and Megaspport. Novyj Kanal, ICTV, STB, M1, and 11 Kanal (Dnipropetrovsk) are part of the media empire of Victor Pinchuk, which also includes the top-selling newspaper *Fakty*. The newspaper *Segodnya* is owned by the richest person in Ukraine, industrialist Rinat Akhmetov. Igor Kolomoyskiy is a shareholder of *Gazeta Po-Kievski* and *Komsomolskaya Pravda v Ukraine*.

Online media play a measurable role in Ukraine, despite the fact that only 8–10 percent of the population enjoys regular access to the Internet. There are e-publications that have no printed analogues, for instance, *Ukrayinska Pravda*, *Korrespondent.net*, *Glavred.info*, *ProUa.com*, and others. The advertising market, which was fast-growing in recent years, is expected to suffer from the global economic crisis, posing a threat to the financial independence of media. Only a few quality projects appeared on the national/regional media scene in 2008.

Some international organizations have already downgraded their assessment of the media situation in Ukraine. According to the International Research & Exchanges Board's Media Sustainability Index 2008, the panelists rated all five indicators lower than in the past two years, some lower even than in 2004. Ukraine's overall score was 2.00, down 0.37.<sup>11</sup> The negative effect of the economic crisis on the media landscape has led some outlets in Ukraine to dramatically cut their personnel (newspaper *24*) or reduce their number of pages (*Gazeta Po-Kievski* and *Dzerkalo Tyzhnia*).

#### Local Democratic Governance

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
n/a	n/a	n/a	n/a	n/a	5.25	5.25	5.25	5.25	5.25

Ukraine maintains four levels of administrative and territorial formation: the Autonomous Republic of Crimea and 24 oblasts (including 2 cities with oblast status, Kyiv and Sevastopol); *raions* (oblast districts) and cities with *raion* status; cities; and villages and townships. Furthermore, each *raion* is divided into a number of village councils.

Local governance comprises a dual system of authorities: state administration and a self-governance council. The president appoints the heads of the executive in oblasts and *raions* from among formal submissions by the government, though these are often de facto ignored. Citizens elect top city officials and the heads of local councils. It is important to note that the Constitution does not outline the precise divisions that are commonly found among bodies at different levels in Ukraine, including administrative bodies such as urban communities, village councils, and township councils.

There are a number of shortcomings in Ukraine's administrative/territorial formation inherited from Soviet times that never entirely reformed with the aim of adapting to the modern needs of the state. The structure is to some degree irrational: Administrative entities do not correspond to the number of resident citizens; division of power between central and local authorities is not clear, and the subsidiary principle is frequently ignored; there are also serious problems in the regional budgeting process, as when local administrations lack the authority to dispose local budgets independent of the central authorities. Citizen participation in local government decision making remains mostly formal, and regional and local authorities are less transparent than the central government.

Though reforms were initiated in 2005, leading to the draft Law on the Introduction of Changes to the Constitution of Ukraine (on Improvement of the System of Local Government), submitted in 2006, there has been little progress. On January 15, 2008, the Constitutional Court of Ukraine finally issued a decision on the 2006 draft law, recognizing that it only partially corresponds to the Constitution. No further steps were taken by the Court.

In its official agenda adopted in January 2008, Prime Minister Yulia Tymoshenko's new Cabinet of Ministers identified the reform of local administration and territorial governance as one of its goals. Their plan linked the reforms with the adoption of a new Constitution of Ukraine. Since the Constitution was not revised in 2008, the government did not take steps to introduce any new reform or implement the earlier proposed reforms of 2005. The draft legislation on changes to the Law on Local State Administrations and the Law on Local Self-Governance were on the list of laws to be adopted by the Parliament with the creation of the Coalition of Democratic Forces. Both drafts passed the first reading in the Parliament and were approved as basis in March 2008, but the respective laws were finally not adopted.

In 2008, there was fierce political fighting among Ukraine's main parties, as well as confrontations between the president and the Prime Minister, which reflected negatively on the activities and stability of local administration. Cases of misuse of local governance structures for political fighting included the early elections of the mayor of Kyiv in June, more than a dozen appointments by the president of so-called acting heads of local state administrations, and the presidential decree of February 11, 2008, "On Business Trips of Local State Administration Heads," obliging them to "coordinate their trips with the President," thus restricting their freedom of movement within the country.<sup>12</sup>

The decree to hold early elections for the mayor of Kyiv was adopted by the Parliament in March 2008, based on allegations of corruption against then mayor Leonid Chernovetsky. The decree lacked full legitimacy. It became possible only as a result of political compromise among the main parties, and its adoption was stipulated as part of the coalition agreement. Although the electoral results did not bring considerable changes to the political representation of the Kyiv Council, it raised the danger of similar "voluntary" mayoral elections in other Ukrainian cities resulting from political fights at the central level. The presidential decrees appointing "acting" heads of local state administrations were contrary to constitutional procedure, which stipulates appointments of local heads by cooperation of the president and the government.

Despite the above challenges, the existing local governance system in Ukraine managed to hold together in 2008, yet remains highly fragile in view of the upcoming presidential elections in 2009.

#### Judicial Framework and Independence

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
4.50	4.50	4.75	4.50	4.75	4.25	4.25	4.50	4.75	5.00

Ukraine has ratified the major international instruments protecting human rights at the global (UN) and European levels. Constitutional provisions defend fundamental political, civil, and human rights, including freedom of expression, freedom of conscience and religion, freedom of association, and business and property rights.

Yet no progress was made in 2008 to correct the main shortcomings of the Ukrainian judiciary, which include a lack of public trust in court decisions and the judicial system as a whole, insufficient financing of the court system, and an inefficient and nontransparent process for appointing judges. The principle of equality before the law was not reinforced during the year, and key political players continued to misuse the judiciary as an outlet for internal disputes. There were no serious discussions on criminal justice reform or efforts to replace the Soviet-era criminal procedure code still in use in an amended form. Furthermore, Ukraine lacks a modern law on the Defense Bar, suggesting that reform of the legal sector is a far distant priority among political elites.

Against political confrontation with allied Bloc of Yulia Tymoshenko (then—head of the government) the President decided to appoint early parliamentary elections with the purpose to re-format the existing coalition, as was done in 2007. But, unlike 2007, there was no political consensus on such a decision among main decision-makers. In such circumstances the judiciary became a hostage and a tool in order to force or shut out the possibility of early elections.

According to the Presidium of the Council of Judges of Ukraine, President Yushchenko, in an effort to force early parliamentary elections, violated legal due process on October 10, 2008, by liquidating the Kyiv County Administrative Court; he also lacked the constitutional or legal power to dismiss the head of the Pechersk District Court of Kyiv, which occurred on October 15. In a months-long “war of decrees,” these marked only a few of the numerous politically motivated actions by the president during the year, which were mostly, successfully challenged by the Parliament, which was guided and supported by the head of the government. On October 21, the Presidium openly addressed the Council of Europe Parliamentary Assembly and the Organization for Security and Cooperation in Europe, informing them about the actions of the president, public deputies, and law enforcement bodies that contradict national legislation and international legal acts on providing independence of courts from executive and legislative bodies and non-allowance of interference in the court process. The Presidium expressed its readiness to interact with international organizations for the purpose of establishing an independent court in Ukraine. Such a reaction by the Council of Judges proved that the Ukrainian judicial system, for the time being, still possesses the will and strength to resist mounting pressure by the state authorities, including seizure of court premises and liquidation of courts.

Thus, unprecedented manipulation of the courts to force early parliamentary elections fully reflects the compromised state of Ukraine’s judicial system: it exposes the gap between political rhetoric and practical steps taken by high Ukrainian officials to secure an independent judiciary; it shows the fragile status of judges under pressure by the state; it demonstrates that top political players in Ukraine will misuse the judiciary in the service of political interests; and it highlights the high level of legal nihilism among political leaders, which spreads among wider social circles.

Throughout 2008, there was growing pressure on the independence of the judicial system from representatives of the executive and legislative branches

of power. Misuse of the judiciary for political purposes reached a scope of unprecedented proportions, which in turn may lead to a degradation of state power, the economy, and public administration in Ukraine. As the Ukrainian judiciary dangerously evolves from a separate branch of power into a subordinate instrument of the total political fight, it becomes clear that effective enforcement of judicial decisions is questionable and very much dependent on personalities rather than the rule of law.

### Corruption

1999–2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
6.00	6.00	6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75

Corruption remains an intractable feature of Ukrainian society despite a years-long fight to curb it. Apart from some successes in the education sector and a few preparatory steps, 2008 did not feature a significant anticorruption campaign in Ukraine. As with local governance issues, the judiciary, and economic policy, Ukraine's anticorruption policy largely fell hostage to the months-long confrontation surrounding the new Cabinet of Ministers. Still, the new government set anticorruption measures as one of its priorities in its Program, viewing corruption in Ukraine as "the main threat to social and economic development of society."

The government's official Program correctly indicated the main factors of corruption in Ukraine, including nontransparency of official bodies, lack of political will to fight corruption, the high impact of oligarchic groups on decision making and state appointments, lack of security of private ownership, ineffectiveness of the judicial system, and absence of civil control over the income and expenditures of high officials. Consequently, the new government devoted itself to providing "maximum transparency of activities of state authorities." In order to create better separation between business and the authorities, the president introduced an anticorruption package to the Parliament that included draft legislation "On Changes to Some Acts (Regarding Responsibility for Corruption Crimes)," "On Basics of Prevention and Fighting Corruption," and "On Responsibility of Legal Entities for Corruption Crimes," all identified among the priorities of the government.

To further influence the Cabinet of Ministers to adopt these draft laws, President Yushchenko adopted decrees on measures concerning the improvement and implementation of the state anticorruption policy and preventing corruption in courts and law enforcement bodies. The decrees ordered the Cabinet of Ministers to take respective measures, including lawmaking, in order to increase anticorruption capacities. However, the Cabinet of Ministers did not elaborate the proposed draft laws and did not bring them to consideration by the Parliament; respectively, the anticorruption package was not adopted. And yet again, there were no further developments in the Measures Plan on the Implementation of the Concept on a

Way to Integrity until 2010, adopted in 2007 by the previous government of Victor Yanukovich.

The president also adopted a decree on the creation of an interdepartmental working group on anticorruption. The group, co-headed by the prosecutor general and the head of the Security Service of Ukraine, is a subsidiary body under the president charged to elaborate initiatives in the fight against corruption, assess main corruption threats, and engage civil organizations to fight corruption. Starting in April 2008, the group held a number of meetings and proposed recommendations. While these will certainly contribute to a wider discussion on corruption, it remains to be seen whether practical implementations will materialize.

Job placement procedures at central- and local-level government bodies lacked transparency and public accountability, and worker qualifications still fall second to personal or party loyalty when filling positions. Moreover, with the new government coming to power, 2008 witnessed the growing tendency to fire officials for political reasons. Such “cleansings” have led some to claim that the “Ukrainian state is losing the most experienced and qualified personnel.”<sup>13</sup>

On a positive note, there were no examples during the year of authorities limiting media investigations into corruption and bribery. Nontransparent decision making at local and higher political levels, however, remained a significant problem and made investigations difficult. Furthermore, no changes were made granting civil councils, which hold consultations with authorities from state bodies, substantial impact over policy development and implementation.

According to a survey on corruption within the judicial system, almost one-third of lawyers and prosecutors believe that corruption is common at all stages of court proceedings; among respondents, 19 percent of citizens and 37 percent of businesses indicated that they have personally experienced corruption.<sup>14</sup> The most common form is use of personal connections. In assessing efforts to curb corruption, the majority of respondents (67 percent) believe that the government has not taken necessary measures.

In the national survey on corruption in higher education conducted in March 2008, admissions exams to institutions of higher learning were recognized as the most corrupt stage in the educational process (more than 50 percent viewed it as very or somewhat corrupted).<sup>15</sup> To tackle this problem, admissions exams were for the first time mandatorily conducted by an independent assessment body throughout Ukraine in 2008. This independent assessment deprives educational institutions of instruments for bribery, a considerable victory in the fight against corruption in the field of education. Although the first year of external assessment was not perfect in terms of procedures, a serious improvement in the educational sphere is expected in the coming years.

Another positive example of tackling corruption was the revocation of legislation adopted in 2005–2007 in the field of public purchasing, which had introduced the Tender Chamber, an NGO with unclear ownership and responsibilities. According to most experts, this public purchasing scheme was extremely nontransparent and allowed rent seeking. The fight to abolish the legislation was extremely fierce, and

although new legislation was not adopted in 2008, the revocation of the former statute signals an improvement.

At the same time, new corruption dangers appeared in Ukraine in 2008 in the form of proposed legislative initiatives, which would introduce electronic reporting for businesses, public and budget organizations, and payment for independent evaluators of purchase and sales transactions by citizens. These novelties could be considered a positive intention to unify data processing if proposed within a clear and transparent institutional framework. The legislation, on the contrary, stipulates the creation of two councils consisting of MPs, officials, and public activists, with unclear responsibilities and quasi-monopolistic status. These legislative proposals were not adopted in 2008, but their worrisome appearance signals the intention to create additional rent-seeking bodies in the country's economic activities.

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- <sup>1</sup> Inna Vedernikova, et al. "100 Head-Off Steps" in *Zerkalo Nedeli*, March 29, 2000, <http://www.mw.ua/1000/1550/62561/>.
  - <sup>2</sup> Kyiv City Election Commission, <http://www.kmr.gov.ua/divisions.asp?Id=2223>.
  - <sup>3</sup> Ibid.
  - <sup>4</sup> *BBC*, May 28, 2008, [http://www.bbc.co.uk/ukrainian/domestic/story/2008/05/080528\\_kyivrada\\_elex\\_results\\_sp.shtml](http://www.bbc.co.uk/ukrainian/domestic/story/2008/05/080528_kyivrada_elex_results_sp.shtml).
  - <sup>5</sup> Vinnikov, Oleksandr. *Financing of NGOs in Ukraine. Analytical report*. (Ukrainian Center for Independent Political Research, January 2008).
  - <sup>6</sup> Ibid.
  - <sup>7</sup> International Renaissance Foundation website, <http://www.irf.kiev.ua/en/about>.
  - <sup>8</sup> Lange, Nico. *Current State of Freedom of the Media in Ukraine. KAS Democracy Report*. (Konrad-Adenauer-Stiftung, 2008), 1.
  - <sup>9</sup> "The role of media in Kyiv's election," *Telekritika* May 30, 2008, <http://www.telekritika.ua/media-suspilstvo/expert/2008-05-30/38709>.
  - <sup>10</sup> Lange, Nico. *Current State of Freedom of the Media in Ukraine. KAS Democracy Report*. (Konrad-Adenauer-Stiftung, 2008), 8.
  - <sup>11</sup> *Media Sustainability Index 2008*. (International Research & Exchanges Board 2008), [http://www.irex.org/programs/MSI\\_EUR/2008/ukraine.asp](http://www.irex.org/programs/MSI_EUR/2008/ukraine.asp).
  - <sup>12</sup> In February 2008, the president issued the Decree "On Appointment V. Cherkaska Acting Head of Zaporizhyya Regional State Administration," (No. 1250, December 24, 2007); and 12 directives of provisional exercise of duties of district state administration heads in different

districts of Kyiv, Vinnytsya, Transcarpathian, Kirovohrad, Luhansk, Lviv, Mykolayiv, Kherson, and the Chernihiv regions.

<sup>13</sup> Tymofiy Motrenko, chief of the Main Public Service Department, as quoted in “100 Head-Off Steps,” *Zerkalo Nedeli*, March 29, 2008, <http://www.mw.ua/1000/1550/62561/>.

<sup>14</sup> *Survey on Corruption Within the Judicial System in Ukraine: Courts of General Jurisdiction*, (MSI in cooperation with InMind, Kyiv, July 2008), [http://www.pace.org.ua/images/survey/jud\\_sys\\_en\\_jun08.pdf](http://www.pace.org.ua/images/survey/jud_sys_en_jun08.pdf).

<sup>15</sup> *National Survey on Corruption in Higher Education, 2008 Baseline Report* (MSI in cooperation with KIIS, April 5, 2008), [http://www.pace.org.ua/images/survey/4\\_cor\\_high\\_edu\\_ukr\\_eng.pdf](http://www.pace.org.ua/images/survey/4_cor_high_edu_ukr_eng.pdf).