

Overall Score:

68 - Weak

Legal Framework Score:

80 - Moderate

Actual Implementation Score:

55 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁶ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

The law "On Associations of Citizens" indicates that citizens can form a political party or a public organization. According to the law, citizens of Ukraine have the freedom of association in political parties and public organizations for the exercise and protection of their rights and freedoms, and for the satisfaction of their political, economic, social, cultural and other interests. State interference with activities of political parties and public organizations is prohibited by law.

The number of NGOs in Ukraine has been increasing, from 25,500 in 2000 to approximately 40,000 in 2006, of which about 10 percent are active. Many of these help their constituencies voice their concerns and interests and advocate for change with official bodies that will help their constituents. According to a 2006 report, the largest percent of Ukrainian NGOs are involved in advocacy and lobbying, training and information dissemination.

However, despite the incredible force they exerted during the Orange Revolution, Ukraine's civil society and business do not present a cohesive and mature front for change vis à vis the government. In general, there are few strong advocacy groups, few strong watchdog groups, uneven access to information about government operations and decisions, and limited experience in using information as a valuable tool in forcing government action. Their deficiencies are attributed to the fact that many have stayed away from highly political policy debates, they have minimal management capacity, and they are overly dependent on foreign donors.

References:

Constitution of Ukraine, Art. 36

The Law on Associations of Citizens (1992), Art. 1, 9
Vera Nanivska, NGO Development in Ukraine. Kyiv: International Center for Policy Studies, 2001
2004 NGO Sustainability Index for Central and Eastern Europe and Eurasia, 8th edition, USAID, 2005
Counterpart Creative Center, Civil Society Organizations in Ukraine: The State and Dynamics, 2002- 2006. Kyiv, 2006

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

SCOs have minimal management capacity, and they are overly dependent on foreign donors.

References:

The Law on Associations of Citizens (1992), Art.1, 9

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

All funds would be transparent, not only for anticorruption organizations.

References:

The Law on Associations of Citizens (1992)

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

92

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

Promoting Active Citizen Engagement (PACE) in Combating Corruption in Ukraine – www.pace.org.ua

http://www.citynews.net.ua/2007/06/07/boleee_50_grazhdan_ukrainy_schitajut_cho_korrupcija_jeto_prinjatyj_put_reshenija_voprosov

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

There are many local and national NGOs and business groups that conduct very effective advocacy and watchdog functions related to anticorruption reforms. For example, the All-Ukraine Network for People Living with AIDS gathered difficult-to access cost data on pharmaceutical procurements conducted by the Ministry of Health (MOH) and compared them with similar procurements conducted in Ukraine by the Global Fund. They uncovered extremely wide cost differentials procurements by the MOH: as high as 27 times the cost of Global Fund procurements for the same medications.

Apparently, collusion and special deals between the MOH procurement commission and the vendors were producing extremely unfavorable results and greatly endangering the public at large, which is being deprived of necessary drugs. The Network presented their results to the MOH, the Ombudsman, the Prosecutors Office, and international donors. Further investigations are now underway to validate their findings.

Other groups, such as the Laboratory for Legislative Initiatives, conduct very professional watchdog monitoring activities of Rada deputies. They maintain a Web site that contains deputy campaign promises, complete voting records of deputies that reveal if campaign promises were kept, and deputy linkages to business interests.

References:

Promoting Active Citizen Engagement (PACE) in Combating Corruption in Ukraine – www.pace.org.ua

http://www.citynews.net.ua/2007/06/07/bole_50_grazhdan_ukrainy_schitajut_cho_korruptcija_jeto_prinjatyj_put_reshenija_voprosov

Counterpart Creative Center, Civil Society Organizations in Ukraine: The State and Dynamics (2002- 2006). Kyiv, 2006

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Interviews with Levchenko Katerina, Leader of NGo La-Strada Ukraine, 9/07/07, Kiev

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Interviews with Levchenko Katerina, Leader of NGo La-Strada Ukraine, Sept. 7, 2007, Kiev

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Interviews with Levchenko Katerina, Leader of NGo La-Strada Ukraine, Sept. 7, 2007, Kiev

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Interviews with Levchenko Katerina, Leader of NGo La-Strada Ukraine, Sept. 7, 2007, Kiev

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

According to the constitution, citizens have the right to take part in trade unions with the purpose of protecting their labor and socio-economic rights and interests.

References:

Constitution, Art.36

Law On Trade Unions, Art.6

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens are able to organize into trade unions. There are formal" trade unions (the Federation of Trade Unions of Ukraine claims a membership of 15.6 million) and many local and national "free" trade unions. But in practice, trade unions are dependent on the government and do not truly protect their members.

References:

Constitution of Ukraine

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The Constitution guarantees freedom of thought and speech, and of expression of views and beliefs, but does not mention freedom of press specifically. According to the law "On the Print Media" (1992) – printed media are free.

While there are certainly many exceptions, the mass media in Ukraine is generally deficient in investigative reporting, a major channel by which journalists can serve as effective public watchdogs.

According to the official data of National Council of Television and Radio, there are 1,268 television and radio organizations (TRO) registered in Ukraine, 97 of which are registered as television and radio organizations and 647 are television stations.

References:

Art. 34, Constitution of Ukraine

Art. 1, "Law On Print Media"

the Law on Information

the Law on Providing Information about the Government to the Media

the Law on Television and Radio

the Law on the Press, the Presidential Decree on Further Measures to Ensure Openness in Government

New Draft Law on Openness and Transparency of the Government

www.rada.gov.ua – Information portal of Supreme Council of Ukraine (Verhovna Rada)

The basic legislative act of Ukrainian media law is the Ukrainian Information Act (1992). The act provides for general regulation of information exchange, including printed and audiovisual media, in the Ukraine.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

Comments:

Freedom of speech is guaranteed by law.

References:

- Art. 34, Constitution of Ukraine
- Art. 1, Law On Print Media”
- the Law on Information
- the Law on Providing Information about the Government to the Media
- the Law on Television and Radio
- the Law on the Press, the Presidential Decree on Further Measures to Ensure Openness in Government

New Draft Law on Openness and Transparency of the Government
www.rada.gov.ua – Information portal of Supreme Council of Ukraine (Verhovna Rada)

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

63

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | **50** | 25 | 0

Comments:

The government does not create barriers to forming a media entity. According to unofficial information, the Ukrainian national media is effectively under the control of several individuals. A significant concentration of national, regional and local media outlets in the same hands creates the threat that information will be unvaried and that there will be a lack of truly comprehensive coverage of socially important issues from different points of view. The situation is even worse at the regional and local level, where the monopoly of media outlets is the greatest and basically uncontrolled.

It is virtually impossible to obtain exact information about individuals controlling the mass media, and this lack of openness is one of the main problems with regard to ensuring media pluralism.

Ukrainian legislation does not take the need for media pluralism into account, relying solely on general anti-monopoly legislation which, in turn, does not allow for the specific features of the television and radio information market.

For example, legislation on information agencies, the press and television and radio broadcasting does not stipulate that this information should be openly available. Moreover, even special regulatory bodies, such as the National Television and Radio Broadcasting Council and the State Committee on Television and Radio Broadcasting, do not have objective information in this sphere. Current legislation does not contain a clear definition of an owner of a media outlet, that is of the individual having actual direct or indirect (through control over other legal entities or individuals) over this media outlet.

There are, it is true, certain branch restrictions in Ukraine on media concentration. The best example is the Law of Ukraine On Printed Mass Communication Media (the Press), in which Article 10 states:

An individual or legal entity may not be the founder (co-founder) or control more than 5 percent of such publications. By control in this Law is meant the ability of such a person or entity to use material or financial means to exert an influence on the activity of a printed form of mass information.

References:

Interview with head of the NGO Journalism's initiative," A.Soldatenko, Kharkov, July 18, 2007

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

According to the Law on Printed Media (1992), there is an appeal mechanism if a license is denied or revoked.

Article 40 of Ukrainian Constitution provides for the right to file individual or collective petitions, or to personally appeal to bodies of state authority, bodies of local self-government, and to the officials and officers of these bodies that are bound to consider the petitions and provide a substantiated reply within the term established by law. This important constitutional provision enables citizen to exercise their other constitutional rights and to protect them.

The ways of exercising the right to appeal are specified in the:

Law On Citizens Appeals of October 2, 1996, Presidential Edict No.241/97. On Measures to Ensure the Constitutional Rights of Citizens to Appeal of March 19, 1997, and the Ukrainian Cabinet of Ministers Resolution of April 14, 1997. On Approving the Instruction on Record Management of Citizens Appeals at Bodies of State Authority and Bodies of Local Self-Government, Citizens Associations, at Enterprises, Institutions, Organizations of All Types of Ownership, and in the Mass Media.

References:

Article 40 of Ukrainian Constitution

The Law on Printed Media (1992), Art. 19

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the law the registration decision must be made within one month. But media licensing is one of the strongest methods for controlling the press in a country rated as one of the most repressive in the region. But after 2004, the strong control of media outlets by clans/cartels has lessened and repressive actions against them have been relaxed.

A broadcasting license's term of validity is established by the National Council in accordance with the licensee's request. The term may be no less than seven years for on-air and multi-channel broadcasting or 10 years for satellite, cable and wire broadcasting.

Companies must commence broadcasting within one year from the effective date of the license, or such license becomes invalid. A company must notify the National Council within 10 days of the broadcasting commencement date.

References:

Broadcasting Law, Art. 36

Interview with leader of NGO A.Soldatenko, Kharkov, Aug. 20, 2007

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can obtain a media license at a reasonable cost.

References:

Interview with NGO leader A. Soldatenko, Kharkov, July 20, 2007

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the government does not create barriers to forming a broadcast (radio and TV) media entity.

References:

Interview with NGO leader Soldatenko, Kharkov, July 20, 2007

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

Under the Broadcasting Law, broadcasting is subject to licensing. Depending on organizational and technological features, on-air, cable, wire, satellite and multi-channel broadcasting require licenses from the National Council.

A broadcasting license issued by the National Council is required in order for the licensee to broadcast, in accordance with the licensing terms and use broadcasting channels. This is subject to the condition that an owner of radio electronic devices has obtained all required permits for using them.

References:

The Law of Ukraine on Television and Radio Broadcasting (Broadcasting Law)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The television industry is regulated by the Ukrainian Television and Radio Broadcasting Act (1993), the Ukrainian Act on National Council of the Ukraine on Television and Radio Broadcasting (1997), the Ukrainian Act on the System of Public Television and Radio Broadcasting of the Ukraine (1997) and regulations adopted by the National Council of the Ukraine on Television and Radio Broadcasting (the National Council) and the Cabinet of Ministers of the Ukraine.

Broadcasting stations may be founded by Ukrainian citizens and legal entities, the parliament and the president of the Ukraine. Foreign nationals and companies have no right to set up television or radio stations in the Ukraine. Ukrainian legal entities owned 30 percent or more by foreign companies or individuals also are excluded from the list of potential founders. Broadcasting organizations may attract foreign investments only under the control and consent of the National Council.

Broadcasting companies must be incorporated like any other Ukrainian legal entity, and registered in the state register of broadcasting organizations of the Ukraine, maintained by the National Council.

The use of broadcasting channels in the Ukraine is subject to licensing by the National Council. The application for the license must contain the following information: name, address, banking details, date of birth and citizenship (for individual founders); name of the broadcasting station, call signs, logo etc.; address and the program goals of the broadcasting station; languages and the territory of broadcast; future audience; frequency, time and volume of broadcast; type of broadcast (television, sound, teletext, etc.); method of distribution (terrestrial, cable, satellite, etc.); and location, frequency and capacity of the transmitter. Founding documents of the broadcasting organization, approximate payroll of the company and information about its financial resources also must be provided.

The license is granted for seven or more years and at least 10 years for cable broadcasting. The broadcaster must start within one year from the date of the license. The license fee is equal to one-month payment for transmitting services, which can be up to several million Ukrainian hryvnyas.

All broadcasting stations must broadcast in the Ukrainian language. However, licenses of many broadcasting organizations contain provisions allowing mixed languages, such as 70 percent in Ukrainian and 30 percent in Russian. Broadcasting in territories where minority groups live is allowed in their languages.

The law requires that at least 50 percent of the programming of any Ukrainian broadcasting station be produced by Ukrainian companies.

The law prohibits broadcasting of any advertising material without payment to the broadcasting station. The law also regulates other requirements to advertising. For example, the law does not allow the interruption of movie broadcastings or the advertising of alcohol and tobacco, etc. The law regulates rights and obligations of broadcasting organizations, journalists and viewers (listeners).

Defamation

As a general rule, mass media are liable for defamatory materials printed or broadcast. Any person suffering from alleged defamation can seek refutation and reparation of damages directly from the media. Court action is also a common protection measure. The existing case law is famous for its ambiguity. Courts typically rule in favor of claimants, totally ignoring or misunderstanding the concept of free speech and expression of opinion.

The law contains clauses that release broadcasting organizations from liability for false information obtained from official communications, news agencies or press centers of state agencies, and citation of speeches of governmental officials in live addresses and statements. Printed media have similar protection.

References:

Media market is opened for foreign players," by By Sergei Konnov
Konnov & Sozanovsky

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The license fee is equal to a one-month payment for transmitting services, which can be up to several million Ukrainian hryvnias.

References:

Media market is opened for foreign players," by By Sergei Konnov
Konnov & Sozanovsky

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published online.

Comments:

In the decree it is emphasized that the development of a national component of global information network Internet, maintenance of wide access to this network of the citizens and legal persons of all forms of ownership in Ukraine, and appropriate representation in it of national information resources, is a state priority in satisfaction of the constitutional right to know, construction of an open democratic society, and development of business.

Defamation

As a general rule, mass media are liable for defamatory materials printed or broadcast. Any person suffering from alleged defamation can seek refutation and reparation of damages directly from the media. Court action is also a common protection measure. The existing case law is famous for its ambiguity. Courts typically rule in favor of claimants, totally ignoring or misunderstanding the concept of free speech and expression of opinion.

The law contains clauses that release broadcasting organizations from liability for false information obtained from official communications, news agencies or press centers of state agencies, and citation of speeches of governmental officials in live addresses and statements. Printed media have similar protection.

References:

www.gipi.internews.ua/rus/activity/analyst/analysis.pdf
Internews research Access state agency to the information via Internet”

The Decree of the President of Ukraine “About measures on development of a national component of global information network Internet and maintenance of wide access to this network in Ukraine ” 9282000

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

References:

www.gipi.internews.ua/rus/activity/analyst/analysis.pdf
Internews research Access state agency to the information via Internet”

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Losing what we have not got in 2006, Ukraine dropped from 68th to 78th place in the WEF competitiveness rating,” by Yulia Zahoruiko, “Zerkalo nedeli” # 38 (617) 7, Oct. 13, 2006

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There were no reports that the central authorities attempted to direct media content; however, reports of intimidation of journalists, including by local officials, as well as continued media dependence on government resources, inhibited investigative and critical reporting and sometimes led to self-censorship.

Individuals could, and did, criticize the government both publicly and privately without reprisal. The government did not attempt to impede such criticism.

References:

Ukrainian Helsinki Human Rights Union
State Department Releases 2006 Human Rights Report about Ukraine
Country Reports on Human Rights Practices – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007
<http://helsinki.org.ua/index.php?id=1173274120>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Ukrainian Helsinki Human Rights Union
State Department Releases 2006 Human Rights Report about Ukraine
Country Reports on Human Rights Practices – 2006
Released by the Bureau of Democracy, Human Rights, and Labor
March 6, 2007

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

The Commercial Code

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

Comments:

Ukrainian legislation provides no regulation at all for cross ownership.” There are, for example, no restrictions on a single individual (or entity) simultaneously owning national television channels and newspapers. We are unaware of examples in practice where any of the provisions of antimonopoly legislation have been applied to the mass media by the Anti-Monopoly Committee of Ukraine.

On 24 January 2006 UHHRU made the first ever attempt in Ukraine to make public information about the owners of the first level of the 10 largest nationwide media outlets. Any such information had previously been selective. This time it had been checked and was the result of a serious public study. Later, the Media Law Institute made public all the founders of the television channel Inter, whose owners had been concealing themselves behind offshore companies[11]. UHHRU is intending in 2006 to publish a list of the individuals/entities controlling all Ukrainian national television channels. It is most likely, however, that all these will prove to be offshore companies, where it is virtually impossible to ascertain who the founders and owners are.

In its report for 2006, the National Television and Radio Broadcasting Council of Ukraine also identified a number of first level founders of particular television channels and radio stations which had received licenses during 2006

Unfortunately, the new version of the Law on Television and Radio Broadcasting only confuses the situation further. Firstly, it encourages owners to conceal themselves by prohibiting direct ownership by foreign individuals or entities of Ukrainian television and radio companies. Secondly, it contains a definition of the term an owner of TRC, which effectively means nothing since the concept of property of a legal entity in the legal sense is not clear.

According to the Broadcasting Law there is a restriction on foreign ownership. In the past, the Broadcasting Law prohibited the establishment and operation of broadcasting companies if greater than 30 percent of the equity capital of such companies was foreign investment. On Jan. 12, 2006, the Ukrainian Parliament adopted the restated Broadcasting Law, ostensibly cancelling the foreign ownership restriction. However, the revised law contains many inconsistent and ambiguous provisions relating to foreign investor participation in Ukrainian broadcasting companies.

Article 12 of the Broadcasting Law, which regulates the establishment of a Ukrainian Broadcasting company and stipulates requirements for founding documents, prohibits such establishment by foreign entities and individuals. It provides that the participation of foreign individuals and entities in the charter fund of a Ukrainian broadcasting company is governed by the Commercial Code of Ukraine. However, the Commercial Code does not currently contain specific requirements or limitations for the participation of foreign entities in broadcasting companies.

It appears, therefore, that a foreign entity or individual may not currently establish a Ukrainian broadcasting company. However, a foreign entity or individual, likely, may be a shareholder or participant in such a company. A distinction can be made between founder, shareholder and participant, but such distinction is not acknowledged in any legislative act. A founder is a legal entity or individual that acquired ownership in a Ukrainian broadcasting company, or a share in its charter fund, at the time of its establishment. A shareholder or participant is a legal entity or individual that acquired ownership in a broadcasting company, or a share in its charter fund, from a share sale purchase or other agreement, as permitted by law, after the legal entity was established.

Even after ownership is acquired, a number of provisions of the Broadcasting Law suggest there may be other restrictions on foreign ownership. For example, Article 24 of the Broadcasting Law stipulates the documents and information that must be filed to obtain or extend a broadcasting license. It also provides that, in order to ensure compliance with Ukrainian legislation regarding antimonopoly limitations and limitations on the share of foreign ownership in a Ukrainian broadcasting company's charter fund, the National Council of Ukraine on Issues Related to Television and Radio Broadcasting (National Council) can request additional information from a broadcasting company regarding the founders' or owners' parent entities.

Thus, the National Council has the right to request disclosure of the shareholding structure of any founder, shareholder or participant of a Ukrainian broadcasting company in order to monitor foreign ownership in such company. An argument can be made that legislators intended to limit the control, direct or indirect, of foreign entities over broadcasting companies, and other provisions of the Broadcasting Law may be interpreted to support that argument.

Neither the Broadcasting Law nor any other currently effective law contains any express restrictions on the share of foreign ownership in a broadcasting company's charter fund if ownership is acquired after the legal entity is established. In other words, the Broadcasting Law clearly prohibits the establishment of a broadcasting company by foreign entities or individuals, but does not appear to regulate their participation therein.

The Commercial Code stipulates that foreign investments (generally speaking) may be prohibited or restricted exclusively by the laws of Ukraine. Therefore, unless there is a prohibition or restriction on foreign investments in a law, no other legislative instrument may establish such a limitation. Because the adoption of laws is within the exclusive authority of the Parliament of Ukraine, no other authorities, including the National Council, have the right to establish any limitation on foreign investments by issuing legislative acts.

References:

The Law of Ukraine on Television and Radio Broadcasting (Broadcasting Law), Art. 12, 24
Commercial Code of Ukraine

Who owns Inter?" (in Ukrainian) at:

<http://www.helsinki.org.ua/index.php?id=1141040859>

Report of the National Television and Radio Broadcasting Council of Ukraine for 2005

Available in Ukrainian on their official site:

<http://www.nradatvr.kiev.ua/docs/Zvit2005.doc>

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

References:

Interviews with journalists from Kharkov region, Soldatenko, Kharkov, July 20, 2007

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

The Ukrainian mass media appears fairly free, and indeed there are no flagrant threats to pluralism. However the further away from the revolutionary events of 2004 we get, the more clearly one can see the ideological direction of various television channels and radio stations, and unbalanced coverage of various positions by these same outlets. One sees cases of manipulation of information more and more, as well as certain events or opinions being ignored by some national media outlets. The number of such cases, for example, rose during the parliamentary electoral campaign.

According to research of Ukrainian Helsinki Human Rights Union, the Ukrainian Law provides some limitation of freedom of speech in the electoral process.

The citation from the research:

THE LIMITATION OF FREEDOM OF SPEECH IN THE ELECTORAL PROCESS

The new version of the Law On the Election of State Deputies of Ukraine from 7 July 2005 substantially restricted freedom of speech and threatened to generally paralyze the activities of the mass media during the electoral campaign of 2006. It should be noted in particular that for some unknown reason, the text of the law which parliament voted for was significantly different from the text which the President signed. How this could have happened, and why, remain a mystery. Article 67 § 12 of this Law states that coverage of the election process in mass media outlets regardless of their form of ownership taking the form of information reports, news, etc., shall be carried out without commentary and evaluation, exclusively on an objective, impartial and well-balanced basis.

Particular provisions of this Law which pertain to the regulation of the activity of the mass media during the election process actually limited the constitutional right to information and freedom of expression, that is, were not in compliance with the Constitution of Ukraine since, according to Article 22 § 3 of the Constitution of Ukraine, The content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force."

Following the adoption of this law it became even less clear exactly which State executive body had the right to temporarily suspend or withdraw the license of a television or radio broadcasting company. According to Part 10 of Article 71 where there has been an infringement by a media outlet of the requirements set out in paragraphs five or nine of this Article, on the petition of the Central Election Commission or of the relevant district electoral commission, the particular media outlet shall have its license or the issue of printed material temporarily suspended (pending the end of the election process) according to the procedure stipulated in law. In the event of any other infringements being committed by a media outlet, the requirement of this Law for the temporary suspension of the force of the license or of the issue of printed matter shall be implemented exclusively with the sanction of the court.

According to Tetyana Kotyuzhynska, member of the Commission of Journalist Ethics, the revised Ukrainian laws totally muffle the Ukrainian mass media. According to the new law On the Election of State Deputies of Ukraine on the course of the pre-election campaign, you are only allowed to publish information reports, without commentary or assessments, without any opinions of citizens of the video or photo backup. All this information has to be objective, balance and impartial. What is more, it is electoral commissions that decide to what extent the information meets these criteria. Effectively, the content of a publication may be influenced by district electoral commissions or the Central Election Commission. One can also add the new Civil Code according to the provisions of which any negative information is a priori considered untruthful. We could in the very near future face selective shots in conditions where everybody is forced to breach the law, only the inconvenient outlets will be closed.

Amendments to the Law On the election of State Deputies of Ukraine, which brought it into compliance with the Constitution of Ukraine, were only introduced in November 2005 as the result of a major campaign by the public and the mass media.

In accordance with Point 2 of the Law of Ukraine On introducing amendments to some legislative acts of Ukraine aimed at enabling citizens to exercise their electoral rights, ensuring freedom of political debate, an unbiased attitude from the mass media to candidates for the office of Deputy, to parties (blocs) taking part in the election process from 17 November 2005, Article 71 § 10 of the Law On the election of State Deputies of Ukraine was given in the following version: the decision about the temporary (pending the end of the election process) suspension of a license, or about the temporary ban (pending the end of the election process) on the publication of printed material shall be taken by the courts. The aim of this norm's guarantee is to safeguard the mass media against illegal loss of their license, and to thus ensure freedom of expression in the Ukrainian mass media. The norm which prohibited journalists from giving commentaries and making assessments in the course of providing information reports was also removed.

This law in addition made amendments to Articles 5, 28, 30 of the Law On television and radio broadcasting which primarily concerned the limitation of the powers of the National Council, with regard to cancelling or temporarily suspending the licenses of television or radio broadcasting companies. In particular, Parts 16, 17, 18 were removed from Article 5 of the Law, these having given the National Council the right, where infringements by a television or radio broadcasting company of current legislation or a breach of the conditions indicated in the license had been detected, to temporarily suspend (for up to two months) or to cancel the license. According to Article 28, the force of a license issued by the National Council may only be temporarily suspended by court ruling. Thus, in accordance with the new version of Article 28, in the event of the broadcasting of programs containing information the dissemination of which is prohibited by legislation about the elections, the National Television and Radio Broadcasting Council of Ukraine on the application of the Central Election Commission or a district (territorial) electoral commission can now no longer temporarily (pending the end of the election process) suspend a license giving the right to use broadcasting channels.

However even these amendments could not fundamentally improve the situation. Electoral legislation effectively restricted political discussion through the broad interpretation of the concept political advertising and the serious sanctions envisaged for violations of the conditions on broadcasting such advertising. As a consequence the election campaign became sterile, bland and quite simply boring.

Legislation was accordingly treated in such a way that any public speeches either criticizing or making positive remarks about specific candidates were viewed as being political advertising, and not as free debate on socially important issues. As a result, any text or video clip which showed the party or members of candidate lists was subject to strict censorship in case it could be considered to be pre-election campaigning. Indeed, when media outlets circulated information with critical content about parties or members of their candidate lists, they risked ending up with law suits demanding their closure until the end of the elections. For this reason articles in newspapers and television programs teemed with reserve clauses: This is not campaigning! This is not campaigning!

References:

The Law of Ukraine On introducing amendments to some legislative acts of Ukraine aimed at enabling citizens to exercise their electoral rights, ensuring freedom of political debate, an unbiased attitude from the mass media to candidates for the office of Deputy, to parties (blocs) taking part in the election process" from Nov. 17, 2005

The Law on the election of State Deputies of Ukraine
the Law on television and radio broadcasting

Ukrainain Helsinki Human Rights Union,
Annual human rights reports, 2006, VI. FREEDOM OF EXPRESSION

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

References:

Ukrainain helsinki Human Rights Union
Annual human rights reports, 2006, VI. FREEDOM OF EXPRESSION

See:

<http://www.helsinki.org.ua/en/index.php?id=1152328073>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Interviews with NGO representatives Humanitarian Initiative” Kulik L. August 3, 200

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Interviews with journalists Soldatenko, Kharkov, July 20, 2007

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Interviews with journalists

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The Law of Ukraine About the information” defines, that “bodies of legislative, executive and judicial authority of Ukraine, their officials are obliged to give the information which concerns their activity, in writing, orally, by phone or using public statements of the officials.

There are also several laws, presidential decrees and other legislative acts that regulate information availability to the public. Although all of these pieces of legislation discuss different aspects of how information is provided to the public, implementation of these laws by different governmental institutions is very uneven and the level of detail and the format in which information is provided are generally not adequate for meaningful use by citizens or organizations. For example, the annual budget that is published on the governments website is 50 pages long and provides information at only the highest levels of generality. Governmental institutions, even those that have the most informative websites, publish press releases and information on legislation, but do not post reports and analysis of their performance.

Studies conducted by several NGOs on governmental transparency at the central and local levels have revealed frequent abuses of citizen rights related to information access. On the other hand, civil society rarely demands better and more detailed information.

References:

The Law on Information, Art. 34
The Law on Providing Information about the Government to the Media
The Law on Television and Radio
The Law on the Press
The Presidential Decree on Further Measures to Ensure Openness in Government,
the Cabinet of Ministers Order On Measures to Develop a System of Electronic Government
Research of USAID Corruption assessment; Ukraine, 2006”

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The Law On Information” grants citizens the right to appeal if access to a basic document (or any information, access to which is guaranteed by the law) is denied.

References:

The Law on Information, Art. 34
The Law on Providing Information about the Government to the Media
The Law on Television and Radio
The Law on the Press,
The Presidential Decree on Further Measures to Ensure Openness in Government
The Cabinet of Ministers Order On Measures to Develop a System of Electronic Government

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The basic lawful means of citizens access to the information in Ukraine are:
Receptions of the open information through printed and audiovisual mass media, news agencies; access to the announced official documentary information; a query and references of citizens; receptions of the information from public statements; access to the information from library resources; access to the information in archives; access of citizens to the information through the Internet.

References:

The Constitution of Ukraine
The Budgetary code of Ukraine
The Law of Ukraine "About access to judgements" from Dec., 22, 2005
The Law of Ukraine "About the reference of citizens" from Oct., 2, 1996
The Law of Ukraine "About the National program of information" from Feb., 4, 1998

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

70

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is the lack of public access to government information and a poor understanding of the connection between the law, the judicial system and corruption.

References:

The law, "On Information"
Nations in Transit 2005, Freedom House

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If information is available it is a free.

References:

The law, On Information”

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The law, On Information,” Art. 34

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Appeals for information are free.

References:

Law On Information”

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Reasons are given sometimes.

References:

Interviews with journalists of Ukrainskay Pravda

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷³Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES

NO

Comments:

The Constitution of Ukraine guarantees free and fair general elections of the president, the national Parliament and bodies of local self-government (regional, district, municipal) councils that are held on the basis of universal, equal and direct suffrage.

References:

Art. 71, Constitution of Ukraine

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The recent parliamentary elections (2002 and 2004) were held every 4 years, and the presidential election (2004) were held every 5 years.

The forthcoming parliamentary election is supposed to be held according to political decision (in September 2007).

References:

Art. 71, Constitution of Ukraine

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

In practice, all adult people can vote. According to the Constitution, citizens who have attained the age of 18 on the day of elections (referenda), have the right to vote. The Committee of Voters of Ukraine often fixes violations and abuses during the election periods, but never concerning this constitutional right

References:

Art. 71, Constitution of Ukraine

Interview with MP Levchenko Katerina, Kiev, August 4, 2007

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are secret. Voters can obtain the ballots only after signing a special paper and showing their passports. But the procedure of counting the ballots is not adequately protected from abuses.

References:

Interviews with MP Levchenko K. Kiev Aug.4, 2007

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The recent parliamentary elections (2002 and 2006) and the presidential election (2004) were held according to the regular schedule. The forthcoming parliamentary election is supposed to be held according to political decision (in September 2007).

References:

Official site of Ukrainian Parliament
www.rada.gov.ua, president.gov.ua

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

According to the law all citizens have a right to form political parties.

References:

The Law on Political Parties (2002), Art.1

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Citizens can run only if they belong to a political party.

References:

Interview with civil rights protection activists Levchenko K.
Constitution of Ukraine
The Law on Political Parties (2002), Art.1
The Election Law

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Yes, in practice all citizens have a right to form a political party, as it is guaranteed in law. According to the Ministry of Justice and Central Electoral Committee, there are 140 political parties in Ukraine (as of May 17, 2007). See <http://www.cvk.gov.ua/paty/paty.htm>

References:

The Law on Political Parties (2002), Art. 1

<http://www.minjust.gov.ua/>

<http://www.cvk.gov.ua/paty/paty.htm>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Theoretically, all citizens have a right of access to political parties.

References:

Interviews with MP Katerina Levchenko. Kiev. Aug. 4, 2007

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective

campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There is no special law regulating opposition parties. The opposition became the way of seizing power but not the source of alternative decisions and proposals. This is a modern model of Ukrainian politics.

References:

http://pora.org.ua/eng/component/option.com_contentview/go_to,16-03-2006/Itemid,0/
website of opposition party Pora-PRP”
<http://www.pravda.com.ua/en/news/2007/1/10/6950.htm> Ukrainskaya Pravda

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition’s ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature’s proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Central Election Commission (CEC) is the permanent election monitoring agency. It is an independent state body that ensures the preparation and organization of elections for the president, the Parliament, and national referenda. The CEC also provides consultations and advice on methodology for local elections and local referenda, and leads a system of subnational election commissions formed to organize and supervise elections and referenda.

References:

Art. 1, Law On the Central Election Commission”

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The CEC is declared to be an independent state body that acts independently from other state and local self-governance bodies; its independence is protected by the Constitution and the law. Any interference with activities of the CEC, except in cases specified by the law, is illegal. The CEC consists of 15 members that are approved by parliamentary committees and factions and by the Parliament as a whole.

A member of the CEC may not be an MP or hold any other elected office, nor be a candidate for the position of the president of Ukraine, nor a parliamentary candidate, nor his/her official representative, nor an authorized representative of a political party or electoral block that takes part in the elections, nor a spouse or close relative of a candidate, nor a candidate's subordinate, nor a member of some other election commission, nor a member of the initiative group of a national referendum.

A CEC member may not be an executive official, civil servant of any other agency or local self-governance body. He may not engage in entrepreneurial activity or any other activity except teaching, research and creative work in his own free time. He may not be on the board of directors or a supervisory board of a profit-making enterprise. Any member of the CEC who was a member of a political party prior to being appointed to the CEC must suspend his party membership. No more than one third of the membership of the CEC can be changed within one year after the approval of the CEC members.

References:

Art. 3, 7, Law On the Central Election Commission”

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission has started organizing the new election process in 2007 within limits of their competence. However, their inadequate legislation and unfavorable political situation hinder their efforts. It is clear now that political parties delay submission of candidacies for constituency election commissioners. So, the CEC shall form constituency election commissions upon submissions of the CEC's head, which may breach the equal representation principle. Also, numerical strength of constituency election commission will be limited, which limitation will highly complicate their work.

The CVU calls upon public authorities and political forces to refrain from any pressure upon members of the Central Election Commission.

The CVU points out that the Central Election Commission should adopt and make public the Schedule of 2007 Parliamentary Election in Ukraine as soon as possible. Also, the CVU consider it advisable to offer protection services to all CEC members and organize guarding of the CEC premises, in particular, to prevent uncontrolled movements of unauthorized persons in CEC.

While the formal criteria of independence, as specified in the law, are observed, political bargaining over the position of the chairman of the CEC is very strong, and the influence of the head of state on the chairman and leaders of the CEC is disproportionately high.

References:

Committee of Voters of Ukraine

National Institute for strategic studies, See:

<http://cvu.org.ua>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The CEC consists of 15 full-time members, appointed for six years; at least one third of them must have law degrees.

References:

Art. 6, Law On the Central Election Commission”

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

Comments:

The law does not oblige the CEC to make general reports to the legislature. Only financial reports on budget-funded expenditures by the CEC must be submitted to the Parliament’s Accounting Chamber annually.

References:

Art. 28, Law On the Central Election Commission”

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

When imposing penalties on offenders, the CEC has been repeatedly accused publicly of bias, but no accusations have ever been proven.

References:

Interview with expert

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

75

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

Head of the Voter committee of Ukraine Ihor Popov predicts that authorities would not manage to compile the State voter record by the elections.

IPeople will come to polling stations and will not be able to cast their votes as the lists will be lacking their names. These cases may be stated as a legal grounding for appeals against poll results, both at state and local levels, he said in his interview to Delo newspaper.

According to Mr. Popov, the voter record is out of anybody's concern" now.

References:

Ukrayinska Pravda Voter Registration Still Without Executor" July 18, 2007

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

There are a lot of examples of contested election results during the last presidential and parliamentary elections. Outside party or candidates usually appeal to the Court.

In the 2002 presidential election, the election results were contested in the Supreme Court by Our Ukraine bloc, who supported Viktor Yushchenko.

References:

Article 30 of the Law of Ukraine On Election of Deputies of the Supreme Council
Code of Administrative Court Procedure

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Description of the most interesting (successful) cases by Committee of Voters of Ukraine

1. A woman complained of negligence of the head of the polling station commission to Donetsk public consulting room. She claimed that official observers from the NGO were refused access to the commission's meeting. A lawyer of the public consulting room has executed a statement of claim against negligence of the commission. The court has answered the claim.
2. Uzhhorod public consulting room of the CVU supported an interesting claim against the constituency election commission, which refused to register observers of the CVU. The cause caused great public response due to efforts of the lawyer of Zakarpattia public consulting room of the CVU and local press service of the CVU. Finally, Mukachevo town court has obliged the commission to accept an application from the observer. Court proceedings were covered in local media and the national TV channels (1+1). In addition, many newspapers kept track of the case.
3. The group of newly elected deputies of Vinnytsa rayon council appealed to Vinnytsa public consulting room of the CVU for assistance in organization and conduction of the constituent session of the council. It turned out that they had no previous experience with local self-government bodies.

Lawyers rendered professional assistance in establishment of the deputy group for holding the constituent session and execution of the relevant papers. After that, the lawyer helped them to organize the secret vote for the head of the rayon council. Due to input of the CVU, the session complied with requirements of current legislation. The final stroke was participation in transference of authorities from the former head to the newly elected one and development of the respective documents.

References:

Voter's Protection Service Project Report Election-related disputes" (election 2006)

by the Committee of Voters of Ukraine

See

www.cvu.org.ua/files/doc11486542333_Sudovi-spravu-SZV-06-zvit.doc

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

In general, the military and security forces remain neutral during elections.

References:

Interview with MP Katerina Levchenko

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

During 2006 election the Central Electoral Commission registered 108 international election observers, but the law does not regulate terms and procedure of registration of observers from parties and NGOs.

References:

UKRAINIAN MONITOR – EUROPEAN PARLIAMENT RESOLUTION ON ELECTIONS IN UKRAINE – Centre for peace, conversions and foreign policy of Ukraine, 2006

See

<http://cpcfpu.org.ua/en/projects/foreignpolicy>

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

As EU Commissioner for External Relations and the European Neighborhood Policy Benita Ferrero-Waldner noted related to the 2006 Parliamentary election in Ukraine, the transparent nature of the parliamentary elections proved that democratic achievements are stronger and stronger.

The Ukrainian people expressed their will and we are satisfied that it happened freely and fairly. Now we should wait, in what the negotiations on the coalition result, as the negotiations are not easy, and what a government is formed. But already now we may say, no matter what a coalition is formed, as a result of the negotiations, we will be happy to cooperate with it in development of bilateral relations.”

As for new 2007 election presence of international election observers causes concerns of Committee of Voters of Ukraine. International organizations like ODIHR / OSCE and foreign governments have not received official invitations from Ukraine for participation in election observation yet. Even if such invitations are sent, organization of missions will take some time. However, it is quite possible some biased international observers will be assigned.

References:

EUROPEAN PARLIAMENT RESOLUTION ON ELECTIONS IN UKRAINE – UKRAINIAN MONITOR

http://cpcfpu.org.ua/en/projects/foreignpolicy/week_theme/09042006/

Committee of Voters of Ukraine

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

80
II-3. Political Financing

20. Are there regulations governing political financing?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Donations to political parties may not be made by charities, religious associations or organizations.

According to the same law, bodies of state power, governmental agencies, public institutions and local self-governance bodies may not make donations to political parties. The state, however, provides some funding for purposes of election campaigns (as provided for by the presidential, parliamentary and local election laws).

No donations may be made by foreign states or institutions. Donations to political parties may not be made by other political parties that are not members of the same electoral block.

References:

Law On Political Parties in Ukraine" (approved April 5, 2001)

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

Foreign nationals and stateless persons may not donate to political parties and/or candidates. The amount of a donation by individual – a citizen of Ukraine during an election campaign is limited to the equivalent of US\$3,207.50 (i.e. 1,000 of non-taxed minimum income of an individual). No donations to political parties may be made anonymously or by individuals using pseudonyms.

References:

Law On Political Parties in Ukraine” (approved on April 5, 2001)
Art. 36, Law “On Election of People’s Deputies of Ukraine”

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | **NO**

Comments:

State-owned and communal enterprises, as well as enterprises and institutions, shares of which are owned by non-residents; and corporations owned by foreign nationals may not donate to political parties and/or candidates. The cap is on the total amount that can be spent by a party or candidate on a campaign through a special election fund (up to UAH 2,255,000 or about US\$425,472); there is also a limit on the size of a personal (individual) donation to a campaign account of a political party (block) or candidate (17,000 UAH, or about US\$3,210).

Funds that may be used by a party (block) or candidate for an election campaign are limited to the party’s (candidate’s) own funds and donations by private individuals. Financial contributions to political parties by corporate donors beyond the election periods are not prohibited and are not limited.

References:

Law On Political Parties in Ukraine” (approved on April 5, 2001)

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

According to estimates of the Central Election Commission, early election of national deputy will cost UAH 340 million. The Law on Election stipulates that required funds shall be paid from the State Budget of Ukraine. UAH 156 million is allocated for the Central Election Commission in the 2007 Budget. Such a sum may cover initial arrangements of the campaign, but utilization of such fund for needs of the early election should be authorized by the Verkhovna Rada, in order to prevent any future accusations in misapplication of budgetary funds.

References:

Art. 36, Law On Election of People's Deputies of Ukraine"

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

Law On Political Parties in Ukraine" Art. 15

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

References:

Interview with MP Levchenko

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

References:

Interview with MP Levchenko

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

17

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

Interview with politicians

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

References:

Assessing Ukraine's Competitiveness Amid Political Change # 25 (553) 2 8 July 2005 Zerkalo Nedeli

See:

<http://www.mw.ua/2000/2020/50519/>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

Comments:

The total party expenditures are not transparent according to an interview with the head of the Central Election Committee.

References:

<http://novosti.dn.ua/details/33181/>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interviews with the leader of human rights protection NGO

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interviews with the leader of human rights protection NGO

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with MP Levchenko Katerina

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

50

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with MP

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interviews with MP

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Records are free but not available.

References:

Interview with MP

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. ^{E1} Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Human rights and citizens' freedoms are protected by the Constitution and any infringement can be challenged through the court. Everyone is guaranteed the right to challenge in court any decisions, actions or failure to act by bodies of state power, local self-government and civil servants.

Everyone has the right to appeal for protection of his/her rights and freedoms to the ombudsman. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to relevant international judicial institutions or relevant international organizations to which Ukraine is a member or a participant. According to the Constitution, everyone has the right to compensation, at the expense of national or local government, for material and/or moral damages inflicted by unlawful decisions, actions or failure of authorities to act.

References:

Art. 55, 56, Constitution of Ukraine

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

63

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the chief executive rarely or almost never give reasons for their policy decisions.

References:

www.pravda.com.ua

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Civil Processal Code of Ukraine, Art. 248
Law On the Constitutional Court of Ukraine" (1996), Art.61

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Interview with independent experts

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

References:

Interviews with representative of ministry of economy

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

50

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The president enjoys the right of immunity during his/her term of authority. The president may be removed from office only by two-thirds of the Verkhovna Rada (Parliament) through the procedure of impeachment in the event that he/she commits state treason or another gross crime. But this process is not clear and very complicated.

References:

Constitution of Ukraine, Art. 105; Art. 111

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There is no regulation in Ukrainian law that gives ministerial-level officials any immunity from prosecution. But in practice there are no cases when ministerial-level officials can be prosecuted for crimes they commit.

References:

Constitution of Ukraine Art. 24

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

38

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The president is required to file an asset disclosure form.

References:

Law On Civil Service,” Art.6
Law “On Fighting Corruption,” Art.13

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

All top officials (rank 1 and 2) are required to file asset disclosure forms.

References:

Law On Civil Service,” Art.6
Law “On Fighting Corruption,” Art.13

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

Comments:

There is no direct regulation concerning gifts and hospitality for the executive. The Law on Fighting Against Corruption says only that any gift or award gained illegally is a corrupt action.

References:

Law On Fighting Corruption” (1995), Art.1

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not

appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Law On Civil Service”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

There are only restrictions on heads of state and government and ministers entering the private sector when they are appointed the government position.

References:

Interview with member of Cabinet of Ministry of Ukraine

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no restriction in the law.

References:

Interviews with MP Levchenko K. Kiev. Aug. 4, 2007

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with MP of Ukraine

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

They are never audited.

References:

Interviews with MP Levchenko K. Kiev. Aug. 4, 2007

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

92

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The law does not demand the head of state to make information about his/her assets available for public information on a regular basis. The law "On Election of the President of Ukraine" requires asset disclosure of a presidential candidate ("a presidential candidate's declaration of assets and income received in the previous year") to be submitted to the Central Election Commission (CEC) in package with a formal application for registration as a candidate for the race.

The accuracy of the information provided in the declaration can be verified by the State Taxation Administration at the order of the CEC. If the information is found to be deliberately distorted or false, the CEC denies the candidate's registration. If the distortions are found after the official registration, the CEC has five days to request that the Supreme Court of Ukraine to abolish the registration. If the Supreme Court rules to abolish the candidate's registration, the court must initiate a criminal investigation into the matter. The CEC publishes declarations of all presidential candidates in the state's official newspapers, the "Holos Ukrainy" and the "Uriadvovyi Kurrier," within three days of their submission.

References:

The Law "On Election of the President of Ukraine" Art. 22, Art. 29

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Official site of the President of Ukraine
www.prident.gov.ua

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Public access to the asset disclosure records of the head of state is free of charge.

References:

www.president.gov.ua

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

References:

Interview with member of opposition party

Interview of Ukrainian politologist

<http://h.ua/story/16645/> Ukraine: totalitarian way of development as alternative of democracy”

<http://www.vovremya.info/art/1183633548.html> “Expert political project”

<http://www.day.kiev.ua/182868/> Vasil’ Kremenets interview to newspaper “Day”

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

50

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

In law, only the Constitutional Court can rule an act issued by the Verkhovna Rada unconstitutional.

References:

Constitution of Ukraine
Law On the Constitutional Court of Ukraine," Art. 61

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

When necessary, the Constitutional Court declares laws or parts of laws unconstitutional. An example of this is reviews by Constitutional Court of Ukraine Presidential Decree for pre-term election.

In September 2006, the President of Ukraine adopted a Concept Paper On the Way to Integrity" which analyses risks and elaborates possible ways to prevent and fight corruption. The Ministry of Justice is currently developing an action plan, which will need to identify clear responsibilities, deadlines, practical measures and budgetary allocations for implementation of the concept. It is expected that once developed, the action plan will be submitted to the Cabinet of Ministers for adoption.

A mechanism for effective coordination and monitoring of the implementation of the concept and the action plan will need to be developed. The current coordination mechanism through the Interdepartmental Commission for prevention and fighting corruption at the National Security and Defense Council does not appear strong enough. A leading institution that would be in charge of taking further the anticorruption agenda, and will ensure effective coordination of various institutions and the monitoring of implementation, needs to be nominated and supported with necessary mandate and resources.

In the area of implementation of the legislation, especially in law enforcement, the low level of communication between various agencies has a negative impact on anticorruption efforts. Thus only a small number of cases find their way to courts, even fewer ending in convictions. Sharing of data and gathering consolidated statistics remains a challenge. In Ukraine there is no specialized anticorruption prosecution unit empowered to detect, investigate and prosecute corrupt activities. A wide debate continues over the need to set up a unique structure that would include representatives from all law enforcement forces either as an independent agency or within one of the institutions that already exist.

There is the risk that a prolonged discussion and lack of practical steps might wear down the remaining public trust in the political class and their will to challenge the old patterns.

References:

Constitutional Court of Ukraine
Anti-Corruption Network for Eastern Europe and Central Asia, 2006 Istanbul Anti-Corruption Action Plan for Ukraine
Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption, 2006
Monitoring report was adopted at the 6th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan on Dec. 12, 2006 at the OECD Headquarters in Paris

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | **NO**

Comments:

In law, members of the legislature are immune from the prosecution. National Deputies of Ukraine are guaranteed parliamentary immunity. National Deputies of Ukraine are not legally liable for the results of voting or for statements made in Parliament and in its bodies, with the exception of liability for insult or defamation. National Deputies of Ukraine shall not be held criminally liable, detained or arrested without the consent of the Verkhovna Rada of Ukraine.

References:

Art. 80, Constitution of Ukraine

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

14

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Art. 1, Law On Fighting Corruption"

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are restrictions for national legislators entering the private sector only when they occupied government positions.

References:

Interview with MP

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

Comments:

There is no regulation concerning gifts and hospitality for members of the legislature. Article 1 of the Law On Fighting Corruption" offers an explanation about gifts and hospitality for members of the legislature. Article 2 of the same Law explains who is meant by "members of the legislature."

References:

Art. 1, Law On Fighting Corruption"

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

In law, MPs are required to file an asset disclosure form, as are all other public officials, but they are not a subject for auditing.

References:

Art. 6, Law On Civil Service”

Art. 13, Law “On Fighting Corruption”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no restrictions.

References:

Interviews with MP

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interviews with MP

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Accounting Chambe of Ukraine

<http://www.ac-rada.gov.ua/achamber/>

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

There is no regulation that requires public access to the asset disclosure records of MPs.

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

Interviews with MP

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

Interviews with MP

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The law "On Information" makes no exception for public access to the records of legislative processes and documents. Only in the case of classified documents and closed hearings (e.g. on defense issues), is public access impossible.

References:

The law "On Information"

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can access unclassified records of legislative processes and documents immediately through the Internet.

References:
www.pravda.com.ua

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:
Available on the Internet
www.4vlada.net

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

37
III-3. Judicial Accountability

33. Are judges appointed fairly?

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

In law, the independence and immunity of judges are guaranteed by the constitution and the laws of Ukraine. Influencing judges in any manner is prohibited. A judge shall not be detained or arrested without the consent of the Verkhovna Rada until a verdict of guilty is rendered by a court. However, the judiciary is inefficient and subject to corruption. Although the Constitutional Court is largely free of political interference, other courts lack independence. Judges are often penalized for independent decision making.

References:

The law of Ukraine About the judiciary”

Law “On the Judiciary,” Art. 7

Law “On the Status of Judges”

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The law requires judges who are selected as candidates to the Supreme Court to be educated in law, to have at least 10 years work experience in the legal profession, and no less than five years experience as a judge. The judge selected as a candidate to the Supreme Court must be elected by the Parliament. Judges to be appointed to the chambers of the Supreme Court are required to have work experience as judges at the relevant high court (not less than three years), or at the relevant high appeal court (not less than five years). There was no evidence that these requirements were ever violated.

References:

Art. 7, Law On Status of Judges”

Art. 48, Law “On Judiciary”

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Verkhovna Rada of Ukraine has a special confirmation process for high-court judges.

References:

Constitution of Ukraine, Art. 85

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

58

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Art. 12 of the Law On the Status of Judges” stipulates that “a judge is not obliged to give any explanations regarding the matter of the judged cases and/or give them to anybody for information except in cases and in order specified by the law” (i.e., when the judge is under investigation by the disciplinary commission for justified changes of misconduct or violation of the law). Judges are immune to prosecution.

At the same time the law of Ukraine About the judiciary opens a principle of publicity of litigation: Nobody can be limited in right on reception in court of the oral or written information concerning results of consideration of his action of proceeding.

References:

The law of Ukraine About the judiciary”
the Law of Ukraine “About access to judgements” (since June, 1, 2006)
Art. 12, Law “On the Status of Judges”

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, judges can both give argued reasons for their decisions or leave their decisions unclear.

The Law of Ukraine About access to judgements” guarantees the right of access to judgements, determined by the Law.

References:

<http://www.krai.org.ua/en/receptionoftheopenin/index.html>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

In compliance with the Constitution of Ukraine and the law on Prosecutor Office, the Prosecutor General and subordinate prosecutors conduct the surveillance of observance or non-observance of the application of the law.

References:

Law on Prosecutor Office

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

De jure juridical system is protected from political interference. But in practice the judicial system is considered one of the more corrupt systems in Ukraine. During the past year, especially after the political crisis in Ukraine, all Ukrainian courts and justice systems are now even more dependent on political power. The Prosecutor General is appointed by the president but according to the PGO, some politicians in Ukraine are trying to engage PGO bodies into the settlement of the crisis situation in Ukraine.”

References:

Law of Prosecutor Office

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

The Ukrainian radio's NRCU Web page
<http://www.nrcu.gov.ua/index.php?id=51>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

The Ukrainian radio's NRCU Web page

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

14

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

All top officials are required to file asset disclosure forms.

References:

Law of Constitutional Court

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

Comments:

There are no requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

References:

Interview with MP

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

www.Obozrevatel.com.ua

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

obozrevatel.com.ua

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors

seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Never

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Publishing the asset disclosure records of high state officials is provided by the law. Ministries have published this data in the governmental newspaper Uriadovyi kur"er," but not all of them do it.

But there are no such obligations for the judiciary.

References:

Law of civil servant

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is true only in the case of independent journalistic investigations.

References:

Interview with MP Levchenko K. Kiev. Aug. 4, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

The legal/regulatory framework in Ukraine is far from ideal. For example, there is no comprehensive FOIA-type legislation. But a number of existing laws, decrees and regulations provide for obligatory transparency and accountability, notably in the budget and procurement areas.

The government of Ukraine, however, fails to comply with these existing requirements in important ways. While the government claims to be transparent, and gets credit from the international community for being so, it falls far short of real transparency. It appears that the Ukrainian government is either unwilling or unable to create an environment of real transparency and accountability.

References:

Diagnostic Report: Fiscal Transparency and Openness in Ukraine by Institute for Economic Research and Policy Consulting, 2003, p. 17

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

They need to be approved by Parliament.

References:

Official site of Ukrainian Parliament
www.rada.gov.ua

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | **50** | 25 | 0

Comments:

It is an area of critical concern both in terms of understanding corruption in Ukraine and designing approaches to combat it. It includes the entire cycle of the budget process (budget formulation, approval, execution and audit/oversight) and involves the executive and legislative branches at both national and sub-national levels. Procurement and government purchasing are central aspects of the budget execution phase. Both internal audit and controls, as well as external audit by the Verkhovna Rada Chamber of Accounts, are critical components.

Public finance is a critical government function that affects all areas of public activity, and it encompasses the vast majority of corrupt behaviors in one way or another. Vulnerabilities in this area typically stem from three weaknesses: a poor legal/regulatory framework, weak capacity (technological, organizational, human and resource), and/or a lack of transparency/oversight. In Ukraine, the problems in the public finance area emanate clearly from a lack of transparency and oversight, both by the appropriate government bodies and civil society.

It should be noted that transparency in the use of public funds does not attack corruption directly. However, it creates the environment in which it is much more difficult to divert these resources and in which the risk of discovery and punishment is dramatically higher. It is a necessary enabling precondition for the success of any other anticorruption efforts.

References:

Corruption assessment: Ukraine, 2006, USAID
Diagnostic Report: Fiscal Transparency and Openness in Ukraine by Institute for Economic Research and Policy Consulting, 2003, p. 17

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

17

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The legal and technical aspects of the budget process in Ukraine generally comply with international standards (such as IMF and OECD requirements) and are consistent with EU requirements in many regards. There are, however, two concerns in this area. The Government of Ukraine does not appear to offer extensive opportunities for citizen involvement in the process either at the national or local levels. While there may be public hearings or opportunities to present testimony or analysis to the Verkhovna Rada (Parliament), there is little evidence that such input has any impact on the budget.

The transparency of the budget and its execution is quite low. A superficial analysis shows that the government does, indeed, provide extensive information to the public. The budget is posted on the Verkhovna Rada website. However, a more complete analysis shows that the VR website posts the government's budget proposal, but not necessarily the amendments to it or their discussions surrounding them. Many budget numbers are available only in summary form and additional detail is not available.

Interbudgetary transfer calculations use complicated formulas that often have plugged-in numbers that do not have justification. The government does not typically report on variances from budget either on the expenditure or the revenue side, even when the variance is significant. Annual reports lack important information on certain assets and there are no long-term budget forecasts. The numbers released by the social funds are particularly opaque. Budget information not posted is typically difficult or impossible to obtain.

Although access to information has improved in recent years, this lack of transparency is a critical vulnerability for corruption.

Documents of the pension fund are not fully available to the public; only general figures on budget execution are published.

References:

Diagnostic Report: Fiscal Transparency and Openness in Ukraine by Institute for Economic Research and Policy Consulting, 2006

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

People can participate in Parliamentary budget hearings but usually their input is not taken into account.

References:

www.rada.gov.ua

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Sub-national governments typically release even less information on their budgets and their execution. Generally, access to public information at these levels is usually restricted. Even information which is public by law is often not provided.

Officials use excuses such as, the information is temporarily unavailable, and the requested data has not been collected yet, and the data can not be disseminated due to technical difficulties.

References:

Diagnostic Report: Fiscal Transparency and Openness in Ukraine by Institute for Economic Research and Policy Consulting, 2003, p. 81

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

Article 2. Tasks of the Accounting Chamber.

The tasks of the Accounting Chamber are as follows:

To organise and execute control over timely execution of the expenditure part of the State Budget of Ukraine, spending of budget funds including from national targeted funds, their amounts, structure and targeted allocation;

Execute control over internal and external national debt of Ukraine, judge on appropriateness and efficiency of spending public money; foreign currency and credit and financial recourses;

Execute control over financing national programmes of economic, research and technical, social and cultural development and environmental protection;

Execute control over legality of lending money and rendering economic assistance as envisaged by the State Budget of Ukraine to foreign countries and international organisations;

Execute control over legality and timeliness of the State Budget and over-the budget funds flows at the National Bank of Ukraine and other authorised banks;

(Paragraph 7, Article 2 has lost its force on the grounds of the Constitutional Court ruling 7-7? (v007p710-97) of December 23, 1997)

Analyse detected deviations from the State Budget indicators and draft proposals on their corrections as well as on improvement of general budgeting process;

Regularly inform the Parliament of Ukraine and its committees about the State Budget execution and situation with redemption of internal and foreign debt of Ukraine, about the results of other controlling activities;

Execute other tasks of the Accounting Chamber according to the current Ukrainian legislation.”

References:

Law of Ukraine About Accounting Chamber” art. 2
(Vidomosty Verkhovnoi Rady (VVR) (Parliamentary Chronicles),
1996, issue 43, p. 212)

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

69

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

http://www.ac-rada.gov.ua/achamber/control/en/publish/category/main?cat_id=32832
Accounting Chamber Annual Report

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

http://www.ac-rada.gov.ua/achamber/control/en/publish/category/main?cat_id=32832

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

According to Article 3, Principles of control – The Accounting Chamber shall execute control on the grounds of legality, planning, objectivity, independence and transparency.

Article 10. Head of the Accounting Chamber, First Deputy Head and Deputy Head, Chief Comptrollers and Secretary of the Accounting Chamber

The Head of the Accounting Chamber shall be appointed to the office by the Verkhovna Rada (Parliament) of Ukraine after submission by the Chairman of the Parliament of Ukraine for the term of 7 years with the right to be appointed to the office for the second term. The Head of the Accounting Chamber shall be appointed by secret ballot. A candidate to the office of the Head of the Accounting Chamber shall be regarded as appointed if, by the results of a secret ballot, he receives the majority vote of the constitutional composition of the Parliament of Ukraine according to the current Ukrainian legislation.

The Head of the Accounting Chamber must be a citizen of Ukraine, who has higher educational background in economics or law, professional experience in public administration, public audit, economy, finance, law and has demonstrated his professional knowledge in the process of selection according to special procedure set up by the relevant Parliamentary Committee in accordance with the current Ukrainian legislation.

References:

Accounting Chamber of Ukraine

http://www.ac-rada.gov.ua/achamber/control/en/publish/article/main?art_id=35928&cat_id=32823

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

<http://www.ac-rada.gov.ua/>

Accounting Chamber

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁴¹Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

NO

Comments:

According to the Law On Civil Service," the civil service must be based on the following fundamental principles: serving the people of Ukraine, democracy and rule of law, humanism and social validity, priority to the human and citizen rights, professionalism, competence, initiative, honesty, commitment to his activity, personal accountability for exercising his official duties and discipline. A civil servant is prohibited to show any bias or partiality to any enterprise, organization, entity, public association or any concrete person.

The Main Department of Civil Service of Ukraine became very active in 2005 in issuing guidance to prevent and detect corrupt behavior, for example, guidance for state and local self-governance institutions on setting up corruption prevention frameworks, guidance on drafting professional responsibilities for public servants to prevent abuses, and guidance on monthly compliance reporting with anticorruption regulations. All these documents attempt to establish better control over corrupt practices in the civil service system at all levels and jurisdictions. However, there is no evident attempt to establish indicators to measure the effectiveness of these measures and to monitor implementation.

A new draft Good Practices Code was developed by the Ministry of Justice to address the weaknesses of the current system.

References:

Law on Civil Service; Art. 3, 5
the General Rules of Public Servants' Conduct' (2000) adopted by Main Civil Service Department ; draft Good Practices Code;
new Law of Ukraine on the Prevention and Fight against Corruption, developed by the Ministry of Justice; Law on Public
Procurement, adopted on 17 March 2006; The Anti-Money Laundering legislative;

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law on Civil Service (33724-XII (3724-12) on 16.12.93, 1993, N 52, AB.491) (art 12); Labor Code;
Law On Fighting Corruption," Art. 5

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | **NO**

References:

Law on Civil Service. Labor Code

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Law on Civil Service

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

33

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

www.pravda.com.ua.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

Comments:

Weak professionalism and low integrity are the main problems of civil service in Ukraine. The need for civil service reform is widely acknowledged, a number of conceptual proposals were developed, but remained unimplemented. The Current Law on Civil Service, passed in 1993, is largely outdated.

Current regulations about the rights and duties, recruitment, promotion, performance appraisal and discipline remain vague and allow for wide arbitrariness, applied on a case-by-case basis. The new draft Law on Civil Service was prepared, and is seen as a move in the right direction, even though some of its provisions require further improvements. The Main Civil Service Department is making efforts to lead the reform of public administration; these efforts need to take the central role in the government, and should focus on policy tasks, rather than case management.

Despite a thin veil of merit-based competition for civil service and judicial recruitment and appointments, there are extensive corruption-prone problems in the selection process.

References:

Monitoring report Adopted at the 6th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan on Dec. 12, 2006 at the OECD Headquarters in Paris

Interviews with government officials – Katerina Levchenko – MP, July 6, 2007

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

References:

Korrespondent (www.korrespondent.net)

Obozrevatel (www.obozrevatel.com.ua)

Ukrainian Pravda (www.pravda.com.ua)

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

The Main Civil Service Department adopted the General Rules of Public Servants Conduct in October 2000 in order to provide a general guide to improve ethical standards in civil service.

However, this document is unknown in many departments of public administration or is understood as a mere internal document and thus not applicable or enforceable in other bodies. Some bodies or professional groups have their own codes of conduct or ethical guidelines. Nevertheless, the effectiveness of such tools is generally recognized as poor. A comprehensive and more proactive move towards a citizens-oriented culture is needed. A new draft Good Practices Code was developed by the Ministry of Justice to address the weaknesses of the current system. If adopted, it can become a turning point in this issue. To ensure that this Code is adopted and effectively implemented, it should be part of an action plan against corruption and be backed by an intensive training program and a proactive communications strategy.

References:

Interview with specialist the department of Interanal Policy, Kharkov State Administration, July 6, 2007, Kharkov

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small faction of total pay.

100 | 75 | 50 | **25** | 0

References:

Interview with officials from Kharkov local administration.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Hiring is regulated by the Civil Service Law and regulations developed by the Main Department of the Civil Service of Ukraine. The Department has issued guidance on hiring procedures, but nepotism and favoritism remain a common practice to fill open positions.

A new Draft Civil Service Law was discussed with the international community at a June 2005 conference, and with the public via discussions at the administration's Public Collegia. The principal objective of this new law is to bring Ukraine into compliance with EU standards. However, the problem lies not so much in the law but in the way it is implemented.

References:

Civil Service Law

Corruption Assessment: Ukraine, research of USAID

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

korrespondent (www.korrespondent.net), Obozrevatel (www.obozrevatel.com.ua)

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

www.ukrstat.gov.ua

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Koviazina G. National Institute for Strategic Studies, head of Finasial Department, Kiev. July 10, 2007

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

17

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES

NO

Comments:

There is no particular law on conflict of interest (COI), though COI provisions can be found in the Civil Service Law and the Main Rules of Civil Servant Conduct (both are applicable to career civil servants and local public officials, but not to officials at the ministerial level), the Ukrainian Constitution, the Law on Public Deputies of Ukraine, and some other pieces of legislation. These provisions generally interpret conflicts of interest in a very limited fashion. They prohibit public officials and civil servants from being involved in any business activities or holding any other office and restrict them from supervising or being supervised by a family member. There are no policies or procedures for resolving conflicts of interest once detected. Rather, current provisions stipulate that these conflicts should be dealt with prior to taking public office otherwise the official will be subject to the Law of Ukraine on Fighting Corruption or other enforcement laws.

As for high-level public officials in the executive branch, the only law that regulates them is the Constitution. The Law on Public Deputies of Ukraine has a very brief article on Deputies ethics. All existing legislative documents are very vague about COI provisions and not very practical. A Draft Code of Conduct of Public Officials was developed by the Ministry of Justice and is posted on their website for public comments.

This draft discusses, with some specificity, the conduct of public officials, conflicts of interest, employment upon retirement, and other issues. In addition, the Draft Law on Administrative Procedures is being developed by the MOJ and is supposed to define the administrative procedures and responsibilities of public officials and civil servants clearly.

References:

Constitution of Ukraine
Law on Civil Service
The General Rules of Public Servants Conduct
Law on Public Deputies of Ukraine
A Draft Code of Conduct of Public Officials

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no restrictions for civil servants entering the private sector after leaving the government.

References:

Labor Code

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

Comments:

A new draft of the Law On Civil Service" would prohibit civil servants of any rank from receiving any gifts or services from persons or legal entities, but it has not yet been adopted.

References:

Law On Civil Service," Art. 16

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | **0**

References:

n/a

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

A new draft of the Law On Civil Service” would prohibit civil servants of any rank from receiving any gifts or services from persons or legal entities, but it has not yet been adopted.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with expert

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

67

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Several laws require financial disclosure for candidates and holders of public office and for civil servants and their immediate families. Only information on candidates running for elected office is available to the public. Financial disclosure information for public officials and civil servants is not publicly available due to privacy and personal safety restrictions. However, there is much skepticism about how these requirements are implemented in practice and how they can be used to control corruption.

References:

Law On Election of the President of Ukraine,” Art. 22, 29
Law on Civil Service (# 3724-XII (3724-12) on 16.12.93, 1993, N 52, AB.491) Art. 13

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These records, if published, are available immediately. For most civil servants, this information is not available.

References:

Interview with expert

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If these records are published, the public access (through mass media or the Internet) is free. For most civil servants, this information is not available.

References:

Interview with expert

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no particular law that provides protection for public officials or civil servants who report corruption or misconduct in their offices. Some general provisions are included in existing laws that ostensibly protect any citizen. For example, the Law on Citizen Inquiries prohibits retribution against citizens and their family members who submit complaints or criticize any governmental or private institution or officials. In the Criminal Code, persons who report paying extorted bribes are not liable for the crime if at the time they report it there was no open case against them.

References:

There is no direct reference concerning civil servants reporting corruption in the Ukrainian legislation. The phenomena known as whistle-blowing measures are known only in Ukraine theoretically from the experience of other countries.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

There is no particular law that provides protection for public officials or civil servants who report on corruption or misconduct in their offices. Some general provisions are included in existing laws that ostensibly protect any citizen. For example, the Law on Citizen Inquiries prohibits retribution against citizens and their family members who submit complaints or criticize any governmental or private institution or officials. In the Criminal Code, persons who report paying extorted bribes are not liable for the crime if at the time they report it there was no open case against them.

References:

Final report Corruption Assessment; Ukraine," USAID, Kiev 2006

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

References:

Final report corruption assessment: Ukraine” USAID, Kiev, 2006

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

References:

<http://www.business-anti-corruption.com/normal.asp?pageid=252>

Corruption in Ukraine: May, 2007 National survey”

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

References:

There is no law regulating reporting corruption.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

6

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

References:

There is no permanent reporting mechanism for public-sector corruption.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

Comments:

Every governmental institution is obligated to have mechanisms to collect and respond to citizen complaints. In addition, almost every governmental agency recently has introduced telephone and web-based hotlines. But most studies of the effectiveness of these mechanisms identify the public's general frustration and skepticism. To strengthen these options or provide an alternative, Presidential Public Reception offices were opened recently and report a mounting number of complaints. It is too early to say if this new initiative is helping to improve the situation.

References:

Interview with Politologist Institute of Democracy

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

References:

Not applicable

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:
Not applicable

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

IV-3. Procurement²

48. Is the public procurement process effective?

68

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:
According to the law On State Procurements, "relatives of participants or their representatives cannot be members of tendering committees, or be experts on specific procurement procedures.

References:
Art.12, Law On Procurements of Goods, Works, and Services For Public Funds" (2000)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all

civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

A new amendment to the Procurement Law was passed in 2005 to create a more competitive environment in the area of public procurement while ensuring transparent procedures. In particular, there are provisions on additional procedures of publication of procurement plans in the Internet, electronic tendering, guarantees for nondiscrimination of participants and equal access to procurement information. New wording includes guarantees against unfair acts of bidders.

References:

The Procurement Law

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | **75** | 50 | 25 | 0

Comments:

According to the law "On State Procurements," relatives of participants or their representatives cannot be members of tendering committees, or be experts on specific procurement procedures.

The law also has provisions to control conflicts of interest: It prohibits participation in procurement committees of close relatives of bidder's representatives; officials of consolidated companies; and their representatives and close relatives of these persons.

Violation of these restrictions will result in cancellation of the tender or its outcome. In addition, the Law has a section on "social control in the area of public procurement" and establishes a new independent controlling body "the Tender Chamber" a nonprofit union of NGOs. The Law provides for procedure and guarantees of activities of this body: administration of complaints, conducting inspections, conducting public discussions of bidding procedures, etc.

References:

Art.12, Law On Procurements of Goods, Works, and Services For Public Funds" (2000)

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The law "On Civil Service" requires asset disclosure by officials. There is no regulation concerning their spending habits.

References:

The law "On Civil Service"

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

In law, all procurements for public funds for the amount of 2,000 euros and more require competitive bidding. The law "On State Procurements" establishes a clear procedure of tendering.

References:

Art. 1, Law "On Procurement of Goods, Works and Services For Public Funds"

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

There is no strict formal regulation on sole sourcing in Ukrainian legislation.

References:

Interview with expert from National Institute for Strategic Studies

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law On Procurement of Goods, Works And Services For Public Funds," Art. 36, 37

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law On Procurement of Goods, Works And Services," Art. 37, p.10

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The law says only that the customer must reject a tender proposal if he/she has indisputable proof of a tender participant offering, giving, or agreeing to give directly or indirectly to any official or former serviceman of the customer, or any other public official an award in any form (proposal on employment, valuables, a service, etc.), aiming at influencing the decision-making of determining the winner of the procurement procedure. No company regulations can be found in the legislation.

References:

Law On Procurement of Goods, Works And Services,” Art. 7

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There has been no precedent of an accusation of any company and prohibition from participation in future tender bids.

References:

Interview with Zhalilo Y. – expert from National Institute for Strategic Studies

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Citizens can access public procurement regulations through publications in a special review, Visnyk Derzhavnykh Zakupivel" (Government Procurement Bulletin), and other mass media.

References:

Law On Procurement of Goods, Works And Services For Public Funds" Art. 8

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law On Procurement of Goods, Works And Services For Public Funds"

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interviews with economic expert from tendering committee

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access public procurement regulations at a reasonable cost.

References:

Interview with Zhalolo J – expert from National Institute for Strategic Studies

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The concerns about corruption are more likely to stem from policy weaknesses, lack of transparency, and external oversight than from technical or legal/regulatory weaknesses.

For example, very few government entities publish a comprehensive procurement plan for the upcoming year. Information on specific procurements can be difficult to locate, and tenders may not be announced publicly until shortly before the

deadline. Arbitrary pre-qualification requirements can exclude otherwise qualified bidders from the running. There does not appear to be a procurement review board including non-government actors; the policies for contesting a decision are weak, and there appears to be little citizen input into what is to be procured in the first place.

References:

<http://www.tpu.net.ua/>
<http://www.tpu.net.ua/mats/95/>
http://www.sportiv.info/files/porivnalna_tablicya.doc

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | **50** | 25 | 0

References:

Interviews with economic expert

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

50. Is the privatization process effective?

33

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

According to the Law On Privatization," a purchaser of privatization objects can be citizens of Ukraine, foreign citizens, legal entities registered in Ukraine, and legal entities of other states.

There are some limits for foreign businesses with privatization of specific enterprises or firms in specific industries (communications, land privatization). The privatization process in Ukraine has always been very biased.

References:

Law On Privatization" (1992), Art. 8

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There is no direct definition of conflict of interest in the legislation.

References:

Interview with expert from National Institute for Strategic Studies

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific procedure to regulate conflicts of interest.

References:

Interviews with expert from National Institute for Strategic Studies

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

70

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

The law requires the publication of terms and conditions of privatization bids in information bulletins of privatization bodies and central and local mass media, no later than 30 days prior to the day the auction, privatization bid or release of shares into free sale is planned.

References:

Law On Privatization" (1992), Art. 19

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The information in itself does not guarantee effective checks because apathy about backroom deals and corruption is widespread.

References:

Interview with expert from NISS

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

0

References:

Law On Privatization" (1992)

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

References:

Interviews with expert from National Institute for Strategic Studies

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

Comments:

Information about terms and conditions of privatization bids is free of charge.

References:

Interviews with expert from National Institute for Strategic Studies

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The Ombudsman does not play a significant role in fighting or preventing corruption. While it collects thousands of citizen complaints, it does not analyze this information to identify problem trends but rather acts on a case-by-case basis and rarely passes this information to the offending governmental institutions to bring their attention to abuses and violations. The Ombudsman's Annual Report to Parliament primarily contains statistics on complaints and complainers but offers no systematic analysis or recommendations for reform.

References:

Law of Ukraine On the Ukrainian Parliament Commissioner for Human Rights
Constitution of Ukraine, Art. 55

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

59

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

After last Parliamentary election, the Ombudsman is appointed by a Parliamentary coalition.

References:

Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine “

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Due to his/her appointment by the ruling parliamentary coalition, the Ombudsman is not protected from political interference, although they declare themselves as an independent.

References:

Interview with MP Levchenko

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman has immunity for the entire period of service and may not be detained, arrested, searched, or brought to trial without prior consent of the Parliament. A criminal case against the ombudsman may be initiated only by the attorney general.

References:

Art. 20, Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine”

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The Ombudsman agency has a full-time staff, but sometimes it is not professional.

References:

Interviews with leader of human rights protection NGO – Zhakharov

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | **75** | 50 | 25 | 0

Comments:

The Ombudsman and staff appointed to the agency are among the most trusted civil servants in Ukraine.

References:

Interviews with NGO representative Zhakharov

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have

clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Ombudsman is funded by the national budget; the funding is requested by the Ombudsman every year when the budget is drafted by the government and earmarked as a special budget line. The funding, however, is rather modest.

References:

Art. 12, Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine"

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Art. 18, Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine"

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

References:

Art. 18, Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine”

100: The agency aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies’ investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

References:

Interview with president of La-Strada Ukraine

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with NGO leader

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with human rights protection activist in Kharkov

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

83

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Law On the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine “

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

www.ombudsman.kiev.ua/

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:

The reports are free.

References:

www.ombudsman.kiev.ua/

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Cabinet of Ministers of Ukraine has recently shown an intense determination in the development of PIFC with the drafting of the Public Internal Financial Control (PIFC) strategy, illustrating the commitment of the whole government to support this new policy.

The Concept for the Development of Public Internal Financial Control, approved by Executive Order of the CMU no. 158-r of May 24, 2005, includes the three pillars of the EU PIFC system: the introduction of managerial accountability for financial management and control elaborated in a legal framework and professional guidance for PIFC, the introduction of decentralized internal audit by a gradual replacement of inspection by internal audit, and the establishment of a central coordination and harmonization function.

In Ukraine the basis for PIFC is laid out in the Budget code. It defines the managerial accountability for establishing and implementing the PIFC system, although poorly formulated and not elaborated in secondary legislation. In fact, the concept of

decentralized MA for PIFC is not introduced in Ukraine.

At present two central institutions are involved in internal financial control: the State Treasury of Ukraine (STU) and the State Control and Revision Office (KRU). The STU carries out ex-ante control and ongoing controls on cash payments. These controls do not guarantee a good financial discipline. There are still many breaches of laws and regulations; The KRU is the institution that carries out ex-post control, and functions in that way as the last beacon for inspecting budget compliance and, in the event of irregularities, initiating the application of administrative penalties or handing the case over to law enforcement bodies. However, annually the KRU can only cover one third of the total number of state budget entities visit and one fourth of the regional and district budget entities.

Centralized control is certainly functional in the present Ukrainian public administration context. However, the system does not really stimulate managers to take responsibility for PIFC. In practice, managers expect the KRU to control their transactions.

The Accounts Chamber is an independent governmental oversight institution that is empowered to conduct performance and financial control and analysis of all governmental programs and institutions, as well as review of how legislation is implemented. In 2004, the Chamber uncovered the misuse or ineffective use of budget and extra-budget funds totaling over USD1.5 billion. The Chamber is proactive in its efforts to reach out to governmental institutions to improve legislation and practices. It cooperates with the Prosecutor's office and monitors the further development of cases it passed to them for investigation.

The Main Control and Revision Office of Ukraine under the Ministry of Finance conducts financial audits of budget expenditures. It conducts such audits for over 15,000 organizations and agencies funded from the public budget throughout the country on an annual basis. During the first 9 months of 2005, it audited over 11,000 organizations and uncovered the unlawful use or misappropriation of public funds in the amount of about USD 200,000 and recovered about USD 71,000.

The decision of the Cabinet of Ministries (CMU) in May 2005 to adopt the Concept for the Development of Public Internal Financial Control for the period 2005-2009 is, however, a signal that the Ukrainian government takes seriously the modernization of the PIFC system based on the principle of managerial accountability for operations and financial management and in line with good EU practice. The strategy and action plan based on this strategy is a good starting point for implementing a new PIFC system.

References:

Constitution, Art. 98
Law On the Accounting Chamber" (1996)
The Law on the State Controlling and Revisioning Service (1993)
Budget code (article 26)
<http://www.ac-rada.gov.ua/achamber/>
Corruption assessment: Ukraine, USAID, February, 2006

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

78

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Law On the Accounting Chamber” declares that the Chamber act independently from other government entities. The State Control and Revisioning Department, an entity within the Ministry of Finance, cannot be protected from political influence.

The Government of Ukraine has appropriate internal and external audit agencies. The external audit (or Supreme Audit Institution, as it is generically called) is accomplished by the Accounting Chamber of Ukraine (ACU). It is independent, reports to the VR and appears free from political and operational interferences. The internal audit function is the Chief Control and Auditing Administration (CCAA), reporting to the Ministry of Finance. Both of the bodies appear to have significant technical capacity. They conduct not only financial audits, but also compliance audits of various types, as well as performance audits (value for money audits) of government programs.

References:

Law On the Accounting Chamber,” Art. 1
www.ac-rada.gov.ua

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the head of audit agency is protected from removal without justification by the balance of political forces in the Parliament.

References:

Interview with experts

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency has a professional, full-time staff.

References:

Interview with expert

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In previous years the audit agency appointments supported the independence of the agency, but this has not been as much the case during the past few years.

References:

Interviews with expert

<http://www.zn.ua/>

<http://pravda.com.ua/>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with expert

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

In practice, as in law, the chamber makes regular reports to the Parliament.

References:

Interviews with expert
www.ac-rada.gov.ua

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The government rarely acts on the findings of the chamber.

References:

Interviews with expert

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Chapter IV. PROCEDURES OF THE ACCOUNTING CHAMBER

Article 15. Planning of the Accounting Chamber activities

Control over execution of the National Budget of Ukraine including budgets of national targeted funds, over financing of national programmes, safekeeping and utilisation of state property, shall be organised and executed by the Accounting Chamber on the basis of annual and operational plans, which are to be formed in view of all kinds and directions of the Accounting Chamber activities and specific orders by the Parliament of Ukraine and its committees.

The Accounting Chamber work plan must include implementation of proposals made by not less than one third of the constitutional composition of the Parliament of Ukraine, submitted according to the Parliamentary Regulations of Verkhovna Rada of Ukraine (129a/ 94 – , 1291/94 –). When developing the Accounting Chamber work plans it is necessary to consider proposals made by the President of Ukraine and Cabinet of Ministers.

Extraordinary controlling measures are to be conducted upon decision taken by the Accounting Chamber Board on the grounds of resolutions or protocol tasks by the Parliament of Ukraine, applications made by the Parliamentary committees and requests by the members of Parliament, which are subject to Parliamentary decisions.

References:

Law On the Accounting Chamber” (1996)

http://www.ac-rada.gov.ua/achamber/control/uk/publish/article/main?art_id=88465&cat_id=32815

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

The ACU publishes extensive data on its website, including the detailed findings of certain audits. However, critics of the ACU point out that the results of sensitive audits are not published, or only summary results are released. Audits of the four Social Funds, thought to be particularly susceptible to corruption, are typically not released.

References:

Law On the Accounting Chamber,” Art. 40
www.ac-rada.gov.ua

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Article 40. Information about activities of The Accounting Chamber

The Accounting Chamber shall regularly publish information about its operations in mass media.

Annual report on operations of The Accounting Chamber to the Parliament of Ukraine must be published.

References:

Law On the Accounting Chamber,” Art. 40

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This information is free of charge.

References:

Law On the Accounting Chamber”

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national tax collection agency?

58. In law, is there a national tax collection agency?

YES | NO

Comments:

The State Tax Administration (STA) oversees all taxes in Ukraine. The main revenue sources are personal and business income taxes. Tax laws and regulations are not always clear, change often, contain numerous loopholes and can conflict internally.

The Tax Administration adopted an Anti-Corruption Action Plan for 2004-2008. According to this plan, a Code of Ethics was adopted, a special Anti-Corruption Department was established in addition to the Internal Control Department, and regulations on job responsibilities are being drafted. The Anti-Corruption Department issues monthly reports on internal investigations and results. These reports are posted on its website.

According to the latest summary report for the first eight months of 2005, regional branches conducted 2,259 internal investigations, among which about 30 percent were triggered by citizen complaints, resulting in administrative sanctions against 1,078 employees, including 142 that were fired. The Department also conducts preventive measures through training of Administration staff and public outreach programs.

References:

Law On the State Taxation Service" (1990), Art. 1

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The state taxation service has a professional, full-time staff.

References:

Law On the State Taxation Service" (1990),
State Tax administration
http://www.sta.gov.ua/page.php3?perelik_str

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The state taxation service receives regular funding from the state budget.

References:

MIGnews.com.ua

<http://www.sta.gov.ua/news.php3?14001>

<http://www.unian.net/rus/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

0

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Administrative procedures for tax collection and management are likewise unclear. This results in a high level of tax evasions, very large collections areas and an extremely large shadow economy.

Taxpayers' rights are routinely violated.

Tax exemptions or tax breaks are typically granted by the legislative branch as a result of lobbying, a clear manifestation of business influencing the state. A tax reform designed to reduce tax rates, simplify legislation and eliminate many loopholes and

exceptions was implemented in 2004. It lowered the profit tax for enterprises from 30 to 25 percent and introduced a flat 13 percent tax on personal incomes.

Large-scale corruption is suspected in the Value Added Tax (VAT) refund scam that allegedly constituted about \$1 billion in 2006, involving kickbacks to tax officials of 30-50 percent of the amount refunded. Currently, the Tax Administration is considering a new reform to deal with this problem by developing a list of low risk firms that would be allowed to file electronic VAT tax returns.

References:

Estimation of the Ministry of Economy and European Integration
<http://www.zn.ua/>
www.kommersant.ua/
Law On the State Taxation Service," Art. 10, 14

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

The national customs agency is the State Customs Service. The excises are under the tax service's domain.

References:

Law On the Customs Affairs," Art. 2
Customs Code of Ukraine, Art.5
Law "On the Taxation System," Art. 14

<http://www.customs.gov.ua/>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

100

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The customs and excise agencies have a professional, full-time staff.

References:

Interviews with expert

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

These agencies receive regular funding from the state budget.

References:

Interviews with expert

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The customs and excise laws are only theoretically enforced uniformly. In practice, there are many cases of abuse of power in the customs service, but this is due more to corruption than any attempt at discrimination.

References:

Interview with academics, Transnational crime and corruption center, Odessa

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

Pursuant to Decree No. 248/99 dated March 13, 1999 On Changes in the System of Central Bodies of Executive Authority in

Ukraine,” the State Property Fund of Ukraine belongs to the central bodies of executive authority.

Under “The Temporary Regulations on the State Property Fund of Ukraine,” the Fund reports to the Verkhovna Rada of Ukraine. In its activities, the Fund is governed by the Constitution, Ukrainian legislation and legislative acts by the Cabinet of Ministers.

The Fund has its regional divisions in all regions of Ukraine, in the Autonomous Republic of Crimea, as well as in the cities of Kyiv and Sevastopol.

Principal tasks of the Fund are:

to protect property rights of Ukraine on its territory and abroad;

to exercise the rights of state property management during privatization; to set up joint ventures;

to exercise powers relating to privatization of the property of enterprises belonging to the state ownership;

to promote the demonopolization of economy and creation of conditions for competition between manufacturers;

In keeping with its tasks, the Fund:

modifies during privatization the organizational and legal structure of the state-owned enterprises through transforming them into open joint-stock companies;

sells during privatization the state-owned property, including the property of liquidated enterprises and incomplete construction projects;

concludes agreements with agents on the preparation for privatization and sale of privatization objects;

grants licenses to agents;

takes measures to involve foreign investors in the process of privatization;

participates in the establishment of joint ventures to whose authorized funds the state-owned property is transferred;

represents Ukraine’s interests abroad on the issues associated with protection of the state property rights.

References:

State Property Fund of Ukraine

<http://www.spfu.gov.ua/eng/documents.php>

Project of the Law of Ukraine “About the Government Program of Privatization” (2007-2009)

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

75

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Law of Ukraine On the Cabinet of Ministers of Ukraine” Art. 21

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

<http://www.kmu.gov.ua/>

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

<http://www.kmu.gov.ua/>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

References:

<http://www.kmu.gov.ua/>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

References:

<http://www.kmu.gov.ua/>

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

66a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

Only state fiscal organs such as the taxes administration have access to financial information.

References:

Law On the State Taxation Service” (1990)

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | **0**

References:

Interview with expert from National Institute for Strategic Studies

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | **50** | 25 | 0

Comments:

Financial records of state-owned companies are regularly audited, according to national standards.

References:

Interview with expert from National Institute for Strategic Studies

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interviews with expert from Institute of Competitive Society

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens cannot access the financial records of state-owned companies.

References:

Interviews with expert from Institute of Competitive Society, Kiev

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

62 V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

75

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

In Ukraine, as in other civil law countries, before an enterprise begins operations, it must register either as an individual entrepreneur or other legal entity to gain a legal identity for tax, social insurance, and statistical purposes. In addition, enterprises in certain industries (e.g., tobacco, alcohol) must be licensed to ensure compliance with restrictions. Finally, enterprises must obtain permits from labor, safety and hygiene, and building authorities, as well as permits for utility connections. Enterprises that need to use public premises must also secure authorization for access to those premises. When registrations, licenses, and permits are secured, the enterprise can operate, but must continue to undergo inspections, meet reporting requirements, and pay dues. Failure to comply subjects the enterprise to punishment, and each regulatory function is an occasion for extracting rents.

In the late 1990s, the government of Ukraine undertook some steps toward improving the business environment and simplifying business regulations, but soon these efforts slowed down and faded. The new administration that came to power in 2005 revived and reinforced the course. Within a very short period of time, an effort to review all business regulations was initiated throughout the country with the participation of all interested parties. Mandatory streamlining of procedures for business registration and the issuing of permits in hundreds of municipalities was conducted, a new procurement law was passed, customs reform was begun, and a business advisory council was reactivated, among other reforms. It is too early to determine the impact of these efforts on reducing corruption, but the initiatives were started in the right direction. There are still many gaps and priorities that need to be addressed to prevent and reduce corruption in business government transactions.

The first, the Presidential Decree on the State Committee of Ukraine on Entrepreneurship Development (No. 373/97), was enacted in 1997 and resulted in the establishment of what is now the State Committee on Regulatory Policy and Entrepreneurship (SCRPE).

The Presidential Decree on Eliminating Barriers that Restrain Development of Entrepreneurial Activities (No. 79/98 of Feb. 3, 1998) called for reducing government interference in business. Nicknamed the deregulation act, it called for simplifying business registration; reducing the number of business activities that needed to be licensed; reducing the number of inspections by different government agencies; and simplifying customs procedures. It obligated the Cabinet of Ministers and ministries to align

laws and regulations with the policy of deregulation. SCRPE was to coordinate implementation of the decree. For the first two years, SCRPE reviewed 120 legal acts of different ministries and local governments. In about 60 percent of cases, regulations were eliminated or modified.

References:

Regulatory policy in Ukraine and its regions is governed by the Law of Ukraine On Fundamentals of State Regulatory Policy in the Sphere of Economic Activity (No. 1160-IV of September 11, 2003)

See also:

Presidential decree On Eliminating Obstacles Impeding the Development of Entrepreneurship (No. 79/98) February 1998

Presidential decree, On Some Measures on Deregulating Entrepreneurial Activity (No. 17/98)

Presidential Decree On Introduction of a Single State Regulatory Policy in the Sphere of Entrepreneurship, Decree (No. 89/2000)

To implement this decree, the national government drafted the Methodology on Preparing Justifications for Draft Regulations. The methodology was adopted by the Cabinet of Ministers Resolution No. 767 in May 2000

State Committee on Regulatory Policy and Entrepreneurship (SCRPE)

Reducing Administrative Corruption in Ukraine Regulatory Reform USAID | BIZPRO submitted to USAID/Washington, submitted by Nathan Associates Inc. Under Contract No. PCE-I-03-00-00013-00 November 2005

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law On Enterprise Activity," Art. 8

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Corruption in the business sector is widespread due to flaws, loopholes, and inconsistencies in legislation, but even more so due to negative practices in interpreting and enforcing the law and intentional abuses and disregard for the law. Recent revisions of all business-related legislation uncovered over 5,500 regulations that do not comply with state regulatory policy, or are outdated, contradictory or excessive.

References:

IFC. Business Environment in Ukraine. – 2006
Study conducted by ARD/Checchi in 2005

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

State regulatory policy, business regulations, and wide discretion have resulted in 82 percent of businesses making unofficial payments to deal with public officials, and 84 percent of businesses operating in the shadow economy and not paying their taxes in full.

Corruption occurs on many levels. While small businesses pay frequent rents to bureaucrats, millions of dollars are embezzled from larger firms through lucrative procurements, privatizations, or massive VAT tax scams.

In 2006, 70.2 percent of businessmen surveyed in Ukraine reported that they paid bribes. The average bribe in Ukraine was 4.8 percent of sales.

References:

IFC. Business Environment in Ukraine – 2006
World Development Report 2005: A Better Investment Climate for Everyone, Washington: World Bank, 2005, p. 246

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

Both the Labor Protection Law and the Labor Code contain provisions relating to occupational safety and health protection.

Under the Labor Protection Law, Ukrainian employees are entitled to:

Refuse a work assignment if the conditions endanger the life or health of the employee or others, or threaten the environment ;
Terminate employment if the employer violates the Labor Safety Regulations or labor protection provisions of the collective agreement (in this case an employee is entitled to severance pay of at least three months' wages); Transfer to another position, if a medical condition so requires.

References:

The Constitution of Ukraine, 1996
Labor Code
Labor Protection Law
Fundamentals of health Legislation in Ukraine, Nov. 19, 1992
Law On Enterprise Activity" (1991)
The Law of Ukraine on Value-Added Tax," April 3, 1997
Law "On Licensing of Some Kinds of Business Activity" (2000), Art. 9

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law of Ukraine On environmental expertise"

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The Labor Code, which covers nearly all aspects of employee relations in the Ukraine, governs: Employment agreements and contracts; Working hours and time off; Compensation and social benefits; Discipline Employment of women and minors; Resolution of employment disputes; Liabilities of employees and employers.

References:

Labor Code
The Law of Ukraine on Local State Administrations of April 9, 1999 Art. 16

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

42

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

References:

Interviews with small business representative

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interviews with small business representative

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interviews with businessman

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁷⁹Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

Fighting corruption was highlighted as among the top three objectives of the current administration in the governmental program, Towards the People. However, after almost a year in office, no significant, consistent and visible actions have been accomplished. The legal framework remains incomplete, in particular in the corruption prevention area, though some laws and amendments have been drafted. Implementation of law remains a critical problem. There is no governmental institution empowered to lead anti-corruption efforts in the country. National policy and priorities are not defined.

Rhetoric about fighting corruption on the highest level is not translated in a clear message and in deeds. Several agencies are drafting different versions of a national anticorruption strategy with limited coordination. Few agencies have developed or are implementing internal anticorruption programs. On the other hand, the government has signed or ratified several international conventions, committing itself to join the Council of Europe Group of States Against Corruption (GRECO) and implement its recommendations, and reactivating its cooperation under the OECD-sponsored Anti-Corruption Network for Transition Economies (ACN).

On December 12, 2003 Ukraine signed the UN Convention on combating corruption. Earlier Ukraine joined to the European Council's conventions.

At the current time, there are at least three new draft national anti-corruption strategies and concepts that employ a cross-sectoral approach developed by three separate agencies: the Parliamentary Committee against Organized Crime and Corruption (CAOCC), the State Security Service (SBU), and the Ministry of Justice (MOJ).

References:

Decree of President of Ukraine On urgent measures to deshadow the economy and counteract corruption" (No 1615/2005)

Law of Ukraine on Fighting Corruption (was passed in 1995 and went through nine minor amendments since then)
The Criminal Code (Part 17, in particular)

http://www.kmu.gov.ua/control/en/publish/article?art_id=26564081&cat_id=32598

Ukrinform.

http://www.kmu.gov.ua/control/en/publish/article?art_id=15998559&cat_id=15998458

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

Comments:

Adopting such a decision, legislators most likely have not borne in mind improvement of the road traffic safety management system, but have been guided by the need to solve an acute social problem: a rather systematic violation of law on the part of STI officials in the form of an open or concealed extortion of bribes from drivers, and a legal and actual defenselessness of drivers before inspectors.

References:

www.kmu.gov.ua

Cabinet of Ministers of Ukraine Order of 200 No.Kyiv

For example was adopted by Cabinet of Ministers Order On Approval of the Concept of Improvement of Road Traffic Safety in Ukraine, May 2006

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

No amendment has been made to the relevant Ukrainian legislation during the evaluation period. In particular, under the current Criminal Code, offer or promise of a bribe and solicitation of a bribe are only considered as attempt, aiding or abetting; bribery of third persons is not covered; sanctions for active bribery and the statute of limitations remain low; the definition of public servant in the Criminal Code is not reformed and does not cover foreign and international public officials. Ukraine is still to introduce the liability of legal persons for corruption.

The Draft Law of Ukraine on the Amendments to Some Legal Acts Concerning the Responsibility for Corruptive Offences prepared by the Ministry of Justice of Ukraine attempts to redress some of the above deficiencies. However, the draft was rejected by the Parliament in the first reading, and was sent back for further elaboration without any clear deadlines for next steps.

References:

Criminal Code of Ukraine

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

The Criminal Code of Ukraine allows confiscation of property for grave crimes that specifically provide confiscation as a form of punishment. Only bribe-taking committed in aggravating circumstances falls within the ambit of the said regulation. At the same time, the criminal legislation provides confiscation of object, means and proceeds of crime. No review of the provisional measures for identification and seizure of corruption proceeds in the criminal investigation has been conducted.

Unfortunately, there are no comprehensive law-enforcement statistics available to evaluate the effectiveness of the fight against corruption.

References:

Criminal Code of Ukraine

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Criminal Code of Ukraine

The Law of Ukraine on Fighting Corruption

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Criminal Code of Ukraine

The Law of Ukraine on Fighting Corruption

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Criminal Code of Ukraine

The Law of Ukraine on Fighting Corruption

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code of Ukraine

The Law of Ukraine on Fighting Corruption

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code of Ukraine

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

There is a group of different state agencies with a legal mandate to fight corruption. These include specialized departments of the Ministry of Interior and of the Taxation Militia, of the State Security Service, of the Office of Attorney General and regional and subregional procurators. There is also the Coordination Council for Fighting Corruption, a cross-sectoral body under the president of Ukraine.

In compliance with the UN Convention against corruption, which Ukraine joined on Dec. 12, 2003, legal responsibility for corruptive actions will be regulated and an independent agency for monitoring and coordinating combating corruption will be established in Ukraine. With a view of developing the concept of combating corruption from the angle of principles of the UN Convention, a working group has been established in Ukraine, staffed by officials from the Ukrainian Security Service, the Interior Ministry, the Prosecutor General Office, the Taxation Administration, the Defense Ministry, the Academy of Legal Sciences and the Main State Service. The working group is supervised by the Justice Ministry.

According to this law this was established with the aim of improving the operations of law enforcement agencies in the area of fighting corruption.

A special interagency commission for coordination of actions in combating corruption will be established under the National Security and Defense Council of Ukraine in 2004. In 2004 the Cabinet of Ministers has adopted a strategy for fighting corruption and implementing the law entitled On the Basis Provisions on Preventing and Combating Corruption in Ukraine.”

According to the Secretary of the NSDC in an official statement on Nov. 25, 2005, an Interregional Commission against Corruption is supposed to be established soon to

coordinate the anticorruption-related activities of the Security Service of Ukraine, Ministry of Internal Affairs, Prosecutor General, and representatives of the court system. It is planned that the Commission will also include representatives from the legislature and civil society organizations, but it is unclear if it will represent other agencies from all branches of government.

The other institution that may play a very substantial role in anticorruption efforts is the recently established Presidential Commission on Democracy and the Rule of Law chaired by the Minister of Justice. The major objective of the Commission is to align Ukrainian policy with the Copenhagen criteria toward joining the EU and to implement an EUUkraine Action Plan. Under the Action Plan, there are a number of activities that directly or indirectly relate to fighting and preventing corruption.

The recent agreement establishing the NSDC as anticorruption coordinator within the GOU is the starting point for real dialogue among governmental agencies on how an interagency anticorruption institution should be organized, under whose auspices, with what membership, and with what responsibility and authority.

The Parliament has conducted oversight over issues of corruption since 1992, when the first Temporary Parliamentary Commission was established. Since 1994, the Parliament has a permanent Parliamentary Committee against Organized Crime and Corruption. The Committee is very active in promoting anticorruption policies and initiating new legislation. Among other functions, it reviews governmental and other annual reports on corruption. Recently, the Committee drafted an Anti-Corruption Strategy on its own initiative. According to the Committee head, they wanted to set an example and push the executive branch to develop and implement a national anticorruption policy.

References:

The National Security and Defense Council
<http://www.kmu.gov.ua/control>, UN Convention
Cabinet of Ministers, Law On the Basis Provisions on Preventing and Combating Corruption in Ukraine

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

47

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

Comments:

There are no direct provisions in the legislation that guarantee protection of these agencies from political interference. Control over activities of the anticorruption agencies is performed by the Parliament of Ukraine directly and by the Parliamentary Committee for Fighting Organized Crime and Corruption. The observance of anticorruption legislation is controlled by the attorney general and his authorized representatives.

References:

Law On Fighting Corruption” (1995) Art. 16, 17

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the state agencies that have a mandate to fight corruption are strongly influenced by the president, premier and the political and business groups that are close to them.

References:

Interview with MP Katerina Levchenko

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the president uses his discretion when he nominates and removes heads of agencies fighting corruption. For instance, the president did not give any relevant or satisfactory justification for his decision to remove the head of Kiev oblast (region) from office or when he removed the prosecutor general from his position.

References:

Interview with Katerina Levchenko, MP

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

While appointments to these agencies may be based on professional criteria, in general, these criteria are not the main conditions for the appointments – during the last appointments political criteria had more weight.

References:

Interview with Katerina Levchenko, MP

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agencies fighting corruption have professional, full-time staff.

References:

Interviews with government officials – Levchenko, MP

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agencies fighting corruption receive regular funding from the state budget.

References:

Interviews with government officials – Levchenko, MP

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The anticorruption agencies do not make regular reports to Parliament. Such reports may be demanded by the Parliament in special cases by the vote of at least 150 MPs, necessary to put the issue on the agenda.

References:

Interviews with government officials – Levckenko. MP

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The agencies that have a mandate to fight corruption have sufficient powers to carry out this mandate. However, those powers are undermined by the agencies' dependence on top political decision-makers in cases where senior officials are involved.

References:

Interviews with government officials – Katerina Levchenko, MP

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The anticorruption agencies initiate investigations, but these investigations are not independent.

References:

Interviews with government officials – Levchenko. MP

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

50

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Like other complaints and appeals, citizens' complaints to the anticorruption agencies must be addressed within no more than one month. In practice, actions in cases of complaints about corruption or bribe extortion are taken immediately or, if there is no political will to address a specific case involving specific (usually high-ranking) officials, not taken at all.

References:

Art. 20, Law On Appeals of Citizens"

See also: The Right to Appeal Bodies of State Authority, Bodies of Local Self-Government, their officials and their officers

http://www.ombudsman.kiev.ua/de_05_4.htm

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

The level of trust in law enforcement agencies is low, but the level of cronyism and corruption is high. Most citizens are reluctant to complain to anticorruption agencies because of fear of recrimination

References:

Interviews with government officials – Levchenko

Interview with Oleksiy Soldatenko, Programs Director of NGO Journalist Initiative Association

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

66 VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

Comments:

Article 40 of Ukrainian Constitution provides for the right to file individual or collective petitions, or to personally appeal to bodies of state authority, bodies of local self-government, and to the officials and officers of these bodies that are bound to consider the petitions and provide a substantiated reply within the term established by law.

The right of appeal belongs to convicted individuals, their authorized representatives, lawyers, as well as the plaintiffs and their representatives, who may challenge the court judgment through appeal.

References:

Constitution of Ukraine; Art. 40, 129
Criminal Code of Ukraine Art. 347

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with human rights protection activist

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with NGO activist

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgments in the criminal system follow written law.

References:

Interview with expert

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

75

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

www.pravda.com.ua

Interview with V/Filinenko, NGO, Kharkiv, August 9, 2007

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

94

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of Ukraine
Criminal Code of Ukraine

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | **75** | 50 | 25 | 0

References:

Interview with law enforcement authority

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:
Criminal Code

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:
Constitution of Ukraine

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Interviews with member of human rights protection NGO in Kharkiv

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

www.oligarh.net
www.pravda.com.ua

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

89

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Interviews with law Enforcement, Kiev

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

According to the Ukrainian Constitution and reinforced in the 2006 Law of Equal Opportunity, women have full access to the judicial system.

References:

Constitution of Ukraine

Law of Equal Opportunity

Research Gender equality of Ukraine” UNDP, Report of Ministry of Family, Youth and Sports on Gender Equality Report to CIDAW

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:
Law On the Militia”
Criminal Code

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:
Interview with law enforcement authority from MOI

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:
Interview with law enforcement authority from MOI, Kiev

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Interview with law enforcement authority from MOI, Kiev

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Interview with law enforcement authority from MOI, Kiev

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

58

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the law enforcement agency in practice made according to professional criteria. Nevertheless, most of Ukraine's law enforcement agencies (police, tax police, prosecutor's office) that have the responsibility to fight corruption are typically rated in public opinion surveys as being the most corrupt governmental institutions. Law enforcement reform is currently under development, but it is too early to tell how it will affect internal controls and law enforcement effectiveness in fighting corruption.

References:

Corruption assessment: Ukraine, USAID report, February 2006
www.oligarh.net

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The budget for the police is wholly inadequate, and often police suffer from lack of finances.

References:

Corruption assessments: Ukraine, Final Report USAID, 2006

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Corruption Assessment; Ukraine, USAID 2006

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

75

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

There is an online tool enabling anyone to send a complaint about police action. The mechanism of response to such complaints, however, is poor. Also, telephones of trust” have been launched in most areas to enable citizens to report inappropriate behavior of militia personnel.

References:

Law On the Militia”

Official Web site of the Ministry of the Interior of Ukraine

<http://www.mfa.gov.ua>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen’s complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

<http://www.mfa.gov.ua>

Official Web site of the Ministry of the Interior of Ukraine

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

On March 16, 2005, the Verkhovna Rada of Ukraine ratified the Civil Law Convention on Corruption (the Law of Ukraine No. 2476), which will foster the establishment of civil and legal machinery to protect the interest of natural persons and legal entities against corruption. On January 1, 2006, Ukraine became a full member of the Group of States Against Corruption (GRECO).

Public monitoring in the fight against corruption was introduced. Hotlines are constantly operating at the Ministry of Internal Affairs, State Customs Service and the Council of Foreign Economic Activity attached to the Cabinet of Ministers.

References:

Civil Law Convention on Corruption (the Law of Ukraine No. 2476)

See the recent assessments of the judicial system by J.T. Asscher and S.V. Konnov, Ukraine Justice System Assessment Report (TACIS, June 2005) and

David Black and Richard Blue, Rule of Law Strengthening and Anti-Corruption in Ukraine: Recommendations for USAID Assistance (USAID, May 2005), for more detailed reviews of the judicial sector and potential reform options.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Web site of the Ministry of the Interior of Ukraine

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The law "On the Militia" does not exclude law enforcement officials from criminal proceedings. It is not stated explicitly, but the officials, according to this law, can be accountable in the case of infringing the law or unfairly performing their duties.

References:

Art. 25, Law "On the Militia"

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement officials, especially of middle and lower ranks, may be under scrutiny by personnel and internal security departments.

References:

Interview with Natalian Gutorova – head of Simferopol Law School

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.