

Overall Score:

**58 - Very Weak**

Legal Framework Score:

**77 - Moderate**

Actual Implementation Score:

**39 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>78</sup>Civil Society Organizations

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### 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<sup>7</sup> indicates that citizens can form a political party or a public organization. State interference with activities of political parties and public organizations is prohibited by law. According to the law, citizens 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.

**References:**

Constitution of Ukraine, Art. 36;  
The Law on Associations of Citizens (1992), Arts. 1, 9

**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:**

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

**References:**

The Law on Associations of Citizens (1992), Arts. 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 should be transparent.

**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.

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

75

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

**Comments:**

President Yushchenko announced that the fight against corruption was one of the main priorities for Ukraine. In January 2006, the president signed a decree to honor the obligations of Ukraine towards the Council of Europe (which contains various sections on anti-corruption). In September 2006, the president signed a decree adopting the anti-corruption strategy of Ukraine titled "On the Way to Integrity", a document which identifies the main directions of the work in the area of anti-corruption for all branches of government. In October 2006, the president submitted a package of draft laws on anti-corruption and draft ratification instruments for the Council of Europe's Criminal Convention on Corruption and its Additional Protocol and the UN Convention against Corruption.

Chairman of the Group of States Against Corruption GRECO, Drago Kos: "The government of Ukraine is one of the key players in the fight against corruption. I would like to confirm that again, knowing all those numerous steps and initiatives performed by the government in this direction." According to him, the government of Ukraine has demonstrated its devotion to corruption prevention by forwarding to the Parliament a package of anti-corruption draft bills.

A coalition of Ukrainian NGOs worked together with Justice Ministry officials on a draft Law on Public Associations that is aligned with European legal standards and resolves conflicts in existing legislation. The bill awaits consideration by Parliament.

**References:**

Project Promoting Active Citizen Engagement in Combating Corruption in Ukraine (implemented by MSI); present in Ukraine since 2006, with USAID support

<http://www.pace.org.ua/index.php?lang=en>

President of Ukraine/Secretariat of the President of Ukraine (Executive Branch)

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

Chairman of the Group of States Against Corruption GRECO, Drago Kos

[http://www.kmu.gov.ua/control/en/publish/article?art\\_id=210612686&cat\\_id=2297108](http://www.kmu.gov.ua/control/en/publish/article?art_id=210612686&cat_id=2297108)

**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.

**Comments:**

Currently Ukraine is implementing several big projects dealing with corruption issues. Here are some of them: Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine" – The Promoting Active Citizen Engagement (PACE) activity supports non-governmental monitoring of priority areas in the fight against corruption as identified by the Government of Ukraine (GOU) in its Millennium Challenge Corporation Threshold Country Plan, namely: strengthening judicial reform; government monitoring and enforcement of ethical and administrative standards; streamlining and enforcing

regulations; and combating corruption in higher education institutions. This project has two major components: 1) support for civil society advocacy and monitoring efforts; and 2) investigative journalism and other media anti-corruption efforts. Both PACE components are essential to furthering and measuring the GOU's progress and long-term commitment to the fight against corruption.

Under the ACTION Project, small grant programs are administered to support civil society groups as well as journalists and media outlets in conducting effective advocacy initiatives targeted at those areas most vulnerable to corrupt practices, including the MCC priority issues mentioned above. In addition, training and technical assistance is provided by the project to strengthen the capacity of groups to conduct advocacy programs and carry out government oversight (watchdog) activities.

The ACTION Project also conducts intensive training and competitions for journalists to mobilize responsible, fact-based investigative reporting targeting corruption issues. This component of the project is focused on encouraging journalists to effectively assume their role as the public's watchdog.

The ACTION Project develops objective data on corruption trends and the effectiveness of anti-corruption initiatives, increases public knowledge regarding corruption and the number of anti-corruption activities and reforms initiated by CSOs.

#### COMBATING CORRUPTION IN THE PUBLIC SECTOR

##### Strengthening Civil Society's Monitoring and Exposure of Corruption

Thousands of Ukrainian NGOs now actively represent the interests of their constituencies, promote public policies, monitor government performance, and successfully advocate for reforms. Media enjoy fundamental press freedoms and offer the public a range of sources of professional news and information. Nonetheless, Ukrainian civil society and media are still not meeting their full potential as effective monitors of government and advocates for reform — which is exactly what this project aims to enable.

##### Judicial Reform

Critical to efforts to fight corruption is increasing the level of transparency in the delivery of justice by introducing permanent improvements in key legislative, procedural and institutional arrangements. The proposed activities will also contribute to fostering a more professional cadre of administrative judges, court personnel, and notaries. The goal of this component is to increase transparency in the judicial sector.

##### Government Monitoring and Enforcement of Ethical and Administrative Standards

Currently Ukraine has no general conflict of interest legislation for government officials except for certain provisions that limit business opportunities for family members of officials. Additionally, although there are requirements that candidates for public office and civil servants declare their assets, the methodology has flaws and omissions: submitted declarations are rarely checked, while sanctions for falsification are even more rarely imposed. This component will create systems to strengthen accountability among government officials and enable the government to better monitor and enforce ethical and administrative standards.

The position and statements of NGO are only rarely taken into account.

#### References:

[http://ukraine.usaid.gov/accomp\\_dem.shtml](http://ukraine.usaid.gov/accomp_dem.shtml)

Support to Good Governance: Anti-Corruption Project for Ukraine (UPAC) LOBBYING AND CORRUPTION

[http://www.parlament.org.ua/upload/docs/UPAC\\_-\\_Lobbying\\_eng.pdf](http://www.parlament.org.ua/upload/docs/UPAC_-_Lobbying_eng.pdf)

Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine (USAID)

**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

**Comments:**

There are many local and national NGOs and business groups that conduct very effective advocacy and watchdog functions related to anti-corruption reforms.

For example, the Eastern-Ukrainian Center for Civic Initiatives (EUCCI)- The Project Implementation of Transparent and Corruption-Free Procedures of City Development (Aug. 15, 2008 – March 15, 2009, financed by Management Systems International in accordance with USAID Cooperative Agreement). EUCCI coordinates the work of ACTION's Public Anti-Corruption Advocacy Network focused on construction and city development (Construction-focused PAAN) and fulfills the work on transparent procedures of construction and city development. EUCCI has created a standardized set of instruments to monitor local government activities related to the allocation of land plots for construction and developed the format of the final report (for Construction-focused PAAN members). It also coordinated the Construction-Focused PAAN members' work in monitoring local government's practices (while also evaluating corruption levels) for allocating land plots for construction.

**References:**

Annual Program Statement (APS), which is a part of the Ukraine National Initiatives to Enhance Reforms (UNITER). Project funded by the USAID and implemented by Pact Inc.

<http://dipcorpus.at.ua/news/2009-06-20-1222>

[http://totalaction.org.ua/index.php?option=com\\_content&task=view&id=243&Itemid=46\)=english](http://totalaction.org.ua/index.php?option=com_content&task=view&id=243&Itemid=46)=english)

**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. YES is a positive score.

**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.

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### 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:**

Interview with UNDP representative Irina Ignatova

**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:**

Interview with Ministry of Interior representative Mariana Evsukova

**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

**Comments:**

It one case, activists working on ecological issues were killed in Kiev in May 2009.

**References:**

Interview with UNDP representative Irina Ignatova

**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.

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#### 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 union depend on the government and do not protect their members.

**References:**

Constitution of Ukraine

Ukraine Trade Union Federation

<http://www.fpsu.org.ua/rus/>

National Institute for Strategic Studies

<http://niss.gov.ua/>

**100:** Trade unions are common and are an important part of 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.

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## I-2. Media

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### 5. Are media and free speech protected?

100

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

YES

NO

**Comments:**

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

The constitution guarantees the freedom of thought and speech and the freedom of expression of views and beliefs, but does not mention freedom of press specifically. According to the the law on Print Media (1992), print media are free.

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

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

**References:**

The Constitution of Ukraine from June, 28, 1996, Arts. 34, 92;  
Law on Print Media, Art. 1;  
Law on Information;  
Law on Providing Information about the Government to the Media;  
Law on Television and Radio;  
Law on the Press;  
Presidential Decree on Further Measures to Ensure Openness in Government;  
New Draft Law on Openness and Transparency of the Government;

Information portal of Supreme Council of Ukraine (Verhovna Rada)

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

**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.

YES | NO

**Comments:**

Article 34 of the constitution:

“Everyone is guaranteed the right to freedom of thought and speech, and to the free expression of his or her views and beliefs.”  
“Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.”

“The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.”

**References:**

The Constitution of Ukraine from June, 28, 1996, Arts. 34;;

Law on Print Media, Art. 1;

Law on Information;

Law on Providing Information about the Government to the Media;

Law on Television and Radio;

Law on the Press;

Presidential Decree on Further Measures to Ensure Openness in Government;

New Draft Law on Openness and Transparency of the Government;

Information portal of Supreme Council of Ukraine (Verhovna Rada)

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

**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.

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## 6. Are citizens able to form print media entities?

69

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 are 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 views. The situation is even worse at the regional and local levels where the monopoly of media outlets is the greatest and basically uncontrolled.

It is virtually impossible to obtain exact information about individuals controlling the media. The lack of openness with regard to people really having power over media 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. Legislation, for example, 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 a given media outlet.

There are, it is true, certain branch restrictions in Ukraine on media concentration. The best example is the Law 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 five 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 print form of mass information.

There are public and private media outlets in Ukraine. The share of non-public television and radio broadcasting stands at over 96 percent. According to data from the Ministry of Statistics of Ukraine, more than 30,000 state registration certificates have been issued to various print media to date. According to estimates by the State Statistics Committee of Ukraine, over 5,300 periodical titles are published. With the development of information technologies and the advent of the Internet, many independent Internet publications have appeared.

The central authority responsible for implementing the state policy in the news and publishing industries is the State Committee for Television and Radio Broadcasting of Ukraine: <http://www.comin.kmu.gov.ua/>.

**Print media:**

Newspapers of Ukraine <http://centra.net.ua/old/newspaper/>  
Magazines of Ukraine <http://centra.net.ua/old/magazines/>  
Newspaper Uryadoviy Kuryer (Government Messenger) <http://uamedia.visti.net/uk/>  
Newspaper Holos Ukrayiny (Voice of Ukraine) <http://www.golos.com.ua>  
Newspaper Dzerkalo Tyzhnya (Weekly Mirror) <http://www.dt.ua/>  
Newspaper Den (Day) <http://www.day.kiev.ua>  
Newspaper Po-Ukrayinsky (Ukrainian) <http://www.gazeta.ua>  
Investment Newspaper <http://www.investgazeta.net>  
Magazine Korrespondent (Reporter) <http://www.korrespondent.net>  
Newspaper Kommersant-Ukrayina (Businessman-Ukraine) <http://www.kommersant.ua>  
Newspaper Segodnya (Today) <http://www.segodnya.ua>  
Newspaper 24 <http://24.ua/>

**Public organizations:**

Internews-Ukraine, International Public Organization <http://www.internews.ua>  
Ukrainian Association of Press Publishers <http://www.uapp.org>  
International Philanthropic Foundation <http://www.openukraine.org/ua/>

**References:**

National Union of Journalists of Ukraine  
<http://nsju.org/>

**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 appeals mechanism if a license is denied or revoked.

YES | NO

**Comments:**

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

Article 40 of the Ukrainian Constitution provides for the right of everyone 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 Oct. 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 Media.

**References:**

Constitution, Art. 40

The Law on Print 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 taken within one month. But media licensing is one of the strongest methods of controlling the press in a country rated as one of the most repressive in the region. Nowadays the strong control of media outlets by clans/cartels has lessened and repressive actions against them have been relaxed.

The term of validity of a broadcasting license 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 approved on 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.

Ukrainian Business Forum

<http://biznet.kiev.ua/index.php?showtopic=14010>

Registration of Print media

[http://www.ubc.ua/st\\_licenze\\_izdatel.html](http://www.ubc.ua/st_licenze_izdatel.html)

**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:**

Print media should be registered at the Ministry of Justice. Print media may be under state, region and local spheres of jurisdictions.

The maximum amount for state registration of a print media outlet is 2,040 UAH (US\$240). This price is reasonable for some people.

**References:**

<http://www.chp.com.ua/forums/index.php?showtopic=164>

<http://zakon.nau.ua/eng/doc/?code=2782-12>

**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.

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

50

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 form a broadcast (radio and TV) media entity.

**References:**

Interviews with journalists Olekciy Moldovan, Kiev, August 2009

**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 appeals 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 characteristics, 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 obtain all required permits for their exploitation.

**References:**

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

Law on Television and Audio Broadcasting;

State Committee on Television and Radio Broadcasting of Ukraine

<http://comin.kmu.gov.ua/control/en/index>

**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.

**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 as 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 could be up to several million Ukrainian hryvnias.

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 broadcasts or the advertising of alcohol and tobacco, etc. The law regulates rights and obligations of broadcasting organizations, journalists and viewers (listeners).

As a general rule, media are liable for defamatory materials printed or broadcast. Any person suffering from alleged defamation can require 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, citation of speeches of governmental officials in live addresses and statements. Print media have similar protection.

The process of obtaining media licenses can be fast if bribes are paid, but the legal norm is complicated, and often the process of obtaining a license depends on outside factors.

**References:**

<http://news.ligazakon.ua/news/2009/6/15/13278.htm>

**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:**

Principal stages of the process of registration may be presented in the following order:

Conducting a meeting of founders and preparation of the Statutes of the Enterprise, Foundation Agreement, and Minutes of the Meeting of Founders.

Getting notarial certification of the founders' signatures put on the Statutes and the Foundation Agreement.

Paying of the state registration fee in a division of the OschadBank.

Opening of an interim account and payment of the contributions to the authorized fund of the entity of entrepreneurial activity by the owners of the enterprise in the amount provided for by appropriate legal acts.

Filing in of the required documents to the appropriate district division of the state administration for the state registration of the entity of entrepreneurial activity in accordance with the list approved by legislation.

Receiving within five working days in the district state administration of the approved documents about the state registration of the entity of entrepreneurial activity.

Getting registered in the city/town department of statistics and receiving an identification code of an entity of entrepreneurial activity in the Single State Register of Enterprises and Organizations.

Getting registered in a district tax administration.

Closing of the interim account with the bank and opening of a permanent (settlement) account.

Getting an authorization from a division of the authorization system of the district department of home affairs for the fabrication of a seal and imprints.

Manufacturing of the seal and imprints.

Costs associated with the creation and registration of small-sized businesses may be divided into two components:

recurring costs (procurement of equipment, lease of premises, hiring of manpower, etc.) that are conditioned by the contractual kind of the enterprise's activity, location of the business;

constant costs that are connected with the fulfillment of mandatory procedures related to the registration process: paying of a portion of the authorized fund, preparation and notarial attestation of founders' documents, fee for the state registration, payment to the bodies of statistics, state anti-fire inspection, sanitary inspection, etc.

Information about recurring costs related to fees for the state registration of entities of entrepreneurial activity is shown below.

The average costs of the fulfillment of several stages of the state registration of an entity of entrepreneurial activity are as follows:

notarial attestation of documents – 20 to 70 UAH.;

payment for the identification code – 15 to 25 UAH.;

payment for the opening of an account with a bank – 90 to 180 UAH (in certain banks this is free of charge);

payment for the authorization to manufacturing of a seal and imprints – 20 UAH.;

payment for the manufacturing of a seal, imprints – 14 to 20 UAH.

(UAH – national currency – the rate before crisis mid September \$ 1 US = 5.3 UAH, Now – \$ 1 = 7.89 UAH)

The broadcast radio and TV media license according to legal norm is not expensive for average citizens.

**References:**

The procedure of the state registration of subjects of entrepreneurial activity in Ukraine is regulated by laws of Ukraine On Entrepreneurship", "On Economic Partnerships," Provisions On the State Registration of Subjects of Entrepreneurial Activity" approved by the Cabinet of Ministers' Resolution # 125 of Jan. 25, 1996, and the Cabinet of Ministers' Resolution # 406 of April 3, 1996, "On Fees for the State Registration of Subjects of Entrepreneurial Activity."

**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?

100

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

100 | 75 | 50 | 25 | 0

### References:

Maidan

Government Rescinds Decree Requiring Online Publications To Register

<http://eng.maidanua.org/node/428>

**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 on-line.

100 | 75 | 50 | 25 | 0

### Comments:

The government does not censor citizens creating content on-line.

### References:

Maidan

**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.

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## 9. Are the media able to report on corruption?

92

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

YES | NO

### References:

The Law of Mass media, Art. 43

**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 Human Rights Report about Ukraine  
Country Reports on Human Rights Practices – 2008, Released by the Bureau of Democracy, Human Rights, and Labor  
<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

**Comments:**

Media report overwhelmingly on different corruption stories and the government does not react.

**References:**

Ukrainian Helsinki Human Rights Union  
State Department Releases 2008 Human Rights Report about Ukraine  
Country Reports on Human Rights Practices – 2008, Released by the Bureau of Democracy, Human Rights, and Labor  
March 6, 2008

**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.

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## 10. Are the media credible sources of information?

20

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

YES | **NO**

### Comments:

Ukrainian TV stations are completely controlled by off-shores company. According to the findings of the Kiev Media Law Institute, Ukraine does not adhere to the European standards in the sphere of transparency of media ownership.

### References:

The Kiev Media Law Institute (MLI), founded in 2005, operates with the support of the USAID-funded NGO Internews Network and its Strengthening Independent Media in Ukraine (U-Media) Program

<http://www.medialaw.kiev.ua/en/institute/current/>

**YES:** A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

YES | **NO**

### Comments:

There is no legal regulation requiring radio and TV stations to disclose ownership.

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

According to the Broadcasting Law, there is a restrictions 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 and ostensibly canceled 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 anti-monopoly 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 Kiev Media Law Institute (MLI), founded in 2005, operates with the support of the USAID-funded NGO Internews Network and its Strengthening Independent Media in Ukraine (U-Media) Program  
<http://www.medialaw.kiev.ua/en/institute/current/>

**YES:** A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

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

#### Comments:

In most cases journalists prepare custom-built materials in accordance to orders from people who pay them.

#### References:

Interviews with journalists, Kiev, August

**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

**References:**

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

Law on the election of state deputies of Ukraine;

Law on television and radio broadcasting;

Ukrainian Helsinki Human Rights Union, Annual human rights reports, 2009; 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

**Comments:**

in most cases, parties try to use the so-called administrative resources". For example, the ruling party has access to TV in prime-time, while other parties don't have such access.

**References:**

Ukrainian Helsinki Human Rights Union

**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.

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## 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:

Committee of Fighting Corruption And Organized Crime  
<http://h.ua/story/161948/>  
[http://sprotiv.org/?cat=news\\_ukraine&id=1208167800](http://sprotiv.org/?cat=news_ukraine&id=1208167800)  
<http://kpk.org.ua/2008/01/29/opasna-li-sajjentologija.html>

**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:

Committee of Fighting Corruption And Organized Crime

<http://h.ua/story/161948/>  
[http://sprotiv.org/?cat=news\\_ukraine&id=1208167800](http://sprotiv.org/?cat=news_ukraine&id=1208167800)  
<http://kpk.org.ua/2008/01/29/opasna-li-sajjentologija.html>

**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:**

Committee of Fighting Corruption And Organized Crime  
<http://h.ua/story/161948/>  
[http://sprotiv.org/?cat=news\\_ukraine&id=1208167800](http://sprotiv.org/?cat=news_ukraine&id=1208167800)  
<http://kpk.org.ua/2008/01/29/opasna-li-sajjentologija.html>

**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.

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76  
I-3. Public Access to Information

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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:**

Article 57 of the Constitution of Ukraine provides that the right to know the rights and duties is guaranteed to everyone. Laws and other legal acts, which determine citizens' rights and duties, should be given to the population in the order established by the law. Laws and other legal acts, which determine citizens' rights and duties, but which have been not given in the order established by law are invalid.

The Constitution of Ukraine establishes also that regular reports on incomes and charges of the state budget of Ukraine, and also reports submitted by the Cabinet of Ministers of Ukraine in the Verhovna Radat on performance of the state budget of Ukraine necessarily should be disclosed.

The Law on information stipulates that officials of bodies of legislative, executive and judicial authority are obliged to give information which concerns their activity, in writing, orally, by phone or using public statements.

According to the Law on the order of illumination of activity of bodies of the government and institutions of local government in Ukraine by media, necessary information can be collected directly or through the information services of the respective bodies or independently by media representatives.

For illumination of activity of bodies of the government and institutions of local government, their information services have the right to use such forms of preparation and announcement of the information:

Releasing and distributing bulletins (special bulletins), press releases, reviews, information, etc.;

Carrying out press conferences, briefings;

Setting up interviews with heads of bodies of the government and institutions of local government for representatives of domestic and foreign media outlets;;

Preparing and carrying out radio programs;

Maintaining publications covering statements delivered by high ranking officers and heads of bodies of the government and institutions of local government;

Creating archives with the information on the activity of bodies of the government and institutions of local government;

Offering other forms of distribution of the official information which does not contradict the legislation of Ukraine.

**References:**

The Constitution of Ukraine from June. 28, 1996

Law on information

**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:**

According to the law, citizens have a right to appeal; however, this law is not clearly formulated and thus in practice it is impossible to use.

Infringements upon the legislation of Ukraine can lead to disciplinary, civil, administrative or criminal liability. The law on information contains a clause which provides for responsibility in case the law is infringed upon. If the citizens' right to information is denied, the persons guilty of such infringements can be liable for:

-Unreasonable refusal of granting the corresponding information;

-Granting invalid information;

-Delayed granting the information;

-Concealing the information;

-Interfering with the distribution of certain information, and also censorship;

-Using and distributing information concerning the private life of the citizen without his/her consent;

-Disclosing state or other secrets which they are entrusted with;;

-Providing unreasonable reference to a category of data with limited access.

In case an offense causes material or moral harm to physical or legal persons, the people found guilty will compensate for it voluntarily or on the basis of a court decision. Bodies of the government and institutions of local government as claimants in affairs about protection of honor, advantage and business reputation, can demand in court only the refutation of unreliable

information and have no right to demand compensation for moral (non-property) harm. It does not deprive officials of those institutions of the right to seek the protection of honor, advantage and business reputation in court.

Criminal legislation mentions the following crime types connected to infringements upon the established order of access to information.

Article 114 of the Criminal code of Ukraine provides the responsibility for espionage (i.e. transferring or collecting with the purpose of transferring to a foreign state or organization or their representatives of data which are deemed state secret) made by a foreigner or a person without citizenship.

Article 111 of the Criminal code of Ukraine provides the responsibility for espionage (i.e. transferring or collecting with the purpose of transferring to a foreign state or organization or their representatives of data which are deemed state secret) made by a person with Ukrainian citizenship.

Article 127 of the Criminal code of Ukraine provides the responsibility for wrongful actions of a person concerning the access to information: deliberate causing of a strong physical pain or physical or moral suffering, tortures or other violent actions with the purpose to induce the victim or other person to make actions which contradict their will, including to receive from it or other person the information, certificates or recognitions.

Article 163 of the Criminal code of Ukraine provides the responsibility for infringement upon the secrecy of correspondence, telephone conversations, cable or other correspondence which are passed by a communication facility or through a computer.

Article 182 of the Criminal code of Ukraine provides the responsibility for infringements upon inviolability of private life: illegal collecting, preserving, using or distributing of confidential information on a person without his/her consent or distributing of this information through a public statement or media.

Article 231 of the Criminal code of Ukraine provides the responsibility for illegal collecting with the purpose of using data which make commercial or bank secrets.

Article 330 of the Criminal code of Ukraine establishes the responsibility of collecting with the purpose of transferring to foreign enterprises, establishments, organizations or their representatives of economic, scientific and technical or other data which make confidential information which is the property of the state, made by a person to whom these data have been trusted or who became known in connection with performing official duties, for the lack of attributes of high treason or espionage. Separate structures of the administrative offenses stipulated by the Code of Ukraine about administrative offenses: Articles 212-3 of the Code provide the administrative responsibility for infringement upon the right to information: wrongful refusal in granting the information, delayed or incomplete granting of the information, granting of invalid information.

After using all national means of a legal protection, citizens seeking protection of their rights and freedoms can address international judicial establishments, such as the European Court for Human Rights.

Offenders can be sanctioned with remarks, warnings, reprimands, dismissals, demotions.

**References:**

Law on information

Criminal Code, April, 5, 2001

Code of administrative legal proceedings, July, 6, 2005

**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 information in Ukraine are:

- Accessing open information through print and audiovisual media coverage, news agencies;
- Accessing official information;
- Accessing information from public statements;
- Accessing information from library resources, archives;
- Accessing online information.

The process involves a request concerning the access to official documents and a request concerning granting the written or oral information.

The search can be individual or collective. The citizen has the right to address state bodies and to demand granting any official document irrespective of whether this document concerns him/her personally or not, except for cases of access restriction stipulated by the Law.

Article 33 of the Law on information defines the terms of consideration of search concerning access to official documents which should not exceed 10 calendar days. During the specified term, the official body notifies in writing about the time the request will be granted or that the required document is not subject to granting. The results of the search will be provided within one month or in accordance with exceptions stipulated by the Law.

For illumination of activity of bodies of the government and institutions of local government, their information services have the right to use such forms of preparation and announcement of the information:  
Releasing and distributing bulletins (special bulletins), press releases, reviews, information, etc.;  
Carrying out press conferences, briefings;  
Setting up interviews with heads of bodies of the government and institutions of local government for representatives of domestic and foreign media outlets;;  
Preparing and carrying out radio programs;  
Maintaining publications covering statements delivered by high ranking officers and heads of bodies of the government and institutions of local government;  
Creating archives with the information on the activity of bodies of the government and institutions of local government;  
Offering other forms of distribution of the official information which does not contradict the legislation of Ukraine.

**References:**

Law on information

Law about the order of illumination of activity of bodies of the government and institutions of local government in Ukraine by mass media

**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.

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### 13. Is the right of access to information effective?

33

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

100 | 75 | 50 | 25 | 0

**Comments:**

In law, the length of time it takes for citizens to receive responses to info requests is 30 days, but in practice the process can take much longer, or requests can even be ignored.

What kind of information is withheld?

There are several significant problems which make it impossible to exercise the right of access to information.

There is a huge amount of information unlawfully classified and therefore held by authorities. This involves first and foremost the information restricted under the stamp "For official use only". There is no clear criterion in legislation for which information is placed in this category, nor any control established over the use of this stamp. There is also the practice to classify not the specific information, but the entire document. For example, one paragraph in the document contains information which based on the unclear legislation is deemed confidential, and the whole document gets classified. This does not comply with international standards.

As for secrets, the relevant type of information should be included in the List of Items of Information which constitute State secrets. Yet, there is no such List for information with the stamp "For official use only". The latter is applied in the case of confidential information held by the state, and if there are such lists they are not always made public. In such cases the paradoxical situation arises where we do not have access to official documents confirming the lists of information which are confidential. In other words we cannot find out what types of information are classified.

There are also serious problems with information being unlawfully classified as secret. The list of items which are deemed state secrets is too broad and not justified in a democratic society. For example, information about generalized data on investigative operations (including the number of permits issued to intercept information from communications channels) is considered a state secret whereas in all democratic countries this information is included in the public reports issued by law enforcement agencies, since it shows the level to which law enforcement agencies and security service intrude upon people's freedom.

Legislation also fails to clearly deal with receiving information which needs to be separately sought through an information request.

There are other problems with receiving open access information. The authorities often don't respond to information requests, legal entities are simply not entitled to submit such requests, and journalists do not have the mechanisms to swiftly receive information. Bearing in mind the specific nature of information, specifically the fact that it becomes stale so swiftly, it is not just important that an information request is met, but how swiftly the necessary document or information is provided. There is no established effective liability for infringing upon the right of access to information.

Thus, as well as excessive classifying of information, legislation does not establish effective procedure for receiving information.

How well does the new draft law deal with these problems?

If you mean the draft law being drawn up by a working group attached to the Ministry of Justice, this has both positive and negative features. The general move in the direction of eliminating the problems mentioned above and clearly stipulating the procedure for receiving information is to be welcomed. Although it is too early to know how this will be in the final version.

How important is the principle of access to information for a democratic civic society?

Openness of information is a cornerstone of democracy. Without objective information you cannot make correct and informed choices during elections, and media cannot use their controlling functioning over the authorities effectively. Without information, it is not possible to assess the work of the current government or deputies, or to simply draw conclusions about many social processes. Free circulation of information is vital for a democracy and for the development of society. Totalitarian regimes usually block access to information before all else.

On the other hand, access to information is an issue of personal safety, especially if one thinks of access to information about the environment or other information about what can harm us.

There are a lot of types of information which can be classified as secret, for example commercial or state secrets, yet which are of importance to the public. Where do we draw the line between public and not public information?

We need to apply a simple test each time. Information is classified as secret for clearly defined reasons, when such reasons are unequivocally defined by legislation. Other reasons cannot be cited. For example, information about crimes, human rights abuse or danger to the public may not be classified as secret. In other words, the opportunities for classifying information as secret and the relevant procedure must be incredibly clearly spelled out in legislation, and all other information should be openly available.

One should also look at what potential harm could be caused if the given information is circulated. Such harm must be real, not hypothetical, i.e. there needs to be a cause and effect link between the information and the consequences. At the same time, the public need for this information must be considered.

In any case, I believe that where there are doubts the principle of openness of information should prevail. It should be open unless the need to classify it as secret becomes evident. The problem is that the government is inclined to take the contrary view. In Ukraine there is no effective control over classifying information, for example by the Human Rights Ombudsperson which could check the balance of interests. Therefore in the majority of cases, the public and individuals don't have any idea what information is kept secret, and cannot therefore stipulate this balance.

**References:**

Totalitarian regimes usually block access to information before all else

Prava Ludyny”

<http://www.imi.org.ua>

An interview with Volodymyr Yavorsky, Executive Director of the Ukrainian Helsinki Human Rights Union

**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

**References:**

Interview with Aleksei Moldovan, 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.

13c. In practice, responses to information requests are of high quality.

**Comments:**

Long-overdue amendments to legislation to improve access to information did not materialize in 2007. One of the reasons was the political crisis which impeded parliament's normal legislative work. At the same time, all the problems with regard to the access to information discussed in previous years' reports emerged in full measure in 2007. As in previous years, human rights organizations systematically requested necessary information and very often received refusals, fob-offs, or quite simply heard nothing at all.

Responses were sometimes not provided because the information requested was classified as restricted access" on the basis of subordinate normative legal acts with reference to Articles 30 and 37 of the Law «On information». With regard to secret information, the type of information should be included in the List of Items of Information constituting State Secrets. However, there is no such list for information in the possession of the State which is stamped «For official use only» [DSK]. If there are lists with such information, they are not always made public. Therefore arises the paradoxical situation where we do not have access to official documents providing a list of items of information which are confidential –in other words, we cannot know what it is that we are not supposed to know.

For this reason, in 2008 the civic organization «Maidan» Alliance decided to look into which central authorities have lists of information stamped «For official use only». For example, at the end of 2008 and beginning of 2009, they sent information requests to the authorities as given on the official website of the Cabinet of Ministers (the Verkhovna Rada, the President's Secretariat, as well as the Kyiv City State Administration.) The respondents were asked: «Is there a list of items of confidential information in the possession of the State which is stamped «For official use only», or is there any other list of items of information (documents, etc.) which are not to be provided or made public in response to information requests from individuals (including from journalists)?» In the event that such a list existed, the respondents were asked to provide a copy of the relevant act, or a written list of such items of information.

The information requests were drawn up in accordance with the Law «On information» and sent recorded delivery with notification to the sender. Of the 79 respondents, 34 provided the lists requested or clearly stated that there are no such lists (thus answering the question asked); The Ministry of Education and Science provided a partial response (as regards supplements to the relevant list which, unlike that, do not have the stamp «For official use only»). General answers were given by the Ministry of Defense, the State Security Service and the Department of State Protection which could, in our view, be justified by the specific nature of their work. The following seven of those who were sent the information request simply ignored it:

The Ministry of Culture and Tourism;

The Ministry of Health (considering the established tradition of this Ministry to not comply with information legislation, in May 2008 a suit was filed with the District Administrative Court in Kyiv seeking to have its inaction declared unlawful);

The State Department on Issues of Citizenship;

The Ministry of Foreign Affairs;

The Ministry for the Coal Industry;

The State Committee for Veterans' Matters;

The State Food Department.

Written refusals giving various arguments were provided by 34 respondents.

It is typical that none of the respondents observed Article 33 of the Law «On information», which makes it obligatory to send the person requesting the information written notification within 10 days of whether the information request will be met. It is worth noting that over the three years that the «Maidan» Alliance has been conducting this monitoring of access to information, in only one case out of the hundreds of requests sent has the law been observed in this respect, that being by the High Council of Justice.

The responses established that 44 central authorities have such instructions. We would note that some of the central authorities still do not have a List of confidential information and replied that lists were in process of being drawn up. This was, for example, the response of the Ministry of Finance and the State Department on Communications and Informatization.

It is impossible not to be disturbed by the refusal to provide lists from 12 out of the 44 State bodies, namely: the Prosecutor General's Office; the Ministry for Emergencies; the Ministry of Finance; the Ministry of Fuel and Energy; the Central Department of the Civil Service; the National Space

Agency; the State Protection Service; the State Department on Intellectual Property; the State Service for Special Communications and Protection of Information; the State Aviation Administration; the Ukrainian State Center for Radio Frequencies and the State Committee for the Forestry

Industry. They gave the following reasons:

1) the documents have the stamp «For official use only»;

2) the issue needs to be agreed with the SBU (State Aviation Administration);

3) the person seeking the information does not have sufficient legal grounds to receive these;

4) the person asking has not explained why s/he needs the information (State Department for Maritime and River Transport).

**References:**

Human Rights in Ukraine, 2008. Report by Human Rights Organizations  
Editors: Y.Zakharov, I.Rapp, V.Yavorsky / Ukrainian Helsinki Human Rights Union.  
Kharkiv: Prava Ludyny, 2008. 256 p. ISBN 978-966-8919-47-3.

<http://helsinki.org.ua/en/index.php?id=1217151409>

**100:** Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

**75:**

**50:** Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

**25:**

**0:** The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

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

**References:**

Human Rights in Ukraine, 2008. Report by Human Rights Organizations  
Editors: Y.Zakharov, I.Rapp, V.Yavorsky / Ukrainian Helsinki Human Rights Union.  
Kharkiv: Prava Ludyny, 2008. 256 p. ISBN 978-966-8919-47-3.

<http://helsinki.org.ua/en/index.php?id=1217151409>

**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.

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

**References:**

Human Rights in Ukraine, 2008. Report by Human Rights Organizations  
 Editors: Y.Zakharov, I.Rapp, V.Yavorsky / Ukrainian Helsinki Human Rights Union.  
 Kharkiv: Prava Ludyny, 2008. 256 p. ISBN 978-966-8919-47-3.

<http://helsinki.org.ua/en/index.php?id=1217151409>

**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.

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

**References:**

Human Rights in Ukraine, 2008. Report by Human Rights Organizations  
 Editors: Y.Zakharov, I.Rapp, V.Yavorsky / Ukrainian Helsinki Human Rights Union.  
 Kharkiv: Prava Ludyny, 2008. 256 p. ISBN 978-966-8919-47-3.

**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.

## II-1. <sup>64</sup>Voting & 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:**

Constitution, Article 70

Citizens of Ukraine who have attained the age of eighteen on the day elections and referendums are held, have the right to vote at the elections and referendums.

" Citizens deemed by a court to be incompetent do not have the right to vote.

According to Article 71 of the Constitution, elections to bodies of state authority and bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage, by secret ballot.

The President, People's Deputies, deputies of Parliament of the Crimean Autonomous Republic, city mayors and deputies of self-government bodies are elected under the following operative laws:

On Election of the President of Ukraine (Sept. 8, 1997),

On Election of People's Deputies of Ukraine (Sept. 24, 1997),

On the Central Election Commission (Dec. 17, 1997),

On Elections of People's Deputies of the Crimean Autonomous Republic (Feb. 19, 1998),

On Elections of Deputies of Local Radas and Village, Township, and City Chairmen (Jan. 14, 1998), and

On All-Ukraine and Local Referendums (July 3, 1999).

**References:**

The Constitution of Ukraine from June, 28, 1996.

**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:****Article 77**

Regular elections to the Verkhovna Rada of Ukraine take place on the last Sunday of March of the fourth year of the term of authority of the Verkhovna Rada of Ukraine.

" Special elections to the Verkhovna Rada of Ukraine are designated by the president of Ukraine and are held within 60 days from the day of the publication of the decision on the pre-term termination of authority of the Verkhovna Rada of Ukraine.

" The procedure for conducting elections of National Deputies of Ukraine is established by law.

**Problems with legislative support for early election**

Legislative amendments on the snap election have cleared up some political controversies in organization of early election. In particular, it deals with publication of election documents, formation and work of election commissions, opening of party accounts, agitation etc. They have positively resolved issues of voting for election commission members, who will be put on voters' lists at polling stations they shall work for.

However, unfortunately, some legislative amendments have been adopted as a result of political trading off, which significantly complicated the organization of the election process or rendered execution of some procedures impossible. CVU treats implementation of the voter turnout threshold as a reactionary norm. There have been no problems with voter turnout at national elections, and the threshold may leave room for intentional election disruptions.

Also, the CVU sees no mechanisms for implementation of provisions on filing data on persons leaving Ukraine by the State Border Guard Service with election commissions. It is unclear how boarder guard agencies should inform constitutional election commission on such voters, as traveling passports do not contain the Patronymic and Address fields. Also, we do not know how election commissions will use such data. It only complicates and impedes the election process. If such provision is implemented, voters who come back to Ukraine in the last three days prior to the polling day inclusively will be restricted in suffrage, as they will be excluded form voters' lists.

Limitation of rights of voters, who stay abroad on the polling day, also makes up reactionary norm. Voting procedures for such voters were complicated significantly during 2006 election (they were required to appeal to diplomatic agencies in advance). Now, they should be registered by consular agencies in order to cast their votes. New amendments impose limitations on about 5 million voters.

The parliament has repealed the provision allowing invalidation of election results at individual polling station when an observer or a journalist is driven out. It allows them to throw out observers from a polling station and performs voting and vote tabulation without any control. Such technology was widely applied at the presidential election in 2004.

**References:**

The Constitution of Ukraine from June, 28, 1996.

**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.

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## 15. Can all citizens exercise their right to vote?

67

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

100 | 75 | 50 | 25 | 0

**Comments:**

The Central election committee organized the elections in a poor way and didn't give people a possibility to vote."

According to the poll, people were asked whether they would participate in the elections. 88 percent of the respondents gave a positive answer. And how many voters do we have — 67 percent. It means that people were not given the possibility to express their political position.”

“20 percent of votes were a falsification: false signatures, filling ballot-boxes with voting papers etc. Therefore I state that the Central Election Committee failed to organize the elections in a proper way and didn’t give people a possibility to vote. There were 88 percent of potential voters, but only few could use their right to vote.”

**References:**

Interviews with Lyudmila Suprun, former MP

**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:**

According to OSCE study:

During the last pre-term election: the ballot papers during the elections were excessively long, queues at polling stations were too long, there was difficulty creating election commissions, there were inaccuracies on lists of voters, etc.”

ENEMO observers noted numerous cases in which where citizens were voting outside of the polling booths or where families or friends voted in the same booth. This was, among other reasons, related to voters being unable to find an empty booth after receiving the ballots. Observers noted several cases when impatient voters marked their ballot outside the booth to save time. There seemed to be no pattern of forcing voters to violate the secrecy of the ballot. Nonetheless, it is vital for maintaining trust in the election system that voters mark their ballots in secret.

**References:**

The OSCE Project Coordinator in Ukraine

[http://oscepcu.org/archive/election\\_2004/](http://oscepcu.org/archive/election_2004/)

Ombudsman office in Ukraine

CONSTITUTIONAL ELECTORAL RIGHTS OF THE UKRAINIAN CITIZENS

[http://www.ombudsman.kiev.ua/de\\_05\\_1.htm](http://www.ombudsman.kiev.ua/de_05_1.htm)

Ukrainska Pravda PM Voting To Be Secret”

<http://www.pravda.com.ua/en/news/2007/12/12/9585.htm>

European Network of Election Monitoring Organizations

International Observation Mission

Ukraine Parliamentary Elections 2006

**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 Constitutional Court on June 16, 2009, made public its judgment finding the Verkhovna Rada Resolution from March 3, 2009, (1058-VI) which revoked its own previous resolution to hold early elections for deputies of the Ternopil Regional Council, to have been unconstitutional .

The court considered the resolution in response to a submission from the president. It states in its judgment that cancellation of local elections or changing their day for reasons not envisaged by law violates citizens' electoral rights.

**Background**

The Council had been basically paralyzed through political dissent for some time when the original resolution was issued calling early elections. The resolution revoking the elections was immediately appealed by the extreme right wing party VO Svoboda, which claimed very publicly that BYuT — the Bloc of Yulia Tymoshenko — wanted to cancel the elections because it was afraid that it would lose very badly. In the first weeks of March and basically until the day before the elections were due, it remained unclear whether they would take place. However, the Lviv Court of Appeal on March 14 upheld the original ruling of the Ternopil Regional District Administrative Court ordering that the elections be held.

Failure to respect rule of law and lack of stability remain the underlying problems that need to be solved.

Ukraine could have easily avoided a second pre-term election in two years. Zerkalo Nedeli's editor Yulia Mostovaya explained the reason why the president was so insistent on an election rather than a new coalition: it was the only sure way to get rid of Yulia Tymoshenko as prime minister. Frankly speaking, that is what all the fuss is really about.

The publication of the president's decree dissolving the Verkhovna Rada and resolutions from the Rada and the Cabinet of Ministers declaring this decree illegitimate have driven the political and legal situation in Ukraine to a dead end. The inactivity of the Constitutional Court makes it improbable that there might be an immediate review of the Constitutional appeal by deputies to determine the legitimacy of the president's decree.

**Ignoring rule of law**

This situation has arisen because all branches of government in Ukraine have been ignoring the principle of rule of law and the rules of honest political competition. This could be seen in the way the government failed to carry out the provisions of the Manifesto of National Unity that it had signed onto and the fact that all government representatives – including the president of Ukraine – failed to respect court rulings. This trend is also evident in the Verkhovna Rada's deliberate adoption of laws that were in clear violation of constitutional norms and even grossly violated the legislature's own rules of procedure and, finally, in the way that the coalition has been trying to expand its numbers to a constitutional majority in ways that are not allowed by the constitution.

All these actions have been cutting into the level of trust among Ukrainian voters in the institutions of government, continuing the cycle of legal nihilism and the scoffing of the law at all levels in Ukrainian society.

**Rada — no judge of constitutionality**

Ukrainian President Viktor Yushchenko issued a decree dissolving the current legislature as is within his competence to do, as stated in Article 106 of the constitution. Until the Constitutional Court hands down a ruling as to the constitutionality of this decree, it must be carried out by all government bodies, their officials and elected officials on all the territory of Ukraine.

The Verkhovna Rada and government are not qualified or authorized to evaluate the constitutionality of a presidential action, as this is the exclusive prerogative of the Constitutional Court. Any statements about the unconstitutionality of this decree and the impossibility of carrying it out amount to an usurpation of state power.

The conditions for resolving this political crisis are:

- all government and administrative bodies must strictly observe all legal norms, while the law enforcement branch and defense forces must refrain from interfering in the political process and maintain law and order in the country;
- the Verkhovna Rada and government must carry out in full all the measures declared in the presidential decree on the pre-term suspension of the powers of the Verkhovna Rada;
- the Constitutional Court must render a ruling as soon as possible regarding the legitimacy of the presidential decree;
- should the presidential decree be declared unconstitutional prior to the holding of a pre-term VR election, the election campaign must be immediately halted and the work of the Fifth Convocation of the Verkhovna Rada resumed in full force;
- should the presidential decree be declared unconstitutional after the holding of pre-term elections, the results must be recognized and the Sixth Convocation of the Verkhovna Rada formed on that basis. In both instances, all political and moral responsibility for having taken an unconstitutional action shall lie with the president of Ukraine.

Re-elections will not resolve the problem of relations among the centers of power in Ukraine. The next coalition may be little different from the current one and it will, once again, have to deal with the same issues: first of all, the failure to uphold the principle of rule of law and respect for the law, the rejection of democratic mechanisms for conflict resolution and a consensual approach to consolidating interests.

Similar challenges will remain

Any future coalition will be faced with the same challenges – the lack of a comprehensible state policy and priorities in many spheres, the unreformed government bureaucracy and the lack of reform in the civil service. In this sense, re-elections will not remove any of the evident problems but only postpone their resolution.

Still, in a situation of political conflict, re-election allows politicians to turn for a mandate of trust to voters, the only source and bearer of power, and to confirm their rightness through the support of the population. Voters themselves are the final recourse for resolving conflicts and politicians must turn to them when they cannot resolve their conflicts in any other way.

#### References:

International Center for Policy Studies, Kiev

Whether the deadlock is ended by elections or not, failure to respect the rule of law and lack of stability remain the underlying problems that need to be solved

<http://www.icps.com.ua>

Early Election in Ukraine: Dangerous Experiment

Igor BURAKOVSKY (Director, Institute of Economic Studies and Political Consultations)

Zerkalo nedeli

# 38 (717) 11, Oct. 17, 2008

VALERIY PYSARENKO, a parliament member from BYuT faction

Ukrainian Helsinki Human Rights Union

<http://helsinki.org.ua/en/index.php?id=1245233580>

Committee of Voters of Ukraine

CVU expert assessment of possibility of holding the early election of Kiev city mayor and Kiev city council's deputies

<http://www.cvu.org.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?

90

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

YES | NO

### Comments:

#### Article 36

Citizens of Ukraine have the right to 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, with the exception of restrictions established by law in the interests of national security and public order, the protection of the health of the population or the protection of rights and freedoms of other persons.

" Political parties in Ukraine promote the formation and expression of the political will of citizens, and participate in elections. Only citizens of Ukraine may be members of political parties. Restrictions on membership in political parties are established exclusively by this Constitution and the laws of Ukraine.

" Citizens have the right to take part in trade unions with the purpose of protecting their labor and socio-economic rights and interests. Trade unions are public organizations that unite citizens bound by common interests that accord with the nature of their professional activity. Trade unions are formed without prior permission on the basis of the free choice of their members. All trade unions have equal rights. Restrictions on membership in trade unions are established exclusively by this Constitution and the laws of Ukraine.

" No one may be forced to join any association of citizens or be restricted in his or her rights for belonging or not belonging to political parties or public organizations.

" All associations of citizens are equal before the law.

The provision of Article 10.1 of the Law of Ukraine "On political parties in Ukraine" on the necessity of support for the establishment of a political party by signatures of no less than 10,000 citizens of Ukraine is the guarantee of implementation of the constitutional fundamentals of the activity of one of the forms of public association and a guarantee of ensuring a real national status of a political force and equal possibilities for all political parties.

### References:

The Constitution of Ukraine from June, 28, 1996.

Law on political parties in Ukraine

**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:

#### Article 38

Citizens have the right to participate in the administration of state affairs, in All-Ukrainian and local referendums, to freely elect and to be elected to bodies of state power and bodies of local self-government.

" Citizens enjoy the equal right of access to the civil service and to service in bodies of local self-government.

**References:**

The Constitution of Ukraine from June, 28, 1996.  
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:**

All citizens are able to form political parties.

**References:**

National Institute for Strategic Studies;  
Political analyst Vadym Karasyov

**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:**

A question of party system functioning in Ukraine and moreover the directions of its development is extremely difficult and controversial. It is caused by vagueness of the term party system of Ukraine as such.

If it is considered as totality of political parties which exist in the country independently of institutionalization form according to the current legislation (V. Jevdokimov) then there is a party system in Ukraine. But other scientific definitions in general give more

extensive notion of the party system as a political space, which consists of political parties and regulates in a certain way the totality of relations of parties with each other and other components of the political system of society. Besides, the overwhelming majority of Ukrainian parties do not meet criteria of classical parties which are: presence of manageable organization, penetrating the society, obtaining ideology, attracting potential supporters; and a leader personifying the party and exercising real guidance of it; efficient activity of this organization on asserting its members' and possible supporters' interests; sufficient quantity of supporters who legally support this organization with their actions.

As a result of historical and political development and first of all the state establishment by incomplete forming of a political nation, combination of too wide power authorities of the president by virtual prevalence of the majority election system, very specific parties and a party system were shaped in Ukraine. Its main differences from classical party systems is a big quantity of parties which are constantly being modified, dissociated, associated, reorganized, that caused extreme instability of the party system. Parties were organized from above and served mainly as democracy imitation. Their ideological foundations were constantly washed out, deviation from left national-democratic trend took place, the balance between ideology and regional belonging was shifted toward the latter. Especially these processes accelerated after the elections in 1998 when business representatives started actively participating in party building. This in turn caused the strengthening of influence of personal, financial-economic, regional-cultural and somewhat of ethnic factors on the life of a party, that finally resulted in turning the party into a structure whose main function was promotion to power or keeping in power representatives of separate small and big financial-political groups — thus virtually transforming them into components of this FPG or business-projects. Consequently there was structural weakness of most parties because their political activity had secondary meaning in conditions when for many parties personal leadership was decisive. For most Ukrainian parties, the absence of strategic behavior was typical. Parties did not usually pursue first of all long-term state goals, but narrow-corporative or even personal goals of individual leaders. The parties did not obtain wide social basis (sofa-like or made-up parties) and were internally divided into affinity groups.

Overall, the general character of Ukrainian parties significantly differs from the idea of mass parties established in the West. If for the West a mass party is a party being widely supported by the society and accumulating different interests, in Ukraine mass character was achieved by hiring in a strict corporate structure employees-performers, who must have fulfilled orders from the center for hiring new members. As a rule, a membership in parties concurred with the work in groups related to one or another party. All this resulted in break-up of relations between parties and society and also between society and power. The important disadvantage of the party system in general and party building in particular is the absence of a serious scientifically provided program for party manpower training as a component of party building. Instead of this, a dominating tendency of the party building during last years was progressive growth of importance of political technologies and especially availability of media-resources.

Consequently, it is possible to talk conditionally about the party system in Ukraine on the current stage. In 2006, Ukrainian parties in classical and close to it meaning turned to secondary participants of the political process. Its real participants became FIG with their financial and media potential. The role of the parties was reduced to tools in the fight of FIG for the power and the following redistributing of country resources. Hence it is appropriate to classify the existing parties in Ukraine not by ideological but by functional features.

Three conditional groups can be outlined. The first consists of so called quasi-parties. Their typical feature is exploiting the rest of the left and national-democratic ideology. The biggest of them (CPU and SPU) have got acknowledged leaders and branchy network of organizations, but their ideology taken from the past does not attract new supporters. On condition that economic indexes improve and public well-being grows, the reduction of their social base is inevitable. The current elections proved this tendency — a virtual failure of CPU and voices reduction by SPU in comparison with 2002, plus non-entry of the Block of Kostenko-Pljushch into Verkhovna Rada.

In the future, CPU and SPU will keep their heads above water only at the expense of new investment bosses, who in order not to incur additional costs would want to use a famous brand and ready infrastructure. This is extremely important for SPU, which after a well-known coalition maneuver lost a significant number of its supporters. According to results of sociological polls conducted at the end of 2006 by the private company R&B Group, a level of trust in SPU was only 2 percent. However CPU's indexes slightly improved and reached 4 percent. But it does not change the situation about left parties in general. The latest tendencies show CPU and SPU living their last days in a current form. In the grimmest scenario, they will disappear bit by bit from the political arena and will be replaced by tougher social-populist projects which will gamble on spirits not on interests.

Regarding extra-parliamentary parties of national-democratic direction, they will at best form a new right-oriented united political force. A very important part in this process plays the future fate of the block NSNU: whether it remains as such or whether it will finally split into two parts — political and business. At worst, they will be kept out of the parliament.

The second group consists of parties which are components of the leading FIG. With left and national-democratic parties leaving in the past, two new poles of the party system are growing ripen: the Party of regions and BJuT, which aspires to the leading positions in the Western and Central Ukraine.

However, BJuT is still not self-determined ideologically. If in the Party of regions there are hesitations in choosing a model of liberal or socio-democratic principals with elements of pro-Russian geopolitical orientation, BJuT does not yet have a definite ideological orientation.

#### **References:**

Prospects of development of party system in Ukraine

**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. A system of party lists may discourage or prevent independent 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

**References:**

Parties, Parliamentary Opposition, And Majority in One Package  
Newspaper Den'  
<http://www.day.kiev.ua/290619?idsource=267363&mainlang=eng>

**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.

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## II-2. Election Integrity

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18. Is the election monitoring agency effective?

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

YES | **NO**

**Comments:**

The Committee of Voters of Ukraine is the all-Ukrainian NGO, which has been monitoring the election campaigns in Ukraine for several years in terms of adherence to Ukrainian laws and international standards of the democratic election by the campaign's actors. During the parliamentary and local elections in 2006, CVU implemented the number of programs aimed to monitor the campaign, reveal any drawbacks in the organization of elections, strengthen openness and fairness of the election process, protect rights of citizens and raise awareness of voters. During the campaign, CVU implemented the Clean Election Initiative. It unified the leading Ukrainian NGOs — Internews Ukraine, the Committee of Voters of Ukraine, the Democratic Initiatives Foundation, the Europe XXI Foundation, the Ukrainian Center for Independent Political Research, the Equal Opportunities Committee, the Community Foundation.

CVU participated in the Public Council on Securing Electoral Rights of the Ukrainian Citizens during 2006 Election, established under the president of Ukraine, the Temporary Special Commission of the Verkhovna Rada of Ukraine for Monitoring of the Electoral Legislation, the Public Board under the Ministry of Interior Affairs of Ukraine.

Due to efforts of the Clean Elections Initiative and contribution of the Committee of Voters of Ukraine, the Law of Ukraine On Election of National Deputies has been amended. They allowed polling station commissioners and observers to vote on site. Journalists were given discretion in covering campaign. In addition, civil society organizations insisted on amending the Code of Administrative Offenses and the Criminal Code of Ukraine; thus, more severe penalties for violations of the election laws have been imposed.

CVU deployed 27 long-term observers in all regions of Ukraine for long-term observation of the campaign in November 2006. In March 2006, the number of observers increased by 225 (one person per each constituency). Based on data gathered over the observation period (November 2005 -March 2006), the Committee of Voters of Ukraine published six evaluative reports on the campaign developments in Ukraine. They focused on activities and violations of political parties and electoral blocs, electoral HQs, governmental agencies and local self-government bodies, election commissions and media.

**References:**

The Committee of Voters of Ukraine

<http://www.electiondog.net/book/do>

<http://www.cvu.org.ua/activity.php?lang=eng&mid=activity&aid=1833>

**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 head of the Committee of Voters of Ukraine was appointed to the presidential administration and now totally reflects the views of the president.

**References:**

Interviews with civil society or NGO representatives

**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

**References:**

The Committee of Voters of Ukraine

[http://www.cvu.org.ua/doc.php?lang=eng&mid=yreport&doc\\_type](http://www.cvu.org.ua/doc.php?lang=eng&mid=yreport&doc_type)

**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

**References:**

The Committee of Voters of Ukraine

**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

**References:**

The Committee of Voters of Ukraine

**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.

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## 19. Are elections systems transparent and effective?

88

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

100 | 75 | 50 | 25 | 0

**Comments:**

The monitoring results of the pre-term 2007 election:

The challenges the PECs faced in generating accurate voters' lists was evident on election day. The inaccuracy of the lists from the beginning of the campaign period, described in greater detail below, as well as the lack of preparation by the PECs, resulted in a segment of voters being unable to vote. While ENEMO cannot determine the impact of the voters who were denied the right to vote in the election itself, it believes strongly that the disenfranchisement of voters could have been prevented by earlier preparation of the PECs and more resources devoted to solving problems once the extent of the problem was identified.

In many cases, chairmen of the PECs admitted that the voters' lists were inaccurate and that voters had been turned away from polling stations. For example, in Kharkiv (DEC 175, PEC 19), the chairman of the precinct judged that 10 percent of the voters were not on the voter list — approximately 170 individuals. Similarly, in Luhansk Oblast (DEC 103, PEC 3) the chairman of the PEC estimated that 200 voters were still missing from the polling station despite the addition of 300 voters from March 23 to 24. The chairman explained that these numbers reflect three streets which were missing from the voters lists. Also in Luhansk (DEC 170, PEC 8) 170 individuals were reported not on the voters lists. In Chernigiv, of the 75 polling stations the observers visited throughout the voting period, in 25 of them ENEMO observed voters who were unable to find their names on the lists and vote.

Voters' list problems reflected the technical difficulties faced during the pre-election period. For example, the absence of entire apartment buildings and streets indicated problems in compiling the lists. In Zhitomir (DEC 56, PEC 65) a building of voters, at 88 Shelyshova Street, was not included in the voter list. In Odesa Oblast (DEC 139, PEC 140) ENEMO observers witnessed 36 voters being denied the right to vote. Despite registering by legal means they were not on the voters lists. The PEC member was unable to provide an explanation.

The Central Electoral Commission will manage to complete preparation of State Register of Voters before presidential elections scheduled for October 25.

According to them, the primary base of the registration is ready, containing information about 36.6 million voters, but the number will be verified to detect possible twins". In late May – early June this year, after revision of the voters' list, each voter will receive a message with the request to specify personal data. The commission noted that the protection of the register will be "unprecedented, Class A". Reliable protection of the list of voters is the most expensive part of the project, worth UAH 30 million (US\$3.6 million). Computers and other office equipment for EUR 1.6 million (US\$2.3 million) were purchased with the European Union's funds. Ms. Usenko-Chorna informed that the 2009 national budget provides UAH 712 million (US\$85.3 million) for the presidential campaign, when the election budget is UAH 941 million (US\$113 million). That is why Verkhovna Rada must approve relevant amendments to the state budget.

It is evident that the National Electoral Register will not be compiled by Sept. 30. As of mid July, the Cabinet of Ministers of Ukraine, CEC and other public authorities failed to fulfill or delayed the majority of activities as required by the Law On the National Register for making legal and organizational basis of the Register.

CVU urges political forces to renounce an idea of implementation of the National Electoral Register at snap election and contribute to clarification and formation of voter lists using previous patterns.

Working groups on registration of voters resumed their activities in all regions of Ukraine after the first decree of the president on termination of the Verkhovna Rada's tenure was published. However, in some regions they are inefficient, or even inactive. Working groups have not been provided with regulations and adequate technical means.

**References:**

PRELIMINARY REPORT ON FINDINGS OF THE ENEMO OBSERVATION MISSION  
2006 UKRAINIAN PARLIAMENTARY ELECTIONS

European Network of Election Monitoring Organizations

[http://www.cvu.org.ua/files/1143542873\\_ENEMO%20Election%20Report%2003.27.06.pdf](http://www.cvu.org.ua/files/1143542873_ENEMO%20Election%20Report%2003.27.06.pdf)

Central Electoral Commission

**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:**

For example, in 2007 a Ukrainian court validated election results. Ukraine’s High Administrative Court threw out a law suit filed by five parties seeking to contest the vote based on alleged violations, allowing the official publication of the election results and enabling the new parliament to convene.

**References:**

Law about High Administrative Court

**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:**

Two weeks after the Ternopil Oblast council election, their results are still disputed. The prime minister’s supporters claimed election fraud, but have not presented compelling evidence in support of their case. Others believe that BYuT suffered an honest and natural defeat after calling on voters to boycott elections.

An independent election watchdog, the Committee of Voters of Ukraine (CVU), did not register significant violations. In a public statement, they explained a major power shift in the regional assembly by disappointment of the voters in the parties in power. However, President Victor Yushchenko cast shadows over the fairness of the CVU by appointing its chief Ihor Popov deputy head of his secretariat just days later. Popov, who earned his reputation as an independent political observer, said it was laughable to connect his nomination to Ternopil elections.

**References:**

Rasumkov Center

[http://www.uceps.org/eng/expert.php?news\\_id=1346](http://www.uceps.org/eng/expert.php?news_id=1346)

Kyiv Post, April 2, 2009

**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

**References:**

Interviews with government officials

**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 overtly 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:**

Presidential election

The Central Electoral Commission registered 108 international election observers to monitor the last presidential elections in Ukraine – 39 more than for previous elections. The registered election observers are from the United States, the Organization for Security and Cooperation in Europe, the World Congress of Ukrainians, the CIS EMO international organization and the Ukrainian Congressional Committee of America.

Parliament Election

The International Election Observation Mission (IEOM) for the March 26 parliamentary elections is a joint undertaking of the OSCE Parliamentary Assembly (OSCE PA), Parliamentary Assembly of the Council of Europe (PACE), European Parliament (EP), NATO Parliamentary Assembly (NATO PA) and the OSCE Office for Democratic Institutions and Human Rights' (OSCE/ODIHR) Election Observation Mission. Following an invitation by the president of Ukraine, the OSCE/ODIHR established

an Election Observation Mission (EOM) in Kyiv on Jan. 23, 2006, with 12 experts and 52 long-term observers. The PACE sent a cross-party Pre-election Mission to Ukraine between Feb. 28 and March 2.

On election day, 914 observers were deployed in the context of the IEOM from a total of 45 OSCE participating states, including 100 parliamentarians and staff members from the OSCE PA, 43 from the PACE, 14 from the EP and 25 from the NATO PA. The IEOM observed the polling and vote count in over 2,500 polling stations throughout the country.

The election process was assessed for compliance with domestic law, OSCE Commitments, Council of Europe commitments and other international standards for democratic elections. This preliminary statement is delivered prior to the completion of counting and tabulation, the announcement of preliminary and final results, and adjudication of possible complaints and appeals. The OSCE/ODIHR will publish a comprehensive final report, offering recommendations for potential improvements, approximately two months after the completion of the process. The PACE will present its report with recommendations at its April meeting.

**References:**

Central Electoral Commission in Ukraine  
<http://www.nrcu.gov.ua/index.php?id=148&listid=4544>

INTERNATIONAL ELECTION OBSERVATION MISSION  
Parliamentary Elections, Ukraine, March 26, 2006

EUROPEAN PARLIAMENT RESOLUTION ON THE RESULTS OF THE UKRAINE ELECTIONS (Jan. 13, 2005)

**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

**References:**

INTERNATIONAL ELECTION OBSERVATION MISSION  
Parliamentary Elections, Ukraine, March 26, 2006

**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.

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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:**

There is monitoring from the parties which take part in the election process.

**References:**

REPORT OF THE COMMITTEE OF VOTERS OF UKRAINE ON THE RESULTS OF ACTIVITIES AT THE PARLIAMENTARY AND LOCAL ELECTIONS ON MARCH 26, 2006

<http://www.cvu.org.ua/files/doc1147350018election-report-2006-.doc>

**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 exists 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.

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76  
II-3. Political Financing

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20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

YES | NO

**Comments:**

All election laws establish the sources for formation of the relevant election funds. In particular, the election fund of a presidential candidate can be formed from his own funds, the funds of the political party that has nominated the candidate or the funds of the

political parties that have formed a bloc, which has nominated a candidate, as well as from voluntary private donations. There is no limit set for the amount that can be contributed, excluding private contributions (contributions from individuals should not exceed 25 minimal salaries). The number of private contributions, however, is not limited (only an excessive contribution is considered to be illegal (Part 8 Article 43 of the Presidential Election Law).

According to Article 53 of the Law on Parliamentary Elections, the election fund of a political party/bloc is formed from the own funds of the political party (or the parties that have established a bloc), as well as from private contributions. Like with the presidential elections, there is no limit on the amount of the contribution or the number of contributions made by the founder of the election fund to its own election fund; restrictions are established only for individuals who can contribute not more than 400 minimal salaries.

The sources of election funds for local elections are defined by Article 86 of the Local Election Law, according to which the election fund of a local political party organization/bloc is formed at the expense of the funds of such an organization/bloc, as well as private contributions; the election fund of a mayoral candidates is formed from their own funds, the funds of the political party/bloc that has nominated such a candidate, and private contributions. Individuals are allowed to make a donation of not more than three minimal salaries.

Individuals and legal entities that provide financial support to political parties get a number of privileges. According to Article 5.3.2 of the Law on Private Income Tax, an individual may include in the tax credit for the year under report the amount of funds or the value of the property donated to non-profit organizations (including political parties), in the amount that exceeds 2 percent, but is not more than 5 percent of the total taxed revenue for the respective year. Article 5.2.2 of the Law on Corporate Profit Taxation sets that the gross expenses of the taxpayer shall include the funds or the value of the goods (works or services) voluntarily transferred to or passed over during the year under report to non-profit organizations including to political parties) in the amount that exceeds 2 percent but is not more than 5 percent of the taxed profit received in the previous year.

#### Article 15.

##### Finance Restrictions

Financing political parties shall be prohibited:

- (1) on the part of authorities of state power and local self- government, except in cases envisaged by the law;
- (2) on the part of state and municipally owned enterprises, institutions, and organizations, as well as by enterprises, institutions, and organizations having government or municipal shares or with a foreign interest;
- (3) on the part of foreign countries and their nationals, enterprises, institutions, and organizations;
- (4) on the part of charity and religious associations and organizations;
- (5) on the part of anonymous persons or persons using pseudonyms;
- (6) on the part of political parties other than members of the election bloc.

Banking institutions shall notify the Ministry of Justice of Ukraine of any entries on political parties' accounts contrary to this Law. Funds received by political parties contrary to this Law shall be transferred by these parties to the State Budget of Ukraine or exacted by a court of law for the benefit of the state.

#### Article 16

##### Exercise of Title to Property Owned by a Political Party

The title to a political party's property, including funds owned by that party, shall be exercised in accordance with the laws of Ukraine and in keeping with procedures designated by that party's statute.

#### Article 17

##### Financial Reporting of a Political Party

A political party shall have a monthly financial report covering incomes and expenditures and a report on its property carried by a central government-run periodical.

Political parties shall keep books and records in accordance with set procedures.

##### Bodies Exercising State Control over Political Parties

State control over political parties shall be exercised by:

- (1) the Ministry of Justice of Ukraine, in terms of observance of the Constitution, [other] laws of Ukraine, and party statute/charter;
- (2) the Central Election Committee and district election committees, in terms of observance, by a given political party, of the election procedures.

Political parties shall provide any documents and explanations as may be required by the controlling authorities. Decisions made by controlling authorities may be contested in keeping with legally established procedures.

The principles of political party finance in Ukraine are established by the Law on Civil Associations of June 16, 1992, the Law on Political Parties in Ukraine of April 5, 2001, and the Law on Corporate Profit Taxation of Dec. 28, 1994. The tax privileges for individuals that provide financial support to political parties are established by the Law on Individual Income Tax of May 22, 2003; tax privileges for legal entities supporting political parties are set by the Corporate Profit Taxation Law. The procedure for the preparation of tax statements on the use of funds by political parties is defined by Order No. 233 on Approval of the Form of Statement on the Use of Funds by Non-Profit Organizations and Institutions and Their Fulfillment Procedure issued by the State Tax Administration (the STA) on July 11, 1997. The liability for the violation of the political party finance rules is established by the Law on Political Parties.

The laws that establish the above funding principles were passed in different times and on different conceptual bases, therefore their provisions are often rather inconsistent. The election legislation lacks a unified approach to the regulation of funding of

various types of elections.

**References:**

Law on Political Parties in Ukraine, April 5, 2001;

Law on Civil Associations, of June 16, 1992;

Law on Corporate Profit Taxation, Dec. 28, 1994;

The main documents that establish the standards for the funding of political parties in Europe include:

-PACE Recommendation No. 1516 (2001),

-the Guidelines on the Financing of Political Parties adopted by the Venice Commission at its 46th Plenary Meeting on March 9-10, 2001,

-Committee of Ministers' Recommendation to Member States on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns of April 8, 2003.

**YES:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

**YES** | **NO**

**Comments:**

The election laws are not very clear about the purposes for which money from the election funds can be used. All election laws set that the main aim for which an election fund is set up is to fund the election campaign of those subjects that open accounts of such elections.

The relevant legislative provisions are specified in more detailed in the resolutions of the Central Election Commission (the CEC). Thus, the CEC Resolution of Jan. 5, 2006, on the Procedure for the Financial Accounting of the Receipt and Use of Election Fund Resources in Parliamentary Elections sets that the election fund resources can be spend on production of campaigning materials, the use of mass media, other services related to campaigning (transport services and maintenance of transport, lease of premises, lease of equipment for the purpose of campaigning, lease of premises for meetings with voters, production and lease of bill-boards, communications services), as well as other campaigning expenses).

The CEC establishes the same list of expenses for the election funds of presidential candidates.

Sources that can be used to fund political parties are defined by the Law on Civil Associations, the Law on Political Parties, and the Law on Corporate Income Taxation. Part 2 of Article 14 of the Law on Political Party defines political parties as non-profit organizations. The Law on Political Parties is not clear on the finance sources for political parties: Part 3 of its Article 14 sets that, to achieve their charter objectives, political parties are entitled to own chattels and real estate, money, equipment, transport, and other means the acquisition of which is not prohibited by the laws of Ukraine. Provisions of the Political Parties Law are elucidated in Article 21 of the Law on Civil Associations.

According to this Article, political parties can use the following sources of finance:

- 1) funds and property passed over by the founders and members of the political party;
- 2) funds and property purchased at the expense of membership fees and from the own funds of the political party;
- 3) funds and property donated by citizens, companies, institutions, and organizations;
- 4) the property purchased from the sale of the social and political materials, other propaganda materials, products with the symbols of the party, organization of festivals, celebrations, exhibitions, lectures, and other political events.

Thus the list of the allowed sources is limited only to those proceeds that are not prohibited by law. The current legislation does not establish either (a) cap annual funding of political parties, or (b) restrictions on the amount of funds that can be transferred by individuals or legal entities for the benefit of political parties; or (c) the number of transfers that can be made by individuals or legal entities.

The Law on Political Parties in Ukraine and the Law on the Corporate Income Taxation offer no definition of the donation to a political party in the understanding of Article 2 of the Common Rules Against Corruption as any deliberate act to bestow advantage, economic or otherwise on a political party. Analysis of the Law on Political Parties in Ukraine and the Law on the Corporate Income Taxation shows that a donation is

understood only as the funds and the property directly received by a political party (e.g. Article 7.11.3 of the Law on the Corporate Income Taxation) by depositing such funds on the relevant account or including the property into the statement of assets and liabilities. The non-economic advantages of a donation are not covered and, consequently are not reflected in the financial statements of political parties.

#### Article 15

##### Finance Restrictions

Financing political parties shall be prohibited:

- (1) on the part of authorities of state power and local self- government, except in cases envisaged by the law;
- (2) on the part of state and municipally owned enterprises, institutions, and organizations, as well as by enterprises, institutions, and organizations having government or municipal shares or with a foreign interest;
- (3) on the part of foreign countries and their nationals, enterprises, institutions, and organizations;
- (4) on the part of charity and religious associations and organizations;
- (5) on the part of anonymous persons or persons using pseudonyms;
- (6) on the part of political parties other than members of the election bloc.

Banking institutions shall notify the Ministry of Justice of Ukraine of any entries on political parties' accounts contrary to this Law. Funds received by political parties contrary to this Law shall be transferred by these parties to the State Budget of Ukraine or exacted by a court of law for the benefit of the state.

#### References:

Law on Civil Associations;  
Law on Political Parties;  
Law on Corporate Income Taxation.

**YES:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

YES | NO

#### Comments:

According to Article 17-1 of the Law on Political Parties, state funding is provided to political parties in two forms:

- 1) funding of the charter activities of political parties which is not related to their participation in elections to the public authorities and local self-governance bodies;
- 2) reimbursement of the expenses incurred by political parties, including those that were part of election blocs, due to the funding of their election campaigns for the regular and special parliamentary elections.

The right to the state funding is given to those political parties that manage to overcome the 3 percent election threshold either independently or within election blocs. The same applies to the state funding provided for participation in elections. Thus, according to the Law on Political Parties, state funding is provided to those political parties that are represented in the parliament on the results of the most recent elections.

Article 17-2 of the Law on Political Parties establishes the cap amount for the annual state funding of the charter activities of political parties which is defined by multiplying 1 percent of the established minimal salary (as of January 1 of the year preceding the one when the funds are provided) by the number of the voters included on the voter lists used in the most recent regular parliamentary elections. This amount is divided by the Ministry of Justice between the political parties and blocs that have managed to overcome the election threshold in proportion to the votes that they have received in such elections. Election blocs divide such state funding in accordance with the procedure established by the parties that have formed the relevant bloc. The cap that can be received by political parties and blocs as a reimbursement for their parliamentary campaign expenses is established by Article 98 of the Law on Parliamentary Elections, according to which the political parties and bloc that have overcome the election threshold are entitled to the reimbursement of their actual expenses, but not more than 100,000 minimal salaries. Parties that formed election blocs divide the state funding on agreement between them.

**References:**  
LAW ON POLITICAL PARTIES

**YES:** A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

**Comments:**

The Political Parties Law establishes three forms of statements to be submitted by political parties:

- 1) the incomes and expenses statement;
- 2) the property statement; and
- 3) the statement on the use of state funds provided to finance the charter activities of political parties.

The Law, however, establishes no requirements to the form and content of such statements or a minimal list of information to be reflected in them. No such requirements can be found in by-laws or the Law on Civil Associations either.

In addition to the statements required by the Political Parties Law, political parties have to prepare quarterly statements on the use of funds as a non-profit organization to be submitted to the local tax authorities. The form of such statement is approved by STA Order No. 23 of Nov. 7, 1997 on Approval of the Form for the Statement on the Use of Funds by Non-Profit Organizations and Institutions and Fulfillment Procedure. According to the Order, the statement (first part) should refer only to the taxable or non-taxable sums (property value) received by the non-profit organizations over the period under report, in particular irrecoverable financial aid or voluntary donations, proceeds from the sale of social and political publications, passive incomes, grants, and subsidies. The second part of the statement shall indicate the taxable incomes, profits, tax liabilities, and the tax amount to be paid. It is not required to provide information on how these organizations have used their funds, just like on individuals or legal entities that have provided their irrevocable financial aid to the non-profit organizations. In other words, the main purpose of this statement seems to be not to ensure the transparency of financial activities of a non-profit organization, but rather correct calculation of tax liabilities.

Political parties also enjoy taxation privileges. Under Article 7.11.3 of the Law on Corporate Profit Taxation, political parties do not pay the corporate profit tax on the revenues received in the form of funds or property transferred free of charge or provided as irrevocable financial aid or donations, as well as on passive incomes (dividends, interest, royalty), and funds or property received from the main activities of the political party.

**References:**  
LAW ON POLITICAL PARTIES  
Law on Corporate Profit Taxation

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

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

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

**Comments:**

## Article 17

## Financial Reporting of a Political Party

A political party shall have a monthly financial report covering incomes and expenditures and a report on its property carried by a central government-run periodical.

Political parties shall keep books and records in accordance with set procedures.

## Article 18

## Bodies Exercising State Control over Political Parties

State control over political parties shall be exercised by:

(1) the Ministry of Justice of Ukraine, in terms of observance of the Constitution, [other] laws of Ukraine, and party statute/charter;  
(2) the Central Election Committee and district election committees, in terms of observance, by a given political party, of the election procedures.

Political parties shall provide any documents and explanations as may be required by the controlling authorities.

Decisions made by controlling authorities may be contested in keeping with legally established procedures.

All election laws require that election fund administrators submit financial statements on the receipt and use of election fund resources to the Central Election Commission (in national elections) or the relevant territorial commission (in local elections). According to Article 52 (Part 5) of the Parliamentary Election Law, the administrators of the current account of the election fund shall, not later than on the 7th day after the ballot, provide the administrator of the accrual account of the election fund a financial report on the use of the funds from the current account. The administrator of the accrual account shall, not later than on the 15th day after the ballot, provide the CEC with a statement on the receipt and use of the election fund resources. The same procedure is established by Article 42 of the Presidential Election Law.

Article 85 (Part 4) of the Law on Local Elections requires that administrators of the election funds established by the participants of local elections submit the financial statements prepared in the form set by the CEC to the relevant territorial election commissions.

Forms of the statements on the receipt and use of the election funds resources are established by the CEC within the dates envisaged by the relevant election laws before the election date. Such reports shall include:

(1) a report on the formation of the election fund (in two sections: receipt of funds by the accrual account of the election fund and the transfer of funds from the accrual account),  
(2) a consolidated report on the receipt of funds by the current account and their use, and  
(3) the reports on the transfer of the outstanding remainder.

Each statement shall be supplemented with details of each transaction on the election fund accounts. The statement shall also be submitted together with an explanatory note.

Article 18 of the Law on Political Parties sets that the state oversight of the activities of political parties is performed by:

1) the Ministry of Justice (MoJ) (as concerns observation of the Constitution and laws of Ukraine, and the charter of the political party);  
2) the Central Election Commission (as concerns observation of the procedure established for the participation in elections); and  
3) the Accounting Chamber (the AC) and the Main Control and Audit Office (the MCAO) (as concerns the use of the state funds provided to finance the charter activities of political parties).

The procedure for the MoJ to exercise its oversight powers is not established clearly enough by the Law on Political Parties in Ukraine. Article 18 of this Law entitled the MoJ to require that political parties provide the necessary documents and explanations, while political parties are supposed to provide the MoJ with such documents and explanations. Likewise, no oversight procedure is also offered by the MoJ Regulation (approved by the CMU Resolution No. 1577 of Nov. 14, 2006).

Principles of the oversight to be exercised by the MCAO and the AC are established by Article 17-8 of the Law on Political Parties. According to this Article, the MCAO shall annually (between February 1 and March 1 of the following year of the one when state funds were provided), check up the scope the relevant funds used by the political parties and the purposes for which they have been spent. The check-up forms and procedure are established in more detail by the Law on the Accounting Chamber and the Law on the State Control and Audit Service in Ukraine.

In addition to the controllers, certain oversight is also done by the State Tax Administration of Ukraine through its local tax inspection offices

(as concerns the observation of the requirements established by the tax legislation for the non-profit organizations (sources and scope of funds received, the correctness of calculation and timely payment of taxes should the party perform any taxable activities).

Article 14 of the Common Rules against Corruption recommend the introduction of independent monitoring in respect of the funding of political parties and electoral campaigns. In Ukraine, this recommendation has been only in relation of electoral campaigns monitored by relatively independent bodies, i.e., by the Central Election Commission (in the national elections) and the relevant territorial election commissions (in local elections). Funding of the charter activities of political parties not related to

their participation in elections is monitored by three public authorities, namely the MoJ, the Main Control and Audit Office (MCAO) (as concerns the scope of state funds provided to fund the charter activities of political parties and the purposes for which such funds are used), and the Accounting Chamber (AC) (for the same purpose as the MCAO).

Out of the above authorities, only the AC can be described as independent, while the MCAO and the MoJ are part of the system of central public executive authorities which makes it impossible to define their monitoring as independent. Moreover, the MoJ has no specialized office to audit financial statements of political parties. At the same time, the transfer of monitoring functions from the MoJ to the MCAO would not correspond to the purpose of the MCAO which controls only the use of the state funds, while the transfer of the same functions to the AC would run counter the Ukrainian Constitution, as according to Article 98 of the Constitution, the AC is in charge of supervising the inflow and use of state funds (contrary to Lima Declaration of Guidelines on Auditing Precepts).

In this context, fulfillment of the recommendation done in Article 14 of the Common Rules Against Corruption requires:

- (a) either revising of the AC's constitutional tasks in order to enable it to exercise independent monitoring of the political party finance (for this purpose, Article 98 of the Constitution needs to be amended); or
- (b) establishing a specialized unit for monitoring political party finance within the MoJ (this will not, however, ensure independence of such monitoring); or
- (c) delegating the powers to monitor political party finance to an independent anti-corruption authority (the Anti-corruption Bureau or any other similar body to be set up).

#### References:

LAW ON POLITICAL PARTIES

#### FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

Prepared by experts of the Agency for Legislative Initiatives:

Denis Kovryzhenko

Ihor Kohut

Oleksandr Syniooky

Angela Yevgenieva

Olena Chebanenko

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES

NO

#### Comments:

Article 18

Bodies Exercising State Control over Political Parties

State control over political parties shall be exercised by:

- (1) the Ministry of Justice of Ukraine, in terms of observance of the Constitution, [other] laws of Ukraine, and party statute/charter;
- (2) the Central Election Committee and district election committees, in terms of observance, by a given political party, of the election procedures.

Political parties shall provide any documents and explanations as may be required by the controlling authorities.

Decisions made by controlling authorities may be contested in keeping with legally established procedures.

#### References:

LAW ON POLITICAL PARTIES

**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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

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## 21. Are there regulations governing the financing of individual political candidates?

60

21a. In law, there are limits on individual donations to political candidates.

**YES** | NO

### Comments:

The obligation to set up election funds has different degrees of necessity. Article 37 of the Presidential Election Law requires that a presidential candidate establish his/her election fund. The same requirements are found in the Law on Parliamentary Election, where Article 48 sets that a political party/bloc that has registered its parliamentary candidates with the CEC shall set up an election fund to finance its participation in the election campaign.

Unlike in the national elections, it is not an obligation but rather a right of the local election participants to create their election funds. Thus, Article 82 of the Local Election Law stipulates that a local political party organization/bloc that has registered its candidates to the local councils or mayoral candidates may establish their election fund to finance their participation in the election campaign.

Likewise differently, the election laws limit the size of election funds. The funds of presidential candidates shall not exceed 50,000 minimal salaries for the first round and 15,000 minimal salaries for the second round (Article 43 of the Presidential Election Law).

No limits on election funds are established by the Parliamentary Election Law. In the local elections, no restrictions are established on the formation of the election funds, but the expenses from such a fund are limited. Unlike in the presidential elections, this amount is not fixed, being defined by the number of voters in the relevant constituency (from 20,000 to 1,000,000 UAH (US\$2,360-118,000) for the local political party organizations and blocs; not more than a half of the above amount for the mayoral candidates; and 50 minimal salaries for the candidates nominated in one-seat constituencies).

### References:

Presidential Election Law  
Law on Parliamentary Election

**YES:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

**References:**

Ministry of Justice

**YES:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

**References:**

Ministry of Justice

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

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

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

**YES** | NO

**Comments:**

Article 14 of the Common Rules against Corruption recommend the introduction of independent monitoring in respect of the funding of political parties and electoral campaigns. In Ukraine, this recommendation has been only in relation of electoral campaigns monitored by relatively independent bodies, i.e., by the Central Election Commission (in the national elections) and the relevant territorial election commissions (in local elections).

**References:**

Common Rules Against Corruption

Ministry of Justice

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

**Comments:**

On Nov. 27, 2003, the parliament amended a number of legislative acts of Ukraine due to the introduction of state funding of political parties. Among other, a new section was introduced also into the Law on Political Parties alongside with a number of other provisions related to the state funding of political parties.

Paragraph 91 of Section II of the 2008 State Budget Law of Dec. 28, 2007, canceled the provisions that were introduced into the Law on Political Parties on Nov. 27, 2003. On May 22, 2008 the Constitutional Court recognized Paragraph 91 of Section II of the 2008 State Budget Law unconstitutional, which restituted the validity of the Law on Political Parties.

According to Article 17-1 of the Law on Political Parties, state funding is provided to political parties in two forms:

- 1) funding of the charter activities of political parties which, is not related to their participation in elections to the public authorities and local self-governance bodies; and
- 2) reimbursement of the expenses incurred by political parties, including those that were part of election blocs, due to the funding of their election campaigns for the regular and special parliamentary elections. The right to the state funding is given to those political parties that manage to overcome the 3 percent election threshold either independently or within election blocs. The same applies to the state funding provided for participation in elections. Thus, according to the Law on Political Parties, state funding is provided to those political parties that are represented in the parliament on the results of the most recent elections.

**References:**

State Committee for Financial Monitoring in Ukraine

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

**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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

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## 22. Are the regulations governing the political financing of parties effective?

4

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

**Comments:**

PACE Recommendation 1516 (2001), the Venice Commission Guidelines on the Funding of Political Parties, and Committee of Ministers' Recommendation Rec(2003) to member states on common rules against corruption in the funding of political parties and electoral campaigns suggest introducing state funding of political parties in order to prevent dependence of political parties on private donors. According to the Law on Amendments to Certain Legislative Acts of Ukraine Due to the Introduction of State Funding of Political Parties in Ukraine, of Nov. 27, 2007, the state funding of the charter activities of political parties should have begun on Jan. 1, 2007, while starting with 2006, political parties should have begun receiving refunds for their election campaign expenses. The Law on the 2007 State Budget, however, suspended the validity of those provisions of the Law on Political Parties in Ukraine that concerned the state funding of the charter activities of political parties in 2007. The 2008 State Budget Law with amendments to certain legislative acts of Ukraine excluded all provisions that envisaged the state funding of the charter activities of political parties, refunding of the election campaign expenditures incurred by political parties from the state budget, and introduction of the oversight in the relevant area from the Law on Parliamentary Elections (Article 98) and the Law on Political Parties in Ukraine.

In such a way, political parties have been put into complete dependence on private finance. Even though in May 2008 the relevant provisions of the 2008 State Budget Law were recognized unconstitutional, no state funding of the charter activities of political parties began. This means that the above recommendations issued by PACE, the Venice Commission, and the Committee of Ministers with regard to the advisable introduction of the state funding of political parties are actually not fulfilled.

**References:**

PACE Recommendation 1516 (2001),  
 Venice Commission Guidelines on the Funding of Political Parties,  
 Committee of Ministers' Recommendation Rec(2003),  
 Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

**Comments:**

According to PACE Recommendation 1516 (2001) and the Guidelines, the state funding should enable new parties to appear on the political arena and compete with more stable parties under fair conditions. The Guidelines recommend that the mechanisms

of state funding be used to ensure equal possibilities for the new and the existing political parties. For this purpose, the finance should be provided to those parties that represent the majority of the voters and nominate their candidates for the elections.

Article 17-3 of the Law on Political Parties in Ukraine stipulates that state funding shall be provided only to those parties that have overcome the threshold established for the parliamentary elections. This approach to the provision of state funding is discriminatory in relation to the new parties which get a considerable support from the voters in the national elections but fail to overcome the election barrier. To this end, the Law on Political Parties in Ukraine should envisage provision of state funding to the political parties which, even though having failed to overcome the established threshold, manage to get a certain percentage of votes in their support (e.g. 1 percent less than the election threshold).

The provision on restriction of the total amount of funds provided from the State Budget to fund a political party and on limitation of the total refunds that can be issued from the State Budget to cover the expenses related to the election campaign generally meets the European standards and does not need to be revised.

#### References:

PACE Recommendation 1516 (2001),  
Venice Commission Guidelines on the Funding of Political Parties,  
Committee of Ministers' Recommendation Rec(2003),  
Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

#### Comments:

Election laws do not define the purposes for which the money from the election funds can be used. Normally, the legislation would just stipulate the principle whereby election campaign can be funded exclusively from the election funds of the election subjects. At the same time, the laws do not define the types of activities that can be used to incline voters to vote for or against a certain candidate or political party (the types of election campaign and related activities). The relevant purposes are defined only by the resolutions of the Central Election Commission, which establish the forms of reports on the arrival and use of election funds money.

Such legislative indeterminacy is one of the reasons of shadow election funding, as the expenses that are not directly attributed to the expenses that can be funded from election funds are covered from other than election funds sources. Therefore, the election laws should establish a clear list of the purposes for which election funds can be used. In addition to the expenses that shall be reflected in the reports on the arrival and use of election funds money envisaged for the presidential and parliamentary elections, the list of allowed expenses should also include the salaries (political party activists, trainers etc) under employment or civil law agreements.

The CEC and TECs have enough possibilities to oversee the cash flow on the accounts of election funds held by the subjects of election processes in the real time (by checking and registering the files sent from the banks where the election fund accounts are open, as well as by getting the weekly details on the election fund accounts), which allows oversight authorities supervising the funding of electoral campaigns to fully check the completeness and reliability of the information reflected in the reports. However, the CEC and TECs have no proper access to the information on the expenses made by political parties not from the election funds, but from their own accounts while preparing to the elections. This problem can be solved (a) either by prohibiting election subjects and their local organizations to make any expenses from their current accounts after the election fund accounts are open and until the ballot day; or (b) by granting the CEC and TECs access to the information on the cash flow on the current accounts of political parties in the period between the opening of election fund accounts and until the ballot day.

**References:**

Interviews with government officials, Ministry of Justice, Kiev, August 3

**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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Article 10 of the Common Rules against Corruption sets that states should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate. The election laws require records only of those expenses that are done from the election funds of candidates, political parties and their blocs in the national elections, and elections funds of local political party or bloc organizations in the local elections.

At the same time, the practice shows that political parties start funding of their election campaign expenses long before the nomination and registration of their candidates (and consequently before the accounts of election funds are opened, as the funds begin to form upon the registration of election subjects), in particular as soon as the relevant national or local elections are announced, and even sometimes a few months before the official beginning of the election process. Such expenses used for the elections are done outside the election funds. With this approach, the scope of the election campaign expenses indicated in the reports on the arrival and use of election funds money make only part of the total expenses of political parties in their election campaigns.

That is why, in addition to the obligation to submit reports on the inflow and use of election funds money, political parties and their local organizations should be required to submit reports on all expenses done from their current accounts before the official beginning of the election process. Should candidates for any elections be nominated by an election bloc, the bodies exercising oversight of funding of electoral campaigns (the Central Election Commission (CEC) in the case of national elections and territorial election commissions (TEC) in the local elections) should receive a consolidated report on the expenses of the political parties (or local political party organizations for the local elections) which have formed the relevant election bloc for the period between the date when the electoral process began and the day when the account of the election fund was opened.

As, unlike with the expenses from the accounts of election funds, neither the CEC, nor TECs have enough possibilities to check the reliability and completeness of the records of expenses made in the period after the beginning of the election process and until the opening of the election fund accounts, it would be advisable to add a provision to the Ukrainian legislation that have been adopted by many European countries: financial statements on the expenses done by political parties in the period between the beginning of the election process and the opening of the election fund accounts shall be submitted to the CEC (for national elections) or TECs (for local elections) together with the relevant opinion of an independent auditor.

#### References:

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, thought limited in effectiveness, is still fair in its application of power.

**25:**

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

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

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

#### Comments:

Nowadays, the system of law enforcement is absolutely poor. This norms exist in law, but not in practice.

Liability for violation of the rules established to fund participation of political parties is set by a number of legislative acts, in particular the election laws, the Criminal Code, and the Code of Administrative Infringements.

Article 19 of the Political Parties Law establishes the following sanctions for the violation of the Ukrainian legislation by political parties:

- 1) warning on exclusion of illegal activities; and
- 2) prohibition of a political party.

The warning is issued in the form of a writ in the cases when the actions performed by a political party do entail any liability.

Article 21 of the same Law envisages that a political party may be prohibited if it violates any requirement of the law on the establishment and activities of the political parties, and the Justice Ministry files a relevant request with the court to prohibit such political party.

In addition to the above two sanctions which may be applied to political parties for any violations of the Ukrainian law, the Law on Political Parties establishes a number of sanctions for breaking the rules set for the use of state funds provided to finance the charter activities of political parties. The state funding of a political party may be terminated if a court, on the presentation of the Ministry of Justice establishes that the relevant state funds have been used for other than charter activities purposes, for examples for funding the expenses related to the participation of the political party in the elections (Article 17-7 of the Law on Political Parties). State funding can also be temporarily suspended (Article 17 of the Law on Political Parties) if a political party fails to submit to the official national mass media by April 1 of the year following the one under report a statement on the use of state funds provided to finance the charter activities of the political party. The decision to suspend state funding is taken by the Ministry of Justice. The funding is resumed in the quarter following the one in which a political party has published the relevant report as required.

A number of factions are also established by the taxation legislation. If a political party funds its activities from prohibited sources or should it violate any other legislative requirements, including those set by the Law on Corporate Profit Taxation, the local tax

inspection office may decide to exclude such political party from the Non-Profit Organization Register, and thus the political party will be deprived of its non-profit status and will have to tax the corporate profit tax and other taxes and mandatory charges.

**References:**

State committee for financial monitoring  
<http://www.sdfm.gov.ua/articles.php>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

**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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with CSO or NGO representatives

**100:** Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party 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.

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23. Are the regulations governing the political financing of individual candidates effective?

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits.

**References:**

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits.

**References:**

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

This never happens.

**References:**

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Oversight of funding of the political parties' participation in the national elections is exercised by CEC. Under Article 53 of the Parliamentary Election Law, CEC and the bank that keeps the relevant election fund shall oversee the receipt, accounting, and use of the means from such election fund. CEC shall also supervise observation by the election participants of the prohibition to use any another assets to finance their campaigning that those offered by their election fund and the State Budget of Ukraine. The same norms can be found in the Law on Presidential

Elections (Article 25 (Part 2, Paragraph 10, and Article 43 (Part 10), while territorial election commission perform the same functions in the local elections in relation to the election funds of local political party organizations and candidates in one-seat constituencies (Section 12 of the Law on Local Elections).

The election laws do not establish directly the procedure for the CEC (in the national elections) and the TECs (in local elections) to oversee the funding of the election campaign. The main role in ensuring that the relevant prohibitions are observed is put on the election participants which, should any facts of illegal funding come to their knowledge, may address themselves to CEC (national elections) or a TEC (local elections) with complaints about the violation of the election legislation in accordance with the procedure established by the relevant laws on elections. If it is established that the facts are correct, election commissions may apply sanctions (announce a warning, cancel registration etc).

The oversight mechanisms are specified in more detail in the Procedure for the Oversight, Accounting, and Use of the Election Fund Resources by the Election Participants approved by joint resolutions of CEC, the National Bank of Ukraine and the order of the Ministry of Transport. The current procedure for the cooperation between CEC and the relevant banks enables CEC to exercise active on-going supervision of all transactions on the election fund accounts (banks are obliged to provide CEC on a daily basis by noon with the information on the relevant transactions in the form of coded files; in addition, banks provide CEC with the statements on such accounts every week).

**References:**

Central Election Committee (CEC)

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

**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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with government officials, Ministry of Justice, Kiev, August 3

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

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## 24. Can citizens access records related to the financing of political parties?

6

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

The Laws on Civil Associations and on Political Parties envisaged a number of mechanisms aiming to ensure transparency of funding of the political parties' charter activities. According to Article 22 of the Law on Civil Associations, political parties shall publish their budgets for the general public. The Law, however, does not describe the method and terms for the publication of such budgets or their form.

Article 26 of the same Law requires that, on the basis of financial declarations, the Holos Ukrayiny newspaper publish the lists of individuals or entities whose donations to political parties exceed the level established by the parliament. However, the form of the tax records prepared by political parties (just like other non-governmental organizations) does not envisage mentioning information on the individuals or entities that provide financial support to political parties.

In addition, the parliament has established neither the size for the contributions that would require disclosure of the information on the donors, nor the list of information to be disclosed. This means that the above provision of Article 26 of the Civil Associations Law is just declarative. The same Article sets that a special parliamentary committee shall consider the financial records of political parties and report their findings at a plenary session of the parliament. No such commission has been set up so far, i.e. the relevant provision of Article 26 does not work in practice.

Article 17 of the Law on Political Parties obliges political parties to publish on an annual basis in a national mass medium their financial statements on incomes and expenses, property statements, and the reports on the use of the state funds provided to finance their charter activities. The dates and the procedure for the publication of the first two reports are not established by the legislation. The Law also does not require that political parties notify the Ministry of Justice of the fact that they have published the above statements. The state funds report shall be provided for publication in an official national printed medium no later than by April 1 of the year following the one when state funds were provided. The relevant mass medium shall public such report within 15 days upon its receipt.

Article 42 (Part 14) of the Law on Presidential Elections sets that the information on the size of election funds and financial statements on their use shall be published by the CEC in the Holos Ukrayiny and Uriadovi Kurier newspapers no later than on the 18th day after the ballot. The Law on Parliamentary Elections does oblige the CEC to publish statements of political parties and blocs on the receipt of resources by their election funds.

According to Article 86 (Part 16) of the Law on Local Elections, the territorial election commissions shall publish the financial statements on the receipt and use of resources of the election funds of the local political party organizations in the local media within five days upon their receipt.

Article 13 of the Common Rules against Corruption recommends that states should require political parties to present the accounts regularly and at least annually to an independent authority, and also to make such accounts public. The Law on Political Parties in Ukraine does not require that political parties take initiative to submit their income and expenses statements, property statements, and statements on the use of the state funds to the MoJ, which can get such statements only upon its request. The Law on Political Parties in Ukraine requires that political parties annually publish statements on their incomes and expenses, a property statement, and a report on the use of state funds provided to finance their charter activities. At the same time, the Law sets no deadline for the publication of such documents (except for the report on the state funds which shall be published before April 1 of the year following the one under report), just like it does not require political parties to notify the MoJ of the publication of such statements, which makes it more complicated to supervise the observation of the relevant requirements of the Law. It is demonstrative that in 2007 only eight political parties (according to the official MoJ website) took the initiative to notify the MoJ on the publication of their income-expense statements and property statements. The authors of this study have not found any signs

of the above documents on the websites of any of the registered political party, excluding Yabluko (and even that report is for 2004). It should also be noted that the Law on Political Parties in Ukraine does not establish proportionate sanctions for the failure to publish the financial statements: according to Article 19 of the Law on Political Parties in Ukraine, only one of two sanctions can be applied: a warning on the avoidance of unlawful actions or prohibition of a party.

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC), 2008

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

Prepared by experts of the Agency for Legislative Initiatives:

Denis Kovryzhenko

Ihor Kohut

Oleksandr Syniooky

Angela Yevgenieva

Olena Chebanenko

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

**75:**

**50:** Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, citizens do not have access to the financial records of political parties

According to the law, a political party shall have a monthly financial report covering incomes and expenditures and a report on its property carried by a central government-run periodical, but in practice citizens have no access to the financial records of political parties.

At the same time the procedure for the Ministry of Justice to exercise its oversight powers is not established clearly enough by the Law on Political Parties in Ukraine. Article 18 of this Law entitled the Ministry of Justice to require that political parties provide the necessary documents and explanations, while political parties are supposed to provide the MoJ with such documents and explanations.

Likewise, no oversight procedure is also offered by the MoJ Regulation (approved by the CMU Resolution No. 1577 of Nov. 14, 2006).

**References:**

State Committee of Financial Monitoring

<http://www.sdfm.gov.ua/documents.php>

[http://parlament.org.ua/docs/uploads/doc/UPAC\\_Funding\\_of\\_political\\_parties\\_eng.pdf](http://parlament.org.ua/docs/uploads/doc/UPAC_Funding_of_political_parties_eng.pdf)

Support to Good Governance: Project against Corruption in Ukraine (UPAC), 2008

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Denis Kovryzhenko  
Ihor Kohut  
Oleksandr Syniooky  
Angela Yevgenieva  
Olena Chebanenko

**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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

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

**References:**

Interview with NGO representative Vadim Karasev, Kiev, August 4

**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.

24d. In practice, the publicly available records of political parties' finances are of high quality.

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

**Comments:**

According to the Venice Commission Guidelines for Financing Political Parties, election accounting documents shall be submitted to the relevant authority in charge of the election oversight, e.g. Central Election Commission (CEC), within a rational term after the elections and published. At the same time, not all election laws require publication of the election financial reports.

For example, the Law on Parliamentary Elections does not envisage such publication at all. The CEC does not do that on its own initiative, and as a result the information on the inflow and use of election funds by political parties and blocs that have participated in the recent regular and early parliamentary elections (in 2006 and 2007) is not generally accessible. Also the forms of the relevant financial statements that are approved by the CEC for the relevant elections do not require disclosing information on the individuals that make donations to the election funds. Such statements just provide information on the value of funds transferred by the election subject to its election fund, the value of funds transferred to the election fund by a political party/bloc (or their local organizations) that has nominated a candidate in the presidential or local elections, as well as the value of funds transferred to the election fund by all individuals.

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC)

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

**100:** Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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## 25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC)

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

**100:** Individual candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Individual 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:** Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC)

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

**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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC)

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

**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.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

**References:**

Support to Good Governance: Project against Corruption in Ukraine (UPAC)

FUNDING OF POLITICAL PARTIES AND ELECTORAL CAMPAIGNS IN UKRAINE: PROPOSALS FOR FURTHER REFORMS

**100:** Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

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Category III. Government Accountability

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III-1. <sup>46</sup>Executive Accountability

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

63

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with Levchenko Katerina, representative of the Ministry of Interior, Kiev, August, 21

**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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

**References:**

Law On Judicature

On the Status of Judges, Dec. 15, 1992

**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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**References:**

Interview with independent experts, Kiev, August 2009

**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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

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

#### Comments:

The media provide the number cases of different violations of legislation . There are cases of violating the Law of Ukraine On Fight against Corruption.

For example, head of Skvyra Rayon State Administration of Kyiv Oblast violated paragraph 0 of part 2 of Article 1 of the Law of Ukraine On Fight against Corruption in the part of illegal receiving by person authorized to perform state functions, in connection with performing such functions, of material benefits, services, benefits or other privileges, including receiving or obtaining objects through purchasing them at price (tariff), which is significantly lower than their actual (real) price, which constitutes a ground for termination of civil service, of which Kyiv Oblast State Administration was informed for purpose of taking corresponding response measures.

The most often are cases of violations of legislation on civil service and labor legislation, which are connected with personnel issues.

For example, numerous violations were detected on the part of the head of Kostopil Rayon State Administration of Rivne oblast as regards effective legislation (in particular, ungrounded mass dismissal of civil servants, workers in the sphere of education and health). Materials of the said inspection were forwarded to the General Prosecutor s Office of Ukraine, Main Department for Fight against Organized Crime of the Ministry of Interior Affairs of Ukraine and Main Control and Audit Department of Ukraine for taking corresponding response measures.

#### References:

Interviews with representatives of the Ministry of Family and Youth, Kiev, August 20  
main department of the Civil service in Ukraine  
<http://www.guds.gov.ua/control/en/publish/article>

**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.

28a. 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 is very complicate.

**Article 105**

The President of Ukraine enjoys the right of immunity during the term of authority.

" Persons guilty of offending the honor and dignity of the President of Ukraine are brought to responsibility on the basis of the law.

" The title of President of Ukraine is protected by law and is reserved for the President for life, unless the President of Ukraine has been removed from office by the procedure of impeachment.

**Article 111**

" The President of Ukraine may be removed from office by the Verkhovna Rada of Ukraine by the procedure of impeachment, in the event that he or she commits state treason or other crime.

" The issue of the removal of the President of Ukraine from office by the procedure of impeachment is initiated by the majority of the constitutional composition of the Verkhovna Rada of Ukraine.

" To conduct the investigation, the Verkhovna Rada of Ukraine establishes a special temporary investigatory commission whose composition includes a special procurator and special investigators.

" The conclusions and proposals of the temporary investigatory commission are considered at a meeting of the Verkhovna Rada of Ukraine.

" For cause, the Verkhovna Rada of Ukraine, by no less than two-thirds of its constitutional composition, adopts a decision on the accusation of the President of Ukraine.

" The decision on the removal of the President of Ukraine from office by the procedure of impeachment is adopted by the Verkhovna Rada of Ukraine by no less than three-quarters of its constitutional composition, after the review of the case by the Constitutional Court of Ukraine and the receipt of its opinion on the observance of the constitutional procedure of investigation and consideration of the case of impeachment, and the receipt of the opinion of the Supreme Court of Ukraine to the effect that the acts, of which the President of Ukraine is accused, contain elements of state treason or other crime.

**References:**

CONSTITUTION OF UKRAINE, arts. 105, 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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

**Comments:**

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

Article 24

Citizens have equal constitutional rights and freedoms and are equal before the law.

" There shall be no privileges or restrictions based on race, color of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

" Equality of the rights of women and men is ensured: by providing women with opportunities equal to those of men, in public and political, and cultural activity, in obtaining education and in professional training, in work and its remuneration; by special measures for the protection of work and health of women; by establishing pension privileges, by creating conditions that allow women to combine work and motherhood; by legal protection, material and moral support of motherhood and childhood, including the provision of paid leaves and other privileges to pregnant women and mothers.

**References:**

CONSTITUTION OF UKRAINE, art. 24

Law On the Cabinet of Ministers of Ukraine, art.48

**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.

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

38

29a. 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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

**YES** | NO

**Comments:**

All of 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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**Comments:**

The Corruption Prevention Law prohibits public officials from obtaining personal illegal rewards (gifts) unless such gifts correspond to a generally recognized concept of hospitality and the cost of such gifts does not exceed the amount of one tax social benefit (as of 2009, UAH 302.5, or US\$38).

Public officials are considered as follows: members of parliament and officials of state and municipal bodies (a full list of public officials is provided in Article 2 of the Corruption Prevention Law) including officials of other countries (individuals holding positions in a legislative, executive, administrative or judicial body of another state and other individuals who perform state functions for another country including the state body or a state enterprise) and officials of international organizations (employees of international organizations or other individuals authorized to act on behalf of such organizations).

**References:**

In June 2009, Ukraine made a big step in tackling corruption: three new anti-corruption laws were adopted by the Ukraine Parliament and signed by the president.

The laws include the following:

“On Basics in Prevention of and Countermeasures against Corruption,” No. 1506- VI, dated June 11, 2009 (Corruption Prevention Law);

“On Responsibility of Legal Entities for Committing Corruption Offenses,” No. 1507-VI, dated June 11, 2009 (Legal Entities Corruption Law); and

“On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses,” No. 1508-VI, dated June 11, 2009 (Amending Law).

**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.

29d. 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:**

There is no legal regulation dealing with asset disclosure forms of the executive.

**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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

**References:**

There are only restrictions on heads of state and government and ministers entering the private sector when they are appointed to these respective officials positions.

**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.

29f. 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 are no such regulations.

**References:**

Interviews with the chief-of-staff of the National Institute of Strategic Studies, Kiev, August 2009

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

This regulation is new for Ukraine, but in the Ukrainian executive branch legal norms are completely ignored.

**References:**

Interviews with journalist Oleksiy Moldovan, Kiev, August 2009

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

This never happens.

**References:**

Interviews with journalist Oleksiy Moldovan, Kiev, August 2009

**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.

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

44

30a. 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 publicly available 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 "Uriadvoyi Kurrier", within three days of their submission.

**References:**

Law "On Election of the President of Ukraine" Arts. 22, 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.

30b. 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 website of the president of Ukraine  
<http://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.

30c. 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:**

Official website of the president of Ukraine  
<http://www.prident.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.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

All Ukrainian top rank officials have supplemental income from other sources, oftentimes shady.

**References:**

Interviews with journalists of the leading Ukrainian newspaper

**100:** The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

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

YES | NO

**Comments:**

Article 55

Human and citizens' rights and freedoms are protected by the court.

" Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

" Everyone has the right to appeal for the protection of his or her rights to the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine.

" After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant.

" Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

According to the Constitution, state authority in Ukraine is exercised on the principles of its division into legislative, executive and judicial power. The latter is called upon to translate into reality an important part of state authority, justice and compliance with legality, protection of the constitutional rights and freedoms of citizens.

Ukrainian citizens are exercising ever more frequently their constitutional right to judicial protection and to challenge in court the decisions, actions or omission of bodies of state authority, bodies of local self-government, officials and officers, as provided for by Article 55 of the Ukrainian Constitution.

**References:**

Article 55 of the Ukrainian Constitution.

**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.

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

0

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

100 | 75 | 50 | 25 | 0

**Comments:**

The so-called administrative resource" broadly uses all political actors in Ukraine, especially for the benefits of the ruling party.

**References:**

Ukrainian independent newspaper Mirror Weekly  
<http://www.unian.net/ukr/news/news-201116.html>

**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.

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

50

32a. 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 (Parliament) unconstitutional.

### Article 61

Decisions of the Constitutional Court of Ukraine

The Constitutional Court of Ukraine shall adopt decisions upon consideration of cases concerning constitutionality of laws and the other legal acts of the Verkhovna Rada of Ukraine, acts of the president of Ukraine, acts of the Cabinet of Ministers of Ukraine and legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea.

The Constitutional Court of Ukraine may recognize a legal act, in whole or in part, as unconstitutional.

If in the course of consideration of a case upon a constitutional petition or a constitutional appeal there has been revealed non-conformity with the Constitution of Ukraine of legal acts (separate provisions thereof) other than those in which constitutional proceedings are initiated and which have an impact on adopting a decision or providing an opinion on the case, the Constitutional Court of Ukraine shall recognize such legal acts (separate provisions thereof) as 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).

32b. 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.

Examples:

The decision of the Constitutional Court of Ukraine no.1-rp/2009 dated Jan. 13, 2009 in the case upon the constitutional petition of 54 People's Deputies of Ukraine concerning official interpretation of paragraph 13 of Article 20.1.1 of the Law On the Cabinet of Ministers of Ukraine, Articles 52.2, 53.3 and 54.2 of the Budget Code in terms of provisions of Articles 93.1, 96.2 and 116.6 of the Constitution of Ukraine (case on the right of legislative initiative concerning introducing amendments to the law on the State Budget of Ukraine);

The decision of the Constitutional Court of Ukraine No. 15-rp/2009 dated June 23, 2009, in the case upon the constitutional petition of the president of Ukraine concerning conformity with the Constitution of Ukraine (constitutionality) of sub-items 3.5 and

3.6 of Article 3.3 of Final Provisions of the Law On Customs Tariff of Ukraine, and paragraph eight Article 9.2 of the Law On External Economic Activities (case on temporary increment to the effective import duty rates).

**References:**

Constitutional Court of Ukraine

<http://www.ccu.gov.ua/en>

**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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES

NO

**Comments:**

Immunity of judges

According to the current Constitution, judges may not be detained or arrested without the consent of the Verkhovna Rada (Parliament) before being convicted by a court. The Party of the Regions suggests no change to this, while the president's draft only changes the body involved, it becoming the Senate instead. In countries of Western Europe judges do not have such guarantees and there respect for judicial independence is the result of century-long tradition.

In Ukraine, where such respect has not yet become the norm, and the rules of arrest do not fully correspond to European standards, certain additional guarantees of immunity are not redundant. However, the procedure for approaching the Verkhovna Rada and the latter's consideration are drawn out and complicated, as well as there being periods when parliament is not meeting, yet decisions need to be taken swiftly. This makes it possible for a person who has committed a crime while serving as a judge to go into hiding.

It would therefore be advisable for the question of whether a judge may be detained or arrested to be decided not by a political body, but by the High Council of Justice. Or this can be by a higher level court, but with a panel of judges, so as to avoid abuse. In either case there must be the possibility of immediate detention of a judge at the scene of a crime, with the issue of consent for the person's arrest being decided as swiftly as possible.

Article 80

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.

Parliament has discussed the abolition of deputy immunity during the past four years. This issue is a political one and rises only during elections. Such major anti-corruption mottos of the elections to the Verkhovna Rada of the sixth convocation were as follows: abolition of deputy immunity (however, following the legislative procedure, this issue shall be settled not by amendments to the law "On the Status of People's Deputies of Ukraine" but by changes to the Constitution of Ukraine (Article 80)), counteraction to political corruption interpreted by politicians mostly as "disloyalty to voters' interests" and criticism of the current system of deputy privileges and preferences.

**References:**

Constitution of Ukraine, Art. 80

**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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

**YES** | NO

**References:**

Law on Fighting Corruption, Art. 1

**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.

33b. 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 to enter the private sector only for the time when they occupy government positions.

**References:**

Interview with a civil servant

**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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**Comments:**

The Corruption Prevention Law prohibits public officials from obtaining personal illegal rewards (gifts) unless such gifts correspond to a generally recognized concept of hospitality and the cost of such gifts does not exceed the amount of one tax social benefit (as of 2009, UAH 302.5, or US\$38).

**References:**

Law on Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses, No. 1508-VI, dated June 11, 2009 (Amending Law).

**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.

33d. 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:**

Law on Civil Service, Art. 6;  
Law on Fighting Corruption, Art.13

**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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no restriction.

**References:**

Interview with Y. Kharkov, NGO representative, August 2009

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with journalists of leading Ukrainian newspaper, Kiev, August 2009

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

This does not occur.

**References:**

Interviews with government representatives from the Tax Office

**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:** 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.

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

0

34a. 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 an MP, Kiev, August 2009

**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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no such regulation.

**References:**

Interview with an MP, Kiev, August 2009

**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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview with an MP, Kiev, August 2009

**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.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

**References:**

Interview with an MP, Kiev, August 2009

**100:** The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 35. Can citizens access legislative processes and documents?

83

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

**Comments:**

Article 57 of the Constitution of Ukraine provides that the right to know the rights and duties is guaranteed to everyone. Laws and other legal acts, which determine rights and duties of citizens, should be given to the population in the order established by the law. Laws and other legal acts, which determine rights and the duties of the citizens which have been not given of the population in the order, established by the law, are invalid.

The Constitution of Ukraine establishes also that regular reports on incomes and charges of the state budget of Ukraine, and also submitted by the Cabinet of Ministers of Ukraine in the Verhovna Rada (Parliament) of Ukraine, and the report on performance of the state budget of Ukraine necessarily should be disclosed.

In many cases the legislation of Ukraine makes a duty to bodies of the government, institutions of local government to announce other, not the legal information.

So, the Law on 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."

According to the Law on the order of illumination of activity of bodies of the government and institutions of local government in Ukraine by mass media, the information of activity of bodies of the government and institutions of local government can become available to media from these bodies directly or through their information services, or can be collected by workers of media outlets.

For illumination of activity of bodies of the government and institutions of local government, their information services have the

right to use such forms of preparation and announcement of the information:

- Releasing and distributing bulletins (special bulletins), press releases, reviews, information collections, the express information etc.;
- Carrying out press conferences, briefings, organizing interview to heads of bodies of the government and institutions of local government for workers of domestic and foreign mass media;
- Preparing and carrying out radio programs;
- Maintaining publications (statements) in mass media about the heads or other ranking officers of bodies of the government and institutions of local government;
- Creating archives of the information on activity of bodies of the government and institutions of local government;
- Other forms of distributing the official information, which do not contradict the legislation of Ukraine.

**References:**

Constitution of Ukraine from June, 28, 1996, Article 57

Law on Information

Law on the order of illumination of activity of bodies of the government and institutions of local government in Ukraine by mass media

**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.

35b. 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:**

<http://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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

**Comments:**

This is free, via the Internet.

**References:**

<http://pravda.com.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.

## 40 III-3. Judicial Accountability

### 36. Are judges appointed fairly?

67

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | **NO**

**Comments:**

Ukrainian laws, which were drafted rapidly and haphazardly in the 16 years of independence, are often mutually or internally contradictory. Thus, the same case can legally be resolved in different ways by choosing convenient articles from applicable laws. Many judicial branch employees will meddle in the process on behalf of special interests. Such corruption takes on two forms: (1) political influence, exercised through the intimidation of judges, manipulation of court appointments, or the taking of other measures aimed at restricting the court's independence; and (2) bribing judges.

The judiciary is vulnerable to corrupt influences through so-called councils of judges and bodies of judicial self-governance, which have assumed the powers of appointing judges to administrative office. This fact is recognized by prominent figures in the judiciary system. Through a mechanism of telephone justice, government officials, as well as heads of appellate courts, can influence the decisions of judges from lower-level courts. The Prosecutor's Office also has influence over courts and has more than once demonstrated its propensity for indicting judges in the middle of a complicated trial.

The highest governing body for judges is the High Council of Justice, which is in charge of recommending judges for appointment or dismissal. The Council is composed of about 70 justices, the majority of whom are heads of courts. The right to hand in an application for appointment to be considered by the council lies with the head of the Supreme Court. Independent observers point out that the whole system of judiciary appointments is now within the powers of a single person, who is not a nationally elected official. Such a system places excessive power in the hands of one official, which leaves a significant gap with regard to transparency in the judicial system.

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 (Parliament) 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:**

Law on Judicature

Law on the Judiciary, Art.7

Law on the Status of Judges

Jan Neutze Adrian Karatnycky

Corruption, Democracy, and Investment in Ukraine

THE ATLANTIC COUNCIL OF THE UNITED STATES

<http://justus.com.ua/articles/6291.html>

**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.

36b. In practice, professional criteria are followed in selecting 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. And judges to be appointed to the chambers of the Supreme Court are required to have an experience of work as the judges at the relevant high court (no less than three years), or at the relevant high appeal court (no less than five years). There was no evidence that these requirements were ever violated.

**References:**

Law on the Status of Judges, Art. 7

Law on Judiciary, Art. 48

<http://blog.liga.net/user/kurilo/article/2746.aspx>

**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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES

NO

**Comments:**

**Article 85**

The authority of the Verkhovna Rada (Parliament) of Ukraine comprises of :

- " 1) introducing amendments to the Constitution of Ukraine within the limits and by the procedure envisaged by Chapter XIII of this Constitution;
- " 2) designating an All-Ukrainian referendum on issues determined by Article 73 of this Constitution;
- " 3) adopting laws;
- " 4) approving the State Budget of Ukraine and introducing amendments to it; controlling the implementation of the State Budget of Ukraine and adopting decisions in regard to the report on its implementation;
- " 5) determining the principles of domestic and foreign policy;
- " 6) approving national programs of economic, scientific and technical, social, national and cultural development, and the protection of the environment;
- " 7) designating elections of the President of Ukraine within the terms envisaged by this Constitution;
- " 8) hearing annual and special messages of the President of Ukraine on the domestic and foreign situation of Ukraine;
- " 9) declaring war upon the submission of the President of Ukraine and concluding peace, approving the decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine;
- " 10) removing the President of Ukraine from office in accordance with the special procedure (impeachment) established by Article 111 of this Constitution;
- " 11) considering and adopting the decision in regard to the approval of the Program of Activity of the Cabinet of Ministers of Ukraine;
- " 12) giving consent to the appointment of the Prime Minister of Ukraine by the President of Ukraine;
- " 13) exercising control over the activity of the Cabinet of Ministers of Ukraine in accordance with this Constitution;
- " 14) confirming decisions on granting loans and economic aid by Ukraine to foreign states and international organizations and also decisions on Ukraine receiving loans not envisaged by the State Budget of Ukraine from foreign states, banks and international financial organizations, exercising control over their use;
- " 15) appointing or electing to office, dismissing from office, granting consent to the appointment to and the dismissal from office of persons in cases envisaged by this Constitution;
- " 16) appointing to office and dismissing from office the Chairman and other members of the Chamber of Accounting;
- " 17) appointing to office and dismissing from office the Authorized Human Rights Representative of the Verkhovna Rada of Ukraine; hearing his or her annual reports on the situation of the observance and protection of human rights and freedoms in Ukraine;
- " 18) appointing to office and dismissing from office the Chairman of the National Bank of Ukraine on the submission of the President of Ukraine;
- " 19) appointing and dismissing one-half of the composition of the Council of the National Bank of Ukraine;
- " 20) appointing one-half of the composition of the National Council of Ukraine on Television and Radio Broadcasting;
- " 21) appointing to office and terminating the authority of the members of the Central Electoral Commission on the submission of the President of Ukraine;
- " 22) confirming the general structure and numerical strength, and defining the functions of the Armed Forces of Ukraine, the Security Service of Ukraine and other military formations created in accordance with the laws of Ukraine, and also the Ministry of Internal Affairs of Ukraine;
- " 23) approving decisions on providing military assistance to other states, on sending units of the Armed Forces of Ukraine to another state, or on admitting units of armed forces of other states on to the territory of Ukraine;
- " 24) granting consent for the appointment to office and the dismissal from office by the President of Ukraine of the Chairman of the Anti-monopoly Committee of Ukraine, the Chairman of the State Property Fund of Ukraine and the Chairman of the State Committee on Television and Radio Broadcasting of Ukraine;
- " 25) granting consent for the appointment to office by the President of Ukraine of the Procurator General of Ukraine; declaring no confidence in the Procurator General of Ukraine that has the result of his or her resignation from office;
- " 26) appointing one-third of the composition of the Constitutional Court of Ukraine;
- " 27) electing judges for permanent terms;
- " 28) terminating prior to the expiration of the term of authority of the Verkhovna Rada of the Autonomous Republic of Crimea, based on the opinion of the Constitutional Court of Ukraine that the Constitution of Ukraine or the laws of Ukraine have been violated by the Verkhovna Rada of the Autonomous Republic of Crimea; designating special elections to the Verkhovna Rada of the Autonomous Republic of Crimea;

- " 29) establishing and abolishing districts, establishing and altering the boundaries of districts and cities, assigning inhabited localities to the category of cities, naming and renaming inhabited localities and districts;
- " 30) designating regular and special elections to bodies of local self-government;
- " 31) confirming, within two days from the moment of the address by the President of Ukraine, decrees on the introduction of martial law or of a state of emergency in Ukraine or in its particular areas, on total or partial mobilization, and on the announcement of particular areas as zones of an ecological emergency situation;
- " 32) granting consent to the binding character of international treaties of Ukraine within the term established by law, and denouncing international treaties of Ukraine;
- " 33) exercising parliamentary control within the limits determined by this Constitution;
- " 34) adopting decisions on forwarding an inquiry to the President of Ukraine on the demand of a National Deputy of Ukraine, a group of National Deputies or a Committee of the Verkhovna Rada of Ukraine, previously supported by no less than one-third of the constitutional composition of the Verkhovna Rada of Ukraine;
- " 35) appointing to office and dismissing from office the Head of Staff of the Verkhovna Rada of Ukraine; approving the budget of the Verkhovna Rada of Ukraine and the structure of its staff;
- " 36) confirming the list of objects of the right of state property that are not subject to privatization; determining the legal principles for the expropriation of objects of the right of private property.
- " The Verkhovna Rada of Ukraine exercises other powers ascribed to its competence in accordance with the Constitution of Ukraine.

**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 or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

54

37a. 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 or give them to anybody for information except in cases and in order specified by the law" (i.e., when the judge is brought to the investigation by the disciplinary commission for justified charges of misperformance or violation of the law). Judges are immune to prosecution.

**References:**

Law on Judicature

Law on the Status of Judges, Art. 12

Law on the Access to Judgments (came into force on June, 1, 2006)

The Order of the Cabinet of Ukraine from May 25, 2006 # 740 «About conducting the Uniform state registry of judgments». Law on the order of illumination of activity of bodies of the government and institutions of local government in Ukraine mass media

**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).

37b. 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 judgments» guarantees to everyone the right of access to judgments in the order determined by the Law.

Courts quite often return claims lodged without grounds, while judges procrastinate with investigating cases and hand down rulings outside what can be called a reasonable timeframe.

No clear mechanism has been drawn up for establishing a court's liability for procrastinating with examining cases, or for judges' liability for not carrying out their duties in a qualified manner.

**References:**

Human Rights in Ukraine, 2008.

Report by Human Rights Organizations/

Editors: Y.Zakharov, I.Rapp, V.Yavorsky / Ukrainian Helsinki Human Rights Union.

Kharkiv: Prava Ludyny, 2008, 256 p. ISBN 978-966-8919-47-3.

**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.

37c. 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 the Prosecutor's Office, the Prosecutor General and subordinate prosecutors conduct the surveillance of observance or non-observance of the application of the law.

According to the legislation in force, the Supreme Court of Ukraine comprises the following structure: Judicial Chamber on civil cases; Judicial Chamber on criminal cases; Judicial Chamber on administrative cases; Judicial Chamber on economic cases; Military Collegium; Presidency, Plenary; Council of Judges of Ukraine. The members of Judicial Collegiums are ratified by the Plenary of the Supreme Court of Ukraine from among judges of SCU. The Chairman of the Supreme Court of Ukraine in cases of need has the right by his order to enable judges of one Collegium on approval of cases of another Collegium.

The Supreme Court of Ukraine rendering justice on the basis of supremacy of law guarantees protection of human and citizens' rights and freedoms, rights and legal interests of juridical persons, interests of society and state ensured by the Constitution of Ukraine.

#### High Council of Justice

The current makeup of this body is not in line with European standards. The European Charter on the Statute for Judges demands that at least half the members be elected by their colleagues.

At present, only four of the 20 members representing the judges' corps (the head of the Supreme Court and three members) are elected by a congress of judges. Two members are also appointed by the president. Under the present Constitution, even if the members of the High Council of Justice are mainly appointed from judges, this will not eliminate the problem of politicization.

This problem would be further exacerbated if the Council were given the authority to appoint and dismiss judges. Therefore amendments to the Constitution need to review not only the jurisdiction of this body, but also its makeup. This is pointed out in the Conceptual Principles for further court reform from the VII Congress of Judges (the Conceptual Principles).

#### Court structure

The Conceptual Principles propose a three-tier system: local courts, appellate courts and the Supreme Court.

At present due to varying interpretations of constitutional principles, the judicial system remains incomplete. There is a three-tier system of courts for criminal and civil cases (local courts, appellate courts and the Supreme Court), but for economic and administrative proceedings a four-tier system is in place, with additional high courts. Yet, the number of stages in all types of court proceedings is identical, and in civil and criminal cases the Supreme Court is empowered to consider its own judgments, this violating the principle that nobody can be the judge in their own case.

There remains a problem with the Supreme Court being overloaded with cassation appeals against the rulings of ordinary courts in civil cases. Even extraordinary measures involving the handing over of cassation appeals received before Jan. 1, 2007, to general jurisdiction appellate courts did not rectify the situation, with the load on the Supreme Court having not changed significantly.

Two solutions are possible. One would be, as suggested in the Conceptual Principles, to create a three-tier system, removing high specialized courts. Yet, if the Supreme Court becomes the only cassation level, the right to cassation appeal would be palpably restricted. Justice in the majority of cases would end with the courts of appeal. However, considering the large number of miscarriages of justice, even with this restriction of the right of cassation appeal, the Supreme Court would still be overloaded. Then it would be necessary to increase the already large number of Supreme Court judges (at present 95).

The second option would be to create high courts for civil and criminal jurisdiction which could carry out the function of cassation level. This would ensure the right of cassation appeal, and mean that the Supreme Court could fully devote its time and energies to its main function, ensuring the same application of the law through reviewing cases where the courts of cassation level in situation situations gave different interpretations of the law.

The procedure for appointing chairpersons of courts and their deputies is an issue around which there has been much political struggle in recent times. At present, if you have influence on the chairperson of the court, you can influence the results of any case.

This issue has not yet been regulated either by the Constitution, with the exception of the Supreme and Constitutional Courts, or by law. Both the president's draft and the amendments suggested by the Party of the Regions propose that the chairpersons of courts and their deputies should be elected by the judges of the particular court.

This variant, as opposed to the present situation when the chairpersons of courts and their deputies are appointed by the Council of Judges, would make it possible to avoid subordination and centralization in the judicial system. It would at the same time be vital towards reducing the powers of the said judges in order to reduce pressure or other unlawful influence on judges.

The progressive ideas in the plans proposed are: constitutional consolidation of the right to a fair trial; introduction of indefinite appointment of judges with the minimizing of political influences; strengthening of the mechanisms for judges' liability with the creation of a Disciplinary Commission of Judges; ensuring that no less than half the members of the High Council of Justice are representatives of the judges' corps; clear definition of the role of each tier in the system of courts with the prohibition on combining at one tier functions of different levels in one case; the appointment of chairpersons of courts by the judges of that court.

What would jeopardize judges' independence are the proposals that the public elect judges and to allow political bodies to retain their powers regarding the formation of the judges' corps, and providing consent for the detention and arrest of judges.

#### References:

Law on Prosecutor' Office  
Supreme Court

The Supreme Court of Ukraine operates in accordance with the Constitution of Ukraine, the Law of Ukraine On Judicial System of Ukraine; Laws of Ukraine; Administrative, Criminal, Civil Codes of Ukraine and also Decrees of the President of Ukraine High Council of Justice

Abridged from an article by Ihor Koliushko and Roman Kuybida from the Center for Political and Legal Reform published at <http://pravda.com.ua/news/2009/8/7/99507.htm>

**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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES

NO

**Comments:**

Article 131

The High Council of Justice operates in Ukraine, whose competence comprises:

- " 1) forwarding submissions on the appointment of judges to office or on their dismissal from office;
  - " 2) adopting decisions in regard to the violation by judges and procurators of the requirements concerning incompatibility;
  - " 3) exercising disciplinary procedure in regard to judges of the Supreme Court of Ukraine and judges of high specialized courts, and the consideration of complaints regarding decisions on bringing to disciplinary liability judges of courts of appeal and local courts, and also procurators.
- " The High Council of Justice consists of twenty members. The Verkhovna Rada [Parliament] of Ukraine, the President of Ukraine, the Congress of Judges of Ukraine, the Congress of Advocates of Ukraine, and the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions, each appoint three members to the High Council of Justice, and the All-Ukrainian Conference of Employees of the Prosecutor's Office appoint two members of the High Council of Justice.
- " The Chairman of the Supreme Court of Ukraine, the Minister of Justice of Ukraine and the Procurator General of Ukraine are ex officio members of the High Council of Justice.

Article 127

- " Justice is administered by professional judges and, in cases determined by law, people's assessors and jurors.
- " Professional judges shall not belong to political parties and trade unions, take part in any political activity, hold a representative mandate, occupy any other paid positions, perform other remunerated work except scholarly, teaching and creative activity.
- " A citizen of Ukraine, not younger than the age of 25, who has a higher legal education and has work experience in the sphere of law for no less than three years, has resided in Ukraine for no less than 10 years and has command of the state language, may be recommended for the office of judge by the Qualification Commission of Judges.
- " Persons with professional training in issues of jurisdiction of specialized courts may be judges of these courts. These judges administer justice only as members of a collegium of judges.
- " Additional requirements for certain categories of judges in terms of experience, age and their professional level are established by law.
- " Protection of the professional interests of judges is exercised by the procedure established by law.

**References:**

The Constitution of Ukraine from June, 28, 1996.

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

<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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

<http://www.nrcu.gov.ua/index.php?id=51>

**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.

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

29

38a. 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 on 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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

### References:

Laws:

“On Responsibility of Legal Entities for Committing Corruption Offenses,” No. 1507-VI, dated June 11, 2009 (Legal Entities Corruption Law); and

“On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses,” No. 1508-VI, dated June 11, 2009 (Amending Law).

**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.

38c. 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:**

National legislation

**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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

**References:**

There are no restrictions.

**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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

**References:**

There are no restrictions.

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a new law addressing this, but it is not effective.

**References:**

Interviews with journalists

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

This never happens.

**References:**

Interviews with government officials from the National Institute for Strategic Studies, Kiev, August 2009

**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:** 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.

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

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

**Comments:**

Publishing asset disclosure records of high state officials is provided for by the law. Some (not all) ministers publish this information in the governmental newspaper "Uriadovyi kurier". There is no such obligation for members of the judiciary.

**References:**

Law of Civil Servants

**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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

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

**Comments:**

Citizens have this possibility only via independent journalist investigations.

**References:**

Interviews with journalists

**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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with journalists

**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.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with journalists

**100:** The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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## III-4. Budget Processes

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### 40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

YES | NO

**References:**

Budget Code

Law on the State Budget of Ukraine for the Year 2009

Refinancing of Banks' Open Budget Index 2008

<http://openbudgetindex.org/files/PressReleaseRussian1.pdf>

**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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**References:**

The Budget Process in Ukraine Must Be More Effective  
A Publication of the International Center for Policy Studies, #19, June 1, 1999  
[http://www.icps.com.ua/doc/nl\\_eng\\_19990601\\_0019.pdf](http://www.icps.com.ua/doc/nl_eng_19990601_0019.pdf)

Open Budgets. Transform Lives. The Open Budget Survey 2008  
Open Budget Index 2008  
<http://openbudgetindex.org/files/PressReleaseRussian1.pdf>

**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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

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

**Comments:**

The budget process is under political pressure.

**References:**

The Budget Process in Ukraine Must Be More Effective  
A Publication of the International Center for Policy Studies, #19, June 1, 1999  
[http://www.icps.com.ua/doc/nl\\_eng\\_19990601\\_0019.pdf](http://www.icps.com.ua/doc/nl_eng_19990601_0019.pdf)

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Open Budget Index 2008  
<http://openbudgetindex.org/files/PressReleaseRussian1.pdf>

**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.

## 41. Can citizens access the national budgetary process?

25

41a. 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:

Ukraine Open Budget Index Score was set at 55 percent. This shows that the government provides the public with some, albeit incomplete, information on the central government's budget and financial activities during the course of the budget year. This makes it difficult for citizens to hold government accountable for its management of the public's money.

### References:

Open Budgets.Transform Lives. The Open Budget Survey 2008

**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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

### References:

Open Budget Index 2008

<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2437&hd=1>

**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.

41c. In practice, citizens can access itemized budget allocations.

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

**Comments:**

In Ukraine, the proposal provides some information to the public, meaning citizens have a general, albeit incomplete, picture of the government's plans for taxing and spending for the upcoming year. Moreover, it is difficult to track spending, revenue collection and borrowing during the year. Although in-year reports of revenue collections are released, Ukraine does not publish detailed in-year expenditure reports or a mid-year review. Publishing these documents would greatly strengthen public accountability, since they provide updates on how the budget is being implemented during the year.

It is also difficult to assess budget performance in Ukraine once the budget year is over. A year-end report is produced, allowing comparisons between what was budgeted and what was actually spent and collected, but it lacks some important details. Ukraine makes its audit report public in a timely manner, but it does not provide much information on whether the audit report's recommendations are successfully implemented.

Access to the highly detailed budget information needed to understand the government's progress in undertaking a specific project or activity remains somewhat limited. This is despite the fact that Ukraine has codified the right to access government information into law, through the Budget Code.

**References:**

Open Budget Index 2008

**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.

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### 43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**References:**

UNDP, Blue Ribbon Committee

**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.

43b. 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:**

Interview with Yaroslav Zhalilo, deputy director of the National Institute for Strategic Studies, Kiev, August 2009

**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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

**References:**

Interview with an MP, Kiev, Aug. 18, 2009

**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.

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

100

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

**YES** | NO

**Comments:**

The SAI maintains formal mechanisms of communication with the public to receive complaints and suggestions to assist it in determining its audit program.

**References:**

Ukraine's Supreme Audit Institution (SAI)

**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).

## IV-1. Civil Service Regulations

28

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

### References:

Law on Civil Service;

Main Department of the Civil Service of Ukraine  
<http://www.guds.gov.ua/control/en/publish/article>

**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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

### Comments:

Article 12. Restrictions concerning civil service employment.

The following persons cannot be chosen as civil servants to the state body apparatus:

When proclaimed to be incapable in accordance with the established procedure;  
Having a criminal record that is incompatible with holding up a civil service rank;  
Subordinated directly when employed to the civil service to individuals that are close relatives or relatives in-law;  
Other cases determined by the Ukrainian Laws

Article 15. Appointment to the civil service.

Appointments shall be made on competitive basis as per article 25 of this Law, except when otherwise stipulated by the Ukrainian Laws.

The appointment procedures are governed by the Regulations adopted by the Cabinet of Ministers of Ukraine. Information on civil service vacancies shall be published and promulgated by media at least one month prior to the contest. It is forbidden to demand from applicants the information and documents that are not strictly foreseen by legislation.

The president of Ukraine, the head of the Verkhovna Rada of Ukraine, members of the government, heads of local state administrations have the right to select and appoint their deputies, heads of the press service, consultants and secretaries as per table of organization and the category corresponding to rank (patronage service). Civil service employment terms are determined by the relevant authorities.

**References:**

Law on Civil Service, Arts. 12, 15

**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.

44c. 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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

**YES** | NO

**Comments:**

Commitment by the person empowered to implement functions of the state of any corruption acts that are mentioned in Article 1 of this Law, if it does not contain corpus delicti, results in administrative responsibility in a form of penalty from 25 to 50 minimum personal tax-free incomes and dismissal from the post or other removal from the implementation of the functions of the state. Such persons shall not hold posts in state bodies during three years starting from the day of their dismissal. Commitment of corruption acts, envisaged by this Law, by a people's deputy of Ukraine, a deputy of the Supreme Council of the Autonomous Republic of Crimea, by a deputy or a head of local council of people's deputies results in administrative responsibility in a form of penalty from 25 to 50 minimum personal tax-free incomes and early termination of deputy authorities or dismissal from the elective post. Decision about consent for bringing to administrative responsibility for commitment of corruption acts and early termination of deputy authorities or dismissal from the elective post is adopted by the respective Council at the plenary session. The procedure for bringing a people's deputy of Ukraine to responsibility in the above cases is determined by the Law of Ukraine On Status of People's Deputy of Ukraine. Such persons shall not be nominated for deputies or for elective posts in state bodies during five years starting from the day of termination of deputy authorities or dismissal from the post and shall not hold posts in state bodies and their staff during three years starting from the day of termination of deputy authorities or dismissal from the post.

Articles 8-11 of the Law are devoted to responsibility for:

- violation of special restrictions that are set for the persons empowered to implement the functions of the state;
- violation of conditions of financial control;
- non-taking measures regarding the fight against corruption;
- deliberate non-execution of duties regarding the fight against corruption.

**References:**

Law on the fight against corruption, Oct. 5, 1995, Art. 7

**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 or if the ban is not a lifetime ban.

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## 45. Is the law governing the administration and civil service effective?

31

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

After the 2005 presidential elections, 18.000 civil servants were removed due to their political orientation.

Zerkalo Nedeli / Politics 20 (599) 27 May 2 June Tymofiy MOTRENKO: No matter which coalition forms the government, there must be no new staff shakeups” Author: Inna VEDERNIKOVA

**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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**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 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:**

Interviews with Ludmila Kulik – civil servant in the Lharkov regional administration

**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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

**Comments:**

After three years in the job of president's chief of staff, Victor Baloha quits and accuses his ex-boss of corruption and nepotism." Baloha's accusations of underlined the ace that he may hold (kompromat, or compromising materials) on Yushchenko's administration. At a press conference on May 21, he declined to publicly release what arsenal he may hold. But some political pundits say his knowledge could prove valuable in the upcoming presidential elections, possibly enough to form political alliances.

**References:**

ForUm.Ua, May 22, 2009, 12:40  
<http://en.for-ua.com/blog/2009/05/22/124023.html>

**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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

The Main Civil Service Department has 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 pro-active move towards a citizen-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 pro-active communication strategy.

**References:**

Interviews with government official Koviasina Galina, Chief of staff of the NISS

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servant bonuses are awarded according the the law. Top level civil servants receive significant bonuses.

### Article 33. Payment for Labor

Civil servants shall receive payment for labor to provide independent performance of official authorities; assist state bodies with competent and experienced staff, stimulate their diligent and initiative work. Salaries of civil servants shall consist of basic payments, bonuses, flat rate additions for ranks, additions for length of service and other supplements. Basic payments are assigned depending on the complexity and responsibility level of performed official authorities. Flat rate additions for rank depend on the rank of the civil servant.

Supplements for the length of service are assigned monthly as percentage of basic payment, taking into account flat rate additions for rank and depending on the length of service, specifically:

more than 3 years: 10%;

" more than 5 years: 15%;

" more than 10 years: 20%;

" more than 15 years: 25%;

" more than 20 years: 30%;

" more than 25 years: 40%.

Civil servants can be paid supplements for high achievements, for especially important work, for filling in for other employees and other supplements, and for providing aid in solving everyday social problems.

Conditions of labor payment, size of basic payments, additional flat rates, supplements and aid are determined by the Cabinet of Ministers of Ukraine.

Salary funds of civil servants are raised at the expense of the state budget and other finance sources determined by regulations on State Executive Bodies that are adopted by decrees of the president of Ukraine and resolutions of the Cabinet of Ministers of Ukraine (Paragraph 8, article 33 in the wording of the Law #96/96-VR dated on March 22, 1996). Budget reductions cannot be the ground for cutting basic payments, supplements and financing of other guarantees, bonuses and compensations envisaged by this Law.

### References:

Law on Civil Service

Interviews with government officials

**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.

45f. 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 drafted but until this time has not been adopted. The principal objective of this new law is to bring Ukraine in harmony with EU standards. However, the problem lies not so much in the law but in the way it is implemented.

**References:**

Interviews with government officials

**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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with government officials

**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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with government officials

**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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with government officials

**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. Some bans are only temporary.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

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## 46. Are there regulations addressing conflicts of interest for civil servants?

33

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

**Comments:**

Article 13: Civil Servants' Tax Returns

Applicants for positions of civil servants categories 3-7 as per article 25 of this Law have to submit tax returns and documents testifying to liabilities, including liabilities abroad concerning themselves and their dependents.

Claimants to positions of civil servants of categories 1-2 as per article 25 of this Law have to submit the information about the movable and immovable properties owned by them and their families, plus bank accounts and securities.

This information is submitted annually.  
Procedure of presentation, storage and use of this information is adopted by the Cabinet of Ministers of Ukraine.

**References:**

Law on Civil Service, Dec. 26, 1993,, # 3723-XII, last revised on Dec. 28, 2005.

**YES:** A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. 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 sketchy 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.

Article 16. Restrictions Concerned with the Civil Service Employment.

The civil servant has no right to perform actions envisaged by the articles 1 and 5 of the Ukrainian Law On Fight against Corruption (356/95-VR). (Paragraph 1, article 16 in the wording of the Law #358/95-VR, Oct. 5, 1995).

Civil servants have no right to take part in strikes and to perform other actions that prevent their normal activity.

**References:**

Law on Civil Service  
Constitution of Ukraine  
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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

**Comments:**

There are no such restrictions.

**References:**

Law on Civil Service

**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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

**YES** | NO

**Comments:**

The Corruption Prevention Law prohibits public officials from obtaining personal illegal rewards (gifts) unless such gifts correspond to a generally recognized concept of hospitality and the cost of such gifts does not exceed the amount of one tax social benefit (as of 2009, UAH 302.5= US\$38).

**References:**

In June, 2009 Ukraine made a big step in tackling corruption: three new anti-corruption laws were adopted by the Ukrainian Parliament and signed by the president.

The laws include the following:

"On Basics in Prevention of and Countermeasures against Corruption," No. 1506-VI, June 11, 2009 (Corruption Prevention Law);

"On Responsibility of Legal Entities for Committing Corruption Offenses," No. 1507-VI, June 11, 2009 (Legal Entities Corruption Law); and

"On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses," No. 1508-VI, June 11, 2009

(Amending Law).

**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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

**References:**

There are regulations.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

There are no regulations.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

There are no regulations.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with representatives of Humanitarian Initiative Kharkov, August 20

**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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

This never happens.

**References:**

Interviews with government officials, Kiev, August 19

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service 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:** Civil service 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.

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## 47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. 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, Arts. 22, 29  
Law on Civil Service (# 3724-XII ( 3724-12 ) on Dec. 16, 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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

### Comments:

For most civil servants, this information is not available.

**References:**

Interviews with the head of the NISS staff, Kiev, August 19

**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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

For most civil servants, this information is not available.

**References:**

Interviews with the head of the NISS staff, Kiev, August 19

**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.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

When asked about income declaration, of prime-minister Tymoshenko replied that it is published on her personal website. It should be mentioned that as of Thursday, 3 PM, that is three hours after the conference was over, the income declaration had not still appeared on Tymoshenko's web-page.

As it has been reported before, the Ukrainian prime-minister was reluctant to publish her income declaration for a long period of time. Her 2008 income was 386,000 hryvnias (US\$48,250). According to her income declaration, the only source of her income was her salary.

At the same time, her husband Oleksander Tymoshenko, earned in 2008 2.8 million hryvnias (US\$350,000). He is also the owner of a 52 square meter flat, a garage and other premises, 255 square meters in total.

**References:**

Ukrayinska Pravda

<http://www2.pravda.com.ua/en/news/2005/7/28/711.htm>

<http://www.unian.net/ukr/news/news-311319.html>

**100:** The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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## IV-2. Whistle-blowing Measures

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48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

6

48a. 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 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:**

There is no direct reference concerning civil servants who report corruption in the Ukrainian legislation. Whistle-blowing is known in Ukraine rather 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.

48b. 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:**

Interviews with Kharkov NGO representative Oleksiy Soldatenko, August 2009

**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.

48c. 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:**

Report: Corruption Assessment: Ukraine”, USAID, Kiev, 2009

**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.

48d. 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.

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50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Every governmental institution is obligated to have mechanisms to collect and respond to citizens' complaints. In addition, almost every governmental agency recently has introduced telephone and web-based hot-lines. 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 in all provinces and report a mounting number of complaints. It is too early to say if this new initiative is helping to improve the situation.

**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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with journalist Oleksiy Moldovan, Kiev, August 2009

**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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

This is not applicable.

**References:**

Interviews with journalist Oleksiy Moldovan

**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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

This is not applicable.

**References:**

Interviews with journalists Oleksiy Moldovan, Kiev, August 2009

**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.

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49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. 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

**Comments:**

The Organized Crime and Corruption Combating Committee prepared the bill, 'On Prevention of Corruption and Counteraction Principles'. The Committee also deliberated on the Bill 'On Anti-corruption Agency of Ukraine' (Reg. No.1378). According to this Bill, the Anti-Corruption Agency of Ukraine is a State Central Law-enforcement special-purpose body, which organizes and carries out systematic counteraction to corruption among the authorities and state governance bodies and those crimes related to corruption which present a significant social danger to the vital interests of the state and its citizens; activates lawful rights and interests of natural persons and legal entities; and responds to the consequences of actions of corruption. The Anti-Corruption Agency shall be established by The Cabinet of Ministers of Ukraine within The Ministry of Internal Affairs, shall report to the president of Ukraine, and will be subject to control by The Verkhovna Rada of Ukraine.

**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.

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## IV-3.<sup>2</sup> Procurement

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### 51. Is the public procurement process effective?

63

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**Comments:**

According to this law, relatives of participants or their representatives cannot be members of tendering committees, or be experts on specific procurement procedures.

**References:**

Law On Procurements of Goods, Works, and Services For Public Funds" (2000), Art.12

**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.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**Comments:**

The Procurement Law creates a 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 on 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:**

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. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, conflict-of-interest regulations do not exist.

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 non-profit 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:**

Law On Procurements of Goods, Works, and Services For Public Funds" (2000), Art.12

Confederation of Employers of Ukraine

<http://www.conf.eu.org/en/socialdialogue/socialinsurancefunds/804.html>

**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.

51d. 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 disclosures by officials. There is no regulation concerning their spending habits.

**References:**

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.

51e. In law, major procurements require competitive bidding.

**YES** | NO

**Comments:**

In law, all procurements for public funds for the amount of 2,000 euros (US\$2,914) and more require competitive bidding. The law "On State Procurements" establishes a clear procedure of tendering.

**References:**

Law On Procurement of Goods, Works and Services For Public Funds", Art.1

**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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**Comments:**

There is no strict formal regulation on sole sourcing in the Ukrainian legislation.

**References:**

Interview with an 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.

51g. 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", Arts. 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.

51h. 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.

51i. 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 in case 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, designed to prevent convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

51j. 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 accusation of any company and prohibition from participation in future tender bids. The system of prohibition is ineffective and there are no records of such prohibition.

**References:**

Ukrainain Public Procurements  
<https://tender.me.gov.ua/EDZFrontOffice/menu/en/>

Interview with Zhalilo Y, expert from The 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.

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## 52. Can citizens access the public procurement process?

38

52a. 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 media.  
See <https://tender.me.gov.ua/EDZFrontOffice/menu/en/>

### 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.

52b. 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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with an economic expert from a 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.

52d. 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:**

Interviews with an economic expert from a tendering committee

**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.

52e. In practice, major public procurements are effectively advertised.

**Comments:**

Concerns about corruption are more likely to stem from policy weaknesses and 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 of 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.sprotiv.info/files/porivnalna\\_tablicya.doc](http://www.sprotiv.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.

52f. In practice, citizens can access the results of major public procurement bids.

**References:**

Interviews with economic expert Zhalilo Yaroslav, National Institute of Strategic Studies

**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.

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## IV-4. Privatization

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### 53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

**Comments:**

In Ukraine, the privatization process is mainly regulated by the laws of Ukraine and the legal acts of the State Property Fund. The basic laws governing the process are the Laws on the Privatization of State Property (the Privatization Law”), on Privatization of Securities and on the Privatization of Small-Sized State Companies (Small Privatization) adopted in 1992. These laws determine what can be privatized, who can be parties to the privatization process and the privatization procedure to be applied.

The Privatization Law identifies the following three groups of state-owned property that are subject to privatization: (i) shares in the capital of business companies and other entities; (ii) unfinished constructions and mothballed developments; and (iii) certain individual items of property or “integrated property complexes” (defined as being a group of assets sufficient to conduct a separate business activity) of state-owned companies. This Law also effectively excludes from privatization state property that is defined as being of ‘national importance’ (the principal examples of such property are listed in Table 1). Based on these criteria, a list of particular companies and property that are excluded from privatization is adopted and, from time to time, modified by the Parliament of Ukraine (the Verhovna Rada).

The Privatization Law provides a limited number of restrictions on who can be the purchaser of state property in a privatization. It prohibits from participation in privatizations: (i) legal entities more than 25 percent owned by the state; (ii) state government bodies; and (iii) employees of state privatization bodies.

Ukrainian law does not provide for any express restrictions on the participation of foreign persons or entities in privatizations. However, there are a number of statutory limitations on the foreign ownership of, or investment in, the capital of certain entities that may effectively limit foreign involvement in a privatization, as described in Table 2. In principle, pursuant to the Partnership and Cooperation Agreement between Ukraine and the European Community, the application of many of these limitations to EU based companies is to be eliminated.

The Ukrainian Parliament has adopted in its first reading a new law on the State Privatization Program for 2008-2012. The vote garnered the support of the coalition’s 227 MPs.

The absence of such a law was the main argument used by the president to suspend privatizations, so this is good news for all the suspended large privatizations in Ukraine — including the sales of the fertilizer maker Odesa Portside Plant, Ukrtelecom < UTEL UZ USD0.18 Accumulate > and privatizations in the power sector. Thus the shares of listed companies concerned as well as related companies in the chemicals sector should react POSITIVELY to the announcement.

**References:**

Law on Privatization of State Property  
Law on Privatization of Securities  
Law on Privatization of Small-Sized State Companies (Small Privatization)

**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.

53b. 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 Zhalilo Yaroslav, expert from the National Institute for Strategic Studies, August 19

**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.

53c. 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 that regulates conflicts of interests.

**References:**

Interview with Zhalilo Yaroslav, expert from the National Institute for Strategic Studies, Kiev, August 19

**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.

---

54. Can citizens access the terms and conditions of privatization bids?

54a. In law, citizens can access privatization regulations.

YES | NO

**Comments:**

Citizens have no access to the regulations of a privatization process.

Privatization methods and procedures differ depending on the entities or other properties to be privatized, as listed in a privatization program.

The privatization program is implemented by the Cabinet of Ministers and the SPF. They typically begin by creating a privatization commission for each company being privatized, which commission prepares the actual privatization plan covering all aspects of the privatization process to be applied. Under the Privatization Law, the impetus for a privatization may come from the SPF, or it may be in response to an application from any foreign or domestic prospective buyer (which may include employees of the company to be privatized).

Currently, a priority is generally being given to 'commercial' tenders for the larger privatizations, where the winner is determined solely on the basis of written sealed submissions by the potential purchasers quoting a price, with the best price winning. In addition to non-commercial and commercial tenders, which are the two principal methods of privatization, the Privatization Law also permits auctions, buyouts and sales through stock exchanges and OTCs (over-the-counter markets) to take place.

The sale of state property in a privatization is documented by a purchase and sale agreement with the SPF, which must be notarized. The agreement ordinarily provides for additional obligations to be imposed on the buyer, usually for defined periods of time, which may include:

criteria for the reconstruction of facilities;

" an obligation not to decrease the number of work places;

" preservation of the production of certain products;

" preservation of certain social infrastructure;

" subsequently making investments in certain amounts; and

" performance of 'mobilization tasks' (measures designed quickly to restructure the company in case of a threat of war, etc. ).

Restrictions may exist on any subsequent sale of property acquired in a privatization, if such sale occurs before any such privatization obligations are performed or expire.

According to Article 27 of the Privatization Law, the purchase and sale agreement may be terminated (including by rescission) or declared invalid by a court decision in case one of the parties fails to timely perform its privatization obligations. This may be used to reverse a privatization even where the obligation stated in the purchase and sale agreement can only be performed by the company and not directly by the one or more shareholders which bought shares in the company's privatization. In such cases, it is essential for the acquiring shareholders to have effective control over the management from the outset.

Ordinarily, purchase and sale agreements concluded in the privatization process provide for payment by the purchaser shortly after the agreement is executed. Article 29 of the Privatization Law contains an important limitation that prevents any extensions of the time for payment and inhibits conditional sales as well. It provides that failure to pay for any privatized property within 60 days from the moment when the purchase and sale agreement was concluded or registered results in annulment of the sale and in fines on the purchaser.

**References:**

Privatization Law

Project of the Law of Ukraine "About the Government Program of Privatization" (2008 – 2012)

**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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

The privatization process is not transparent.

**References:**

Interviews with the deputy director of the National Institute for Strategic Studies

**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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**References:**

Privatization Law

**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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with the deputy director of the 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with the deputy director of the 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.

56. Is the national ombudsman effective?

55

56a. In law, the ombudsman is protected from political interference.

YES | NO

**Comments:**

The office of the Commissioner for Human Rights is an integral element of the constitutional system of protection of human and citizens' rights, which includes primarily the courts, the Ukrainian Parliament Commissioner for Human Rights, and international judicial and other bodies, of which Ukraine is a member or participant.

The Ukrainian Constitution and its derivative Law On the Ukrainian Parliament Commissioner for Human Rights of Dec. 23, 1997, provided for creating a strong model of ombudsman, which is characterized by the following attributes:

§ high constitutional status of the Commissioner for Human Rights, as secured in articles 88, 85 and 101 of the Ukrainian Constitution;

§ independence of the Commissioner from any body of state authority or local self-government and their officials;

§ broad jurisdiction of the Commissioner that extends to bodies of state authority, including courts, as well as to bodies of local self-government and their officials;

§ ample powers for inquiries and inspections, including on his own volition, and for constant monitoring of compliance with human rights and freedoms;

§ right to initiate petitions that are binding for review, along with recommendations on rectifying the detected violations of human rights and freedoms by bodies of state authority, local self-government, NGOs, enterprises, and institutions regardless of their form of ownership, as well as their officers and officials;

§ opportunity of everyone to appeal directly to the Commissioner;

§ flexible and informal procedure and freedom of action in inspection of cases.

The Ukrainian Parliament Commissioner for Human Rights is an example of a parliamentary ombudsman, since he is elected by Parliament (Article 5 of the relevant Law) by secret ballot, thereby ensuring the high status and legitimacy of the office as well as guaranteeing his independence from all branches of state authority, the legislature included. Notably, the Commissioner's term of office does not coincide with the term of legislature of the Ukrainian Parliament (Article 5 of the Law).

Besides, the Commissioner is vested with additional guarantees of independence: bodies of state authority, bodies of local self-government, NGOs, enterprises, institutions and organizations irrespective of their forms of ownership as well as their officials are prohibited from interfering in the activity of the Commissioner, including the prohibition from demanding from the Commissioner any explanations about the essence of the cases under his current or future scrutiny (Article 20 of the Law).

According to the law, the Commissioner's status does not belong to any branch of state power, but is a body sui generis, i.e. unique (of its own kind). The exercise of his mandate in Ukraine under the current circumstances becomes the more complicated, because the Commissioner for Human Rights does not fit into the traditionally existing system of authority. Therefore, at the stage of the institution's development, the Commissioner is inevitably seeking the best possible mechanisms of interaction with the administrative authority while simultaneously retaining his independent status.

**References:**

Law On the Ukrainian Parliament Commissioner for Human Rights

**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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

This is not often the case. According to the law, the Ombudsman is independent, but during last years this position was politicized. In 2007, we had an exuberant debate concerning the election of the ombudsman between two candidates: independent Evgen Zaharov and former ombudsman Nina Karpachova, an MP and a member of ruling party (Party of Regions.)

**References:**

[http://www.ombudsman.kiev.ua/zm\\_05\\_2.htm](http://www.ombudsman.kiev.ua/zm_05_2.htm)

Interview with Nina Karpachova – The Ukrainian Parliament Commissioner for Human Rights, Kiev, Aug. 5, 2009

**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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the law this position is appointed by Verhovna Rada (Parliament).

**References:**

The Ukrainian Parliament Commissioner for Human Rights — the Ukrainian Model of Ombudsman  
[http://www.ombudsman.kiev.ua/de\\_01\\_3.htm](http://www.ombudsman.kiev.ua/de_01_3.htm)

**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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

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

**Comments:**

Now there are five people with legal background who work in the Ombudsman's office. They are experts in human rights issues, while the rest are, by training, economists, journalists, civil servants and technical staff. According to the staff time-table, 235 people should be employed there, but due to a shortage of funding the staff is incomplete.

**References:**

FIRST ANNUAL REPORT OF THE UKRAINIAN PARLIAMENT COMMISSIONER FOR HUMAN RIGHTS  
[http://www.ombudsman.kiev.ua/zm\\_05\\_2.htm](http://www.ombudsman.kiev.ua/zm_05_2.htm)

**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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

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

**References:**

Interview with Nina Karpachova – The Ukrainian Ombudsman  
Kiev, August 5, 2009

**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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

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

**References:**

Interview with Nina Karpachova – The Ukrainian Parliament Commissioner for Human Rights  
Kiev, August 5, 2009

[http://www.ombudsman.kiev.ua/zm\\_05\\_2.htm](http://www.ombudsman.kiev.ua/zm_05_2.htm)

**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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

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

**References:**

THE HISTORICAL AND LEGAL ASPECTS OF development OF HUMAN RIGHTS IN THE WORLD AND IN UKRAINE

[http://www.ombudsman.kiev.ua/de\\_01\\_3.htm](http://www.ombudsman.kiev.ua/de_01_3.htm)

Official website

[http://www.ombudsman.kiev.ua/de\\_01\\_3.htm](http://www.ombudsman.kiev.ua/de_01_3.htm)

**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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nina Karpachova, Ukrainian ombudsman, Kiev, August 5, 2009

**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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nina Karpachova, The Ukrainian Parliament Commissioner for Human Rights, Kiev, August 5, 2009

**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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nina Karpachova – The Ukrainian Parliament Commissioner for Human Rights  
Kiev, August 5, 2009

**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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Nina Karpachova – The Ukrainian Parliament Commissioner for Human Rights  
Kiev, August 5, 2009

**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.

## 57. Can citizens access the reports of the ombudsman?

92

57a. In law, citizens can access reports of the ombudsman(s).

**YES** | NO

### References:

Law On the Ukrainian Parliament Commissioner for Human Rights;

Official website of Ukrainian Ombudsmen

[http://www.ombudsman.kiev.ua/om\\_00.htm](http://www.ombudsman.kiev.ua/om_00.htm)

**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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

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

### References:

Interview with Katerina Levchenko, NGO representative, Kiev, August 5

**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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

This is free.

**References:**

Interview with Katerina Levchenko, NGO representative, Kiev, August 5

**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.

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55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

**Comments:**

On Jan. 15, 1998, the Law On the Ukrainian Parliament Commissioner for Human Rights came into force. On April 14 that year, the Ukrainian Parliament elected the commissioner for Human Rights for the first time in the history of this country.

Article 101

The Authorized Human Rights Representative of the Verkhovna Rada of Ukraine exercises parliamentary control over the observance of constitutional human and citizens' rights and freedoms."

**References:**

Law On the Ukrainian Parliament Commissioner for Human Rights  
Constitution, Art. 101

**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.

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## V-2. Supreme Audit Institution

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### 59. Is the supreme audit institution effective?

75

59a. In law, the supreme audit institution is protected from political interference.

**YES** | NO

**Comments:**

**Article 1. Status of Accounting Chamber**

The Accounting Chamber is a permanent controlling body, which is set up by the Verkhovna Rada (Parliament) of Ukraine, subordinated and responsible to it. The Accounting Chamber operates independently of any other state bodies.

The Accounting Chamber is a legal entity with its own seal having its name and state coat-of-arms depicted on it. The Accounting Chamber is located in the city of Kiev.

**Article 3. Principles of control**

The Accounting Chamber shall execute control on the grounds of legality, planning, objectivity, independence and transparency

**Article 36. Independence and legality of the Accounting Chamber's operations**

The Accounting Chamber acts as an independent controlling body of the Parliament of Ukraine and is guided by the Constitution of Ukraine (254k/96-2p) and Ukrainian laws, functioning and exercising its authority in line with the statute prescribed by this Law.

**References:**

Law on Accounting Chamber

**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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The chairman of the Accounting Chamber has held this position since 1996.

**References:**

Interview with Yaroslav Zhalilo, deputy director of the National Institute of Strategic Studies, Kiev, August 18

**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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine

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

**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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine

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

**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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine

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

**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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine- Annual Reports of the Accounting Chamber  
[http://www.ac-rada.gov.ua/achamber/control/en/publish/category/main?cat\\_id=32832](http://www.ac-rada.gov.ua/achamber/control/en/publish/category/main?cat_id=32832)

**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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Yaroslav Zhalilo, deputy director of the National Institute of Strategic Studies, Kiev, August 18

**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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine

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

**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.

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## 60. Can citizens access reports of the supreme audit institution?

92

60a. In law, citizens can access reports of the audit agency.

YES | NO

**Comments:**

Article 40. Information about activities of the Accounting Chamber

The Accounting Chamber shall regularly publish information about its operations in mass media.

An annual report on operations of the Accounting Chamber to the Parliament must be published.

**References:**

Law on Accounting Chamber

**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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The Accounting Chamber of Ukraine-Activity of the Accounting Chamber  
<http://www.ac-rada.gov.ua/achamber/control/en/publish/>

**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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

This is free.

**References:**

Activity of 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.

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58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

**Comments:**

The Accounting Chamber is a permanent acting body of external state financial control that has been functioning in Ukraine since 1997.

The Constitution of Ukraine adopted by Verkhovna Rada of Ukraine on June 28, 1996, fixed constitutional status of the Accounting Chamber as the body acting on behalf of Verkhovna Rada of Ukraine and executing control over use of the funds of the State Budget of Ukraine. On July 11, 1996, Verkhovna Rada of Ukraine approved the Law on the Accounting Chamber of Verkhovna Rada of Ukraine. On Aug. 19, 1996, the president exercised veto of the approved law. Verkhovna Rada overrode veto in October and the president signed the law.

The Constitution of Ukraine  
ARTICLE 95

The budget system of Ukraine is based on principles of fair and unbiased distribution of social wealth among citizens and local communities.

The Law on the State Budget of Ukraine is the exclusive document that outlines any expenses of the state for social needs, amount and target of these expenses.

The state is searching to have a balanced budget of Ukraine.

Regularly coming statements of revenues and expenditures of the state budget of Ukraine should be promulgated.

ARTICLE 98

The Accounting Chamber shall execute control over revenues and expenditures of the State Budget of Ukraine on behalf of the Verkhovna Rada of Ukraine.

**References:**

Accounting Chamber of Ukraine

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

Law on the Accounting Chamber of Verkhovna Rada of Ukraine

The Constitution of Ukraine

**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.

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89  
V-3. Taxes and Customs

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62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The State Tax administration of Ukraine

<http://www.sta.gov.ua/control/uk/index>

**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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The State Tax Administration of Ukraine

<http://www.sta.gov.ua/control/uk/index>

**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.

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## 65. Is the customs and excise agency effective?

63

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Customs Administration of Ukraine

<http://www.customs.gov.ua/dmsu/control/en/index>

**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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Customs Administration of Ukraine

<http://www.customs.gov.ua/dmsu/control/en/index>

**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.

---

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

**References:**

The State Tax Administration of Ukraine (STAU)  
<http://www.sta.gov.ua/control/uk/index>

**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.

---

63. In practice, are tax laws enforced uniformly and without discrimination?

0

63. 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 arrears 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 state capture by influential business. 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 amounted to about US\$1 billion in 2008, 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/>  
<http://www.kommersant.ua/>

Law on the State Taxation Service, Arts. 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.

---

## 64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

### Comments:

The State Customs Service of Ukraine (SCSU) is a specially authorized central body of executive power in the area of customs practice that was created in 1991 with the mission to direct, co-ordinate, and control the activities of customs authorities, specialized customs institutions and organizations in implementing the laws of Ukraine on customs practice.

Ukrainian Customs is oriented towards the efficient fulfillment of the following basic tasks:

- implement and control over compliance with the legislation of Ukraine on customs;
- protect Ukraine's economic interests;
- secure implementation of obligations prescribed by international agreements on customs practice to which Ukraine is a party;
- assist the defense of intellectual property rights of people involved in foreign economic activity, and other legal entities and natural persons;
- apply, in accordance with the law, tariff and non-tariff regulatory measures upon movement of goods through the customs border of Ukraine;
- implement customs control and customs clearance of goods and vehicles crossing the customs border of Ukraine, and improve the means and forms of such implementation;
- control compliance with the rules of movement of currency values through the customs border of Ukraine;
- implement, in cooperation with other authorized state power bodies, the measures aimed at securing the interest of goods consumers, and at ensuring that participants in foreign economic relations adhere to the state interests on the external market;
- create favorable conditions for speeding up the goods turnover and flow of passengers through the customs border of Ukraine;
- fight against contraband and violations of customs rules;
- develop international cooperation in the area of customs practice;
- compile customs statistics;
- maintain the Ukrainian Classification of Commodities of Foreign Economic Activity;
- verify (ascertain the authenticity of) certificates of origin of goods from Ukraine.

### References:

Customs Administration of Ukraine  
<http://www.customs.gov.ua/dmsu/control/en/index>

**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.

---

## 66. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The entrepreneurs complained about hardships and barriers to successful business. Importers seemed the most concerned, which is understandable, given a deep-rooted corruption in the customs system that has spread into other related services and regulatory authorities. The rank-and-file importers should be concerned, as their company trucks have to queue at border check-points for weeks. At a check-point between Volyn Province [in Ukraine] and Lublin Province in Poland, for example, a line of trucks is five-six kilometers long.”

**References:**

Clouds Above The State Border (Customs Tariffs Concerns)

Authors: Nataliya YATSENKO, Serhii SLEDZ, Volodymyr PISKOVYI, Nina PERSTNEVA, Svitlana KABACHYNSKA, Alla YEREMENKO, Yevhen Hutsul

Zerkalo Nedeli

<http://www.mw.ua/1000/1030/49404/>

**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.

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## V-4. State-Owned Enterprises

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68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

**References:**

State Property Fund of Ukraine

<http://www.spfu.gov.ua/eng/index.php>

**YES:** A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Laws of Ukraine

2658-III 214 12.07.2001

On evaluation of property, property rights and professional evaluation activity in Ukraine

Orders of SPFU

On renewal of the validity of evaluator qualification certificates

# 79 214 13.01.2005

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview with Yaroslav Zhailo, deputy director of the National Institute of Strategic Studies, Kiev, August 18

**100:** The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

State property Fund

<http://www.spfu.gov.ua/eng/index.php>

**100:** When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

State Property Fund

<http://www.spfu.gov.ua/eng/index.php>

**100:** When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

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

**25:**

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

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## 69. Can citizens access the financial records of state-owned companies?

10

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

### Comments:

Only state fiscal organs (such as Tax Administration) have access to the financial information.

### References:

Law on 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.

69b. In practice, the financial records of state-owned companies are regularly updated.

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

### References:

Interview with an expert from the National Institute for Strategic Studies, Kiev, August 19

**100:** State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. 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 an expert from the National Institute for Strategic Studies, Kiev, August 19

**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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

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

**References:**

Interview with an expert from the National Institute for Strategic Studies, Kiev, August 19

**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.

69e. 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:**

Interview with an expert from the National Institute for Strategic Studies, Kiev, August 19

**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.

---

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

**References:**

State Property Fund of Ukraine

<http://www.spfu.gov.ua/eng/index.php>

**YES:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

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## 53 V-5. Business Licensing and Regulation

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### 70. Are business licenses available to all citizens?

81

70a. 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. Failing to comply subjects the enterprise to punishment, and each regulatory function is an occasion for extracting rents.

In the late 1990s, the government 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 on Fundamentals of State Regulatory Policy in the Sphere of Economic Activity (No. 1160-IV of Sept. 11, 2003).

See also:

Presidential decree On Eliminating Obstacles Impeding the Development of Entrepreneurship (No. 79/98 of 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

**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

70b. 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.

70c. 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:**

The Doing Business

<http://www.doingbusiness.org/ExploreEconomies/?economyid=194>

**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.

70d. 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

**References:**

The Doing Business

<http://www.doingbusiness.org/ExploreEconomies/?economyid=194>

**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.

---

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. 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, the Ukraine 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)  
Law 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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

**YES** | NO

**References:**

Law 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.

71c. 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 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  
Law 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.

## 72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. 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:

Interview with a small business representative, Kiev, August 2009

**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.

72b. 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:

Interview with a small business representative, Kiev, August 2009

**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.

72c. 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:**

Interview with a small business representative, Kiev, August 2009

**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.

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Category VI. Anti-Corruption and Rule of Law

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VI-1. <sup>61</sup>Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES

NO

**Comments:**

In Ukraine, the anti-corruption legislation consists of more than 30 regulatory legal acts. This set of legislation can be divided into 3 components:

1. On the international front, there are multilateral and bilateral acts, treaties and agreements ratified by the Parliament;
2. On the domestic front, the national laws; and
3. The presidential orders.

Currently, the anti-corruption strategy in Ukraine is still in a reactive mode. That is to say to combat the consequences of corruption by investigating what had happened but not eradicating the problems at their roots. Meanwhile spontaneous reactions, lack of perseverance, unclear directions are the fundamental problems of the national anti-corruption strategy.

To make the existing anti-corruption legislation meet the international standard, the Parliament of Ukraine ratified the Council of Europe Civil Convention on Corruption, the Council of Europe Criminal Convention on Corruption, and the Additional Protocol to the Criminal Convention on Corruption.

Currently, the Supreme Council of Ukraine is examining a number of draft laws introduced by the president of Ukraine with the aim to strengthen the combating corruption effort. The draft legislation is called "On responsibility of the entity for committing the corruption delicts". It acknowledges the presence of political will in all the strata of the state power to establish a legal regime that is directed towards the further development of democracy, reflecting the government's desire to develop an integral system of measures on combating corruption.

In June 2009, Ukraine made a big step in tackling corruption: three new anti-corruption laws were adopted by the Ukraine Parliament and signed by the president. The laws include the following:  
"On Basics in Prevention of and Countermeasures against Corruption," No. 1506-VI, dated June 11, 2009 (Corruption Prevention Law);  
"On Responsibility of Legal Entities for Committing Corruption Offenses," No. 1507-VI, dated June 11, 2009 (Legal Entities Corruption Law); and  
"On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses," No. 1508-VI, dated June 11, 2009 (Amending Law).

All three laws (collectively, the Anti-corruption Laws) go into effect on Jan. 1, 2010. They are intended to establish the legal and organizational framework for preventing and fighting corruption and minimizing or eliminating the consequences of corruption. The Anti-corruption Laws expand upon these basic principles with respect to certain categories of government employees including judges, members of parliament, individuals holding state and municipal positions, officials of commercial legal entities and other individuals.

The Anti-corruption Laws introduce for the first time in the history of independent Ukraine the responsibility of commercial legal entities for corruption offenses committed by their officials. The Legal Entities Corruption Law was adopted on the basis of the United Nations Convention against Corruption, dated Oct. 31, 2003 (Resolution 58/4).

According to the Legal Entities Corruption Law, a legal entity is accountable for any crime committed on its behalf and in its interests by a manager, founder, participant or other authorized person as stipulated by the following articles (collectively, the Corruption Crimes) of the Criminal Code of Ukraine:

- 209 (Legalization [Laundering] of Income Obtained by Illegal Means), Parts 1 and 2 of Articles 235-4 and 235-5;
- 364 (Abuse of Power or Official Position);
- 365 (Exceeding Authority or Official Position);
- 368 (Receiving a Bribe);
- 369 (Giving a Bribe); and
- 376 (Intervention in the Activity of Court Organs).

The following types of penalties may be handed down to the legal entities:

1. A penalty of 1,000 (UAH 17,000, or US\$2,180) to 15,000 (UAH 225,000, or US\$32,700) nontaxable minimums of an individual's income[1];
2. Prohibition against certain activity. A court may prohibit a legal entity from conducting any business activity stipulated in its charter for a period of three months to three years;
3. Seizure by the state of property and income (or their equivalent) obtained by a legal entity as a result of Corruption Crimes committed by its officials; and
4. Liquidation of a legal entity.

Items 2 and 4 may be applied as the main penalties, and items 1 and 3 may be applied as the main or additional penalties.

Penalization of officials of legal entities for committing Corruption Crimes is stipulated by the Criminal Code and includes (i) a fine and/or (ii) confinement for a term of two to 15 years, with forfeiture of the right to hold certain positions or to perform certain activities for up to three years with or without seizure of property.

#### Prohibition Against Financing State Bodies

The Corruption Prevention Law provides that individuals and legal entities are prohibited from financing state or municipal bodies and may not give them financial and non-financial assistance, perform works for free, provide services, or transfer money and other property other than in cases stipulated by Ukraine's laws and international treaties.

#### Gifts to Public Officials

The Corruption Prevention Law prohibits public officials[2] from obtaining personal illegal rewards (gifts) unless such gifts correspond to a generally recognized concept of hospitality and the cost of such gifts does not exceed the amount of one tax social benefit (as of 2009, UAH 302.5, or US\$38).

#### References:

<http://rada.gov.ua>

<http://president.gov.ua>

Mr. Oleksandr Shynalskyi  
Deputy Prosecutor General of Ukraine

<http://www.icac.org.hk/news/issue32eng/button5.htm>

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

**YES** | NO

#### Comments:

Quantifying bribes and extortion is always difficult because of its very nature — money changing hands in furtive and hidden ways. The problem with fighting corruption is that this fight is often not in the best interest of the political elite, those who actually have the means and levers to fight it, Nesterenko said. (UPAC's project leader)

#### References:

CABINET OF MINISTERS OF UKRAINE ORDER of 200 No.Kyiv

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

Mr. Oleksandr Shynalskyi  
Deputy Prosecutor General of Ukraine  
<http://www.icac.org.hk/news/issue32eng/button5.htm>

Mark Rachkevych, Kyiv Post  
Corruption Plague" – June 25, 21:48l

**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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**Comments:**

Transparency International's 2009 Global Barometer survey estimated that 7 to 10 percent of household disposable incomes go towards paying someone off.

Bribes are essentially extra taxes on firms and individuals, which reduce profits and disposable income and thus demand. They increase the income of the corrupted elite, said Vladimir Nesterenko (head of research for Galt & Taggart Securities.)

**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.

73d. 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 and utmost 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 objects, 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.

Bribes are so widespread and common that many Ukrainians know exactly how the system works. The USAID-funded study found that nearly half of Ukrainians see corruption as more than an every-day part of life: as a justified market mechanism that exists to get things done fast or counter-balance low salaries. Ukrainians face corruption at nearly each step they take, be it in business dealings, education or when they go to the doctor.

Oleksandr Ovcharenko, an IT specialist at a prominent Kiev company, said he paid a total of US\$1,000 to the doctor who was responsible for caring for his wife during her pregnancy all the way through the delivery of their son. He was more concerned about securing quality medical care than demanding free service. The extra payments Ukrainians routinely make to underpaid doctors dispel the myth about the country's free health care system.

The money given in bribes to doctors, university professors and traffic policemen — three common recipients — is money that doesn't go into state coffers. Consequently, that's less public money for improving infrastructure, increasing public-employee salaries or other social uses. A bribe is often spent or saved outside the country, instead of being spent on the purchase of locally-produced goods, or saved in a local bank, which would fuel the country's economy, said Galt & Taggart's Nesterenko.

**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.

73e. In law, bribing a foreign official is illegal.

**YES** | NO

**Comments:**

Foreigners residing in Ukraine are not spared by Ukraine's widespread and institutionalized corruption. Uliana Paliukh hails from North America and is of Ukrainian lineage. She paid a lawyer US\$2,400 to obtain a residence permit without an expiration date in order to avoid the massive bureaucracy and common demands for bribes from state officials.

**References:**

Criminal Code of Ukraine  
Law 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.

73f. In law, using public resources for private gain is illegal.

**YES** | NO

**Comments:**

Nevertheless, Transparency International's study found that 28 percent of Ukrainians see civil servants as most corrupt, followed by lawmakers (21 percent), the judiciary branch (21 percent) and political parties (12 percent).

**References:**

Criminal Code of Ukraine  
Law 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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

**References:**

Criminal Code of Ukraine  
Law 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.

73h. In law, money laundering is illegal.

YES | NO

**Comments:**

Ukrainian Legislation, approved at the end of 2002 in order to fight money laundering, gained positive results: in 2005 FATF ceased monitoring Ukraine.

To prevent money laundering, the Ukrainian Government approved the respective regulatory legal act: Plan of measures to fight money laundering for the year of 2007. This act contains several novelties as compared with the analogous one dated 2006. One of them is the government order regarding financial service market controlling and regulatory bodies to investigate whether such widespread securities as savings (deposit) certificates and bank endorsed bills of exchange can be used for money laundering. Nevertheless, Ukraine is to rely upon more serious attention on the part of European Union for this matter.

**References:**

Criminal Code of Ukraine  
Law 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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**Comments:**

The bill 'On Amendments to Several Legislative Acts on Liability for Corruption Offenses' (Reg. No.0875), envisages a further improvement of Ukrainian Legislation as regards the administrative and criminal liability of persons involved in corruption actions and other offenses related to corruption, in line with the provisions of the UN Convention against Corruption and the Criminal Law

Convention. Amendments are made to The Criminal Code of Ukraine, The Procedural Criminal Code of Ukraine and Administrative Offenses Code of Ukraine, establishing criminal and administrative liability for actions of corruption and deeds related to corruption, and the relevant prosecution procedure.

The bill, 'On the Principles of Prevention and Counteraction to Corruption' (Reg. No 0876) aims at improving Legislation connected with prevention, disclosure and stopping corruption in public and private areas, compensation for damage inflicted by offenses of corruption, Restitution of Rights and lawful interests of natural persons, Legal entities and the State, and regulating International co-operation in the fight against corruption. The bill establishes types of liability for corruption offenses (criminal, administrative, disciplinary and/or civil). It regulates the issues of control over implementation of Laws appertaining to prevention of and counteraction to corruption. Should this bill be passed and take effect, the Law on Combating Corruption will become invalid six months after the publication of the bill.

The bill, 'On Liability of Legal Entities for Committing Corruption Offenses' (Reg. No.0877) creates liability of legal entities for corruption offenses, as required by Clause 26 of the UN Convention against Corruption, and Clause 18 of the Council of Europe Convention on Fighting Corruption. The bill establishes grounds for criminal liability of a legal entity for corruption offenses, the level of penalties for offenses as defined in the bill, and the procedure for the opening of corruption offense cases, their cognizance, and appeals against Court judgments.

**References:**

Criminal Code of Ukraine

Vervovna Rada of Ukraine (Parliament)

The Organized Crime and Corruption Combating Committee in Parliament

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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### 75. Is the anti-corruption agency effective?

17

75a. 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 anti-corruption agencies is performed by the Parliament of Ukraine directly and by the Parliamentary Committee for Fighting Organized Crime and Corruption. The observance of anti-corruption legislation is controlled by the attorney general and his authorized representatives.

**References:**

Law on Fighting Corruption (1995) Arts. 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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

There are too many cases of high-level corruption and crime in Ukraine that political interference stopped cold.

According to the US Embassy's report, the key problems for the investment climate in Ukraine remain the lack of adequate rule of law, a fair and impartial dispute resolution, and inadequate mechanisms and the enforcement of domestic court and international arbitration decisions.

Unsurprisingly, foreign investors continue to express little confidence in the Ukrainian court system, criticizing it for inefficiency, burdensome procedures, unpredictability, corruption, and susceptibility to political interference.

The biggest threat is posed by the corruption in the political sphere. Shadow financing of election campaigns is one of the most common kinds of political corruption. It is in this way that the unlawful lobbying of the interests of financial-industrial groups is ensured. Unlawful use of election funds makes it possible to manipulate the political power with the simultaneous deformation of the process and results of the will of people in favor of the manipulators. The violation of the principles of formation and functioning of the representative power is manifested in the decrease of its legitimacy.

Manifestations of political corruption are noted for being very latent, but this phenomenon is overlooked by official statistics.

**References:**

Kiev Post, July 21

<http://www.kyivpost.com/nation/31315>

US Embassy's report

<http://kiev.usembassy.gov/>

Mr. V.M. Stretovych (POLITICAL CORRUPTION IN UKRAINE),

Chairman of the Parliamentary Committee On Struggle with Organized Crimes and Corruption

[http://www.rada.gov.ua/~k\\_org\\_zloch/diyak%20eng.htm](http://www.rada.gov.ua/~k_org_zloch/diyak%20eng.htm)

**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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The Constitutional Court is currently considering an appeal against the president's decree dismissing Ukraine's democratically elected parliament. Ukraine's President, Viktor Yushchenko, removed from office one of Ukraine's Constitutional Court judges who was reviewing his decree. This raises serious concerns of possible corruption and subjects the Office of the President to allegations that the president's actions were politically motivated. It also raises questions about direct interference in the decision and determination of Ukraine's Constitutional Court.

(Constitutional Court judges are appointed for a nine year term of office and are protected from unfair dismissal by the provisions of Ukraine's Constitution Chapter VIII Articles 126, 127 and Chapter XII.)

**References:**

Ukraine Today. An Independent Political Review

<http://ukrainetoday.blogspot.com/2007/04/political-corruption-in-ukraines.html>

Interview with Y. Zakharov, leader of the Kharkiv Human Rights Organization

**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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

Since 2005, appointments are based ONLY on political considerations.

The composition of the Ukrainian Government remains a major issue with the public. Questions have also arisen as to the principles that were used to form the new cabinet. Some members of the new cabinet competed for several absolutely unrelated ministerial posts. When asked about the principle of professionalism espoused by the members of the governmental team, Prime Minister Yulia Tymoshenko answered this question in her keynote speech in parliament: First comes morality, then professionalism.

However, what moral or team rationale can explain the following concoction: the agrarian sector has been placed in the care of the Socialists, while the economy and finances are the responsibility of market fundamentalists?"

**References:**

<http://www.profession-in-perspective.org.ua>

Ukrainska Pravda

<http://world.pravda.com.ua/en/news/2002/5/10/1308.htm>

**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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

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

**References:**

IDENTIFYING PROBLEM AREAS

Weekly digest Den”

**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.

75f. 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:**

National Institute for Strategic Studies,  
<http://niss.gov.ua>

**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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

Anti-corruption agencies do not submit regular reports to the Parliament. Such reports may be demanded by the Parliament in special cases. The vote of at least 150 MPs is necessary to put the issue on the agenda.

**References:**

Interviews with government officials

**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.

75h. 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:**

Interview with an 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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Anti-corruption agencies initiate investigations according to certain political interests and influences.

**References:**

Ukraine Today. An Independent Political Review

**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.

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## 76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Law on Citizens' Appeals, Art. 20

**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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

**Comments:**

The level of trust in law enforcement agencies is low but the level of cronyism and corruption is high. Therefore, most of citizens are reluctant to complain to anti-corruption agencies because of fear of recrimination.

**References:**

THE ATLANTIC COUNCIL OF THE UNITED STATES  
Corruption, Democracy, and Investment in Ukraine  
Jan Neutze, project director and co-author, and Adrian Karatnycky, co-author

**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.

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74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**Comments:**

General Prosecutor's Office of Ukraine (Independent Agency)

Functions: Responsible for: 1) prosecution and investigation of corruption cases; 2) monitoring and oversight over the legality of the work of individual state agencies in the area of anti-corruption (general oversight function); 3) participation in the work of the Intergovernmental Commission on the Solution to Problems of Fighting Corruption at the NSDC, hereinafter referred to as Intergovernmental Commission.

Security Service of Ukraine (Special Status Law Enforcement Agency)

Functions: Responsible for: 1) investigation of corruption cases; 2) participation in the work of the Intergovernmental Commission.

National Security and Defense Council of Ukraine (NSDC) (Advisory Coordination Body)

Functions: Responsible for: 1) coordination of the governmental activities in the area of anti-corruption; 2) monitoring and oversight over the work of individual state agencies in the area of anti-corruption; 3) monitoring of Ukraine's progress under regional and international initiatives; 4) analyzing trends of corruption in the State and the development of recommendations towards addressing those issues; 5) addressing specific issues of combating corruption through the Intergovernmental Commission where the need is most acute.

Prime Minister of Ukraine/Cabinet of Ministers of Ukraine (Executive Branch)

Functions: Responsible for: 1) execution of State policies in the area of combating corruption; 2) coordinating activities of all Ministries responsible for the specific elements of anti-corruption activities of the State and for control over the implementation of the tasks of each Ministry individually; 3) participation in the work of the Intergovernmental Commission.

Activities undertaken: A Working Group to develop an Action Plan for the implementation of the National Anti-Corruption Strategy is being composed under the leadership of the Ministry of Justice. The State program for the government of Ukraine is being developed to identify the direction of the work for the government of Ukraine over the next 5 years, which will include aspects of the National Anti-Corruption Strategy.

Ministry of Justice of Ukraine (Executive Branch)

Functions: Responsible for: 1) preparation of the legislative drafts in the area of anti-corruption; 2) coordination of the input from the governmental agencies in the area of anti-corruption; 3) presentation and support of the governmental drafts in the parliament; 4) participation in the work of the Intergovernmental Commission.

Activities undertaken: Ministry of Justice prepared the draft strategy on combating corruption and the draft laws submitted in the package by the president. Ministry of Justice representatives were appointed as focal persons for Ukraine's participation in GRECO (Council of Europe's Group of States Against Corruption) and are assisting Ukraine during the review process, which started on Nov. 20, 2006. The Ministry of Justice serves as a liaison for the government of Ukraine to the Council of Europe's institutions and to the UN institutions which deal with anti-corruption issues.

President of Ukraine/Secretariat of the President of Ukraine (Executive Branch)

Functions: Responsible for: 1) defining the general policy in the area of anti-corruption, including the development of anti-corruption concepts, strategies and other state priority documents; 2) coordinating the work of those agencies which report directly to the President and have anti-corruption functions, i.e. Security Service of Ukraine, General Prosecutors Office of Ukraine; 3) signing of international treaties and other instruments which define Ukraine's international commitments in the area of anti-corruption; 4) preparing the anti-corruption legislative drafts to be submitted under the prerogative of the Presidential legislative initiative; and 5) veto power over legislative drafts in the area of anti-corruption.

Kiev, August 5 (Interfax-Ukraine): A group of MPs representing all factions of the Ukrainian parliament have suggested forming a separate central law enforcement authority with a special status, the National Bureau of Anti-corruption Investigation (NBAI). According to the parliament's Website, the respective bill (On a National Bureau of Anti-corruption Investigation of Ukraine) was registered in parliament. The bill sets out the legal basis for the organization and activities of the NBAI. It suggests authorizing the body to access information on the property, incomes and expenses of officials.

According to the document, the organizational structure of the NBAI will be adopted by the Cabinet of Ministers.

The bill suggests putting the body under parliamentary control, but with obligatory reports to the cabinet and the president. Prosecutor General's Office is to monitor the activities of the NBAI.

Apart from that, the total number of the bureau's employees is limited to 1,300 people. It is to be funded from the state budget only.

**References:**

Cabinet of Ministers  
The Organized Crime and Corruption Combating Committee in Parliament  
The National Security and Defense Council  
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.

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47  
VI-3. Rule of Law

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77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

YES | NO

**Comments:**

Article 55 of the Ukrainian Constitution

Human and citizens' rights and freedoms are protected by the court.

" Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.

" Everyone has the right to appeal for the protection of his or her rights to the Authorized Human Rights Representative of the Verkhovna Rada [Parliament] of Ukraine.

" After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant.

" Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

Article 40 of the Ukrainian Constitution provides for the right of everyone 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 or cassation.

Judgments of the Supreme Court cannot be challenged through cassation.

**References:**

Appeal Court of Ukraine

<http://court.gov.ua/> ([http://www.court.gov.ua/court/frame.php?court\\_id=5](http://www.court.gov.ua/court/frame.php?court_id=5))

Constitution of Ukraine, Arts. 40, 55, 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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview with a 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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview with a human rights protection activist

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

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## 78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

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

### Comments:

Key problem: Corruption and the lack of protection of citizens' rights in the justice system

During the process of developing a strategy to address the rule of law challenges set by the president, the ministry identified the key problems of the sector as follows:

Institutional/systemic issues – corruption (Overall lack of transparency and accountability in the justice system provides a fertile breeding ground for corruption, leaving citizens vulnerable to violation of their rights)

Lack of citizens' access to justice

Corrupt, inefficient judicial system

Inefficient court administration

Dependent, engaged judiciary

Low level of enforcement of judicial decisions

Ineffective system of legal aid in criminal cases

Ineffective delivery of legal services:

Poor quality of notary services

Unaccountable advokatura,

Unaccountable system of law enforcement and poor protection of human rights

Unreformed prokuratura

Unreformed system of investigative functions

Lack of procedural justice in the area of criminal law

Underdeveloped legal culture

Soviet-style system of legal education; lack of education in rule of law principles and human rights

Unresponsive system of executive authority

Problems of legislative acts: lack of hierarchy of acts, poor quality of acts received from central bodies of executive authority, low level of adaptation of laws to European standards

Administrative process – lack of coordination in the legislative process, too many instructions ( doruchennya) from the Cabinet of Ministers (48 percent increase in 2005 over 2004), many of which do not concern the competency of the Ministry of Justice

Complicated, non-transparent, poorly accessible registration systems

Loss of supervisory authority by the Ministry of Justice over key sectors of the justice system to the territorial level, to the point where the minister cannot properly exercise political control and set and maintain standards in the sector

Poor and inefficient access to public information (difficulty of public access to official materials, low level and quality of documentation available to the public, poor level of internet access)

High level of crimes requiring incarceration, including of juveniles

Ineffective protection of property rights, especially with respect to rights to immovable property

Of Ukrainians' trust in different government branches, the judiciary ranks at the bottom. Only 10 percent had confidence in the judicial system, according to the MCC survey. The unfairness of the judicial system was viewed as a serious problem by 79.3 percent of respondents. The same survey indicated that 49 percent of Ukrainians perceived the court system as corrupt, followed by the Prosecutor's Office (42.9 percent), and notaries (22.8 percent).

### References:

THE ATLANTIC COUNCIL OF THE UNITED STATES

Report of the Ministry of Justice of Ukraine

**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.

---

## 79. In practice, are judicial decisions enforced by the state?

0

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**Comments:**

The Assessment shows that Ukraine faces problems with enforcement of court decisions.”  
Sometimes decisions of the Constitutional Court are ignored, as are decisions of the European Court of Human Rights.

**References:**

Common Country Assessment for Ukraine, United Nations Country Team  
[http://www.un.org.ua/files/CCA\\_2004\\_en.pdf](http://www.un.org.ua/files/CCA_2004_en.pdf)

**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.

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## 80. Is the judiciary able to act independently?

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

**Comments:**

Article 126

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 [Parliament] of Ukraine, until a verdict of guilty is rendered by a court.

" Judges hold office for permanent terms, except judges of the Constitutional Court of Ukraine, and judges appointed to the office of judge for the first time.

" A judge is dismissed from office by the body that elected or appointed him or her in the event of:

" 1) the expiration of the term for which he or she was elected or appointed;

" 2) the judge's attainment of the age of sixty-five;

" 3) the impossibility to exercise his or her authority for reasons of health;

" 4) the violation by the judge of requirements concerning incompatibility;

" 5) the breach of oath by the judge;

" 6) the entry into legal force of a verdict of guilty against him or her;

" 7) the termination of his or her citizenship;

" 8) the declaration that he or she is missing, or the pronouncement that he or she is dead;

" 9) the submission by the judge of a statement of resignation or of voluntary dismissal from office.

" The authority of the judge terminates in the event of his or her death.

" The State ensures the personal security of judges and their families.

Constitution of Article 149

" Judges of the Constitutional Court of Ukraine are subject to the guarantees of independence and immunity and to the grounds for dismissal from office envisaged by Article 126 of this Constitution, and the requirements concerning incompatibility as determined in Article 127, paragraph two of this Constitution

The constitutional norm stating that "The independence and immunity of judges are guaranteed by the Constitution and the laws of Ukraine. Influencing judges in any manner is prohibited" has not been positively reflected in Ukrainian legislation on the judicial system and the status of judges and provides insufficient guarantees for judicial independence. The laws "On the High Council of Justice", "On the procedure for the election and dismissal of professional judges of the Supreme Court of Ukraine" and current procedural legislation are rated negatively by the overwhelming majority of judges.

**References:**

Constitution of Ukraine, Art. 149

Law on the High Council of Justice

Law on the Status of Judges

Decree of Supreme Court of Ukraine about the Independence of Judges

Supreme Court of Ukraine

<http://www.scourt.gov.ua/clients/vs.nsf/0>

[http://www.ligazakon.ua/news\\_old/ga006885.html](http://www.ligazakon.ua/news_old/ga006885.html)

**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 includes 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.

80b. In practice, national-level judges are protected from political interference.

**Comments:**

The results of the survey "Monitoring of Judicial Independence in Ukraine: 2008" showed that only one fifth of the respondents consider that they have sufficient powers to uphold the authority of judges and respect for the court, and the possibility of having influence on these processes.

General assessment of judicial independence in Ukraine

The results of the study demonstrate dangerous tendencies with infringements of judicial independence, with the institutional independence of the judiciary under constant threat from individual high-ranking public officials and state bodies.

**References:**

Supreme Court of Ukraine

<http://www.scourt.gov.ua/clients/vs.nsf/0/>

<http://www.judges.org.ua>

Ukrainian Helsinki HR Union

Monitoring of Judicial Independence in Ukraine: 2008

<http://helsinki.org.ua/en/index.php?id=1228330337>

**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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**Comments:**

The problems besetting the Ukrainian justice system have been known for a long time: rulings to order, pressure from both within the system and from outside; chronic lack of funding which is compensated by corruption; numerous abuses and irresponsibility from judges; the lack of logic in the distribution of powers between tiers of the judicial system.

Measures against these phenomena are suggested in the amendments to the constitution proposed by Party of the Regions, the new draft constitution put forward by the president, as well as in the Conceptual Principles for further court reform from the VII Congress of Judges.

One of the key issues of constitutional change is the way of forming the judge corps. It has become fashionable among politicians to say that judges should be elected, and even recalled, by the public. People undoubtedly like this. It is this variant which is proposed by the Party of the Regions: judges of all courts would be elected by the relevant communities or at national elections.

The president's draft envisages judges of higher levels being appointed by the Senate (one of the two houses of parliament in the draft), while lower level judges would be appointed by the president. Judges of magistrate courts which should appear for minor cases would be elected by the public.

At present, judges are first appointed by the president for five years, and then receive indefinite tenure from the Verkhovna Rada [Parliament]. Judges of the Constitutional Court are chosen in equal number by the president, the Verkhovna Rada and the Congress of Judges (six each). This mechanism, where the career of a judge depends on the decisions of political bodies, causes considerable dependence on politicians.

However, elections, despite their democratic veneer, would still further politicize the position of judge. They would be forced to become involved in election campaigns, and who would give the most support, if not politicians and businessmen?

Even a magistrate could be of interest to local politicians and businesspeople wanting to strengthen their influence.

The Venice Commission does not recommend election of judges by the public for these reasons. (cf. [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)024-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)024-e.asp) )

The Commission approved the idea in the president's draft that parliament should not take part in the election of lower court judges, but felt that election by the Senate of judges of higher levels would still carry the danger of political rulings.

Therefore, however undemocratic this may sound, parliament and the public should not take part in the formation of a judge corps. The president should only nominally appoint judges on the basis of a competition and after that s/he has no further relation to their career. However, the optimum solution would be for all appointments and dismissals to be carried out by a depoliticized High Council of Justice.

#### Term of office

Opposite alternatives are proposed: the Party of the Regions suggests election every five years, while the president's draft proposes indefinite tenure. The authors state that any appointment for a certain period carries the risk of judges' dependence on those making the relevant decision.

Some politicians say that tenure should be restricted since otherwise judges feel untouchable, and are therefore guilty of abuses much more often than judges appointed for the initial five years. The authors point to figures which do not confirm this. Since the present constitution came into force (1996), 86 judges have been dismissed: 48 during the five-year period, 38 who already had indefinite tenure.

#### Liability and immunity

There is no sense in introducing any new procedure for appointing judges with effective mechanisms for bringing judges to answer.

At present, the constitution provides an exhaustive list of grounds for suspending judges' powers, whereas the Party of the Regions variant says that they can be recalled on the grounds and in accordance with a law which would reduce constitutional safeguards of independence.

The president's plan changes little except that it is the High Council of Justice, forming a Disciplinary Commission, which would bring disciplinary proceedings against judges.

At present this role is carried out, depending on the level of the court, by qualifying commissions and the High Court of Justice. Yet the issue involved is more often than not unrelated to the judges' qualifications, and therefore the idea of creating a Disciplinary Commission can be supported, and is also in line with European standards. The authors believe, however, that such a Disciplinary Commission should be an independent body.

#### References:

Human Rights in Ukraine

<http://www.khpg.org/en/index.php?id=1249736275>

**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.

YES | NO

**References:**

Law on the High Council of Justice  
Law on the Status of Judges

**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.

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## 81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**References:**

Interview with a member of a human rights protection NGO, Kharkiv, 2009

**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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**References:**

Interview with a member of a human rights protection NGO, Kiev, 2009

**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.

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## 82. Do citizens have equal access to the justice system?

61

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

### References:

Interviews with members of the Ministry of Interior

**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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

### References:

Interview with the UNDP representative in Ukraine

**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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

**References:**

Law on 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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with members of the Ministry of Interior

**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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

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

**References:**

Official Fees for Trademarks & Patent  
Registration in Ukraine

[http://www.vulikh.com/tariffs\\_eng.html](http://www.vulikh.com/tariffs_eng.html)

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

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

**References:**

Official Fees for Trademarks & Patent Registration in Ukraine

[http://www.vulikh.com/tariffs\\_eng.html](http://www.vulikh.com/tariffs_eng.html)

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**

Interviews with members of the Ministry of Interior

**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.

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## VI-4. Law Enforcement

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83. Is the law enforcement agency (i.e. the police) effective?

17

83a. 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 are 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 corrupted 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.

**Quotation:**

We see odious figures coming back to responsible positions. We see people who are far from competent in matters of national

security cleansing the SBU staff and recruiting a new team of deputies and chiefs of regional departments. These processes are different in quality but equally detrimental to both the Interior Ministry and the SBU.”

**References:**

Interview with Volodymyr Radchenko, former Security Service chief

Zerkalo nedeli newspaper

**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.

83b. 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 this agency suffers from lack of funding.

**References:**

STATE COMMITTEE FOR FINANCIAL MONITORING OF UKRAINE

[http://www.sdfm.gov.ua/print.php?what=doc&id=124\)=en&page=1](http://www.sdfm.gov.ua/print.php?what=doc&id=124)=en&page=1)

NATIONAL SECURITY STRATEGY OF UKRAINE

<http://www.mfa.gov.ua/usa/en/publication/print/8387.htm>

Donbass.Ua

<http://donbass.ua/news/ukraine/2009/02/18/nachalnik-krymskoi-milicii-parlamentu-avtonomii-ne-dadite-deneg-budem-grabit.html>

**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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Since 2005, political parties set political tasks before law enforcers and create conditions for fulfilling such tasks.

As the political crisis in the country is aggravating, there is an attempt to use military forces and law enforcement bodies for individual interests.

**References:**

Interview with Volodymyr Radchenko, former Security Service chief

Zerkalo nedeli newspaper

**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.

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## 84. Can law enforcement officials be held accountable for their actions?

67

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**Comments:**

There is an online facility 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 of regional and local departments of the Ministry of Interior to enable citizens to report about undue behavior of the militia personnel.

**References:**

Law on the Militia

Official website 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

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the report, some of the key problems of law enforcement are ineffective delivery of legal services, poor quality of notary services and unaccountable advokatura.

**References:**

Report of the Ministry of Justice

<http://www.minjust.gov.ua/0/6971>

**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.

84c. 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 (Law 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 Jan. 1 2006, Ukraine became a full member of the Group of States against Corruption (GRECO). Public monitoring in the fight against corruption was introduced. Hot lines 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.

In June 2009, Ukraine made a big step in tackling corruption: three new anti-corruption laws were adopted by the Ukraine Parliament and signed by the president. The laws include the following:  
"On Basics in Prevention of and Countermeasures against Corruption," No. 1506-VI, dated June 11, 2009 (Corruption Prevention Law);  
"On Responsibility of Legal Entities for Committing Corruption Offenses," No. 1507-VI, dated June 11, 2009 (Legal Entities Corruption Law); and  
"On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Committing Corruption Offenses," No. 1508-VI, dated June 11, 2009 (Amending Law).  
All three laws (collectively, the Anti-corruption Laws) go into effect on Jan. 1, 2010. They are intended to establish the legal and organizational framework for preventing and fighting corruption and minimizing or eliminating the consequences of corruption. The Anti-corruption Laws expand upon these basic principles with respect to certain categories of government employees including judges, members of parliament, individuals holding state and municipal positions, officials of commercial legal entities and other individuals.

Newly Introduced Administrative and Criminal Corruption Offenses Amending Law stipulates terms by which the administrative penalty may be applied and introduces a new chapter "15-B" ("Administrative Corruption Offenses") to the Code on Administrative Offenses of Ukraine. Among the new articles on administrative corruption offenses are Obtaining Illegal Reward, (Administrative) Bribery, Illegal Assistance to Individuals or Legal Entities, and Illegally Obtaining a Gift. In addition, the Corruption Prevention Law introduces Part VII-A, "Crimes in the Sphere of Official Activity in Legal Entities of Private Law and Professional Activity Related to Provision of Public Services," to the Criminal Code of Ukraine. New articles describing the responsibility of officials of commercial legal entities include Abuse of Position, Exceeding Authority, Commercial Bribery, Illegal Enrichment, Proposing or Giving a Bribe, Abuse of Influence and others.

**References:**

Civil Law Convention on Corruption (Law No. 2476)

See also:

The recent assessments of the judicial system by J.T. Asscher and S.V. Konnov: Ukraine Justice System Assessment Report (TACIS, June 2005);

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

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

**References:**

Website of the Ministry of the Interior of Ukraine  
<http://mvs.gov.ua/>

**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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

**YES** | NO

**Comments:**

The Law on Militia does not exclude law enforcement officials from criminal proceedings. It is not said directly, but the officials, according to this law, can be accountable in the case of infringing the law or unfairly performing their duties.

**References:**

Law on Militia, Art. 25

**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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

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

**Comments:**

Law enforcement officials, especially of medium and lower ranks, may be under scrutiny or inspections for personnel and internal security departments.

**References:**

Interview with Natalian Gutorova, head of Simferopol Law Shcool, Simpheropol, August 2009

**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.

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