

Overall Score:

64 - Weak

Legal Framework Score:

83 - Strong

Actual Implementation Score:

48 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶⁸Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

Freedom of assembly is guaranteed by Article 36 of the Constitution of Ukraine (1996). According to the Law of Ukraine, "On the Association of Citizens" (1992), citizens have the right and freedom to organize NGOs to protect their interests, monitor activities of the government, request public information, petition, protest and participate in decision-making processes on any level. There is no classification of NGOs in Ukrainian law, thus no specific barriers for anti-corruption or good governance NGOs exist.

References:

Constitution of Ukraine (1996), Article 36.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

The Law of Ukraine, "On Associations of Citizens" (1992), Preamble, Article 20.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

There are no limitations on sources of funding for NGOs in Ukraine. The NGOs are free to accept funding for domestic or international donors. Such limitations exist for political parties only.

References:

The Law of Ukraine, "On Associations of Citizens" (1992), Preamble, Article 21.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

The sources of funding should be made public through regular reports of the NGO and the reports should be made public. According to Article 6 of the Law of Ukraine, "On Associations of Citizens" (1992), "The association of citizens should regularly publish their key documents, information about management, sources of funding and expenditures." The procedure is explained in more details on the website of the Ministry of Justice, which also emphasizes the necessity of providing such information.

References:

The Law of Ukraine, "On Associations of Citizens" (1992), Article 6.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>

Ministry of Justice of Ukraine: <http://www.minjust.gov.ua/0/24339>

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

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

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

33

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

According to Ukrainian Center for Independent Political Research, only 50 percent of civic initiatives are successfully transformed into NGOs because of complex registration requirements. The law allows new NGOs to be legalized either by informing the Ministry of Justice (or corresponding units of local government if the NGO is to be local), or by undergoing a process of formal registration.

The registration process involves filing an application, submitting the minutes of the establishment meeting, information on leadership, local branches, if any, and documents confirming the payment of a registration fee. The government must provide an answer on the application within a month. Rejections may be appealed in court.

The procedure is extremely lengthy both in case of registration of an all-Ukrainian organization or when the group is already registered but needs to make some changes, such as its name or symbol.

Nevertheless, no specific obstacles have been documented involving the creation of NGOs fighting corruption. On the contrary, since corruption is an important topic, the government encourages the creation of such NGOs so they can cooperate with the government in this regard. The main problems appear with NGOs involved with monitoring or critical evaluation of government activities. Many civil society organizations in Ukraine report pressure and intimidation by security service, law enforcement agencies, and local government. Thus the climate for operation of NGOs is changing in a negative way.

References:

Ukrainian Center for Independent Political Research, "How to Organize a Government Policy for Civil Society" (2011).
<http://www.ucipr.kiev.ua/files/books/NGO2011.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Interview with representatives of international organization, held Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Anti-corruption NGOs have a history of involvement in political and policy making processes. This is especially true during election campaigns when the government is supporting such NGOs in order to use them for public relations purposes or as a way to pressure political opponents. At the same time, the NGOs concentrating on anti-corruption activities have difficulty making a real impact in Ukraine. Few NGOs have enough expertise and resources to actively participate in the political process. Secondly, the government is not generally interested in hearing the NGOs, even when the NGOs are invited to participate.

Civil society was unable to provide input on many important reforms involving the pension system, tax and election legislation and other matters. The Organization for Economic Cooperation and Development has documented several cases of government impeding NGOs. For instance, one Ukrainian NGO could not take part in the hearing of the tender committee on procurement of drugs because the committee officials gave wrong information about the time of the hearing.

NGOs in Ukraine have occasional success, such as the Law of Ukraine "On Access to Public Information" (2011). The measure was passed after pressure from journalists and civil society groups within the Civic Initiative New Partnership.

But this is more an exception, as generally NGOs are able to voice their opinion but it is rarely taken into consideration by the government. The concentration of power in one political party leads to the practice of sole decision-making by the president or by few people in power.

References:

New Citizen Partnership (Ukraine), "The President Signed the Law 'On Access to Public Information' "(2011).
<http://newcitizen.org.ua/news/президент-підписав-закон-про-доступ-до-публічної-інформації>

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report"
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Interview with representatives of international organization, held Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | **No**

Comments:

Even though no cases documented of government directly shutting down anti-corruption NGOs have been documented, many NGOs claim that they were forced to cease operations due to government pressure. For instance, the anti-corruption NGO Department of Youth Initiatives was forced to shut down after the leader has been attacked several times and government inspection of organization activities became too frequent. An attempt to force an NGO to shut down was made in 2011 when the Network of People Living with HIV in Kiev was audited by three agencies at the same time, which paralyzed the group's work.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report"
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Interview with representatives of international organization, held Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | **No**

Comments:

Several cases of detention of NGOs activists have been documented. For instance, when the 2008 financial crisis led to the collapse of loan unions in Ukraine, some NGOs and their coalitions criticized government inaction, claiming that corruption was the main reason for government silence. One of the activists in Cherkassy was imprisoned during a protest and was still in prison as of June 2011.

In October 2009, two activists of a Lviv NGO, "Guardians of Law" (Vartovi Zakonu) were imprisoned for three days for protesting corruption of prosecutor's office employees. Human rights activists in Ukraine claim that the decision was not legitimate as the protest was not officially banned by the court.

Two Kharkiv activists, Andrei Yevarnitsky and Denis Chernega, who protested construction of a road on the site of public park, were imprisoned for 15 days in June 2010. Amnesty International declared them prisoners of conscience.

References:

Human Rights in Ukraine: Informational Portal of Kharkiv Human Rights Group (2010), "Ukrainian Helsinki Union Demands to Stop Persecutions of Human Rights Activists" <http://khpg.org/index.php?id=1288180877>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

Comments:

In December 2008, Stanislav Ignatev, opposing corruption in land management in Kharkiv, was severely beaten by unknown persons that told him to leave this issue alone. Two weeks later Ignatev got into a car accident, and the police found that his car had been sabotaged. As a result, Ignatev had to change the format of his organization and rename it.

In September 2010, a representative of the Kherson branch of the Committee of Voters of Ukraine, Dementiy Bilyy, was beaten in the lobby of the conference hall where the mayor of Kherson was about make a formal report. Bilyy said this event should be open to the public.

Andriy Fedosov, an activist of a Crimean organization protecting the rights of the mentally disabled, was beaten right after the group's publication of a report on psychiatric institutions that claimed they were guilty of numerous violations of the law.

References:

Human Rights in Ukraine: Informational Portal of Kharkiv Human Rights Group (2010), "Ukrainian Helsinki Union Demands to Stop Persecutions of Human Rights Activists" <http://khpg.org/index.php?id=1288180877>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

No such cases have been documented by any of the organizations interviewed or human rights organizations that publish reports and results of monitoring of situation with human rights.

References:

Human Rights in Ukraine: Informational Portal of Kharkiv Human Rights Group (2010), "Ukrainian Helsinki Union Demands to Stop Persecutions of Human Rights Activists" <http://khpg.org/index.php?id=1288180877>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," held Aug. 23, 2011, in Kiev.

Interview with representatives of international organization, held Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

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

4. Can citizens organize into trade unions?

75

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

By law Ukrainian citizens are free form trade unions. No special permission is required. Foreign citizens can freely become members of existing trade unions.

References:

Constitution of Ukraine (1996), Article 36, Part 3.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

Law of Ukraine, "On Trade Unions, Their Rights, and Guarantees of Activity" (1999), Article 6.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1045-14>

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There are several groups of trade unions in Ukraine. One of them, the umbrella group the Federation of Trade Unions of Ukraine, claims to be the main and the largest group with approximately 10 million members. Unofficial estimates show that the value of its assets is \$2.5 billion, mainly in recreation centers. At the same time, this organization is often blamed for being politically biased, as it is headed by an active member of the ruling Party of Regions, which makes real protection of employees' rights difficult. Some actions to defend their rights were held, e. g. protest against the reform of the pension system; however, they are rather rare.

The other group of trade unions is comprised mostly of minority trade unions that are protected by Ukrainian legislation but often are not recognized by companies. According to annual survey of violations of trade union rights, conducted by the International Trade Union Confederation in 2010, the employers in Ukraine are generally resistant to establishment of new trade unions and create various barriers for them (e.g. in agrarian complex Pushcha Vodytsa near Kiev). Members of many trade unions suffer unjustified warnings, illegal dismissals, and worsened employment conditions. Moreover, even when trade unions are established and operating, they are rarely effective in doing their main task – protecting the rights of employees.

For instance, when businesses were struggling with the increased social security tax (unified social security payment), no trade unions agreed to support it. The system of trade unions was not reformed after Ukraine gained independence, thus they still regard themselves as additional source of power in the company or organization as opposed to being representatives of the rights of employees in the negotiations with the owners or leadership.

References:

International Trade Union Confederation, "2010 Annual Survey of violations of trade union rights – Ukraine".

<http://www.unhcr.org/refworld/category/COI.ITUC.,4c4fec51c;0.html>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, held Sept. 16th, 2011, in Kiev.

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), held Sept. 8, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, held Sept. 14, 2011, in Kiev.

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Censorship in any form is banned by Ukrainian legislation. The government is prohibited from intervening into the activities of print, TV or radio outlets and from creating barriers for reporting any specific information. The media is free to criticize the government at all levels.

References:

The Constitution of Ukraine (1996), Article 34

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

Law of Ukraine, "On Information" (1992), Article 24.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2657-12>

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Freedom of speech and expression is guaranteed by the constitution and laws. The government is obliged to protect this right. The only limitations concern national security issues, territorial unity and information that may lead to violation of human rights.

References:

The Constitution of Ukraine (1996), Article 34.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

Law of Ukraine, "On Information" (1992), Articles 2, 3, 5, and 6.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2657-12>

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

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

6. Are citizens able to form print media entities?

81

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

All print media entities must be registered, otherwise they are considered illegal. In order to register a print media entity, founders submit an application with information about themselves and description of their planned publication: type, language, circulation, territory of distribution, etc. The application is submitted to the registration department of the Ministry of Justice in case of all-Ukrainian media or to local state administrations. They then have a month to make a decision. Even the Ministry of Justice describes this process as too difficult and lengthy. In 2010, the Ministry introduced Bill #7011 to ease this procedure, but it is still awaiting consideration.

Nevertheless, generally it is possible to register a print media entity. According to data of State Registry of Print Media Entities, there are 30,482 print mass-media entities in Ukraine, registered since 1993, including 2,047 in 2010 and 361 in January, February, and March of 2011. There are examples of establishment of newspapers without any barriers. The barriers appear in later stages – when print media entities are already operating. Such cases have been documented by Ukrainian NGO "Institute of Mass Information" in its yearly report (June 2010 – June 2011).

For instance, in June 2010, after a visit of the head of district state administration, the editor and all journalists quit the Cherkassy oblast newspaper Visnyk Horodyschyny (Herald of Horodyschyna). The newspaper workers claimed that the head of administration was very rude, threatened them, and criticized the newspaper's activities harshly, thus they did not believe in the newspaper's future. In March 2011, owners of the Kiev newspaper "Gazeta po-kyivsky" stopped publishing it. The journalists claimed that it closed because of pressure from authorities.

References:

NGO "Institute of Mass Information" (2011), "Journalists' Day 2011: the Festival on Whose

Street?" <http://imi.org.ua/content/%D0%B4%D0%B5%D0%BD%D1%8C-%D0%B6%D1%83%D1%80%D0%BD%D0%B0%D0%BB%D1%96%D1%81%D1%82%D0%B0-2011-%D0%BD%D0%B0-%D1%87%D0%B8%D1%97%D0%B9-%D0%B2%D1%83%D0%BB%D0%B8%D1%86%D1%96-%D1%81%D0%B2%D1%8F%D1%82%D0%BE>

Semiorkina O., head of the Department of Legalization of the Associations of Citizens of the Ministry of Justice in Ukraine, Registration of Print Mass-Media, and Information Agencies (2010), "Print Mass-Media: Problems with Registration".

<http://www.minjust.gov.ua/0/34698>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, held Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, held Sept. 14, 2011, in Kiev.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

Ukrainian legislation allows for an appeal of a denial or revoking of registration through the courts. No other mechanisms have been established. If the court rules in favor of the publication, all expenses, caused by the government, are to be reimbursed. No special procedure exists, the appeal is the same as for any appeals regarding government decisions.

References:

Law of Ukraine, "On Print Mass Media (Press) in Ukraine" (1993), Article 19.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2782-12>

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All print media entities have to be registered in order to operate legally. For registration the founders must submit an application with information about themselves (names, contact information) and future publication (type, language, circulation, territory of distribution, etc.). The registration departments of the Ministry of Justice (in case of all-Ukrainian print media) or local state administration have a month to make a decision.

According to the Ministry of Justice, the registration process for publications is too difficult and prolonged and should be reformed. The ministry introduced a bill, No. 7011 from July 23, 2010, to ease this procedure. Currently the bill is still awaiting consideration.

Nevertheless, no cases of government delaying a publication's registration have been documented. The barriers appear at later stages, when the print entities are registered and start working.

References:

O. Semiorkina, head of Department of Legalization of the Associations of Citizens of the Ministry of Justice in Ukraine, Registration of Print Mass-Media, and Information Agencies (2010), "Print Mass-Media: Problems with Registration".
<http://www.minjust.gov.ua/0/34698>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, held Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TV1, held Sept. 14, 2011, in Kiev.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of registering a publication is not a problem for an organization or an individual, as the cost of necessary equipment is much higher. The cost of registration varies, depending on the territory of distribution, but for a nationwide publication it is approximately \$95. Registration does require visit to a specific office, and it is not possible to register online, but the process generally does not cause financial burden for the founders.

References:

O. Semiorkina, head of Department of Legalization of the Associations of Citizens of the Ministry of Justice in Ukraine, Registration of Print Mass-Media, and Information Agencies (2010), "Print Mass-Media: Problems with Registration." <http://www.minjust.gov.ua/0/34698>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, held Sept. 16, 2011, in Kiev.

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

75:

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

25:

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

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

63

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

According to a report of the National Television and Radio Broadcasting Council, 15 national and seven regional TV channels, 15 national and 13 regional radio stations were on the air in Ukraine in 2010. In addition, 80 Ukrainian TV and 4 radio stations have been operating through satellites. By the end of 2010, the council had issued 234 general broadcasting licenses, including renewed and prolonged licenses. Also, 66 licenses were canceled, of which 53 were at the request of the companies themselves. Of the canceled licenses, 10 were canceled for absence of broadcasting for a year and four by court decision. At the end of 2010, 1,682 TV and radio companies were listed in the state registry.

Despite such high numbers of issued licenses, the council is often blamed for being politically biased. It depends heavily on the state. For instance, in February 2010 newly elected President Victor Yanukovich cancelled the appointment of one of its members. The Ukrainian Security Service has also intruded in one of the licensing competitions, obtaining all relevant documents, including personal files of the council members.

According to the international group Reporters without Borders (August 2010), the distribution of licenses is used as a mean of censorship. Two Ukrainian TV companies, "the fifth channel" and TV1, lost licenses in court orders. The two companies that filed a joint lawsuit belong to Inter Media Group, a media entity that is believed to be owned by the head of the Security Service, Valeriy Khoroshkovsky. Mr Khoroshkovsky was simultaneously working in the High Council of Justice; thus, there were doubts about whether the court decision was free of political influence.

References:

Creative Union "TORO" (Ukraine), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, held Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, held Sept. 14, 2011, in Kiev.

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

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.

07b. 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:

All decisions of the National Television and Radio Broadcasting Council that approves, renews and cancels TV and radio licenses, can be appealed through the courts within 30 days. No other mechanism exists.

References:

Law of Ukraine (1994), "On Television and Radio Broadcasting," Articles 25 and 30. <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3759-12&p=1316608703974311>

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is extremely difficult to obtain a broadcast media license for small and, especially, regional TV and radio companies. The process of licensing is often regarded as a means of censorship. Nevertheless, no cases of the National Television and Radio Council attempting to create barriers by delaying the procedures, or complaints regarding the time necessary to collect the documents and to register for the competition, have been documented.

References:

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is extremely difficult to obtain broadcast media license for small and, especially, regional TV and radio companies. The process of licensing is often regarded as a means of censorship. Nevertheless, no cases of the National Television and Radio Council attempting to create barriers by increasing the cost of registration or demanding any extra payments have been documented. No complaints regarding the cost of registration have been documented. Licensing cannot be obtained online and requires a visit to the council's office.

References:

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

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?

75

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

Since the numbers of Internet users are rather low in Ukraine (approximately 30 percent of adults), the government does not use systematic measures to prevent citizens from accessing online content. Some cases, though, have been documented. Ukrainian blogger Oleg Shynkarenko had his two humorous posts on Ukrainian President Victor Yanukovich removed. The Facebook profile of Ukrainian political observer Mykola Suhomlyn was deleted in June 2011 without warning. Suhomlyn was constantly writing jokes and commenting on political events, and his page was among the most popular in Ukraine. Many jokes involved the president or Prime Minister Mykola Azarov. Before Suhomlyn's profile was deleted, he had received numerous threats, with anonymous people demanding that he stop discussing Ukrainian politics.

References:

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Email interview with Oleg Shynkarenko, a Ukrainian blogger, Aug. 9, 2011.

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

Censorship is conducted through economic means and pressure from law enforcement agencies. The politicians and civil servants often sue online media for certain publications in order to prohibit their distribution. In many cases such publications contain stories about corruption or abuse of power. For instance, human rights activist Dmytro Groisman from Vinnitsya was sued for "pornography distribution," but he claims that this is done to prevent him from investigating and reporting corruption. In March 2010 and January 2011, the apartment of famous blogger Olena Bilozerska was searched by the police. Some of her possessions, including computer and camera, were confiscated. This search was justified by claims that Bilozerska was involved in a radical organization. Another blogger, Oleg Shynkarenko, was questioned by the Security Service of Ukraine. His blog was described as containing threats to state officials. In August 2010, Ukrainian bloggers and journalists protested such actions.

References:

Ukrainska Pravda (online media resource) (2011), "The Police Conducted a Search of a Journalist-Blogger"
<http://www.pravda.com.ua/news/2011/01/12/5775591/>

TSN.UA (website of Ukrainian TV station TSN) (2010), "Ukrainian Bloggers Started a Protest 'I Want to Be Questioned By SSU' "
<http://tsn.ua/ukrayina/ukrayinski-blogeri-rozpochali-akciyu-hochu-na-dopit-v-sbu.html>

Jean-François Julliard and Elsa Vidal (Reporters Without Borders, 2010), "Press Freedom in Ukraine: Temptation to Control"
http://en.rsf.org/IMG/pdf/_rapport_ukraine_anglais.pdf

Email interview with Oleg Shynkarenko, a Ukrainian blogger, Aug. 9, 2011.

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

75:

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

25:

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

9. Are the media able to report on corruption?

67

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

A journalist's professional activities cannot serve as a basis for his or her arrest or confiscation of any equipment or collected information. A person who claims that his reputation was damaged by a journalist's story may receive compensation only if the journalist was reporting false information, knew about its inaccuracy and realized its possible consequences. Otherwise, journalists are protected in reporting accurate news.

References:

Law of Ukraine (1997), "On State Support for Mass Media and Social Protection of Journalists," Article 17.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=540%2F97-%E2%F0>

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The cases of media owners and editors preventing corruption stories from being published have been documented by several Ukrainian and international organizations. For instance, according to annual monitoring report of the Ukrainian NGO Institute of Mass Information (June 2010 – June 2011), such actions happened in different media, including TV. A story by Ukrainian TV channel STB reporter Natalia Sokolenko on the appointment of a daughter of one of the ministers to a high position without proper experience was edited to exclude such information. Officers of president's security service prevent journalists from photographing cars, used by the president and officials of the administration of president. The reporters from certain TV channels and online media cannot get access to the residence of President Victor Yanukovich. Journalists of almost 20 Zhytomyr media entities have limited or no access to sessions of local assembly.

After the number of documented cases increased significantly, the journalists and civil society activists established the group "Stop Censorship!" The experts believe that the main reason for such censorship is that owners of mass-media usually do not regard their media business as their main source of income, thus do not pay significant attention to opinion of consumers. In most cases they have other businesses and want to preserve good relations with power holder to keep their other businesses running,

References:

Maryana Zakusylo and Svitlana Ostapa (2010), "Instead of Temnyks We Have Usnyks?" (The word "temnyk" was used to describe a list of topics to be reported by media and topics to be ignored. The list was distributed by government before 2004. The word originates from the word "topic" which in Ukrainian is "tema." "Usnyk" derives from "usno," which means "orally" and is used to describe how media owners are currently informed about such topics).
<http://www.telekritika.ua/cenzura/2010-05-22/53152>

Stop Censorship, "Cases of Censorship."
<http://stopcensorship.wordpress.com/censorship-causes/>

NGO "Institute of Mass Information" (2011), "Journalists' Day 2011: the Festival on Whose Street?"
<http://imi.org.ua/content/%D0%B4%D0%B5%D0%BD%D1%8C-%D0%B6%D1%83%D1%80%D0%BD%D0%B0%D0%BB%D1%96%D1%81%D1%82%D0%B0-2011-%D0%BD%D0%B0-%D1%87%D0%B8%D1%97%D0%B9-%D0%B2%D1%83%D0%BB%D0%B8%D1%86%D1%96-%D1%81%D0%B2%D1%8F%D1%82%D0%BE>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

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

Comments:

According to the annual monitoring report (June 2010 – June 2011) of the Ukrainian NGO Institute of Mass Information, local governments pressured media in Khmelnytsky, Crimea, and Cherkassy. The representatives of local or central government either threatened the journalists and editors or created barriers in their activities to present corruption-related stories. It is hard to prove that the government is conducting censorship as media owners usually tend to censor their content themselves.

References:

NGO Institute of Mass Information (2011), "Journalists' Day 2011: the Festival on Whose Street?" <http://imi.org.ua/content/%D0%B4%D0%B5%D0%BD%D1%8C-%D0%B6%D1%83%D1%80%D0%BD%D0%B0%D0%BB%D1%96%D1%81%D1%82%D0%B0-2011-%D0%BD%D0%B0-%D1%87%D0%B8%D1%97%D0%B9-%D0%B2%D1%83%D0%BB%D0%B8%D1%86%D1%96-%D1%81%D0%B2%D1%8F%D1%82%D0%BE>

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, held on September 14th, 2011, in Kiev.

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

75:

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

25:

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

10. Are the media credible sources of information?

20

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

Yes | **No**

Comments:

Ukrainian law requires including the information about owners in full in the application package for registration of print media. However, there are no requirements for public disclosure of such information.

References:

Law of Ukraine, "On Print Mass Media (Press) in Ukraine" (1993), Article 17.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2782-12>

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:

Ukrainian law requires including the information about owners in full in the application package for registration of broadcast media companies. However, there are no requirements for public disclosure of such information.

References:

Law of Ukraine (1994), "On Television and Radio Broadcasting," Article 24.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3759-12&p=1316608703974311>

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:

The website Telekritika provides many examples of censorship. Similar cases are described in monthly analytical reports by the NGO Institute of Mass Information. Mass media generally claim that the censorship is becoming more widespread, and the journalists adhere to professional standards less, publishing prepaid materials without necessary labeling. Since the owners of media usually have other business and do not regard their media entities as the main source of income, the selection of content is usually based on political basis. The journalists of local media have preferences in their pensions thus they worry to keep their jobs and tend to behave less professionally.

For instance, in May 2010, the main state TV and radio broadcasting company "1st national" canceled live broadcasting from the weather forecast agency after the weather announcer mentioned her negative attitude toward the authorities. In June 2010, the reporters of Donetsk TV and radio broadcasting company complained about the return of "temnyky" – printed and oral instructions from local authorities on what topics to cover, which topics to avoid and how the information should be portrayed.

References:

NGO Institute of Mass Information (2011), "Monitoring of Dzynsa"
<http://imi.org.ua/category/%D0%BC%D0%BE%D0%BD%D1%96%D1%82%D0%BE%D1%80%D0%B8%D0%BD%D0%B3%D0%B1%D0%B0%D1%80%D1%81%D0%B2%D0%BE%D0%B1%D0%BE%D0%B4%D0%B8-%D1%81%D0%BB%D0%BE%D0%B2%D0%B0>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

Comments:

During the 2010 presidential elections, incumbents, already working in the government or parliament, received more coverage than others. Certain TV channels tended to favor one of the candidates. For instance, 5th Channel (news channel) devoted 66 percent of its campaign coverage to Yulia Tymoshenko, while Ukraine TV was in favor of Viktor Yanukovich. Yanukovich received significantly more air time in the last three days of campaigning. Regional media favored the candidate, officially or unofficially supported by local authorities.

The issue was even more evident during 2010 local elections when some candidates had problems with any coverage of their campaigns. Such situation was possible because there were no limitations for the political parties or candidates to use their own resources to receive media coverage and Central Election Commission cannot effectively control it. During the 2010 local elections the candidates were able to buy entire issues of print media or time on TV. Some publications, especially on a local level, turned into propaganda leaflets.

References:

NGO "Institute of Mass Information" (2010), "Elections Without Journalists or About Their Coverage By the Media" <http://imi.org.ua/content/%D0%B2%D0%B8%D0%B1%D0%BE%D1%80%D0%B8-%D0%B1%D0%B5%D0%B7-%D0%B6%D1%83%D1%80%D0%BD%D0%B0%D0%BB%D1%96%D1%81%D1%82%D1%96%D0%B2-%D0%B0%D0%B1%D0%BE-%D0%BF%D1%80%D0%BE-%D1%97%D1%85%D0%BD%D1%94-%D0%B2%D0%B8%D1%81%D0%B2%D1%96%D1%82%D0%BB%D0%B5%D0%BD%D0%BD%D1%8F-%D0%B4%D1%80%D1%83%D0%BA%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%BC%D0%B8-%D0%B7%D0%BC%D1%96>

OSCE (2010), "Ukraine Presidential Election 17 January and 7 February 2010: OSCE/ODIHR Election Observation Mission Final Report".

<http://www.osce.org/odihr/elections/ukraine/67844>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

Comments:

The law requires state-owned media to provide equal coverage to political parties and independent candidates. This requirement is usually fulfilled, and all candidates or parties receive such coverage. The government covers the expenses, but funding is not sufficient. This leads to absurd situations: During 2010 local elections the candidates and parties received 1 to 2 minutes of TV air time. Outside of such required coverage, the access to state media is not equal. Before the second round of the 2010 presidential elections, Yulia Tymoshenko received 65 percent of coverage while Viktor Yanukovich got 35 percent. State-owned newspaper Uryadoviy Kurier displayed a clear bias in favor of Tymoshenko.

References:

OSCE (2010), "Ukraine Presidential Election 17 January and 7 February 2010: OSCE/ODIHR Election Observation Mission Final Report."

<http://www.osce.org/odihr/elections/ukraine/67844>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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

75:

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

25:

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

11. Are journalists safe when investigating corruption?

33

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

Yes | No

Comments:

No case of imprisonment has been documented. Police tend to confiscate or destroy reporters' cameras and microphones, impede filming or make the journalists delete photo or video content, but imprisonment have not been used as a mean of censorship.

References:

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

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

Comments:

Cases of attacks on journalists are constantly documented in Ukraine, and journalism is considered to be among the most dangerous professions. In June 2010 Serhiy Andrushko was physically harmed by the president's security guards. Also, in June 2010, journalists were hurt while shooting a story in a private company. Among more recent cases is the one in Brovary, near Kiev, when journalist Anriy Kachor was threatened and then beaten up in a café.

References:

Svetlana Ostap (2011), "From Gongadze to Klymentiev"
http://www.telekritika.ua/ukrainski_zmi/2011-01-29/59662

Ukrainian Independent Information Agency (2010), "A Journalist Was Attacked"
<http://www.unian.net/ukr/news/news-391294.html>

Holodnoyarska Initsiatyva (community of civic activists) (2010), "In Brovary A Journalist Was Attacked".
<http://kholodny-yar.org/2011/05/30/v-brovarah-skojeno-napad-na-zhurnalista/>

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

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

Comments:

On Aug. 11, 2010, an editor of the Kharkiv newspaper Novy Styl (New Style), Vasyl Klymentyev, disappeared and is presumed dead. His newspaper was actively investigating corruption of law enforcement officers in Kharkiv. This story was broadly covered by Ukrainian mass-media (http://www.pravda.com.ua/articles/2010/09/23/5408666/view_print/, http://dt.ua/POLITICS/perevirka_na_voshivist_abo_chomu_znik_vasil_klimentev-60952.html, <http://www.kyivpost.com/news/nation/detail/79095/>) and international organizations (<http://www.osce.org/fom/73983>, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2010-0575&language=EN>).

References:

U.S. State Department, "Ukraine" <http://www.state.gov/documents/organization/160481.pdf>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

Interview with Nataliia Sokolenko, reporter for STB (Ukrainian TV channel), Sept. 11, 2011, in Kiev.

Media Reports:

http://www.pravda.com.ua/articles/2010/09/23/5408666/view_print/
http://dt.ua/POLITICS/perevirka_na_voshivist_abo_chomu_znik_vasil_klimentev-60952.html
<http://www.kyivpost.com/news/nation/detail/79095/>) and international organizations
<http://www.osce.org/fom/73983>, <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2010-0575&language=EN>

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.

63
 1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

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

Yes | No

Comments:

A law requiring public access came into force May 10, 2011. Under the law, citizens have a right to request any government document and information that is not classified as "information with limited access." Reasons for this classification may include national security, individual privacy, possibility of influence on courts, etc.

References:

Law of Ukraine, "On Access to Public Information" (2011). <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

All public information, not classified as information with limited access, should be provided within five working days after a request. In exceptional cases, when collection of such information requires additional time, the time limit can be extended to 20 days. If the information is not provided in time, fully, or access is denied, the citizens have a right to use either administrative appeal or appeal through the courts.

References:

Law of Ukraine, "On Access to Public Information" (2011), Article 23
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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 citizens are free to request information by any means: personally, by phone, fax, letter, email, electronic system, etc. Each agency or institution that possesses public information and is obliged to provide it must establish a system for handling public information requests that is convenient for citizens.

References:

Law of Ukraine, "On Access to Public Information" (2011), Articles 3&16 <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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

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

13. Is the right to information requests effective?

63

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

100 | 75 | 50 | 25 | 0

Comments:

According to the report on access to public information, prepared by the president's office, during May 2011 (when the law came into force) the office received 371 requests for information and responded to 359. Similar figures can be found on other Web pages of the central authorities. The NGOs monitoring this issue also state that rate of response is above average, without regard to the quality of the responses.

One monitoring campaign of the All-Ukrainian NGO "Democratic Alliance" in the framework of Civic Partnership "New Citizen," found that 38.9 percent of requests for information have been ignored, at least in the first month after the law was enacted. Even though some cases of providing information within time limits have been documented (the asset disclosure form of Odessa's mayor was released in three days), the prevailing majority of responses were given late.

One reason is that state bodies still have not rearranged their work to include handling citizens' requests for information. The law presumes that such information is already collected, systematized, and ready to be issued. But this is not the case in many agencies, which do not have sufficient resources to appoint a person just to handle information requests.

References:

Democratic Alliance (2011), "Monitoring of Readiness of Local Government to Implement the Law of Ukraine "On Access to Public Information" <http://newcitizen.org.ua/sites/default/files/u1505/pidsumki.pdf>

President of Ukraine (official Web page), "In May the administration of President received 371 requests for information."

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance," an expert on the Law of Ukraine, "On Access to Public Information," held on Aug. 17, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Since the public access law requires providing information of less than 10 pages free of charge, generally the information is provided at no cost to citizens. The prices for scanning and copying of the information beyond the limit are to be set by the Cabinet of Ministers. Some of the governing bodies demand that citizens pay unreasonable prices, however it happens rarely and in majority of cases the information is provided for free. Information sent by email is free of charge.

The Cabinet of Ministers set limits for fees in July 2011. If the information is on A4 paper, the cost for one page (printing or copying) should be not more than 1 UAH (\$0.13), if on A3 – 2 UAH (\$0.25).

References:

Democratic Alliance (2011), "Monitoring of Readiness of Local Government to Implement the Law of Ukraine 'On Access to Public Information'" <http://newcitizen.org.ua/sites/default/files/u1505/pidsumki.pdf>

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance," an expert on the Law of Ukraine "On Access to Public Information," held on Aug. 17, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in 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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

According to the report of NGO "Democratic Alliance," generally the quality of responses to requests for information is low. Requested documents were provided only in 35.5 percent of cases. The quality of responses was the highest in the North (requested documents have been provided in 47.4 percent of cases), the lowest in the East (29.6 percent) and Center (29.5 percent). In the South the documents were provided in 37.3 percent of cases, while in the West 33.8 percent. The lowest response rate was in case of requests for the city planning documents. Local budgets and utility prices were provided in 45.9 percent of cases.

Many responses to requests for specific documents contained explanations why the documents cannot be provided instead of the documents. At least 30 percent of the requests were ignored.

References:

Democratic Alliance (2011), "Monitoring of Readiness of Local Government to Implement the Law of Ukraine 'On Access to Public Information'" <http://newcitizen.org.ua/sites/default/files/u1505/pidsumki.pdf>

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance," an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Institute of Media Law sued after the parliament (Verkhovna Rada of Ukraine) did not provide documents requested by the Institute. The court rejected the appeal on the basis that the institute is a local NGO while the parliament is a national body. At the same time, since the law has been working for only a few months, it is difficult to judge the possibility to resolve appeals to information requests, as there have been only several cases documented. By October 2011, the courts took into consideration 75 cases of administrative appeals regarding access to information. The cases were resolved within the 30-day limit required by the law. In 35 out of 75 cases the court ruled in favor of the suitor.

References:

Media Law Institute (2011), "The Court Rejected to Consider a Lawsuit of Media Law Institute against Verkhovna Rada of Ukraine" <http://www.medialaw.kiev.ua/news/1600/>

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance," an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

According to the State Judicial Administration of Ukraine (an agency that provides organizational support to the courts), citizens have to pay a filing fee of 3.40 UAH (approximately 40 cents). If they would like to receive moral compensation or a certain reimbursement, they have to pay an additional 1 percent of the requested sum but not more than 1,700 UAH (about \$164). Thus the fee for filing a lawsuit is low in Ukraine and no special fees exist if the suit is regarding the request for information. Such fee is not unbearable, even for low-income citizens of Ukraine.

References:

Judiciary of Ukraine (official website), "Expenses in Case of Filing an Administrative Lawsuit" http://court.gov.ua/userfiles/sud_vitrati_v_admin_spr.pdf

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance," an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

In most cases reasons for denial of access to public information do not correspond to the law. Many agencies state that they cannot provide information as the citizen requesting it did not pay fees for printing or copying. But until the Cabinet of Ministers specified fees for public information, the information had to be provided for free. Sometimes the agencies claim that requested documents are for internal use, while the law is rather clear with specifying which documents can be labeled as such.

Some denials were absurd. The municipal government of the city Lutuhine in Luhansk oblast said the city plan is drawn on fabric and so cannot be copied and distributed.

Members of the Ukrainian parliament refused to provide their asset disclosure forms, writing responses that it was a duty of the parliament's bureaucracy. At the same time, the bureaucracy claimed that it was a duty of the members themselves, or the tax agency. Even though the asset disclosure forms were later published due to pressure from the public and media, access was denied for several weeks.

References:

Democratic Alliance (2011), "Monitoring of Readiness of Local Government to Implement the Law of Ukraine "On Access to Public Information" <http://newcitizen.org.ua/sites/default/files/u1505/pidsumki.pdf>

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance," and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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

75:

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

25:

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

Category 2. Elections

2.1. ~~67~~ Voting and Party Formation

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:

Universal and equal adult suffrage is guaranteed to all citizens by the constitution in Articles 70 and 71. This right is also reinstated in election laws: "On Elections of President of Ukraine" (Article 3), "On Elections of the Members of Parliament of Ukraine" (Article 3), "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (Article 4).

References:

The Constitution of Ukraine (1996), Articles 70 and 71
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 3
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 3
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 4

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

According to the Constitution of Ukraine, the elections of the president, Verkhovna Rada (parliament) of Ukraine and local government must be held regularly. This requirement is also reinstated in election laws.

References:

The Constitution of Ukraine (1996), Article 77, Part 1; Article 103, Part 3; Article 136, Part 2; Article 141, Part 2.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

Law of Ukraine, "On Elections of the President of Ukraine" (1999), Article 17, Part 1
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine "On Elections of the Members of Parliament of Ukraine" (2004), Article 16, Part 1
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 14, Part 2
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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

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

15. Can all citizens exercise their right to vote?

75

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

100 | 75 | 50 | 25 | 0

Comments:

The barriers for adult citizens to vote are rather an exception than a rule and they are not based on discrimination of any kind. No problems in this regard have been noticed by international observation missions. For instance, European Parliament observers saw an issue with overcrowded polling stations and a complicated system of voting (five to eight ballots at once). Otherwise, adult citizens are able to exercise their right to vote.

References:

Paweł Kowal and Jan Kozłowski (2010), "Mission to Ukraine On the Occasion of the Local and Regional Elections of 31 October 2010."

http://eeas.europa.eu/delegations/ukraine/documents/press_releases/report_ep_en.pdf

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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:

Generally, the ballots are secret and adequately protected. The CANADEM observers for the 2010 presidential elections noted a high level of ballot protection. Out of 82 polling stations monitored, all (100 percent) had properly sealed ballots. Even though occasionally some cases of printing extra ballots are documented (e.g. in Khmelnytsky and Luhansk oblasts in 2010), they are rather rare. In addition, the observers are able to enter the polling stations, and they report if there is a case of two people entering the same booth, or a person attempting to take the ballot outside.

References:

Natalia Shmurikova (2010), "Extra Ballots Have Been Printed in Khmelnytsky Oblast As Well"
<http://www.opora.org.ua/oblast/article/718-2010-10-26>

Mission Canada – Ukraine Election 2010, "Final Report of the Independent Canadian Election Observer Mission for the 2010 Presidential Election of Ukraine"
<http://www.canadem.ca/documents/Final%20Report%20Mission%20Canada%202010%20-English%20Version.pdf>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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 elections are held regularly, but the schedule is a subject to constant change. The last presidential elections were supposed to be held on Oct. 25, 2009, but took place Jan. 17, 2011. The last local elections were originally scheduled for May 30, 2010, but were held on October 31, 2010. The same situation is happening with parliamentary elections that were supposed to take place March 2011, but instead will take place in 2012.

The main reason for it is the constitutional instability. The Constitution of Ukraine has been amended several times, including articles on the legislative and executive branches.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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?

75

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

Yes | No

Comments:

Article 36 of the constitution guarantees all citizens the right to form political parties. This right is restated in Articles 11 and 12 of the Law of Ukraine "On Association of Citizens." Thus all citizens, older than 18, not imprisoned or proclaimed incompetent by a court, can form political parties. Any discrimination on the basis of membership or absence of membership in a political party is prohibited. The parties cannot set any limitations on membership opportunities on the basis of gender or ethnicity.

The government cannot request information about one's membership in a political party in official documents. (It is allowed only during elections if the parties are to nominate candidates).

Law of Ukraine, "On the Political Parties," restates the right to form political parties by all citizens. It also sets limits of party membership for judges, prosecution office employees, police officers, personnel of Security Service of Ukraine, military personnel, tax agencies and the employees of State Penitentiary Service of Ukraine.

References:

The Constitution of Ukraine (1996), Article 36
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

The Law of Ukraine, "On Associations of Citizens" (1992), Articles 11&12
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2460-12>

The Law of Ukraine, "On Political Parties in Ukraine" (2001), Article 1
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2365-14>

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:

The constitution provides a right to run for a political office and specifies the requirements for candidates. Article 76 Part 2 states that any citizen of Ukraine, aged 21 or older, who lives in Ukraine for at least five years can be elected to the national parliament.

Article 103 Part 2 specifies requirements for a candidate for a President of Ukraine: at least 35 years old, a citizen of Ukraine, resident of Ukraine for at least for last 10 years, and can speak the state language. Those requirements are further specified in the corresponding election laws. The local election law specifies requirements for candidates for deputies to local government: the candidate has a right to vote, is 18 or older, and has not been proclaimed incompetent by a court.

References:

The Constitution of Ukraine (1996), Article 76, Part 2; Article 103, Part 2
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 9
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 9
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 9
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

Political parties must be registered in order to start working. To register a party, citizens have to collect at least 10,000 signatures in two-thirds of oblasts and in each oblast in at least two-thirds of rayons. (Ukraine is divided into oblasts, which are further divided into rayons.) Even though the registration fee is not high, the process of collecting signatures is rather expensive, hindering the ability to form parties freely. It is prohibited to form local parties, which is also rather discriminatory. The registration department of the Ministry of Justice provides an answer within 30 days, and in some cases may require additional 15 days, which makes the procedure rather lengthy as well. Nevertheless, as of June 30, 2011, there were 189 political parties in Ukraine. The legislation and practice of the establishment of political parties is rather liberal, and newly emerging political parties are often criticized for being created only for certain elections or for certain people.

References:

Ministry of Justice of Ukraine (2011), "Joint Registry of Political Parties of Ukraine."
<http://www.minjust.gov.ua/parties>

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

Comments:

The laws that allow all citizens that meet with age, citizenship, and residence requirements to run for political office are often violated by district and precinct election commissions. The commissions often create artificial barriers for registration of some candidates for local elections. Such actions are justified by claims that the candidates made procedural mistakes in registering. However, problems with registrations occurred mostly with opposition candidates. For instance, Yulia Tymoshenko's party "Batkivshchyna" could not register for Kiev and Lviv oblast elections. In Crimea it happened both to the opposition parties ("Svoboda") and to pro-government ones – The Communist Party of Ukraine and "Sylna Ukraina" (Strong Ukraine – political party of Serhiy Tyhytko). The court ruled mostly in favor of the candidates, but the commissions failed to register them anyway.

Another issue in this regard concerns equality of opportunities to run for a political office. Women are generally far less able to receive the necessary training and support to create a real competition to male candidates. Lack of monitoring of campaign funds gives almost unlimited opportunities to use one's own resources, so wealthier candidates have more chances to win, and the competition is not based on skills and programs.

At the same time, the ban for newly established political parties (operating less than a year) to run for elections has been recently lifted. Since it is relatively easy to establish political parties, it may create additional opportunities for political parties to run during parliamentary elections in 2012. Even though some candidates or political parties spend millions on their campaigns, there were cases of candidates scoring high without significant financial resources or support.

References:

Paweł Kowal and Jan Kozłowski (2010), "Mission to Ukraine On the Occasion of the Local and Regional Elections of 31 October 2010."

http://eeas.europa.eu/delegations/ukraine/documents/press_releases/report_ep_en.pdf

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

Comments:

In the country's constitution, the status of coalition and opposition in the parliament are not clearly defined. The law, "On Proceedings of the Verkhovna Rada of Ukraine," does not contain any guarantees of fair share of committee leadership positions, including committees that monitor freedom of speech, budget processes, or other key subjects.

The law on opposition was adopted only in the first reading in 2007, and it has not advanced since. According to a study of the National Institute of Strategic Studies, such a law would improve the real status of the opposition, ensuring it a right to participate in parliament proceedings by having an "opposition day," a right to form an opposition government and to have an influence on agenda. Nowadays the opportunity to have input on agenda is limited.

Currently, several parties, which claim to be in opposition and whose leaders scored high in last presidential elections, are not represented in the parliament. Some rather influential but small parties may lose the chance to get adequate representation in the next election due to election law changes.

The situation is not properly balanced also because no significant changes occurred after Ukraine gained independence, thus both the party in power and opposition are formed by former nomenclature. It leads to instability of opposition and frequent cases of faction changes among the members of Parliament.

References:

Law of Ukraine (2010), "On Proceedings of Verkhovna Rada"
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1861-17&p=1309939492494859><http://old.niss.gov.ua/Monitor/august08/04.htm>

Interview with representatives of international organization, Sept. 1, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

The Central Election Commission of Ukraine is assigned to facilitate the process of voting and ensure that the right to vote is guaranteed. The commission can report on violations by invalidating the results of elections in a certain district. It can also monitor the activities of political parties, candidates, local election commissions and take actions in case of violation of the electoral law (e.g. cancel registration of candidates).

References:

Central Election Commission of Ukraine.

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Article 17

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

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.

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:

Article 3 of the Law of Ukraine, "On Central Election Commission," states that the commission is independent and no government agency should intervene in its activities. Its members are appointed by the parliament that makes final decisions on the candidates, nominated by the president. The same logic applies to local commissions. They are staffed by candidates and political parties in parliament get the majority of seats. Nevertheless, such commissions are legally separate from any other agencies.

References:

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Article 3
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

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 procedure for appointing members of Central Election Commission of Ukraine is quite adequate and the mechanism itself is not the problem. But in reality the appointments are based on political reasoning. The members are influenced by major politicians and political parties, so it is hard for the commission to work jointly as a collective body. At the same time, there are no direct links between the political parties and the commission members. If, for example, they were directly appointed on partisan basis, political influence would be more obvious.

The situation is worse with local commissions. There is no parity or balance among the members of the commissions. During the last local elections in October 2010 the majority of 18 members of precinct commissions were appointed by the parties in power.

References:

Serhiy Rahmanin (2010), "Head Of CEC Volodymyr Shapoval: I Will Administer the Elections and Leave," weekly newspaper Dzerkalo Tyzhnya (Mirror of the Week).
<http://dt.ua/articles/58153>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

Only the Central Election Commission of Ukraine has a professional full-time staff with the requirements to possess necessary education and work experience. Seven members out of 15 must have a law degree. Local election commissions are appointed just for the election period, and the appointments are based on nominations of the political parties. Thus their general level of expertise is usually evaluated as average. The members of district and precinct commissions during 2010 local elections have been harshly criticized for being unprofessional.

References:

Serhiy Rahmanin (2010), "Head Of CEC Volodymyr Shapoval: I Will Administer the Elections and Leave," weekly newspaper Dzerkalo Tyzhnya (Mirror of the Week).
<http://dt.ua/articles/58153>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

By law the Central Election Commission is directly obliged to publish financial reports but not reports on elections. The latter can be obtained only by the parliament – Verkhovna Rada of Ukraine – upon the request of the members of parliament. In practice, the commission does publish reports on elections. Such reports are publicly available and can easily be accessed through its website.

Local election commissions are usually very slow to publish such reports and even to announce election results.

References:

Central Election Commission (website), "The Reports."
<http://www.cvk.gov.ua/zvernennya/zvit/>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission is not authorized to impose penalties directly. In case of violations of the law, it can contact law enforcement agencies and pass along evidence. The only group of punishments that can be directly imposed by the commission are so-called administrative punishments – issue a warning, cancel registration for the candidates or fire the member of district or precinct electoral commission. During 2010 local elections, the commission issued several decrees regarding work of precinct and district electoral commissions. For instance, Decree No. 78 from June 7, 2011, (issued in response to violations of the law by Rokytno village election commission) dissolved this local commission.

References:

Central Election Commission (2011), “On Some Issues Regarding Work of Rokytno Village Election Commission in Rokytno Rayon of Rivne Oblast”

<http://www.cvk.gov.ua/pls/acts/ShowCard?id=27043>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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

75:

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

25:

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

19. Are elections systems transparent and effective?

83

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

100 | 75 | 50 | 25 | 0

Comments:

Currently, voters in Ukraine are registered automatically when they reach 18 years of age or gain Ukrainian citizenship. The voter registration is conducted through one national system, the State Registry of Voters. The first draft of the registry was finished in 2009 and the data was checked for the first time and first amendments were made. Now the registry is constantly being improved – the data is checked monthly. The voters are able to contact the agency responsible for the registry in their place of residence, and check whether he or she is included in the lists as well as the accuracy of the information.

Before every election voters receive a personal invitation to specific polling places so they have enough time to check whether their names are on the lists and that all information is correct. Before presidential elections such invitations have to be sent at least in 15 days prior to the elections. Before parliamentary elections the invitations have to be sent twice – at least 25 days prior to the elections and at least seven days prior to the elections. In case of special elections, the invitations have to be sent at least seven days prior to the elections. Before local elections the invitations have to be sent at least 10 days before the elections.

Administrative reforms begun in early 2011 seek to decrease of the numbers of civil servants. While generally such cuts are considered to be good, the Committee of Voters of Ukraine (a NGO, conducting election monitoring) believes that cuts in the numbers of employees of local state registry agencies can hurt the registry. But generally the system of registration is rather effective.

References:

Press Service of Committee of Voters of Ukraine (2011), “Statement on Unjustified Reduction of Number of Employees of the State Registry of Voters” <http://cvu.org.ua/doc.php?>

http://cvu.org.ua/doc.php?lang=ukr&mid=chronicleinit&id=2947&lim_beg=45&sdate_act_d=23&sdate_act_m=07&sdate_act_y=2010&sdate_act_end_d=23&sdate_act_end_m=07&

State Registry of Voters of Ukraine. <http://www.reestr2009.org.ua/>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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:

Even though election results cannot be directly contested by the citizens or political parties, there is a possibility to challenge the activities of election commissions in courts. If the court decides that the commission violated the law, the results can be proclaimed invalid in the corresponding district. The procedure is much easier for the candidates (both individual candidates and political parties) that can challenge actions or inaction of election commissions, other candidates, or mass media. The citizens must prove that their personal voting rights were directly violated by the commission otherwise the court will not take the case into consideration.

References:

The Code of Administrative Proceedings of Ukraine (2005), Articles 172, 174 and 176
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2747-15>

Law of Ukraine “On Elections of President of Ukraine” (1999), Articles 91, 100 and 103.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine “On Elections of the Members of Parliament of Ukraine” (2004), Article 103
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine “On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages” (2010), Article 85
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

It is not possible to appeal the election results directly. The candidates or the citizens can file a lawsuit to protect their rights and, if the actions of an election commission are declared illegal, the results of elections can be invalidated in a specific district. The results of elections were directly appealed through courts only once when in 2004 the Supreme Court of Ukraine invalidated election results, according to which Viktor Yanukovich was proclaimed a winner. After the 2010 presidential elections Yulia Tymoshenko appealed to High Administrative Court of Ukraine. Even though she recalled her appeal, the decision of CEC on election results was stopped for a few days. During all elections, held in Ukraine after the Orange Revolution, the courts were involved in election process.

Both the citizens and candidates can file a lawsuit to protect their rights. It is rather difficult for the citizens to prove that their personal rights have been violated, otherwise the case will not be considered. In addition, the courts are often criticized for being biased and under governmental pressure.

Nevertheless, according to an analysis conducted by the Donetsk Appeal Administrative Court of the 2010 local elections, 198 court cases regarding election process were reviewed by the Donetsk District Administrative Court and 114 cases were reviewed by the Luhansk District Administrative Court. The Donetsk Administrative Appellate Court reviewed 142 cases.

References:

Press Service of Committee of Voters of Ukraine (2010), "Statement of the Committee of Voters of Ukraine on Results of the Long Term Monitoring Campaign for the Local Elections Held on October 31, 2010"
http://cvu.org.ua/?lang=eng&mid=fp&id=2837&lim_beg=0

Judges of Donetsk Appellate Administrative Court V. Yurchenko and S. Dyachenko (2010), "Analysis of Judicial Practice in Cases of Elections to Local Government"
http://court.gov.ua/sud9102/prak/yurchenko-dyachenko_analiz/

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

Laws in Ukraine pay special attention to the possible involvement of military and security forces in the election. For instance, it is not allowed to have polling stations at military bases – military officers get time off to vote at other places.

Even though law enforcement officers have to be present near a polling station, they cannot enter the station itself. If an incident is taking place at the polling station, members of local election commission can invite the law enforcement officers inside but as soon as the situation is resolved, they are obliged to leave the station. Such measures have generally been effective.

Even though some cases of involvement of Security Service of Ukraine have been documented (intimidation of candidates and members of local election commissions), they are rather rare.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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

75:

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

parties but there are exceptions.

25:

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

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

Yes | No

Comments:

Article 4 of the Law of Ukraine, "On Central Election Commission," provides a right for domestic and international election observers to be present at sessions of the CEC.

Article 28 of the Law of Ukraine, "On Elections of President of Ukraine," provides a right to be present at all meetings of district and precinct election commissions and to monitor the process of elections to the representatives of the candidates, mass media, and international observers. Representatives from Ukrainian Civil Society Organizations (CSOs) cannot register as observers.

Article 34 of the Law of Ukraine, "On Elections of the Members of Parliament of Ukraine," provides the same right (to be present at all sessions and monitor the elections) to the representatives of candidates, mass media, international and domestic observers.

Article 27 of the Law of Ukraine on local elections provides the right to be present at all sessions and monitor the elections to the representatives of candidates and political parties as well as domestic and international observers.

References:

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Article 4
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 28
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 34
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine. "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 27
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

During the 2010 presidential election in Ukraine, there were some barriers for the observers. First of all, only international observers and representatives of the candidates were allowed to register. Observers from Ukrainian NGOs could not observe the elections unless they registered as journalists. According to Ukraine Central Electoral Commission (CANADEM), unofficially there were approximately 2,000 Ukrainian electoral observers from NGOs, registered as journalists.

In addition, the deadline for registration of international observers was inconvenient (seven days before the elections). It led to problems for registration of observers for the second round which took place in two weeks after the first. Generally, the registration process was relatively easy. Thus 17 international observer missions were registered with the Central Election Commission (CEC), including Organization for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights (OSCE-ODIHR), CANADEM, European Network of Election Monitoring Organizations (ENEMO), Commonwealth of the Independent States – Elections Monitoring Organization (CIS-EMO), Council of Europe Parliamentary Assembly (PACE), International Republican Institute (IRI), National Democratic Institutes (NDI), North Atlantic Treaty Organization Parliamentary Assembly (NATOPA), etc., with 3,449 as general number of observers from international organization. There were 330 international observers registered as individuals. However, some problematic situations did happen. The CEC failed to issue a decision on 2,011 Georgian observers within the deadline.

During 2010 local elections, both international and domestic observers were allowed to the polls. There were 1,913 domestic observers from three Ukrainian NGOs, 134 individual international observers, and 356 international observers, working in 14 missions, all registered by the CEC.

Generally, the observers were able to do their job effectively. The commissions were cooperative and granted access to their documents and sessions. Some conflict situations that did happen were mostly based on lack of knowledge of the members of district and precinct election commission. According to the ODIHR/OSCE election observation report for 2010 presidential elections, in about 50 out of 185 District Election Commissions (DECs) visited, the observers were denied access to observe the entry of Precinct Election Commissions (PECs) protocols into the computer system.

In 2010 and 2011 the parliament was working on new election code. The drafts are harshly criticized by many experts. Among major drawbacks is that the observers will have limited access to obtain information during the election and even less rights to use it.

References:

Central Election Commission (2010), "Official Election Observers from Other Countries and International Organizations" <http://www.cvk.gov.ua/pls/vp2010/WP0011>

Central Election Commission (2010), "Official Election Observers from All-Ukrainian NGOs, Other Countries, and International Organizations" <http://www.cvk.gov.ua/pls/vm2010/wp001>

OSCE (2010), "Ukraine Presidential Election 17 January and 7 February 2010: OSCE/ODIHR Election Observation Mission Final Report". <http://www.osce.org/odihr/elections/ukraine/67844>

Mission Canada – Ukraine Election 2010, "Final Report of the Independent Canadian Election Observer Mission for the 2010 Presidential Election of Ukraine" <http://www.canadem.ca/documents/Final%20Report%20Mission%20Canada%202010%20-English%20Version.pdf>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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.

84
2.3. Political Financing Transparency

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

50

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

Yes | No

Comments:

Ukrainian election laws set limitations for individual contributions. Contributions from organizations, foreign citizens, and anonymous sources are prohibited. Maximum limit of individual contributions to electoral funds of political parties during parliamentary elections is 400 times the minimum wage (on April 1, 2011, minimum wage in Ukraine was set at 960 UAH per month or approximately \$120). Maximum limit of individual contributions to electoral funds of political parties during local elections is 10 times the minimum wage.

References:

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 53
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

Corporate contributions are prohibited in Ukraine. Only individual citizens can make contributions to political parties, within the limits set by election laws.

References:

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 53
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

There are no limits on total expenditures of the political parties during elections. The parties cannot use any funds outside of a campaigning fund, but this fund is made up of donations from individuals and the political party. Election laws clearly prohibit any limitations to be imposed upon the party's contributions (on the amount or number of contributions made), thus political parties can spend as much from their own resources as they wish.

References:

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 43
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 53
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

Political parties are required to file a report about the use of their campaign funds to the Central Election Commission. The commission sets the form of such report at least 80 days before the elections and the parties must file them no later than 15 days after the elections. However, the CEC is not required to publicly disclose the financial contributions to political parties. If the reports are published, they usually contain data on expenses but not on the contributions.

During local elections such reports are prepared by district election commissions, but they are doing it selectively and are not obliged to publicly disclose them.

References:

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 52
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | **No**

Comments:

The Central Electoral Commission and local election commissions are obliged to control the contributions and use of campaigning funds. But they are doing it selectively and well in advance before the elections. For instance, Article 43 of the presidential election law specifies that the CEC together with the National Bank, executive agency on communications, and the bank of the candidate selectively audit campaigning funds at least within 83 days before the elections. During parliamentary elections, a similar audit is conducted at least within 90 days before the elections. The audit is conducted for the second time after the elections, but there is no mechanism for further investigations.

References:

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Articles 18, 19 and 23
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 43
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Members of Parliament of Ukraine" (2004), Article 53
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1665-15>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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:

The monitoring of finances of the political parties during campaign periods is conducted by the Central Election Commission of Ukraine.

References:

Central Election Commission of Ukraine.

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Articles 18 and 23

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

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 non-governmental organizations.

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

100

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

Yes | No

Comments:

Contributions from foreign citizens, organizations (except for donations from political parties that nominated the candidate) or anonymous sources are prohibited. Campaign funds can come only from individual contributions and funds of the candidate and political parties. A citizen of Ukraine can donate up to 400 minimum wages to a candidate for president of Ukraine and up to 10 minimum wages to a candidate, running for the position of mayor or a head of village (on April 1, 2011, minimum wage in Ukraine was set at 960 UAH or approximately \$120).

References:

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 43

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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

Comments:

Corporate contributions are prohibited in Ukraine. Only individual citizens can make contributions to individual candidates within the limits, set by election laws.

References:

Law of Ukraine, "On Elections of President of Ukraine" (1999), Article 43
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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

Comments:

Individual candidates are required to report use of their campaigning funds. Central Election Commission sets the form of such report at least 80 days before the elections and the candidates must file them no later than 15 days after the elections. The commission is obliged to publish such reports in official newspapers of the parliament and the government of Ukraine "Golos Ukrainy" and "Uryadovyy Kuryer." But such public disclosure is required only for the candidates for the president. Individual candidates, running for the position of mayor, head of the village, or member of local council have to file reports within 15 days after the elections, but election commissions are not obliged to publicly disclose them.

References:

Law of Ukraine, "On Elections of President of Ukraine" (1999), Articles 42 and 43
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=474-14>

Law of Ukraine, "On Elections of the Deputies of the Council of Autonomous Republic of Crimea, Local Councils and Heads of Towns and Villages" (2010), Article 64
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2487-17>

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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:

According to the Law of Ukraine, "On Central Election Commission," the commission controls and audits the campaigning finances and expenditures.

References:

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Article 17

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:

According to the law, the Central Election Commission controls and audits campaign finances and expenditures.

References:

Central Election Commission of Ukraine.

The Law of Ukraine, "On Central Election Commission of Ukraine" (2004), Article 17

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1932-15>

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 non-governmental organizations.

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

21

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.

100 | 75 | 50 | 25 | 0

Comments:

Such limitations are not effective in regulating an individual's ability to financially support a political party since there is no independent auditing agency and the Central Election Commission does not have enough resources to conduct such monitoring regularly and in full. Moreover, there are no limitations on the amount of parties' own contributions, and the sources of such funds are not audited.

References:

OSCE (2010), "Ukraine Presidential Election 17 January and 7 February 2010: OSCE/ODIHR Election Observation Mission Final Report".

<http://www.osce.org/odihr/elections/ukraine/67844>

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

Even though the political parties are obliged to get campaign funds only from contributions of individuals, and their own funds, in practice this is not controlled. Central Election Commission does not have enough resources to do it effectively and no other independent agency does this monitoring. As a result, in reality companies are often financing political parties through own personnel or other legal mechanisms, which are not properly analyzed by any agency.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

Such limits are not effective in regulating an ability to financially support a political party. Since the party is not limited in using its own funds, the majority of expenses are based on own funds and the source of such funding is not disclosed.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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:

Even though the Central Election Commission of Ukraine has the right and powers to send materials to law enforcement agencies and start investigations, this is done rather rarely for two reasons. First, the commission does not have enough resources to conduct such analysis on a regular basis and to a full extent. Second, law enforcement agencies rarely start such investigations, even if materials are provided. No cases connected with violations of the legal requirements on financial reporting by political parties have been brought to the courts.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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, though 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:

The Central Election Commission has limited powers to impose penalties on the basis of finances. It can issue a warning or cancel registration of the candidate but the materials on any financial violations have to be passed to corresponding law enforcement agencies that can then investigate. Law enforcement agencies rarely start such investigations and impose punishments even if materials are provided. No cases connected with violations of the legal requirements on financial reporting by political parties have been brought to the courts and no cases of cancelling registration of candidates on the basis of financial irregularities have been documented.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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

Comments:

Central Election Commission does not have enough resources to conduct such monitoring and in most cases it is done selectively. There is no other independent agency to audit the contributions to political parties. The source of the money is not audited, thus it is possible to fund the party through many random people, providing small contributions (e.g. personnel of a company).

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

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

20

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:

Election laws clearly specify that campaign funds should consist of individual contributions and a candidate's or party's own resources. At the same time, in practice, companies find ways to make a donation to an individual candidate (e.g., through own resources) and this is not monitored and controlled effectively.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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:

Central Election commission does not have enough resources to conduct such monitoring and in most cases it is done selectively. It is even more so with regard to district election commissions, which are not capable of conducting an efficient audit of the finances of individual candidates' campaigns. Thus finances of individual candidates' campaigns are not audited properly.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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:

Even though the Central Election Commission has the right and powers to send materials to law enforcement agencies and initiate investigations, this is done rather rarely due to the two reasons. First, the commission does not have enough resources to conduct such analysis on a regular basis and to a full extent. Second, law enforcement agencies rarely start such investigations. This is also true for district election commissions which are obliged by law to monitor the campaigning finances of the candidates for the position of mayor and village head. In most cases they do not have enough expertise to conduct such analysis thus it is not done at all. No cases connected with violations of the legal requirements on financial reporting by individual candidates have been brought to the courts.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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:

The Central Election Commission and district election commissions have limited powers to impose penalties on the basis of finances. They can issue a warning or cancel registration of the candidate, but the materials on any financial violations have to be passed to corresponding law enforcement agencies that can then initiate investigations and punish the violators of the law. But law enforcement agencies rarely start such investigations and rarely impose punishments even if materials are provided. No cases connected with violations of the legal requirements on financial reporting by political parties have been brought to the courts and no cases of cancelling registration of candidates on the basis of financial irregularities have been documented.

References:

Creative Union "TORO" (Ukraine), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

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

Comments:

The Central Election Commission does not have enough resources to conduct such monitoring and in most cases it is done selectively. It is even more so with regard to district election commissions, which are not capable of conducting an efficient audit of the finances of individual candidates' campaigns. Thus finances of individual candidates' campaigns are not audited properly.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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.

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

0

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

100 | 75 | 50 | 25 | 0

Comments:

Election laws require political parties to file reports about their campaigning funds to the Central Election Commission or district election commissions. At the same time, neither the CEC nor district election commissions are obligated to publicly disclose such reports. Such reports are filed only on 15th day after elections thus they are not useful to the election monitoring agencies or the public anymore.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

Since neither political parties nor election commissions are obliged to publicly disclose reports on campaigning funds, they are not doing it. Thus, the citizens do not have such access to financial records and expenditures of the political parties.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

Comments:

Since neither the political parties, nor election commissions are obligated to publicly disclose reports on campaigning funds, they are not doing it. Thus, the citizens do not have such access to financial records and expenditures of political parties.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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 NGOs. 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 NGOs 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:

Since neither the political parties nor election commissions are obligated to publicly disclose reports on campaigning funds, they are not doing it; thus the citizens do not have such access to financial records and expenditures of political parties.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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.

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

Comments:

Since neither the candidates nor election commissions are obligated to publicly disclose reports on campaigning funds, they are not doing it; thus the citizens do not have such access to financial records and expenditures of individual candidates.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

Comments:

Since neither the candidates nor election commissions are obligated to publicly disclose reports on campaigning funds, they are

not doing it; thus the citizens do not have such access to financial records and expenditures of individual candidates.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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

Comments:

Since neither the candidates nor election commissions are obligated to publicly disclose reports on campaigning funds, they are not doing it. Thus the citizens do not have such access to financial records and expenditures of individual candidates.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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 NGOs. 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 NGOs 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

Comments:

Since neither the candidates nor election commissions are obliged to publicly disclose reports on campaigning funds, they are not doing it. Thus, the citizens do not have such access to financial records and expenditures of individual candidates.

References:

Interview with Andriy Mahera, deputy head of Central Election Commission of Ukraine, Aug. 16, 2011, in Kiev.

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

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.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁶⁰Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

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

Yes | No

Comments:

Article 55, Part 2 of the constitution guarantees the right to sue the government for any decisions, actions or inaction. If the government infringes the civil rights of any individual (not only citizens of Ukraine) or organization, the person or group can protect its own rights and interests by filing a lawsuit against any government agency at national or local level.

References:

The Constitution of Ukraine (1996), Article 55, Part 2
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

The Code of Administrative Proceedings of Ukraine (2005), Article 2, Part 1. <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2747-15>

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.

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

69

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

Comments:

The chief executive (prime minister) in Ukraine regularly states his opinions on different issues. They are published in the press and available to the public. In addition, the Cabinet of Ministers is obliged to answer questions of the members of parliament on Fridays of the plenary session weeks. All legislative initiatives are introduced together with justifications of such initiatives and their potential influence. Nevertheless, journalists sometimes say that it is difficult to ask officials some questions during meetings or press conferences.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with representatives of international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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

Comments:

The Constitutional Court of Ukraine has powers to review actions of the executive branch (prime minister and the Cabinet of Ministers) and determine whether they correspond to the constitution.

References:

The Constitution of Ukraine (1996), Article 150, Part 1.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

The Law of Ukraine, "On Constitutional Court of Ukraine" (1996), Article 13, Part 1
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=422%2F96-%E2%F0>

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.

Comments:

Actions of the executive can be questioned in specialized administrative courts that have jurisdiction to review actions and decisions of state authorities. Many cases of reviewing the decisions of executive by the courts have been documented. In 2009, administrative courts took into consideration more than 1.5 million cases. But the main problem in this regard is that due to imperfection of legislation, one clause can be interpreted in several ways thus sometimes it is difficult to determine legality of actions of the executive.

Judicial review is conducted on the highest level as well. The Constitutional Court of Ukraine has powers to determine constitutionality of acts of the Cabinet of Ministers, and this is done rather frequently. For instance, in the beginning of 2010, a decision of the Cabinet of Ministers to liquidate a Department on Individual Citizenship, Registration, and Migration within the Ministry of Interior was declared unconstitutional. At the same time, the decisions of judiciary are biased. For instance, in 2010 the Constitutional Court made a decision on formation of parliamentary coalition that contradicted with a previous decision and was based on political expediency.

References:

TORO Creative Union (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011 (a book)".

Constitutional Court of Ukraine (official website). <http://www.ccu.gov.ua/uk/doccatalog/list?currDir=98483>

Interview with Supreme Court Justice Olga Shapovalova, Sept, 14th, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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 use of executive orders by the Cabinet of Prime Minister Mykola Azarov is less frequent than that of the former prime minister, Yulia Tymoshenko (former prime minister of Ukraine). Nevertheless, such practice exists. For instance, in March 2011 Azarov ordered the farmers to plant certain crops. Moreover, even though the president formally is above the branches and does not legally belong to the executive branch, Viktor Yanukovich often claims to be personally responsible for different problems or programs and makes public orders to the government or other officials. For instance, in June 2011, he ordered all central and local agencies to ensure that all churches in Ukraine are equal. As a result, currently the government and the president are major centers of policymaking.

References:

Ukrainskyy Tyzhden (2011), "Azarov Ordered to Plant Buckwheat Even in the Regions Where It Does Not Grow" <http://tyzhden.ua/News/18846>

ZiK (2011), "Yanukovich Ordered to Ensure the Equality of All Churches in Ukraine" <http://zik.ua/ua/news/2011/06/17/293764>

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | **No**

Comments:

Constitution of Ukraine, Article 105, Part 1, provides that the president cannot be investigated or prosecuted for any crimes. The prime minister and the ministers do not enjoy such immunities.

References:

The Constitution of Ukraine (1996), Article 105, Part 1
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

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:

In Ukraine, immunity is granted to the president, members of parliament and the judges. The prime minister and ministers can be investigated, charged or prosecuted for crimes they commit.

References:

Law of Ukraine, "On the Cabinet of Ministers of Ukraine" (2010)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2591-17&p=1316849398496994>

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.

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

28

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

According to the Tax Code of Ukraine, every person that receives income other than salary is obliged to file an asset disclosure form. The president and the prime minister are not exempt. They are also required to file this form when they become candidates for the president or are appointed for the position of prime minister.

A new anti-corruption law pays significant attention to filing a regular asset disclosure form by the president, prime minister, and ministers. The law came into force July 1, 2011, with this specific article taking effect Jan. 1, 2012.

References:

Tax Code of Ukraine (2010), Article 46

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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:

According to the tax code, every person who receives income other than salary at the workplace is obliged to file an asset disclosure form. The prime minister and the ministers are not exempt from this duty.

A new anti-corruption law pays significant attention to filing a regular asset disclosure form by the president, prime minister, and ministers. The law came into force July 1, 2011, with this specific article taking effect Jan. 1, 2012.

References:

Tax Code of Ukraine (2010), Article 46

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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:

There are no limitations regarding gifts specifically to the members of executive branch. Nevertheless, the tax code requires all gifts larger than 50 percent of the minimum wage (approximately \$120 per month) to be declared.

The new anti-corruption law that came into force July 1, 2011, sets limits for gifts and hospitality offered to members of executive branch. The value of such gift cannot exceed 50 percent of the minimum wage (as of April 1, 2011, minimum wage in Ukraine was approximately \$120 per month). Total value of all gifts from one source should not exceed one minimum wage.

References:

Tax Code of Ukraine (2010), Article 165-1-39
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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**

Comments:

The asset disclosure forms of the members of executive branch are audited only by the tax administration (Article 49 of the tax code). There is no other agency responsible for independent auditing of the asset disclosure forms of the executive.

Such financial control is required by new law on anti-corruption measures that came into force on July 1st, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be determined by the president.

References:

Tax Code of Ukraine (2010), Article 49
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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**

Comments:

No such restrictions have been present in the legislation of Ukraine through the time of this report, June 30, 2010 – June 30, 2011.

Article 10 of the new law on anti-corruption measures that came into force on July 1, 2011, prohibits public officials on national or local level to hold any position connected to their previous work for at least a year.

References:

No law exists.

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 have been no regulations, thus it is impossible to judge their effectiveness.

Article 10 of the new law on anti-corruption measures that came into force July 1, 2011, prohibits public officials on national or local level to hold any position connected to their previous work for at least a year.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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:

Since no such regulations have been in place, it is impossible to estimate their effectiveness. The cases of especially expensive gifts to the prime minister and the ministers have been documented. For instance, on December 17, 2010, Prime Minister Mykola Azarov received a car full of flowers and rare books.

References:

Aleksandr Panchenko and Igor Serov (Newspaper "Segodnya," 2011), "Azarov Received a Car Full of Flowers and Kaluzh Newspaper from 1947"

<http://www.segodnya.ua/news/14205978.html>

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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:

The asset disclosures are audited only by the tax administrations (Article 49 of the Tax Code of Ukraine) that check only if the taxes are filed properly. There is no other agency responsible for independent auditing of the asset disclosure forms of the executive.

Such financial control is required by a new law on anti-corruption measures that came into force July 1, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be set by the president.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

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

88

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

Comments:

According to the law, the asset disclosure forms of the public officials cannot be classified as information with limited access, and should be provided upon request of the citizens.

Article 12 of the new law on anti-corruption measures that took effect Jan. 1, 2012, specifies that the asset disclosure forms of the president, prime minister, and ministers must be published within 30 days after they are filed.

References:

Law of Ukraine "On Access to Public Information" (2011), Article 6, Part 6 <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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

Comments:

In 2010 and 2011, the asset disclosure records of President Viktor Yanukovich and Prime Minister Mykola Azarov were published on their official websites. The assets disclosure forms were issued voluntarily and within a reasonable time period.

References:

President of Ukraine (official Web portal), "Asset disclosure form of the President of Ukraine Viktor Yanukovich, 2011."
http://www.president.gov.ua/docs/Yan_d01g.pd

President of Ukraine (official Web portal), "Asset disclosure form of the President of Ukraine Viktor Yanukovich, 2010"
<http://www.president.gov.ua/docs/declaration.pdf>

Cabinet of Ministers (official Web portal), "Asset disclosure form of the Prime-Minister of Ukraine Mykola Azarov, 2011."
<http://www.kmu.gov.ua/document/244196290/Azarov.pdf>

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance," and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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:

In 2010 and 2011 the asset disclosure records of the president and prime minister were published on their official websites. They were available to the public free of charge.

References:

President of Ukraine (official Web portal), "Asset disclosure form of the President of Ukraine Viktor Yanukovich, 2011."
http://www.president.gov.ua/docs/Yan_d01g.pd

President of Ukraine (official Web portal), "Asset disclosure form of the President of Ukraine Viktor Yanukovich, 2010"
<http://www.president.gov.ua/docs/declaration.pdf>

Cabinet of Ministers (official Web portal), "Asset disclosure form of the Prime-Minister of Ukraine Mykola Azarov, 2011."
<http://www.kmu.gov.ua/document/244196290/Azarov.pdf>

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance," and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in 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 NGOs. 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 NGOs 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:

The form of an asset disclosure document is specified by the Ministry of Finances and is standard for all public officials. The form is often criticized for not including the information on spending habits of the officials, which limits public understanding of the official's true income and does not show correspondence of lifestyle and declared assets. Such discrepancies have often been noticed and reported by the journalists. For instance, former Prime Minister Yulia Tymoshenko has never declared any house or apartment. The current prime minister lives in one of the most expensive apartment buildings in Kiev, though his income until 2010 was not high enough for purchasing such accommodation.

References:

Vidomosti UA (2011), "The Lifestyle of Government Official Does Not Corresponds to Their Asset Declarations"
<http://vidomosti-ua.com/newspaper/22589>

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance," and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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.

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

50

31a. 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 roles of a representative of a political party and a government official are often blended in Ukraine. Most recent examples concern Yulia Tymoshenko. The members of the Party of Regions have been giving statements in response to requests of the embassies to visit her in jail. The absence of such separation is especially notable during heated events. Moreover, the president is currently the honorary head of the Party of Regions and Prime Minister Mykola Azarov is the head of the party. There have been cases of combining both work trips and meetings with constituents in the regions to promote their political party and its activities.

References:

Interview with representatives of an international organization, Sept. 1, 2011, in Kiev – sources wished to remain anonymous.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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:

The Constitutional Court of Ukraine has powers to review the laws passed by the parliament, Verkhovna Rada, and determine whether they correspond to the Constitution of Ukraine.

References:

The Constitution of Ukraine (1996), Article 150.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

The Law of Ukraine, "On Constitutional Court of Ukraine" (1996), Article 13
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=422%2F96-%E2%F0>

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:

Judicial review of the laws can be performed by the Constitutional Court of Ukraine and the Higher Administrative Court of Ukraine. The latter is less effective since it cannot determine the constitutionality of legislative acts, just their correspondence to other laws. As a result, the cases are often decided in favor of the parliament, the Verkhovna Rada of Ukraine (e.g. in 10 out of 10 cases, considered in January to October of 2010).

The role of the Constitutional Court of Ukraine is greater. It makes decisions that influence the political situation in Ukraine to a great extent. At the same time, the court is often blamed for being politically biased. For instance, the decision of April 6, 2010, that individual members of the parliament can become members of coalition is directly opposite to another decision of the same court from 2008. Another controversial decision was adopted Sept. 30, 2010, when the Constitutional Court reviewed the Law of Ukraine No. 2222, "On Amendments to the Constitution of Ukraine," and declared it unconstitutional, changing the system of government of Ukraine.

On the other hand, the justices of the Constitutional Court of Ukraine, Supreme Court of Ukraine, and Higher Administrative Court of Ukraine often take part in drafting legislation. They serve as invited experts in the National Institute for Strategic Research that prepares analytical memos for the president, become members of various working groups and serve in other roles.

Nevertheless, in general the Constitutional Court is not politically neutral. Some controversial legislation that might contradict the constitution is ignored. For instance, the court refused to review the ratification of the agreement to extend the lease of the Sevastopol naval base to Russia to 2042. The experts believe it to be a political decision.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Center for Legal Political and Legal Reforms (2010), "Amending the Constitution of Ukraine through the Constitutional Court of Ukraine"

<http://www.pravo.org.ua/index.php/component/content/article/36-2010-03-02-15-16-48/230-changing-the-constitution-of-ukraine-by-the-constitutional-court-of-ukraine-ua>

Constitutional Court of Ukraine (official website), "Decision #1-45/2010"

<http://www.ccu.gov.ua/doccatalog/document?id=122408>

Interview with Supreme Court Justice Olga Shapovalova, Sept, 14th, 2011, in Kiev.

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:

Members of parliament are immune from criminal proceedings. Such immunity can be lifted only by the parliament itself.

References:

The Constitution of Ukraine (1996), Article 80

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

Law of Ukraine, "On Status of People's Deputy of Ukraine" (1993), Article 27

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2790-12>

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.

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

14

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

Yes | No

Comments:

Members of parliament are obliged to file an asset disclosure form when they start working in the parliament, and then do so annually no later than May 1st.

References:

Law of Ukraine, "On Status of People's Deputy of Ukraine" (1993), Article 25
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2790-12>

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:

No such restrictions have been present in the legislation of Ukraine during the time of this report, June 30, 2010 – June 30, 2011.

However, a new law on anti-corruption measures came into force July 1, 2011. Article 10 prohibits any public official on national or local level to hold any position connected to previous work for at least a year.

References:

No law exists.

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:

There were no limitations regarding gifts specifically to the members of the national legislature through the time of this report June 30, 2010, to June 30, 2011. Nevertheless, the Tax Code of Ukraine requires all gifts with the value of more than 50 percent of minimum wage (approximately \$120) to be declared.

However, a new law on anti-corruption measures that came into force July 1, 2011, sets limits for gifts and hospitality offered to the members of parliament. The value of such gift cannot exceed 50 percent of the minimum wage (as of April 1, 2011, minimum wage in Ukraine was approximately \$120). Total value of all gifts from one source should not exceed the minimum wage.

References:

Tax Code of Ukraine (2010), Article 165-1-39
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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:

For the time of this report, June 30, 2010 – June 30, 2011, asset disclosure forms are audited only by tax administrations that pay attention only to the accuracy of tax payments. There is no other agency, responsible for independent auditing of the asset disclosure forms of the legislative.

However, such financial control is now required by a new law on anti-corruption measures that came into force July 1, 2011. The mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be determined by the president.

References:

Tax Code of Ukraine (2010), Article 49

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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 have been no regulations. Nevertheless, many members of parliament are still involved in business even while working in the parliament.

The new law on anti-corruption measures that came into force July 1, 2011, prohibits an employment of any public officials on national or local level to hold any position connected to their previous work.

References:

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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

Comments:

There have been no regulations, thus it is impossible to judge their effectiveness. Many cases of especially expensive gifts to the members of parliament have been documented. For instance, in 2009, a member from the Party of Regions, Anna Herman, received an expensive watch and antiques for her birthday.

References:

Novynar (2009), "Herman celebrates 50th birthday."
<http://novynar.com.ua/politics/65124>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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:

The asset disclosure form is specified by the Ministry of Finances and is standard for all public officials. It is often criticized for not including the information on spending habits of the officials, which limits public understanding of true income of the official. Such discrepancies have often been noticed and reported by journalists, but no special audit of such forms is held. The asset disclosures are audited only by the tax administrations (Article 49 of the Tax Code of Ukraine) that check only if the taxes are filed properly. There is no other agency responsible for independent auditing of the asset disclosure forms of the legislative.

Such financial control is required by the new law on anti-corruption measures that came into force July 1, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be set by the president.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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.

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

63

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

Comments:

According to law, the asset disclosure records of the public officials cannot be classified as information with limited access and should be provided upon citizens' requests.

Article 12 of the new law on anti-corruption measures that took effect Jan. 1, 2012, specifies that the asset disclosure forms of the president, prime minister and other ministers must be published within 30 days after they are filed.

References:

Law of Ukraine, "On Access to Public Information" (2011), Article 6 <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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, non-governmental 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:

Generally it is difficult for the public to obtain access to asset disclosure records of the members of parliament. Some of them disclose such documents voluntarily by publishing the forms on their own websites or those of their political parties. Otherwise, it is very hard to receive such documents upon request. Even the law on public records is not effective in this regard as the members claim that the public disclosure of declaration is the duty for the legislative chamber of Ukraine, Verkhovna Rada. The chamber, in its turn, claims that it cannot disclose personal data of members.

References:

Ukrainska Pravda (online media resource) (2011), "Verkhovna Rada Refused to Disclose Assets of the Members of Parliament" <http://www.pravda.com.ua/news/2011/05/27/6247912/>

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance," and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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

Comments:

Members of parliament generally do not disclose their asset records. If such disclosure takes place, the form can be easily accessed free of charge through a website. Since the asset disclosure form consists of fewer than 10 pages, citizens cannot be asked for any fee for printing or copying. (The law requires such fee for every page above the 10-page limit.) As a result, when asset forms are disclosed, the access is free.

References:

Ukrainska Pravda (online media resource) (2011), "Verkhovna Rada Refused to Disclose Assets of the Members of Parliament" <http://www.pravda.com.ua/news/2011/05/27/6247912/>

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in 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 NGOs. 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 NGOs 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

Comments:

The asset disclosure form is standard and usually not very informative for the public. They are not audited thus not filled out carefully and accurately enough to serve their true purposes. The discrepancies between the lifestyle of the members of legislative branch and their declared assets are often documented. Such discrepancies are often caused by the fact that the assets are documented as belonging to the family of the official and not to himself or herself.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO" and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

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.

35. Can citizens access legislative processes and documents?

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

Yes | No

Comments:

All sessions of parliament – Verkhovna Rada of Ukraine – are conducted publicly. A decision to have a closed session requires a majority of votes of the members. All session proceedings, voting records, minutes, bills and laws (if the session was open) are published on its website. According to the website, all information on the site is official.

References:

The Constitution of Ukraine (1996), Article 35
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

Provisions on the website of the Verkhovna Rada of Ukraine in Global Information Network Internet (2001). <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=462/01-%D1%80%D0%B3>

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:

The plenary sessions are broadcast live on the special parliamentary TV channel “Rada” and if the issues at hand are very important, the sessions are also carried by several other national TV channels. The bills and laws as well as information on presence, voting, etc., are published on the website of the parliament – Verkhovna Rada of Ukraine – and are accessible to the citizens free of charge. According to the regulations on parliament’s website, it is a source of official information. The public can obtain information not only about current laws but on any amendments and previous versions of the acts.

However, information on committees is not as easily accessible. The committee reports and documents are in most cases classified as internal documents and not provided upon request. Minutes of the committees, their votes, participation of the members of parliament in their activities is absent and hard to obtain. Some committees lack websites.

References:

Creative Union “TORO” (Ukraine) (2011), “National Integrity System Assessment: Ukraine 2011” (a book).

Agency for Legislative Initiatives and The Westminster Foundation for Democracy (2010), “Concept of Amendments to Legislative Acts of Ukraine to Improve the Functioning of the Verkhovna Rada Of Ukraine (The “White Book” of Ukrainian Parliamentarism).” http://www.schoolsofpoliticalstudies.eu/files/White_Book.pdf

Interview with Oleksiy Chorny, head of the Odessa branch of “Democratic Alliance” and an expert on the Law of Ukraine, “On Access to Public Information,” Aug. 17, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

The majority of information is provided on the website of the parliament – Verkhovna Rada of Ukraine. It is accessible for the public free of charge. The information that is not available (minutes and reports of the committees, voting results in the committees etc.) is not accessible not due to cost, but because it is considered to be internal information.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Agency for Legislative Initiatives and The Westminster Foundation for Democracy (2010), "Concept of Amendments to Legislative Acts of Ukraine to Improve the Functioning of the Verkhovna Rada Of Ukraine (The "White Book" of Ukrainian Parliamentarism)." http://www.schoolsofpoliticalstudies.eu/files/White_Book.pdf

Interview with Oleksiy Chornyy, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in 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 NGOs. 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 NGOs trying to access this information.

53

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

83

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

Yes | No

Comments:

The Law of Ukraine, "On Justice and the Status of Judges," describes the procedures for the selection of national-level judges in Articles 64 to 79. Higher Qualification Commission of Judges (the institution with powers to appoint judges, initiate investigations, and impose penalties) announces vacancies publicly, on its website and in the government press. In order to be appointed a judge, a candidate must be 25 years or older, have legal higher education, and have at least three years of relevant work. The commission checks the eligibility of the candidates and tests their knowledge of legislation. Those who pass undergo a special clearance procedure. Cleared candidates take a second exam, after which a list of successful applicants is passed to the High Council of Justice. The council reviews the list, then sends materials on approved candidates to the president, who makes the final decision of appointing a judge for five years.

After five years, the judge is eligible for lifetime appointment. He or she can file an application to the Higher Qualification Commission of Justice. If the decision of the commission is positive, the documents are passed to the parliament – Verkhovna Rada of Ukraine – that makes the final decision at the plenary session.

References:

Higher Qualification Commission of Judges

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

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

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Requirements for being appointed a judge are rather high. But the mechanism is often criticized because the Higher Qualification Commission of Judges has too much influence over the selection of judges. Cases of nepotism are sometimes documented (children of famous judges have won in the competition, and some experts believe that it is impossible to become a judge without protectionism). At the same time, since a judge must not only know the legislation but actually lead the trial, people that are not qualified enough usually do not apply for a lifetime judge position as it is obvious that they cannot work effectively during their five-year term.

References:

Ukrainskyy Tyzhden (2011), "Competition for Position of Judges was 'Accidentally' Won by Children of Famous Judges" <http://ut.net.ua/News/25601?PageIndex=4>

Center for Legal Political and Legal Reforms (2011), "The First Selection of Judges under the New Law: Sieve Has a Crack?" <http://cplpr.org.ua/index.php/2010-03-07-18-06-07/laworganisationsandstatusuddiv/249-2011-05-25-10-17-07>

Interview with Supreme Court Justice Olga Shapovalova, Sept, 14th, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

The preparation of documents for the lifetime appointment of the judge is prepared by the Higher Qualification Commission of Judges and reviewed by High Council of Justice, but final decision is made by the parliament – Verkhovna Rada of Ukraine.

References:

Higher Qualification Commission of Judges
High Council of Judges
Verkhovna Rada of Ukraine

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).

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

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

Court decisions have sufficient reasoning behind them. Such requirements are set by the Civil Procedural Code of Ukraine (Articles 210, 213 and 215), the Code of Administrative Proceedings of Ukraine (Article 159) and the Commercial Code of Ukraine (Articles 84 and 86). These laws (codes) prescribe judicial procedure that require judges to explain their verdicts in court decisions in different cases (civil, criminal).

The former law on the status of judges is not in force any more. It was replaced by a new law "On Judiciary and the Status of Judges", which was passed in 2010. Article 12 – the previous clause governing judicial reasoning – was not included into the new law in any form.

Additionally, a law and corresponding order of the government regarding creation of state registry of judicial decisions are in force. However, they are about access to the text of court decisions, not judicial explanations and reasoning for the decisions.

References:

The Civil Procedural Code of Ukraine (2004), Articles 210, 213 and 215
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=6&nreg=1618-15>

The Commercial Code of Ukraine (1992), Articles 84 and 86
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=3&nreg=1798-12>

The Code of Administrative Proceedings of Ukraine (2005), Article 159
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2747-15>

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:

Court decisions have sufficient reasoning behind them and are available in full on the website of the "Registry of Court Decisions in Ukraine." The only exceptions are decisions classified as secret information. Many judges agree to further comment on decisions in the mass media and explain them in common language to educate the public, even though they are not obliged to do so by law.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Unified State Registry of Court Decisions of Ukraine (official website). <http://www.reyestr.court.gov.ua/>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

Anyone can file a complaint against a judge to the corresponding disciplinary body that can start investigations, conduct disciplinary hearings, and impose punishments. In case of judges of local and appellate courts, such actions are undertaken by the Higher Qualification Commission of Judges. In case of judges of higher specialized courts and Supreme Court Justices, this is done by the High Council of Justice.

References:

Higher Qualification Commission of Judges
High Council of Judges

Law of Ukraine, "On the Judicial System and Status of Judges" (2010), Articles 85-88
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17&p=1316944110939750>

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:

The High Council of Justice is an independent body with separate funding and not directly subordinate to any other agency. It is composed of 20 members. Three members each are nominated by the president, the parliament, Congress of Judges, Congress of legal universities and academic institutions, and the Congress of Attorneys of Ukraine. Two members are nominated by the National Conference of Prosecutors. The Minister of Justice of Ukraine, Supreme Court's president, and prosecutor general are members of the Council ex officio. Since not all members of the council are judges (in 2010 only six of them were judges), it is not fully protected from political interference.

The Higher Qualification Commission of Judges is also not directly subordinate to any other agency, and the mechanism of selection of its members contributes to its independence. Its members are nominated by the Congress of Judges (six members), the congress of legal universities and academic institutions (two members), the Minister of Justice of Ukraine (one member), the Human Rights Commissioner (one member), and the head of the State Judicial Administration of Ukraine (one member). In order to operate, the commission needs a quorum: At least eight members must be present.

References:

Law of Ukraine, "On the High Council of Justice" (1998), Articles 1 and 5
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=22%2F98-%E2%F0>

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

Comments:

The efficiency of both disciplinary agencies increased significantly with the new Law of Ukraine, "On Judiciary and the Status of Judges." In 2009 and 2010, the Higher Qualification Commission started investigations in four cases. The High Council of Justice increased its effectiveness in 2010 (254 cases were considered, in contrast to 113 in 12 previous years). The judges themselves and the experts claim that the main reason for the increase of efficiency is that grounds for initiating investigations are not clear. For instance, the formula "violation of oath" is vague and allows for political speculations. Thus an increase in investigations is often explained by use of this mechanism to press judges to make certain decisions.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

High Council of Justice (official website), "Results of Activities of the High Council of Justice in 2010"
<http://www.vru.gov.ua/index.php?y.pov.u.p15422011>

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Supreme Court Justice Olga Shapovalova, held Sept. 14, 2011, in Kiev.

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

Comments:

The efficiency of both disciplinary agencies increased significantly with the new law, "On Judiciary and the Status of Judges." In 2009 and 2010, the Higher Qualification Commission began investigations in four cases and in one of them the judge was dismissed. In the first half of 2011, 45 disciplinary punishments were imposed by the Commission. In 2009, 10 judges were found guilty of corruption offenses and three of them were imprisoned. In 2010, 39 judges were dismissed by High Council of Justice for violation of oath, 10 because they were found guilty by criminal court.

Such sudden increase of effectiveness is often explained by the fact that grounds for imposing punishments are not clear. The formula "violation of oath" is vague and allows for political speculations. Thus an increase in punishments is sometimes linked to use of this mechanism to press judges to make certain decisions.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Higher Qualification Commission of Judges of Ukraine (official website), "Information about the Disciplinary Responsibility of Judges"

<http://vkksu.gov.ua/discipline/3/>

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

High Council of Justice (official website), "Results of Activities of the High Council of Justice in 2010"

<http://www.vru.gov.ua/index.php?u.pov.u.p15422011>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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?

14

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes

No

Comments:

During the reporting period, no law mandated judges to file asset disclosures. However, as of July 1, 2011, all national-level judges are obliged to file an asset disclosure form no later than May 1 of each year. This declaration has to be published on the official website of the institution where they work.

Anti-corruption legislation from 1995 was considered imperfect, so the parliament passed a new law in June 2009. The new law was supposed to come into force in January 2010. Instead, it was postponed twice: first until April 2010 and then until Jan. 1, 2011. Due to delays and clauses that automatically declared the previously applicable law invalid, Ukraine had no anti-corruption legislation for half a year. The newest anti-corruption law came into force on July 1, 2011. As a result, in the end of 2010, the law, quoted in 2009 Global Integrity Report, was no longer in force. The new law came into force later than the analyzed period.

The tax code does not have any limitations or regulations regarding the gifts for the judges. It states that gifts of certain value must be included into asset declaration forms and that it is, without requiring any investigation or any similar audit as it is for everybody, not just for public servants.

References:

Law of Ukraine, "On Judiciary and the Status of Judges" (2010), Article 54

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2453-17>

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**

Comments:

There were no limitations regarding gifts specifically to judges until June 30, 2011. Nevertheless, the Tax Code of Ukraine requires the reporting of all gifts with a value of more than 50 percent of the minimum wage (approximately \$120).

References:

Tax Code of Ukraine (2010), Article 46

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=5&nreg=2755-17>

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:

Asset disclosure forms are audited only by tax officials that pay attention only to the accuracy of tax payments. There is no other agency responsible for independent auditing of the asset disclosure forms of the judiciary. The State Judicial Administration of Ukraine that discloses the forms on its website controls only the availability of the asset disclosure forms and not their content. Such financial control is required by the new law on anti-corruption measures that came into force July 1, 2011. However, the law doesn't specify a mechanism of audit, only stating that the president will set the procedures of financial control.

References:

Law of Ukraine, "On Judiciary and the Status of Judges" (2010)

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2453-17>

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**

Comments:

No such restrictions have been present in the legislation of Ukraine through the time period of this report, June 30, 2010, to June 30, 2011.

However, a new law on anti-corruption measures came into force on July 1, 2011. Article 10 prohibits any public official on the national or local level to hold any position connected to previous work for at least a year.

References:

No law existed.

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

Comments:

There have been no such restrictions, so it is impossible to judge their effectiveness.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Supreme Court Justice Olga Shapovalova, held Sept. 14, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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 have been no such regulations, thus it is impossible to judge their effectiveness. Nevertheless, media investigations show that judges are among the richest people in Ukraine, and their salaries do not correspond to their lifestyles.

References:

Serhiy Scherbyna (2011), "Judge-Millionaire, Or Who Earns More than Yanukovych"
<http://www.pravda.com.ua/articles/2011/05/12/6190295/>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

Asset disclosure forms are audited only by tax administrations that pay attention mostly to accuracy of tax payments. There is no other agency responsible for independent auditing of the asset disclosure forms of the judiciary. The State Judicial Administration of Ukraine that discloses the forms on its website only notes the facts of filing the asset disclosure forms and not their content.

Such financial control is required by the new law on anti-corruption measures that came into force July 1, 2011. However, the mechanism of audit is not specified, leaving that task to the president to decide.

References:

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.

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

56

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

Yes | No

Comments:

Judges are obliged to file an asset disclosure form no later than May 1 each year. The forms are submitted to the State Judiciary Administration of Ukraine, which publishes them on the website of the judiciary. The asset disclosure forms are available for the public for free. In addition, the law on public information says the asset disclosure forms of public officials cannot be classified as "documents with limited access" and should be provided to the citizens upon request and for free.

References:

Law of Ukraine, "On Judiciary and the Status of Judges"(2010), Article 54
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=2&nreg=2453-17&ed=20110224>

Law of Ukraine, "On Access to Public Information" (2011), Article 8
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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:

Even though the judges are obliged to file their asset disclosure records annually and these must be published on the website of their institution, the public generally has had limited access to such records.

According to the State Judicial Administration of Ukraine, there are 7,776 judges in Ukraine. Currently it is very difficult to find disclosure records for some of them. For instance, the declarations of Justices of the Constitutional Court of Ukraine were available only for a few days. After that, the head of apparatus of the court ordered them removed from the site, claiming that the requirement for public release had been fulfilled.

Moreover, a member of parliament introduced a bill, No. 8710, on June 20th, 2011, that proposes removing the requirement for public disclosure of the judges' asset declarations.

On the other hand, full availability of the forms can endanger the judges, as their home addresses and other personal data are included. Therefore judges are demanding that the form be changed to limit information about their personal life.

References:

Zakonoproekt.Org.UA (2010), "The Asset Declarations of Judges Have Been Removed from Official Website of the Constitutional Court of Ukraine"

<http://www.zakonoproekt.org.ua/z-oficijnogho-veb-sajtu-konstytucijnogho-sudu-ukrajiny-znjati-deklaracii-suddiv-pro-dokhody-.aspx>

Pravo Znaty (2011), "Verkhovna Rada Wants to Ban Public Disclosure of Asset Declaration of Judges on the Web-Site of State Judicial Administration of Ukraine"

<http://stop-x-files-ua.org/?p=5556>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev

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

Comments:

Judicial asset disclosure records generally are not available to the public, but the problem is not with cost. If they are available, usually it is through the website and free of charge. No cases of requests for fees have been documented.

The form of asset declaration is standard in Ukraine and consists of fewer than 10 pages. According to the Law of Ukraine, "On Access to Public Information," the asset declarations cannot be classified as "information with limited access," and no fee can be asked for copying or printing of documents consisting of fewer than 10 pages.

References:

Zakonoproekt.org.UA (2009) "The Official Website of the Constitutional Court of Ukraine Disclosed Asset Declaration of Judges"

<http://www.zakonoproekt.org.ua/%D0%BD%D0%B0-%D0%BE%D1%84%D1%96%D1%86%D1%96%D0%B9%D0%BD%D0%BE%D0%BC%D1%83-%D0%B2%D0%B5%D0%B1-%D1%81%D0%B0%D0%B9%D1%82%D1%96-%D0%BA%D0%BE%D0%BD%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%86%D1%96%D0%B9%D0%BD%D0%BE%D0%B3%D0%BE->

[%D1%81%D1%83%D0%B4%D1%83-%D1%83%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D0%B8-%D1%80%D0%BE%D0%B7%D0%BC%D1%96%D1%89%D0%B5%D0%BD%D1%96-%D0%B4%D0%B5%D0%BA%D0%BB%D0%B0%D1%80%D0%B0%D1%86%D1%96%D1%97-%D1%81%D1%83%D0%B4%D0%B4%D1%96%D0%B2-%D0%BF%D1%80%D0%BE-%D0%B4%D0%BE%D1%85%D0%BE%D0%B4%D0%B8.aspx](#)

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in 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 NGOs. 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 NGOs 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

Comments:

The asset disclosure forms are standard and in most cases do not represent the lifestyle of the judges. On one hand, there are claims that such forms disclose too much personal information that puts the judge in danger (e.g., home address, family members). On the other hand, the media has documented many cases of judges having houses, cars or other assets that do not correspond to their salary. For instance, the former head of the Constitutional Court of Ukraine has a large house, apartment, summer house, land etc. He is among numerous judge millionaires.

References:

Serhiy Scherbyna (2011), "Judge-Millionaire, Or Who Earns More than Yanukovych"
<http://www.pravda.com.ua/articles/2011/05/12/6190295/>

Panorama Zakarpattya (2011), "Andriy Stryzhak is on the Third Place among Judges-Millionaires"
<http://panorama-mukachevo.com/2011/05/13/8590/>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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.

3.4. Budget Process Oversight & Transparency

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

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

Yes | No

Comments:

Participation in drafting a budget for the next year is among constitutional powers of the legislature – Verkhovna Rada of Ukraine. The legislature sets preferences for the next budget period, prepares amendments to the government draft of the budget, and controls its implementation.

References:

The Constitution of Ukraine (1996), Article 85, Part 4
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%FO>

Budget Code of Ukraine (2010)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2542-14>

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

Comments:

The legislature – Verkhovna Rada of Ukraine – passes the budget proposed by the government. The parliament can provide any input or amend the budget, approve or disapprove public expenditures. There are no exceptions based on size or any other reason for specific expenditures, as the budget as a whole is voted for by the parliament.

At the same time, legislative approval is mostly based on political reasons. For instance, at the end of 2010, right before the presidential elections, the budget, developed by the government of Yulia Tymoshenko, received about a thousand amendments and was returned by the parliament to the government for improvement.

On the contrary, the 2010 budget with amendments, developed by the government of Mykola Azarov, was voted for and passed within 10 minutes without any debates or changes. The 2011 budget, also by Azarov's government, received more than 2,000 amendments but none of them were discussed; thus the budget was passed very quickly.

References:

Liga.Net (news portal) (2009), "The Parliament Returned 2010 Draft Budget for Revision"
<http://news.liga.net/ukr/news/NU097619.html>

Parliamentary Development Program II (2010), "Parliament Approved Budget for 2011"
<http://pdp.org.ua/component/content/article/1-latest-news/2398---2011>

Open Budget Index 2010, "Ukraine"
<http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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:

Even though the Verkhovna Rada of Ukraine has powers to monitor the budget process and provide any input, this mechanism is used rather rarely. The prevailing majority of budget expenditures, suggested by the government, usually remain unchanged. The approval of the budget is often based on political grounds, so if the government and the majority in parliament are from the same political party or coalition, the monitoring is limited. In case of the opposite, the parliament is using all available means to control the government through the expenditures, amending and changing the budget. For instance, in December 2010, the Verkhovna Rada of Ukraine adopted the budget without even considering any of 2,000 amendments suggested by the members of parliament.

References:

Liga.Net (news portal) (2009), "The Parliament Returned 2010 Draft Budget for Revision"
http://news.liga_net/ukr/news/NU097619.html

Parliamentary Development Program II (2010), "Parliament Approved Budget for 2011"
<http://pdp.org.ua/component/content/article/1-latest-news/2398--2011>

Open Budget Index 2010, "Ukraine"
<http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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?

42

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:

Transparent and public debates during the budgetary process take place only when the budget is discussed in the parliament. Otherwise the public does not have any access to budgetary documents. The debates in the budget committees are held behind closed doors, and the public cannot request any documents in this regard as they are classified as internal documentation, and the public records law is not applicable to them. Moreover, the budget can even lack adequate discussion in the parliament.

For instance, in April 2010, a bill with amendments to the 2010 budget was published on Friday and on Tuesday (the next working session) the measure passed all readings — at 11 a.m. As a result, the national budgetary process is often criticized as being too opaque.

References:

Reform Support Network (2009), "Modernization of Ukraine: Determining Priorities to Reform"
<http://parliament.org.ua/upload/docs/Modernization.pdf>

Open Budget Index 2010, "Ukraine"
<http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The only way for the public to provide any input to the budget process is through parliamentary hearings. Public committee hearings are not typical for Ukraine, especially for the Committee on Budget, and are held rarely. But even if they take place, their only outcome is in form of a resolution of the parliament that is just advisory, not mandatory for the parliament to take into consideration. Moreover, during such hearings the materials are not available in advance (only to the members), thus the citizens are unable to fully prepare for such hearings. The experts can be involved in the process of developing budget priorities. However, the link between their suggestions and the budget is not obvious.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

The itemized budget (Law of Ukraine, "On Budget of Ukraine for ...(year)") is available to the public on the website of parliament – Verkhovna Rada of Ukraine – with all amendments. This positive change has been made quite recently – before 2010 the budget was not published on the web in full. However, the budget is not comprehensive to the public and does not present approved articles for all programs.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Open Budget Index 2010, "Ukraine"

<http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

75:

50: Citizens, journalists and NGOs 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.

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

100

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

Yes | No

Comments:

Within the structure of the parliament of Ukraine – Verkhovna Rada of Ukraine – there is a special legislative committee dealing with budget and oversight of public funds. The Budget Committee is working on the budget during its preparation, evaluates the bills on their accordance to the current budget, cooperates with the Accounting Chamber and performs other tasks.

References:

The Budget Committee of the Verkhovna Rada of Ukraine.

Resolution of Verkhovna Rada of Ukraine (2007), “On the List, Quantitative Composition, and Jurisdiction of the Committees of the Verkhovna Rada of Ukraine”

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=4-17>

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).

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

Comments:

There is no mechanism for direct reporting of the department heads to the Budget Committee. The reports on expenditures of the state-funded institutions are passed to the treasury, which then reports on the use of state finances to the parliament. The treasury is obliged to report to the legislature on a monthly, quarterly and annual basis.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), “Second Round of Monitoring: Ukraine Monitoring Report.”

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The Budget Committee's members are selected proportionally to their parties' strength in parliament, so the majority party or coalition has the majority of members of this committee. Sometimes the chairmanship of the committee is given to the opposition but not at all times. Currently the head of the committee represents the Bloc of Lytvyn, which belongs to the coalition, and all the deputy chairs belong to BYUT-Batkivschyna (Yuliya Tymoshenko's party) and the Party of Regions. At the same time, the committee is supported by a Secretariat, made up of around 30 highly professional civil servants who do most of the work.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

The committee is not able to start investigations. Parliament can create temporary special investigation commissions. Mostly the decisions to start investigations are based on political situation and preferences. For instance, on March 17, 2011, a temporary special investigation commission on the issue of gas agreements between Ukraine and Russia was created. A member of the Party of Regions, Inna Bogoslovka, a famous opponent of Yulia Tymoshenko, was appointed a head of the commission.

References:

Ukrainskyy Tyzhden (2011), "Verkhovna Rada Will Seek Signs of Betrayal in Tymoshenko's Negotiations with Putin"
<http://www.ut.net.ua/News/18906>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category 4. Public Administration and Professionalism

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence

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

50

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

Yes | No

Comments:

By Ukrainian law civil service must be impartial and the servants should base their activities on the interests of Ukrainian people as their highest priority. Civil servants are obliged to avoid any public expression of their political views and must prevent any influence of their own political views on their work.

References:

Law of Ukraine, "On Civil Service" (1993), Article 3.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3723-12>

Code of Conduct of a Civil Servant (2010), Article 1.7
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z1089-10>

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:

Such regulations are stated in the Law of Ukraine, "On the Civil Service of Ukraine." Article 12 prohibits direct subordination of relatives. Article 15 regulates the process of employment, requiring it to be conducted on a competitive basis, with vacancies to be publicly announced at least a month in advance. According to Article 27, any civil servant can take part in competition for promotion. Article 30 of the law prohibits dismissal of a civil servant due to change of the head of the agency. Article 32 provides a right to appeal a dismissal in court. Such regulations apply to all civil servants.

References:

Law of Ukraine, "On Civil Service" (1993), Articles 12, 15, 27, 30, and 32
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3723-12>

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**

Comments:

The civil servants can appeal any decisions of their supervisor in the court. Another mechanism is through special commissions on workplace conflicts. However, there are no regulations that would ensure independence of such commissions. They are organized by the head of the agency, which has major influence on their activities and decisions. The head of the agency is the one deciding how and when their meetings will be held, what the agenda will be etc. Thus such mechanisms are ineffective and not independent of the supervisors.

References:

Law of Ukraine, "On Civil Service" (1993), Article 11
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3723-12>

Labor Code of Ukraine (1971), Articles 221 and 223-230
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=6&nreg=322-08>

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:

Actions, usually qualified as corruption (misuse of power or using information for illegitimate private gain, financial frauds or frauds with documents etc.), can be punished either according to the Code of Ukraine, "On Administrative Offences," or the Criminal Code of Ukraine. If such actions or inaction are classified as administrative offense, the fine is used as a punishment. Prohibition of future employment cannot be applied in this case.

If such actions or inaction qualify for criminal offense, the person can be punished with community works, fines, or imprisonment, with a ban on future government employment for up to three years. Giving or accepting a bribe is clearly defined as a criminal offense thus such prohibition can be applied here.

References:

Code Of Ukraine, "On Administrative Offences" (1984), Part 13A
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=80731-10&p=1315046085657365>

Criminal Code of Ukraine (2001), Part 17
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1315046085657365>

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.

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

44

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

100 | 75 | 50 | 25 | 0

Comments:

Although civil servants cannot be dismissed on the basis of appointment of a new supervisor, in practice, a change in the political situation leads to major shifts in civil service. When a new government comes into power, all heads and deputy heads of departments are dismissed and replaced. New appointments are made on the basis of political preferences and loyalty.

For instance, in March 2010, the newly appointed minister of culture fired the head of Shevchenko national park in Kaniv (one of the major tourist sites in Ukraine). From April 1 to Nov. 1, 2010, following the change of government, new Cabinet ministers dismissed about 200 heads of central executive bodies, directors of state enterprises, etc., that are subject to appointment by the government. The president fired about 550 civil servants that are subject to appointment by the president during the same period.

References:

Victor Tymoshchuk (2011), "Law on Civil Service: the Risks and Consequences"
<http://dt.ua/articles/78774>

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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:

Political criteria often dominate decisions on appointment or evaluation of civil servants. In most cases, political loyalty is the basis for hiring or promotion. Numerous cases of appointments of civil servants on the basis of personal relations were documented by the journalists of Ukrainian website Ukrainska Pravda in the end of 2010. Many influential positions then were occupied by people without relevant prior experience and education.

For instance, media reported that the deputy head of the president's administration, Hanna Herman, admitted that she met with the minister of emergencies to discuss appointment of her son, who then became a deputy minister. Also, some experts claim

that the appointments of the heads of the Security Service of Ukraine and the National Bank of Ukraine were based on their close personal ties to the leadership of the country, since they lack necessary qualifications and work experience.

References:

Serhiy Leshchenko (2010), "Ukrainian Politics as Scenery for the Series 'Dynasty.'"
<http://www.pravda.com.ua/articles/2010/12/9/5656770/>

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kyiv

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:

Political criteria often dominate decisions on appointment or evaluation of civil servants. Sometimes professionalism can serve as a basis for hiring or promotion but in most cases, political loyalty is more important. Numerous cases of appointments of civil servants due to their close ties with the top officials were documented by journalists of Ukrainian website Ukrainska Pravda in the end of 2010. Many influential positions then have been occupied by people without relevant prior experience and education.

For instance, media reported that deputy head of the president's office, Hanna Herman, admitted that she met with the minister of emergencies to discuss appointment of her son, who then became a deputy minister. The son of leader of the Communist Party of Ukraine, Andriy Symonenko, was appointed the first deputy of the State Agency of Investments and Development. The son of the Minister of the Cabinet of Ministers Oleksiy Tolstoukhov was appointed a director of state-owned Kiev Zoo.

References:

Serhiy Leshchenko (2010), "Ukrainian Politics as Scenery for TV Show 'Dynasty' "
<http://www.pravda.com.ua/articles/2010/12/9/5656770/>

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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:

Basic rights and duties of civil servants are stated in Articles 10 and 12 of the Law of Ukraine, "On Civil Service." They are further specified in job descriptions that contain detailed instructions for certain positions. Such job descriptions are prepared for all civil servants and in most cases are very specific and clear.

References:

Main Civil Service of Ukraine (official website), "A Practical Guide for Managers of Personnel Departments of Central Executive Bodies"
http://www.guds.gov.ua/control/uk/publish/article?art_id=373562&cat_id=271286#_Toc266199068

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev

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:

Base salaries of civil servants are rather low. At the same time, base salaries are received by very few civil servants, working on lower positions, in poor regions, or less influential institutions. All other civil servants receive different bonuses that compose up to 100 percent of their salaries. For instance, in Kiev state administration the real salary is around 10,000 hryvnas (approximately \$1,250) while the base salary is about 3,000 hryvnas (approximately \$375). Such bonuses are paid for holding a Ph.D. degree, work experience, bonuses for the occasion of different holidays, etc.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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:

In the majority of cases, it is possible to find information on vacancies and on personnel of government agencies on their websites. Such information can also be found on the website of Main Department of the Civil Service of Ukraine (National Civil Service of Ukraine). The latter gives an opportunity to sign up and receive new vacancies by email.

References:

Main Civil Service of Ukraine (official website), "Vacancies"
<http://www.guds.gov.ua/control/vacancy>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The conflicts between civil servants and their supervisors are usually resolved in favor of the supervisors. Even though formally civil servants can complain to institutions higher in the hierarchy of civil service, in practice the only way to appeal the decisions of supervisors is through the courts.

References:

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

No documented cases of delays of salary payments for civil servants have been documented in any media or described by the interviewees.

References:

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

There are cases of civil servants found guilty of corruption but still working at the same institution. The ban on further employment in civil service acts only for three years, and such prohibition can be used as punishment only if an act of corruption is classified as a criminal offense. Since the basis for such classification is not absolutely clear, in most cases it is labeled as administrative offense with lesser punishment and no prohibition for future employment.

For instance, in 2009, journalists of Ukrainian newspaper Dzerkalo Tyzhnya (Mirror Weekly) have documented 79 cases of persons, convicted of corruption by court, who continued working at state tax agencies.

References:

Yuri Butusov (2009), "How to Pluck Geese? Methods and Problems of STA of Ukraine"
<http://dt.ua/articles/58606>

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

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:

Civil servants of Ukraine are obliged to file asset disclosure forms before they start working and then on an annual basis.

References:

Law of Ukraine, "On Civil Service" (1993), Article 13
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3723-12>

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:

Even though the issue was not addressed in the Law of Ukraine, "On Civil Service," (until July 1st, 2011, when the new law on anti-corruption measures was adopted), it was addressed in detail in the Code of Conduct of the Civil Servants. It states that civil servants must avoid conflicts of interest and testify about any upon demand. Civil servants must recuse themselves from participation in any policy decisions if their personal interests may be affected.

References:

The Code of Conduct for Civil Servants (valid through August 2011), Articles 21 to 25
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0783-00>

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:

No such restrictions have been present in the legislation of Ukraine during the time of this report, June 30, 2010, to June 30, 2011.

However, a new law on anti-corruption measures came into force July 1, 2011. Article 10 prohibits any public official on the national or local level to hold any position connected to the official's previous work for at least a year.

References:

Law of Ukraine, "On Civil Service" (1993)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3723-12>

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 regulations are general and state that all civil servants should avoid receipt of any gifts that can be connected to his professional activities. Nevertheless, the Tax Code of Ukraine requires all gifts, larger than 50 percent of the minimum wage (approximately \$120 monthly) to be declared.

References:

The Code of Conduct for Civil Servants (valid thru August 2011), Article 23
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=z0783-00>

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

Comments:

No institution is obliged to conduct such an audit. Even though a necessity to audit the asset disclosure forms of civil servants has been constantly emphasized, it is not done yet. In 2008, the Main Department of the Civil Service of Ukraine published a number of articles on its website, analyzing the practice of such audits in other countries and expressing an interest in establishing similar procedures in Ukraine. In 2009, the need for an auditing agency has been discussed by the State Tax Administration with international experts. In 2008, a member of parliament, Yuriy Karmazin, registered a bill on state financial control of asset disclosure forms, but this bill was not included in the agenda. A person, appointed by the government to conduct such monitoring – Government Agent on Anti-Corruption Policy – did not have such audit in the list of duties and responsibilities.

Such financial control is now required by a new law on anti-corruption measures that came into force on July 1, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be determined by the president.

References:

State Tax Service of Ukraine (official website) (2009), "Future Plans for the Declaration of Income and Expenses were Discussed with International Experts"
http://www.sta.gov.ua/control/uk/publish/article?art_id=212376&cat_id=90622

S. Yaremenko, A. Kozlovsky (2008) "Declaration of income by persons authorized to perform state functions"
http://www.guds.gov.ua/control/uk/publish/printable_article.jsessionid=69A80FB494539DF970593B3C83F5CC25?art_id=150887

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

Comments:

No such restrictions have been present in the legislation of Ukraine during the time of this report, June 30, 2010, to June 30, 2011, thus it is impossible to judge their effectiveness.

However, a new law on corruption came into force on July 1, 2011. Article 10 prohibits public officials on national or local level to hold any positions connected to their previous work for at least a year.

References:

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17th, 2011, in Kiev.

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

Comments:

Such regulations and restrictions are not effective in practice. Civil servants are supposed to declare such gifts and take all measures not to accept them, but journalists often document cases of civil servants accepting very expensive gifts. Among them, for instance, a Cadillac Escalade, presented to the Ministry of Internal Affairs, and an expensive watch that was noticed on the hand of the deputy head of presidential administration, Hanna Herman. The watch costs more than her declared annual income.

References:

Ukrainska Pravda (online media resource) (2010), "Moskal Discovered who gave the Cadillac to Mohyliov." <http://www.pravda.com.ua/news/2010/09/3/5354198/>

TSN.UA (website of Ukrainian TV station TSN) (2010), "Herman Received a Diamond Watch for 58 Thousand Dollars," <http://tsn.ua/ukrayjina/german-podaruvali-diamantovij-godinnik-za-58-tis-dolariv.html>

Interview with Dr. Valentyn Gladkyh, Senior Consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, held on Aug. 17th, 2011, in Kiev.

Interview with Oleksiy Khmara, the President, and Alla Voloshyna, Vice-President of the Creative Union "TORO," held on Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, held on Aug. 17, 2011, in Kiev.

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

Comments:

Conflict of interest regulations are not effective at all. There is no mechanism of adequate control of public service thus in practice civil servants do not recuse themselves from policy decisions even if their personal interest is clear. The most famous case is with Valeriy Khoroshkovskyy, who was the head of the Security Service of Ukraine while occupying a position in High Council of Justice. Moreover, his wife was in a case before the court with a TV channel regarding licensing conflict, and he continued working in the Council during all hearings until public pressure became too strong.

References:

Telekritika (online media resource) (2010), "TVi Demands Investigation Abuse of Power by Khoroshkovskyy and Public Control over Formation of the National TV and Radio Council," <http://www.telekritika.ua/news/2010-06-08/53503>

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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:

No institution is obliged to conduct such audit. Even though a necessity to establish such an institution or to empower one of the existing institutions to audit the asset disclosure forms of civil servants has been constantly stated, it is not done yet. In 2008, the Main Department of the Civil Service of Ukraine published a number of articles on its website analyzing the practice of such audits in other countries and expressing an interest in establishing similar procedures in Ukraine. In 2009 the need for an auditing agency was discussed by State Tax Administration with international experts. In 2008, a member of parliament, Yuriy Karmazin, registered a bill on state financial control of asset disclosure forms but this bill was never included in the agenda. A person appointed by the government to conduct such monitoring, the Government Agent on Anti-Corruption Policy, did not have such an audit in the official list of duties and responsibilities.

Such financial control is required by new law on anti-corruption measures that came into force on July 1, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be determined by the president.

References:

S. Yaremchenko, A. Kozlovsky (2008), "Declaration of income by persons authorized to perform state functions" http://www.guds.gov.ua/control/uk/publish/printable_article.jsessionid=69A80FB494539DF970593B3

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.

47. Can citizens access the asset disclosure records of senior civil servants?

69

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

Comments:

Article 6 Part 6 of the Law of Ukraine, "On Access to Public Information," states that asset disclosure records of civil servants cannot be classified as secret or internal documents, and so must be provided upon a citizen's request.

References:

Law of Ukraine, "On Access to Public Information" (2011), Article 6, Part 6.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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:

Civil servants are not specifically obliged to publicly disclose their asset disclosure records. They have to file such forms but not necessarily publish them. At the same time, Law of Ukraine, "On Access to Public Information," states that such asset disclosure records cannot be classified as secret or internal documentation and so must be provided within five days. There are cases of obtaining such records easily and quickly (e.g. asset disclosure form of the governor of Odessa oblast) but this is not happening in all cases.

References:

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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:

Generally, it is not very easy to obtain an asset disclosure form, as civil servants often refuse to provide such information, claiming that this is the job of the human resource departments. In turn, the departments claim that it is a civil servant's personal business to decide whether to disclose a form or not. Nevertheless, when disclosure assets are obtained, they are provided free of charge, as such forms have fewer than 10 pages. (According to the law on public access to records, documents that have fewer than 10 pages are provided without charge for printing or copying).

References:

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in 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 NGOs. 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 NGOs 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:

There is no audit of such asset disclosure forms; thus, they are generally not of a high quality, and do not contain necessary details and information. Moreover, such declarations often do not correspond to the lifestyles of the civil servants. Such discrepancies arise because the assets are documented as belonging to the family of the official and not to the individual.

Note that more financial control is required by a new law on anti-corruption that came into force July 1, 2011. However, a required audit is not specified. It is only mentioned that the procedures of financial control will be set by the president.

References:

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

25

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 are no specific laws or articles in existing legislation to protect civil servants who report corruption. The only law that can be used in this regard is the Law of Ukraine, "On Protection of Persons Participating in the Criminal Procedures." According to it, people reporting to law enforcement officers should be protected. At the same time, it does not have any specific references to civil servants that would protect them from transfers, termination of service etc.

Such measures have been introduced for the first time by the new anti-corruption law that came into force July 1, 2011.

References:

Law of Ukraine, "On Protection of Persons Participating in the Criminal Procedures" (1994), Article 2
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3782-12>

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:

In 2009, the Organization for Economic Cooperation and Development stated that Ukraine still did not have any protection for whistle-blowers. Even though such recommendation had been given earlier, still no progress in that direction has been made. The only way for a civil servant to get at least some protection is to qualify for protection under the Criminal Code of Ukraine that provides protection to people who report violations of the law. Moreover, whistle-blowers have limited capacity to appeal any negative consequences such as transfer or dismissal due to the low level of independence of the judiciary.

In practice, civil servants who report cases of corruption are rarely protected from negative consequences. Although protection has been promised by the president, such mechanisms have not been created until recently. Whistle-blower protection measures have been introduced for the first time by the new anti-corruption law that came into force July 1, 2011.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring

Report.”

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Dr. Valentyn Gladkyh, senior consultant of Main Organizational Department of Apparatus of Verkhovna Rada of Ukraine, Aug. 17, 2011, in Kiev.

Interview with Oleksiy Khmara, president of the Creative Union “TORO,” and Alla Voloshyna, vice president of the Creative Union “TORO,” Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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**

Comments:

There were no specific laws to protect who those report corruption, graft, abuse of power or abuse of resources. The only law that could be used in this regard is the Law of Ukraine, “On Protection of Persons Participating in the Criminal Procedures.” According to this law, people who report to the law enforcement officers can be protected. Such protection includes the possibility to remain anonymous and the duty of those who have such information due to their involvement in the process to keep this information secret, otherwise it would be considered a criminal offense.

Such protective measures have been introduced for the first time by the new anti-corruption law that came into force on July 1, 2011.

References:

Law of Ukraine, “On Protection of Persons Participating in the Criminal Procedures” (1994), Article 2
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3782-12>

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

Comments:

In 2009, the Organization for Economic Cooperation and Development stated that Ukraine still did not have any protection for whistle-blowers. Even though such recommendation had been given earlier, still no progress in that direction was made. The only way for the people to get at least some protection is to qualify for protection under criminal code. Besides, it is hard for whistleblowers to appeal any negative consequences such as transfer or dismissal due to the low level of independence of the judiciary. In practice, employees who report cases of corruptions are rarely protected from retribution. Even though such protection has been also promised by the president, such mechanisms had not been created until recently. Whistle-blowers protection measures were introduced for the first time by the new anti-corruption law that came into force July 1, 2011.

In addition, private-sector employees are often afraid to report corruption because officials are not punished adequately in most cases and still work in government. Thus, they are in position of power that enables them to take retribution. An example of

persecution of a whistle-blower took place in the summer 2011. After a methane explosion in a mine, a coal miner, Ihor Smetanin, recorded a video where he criticized dangerous conditions. The video received significant media attention and after that the miner received numerous threats, disappeared for some time, and lost his job.

References:

Kyiv Post newspaper (2011), "Whistle-blower Coal Miner Reportedly Forced out of Job." http://www.kyivpost.com/news/business/bus_general/detail/110670/

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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.

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

49a. 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:

According to anti-corruption law of Ukraine that was valid until 2011, no such mechanisms were available. The only exception was with law enforcement agencies that had them. Public servants, working at other institutions, can report corruption to prosecutor's office or to special departments of the police.

References:

Law of Ukraine, "On Struggle with Corruption" (1995), Article 4 (valid thru Jan. 1, 2011) <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=356%2F95-%E2%FO>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

25

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Usually such internal reporting units or agencies consist of agency staff that do this job in addition to their own tasks. Therefore in most cases such units hold meetings from time to time and do not have professional staff to react to corruption complaints. Special internal investigation units with full-time professional employees operate only within certain agencies, mostly in law enforcement (e.g., police, Security Service of Ukraine).

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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

Comments:

Usually such internal reporting units or agencies consist of agency employees that do this job in addition to their own tasks. Therefore in most cases there is no funding for such units. Special internal investigation units operate only within certain public institutions, mostly in law enforcement (police, security service). In such institutions they receive adequate funding for their activities.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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:

Usually such internal reporting units or agencies consist of agency employees that do this job in addition to their own tasks. Therefore the meetings are not held regularly and the personnel of such units do not have much time to react to corruption complaints upon receipt. Special internal investigation units operate only within certain public institutions, mostly in law enforcement (police, security service). In such institutions they work full time and react on complaints within reasonable time period.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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:

Internal reporting units in government agencies rarely start investigations. If a person wants to get his or her complaints satisfied, he or she usually goes directly to law enforcement. In law enforcement agencies, internal investigation units are much more effective. For instance, in 2009, 5,400 reports on administrative corruption offenses have been submitted to courts by these units of law enforcement agencies.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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.

51. Is the public procurement process effective?

60

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

According to the Law of Ukraine, "On Public Procurement," Article 11, the personnel of the committees on competitive bidding that directly administer procurement procedures must ensure that no conflict of interest is in place. Representatives of bidding companies, their relatives, members of parliament, members of local councils are prohibited from membership in such committees.

More specific conflict of interest measures have been introduced for the first time by the new anti-corruption law which took effect July 1, 2011. A new Code of Conduct, based on new law, contains specific measures for civil servants on how to avoid conflicts of interest. If there is no way to avoid it, the civil servant comes under specific control of his or her supervisor, and all the worker's documents, proposals, etc., are reviewed for absence of influence of the civil servant's interests.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 11
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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:

Article 11 of the Law of Ukraine, "On Public Procurement," requires all officials that start working in the committee on competitive bidding, directly administering procurement procedures, to undergo special professional training. They are also obliged to undergo mandatory training at least once every two years.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 11
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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:

Although conflicts of interest are addressed in the Law of Ukraine, "On Public Procurement," in practice there is no mechanism to prevent or detect such conflict. The members of bidding committees are obliged to declare the conflict of interest themselves but there is no agency or institution, responsible for controlling that. There is no punishment for the officials who have such conflict of interest.

Such measures were introduced for the first time by the new anti-corruption law that took effect July 1, 2011. A new Code of Conduct, based on the new law, contains specific measures for the civil servants on how to avoid conflicts of interest. If there is no way to avoid it, the civil servant comes under specific control of his or her supervisor and all the worker's documents, proposals, etc., are additionally reviewed for absence of influence of the employee's interests.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

USAID (2011), "Join the Discussion of the Concept of the Law of Ukraine 'On Public Procurement.'" <http://uniter.org.ua/ua/news/info/163>

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Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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:

There are no specific requirements concerning procurement officials. As civil servants, they are obliged to file asset disclosure forms, but no institution is obliged to audit the forms. Even though a necessity to audit the asset disclosure forms has been constantly stated, it is not done yet. In 2008, the Main Department of the Civil Service of Ukraine published a number of articles on its website, analyzing the practice of such audits in other countries and expressing an interest in establishing similar procedures in Ukraine. In 2009, the need for an auditing agency was discussed by State Tax Administration with international experts. In 2008, a member of parliament, Yuriy Karmazin, registered a bill on state financial control of asset disclosure forms, but this bill was not included in the agenda. A person appointed by the government to conduct such monitoring – the Government Agent on Anti-Corruption Policy – did not have such audit in the official list of duties and responsibilities. Such financial control is required by new law on anti-corruption measures that came into force July 1, 2011. However, the mechanism of audit is not specified. It is only mentioned that the procedures of financial control will be set by the president.

References:

State Tax Service of Ukraine (official website) (2009), "Future Plans for the Declaration of Income and Expenses were Discussed with International Experts" http://www.sta.gov.ua/control/uk/publish/article?art_id=212376&cat_id=90622

S. Yaremchenko, A. Kozlovsky (2008), "Declaration of income by persons authorized to perform state functions" http://www.guds.gov.ua/control/uk/publish/printable_article.jsessionid=69A80FB494539DF970593B3C83F5CC25?art_id=150887

Cabinet of Ministers of Ukraine (2009), "On approval of the Government Agent for Anti-Corruption Policy" <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=410-2009-%EF>

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:

According to the Law of Ukraine, "On Public Procurement," any procurements greater than 300,000 hryvnas (\$37,500) for work contracts and 100,000 hryvnas (\$12,500) for goods or services require competitive bidding.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 2.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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:

Article 39 of the Law of Ukraine, "On Public Procurement," lists limitations on sole sourcing but they are general and unspecific. For instance, it states that sole sourcing can be used in cases when there is not competition, including for technical reasons, which is not clear, and in case of emergency need for the goods or services.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 39.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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

Comments:

Article 18 of the Law of Ukraine, "On Public Procurement," describes the review of procurement decisions. A decision can be appealed within 14 days after it is received. The unsuccessful bidder can appeal to the special appeal agency – the Anti-Monopoly Committee of Ukraine – and pay a fee of 5,000 hryvnas (about \$625) to appeal a contract for goods and services or 15,000 hryvnas (\$1,875) to appeal a work contract. The Anti-Monopoly Committee is obliged to notify the bidder when and where the appeal will be considered within three days. If the committee finds the procurement decision illegal or that it violated the rights of the bidder, the contract can be canceled.

References:

The Anti-Monopoly Committee of Ukraine.

Law of Ukraine, "On Public Procurement" (2010), Articles 18, 19.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

Regulations of the Cabinet of Ministers, "On Fee for Filing Appeals Regarding Public Procurements" (2010)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=773-2010-%EF>

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

Comments:

Article 8 of the Law of Ukraine, "On Public Procurement" provides the right for unsuccessful bidder to challenge the decision of the procurement appeal agency – the Anti-Monopoly Committee of Ukraine – in a court within a month after it became known to the bidder.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 8.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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:

Article 17 Part 2 of the Law of Ukraine, "On Public Procurement," states that if the company is found guilty of major violations of procurement regulations, connected to corruption, the verdict can serve as a basis for banning the companies from bidding. At the same time, there are no regulations on creation of black lists of the companies guilty of major violations of procurement regulations.

References:

Law of Ukraine, "On Public Procurement" (2010), Article 17, Part 2.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

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:

Although such companies are by law prohibited from further participation in procurement bids, there is no blacklist. Thus, this requirement is ineffective in practice. No case of a company prohibited from participation in procurement bids has been found during this research.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring

Report.”
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union “TORO,” and Alla Voloshyna, vice president of the Creative Union “TORO,” Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

52. Can citizens access the public procurement process?

96

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

The Law of Ukraine, “On Public Procurement,” describes procurement regulations and procedures in great detail. In addition, the information about any announced procurement can be found on website of the Ministry of Economic Development and Trade of Ukraine and in the journal “Public Procurement.”

References:

Law of Ukraine, “On Public Procurement” (2010)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

Public Procurement (nationwide official web portal) <https://tender.me.gov.ua/EDZFrontOffice/menu/uk/>

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

Comments:

Article 10 of the Law of Ukraine, “On Public Procurement,” requires all results of the bidding to be announced on the website of the Ministry of Economic Development and Trade of Ukraine and in the journal “Public Procurement.”

References:

Law of Ukraine, “On Public Procurement” (2010), Article 10.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2289-17&p=1315126203473884>

Public Procurement (nationwide official website)
<https://tender.me.gov.ua/EDZFrontOffice/menu/uk/>

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

Comments:

The Law of Ukraine, "On Public Procurement," describes procurement regulations and procedures in great detail. The law is easily accessible for the citizens on the website of Verkhovna Rada of Ukraine. In addition, the information about any announced procurement can be found on the website of the Ministry of Economic Development and Trade of Ukraine and in the journal "Public Procurement."

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, held on Aug. 17, 2011, in Kyiv

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:

The Law of Ukraine, "On Public Procurement," describes procurement regulations and procedures in great detail. The law is easily accessible on the website of the parliament, Verkhovna Rada of Ukraine. In addition, the information about any announced procurement can be found on the website of the Ministry of Economic Development and Trade of Ukraine and in the journal "Public Procurement." The access to the websites of Verkhovna Rada of Ukraine and the Ministry is free of charge.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in 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. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The Law of Ukraine, "On Public Procurement," requires announcements of public procurements to be published on the website of the Ministry of Economic Development and Trade of Ukraine and in the journal "Public Procurement." The access to this portal is free of charge. In addition, many government agencies and institutions publish announcements on their own websites. For instance, all information about expected procurements of the railway can be found on the website of Ukrainska Zaliznytsya (main state railway agency).

References:

Ukrainska Zaliznytsya (state railway agency, official website), "Public Procurement in Rail Transport."
<http://tender.uz.gov.ua/>

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

100 | 75 | 50 | 25 | 0

Comments:

The Law of Ukraine, "On Public Procurement," requires results of major public procurement bids to be published on the website of the Ministry of Economic Development and Trade of Ukraine and in the journal "Public Procurement." The access to this site is free of charge. At the same time, sometimes the information, published at the website, is limited. The public has no details about the winner (e.g., who the company actually belongs to), just general facts about the bidding and its results.

References:

Ukrainska Zaliznytsya (state railway agency, official website), "Open tenders – Results".
<http://tender.uz.gov.ua/siteweb/tender.nsf/%D0%A0%D0%B5%D0%B7%D1%83%D0%BB%D1%8C%D1%82%D0%B0%D1%82?OpenView>

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

Comments:

Article 8 of the Law of Ukraine, "On Privatization of State Assets," states that any Ukrainian citizen, Ukrainian or foreign legal entity can participate in buying state assets. The only limitation is for the entities still partially owned by the state. If the state owns more than 25 percent of the entity, it is not eligible for participation in privatization as the buyer.

References:

Law of Ukraine, "On Privatization of State Assets" (1992), Article 8.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2163-12&ed=20110101>

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:

Even though the issue was not addressed in the Law of Ukraine, "On Civil Service," until July 1, 2011, it was addressed in detail in the Code of Conduct of the Civil Servants. It states that a civil servant is obliged to avoid any conflict of interest and testify about it upon demand. In addition, Article 8 of the Law of Ukraine, "On Privatization of State Assets," prohibits civil servants from buying privatized state assets. Article 10 of the Temporary Provision on the State Property Fund that administers privatization prohibits the staff of the fund from being members of political parties, NGOs, parliament, or be on leading positions of enterprises.

References:

Law of Ukraine, "On Privatization of the State Assets" (1992)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2163-12&p=1315126203473884>

Resolution of the Verkhovna Rada of Ukraine, "On Temporary Provisions on State Property Fund of Ukraine" (1992)
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2558-12>

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 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:

The conflict of interest measures in the sphere of privatization are not effective. Moreover, experts claim that the fact that the State Property Fund is responsible both for managing state assets and their privatization creates a major conflict of interest. Even though the cases of conflict of interest have not been officially documented and marked as such, the experts constantly note and highlight examples. For instance, there is a suggestion that Ukrtelecom (Ukrainian National Telecommunications Operator, an all-Ukrainian Internet provider) was not privatized within developed schedule because the price was too high. The government had an interest in the officials in the property fund because the government already had professional relationships with them; thus, it created speculation when Ukrtelecom was not sold until the price was acceptable for the officials in the property fund.

Such measures have been introduced for the first time by the new anti-corruption law that came into force July 1, 2011. A new Code of Conduct, based on the law, contains specific measures for the civil servants on how to avoid the conflict of interest. If there is no way to avoid it, the civil servant comes under specific control of the worker's supervisor and all the employee's documents, proposals, etc., are additionally reviewed for absence of conflict of interest. Since the measures have been introduced recently, it is impossible to judge their effectiveness in practice.

References:

Deutsche Welle (2010), "Privatization of 'Ukrtelecom': The Process is Delayed Again and Shares Fall." <http://www.dw-world.de/dw/article/0,,5989611,00.html>

Independent International Experts Commission (2010), "Proposals for Ukraine: 2010 – Time for Reforms" <http://www.iiie.com/publications/papers/asiund0210.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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?

75

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The Law of Ukraine, "On Privatization of State Assets," is available for the public on parliament's website. Article 11 requires the list of objects, eligible for privatization, to be published on government websites and in national and local state media. Any decision of privatization of any particular object must be also made public. Article 19 of the law specifies what such information should contain: the deadlines for applying as a buyer, regulations of the auction, results of the privatization, any government decisions in this regard etc.

References:

Law of Ukraine, "On Privatization of State Assets" (1992), Article 11.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2163-12&ed=20110101>

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 information about privatization is advertised through print media and Internet. The State Property Fund publishes such announcements on its website. At the same time, the situation is not the same with local authorities. Many cases of local authorities not announcing their meetings when land privatization will take place have been documented.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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

Comments:

According to Article 19 of the Law of Ukraine, "On Privatization of State Assets," the information about privatization results – winners of the auction, final price, distribution of shares between new owners, etc. – must be published in the local press of the region where the privatized object is situated.

References:

Law of Ukraine, "On Privatization of State Assets" (1992), Article 19.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2163-12&ed=20110101>

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

Comments:

The information about privatization is advertised through print media and Internet. The State Property Fund that administers privatization publishes such announcements on its website. The citizens can access privatization regulations within a reasonable time period before the actual privatization takes place. At the same time, the citizens can access only general information about the privatization and further details are available only to registered participants. In addition, the situation is worse on the local level. Local authorities often do not provide information about land privatization to all interested parties.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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

Comments:

The information about privatization is advertised through print media and Internet. The State Property Fund that administers privatization publishes such announcements on its website free of charge. The citizens can access privatization regulations within a reasonable time period before the actual privatization takes place. At the same time, the citizens can access only general information about privatization while further details are available only to registered participants. In addition, the situation is worse on the local level. Local authorities often do not provide information about land privatization to all interested parties. However, the cost is not the issue but the availability of the information in general.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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 NGOs. 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 NGOs trying to access this information.

5.1. ⁷⁴National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

Article 1 of the Law of Ukraine, "On Commissioner for Human Rights of Verkhovna Rada of Ukraine," provides a mandate to protect the rights of any person within Ukrainian borders from any violations. The authority in charge is the Commissioner for Human Rights of Verkhovna Rada of Ukraine.

References:

Law of Ukraine, "On Commissioner for Human Rights of Verkhovna Rada of Ukraine" (1998), Article 1.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=776%2F97-%E2%F0>

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.

56. Is the national ombudsman effective?

43

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

Article 4 of the Law of Ukraine, "On Commissioner for Human Rights of Verkhovna Rada of Ukraine," declares the neutrality of the ombudsman and formal independence from the government. The ombudsman cannot be removed from the position if the government is dissolved or when a state of emergency is declared. The commissioner is appointed and dismissed by Verkhovna Rada of Ukraine and is not a subordinate part of any ministry or other government agency.

References:

Law of Ukraine, "On Commissioner for Human Rights of Verkhovna Rada of Ukraine" (1998), Article 4.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=776%2F97-%E2%F0>

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:

The ombudsman in Ukraine is partly protected from political interference. He or she is appointed by the parliament for five years but can be removed for several reasons, including such vague ones such as "violation of oath," which gives basis for removal in case of political will. The ombudsman is elected by simple majority in parliament, which again creates means for political influence. In addition, the current Ukrainian ombudsman, Nina Karpachova, claims that the financing of her office is too dependent on parliamentary decisions; these also can be used as a mean of pressure.

Nevertheless, Mrs. Karpachova is displaying increasing independence. She had been harshly criticized for participation in parliamentary elections and for illegally holding a seat in parliament while ombudsman. However, since then her frequent involvement in political cases became more balanced. For instance, she visited former minister Yuriy Lutsenko in prison but did not make any political statements, talking only about his health and living conditions.

References:

ForUm (online media resource) (2011), "Karpachova Talked with Lutsenko in Prison for an Hour"
<http://ua.for-ua.com/politics/2011/05/04/201816.html>

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2010), "Monitoring of Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine"
<http://library.khpg.org/files/docs/1269004586.pdf>

Website of the Ukrainian Parliament Commissioner for Human Rights, "Financing Activities of the Ombudsman"
http://www.ombudsman.kiev.ua/finance_frame.htm

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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:

The ombudsman can be removed by parliament. The reasons of such removal are specified in the law, but some of them are not clear enough. For instance, the ombudsman can be removed for "violation of oath" without further explanations what exactly that means. Thus the parliament has an exclusive right to remove the ombudsman by simple majority. An investigation of the reasons for removal of the ombudsman can be initiated solely by the speaker of parliament or by one-fourth of the members.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of Activities of Human Rights Commissioner of the Verkhovna Rada of Ukraine on Human Rights (for the period 1998 – 2008)"

<http://helsinki.org.ua/index.php?id=1243947451>

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:

The ombudsman has a right to appoint members of its secretariat and create a network of regional representatives. It is impossible to judge the professionalism of the secretariat, as its structure is not known to the public. Even though the intent to establish a regional network was declared more than 10 years ago, local representatives are currently working only in three regions. The problem is based on inability of the ombudsman to organize work effectively. In general, the ombudsman's poor performance is shown by the following facts:

* During 1998 to 2010 only six annual reports have been published and are available on the website.

* Requests for information are ignored by ombudsman's personnel.

* Investigations are started only in 30 percent of the cases, while 70 percent of citizens' complaints are ignored.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"

<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights

<http://www.ombudsman.kiev.ua/>

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

Comments:

The ombudsman has a right to appoint members of the secretariat and create a network of regional representatives. It is impossible to judge the independence of the secretariat from other institutions or political influence as its structure is not known to the public. Even though the intent to establish a regional network was declared more than 10 years ago, local representatives are

currently working only in three regions. On the other hand, since such appointments are up to the ombudsman, they do not directly contradict to the principle of independence of the ombudsman.

References:

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights
<http://www.ombudsman.kiev.ua/>

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

Comments:

There are two positions on regularity and adequacy of funding of the ombudsman. The current ombudsman claims that such funding is inadequate and uses it to justify low efficiency of her activities. On the other hand, civil society associations state that the funding has been significantly increased (more than eight times). In addition, almost \$1 million has been provided by UNDP (2004-2006) to increase the efficiency of the ombudsman's work.

It is important to note the difficulty of gaining information regarding the Ombudsman. Even NGOs specifically trying to monitor the ombudsman's activities cannot obtain updated data.

References:

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights
<http://www.ombudsman.kiev.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: 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

Comments:

The ombudsman is obliged to publish annual reports. But from 1998 to 2010 only six annual reports have been published and are available on the website. The requests on information are considered by the agency as undue interference with its activities, thus no information is provided in response. There are no cases documented about any requests sent after the new law on access to public information came into force in May 2011.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"

<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights

<http://www.ombudsman.kiev.ua/>

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

Comments:

National ombudsman starts investigations only in 30 percent of cases of complaints. In Ukraine it is more a formal position than an active agency. The reaction on complaints is rare and inadequate.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"

<http://helsinki.org.ua/index.php?id=1243947451>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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

Comments:

The national ombudsman does not have a right to impose any penalties on offenders. It can only pass the claims to other agencies. However, human rights organizations in Ukraine find that the ombudsman is not actively monitoring the situation after the case has been passed to another institution. The work on a specific case is not systematic. The ombudsman in Ukraine is more a formal position than an active agency. The reaction on complains is rare and inadequate.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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

Comments:

The reports of the ombudsman are in most cases ignored. Only 20 percent of cases that the ombudsman has been dealing with received any reaction from the government.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

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

Comments:

Approximately 70 percent of citizen complaints are rejected by the ombudsman. In 40 percent of the complaints that received attention of the ombudsman, the response contained just an explanation of whom to contact and how to take further action. The ombudsman is difficult to reach, as in most cases the caller cannot get past the answering machine.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

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?

75

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

The commissioner is obliged to present annual reports to Verkhovna Rada of Ukraine and can present special reports upon necessity. The reports are to be published in official media of Verkhovna Rada of Ukraine.

References:

Law of Ukraine, "On Human Rights Commissioner of the Verkhovna Rada of Ukraine" (1998), Article 18.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=776%2F97-%E2%F0,k>

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

Comments:

The ombudsman agency is obliged to publish annual reports. However, from 1998 to 2010 only six annual reports have been published and are available on the website. Requests for information are considered by the agency as undue interference with its

activities. No information about any requests sent after the new law on access to public information came into force in May 2011 has been documented.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights
<http://www.ombudsman.kiev.ua/>

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

75:

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

25:

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

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

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

Comments:

The ombudsman agency is obliged to publish annual reports. However, within the period from 1998 to 2010, only six annual reports have been published and are available on the web-site. The requests on information are considered by the agency as undue interference with its activities. No cases of requests sent after new law on access to public information came into force in May 2011 have been documented. Nevertheless, the reports, which are available, can be accessed online and free of charge.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"
<http://helsinki.org.ua/index.php?id=1243947451>

Website of the Ukrainian Parliament Commissioner for Human Rights
<http://www.ombudsman.kiev.ua/>

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

75:

50: Reports impose a financial burden on citizens, journalists or NGOs. 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 NGOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. 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 of Ukraine serves as a national supreme institution, conducting audit and tracking the movement of government money as well as making any investigations in this regard.

References:

Accounting Chamber of Ukraine.

Law of Ukraine, "On Accounting Chamber of Ukraine" (1996) Articles 1, 2, 6 and 7.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=315%2F96-%E2%F0>

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.

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Law of Ukraine, "On Accounting Chamber of Ukraine," declares its independence from any other agencies. The head of the Accounting Chamber is appointed by Vekhovna Rada of Ukraine by secret ballot.

References:

Law of Ukraine, "On Accounting Chamber of Ukraine" (1996) Articles 1, 2, 6 and 7.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=315%2F96-%E2%F0>

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.

Comments:

The head of Accounting Chamber is appointed by the parliament – Verkhovna Rada of Ukraine – for a seven-year term, which protects him or her from removal without relevant justification. Valentyn Symonenko has been working in the post since December 1996 – in 2003 he was re-elected for a second term. The only case of claimed intrusion into the activities of the Accounting Chamber was documented in 2006 when the opposition requested an exclusive right to appoint the head of the chamber.

Verkhovna Rada of Ukraine removed the head of the Accounting Chamber on July 7, 2011, at the end of his term. As of the beginning of January 2012, no other head had been appointed.

References:

Creative Union “TORO” (Ukraine) (2011), “National Integrity System Assessment: Ukraine 2011” (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), “Second Round of Monitoring: Ukraine Monitoring Report.”

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, held on Aug. 17, 2011 in Kiev.

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.

Comments:

In 2009, the Accounting Chamber had 543 employees, including 361 auditors. In 2008 and 2009, 40 percent of the employees had been working for more than five years. Many have doctoral degrees or are pursuing such degrees. The chamber is frequently organizing trainings for its personnel.

No cases of violation of legal requirement on incompatibility of their office with other activities by the members of the Accounting Chamber have been documented. The termination of office of chamber’s personnel was based solely on expiration of the terms of office.

References:

Creative Union “TORO” (Ukraine) (2011), “National Integrity System Assessment: Ukraine 2011” (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), “Second Round of Monitoring: Ukraine Monitoring Report.”

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The Accounting Chamber has a professional staff that works at the agency for a long period of time. The termination of staffers has been based mostly on reaching the upper age limit for civil servants. Even though the chamber is generally considered as being independent, there are some concerns that its personnel is affected by the situation in the parliament as the agency requires parliamentary approval of its activities.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The Accounting Chamber receives regular funding that allows it to conduct its functions in full. From 2006 to 2008 the funding was constantly increased. In 2009, due to the global financial crisis, the funding was reduced 30 percent, which created some barriers to the agency's operations, mostly decreasing the number of auditing trips. However, in 2010, the funding was increased twice.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The reports of the Accounting Chamber are available on the agency's website. The site has rather full and updated information on the activities of the chamber, including bulletins, work plans, etc.

At the same time, the Accounting Chamber fails to provide information in other ways. It often ignores the requests for information from the public, providing in response only a Web hyperlink, which does not give the people without internet access the opportunity to obtain information. There have also been cases of refusal to provide information even on the requests of the members of parliament.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, held on Aug. 17, 2011, in Kiev.

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

Comments:

Some proposals of the Accounting Chamber to the parliament led to further actions by the parliament, president or the Cabinet, such as: on border crossing procedures, on unified IT automated systems, on procedures to impose fines, on amendments to Budget Code and Tax Code, etc. However, generally the parliament takes no action on the findings of the Accounting Chamber.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

Approximately 10 percent of the audits were initiated by the parliament, the rest are planned by the Accounting Chamber on its own. During 2008-2010, the Accounting Chamber forwarded 57 reports to the prosecutor's office. Fourteen investigations were launched on this basis. However, even in its own reports the chamber claims that the majority of actions taken in response to the reports stay on paper.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

60. Can citizens access reports of the supreme audit institution?

75

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

Article 40 of the Law of Ukraine, "On Accounting Chamber of Ukraine," requires the chamber to publish its reports regularly. Annual reports made for parliament are to be published on parliament's website and its media and made available to the public.

References:

Law of Ukraine, "On Accounting Chamber of Ukraine" (1996), Article 40.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=2&nreg=315%2F96-%E2%F0&ed=20080522>

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.

Comments:

The reports of the Accounting Chamber are available on the Web page of the agency. The website has rather full and updated information on the activities of the chamber, including bulletins, work plans, etc. At the same time, the Accounting Chamber fails to provide information in other ways. It often ignores the requests for information for the public, providing in response only the Web hyperlink, which does not give the people without internet access the opportunity to obtain information. There have also been cases of refusal to provide information even on the requests of members of parliament.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

Comments:

The reports of the Accounting Chamber are available to the public free of charge on the website of the institution. At the same time, Accounting Chamber fails to provide the information in response to requests on information, claiming that it can be found on the internet. The chamber does not require any fees to be paid for such information.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Chorny, head of the Odessa branch of "Democratic Alliance" and an expert on the Law of Ukraine, "On Access to Public Information," Aug. 17, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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 NGOs. 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 NGOs trying to access this information.

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

Articles 1 and 2 of the Law of Ukraine, "On State Tax Administration of Ukraine," provide a mandate to collect taxes to the State Tax Administration of Ukraine. It operates nationwide and has powers to create local tax inspectors, subordinate to it.

References:

State Tax Administration of Ukraine.

Law of Ukraine, "On State Tax Administration of Ukraine" (1991), Article 1 and 2.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=509-12>

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.

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

Comments:

The State Tax Administration of Ukraine has enough staff, working in the agency full time. It consists of 24 departments with different spheres of competence, including an internal audit unit. The administration has 60,000 tax inspectors. At the same time, the tax agency and local tax inspectors that deal with the citizens are generally described as low-qualified. For instance, the Tax Code was adopted in December 2010 but in June 2011 the personnel of the tax agencies was unable to provide explanations of some of its provisions.

References:

State Tax Service of Ukraine (official website), "The List of Structural Units of State Tax Service of Ukraine"

http://www.sta.gov.ua/control/uk/publish/article?art_id=47117&cat_id=46608

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The State Tax Administration and local tax inspectors receive adequate funding for their operations. Moreover, in many cities their offices are in the most prestigious districts or expensive office buildings.

References:

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

First of all, there are different taxation principles for residents and non-residents of Ukraine. In addition, some people receive special "tax clarifications" that can be used only by those who have it. Such clarifications creates special conditions for them and their businesses. Moreover, the experts claim that the richest do not receive official salaries, thus are not paying income taxes and social payment taxes. Their main source of income is from shares and dividends, which are not taxed in Ukraine. Nevertheless, generally the taxation is based on the principle of equality of the citizens, with some exceptions.

References:

RBC Ukraine (2011), "Wealthy Citizens Actually Exempt by Law From Paying Income Taxes – Expert." <http://www.rbc.ua/ukr/finance/show/sostoyatelnye-ukraintsy-fakticheski-osvobozhdeny-na-zakonodatelnom-27032011142400>

Larysa Antoshchuk (2011), "Discrimination of Non Residents." <http://www.chesni-podatky.org/archives/7573>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Article 12 of the Customs Code of Ukraine states that the national agency which is mandated to inspect customs is the State Customs Administration of Ukraine. The right to collect excises belongs to State Tax Administration of Ukraine (Article 8 of the Law of Ukraine, "On State Tax Administration of Ukraine").

References:

State Customs Administration of Ukraine.

The Customs Code of Ukraine (2002), Article 12.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=92-15>

Law of Ukraine, "On State Tax Administration of Ukraine" (1991), Article 8

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=509-12>

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.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The customs agencies on national and on local levels have full-time employees, qualified for work in such institutions.

References:

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The customs agency receives sufficient funding to maintain its functioning. At the same time, no additional finances are provided to modernize its everyday operations. For instance, the customs offices lack modern screening devices that would make the check-ups faster and easier.

References:

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The evidence of enforcement of customs and excise legislation and cases of prevention of smuggling are regularly reported by the media. Nevertheless, they are not enforced uniformly and without discrimination. Companies that support or are close to the political forces in power receive bonuses and can be exempt from some customs payments. For instance, the firm Livella was exempt from any duties on imported oil. If the company paid import duties, the state would have received than \$375 million.

The whole process of declaring goods lacks transparency. All customs procedures are conducted in a closed room with only one inspector working with an individual businessperson. Thus, only one person has an idea about the real amount of customs payments that need to be declared.

References:

Yuriy Onyshkiv and Mark Rachkevych (2011), "Bled Dry"
<http://www.kyivpost.com/news/nation/detail/97465/#ixzz1XCc1M27R>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

The oversight of state-owned companies is conducted by the State Control and Revision Service of Ukraine.

References:

State Control and Revision Service of Ukraine.

Article 1 of the Law of Ukraine, "On State Control and Revision Service of Ukraine."

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-12>

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

70

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

The State Control and Revision Service of Ukraine is subordinate to the Ministry of Finance of Ukraine.

References:

Law of Ukraine, "On State Control and Revision Service of Ukraine" (1993), Article 4.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-12>

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

Comments:

In 2009, the State Control and Revision Service of Ukraine had 490 staff in the central office and 8,390 in the local offices. All employees are working full time and have to meet certain requirements to be employed.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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

Comments:

The State Control and Revision Service of Ukraine receives regular funding, sufficient to carry out its activities effectively. For instance, 2009 budget allocated \$54,818,000 to finance the service.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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

Comments:

The State Control and Revision Service of Ukraine is capable of initiating independent investigations. It carries out inspections of the use of budget funds, validity of financial plans, their implementation and bookkeeping. In 2010, the service carried out 7,047 inspections.

At the same time, the service in some cases is used for political persecutions. For instance, it was involved in the case regarding former Prime Minister Yulia Tymoshenko. The journalists claim that similar violations, conducted by newly appointed officials, are ignored.

References:

Unian (Information Agency) (2011), "Main Department of the State Control and Revision Service of Ukraine Declares that Tymoshenko has Broken All Records." <http://www.unian.net/ukr/news/news-416597.html>

Nikolov, Yu., Shalaisky, O., (2011), "A Tower for Boyko." http://dt.ua/POLITICS/vishka_dlya_boyka-81790.html

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010). "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011 in Kiev.

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

Comments:

The State Control and Revision Service of Ukraine is effective in imposing penalties on offenders in cooperation with law enforcement agencies. For instance, in 2010, 562 criminal cases were launched on the basis of reports of the service. Eighty-

eight of them were sent to court and 29 verdicts were pronounced. At the same time, no information is available on actual punishments and their adequacy in connection to the crimes committed by the prosecuted.

However, in some cases, the service is not even reacting to possible violations noticed by the media. For instance, journalists discovered that the price paid by one of the state-owned companies for two drilling towers is too high, compared to its market price. But the service did not make any investigations.

References:

Unian (Information Agency) (2011), "Main Department of the State Control and Revision Service of Ukraine Declares that Tymoshenko has Broken All Records". <http://www.unian.net/ukr/news/news-416597.html>

Nikolov, Yu., Shalaisky, O., (2011), "A Tower for Boyko." http://dt.ua/POLITICS/vishka_dlya_boyka-81790.html

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with financial expert Dr. Oleksandr Tsaruk, Aug. 17, 2011, in Kiev.

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.

69. Can citizens access the financial records of state-owned companies?

55

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

The information about any receipt or use of budget money as well as state assets cannot be classified as secret and must be provided upon citizen request within five days.

References:

Law of Ukraine, "On Access to Public Information" (2011), Article 6, Part 5. <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2939-17>

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

Comments:

The citizens do not have sufficient information on the expenditures of state enterprises. For instance, some of them declare themselves unprofitable and request additional state funding, while they seem to operate quite well. The Ukrainian state-owned companies have not placed their shares in the international markets which would require them to be more open.

References:

Razumkov Centre (2010), "Expert's Comments: Opaque Nature of State-Owned Enterprises Hinders to Attract Investment." http://www.uceps.org/eng/expert.php?news_id=2432

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

The audit is conducted by the State Control and Revision Service of Ukraine. Even though the institution is rather effective in its audits and many cases of violations receive adequate reaction, the service can only detect violations which have already been committed. In order to make the agency truly efficient, it needs to include risk assessment to prevent such violations in the future.

Moreover, in some cases, the service did not react to possible violations brought to light by the media. For instance, journalists discovered that the price paid by one of the state-owned companies for two drilling towers is too high, compared to market price. But the service did not initiate any investigations. Otherwise, the service has been quite effective.

References:

Unian (Information Agency) (2011), "Main Department of the State Control and Revision Service of Ukraine Declares that Tymoshenko has Broken All Records." <http://www.unian.net/ukr/news/news-416597.html>

Nikolov, Yu., Shalaisky, O., (2011), "A Tower for Boyko." http://dt.ua/POLITICS/vishka_dlya_boyka-81790.html

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report." <http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), held on Sept. 8, 2011, in Kiev.

Interview with financial expert Dr. Oleksandr Tsaruk, held on Aug. 17, 2011, in Kiev.

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

Comments:

Such information is not available to the citizens. Even though such information can be accessed by the experts through the budget or reports of the audit, they are not understandable to the general public since no "citizen budget" that would explain the budget to the people without financial background is published.

References:

International Budget Partnership (2010), "Open Budget Index 2010. Ukraine," <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in Kiev.

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:

Such information is not available to the public in a comprehensive way. Even though such information can be accessed by experts through the budget or reports of the audit, they are not understandable to the general public since no "citizen budget" that would explain the budget to the people without financial background is published.

References:

International Budget Partnership (2010), "Open Budget Index 2010. Ukraine," <http://internationalbudget.org/wp-content/uploads/2011/04/OBI2010-Ukraine.pdf>

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

Interview with Vitaliy Portnikov, chief news editor of Ukrainian TV channel TVI, Sept. 14, 2011, in 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 NGOs. 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 NGOs trying to access this information.

75 5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

The Constitution of Ukraine guarantees the right to conduct business activity within law for anyone, besides the categories of citizens, directly prohibited to do so – Members of Parliament, civil servants, etc. No other limitations for any groups of citizens are mentioned in the law.

References:

Constitution of Ukraine (1996), Article 42.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=254%EA%2F96-%E2%F0>

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

Comments:

In order to start a business, state registration is required. If such registration is denied by registering agencies, the citizens can appeal to the court. Appeals are possible both for legal entities and individual entrepreneurs.

References:

Law of Ukraine, "On State Registration of Legal Entities and Natural Persons – Entrepreneurs" (2003), Article 27 Part 4, Article 44 Part 5.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=755-15&p=1317053842184171>

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:

Generally Ukraine scores very low on the ease of doing business: 142nd out of 183 countries in 2010 World Bank's Doing Business assessment, 162nd out of 179 in 2010 Economic Freedom Index (by Heritage Foundation). It takes approximately 27 days and 10 procedures to start a business in Ukraine. Even though the total number of permits required to do business was officially reduced to 400 from 1,200, businesses still claim that the procedure did not change much in practice. At the same time,

businesses state that it is not difficult to obtain a business license but there are obstacles to its operation and extremely hard to close a business.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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

Comments:

Official cost of business license is quiet reasonable. However, many additional expenses may occur. For instance, since the procedures of obtaining a license are time-consuming and complicated, many entrepreneurs prefer to pay a lawyer to help with the documents. In addition, the government sometimes "delegates" powers to private-sector enterprises to "sell" paid services to handle various permits with state agencies. Even though the government usually recommends prices for such services, the enterprises tend to raise them, which increases the overall cost of starting a business. The approximate official cost of obtaining required permits is around \$100. However, the government requires an entrepreneur to conduct all procedures in the government of his/her city of registration. As a result, the registration process may require traveling. So the complicated procedure and necessity to file many documents, obtained at different places with different working hours, increases the actual cost.

References:

Independent International Experts Commission (2010), "Proposals for Ukraine: 2010 – Time for Reforms"
<http://www.iiie.com/publications/papers/aslund0210.pdf>

Doing Business (2011), "Starting a Business in Ukraine." <http://www.doingbusiness.org/data/exploreeconomies/ukraine/starting-a-business>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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:

Government right to inspect enterprises for public health reasons is stated in the Commercial Code of Ukraine. More details, including requirements, regulations regarding government inspections, etc., are available in separate legal act, the Law of Ukraine, "On ensuring sanitary and epidemiologic welfare of population." Both laws are available to the public on the website of parliament.

References:

The Commercial Code of Ukraine (2003),
Article 19, Part 3.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=436-15&ed=20110524>

Law of Ukraine, "On Ensuring Sanitary and Epidemiologic Welfare of Population" (1994).

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=4004-12&p=1317053842184171>

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

Comments:

Government right to inspect companies for environmental standards is stated in the Commercial Code of Ukraine. More details, including requirements and regulations regarding government inspections, are available in a separate legal act – Law of Ukraine, "On Environmental Protection." Both laws are available to the public on the website of parliament.

References:

The Commercial Code of Ukraine (2003),
Article 19, Part 3.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=436-15&ed=20110524>

Law of Ukraine, "On Environmental Protection" (1991).

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1264-12>

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:

Government right to inspect companies for public safety standards is stated in the Commercial Code of Ukraine. More details, including regulations on government inspections, are available in separate laws, the Law of Ukraine "On Fire Protection" and Law of Ukraine, "On Workplace Safety." All the laws are available to the public on parliament's website.

References:

The Commercial Code of Ukraine (2003),

Article 19, Part 3.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=436-15&ed=20110524>

Law of Ukraine "On Workplace Safety" (1992).
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2694-12&p=1317053842184171>

Law of Ukraine, "On Fire Protection" (1994).
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3745-12>

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 and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Health, environmental, and safety standards are enforced by different government agencies. The number and regularity of inspections go beyond any reasonable limits. Even though officially the government declared a moratorium on inspections until Dec. 31, 2010, such inspections were possible at enterprises "of high risk" and it was not clearly defined which enterprises qualified for such description. Therefore the authorities continued to use inspections as a mean of pressure. The level of inspections increased after so called "Tax Maydan" in the end of 2010, when entrepreneurs were protesting the new Tax Code. Participants of the protests suffer from inspections significantly.

References:

Zinovii Voronovich (2011), "Nataliia Korolevska: "These are not Reforms but the Experiments on People." "
<http://www.wz.lviv.ua/articles/90214>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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

Comments:

Such inspections in Ukraine are conducted too often. Even though officially the government declared a moratorium on inspections until Dec. 31, 2010, such inspections were possible at enterprises "of high risk." It was not clearly defined which enterprises qualified for that. Therefore, the authorities continued to use inspections as a mean of pressure.

The level of inspections increased at the end of 2010 after the so-called "Tax Maydan," when entrepreneurs protested the new Tax Code. Participants of the protests suffer from inspections significantly.

For instance, in August 2010, the head of environmental inspection of Sevastopol was arrested for soliciting a bribe in exchange for permission to reopen a hotel that had been closed for violations. In May 2011, an environmental inspector in Kerch was arrested for soliciting a bribe instead of levying an environmental fine.

References:

ZN,UA (2010), "Head of State Environmental Inspection of Sevastopol Was Caught on Bribes." http://news.dt.ua/ARCHIVE/nachalnik_derzhekoinspektsiyi_sevastopolya_pogoriv_na_habari-63392.html

Transparent Ukraine (2011), "A Bribe instead of a Fine." <http://transparentukraine.org/?p=712>

Zinovii Voronovich (2011), "Nataliia Korolevska: These are not Reforms But Experiments on People". <http://www.wz.lviv.ua/articles/90214>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), held on Sept. 8, 2011, in Kiev.

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

Comments:

Usually such inspections are the easiest and do not impede regular functioning of the business much. Nevertheless, even though officially the government declared a moratorium on inspections until Dec. 31, 2010, such inspections were possible at enterprises "of high risk" and it was not clearly defined what enterprises qualified for that. Therefore the authorities continued to use inspections as a mean of pressure. The level of inspections increased after so called "Tax Maydan" in the end of 2010, when the entrepreneurs were protesting against new Tax Code. Participants of the protests suffer from inspections significantly.

References:

Zinovii Voronovich (2011), "Nataliia Korolevska: These are not Reforms But Experiments on People". <http://www.wz.lviv.ua/articles/90214>

Interview with Oksana Prodan, head of Board of All-Ukrainian Union of Small and Medium Enterprises "Fortetsya" (Fortress), Sept. 8, 2011, in Kiev.

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.

6.1. ⁵⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

Clauses prohibiting attempted corruption are present in both the Code of Administrative Offenses and the Criminal Code of Ukraine.

In 1995, anti-corruption legislation was passed by the parliament. The law was considered imperfect, so the parliament continued working on a new law, which was finally passed into law in June 2009. The new law was supposed to come into force in January 2010. Instead, it was postponed twice, first until April 2010 and then until Jan. 1, 2010. Due to delays and clauses that automatically declared previously applicable law invalid, Ukraine had no anti-corruption legislation for half a year. The newest anti-corruption law came into force on July 1, 2011.

References:

Criminal Code of Ukraine (2001).

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1315046085657365>

Code Of Ukraine, "On Administrative Offenses" (1984).

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=80731-10&p=1315046085657365>

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:

Extortion is prohibited by Article 368 of the Criminal Code of Ukraine. The punishment depends on the amount involved and can include fines, imprisonment, confiscation of assets and prohibition of public service employment for up to three years.

References:

Criminal Code of Ukraine (2001), Article 368.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

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:

Offering a bribe is classified as illegal activity by the Criminal Code of Ukraine and is punished by a fine or imprisonment for up to two years, and prohibiting the obtaining of certain government positions for up to three years.

References:

Criminal Code of Ukraine (2001), Article 369.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

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:

Receiving a bribe is proclaimed illegal by Article 368 of the Criminal Code of Ukraine and the punishment can vary from a fine to imprisonment up to 12 years, with the prohibition of obtaining certain positions. The punishment is determined by the size of the bribe.

References:

Criminal Code of Ukraine (2001), Article 368.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

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:

Offering a bribe is classified as illegal activity. Even though it is not mentioned directly that bribing a foreign official is illegal, it is stated that bribing of any official is such and the punishment depends on the powers of the officials.

References:

Criminal Code of Ukraine (2001), Article 369.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

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:

The use of public resources for private gain is declared illegal in Article 172-2 of the Code of Ukraine on Administrative Offenses. If a person uses an official position for illegal enrichment, he or she will be punished with a fine. Comment. New anti-corruption law specifies this in more detail, describing cases of such use of public resources for private gain. New law came into force July 1, 2011.

References:

Code Of Ukraine, "On Administrative Offenses" (1984), Article 172-2.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=80731-10&p=1316257075265765>

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

Comments:

Use of confidential information for private gain is proclaimed illegal by several clauses of the Code of Ukraine, "On Administrative Offenses," as well as in the Criminal Code of Ukraine. Article 212-2 of the Code of Ukraine on Administrative Offenses prohibits not only distribution of such information but also illegal classification of information as secret without necessary grounds. Article 212-5 describes punishment for inadequate storage of secret information. Article 361-2 of the Criminal Code describes punishments for distribution or sale of information, saved on technical and computer devices.

The new anti-corruption law that came into force July 1, 2011, prohibits use of any information obtained by a former public servant for one year after the worker's dismissal.

References:

Code of Ukraine, "On Administrative Offenses" (1984), Article 212-5.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=80731-10&p=1316257075265765>

Criminal Code of Ukraine (2001), Article 361-2.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

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:

Money laundering is proclaimed illegal both in the Code of Ukraine, "On Administrative Offenses," and the Criminal Code of Ukraine. Article 166-9 of the Code of Ukraine, "On Administrative Offenses," classifies money laundering as illegal and specifies punishment for it – a fine. Article 188-34 describes punishments for refusal to obey the regulations concerning money laundering.

Article 209 of the Criminal Code of Ukraine imposes considerable punishment for money laundering. Such punishments include fine and/or imprisonment.

The procedural details of anti-money laundering activities are described in several laws, such as Law of Ukraine, "On Financial Services and State Control of Financial Markets" (Article 18), "On Banks and Banking" (Article 24, Part 2, Articles 63-65) which specify what exactly banks or other financial entities must do to prevent money laundering and what actions are needed in case if money laundering is noticed.

References:

Code Of Ukraine, "On Administrative Offenses" (1984), Article 188-34.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=80731-10&p=1316257075265765>

Criminal Code of Ukraine (2001), Article 209.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

Law of Ukraine, "On Financial Services and State Control of Financial Markets" (2002), Article 18.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2664-14>

Law of Ukraine, "On Banks and Banking" (2001), Article 24 Part 2, Articles 63-65.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=2121-14>

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:

Article 67 of the Criminal Code of Ukraine describes conspiracy to commit a crime as an aggravating circumstance and in further articles, when a specific crime is described, a conspiracy to commit it is mentioned as the aggravating circumstance.

References:

Criminal Code of Ukraine (2001), Article 67.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14&p=1316257075265765>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

0

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

Such an agency was created on April 24, 2009, when the government appointed the government anti-corruption agent. However, on February 14, 2011 the position was eliminated.

The new anti-corruption law that came into force July 1, 2011, specifies that the president will initiate establishment of an agency that would coordinate anti-corruption policies and activities.

References:

Decree of the President of Ukraine, "Dismissal of A. Bogdan from the Position of Deputy Minister of the Cabinet of Ministers of Ukraine – Government Agent for Anti-Corruption Policy" (2011).
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=212%2F2011>

Decree of the Cabinet of Ministers of Ukraine, "On Ratification of the Regulations on Government Anti-Corruption Agent" (2009).
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=410-2009-%EF>

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.

75. Is the anti-corruption agency effective?

33

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

Comments:

The government agent on anti-corruption policy was at the same time the deputy minister of the Cabinet of Ministers (a minister of the Cabinet of Ministers is the head of the government secretariat). As a result, he was in charge of some departments within the secretariat while working on anti-corruption issues and also was subordinate not only to the prime minister but to the minister of the Cabinet of Ministers as well.

References:

Decree of the Cabinet of Ministers of Ukraine, "On Ratification of the Regulations on Government Anti-Corruption Agent" (2009).
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=410-2009-%EF>

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:

The government agent on anti-corruption policy was regarded as a political office. The official was appointed and dismissed by the Cabinet upon nomination of the prime minister. There were no clear provisions on selection and dismissal of the agent, which made him politically vulnerable. In March 2010, after the change of government, the agent was replaced as well. The agent working till Feb. 2011, Andriy Bohdan, held two positions in the government simultaneously, being the government agent on anti-corruption policy and the deputy minister of the Cabinet (a minister of the Cabinet of Ministers is the head of the government secretariat). As a result, he was in charge of some departments within the secretariat while working on anti-corruption matters.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Government Portal (single website of the executive branch of Ukraine), "Government Agent for Anti-Corruption Policy."
http://www.kmu.gov.ua/control/uk/publish/article?art_id=238177802&cat_id=238175216

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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:

There were no clear provisions on selection and dismissal of the agent, which made him politically vulnerable. Since the agent was within the structure of the Cabinet, in March 2010, after the change of government, the agent was replaced as well. On Feb. 14, 2011, President Viktor Yanukovych eliminated the position.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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:

The employees of the Anti-Corruption Bureau (the office of the government agent) were qualified and capable of fulfilling their tasks. The bureau had 14 staff members, some of which were the best anti-corruption experts in Ukraine, and was headed by the director.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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

Comments:

The government agent of anti-corruption was subordinate to the Cabinet, and so was a political position. In March 2010, after the change of government, the agent was replaced as well. Being a part of Government Secretariat, the Anti-Corruption Bureau (the agent was in charge of the bureau as a structure to support his activities) did not have its own staff selection procedures to support its independence. Nonetheless, the bureau was successful in hiring some of the best anti-corruption experts in the country.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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:

Being a part of the Government Secretariat, the government agent on anti-corruption and the Anti-Corruption Bureau received adequate funding for premises, salaries, etc. In addition, the agent and bureau received funding and grants from various international anti-corruption or good governance organizations. For instance, international donors supported the website of the agent. At the same time, no funding was foreseen for some important functions of the agent and the bureau e.g. anti-corruption studies, public education campaigns, etc. In Feb. 2011, the agency was eliminated, but for political reasons, not lack of funding.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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:

No public reports had been made orally or published during the time the government agent on anti-corruption was operating (till Feb. 14, 2011). Some information on the activities of the agent could be found on the website, however no systematized statistical or other information was available there.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

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 government agent had a number of control responsibilities that allowed him to carry out his duties, including: recommending appointments and dismissal of heads and deputy heads of anti-corruption units in ministries and regional state administration, approving their activity plans, instructing on the procedures of verification of compliance with anti-corruption legislation; submitting proposals to the government on disciplinary measures on public officials during internal investigations (including temporary removal); initiating preparation of legal acts by the Cabinet; requesting any information necessary for proper functioning. Nevertheless, in practice the agent was not capable to react to the violations adequately, especially in politically sensitive cases.

References:

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

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:

In 2010, the government agent began an investigation that resulted in the dismissal of the head of the State Committee of Consumer Standards. However, the overall level of efficiency could be estimated as low.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."

<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

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.

76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No efficient mechanism of direct complaints of the public to the government agent on anti-corruption was established. The citizens could not file a complaint through a website of the agent, and they were not aware of such possibility through other means. Even though the agent established a public council composed of 36 NGO representatives, no active participation or influence of non-governmental organizations in anti-corruption activities was documented.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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 traditions of filing corruption complaints have not been yet established in Ukraine. The public still fears recrimination from public servants, which in most cases are not punished adequately for their actions. In addition, the institution of the government agent on anti-corruption did not exist long enough to prove its impartiality and efficiency.

References:

OECD Anti-Corruption Network for Eastern Europe and Central Asia (2010), "Second Round of Monitoring: Ukraine Monitoring Report."
<http://www.oecd.org/dataoecd/31/55/46832397.pdf>

Interview with Oleksiy Khmara, president of the Creative Union "TORO," and Alla Voloshyna, vice president of the Creative Union "TORO," Aug. 23, 2011, in Kiev.

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.

24
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

77a. In law, there is a general right of appeal.

Yes | No

Comments:

The Law of Ukraine, "On Judiciary and the Status of Judges," (Article 14), provides that any decision of the court can be appealed in the appellate court and the court of cassation. It is also possible to appeal to the Supreme Court of Ukraine as the highest institution of appeals.

References:

Law of Ukraine, "On Judiciary and the Status of Judges" (2010), Article 14.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17&ed=20110224>

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

Comments:

Appeals are resolved within a reasonable period. Moreover, the judges claim that today the procedure has been shortened so significantly that it creates problems. For instance, the post office does not operate efficiently. Thus, sometimes it is hard to inform the parties that an appeal is necessary within the time limits required by the law to file an appeal. The deadline is too tight for the public official, as well. Often the public official receives the decision of the court so late that there is no possibility to appeal.

References:

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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

Comments:

The cost of appeal is reasonable and affordable for individual citizens and small and medium businesses. The appeal in criminal cases is free of charge. In civil proceedings the price depends of the cost of assets involved. No complaints regarding the cost of appeal have been documented.

References:

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine." http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Not all judgments in criminal system follow written law. Even though some violations are corrected by the decisions of the appellate courts, there are problems with courts making decisions that can be qualified as unlawful. The cases of the courts overturning convictions in a criminal case after a person was in jail for several years have been documented by the media. For instance, in May 2011, Ihor Bezsliznyy, a resident of Zhytomyr city, was sentenced to life. He spent two and a half years in jail until he managed to prove his innocence and was finally released.

References:

Reporter of Zhytomyr (2011), "Sentenced to Life Zhytomyr Resident Succeeded in Proving His Innocence and Get Out to Freedom." <http://reporter.zt.ua/news/2210-zasudzheniy-na-dovichne-uv-yaznennya-zhitel-zhitomira-zmig-dovesti-svoyu-nevinnist-i-viyti-na-svobodu>

European Commission for the Efficiency of Justice (2008), "Enforcement of Court Decisions in Europe" http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes8Execution_en.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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?

25

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

There are major problems with implementation of judicial decisions in civil cases. Enforcement of decisions in criminal cases is greater but not significantly. Generally, only about 30 percent of judicial decisions are enforced by the state.

References:

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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.

80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

The Law of Ukraine, "On Judiciary and the Status of Judges," guarantees the independence of the judiciary from any interference or influence. The courts enjoy self-governance necessary to operate sufficiently. The finances for the judiciary are stated as separate article in the state budget and are protected, which means that they cannot be decreased.

References:

Law of Ukraine, "On Judiciary and the Status of Judges" (2010), Article 6 and 142.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17&ed=20110224>

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.

100 | 75 | 50 | 25 | 0

Comments:

The judges are not protected from political interference. Only 66 percent of judges believe that the judiciary is protected by the constitution. Even though the judges are appointed for life and are allegedly immune from political interference, they can be dismissed by disciplinary agencies for "violation of oath," although that term is not defined.

In 2010, 600 disciplinary cases against judges were initiated. One of the most significant examples of use of threat of dismissal or persecution as a means for pressure is with Judge Serhiy Vovk. In 2010, he twice came under investigation but was never prosecuted. On the contrary, he became chairman of politically important cases, including those of Yuriy Lutsenko and Mr. Korniychuk, as well as for preliminary hearings of the cases of Mr. Anatoliy Makarenko, Mr. Ihor Didenko, and Mr. Taras Shepitko, all of whom were members of the former government (former Chairman of the State Customs Service, former Naftogaz First Deputy, and former Chief of the Kyiv Regional Customs Service). They were prosecuted for customs violations.

In addition, the High Council of Justice has a right to demand copies of unfinished court cases to conduct reviews. This undermines the independence of judiciary since the council is composed of government officials, and only some of its members are judges.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Kharkiv Human Rights Protection Group (2011), "Danish Helsinki Committee: Legal Monitoring in Ukraine II." <http://www.khpg.org/en/index.php?id=1313446474>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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:

Since 2010, the cases have been distributed among judges with the use of an automated system. Before that the cases were distributed by the head of the court.

References:

Law of Ukraine, "On Judiciary and the Status of Judges" (2010), Article 15.
<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17&ed=20110224&p=1316282516611453>

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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

Comments:

The Constitution of Ukraine states reasons for removal of the judge. They include reaching the age of 65, inability to work due to health conditions, change of citizenship, and other matters. All of them are rather clear and obvious except one – violation of

oath. It is not specified what exactly the phrase means, so it is often used as a basis for removing a lifetime judge. The procedure is also rather questionable. The High Council of Justice makes such decisions and then sends the documents to Verkhovna Rada of Ukraine. The parliament considers this issue during plenary sessions without any additional check-ups or committee reports.

References:

Constitution of Ukraine (1996), Article 125.

<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=3&nreg=254%EA%2F96-%E2%F0>

Law of Ukraine, "On Judiciary and the Status of Judges" (2010), Articles 100-112.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2453-17&ed=20110224&p=1316282516611453>

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.

81. Are judges safe when adjudicating corruption cases?

50

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

Several cases of attacks on judges have been documented recently. For instance, two attacks happened in Lviv in 2011. One of the judges was tied up and robbed in his home. At the same time, no direct links of such attacks to professional activities of judges have been documented. Also, such cases are not happening systematically and are not considered a problem with the judiciary in Ukraine.

References:

Ostrov (www.ostro.org, online media resource) (2011), "How is Galychyna Politics Doing? Press Analysis." <http://www.ostro.org/politics/articles/article-193960/print.html>

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

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

Comments:

Several cases have been documented recently. An Odessa judge was attacked and killed in the end of 2009. Even though there are claims that judge was drunk and the attack could have been caused by other reasons, his son-in-law was also attacked not long before that. Experts thus consider the attack stems from the judge's position.

Professional activities served as a reason for another murder of judge in Kiev in March 2011. The judge was involved in several cases regarding property rights.

References:

RBC Ukraine Information Agency (online media resource) (2011), "In Kyiv Shevchenko District Court Judge S. Zubkov Was Killed".

<http://www.rbc.ua/ukr/newsline/show/v-kieve-ubili-sudyu-shevchenkovskogo-raysuda-s-zubkova-22032011105300/>

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.

82. Do citizens have equal access to the justice system?

86

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The decisions of courts in Ukraine are not affected by racial or ethnic bias. All citizens of Ukraine, regardless of their ethnicity, race or religion are treated equally by the judiciary. Such discrimination is not included in the list of problems in the judiciary.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The decisions of courts in Ukraine are not affected by gender bias. Judges treat women equally with men. Such discrimination is not included in the list of problems in the judiciary.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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

Comments:
The Constitution of Ukraine guarantees legal counsel to all people brought to the court. If the person cannot afford a lawyer, the state pays for legal services. Article 47 of the Code on Criminal Procedures specifies the procedure of appointing a lawyer for a defendant who cannot afford it.

References:
Constitution of Ukraine (1996), Article 59.
<http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=254%EA%2F96-%E2%F0>

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

Comments:
Such practice was introduced recently and is not effective at the moment. On one hand, this practice is positive as the people with low income receive an opportunity to get adequate protection in the court. On the other hand, the attorneys do not receive reasonable payment for such work. They are obliged to work without reimbursement thus there are doubts that defense attorneys will be professional enough and devote necessary attention to cases to provide defendants with adequate legal counsel.

References:
Yuridicheskaya Praktyka (2010), "Providing Free Legal Assistance Will be Mandatory Honorary Social Duty of All Lawyers"
<http://www.eucon.ua/ua/efforts/effort1119>

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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

Comments:

The cost of court cases is reasonable and affordable for individual citizens and small and medium businesses. The cost of criminal cases is free of charge. In civil proceedings the price depends of the cost of assets involved. No complaints regarding the cost of filing legal suit have been documented.

References:

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

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

Comments:

The cost of filing legal suit is reasonable and affordable for individual citizens and small and medium businesses. The cost of criminal cases is free of charge. In civil proceedings the price depends of the cost of assets involved. No complaints regarding the cost of filing legal suit have been documented. The only cost that might cause a burden is the attorney fee.

References:

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukrainerol.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept.14, 2011, in Kiev.

World Bank, Doing Business, Enforcing Contracts in Ukraine, 2011,
<http://www.doingbusiness.org/data/exploreeconomies/ukraine/enforcing-contracts>

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

Comments:

The decisions of courts in Ukraine are not affected by territorial inequality. Inhabitants of all regions of Ukraine have access to the courts. Territorial discrimination is not included in the list of problems of the judiciary.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

USAID, Ukraine Rule of Law Project (2010), "Proposals Regarding Next Steps in Judicial Reform in Ukraine."
http://www.ukraineroi.org.ua/content/library_doc/Judicial_Reform_Roundtable_Proposals_ENG_FINAL.pdf

Interview with Supreme Court Justice Olga Shapovalova, Sept. 14, 2011, in Kiev.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The minister of interior is highly dependent on the president that appoints him or her and the prime minister. The prosecutor general is also appointed by the president. As a result, activities of the law enforcement agencies are highly politicized. For instance, in 2010, after a new minister of interior has been appointed, all but one deputy minister, 90 percent of heads of departments, most unit and division of the central office heads, 24 out of 27 heads of regional offices have been replaced.

The head of the Security Service of Ukraine Valeriy Khoroshkovsky is criticized for having no experience or qualifications for his position. The same applies to Victor Pshonka, the prosecutor general, who is often considered to be appointed on the basis of personal loyalty to Victor Yanukovich.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

"100 days of the New Leadership of the Ministry of Internal Affairs" (a book), (2010).
<http://library.khpg.org/files/docs/1277206750.pdf>

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:

Law enforcement agencies in Ukraine do not have sufficient funding to carry out their mandate. Annual allocations cover only about 40 percent of their needs. It leads to the practice of non-budgetary funding of such agencies through "voluntary contributions," which are not regulated. For instance, in Aug. 2010 the Minister of Interior Anatoly Mogylov acknowledged that his agencies accepted 500 cars as charity. Lack of funding is recognized by the prevailing majority of experts as one of the main reasons of high politicization and low efficiency of the country's law enforcement bodies.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

National Institute for Strategic Studies (2011), "Ukrainian Experience of Reforming Criminal Justice and Law Enforcement Agencies."

http://www.niss.gov.ua/content/articles/files/ref_pravosud-0c984.pdf

The State Penitentiary Service of Ukraine (official website) (2010), "Concept of State Program of Development of State Penitentiary Service of Ukraine till 2015"

http://www.kvs.gov.ua/punish/control/uk/publish/article?art_id=73927&cat_id=47930

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:

Law enforcement bodies are not protected from political interference. They are highly hierarchical: heads of such agencies (minister of interior, head of Security Service, and prosecutor general) are appointed by the president and can be removed upon political will. That has a major impact on the activities of those agencies. The majority of heads of departments are replaced once the head of the law enforcement agency is replaced.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

National Institute for Strategic Studies (2011), "Ukrainian Experience of Reforming Criminal Justice and Law Enforcement Agencies."

http://www.niss.gov.ua/content/articles/files/ref_pravosud-0c984.pdf

The State Penitentiary Service of Ukraine (official website) (2010), "Concept of State Program of Development of State Penitentiary Service of Ukraine till 2015"

http://www.kvs.gov.ua/punish/control/uk/publish/article?art_id=73927&cat_id=47930

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.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

Citizens can complain about police actions to the prosecutor's office, which has power to investigate such complaints. In addition, citizens can complain about police actions or inaction to the human rights commissioner.

References:

Prosecutor General of Ukraine

Human Rights Commissioner of Verkhovna Rada of Ukraine

Law of Ukraine "On Police" (1992), Article 25.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=3&nreg=565-12&ed=20110626>

Law of Ukraine, "On Commissioner of Verkhovna Rada of Ukraine on Human Rights" (1998), Article 13 and 16.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=776%2F97-%E2%F0>

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:

The complaints through national ombudsman are very ineffective as the rate of reaction of the ombudsman to such complaints is rather low. Approximately 70 percent of citizen complaints are rejected by the ombudsman. The prosecutor's office is much more effective. Former president controlled the reaction of prosecutors to citizens' complaints very strictly, and this practice remained unchanged. Even though there are no statistics available regarding responses to citizens' complaints, Ukrainian NGOs believe this mechanism to be efficient enough.

References:

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Ludmila Koval (2009), "Monitoring of the Activities of Human Rights Commissioner of Verkhovna Rada of Ukraine (for the period 1998 – 2008)"

<http://helsinki.org.ua/index.php?id=1243947451>

General Prosecutor's Office of Ukraine (official website) (2011), "Report on the Work of the Prosecutor"

http://www.gp.gov.ua/ua/stst2011.html?_m=fslib&_t=fsfile&_c=download&file_id=167760

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:

The prosecutor has a mandate to investigate any violations of the law by law enforcement officials. In addition, the ministry of interior has a special set of agencies with certain independence from local police units and broader powers to combat organized crime. The units are subordinate to the Main Department for Combating Organized Crime. Among its duties is to investigate corruption and violations of law by law enforcement officials.

References:

The Prosecutor General of Ukraine

Main Department for Combating Organized Crime.

Law of Ukraine, "On Prosecutor's Office" (1991), Articles 29-33.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1789-12>

Main Department for Combating Organized Crime (official website).

http://www.guboz.gov.ua/index.php?option=com_content&view=article&id=1&Itemid=2

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

Comments:

The Main Department for Combating Organized Crime is very effective in its actions. It constantly publishes reports on crimes or prevention actions with many such cases documented. The department is also active in investigating corruption among law enforcement officers. At the same time, the department is often used as a means of pressure. For instance, the department was involved in inspections of the Vinnitsya Human Rights Union, which is often characterized as political prosecution.

References:

Ukrainian Independent Information Agency (2010), "Vinnytsya Human Rights Group is Inspected by Main Department for Combating Organized Crime"

<http://human-rights.unian.net/ukr/detail/193467>

Main Department for Combating Organized Crime (official website), "News."

<http://www.guboz.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:

Article 25 Part 1 of the Law of Ukraine, "On Police," states that law enforcement officials are accountable for their actions and can be prosecuted.

References:

Law of Ukraine, "On Police" (1991), Article 25 Part 1.

<http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=3&nreg=565-12&ed=20110626>

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 are mostly punished for their wrongdoings according to administrative procedures, which have lesser punishments than criminal ones and no adequate sanctions. Even when a criminal investigation is launched, the sentence is in most cases mild. Imprisonment is very rare. As a result, in practice the level of immunity of law enforcement officials is high, especially for senior staff.

For instance, in the first six months of 2011 the prosecutor began 208 criminal proceedings against law enforcement officials. And a Kharkiv police officer who was accused of beating a person to death was imprisoned.

At the same time, such cases are not frequent. Corporate ethics creates barriers to prosecute law enforcement officials. Human rights activists claim that during 2010-2011, 51 people died in police custody after being detained and hundreds were tortured. The guilty have not been punished yet. Even cases with public support, such as the death of student Ihor Indylo in police custody, do not bring action. His death triggered protests and was monitored by the media, yet no one was adequately punished.

References:

Sergiy Bahryanyy (2011), "The Case of Impunity. Opinions on the Anniversary of Death of Igor Indylo"

<http://www.pravda.com.ua/columns/2011/05/23/6222880/>

Creative Union "TORO" (Ukraine) (2011), "National Integrity System Assessment: Ukraine 2011" (a book).

Interview with Svitlana Kononchuk, director of political programs of Ukrainian Center for Independent Political Research, Sept. 16, 2011, in Kiev.

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.