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NATIONAL INTEGRITY SYSTEM ASSESSMENT

UKRAINE 2011

CREATIVE UNION «TORO»
Transparency International
National Contact in Ukraine

Agency for
Legislative Initiatives

NATIONAL INTEGRITY SYSTEM ASSESSMENT

UKRAINE 2011

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www.toro.org.ua/nis

ISBN: 978-966-2157-41-3

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I. INTRODUCTORY INFORMATION

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1 Interviewees who wanted to remain anonymous are not included into this list. For information on the dates when such interviews were conducted and institutions which the anonymous interviewees represented see the pillar reports.

ACRONYMS AND ABBREVIATIONS

ABA ROLI	American Bar Association Rule of Law Initiative
ACA	Anti-Corruption Agencies
AMC	Anti-Monopoly Committee
BTI	Bertelsmann Transformation Index
CEC	Central Election Commission
CIDA	Canadian International Development Agency
CM CoE	Committee of Ministers of the Council of Europe
CMU	Cabinet of Ministers of Ukraine
CPC	Criminal Procedure Code of Ukraine
CPI	Corruption Perceptions Index
CSO	Civil Society Organisation
EBRD	European Bank for Reconstruction and Development
ECtHR	European Court of Human Rights
EIU	Economist Intelligence Unit
EMB	Electoral Management Body
FDI	Foreign Direct Investment
FOIA	Freedom of Information Act
GCB	Global Corruption Barometer
GCR	Global Competitiveness Report
GDP	Gross Domestic Product
GRECO	Council's of Europe Group of States against Corruption
HACU	Higher Administrative Court of Ukraine
HCJ	High Council of Justice
HRW	Human Rights Watch
HQCJ	High Qualification Commission of Judges
ICC	International Chamber of Commerce
IFC	International Finance Corporation
IFRS	International Financial Reporting Standards
INTOSAI	International Organisation of Supreme Audit Institutions
IPR	Intellectual Property Rights
IREX	International Research and Exchanges Board
ISA	International Standards on Auditing

JSC	Joint Stock Company
MCC	Millennium Challenge Corporation
MCRD	Main Control and Revision Department
MDCS	Main Department of Civil Service
MP	Member of Parliament
NAC	National Anti-Corruption Committee
NBC	National Broadcasting Council
NEC	National Expert Commission for Protection of Public Morality
NGO	Nongovernmental Organisation
ODIHR	Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe
OECD/ACN	Organisation for Economic Co-operation and Development / Anti-Corruption Network for Eastern Europe and Central Asia
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PPG debt	Public and Publicly Guaranteed Debt
SAI	Supreme Audit Institution
SCA	State Court Administration
SIGMA	Support for Improvement in Governance and Management
SSU	Security Service of Ukraine
TI	Transparency International
TRBs	Television and Radio Stations
UCAN	Ukrainian Civic Action Network Project
UNCAC	United Nations Convention against Corruption
UN CEDAW	United Nations Committee on the Elimination of Discrimination against Women
UNDP	United Nations Development Program
UNITER	Ukraine National Initiatives to Enhance Reforms
UNODC	United Nations Office on Drugs and Crime
UPAC	Support to Good Governance: Project against Corruption in Ukraine
USAID	United States Agency for International Development
VRU	Verkhovna Rada of Ukraine (the Legislature)
WB	World Bank
WTO	World Trade Organisation

FOREWORD

Oleksii KHMARA,
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February 2011

Corruption remains one of the top problems threatening the democratic development of Ukraine. It can be characterised as a systemic phenomenon, which exists in all sections and all levels of the public administration. Furthermore, there is a high tolerance for corrupt practices throughout the society. Ukraine for years has been ranked low in Transparency International's Corruption Perceptions Index, as well as in other indices and reports produced by international organisations.

Ukraine's political leaders and high-ranking officials are generally aware of the importance of corruption and its negative impact on society and national economy. The former president of Ukraine Victor Yushchenko initiated anti-corruption reforms, which resulted in adoption of so called "anti-corruption package" of laws, a number of by-laws and establishment of the position of the Government Agent on anti-corruption policy under the Government. However, the taken measures have not resulted in significant changes in public perceptions of corruption in public administration, nor have they fundamentally changed the actual practice of the functioning of the state apparatus.

The newly elected president also highlighted the importance of the fight against corruption. Among the major achievements of 2010 are the adoption of the new legislation on the judiciary seeking to solve the major problems encountered by the court system for years, the launch of administrative reform, the adoption of the new law on access to public information and the new law on public procurement. The positive impact of these achievements has yet to be seen in the years to come. In a negative development, at the end of 2010 the parliament repealed new anti-corruption legislation adopted in 2009, thus having demonstrated lack of political will to fight corruption in Ukraine. In addition, anti-corruption activities carried out in 2010 were still lacking a strategic approach to tackling the problem of corruption, i.e. they were not based on the anti-corruption strategy shared by the key political actors and generally accepted by society.

On behalf of the TORO Creative Union, the Contact Group of Transparency International in Ukraine, I am pleased to present the study on the National Integrity System of Ukraine, a comprehensive assessment of the legal basis for and actual practice of functioning of the Ukraine's key institutions responsible for prevention and counteraction to corruption. The main aim of this study is to detect major strengths and weaknesses of the relevant institutions in order to achieve more ambitious and far-reaching goal – to suggest precise and realistic proposals for comprehensive anti-corruption reform in Ukraine.

I would like to recognise the invaluable contributions of those who participated in the development of publication, as well as in overall implementation of the project. First, I would like to thank the team of authors and the lead researcher who produced the study. Second, I thank the team at TI-Secretariat who have on a daily basis followed up on the implementation of the project, in particular Dr. Finn Heinrich and Dr. Suzanne Mulcahy. I would like to thank the external reviewer Juhani Grossmann, the Deputy Chief of the Party for IFES in the Philippines, who used to work in Ukraine for years on anti-corruption issues, for his valuable and comprehensive comments on the draft assessment report. Special thanks go to members of the advisory group who provided their time and advice to ensure reliability and comprehensiveness of the study, as well to the volunteers who addressed the relevant institutions with requests for information to test the level of openness and transparency of public authorities and political parties. I would like to acknowledge the time and efforts of the experts and representatives of the assessed pillars who answered the authors' questions during interviews. Last but not least, I would like to express my deep gratitude to the Bill & Melinda Gates Foundation for its generous support in funding this project.

II. ABOUT THE ASSESSMENT OF THE NATIONAL INTEGRITY SYSTEM

The National Integrity System (NIS) comprises the principle governance institutions in a country that are responsible for the fight against corruption. When these governance institutions function properly, they constitute a healthy and robust National Integrity System, one that is effective in combating corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive, with negative ripple effects for the societal goals of equitable growth, sustainable development and social cohesion. Therefore, strengthening the NIS promotes better governance in a country, and, ultimately, contributes to a more just society overall.

The concept of the NIS has been developed and promoted by Transparency International (TI) as part of TI's holistic approach to combating corruption.[1] While there is no absolute blueprint for an effective anti-corruption system, there is a growing international consensus as to the salient aspects that work best to prevent corruption and promote integrity. The NIS assessment offers an evaluation of the legal basis and the actual performance of institutions ("pillars") relevant to the overall anti-corruption system. The NIS is generally considered to comprise of 13 pillars (the number may depend on specific country context), which are assessed in the context of – the basic societal, economic, political and cultural foundations of a country.

The NIS is based on a holistic approach to preventing corruption, since it looks at the entire range of relevant institutions and also focuses on the relationships among them. Thus, the NIS presupposes that a lack of integrity in a single institution could lead to serious flaws in the entire integrity system. As a consequence, the NIS assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and at assessing their inter-linkages.

TI believes that such a holistic "system analysis" is necessary to be able to appropriately diagnose corruption risks and develop effective strategies to counter those risks. This analysis is embedded in a consultative approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic pressure for relevant reform initiatives.

Since its inception in the late 1990s until December 2010, 83 NIS assessments have been conducted by TI,[2] many of which have contributed to civic advocacy campaigns, policy reform initiatives, and the overall awareness of the country's governance deficits.

The project on the Ukraine's NIS assessment was funded by the Bill & Melinda Gates Foundation and began in May 2010. The Ukraine's NIS assessment reviews the period from 2005 to January 2011, with particular emphasis put on the period from 2008 to 2010, and it is strictly based on the methodology provided by the TI Secretariat.

The implementation of the NIS assessment project comprised a series of steps. In particular, in early May 2010, the TI Contact Group in Ukraine set up the advisory group which consisted of 11 members representing the government, academia, NGOs, business and media, tasked to advise on the main aspects of the project implementation, to review and comment on draft NIS report, validate the indicator scores and attend the NIS workshop. The members of the advisory group met twice (on 14 May and 15 November 2010); the second meeting was entirely dedicated to the discussion of the key findings of the pillar reports and indicator scores. From May – October 2010, the authors of the NIS assessment collected actual data and information for each of the NIS indicators for all pillars, as well as for

1 For further information on the NIS Assessments see: http://www.transparency.org/policy_research/nis [accessed 29 December 2010].

2 NIS reports are available at http://www.transparency.org/policy_research/nis/nis_reports_by_country [accessed 29 December 2010].

the corruption profile, country profile and anti-corruption activities sections. Data collection included desk research by the authors, key informant interviews, and field tests aimed to ascertain how transparent and accessible the institutions are in practice (except for the media, business and civil society organisations). Having been discussed by the advisory group on 15 November 2010, the NIS study was then updated to incorporate comments of the group's members and presented for further debate at the National Integrity Workshop which was held on 16 December 2010. The workshop brought together experts from the civil society, academia, representatives of the law enforcement agencies and other pillars to discuss the findings and recommendations of the NIS assessment, as well as to suggest proposals for further reforms in fight against corruption. In January 2010, the study on the NIS was submitted to the external reviewer for a peer review. The final amendments to the study based on the results of the National Integrity Workshop, TI Secretariat's and external reviewer's comments, as well as on up-to-date changes to the legal framework (e.g. adoption of the Freedom of Information Act by the parliament on 13 January 2010) were made in February 2011.

Overall, the assessment of the NIS in Ukraine evaluates the legal framework and actual performance of 13 pillars, in particular legislature, executive, judiciary, public sector, law enforcement agencies, electoral management body, ombudsman, supreme audit institution, anti-corruption agencies, political parties, media, civil society organisations, and business. However, three major observations should be noted in this connection.

First, although the president of Ukraine currently has significant powers to influence the executive's performance, the legal framework and actual performance of the presidency generally have not been evaluated within the Ukraine's NIS assessment (in particular, in the pillar report on the executive) for a number of reasons. In particular, the methodology of Ukraine's NIS assessment was approved in the early 2010, when the powers of the president were significantly restricted by the 2004 amendments to the 1996 Constitution of Ukraine.[3] In September 2010, when the first draft of the NIS assessment had been produced, the Constitutional Court of Ukraine declared the 2004 amendments to the Constitution unconstitutional,[4] thus reinstating the legal effect of the 1996 Constitution, which provided for significant powers of the president in terms of its influence on the activities of the executive branch of the government. More importantly, notwithstanding the above judgment of the Constitutional Court, inclusion of the president into the executive still lacks legal grounds, since both the 1996 Constitution and the Constitution as amended in 2004 grant the president only the status of the head of the state and formally do not include the president into the executive branch of government.

Second, the pillar report on the electoral management body (EMB) deals only with the Central Election Commission (CEC), and only with the legal framework and performance of the CEC as concerns national (but not local) elections, as it was beyond the scope of the study to examine the governance at a sub-national level. Hence, the territorial electoral commissions, which are tasked with administering the local elections, are not included in the assessment.

Third, the assessment of the anti-corruption agencies is focused on the Government Agent on Anti-Corruption Policy, the closest body to an anti-corruption agency (which is defined by TI as a specialised, statutory and independent public body of a durable nature, with a specific mission to fight corruption through preventive and/or repressive measures) in the existing institutional set-up in Ukraine. In addition, the assessment according to the NIS indicators is adjusted to take account of the Government Agent's mandate (anti-corruption policy coordination and prevention institution). Since the NIS assessment has been finalised in January

3 Law № 2222-IV, 8 December 2004.

4 Judgement of the Constitutional Court of Ukraine in the case of observance of the procedure for amending the Constitution of Ukraine, № 20-рп/2010, 29 September 2010.

2010, it does not take into account the fact that in February 2010 the Cabinet of Ministers of Ukraine (CMU) terminated the position of the Government Agent on Anti-Corruption Policy.[5] Although this is not reflected in the relevant pillar report, such a decision can hardly be considered a positive development in the field of fight against corruption.

5 CMU Resolution № 86-p, 7 February 2011.

III. EXECUTIVE SUMMARY

1. General overview

The assessment of Ukraine's National Integrity System offers an evaluation of the legal basis and actual performance of the national governance institutions ("pillars") which are responsible for counteracting corruption. They are assessed in the context of the basic political, economic, societal, and cultural foundations of the country. The assessment does not seek to offer an in-depth evaluation of each pillar, but rather puts an emphasis on covering all relevant pillars and assessing their inter-linkages. The study, based on the methodology provided by TI[6], reviews the period from 2005 to January 2011, with an emphasis on the period from 2008 to 2010. The implementation of the NIS assessment project included a number of steps, such as desk research by the authors, key informant interviews, field tests aimed to ascertain the level of transparency and accessibility of the institutions in practice, and verification of the assessment's findings by the TI Secretariat, project advisory group, and external reviewer. The findings and recommendations derived from the NIS assessment were discussed at the National Integrity Workshop and resulted in the identification of key priorities for anti-corruption reform in the country, to be addressed by the government, civil society and other stakeholders.

Ukraine's NIS assessment suggests that corruption in Ukraine is a systemic problem existing across the board and at all levels of public administration. Both petty and grand scale corruption are flourishing. Among the institutions which are perceived by the public to be highly corrupt are political parties, legislature, police, public officials and the judiciary. Ukrainian society can be characterised as a society with a high tolerance for corrupt practices.

Since 2005, public authorities, civil society organisations, international donors and other stakeholders have taken a number of measures to address the problem of corruption in Ukraine, but most of them, it appears, have not been effective. For instance, in 2009 GRECO stressed that less than one third of the recommendations contained in the 2006 Evaluation Report on Ukraine had been implemented satisfactorily or had been dealt with in a satisfactory manner. According to the OECD/ACN, only 5 of the 24 recommendations it suggested to Ukraine in 2006 have been fully implemented, while 12 recommendations have not been addressed at all. Multimillion donor-funded anti-corruption programs which were implemented in Ukraine from 2006 to 2009 have not produced significant results, neither have they changed public perceptions of corruption in the country. Ukraine continues to receive low scores from international organisations on different corruption-related indicators and indexes, such as TI Corruption Perceptions Index, Global Integrity Index and the World Bank's and World Economic Forum's indicators. Foreign and international donors are therefore waiting to see practical evidence of political will to fight corruption in order to consider further support for anti-corruption activities in Ukraine. However, the political elite appears janus-faced on the issue of corruption. On the one hand, the President of Ukraine declared his will to overcome corruption, established National Anti-Corruption Committee to tackle the problem, initiated administrative reform and submitted a draft framework anti-corruption law to the legislature. In 2010 the parliament succeeded in adoption of some laws addressing corruption. On the other hand, all anti-corruption laws passed in 2009 were repealed by the parliament in 2010, while in 2011 the Cabinet of Ministers terminated the position of the Government Agent on anti-corruption policy. It is difficult to see any true political commitment to anti-corruption in this flurry of activities.

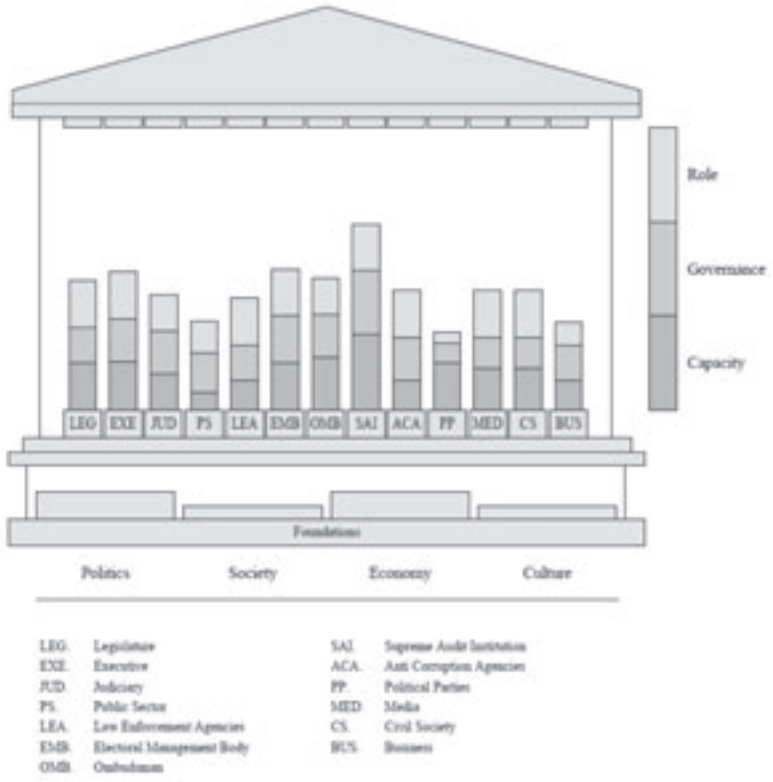
2. The NIS Foundations

The NIS temple graph below demonstrates that the entire integrity system rests on shaky foundations. Political-institutional foundations are weakened by lack of respect for the rule of law and the ineffectiveness of government, undemocratic behaviour of political actors, cases of violations of certain human rights and by the de facto absence of an independent judiciary to protect the rights enshrined in the Constitution. Socio-political foundations are even weaker compared to the political-institutional ones due to cleavages

6 For information on the NIS Assessments see: http://www.transparency.org/policy_research/nis [accessed 29 December 2010].

in the society made deeper by political parties, cases of discrimination against minorities, failure of political parties to effectively aggregate people's preferences and represent their interests, lack of cooperation between the political parties and civil society, as well as the limited impact of CSOs in the political sphere. Social inequality, a large share of the population living below the poverty line, poor infrastructure hampering the private sector's growth, as well as an ineffective social assistance system are the key factors making social-economic foundations of the NIS vulnerable. Socio-cultural foundations of the NIS are undermined by a low level of interpersonal trust among the Ukrainians, high tolerance for corruption, a lack of respect for democratic values and social and political institutions.

National Integrity System Ukraine



The feeble foundations of the NIS contribute to overall weakness of the NIS pillars. In particular, when society demonstrates high tolerance for corruption, one can hardly expect that public officials, who constitute the integral part of society, will not be engaged in corrupt practices once being elected or appointed. Low level of interpersonal trust is transferred to specific pillars, such as media, civil society, business and other, which show no significant will to combine their efforts in counteracting corruption through interaction with other NIS sectors and institutions, as well as through the adoption of sector-wide codes of conduct. Low levels of respect for the rule of law and democratic values could be a good explanation for widespread political interference across the pillars, which undermines the independence and the role of some of them (judiciary, media and other) in combating corruption. However, the negative interactions between the pillars and foundations are of a mutual nature, as the pillars likewise fail to strengthen the foundations: for example, they do not reduce corruption, introduce more effective administration of public funds and social assistance to bridge the gap between the rich and poor, inform the public on governance issues and their activities, or ensure independence of the judiciary thereby undermining the broader political, social, economic and cultural progress of the country.

3. The strongest and the weakest pillars of the NIS

The NIS assessment demonstrates the overall weaknesses of Ukraine's National Integrity System. Notwithstanding that, the Supreme Audit Institution stands out as the strongest pillar of the NIS, while three pillars, namely political parties, business and the public sector are the weakest compared to other sectors and institutions of the NIS. While other pillars have significant potential for combating corruption (such as the legislature, law enforcement agencies, the judiciary, ACA, me-

dia and civil society etc.), their actual influence within the NIS is moderate due to their limited capacity to function (as concerns judiciary, law enforcement agencies, ACA), weak internal governance (as concerns legislature, law enforcement agencies, media, and civil society organisations), or their limited role in the NIS (the judiciary, ombudsman).

The strength of the SAI can be explained by a number of reasons, in particular, by the sufficiency of its resources, the effective legal mechanisms protecting it from undue external interference, the absence of both external interference with SAI activities and engagement of SAI members into political activities in practice. Whereas the legal framework does not provide for effective mechanisms to ensure transparency of overall public administration, with no exception to the SAI, the latter, in contrast to other pillars, seeks to go beyond the legal requirements in terms of its own transparency. The law also lays down a number of provisions requiring the SAI to submit reports, expert opinions and other documents to the legislature. All these requirements are met by the institution. Although the parliament has failed to introduce the appropriate mechanisms to ensure the integrity of public officials, including those employed by SAI, the integrity of the SAI is to a large extent ensured in practice. The reasons for this is rooted in close cooperation between the national SAI, INTOSAI and the supreme audit institutions in other countries, engagement of the SAI in auditing international organisations (e.g. OSCE), as well as in the 2006 GRECO recommendations, which suggested to consider some measures aimed to ensure a better level of integrity of the SAI. However, the role of the SAI in the NIS is moderate due to outdated legislation on the basis of which it operates, limited scope of powers and lack of reaction of the law enforcement agencies to cases of misbehaviour detected by the SAI. The case of the SAI demonstrates that enhancement of transparency of the institution, development of internal codes of ethics, delivery of training on integrity issues and improvement of staff qualifications can happen even if not directly prescribed by law. In this connection, the SAI sets an example which could and should be used by other pillars to improve their overall performance.

The weaknesses of political parties are rooted mainly in the legal framework. As the law neither provides for the public funding of political parties, nor restricts the value of donations which can be granted to them, the parties are in fact captured by oligarchs and tend to mainly represent their interests. In addition, political parties face no competition for elected office, as the election laws exclude independent candidates from participation in the parliamentary and most local elections. These two factors to a large extent explain why the political parties fail to aggregate and represent societal interests and why they are insufficiently committed to the fight against corruption. The law also fails to introduce mechanisms to ensure transparency and oversight of party funding, while the parties themselves, as well as their donors, and are not very interested in disclosure of information on sources and value of donations. This is why transparency and accountability of political parties are not ensured in practice.

Overall performance of the public sector is undermined by imperfect legislation, insufficient resources, poor enforcement of the existing rules, negative influence of other pillars and lack of cooperation with civil society and other stakeholders in the field of combating corruption. In practice the independence of the pillar is not ensured at all. This is due to a lack of clear delineation between political and professional servants, restricted competition for higher level positions in the sector and absence of effective legal protection of public servants from arbitrary dismissals. In addition, the legal provisions on transparency are poorly enforced by public sector agencies. Due to limited powers, the role of the executive in developing a well-governed public sector is not very high, while the judiciary and law enforcement agencies do not effectively prosecute corruption in the public sector, thus making its employees less answerable for their actions and allowing them to escape liability. Insufficient funding makes the public sector vulnerable to corruption and fails to facilitate the delivery of high-quality administrative services, as well as significantly decreasing the role of the pillar in educating the public on the sector's role in combating corruption.

As regards the business sector, its poor performance is caused by the poor quality of legislation, the negative influence of other pillars, weak self- and internal regulation and a lack of cooperation, both within the pillar and with other sectors and institutions, such as civil society and the executive. The legal framework generally does not create a favourable environment for the starting, closing and operation of businesses, grants wide discretionary powers in the hands of pub-

lic officials, facilitates corporate government abuses and fails to introduce mechanisms for whistleblower protection. All this makes businesses exposed to unwarranted external interference, reduces the level of integrity within the pillar and decreases the effectiveness of corporate governance in companies. The judiciary fails to effectively protect property rights from illegal takeovers, as well as to protect businesses from undue interference of the executive and public sector officials. Businesses have not yet succeeded in preparation of a sector-wide code of conduct, while small and medium size enterprises mostly do not have internal codes of conduct, which, in addition to legal loopholes, decreases the integrity of those acting in the sector. Since the business sector is penetrated by corruption and is generally weak and uncoordinated from within, it provides no sufficient support to the government, civil society organisations and other actors in combating corruption, which makes its overall role in upholding the NIS insignificant.

4. The reasons for weakness of the NIS pillars

Apart from the four pillars mentioned above, all the other pillars of the NIS can be characterised as having weak but, nevertheless, moderate performance. Their weaknesses can be explained by four major reasons.

1. Lack of financial, human and other resources. In a number of cases, the capacity of the pillars to function is undermined by a lack of adequate resources to allow them to carry out their activities in an effective way. Insufficient funding of many pillars can be explained by a number of reasons, such as weakness of social-economic foundations of the NIS, corruption which does not facilitate effective use of resources and lack of necessary reforms in public administration (which lead to ineffectiveness in administrative service delivery and contributes to an increase in the number of public sector employees).

Since separate institutions (e.g. legislature, executive and the SAI) require fewer resources compared to the sectors employing thousands of officials and comprising branch structures at regional and local levels (such as the judiciary, public sector and law enforcement agencies), they have a better opportunity to be provided with adequate funds, premises, technical facilities and other resources. However, there are some exceptions to this rule, such as the Electoral Management Body, Ombudsman, and the Government Agent on anti-corruption policy, which are underfunded (Ombudsman), do not receive funds to carry out certain activities in timely manner (EMB), or do not have separate budget (Government Agent on anti-corruption policy).

Insufficient funding has a negative impact, not only on capacity of the relevant institutions to function, but also on internal governance and their role within the overall integrity system. In particular, it restricts the possibility to conduct comprehensive training for employees of the public sector, law enforcement agencies and the judiciary, thus maintaining the low level of integrity of the relevant pillars in practice. A lack of public funding also decreases the role of the judiciary in oversight of the executive, the role of EMB in administration of elections, as well as the role of the Government Agent on anti-corruption policy in educating citizens.

2. Imperfect legal framework. One of the key reasons why many institutions of the NIS are weak is the absence of necessary laws or loopholes, and shortcomings in the existing ones. The latter can be explained by the fairly moderate role of the legislature and executive in prioritising anti-corruption issues, good governance and legal reforms. In this connection, the legislature and executive can be considered the pillars which undermine the performance of other institutions and sectors of the NIS. The moderate role of the parliament and the executive in anti-corruption reforms is predetermined by a number of factors, which include the weakness and corruptibility of political parties, lack of political will among the corrupt politicians to fight corruption and low levels of respect for democratic values within the society and political elites.

Constitutional provisions, legal loopholes and shortcomings also diminish the level of independence of a number of pillars, namely the legislature, the executive, the judiciary, the public sector, law enforcement and anti-corruption agencies, political parties, civil society organisations and business. In the case of legislature, its independence is weakened by constitutional provisions establishing a complicated procedure for overriding the president's veto. The Constitution restricts independence of the executive,

as it provides the President, who is not formally included in the executive branch of government, with significant powers to influence the activities of the Cabinet of Ministers. Constitutional provisions on procedure for appointment of judges and composition of the High Council of Justice affect independence of the judiciary, while the constitutional procedure for appointment and dismissal of the Prosecutor General and the Minister of Interior to significant extent weakens independence of the law enforcement agencies. In the cases of other pillars mentioned above, weak level of their independence can be explained by gaps and deficiencies in laws and by-laws. For instance, Government Agent on anti-corruption policy and its office are included into the structure of the Cabinet of Ministers and, therefore, cannot be considered independent. The laws on public service fail to provide clear delineation between political and professional civil servants, while legislation on political parties, civil society organisations, media and business contains a number of provisions increasing the risks of undue external interference with their activities.

Outdated legislation on citizen access to public information (i.e. the Law on Citizen Inquiries and the Law on Information), lack of legal provisions requiring declarations of assets of public officials to be disclosed, as well as provisions clearly defining the scope of information to be proactively made publicly available by the public authorities are the key reasons why the activities of many pillars are far from being transparent. Among the pillars whose level of transparency is affected by the above legal shortcomings are the executive, public sector, law enforcement agencies, and Ombudsman. However, in a number of cases legislation does not prevent some institutions from going beyond the legal requirements to ensure a better level of their transparency. Among them are the legislature, the SAI and Government Agent on anti-corruption policy – all of them making a broader scope of information on their activities publicly available than is legally required.

The legal framework also decreases the level of accountability of many pillars. In a number of cases legislation does not envisage obligation of the institutions to produce annual reports on their activities, thus hindering their accountability. For example, no annual reports are required to be prepared by the legislature, public sector agencies and EMB. In cases when the pillars are legally obliged to prepare and present annual reports to certain bodies, the law often fails to provide for the presentation of important information within them and to set deadlines for their submission, as well as to ensure that the body to which the report is submitted has to discuss it or react on it in any manner. The latter is a typical situation with the Ombudsman, Government Agent on anti-corruption policy and political parties (as concerns their financial statements). Accountability of certain pillars is also hampered by insufficient mechanisms to ensure effective public consultations (as regards the legislature), the legal provisions on broad immunity (which has a negative impact on accountability of the legislature and judiciary), lack of effective and proportionate disciplinary/administrative sanctions (as concerns judiciary and public sector), wide margin of discretion granted to officials (as concerns public sector) and other factors.

An inadequate legal framework can be considered one of the main reasons why integrity in different sectors and institutions is not properly ensured in practice. For instance, the absence of a comprehensive regulation of conduct for public servants, significant gaps in the regulation of asset disclosure, lack of legal restrictions on gifts and post-employment/revolving door restrictions and insufficient regulation of conflicts of interest (in the case of the legislature – regulation of lobbying) do not ensure the integrity of MPs, members of the executive, judges, employees of law enforcement and public sector agencies, members and staff of the Central Election Commission (EMB), the Ombudsman or the Government Agent on anti-corruption policy and its office. Envisaged by law, a proportional system with voting for the closed lists of candidates nominated by political parties, as well as restrictions on nominations of independent candidates in the parliamentary and most of the local elections, do not promote internal democratic governance of the political parties. The integrity of media employees is diminished by the absence of a code of journalist ethics or commissions on ethics in print media entities. The integrity of those acting in the business sector is undermined by a lack of legal requirements for bidders to have ethics or anti-corruption programmes, and an absence of professional compliance officers in most businesses, as well as corporate codes of conduct in many small and medium enterprises.

Finally, legal deficiencies also decrease the role of certain pillars (the legislature, public sector, EMB,

SAI, civil society etc.) in supporting other NIS institutions and upholding the entire integrity system. In particular, an absence of a law on commissions of inquiry, constitutionally restricted powers of the legislature in terms of appointments and dismissals within the executive and a lack of provisions requiring the executive's Program of Action to be adopted by the legislature, weakens the role of the legislature in oversight of the executive. A negligible public sector role in cooperation with civil society and other stakeholders in preventing corruption to a large extent can be explained by imperfect regulation of public consultations and other mechanisms of stakeholder involvement in the sector's activities. Some gaps and shortcomings in the regulation of public procurement are one of the reasons why public sector plays a moderate role in the reduction of corruption risks in public procurement. The legislation fails to grant the EMB powers to effectively supervise the funding of political parties and election campaigns; therefore the role of the EMB in such supervision is not very high. As the ombudsman is not legally required to promote good practice of governance, it does not promote it in practice. The Constitution significantly restricts the powers of the SAI in terms of auditing public finances, thus decreasing the SAI's role in effective audits of public funds. An absence of clear criteria for selecting NGOs for consultations and for taking NGO's proposals into account in the official decision-making process does not promote engagement of civil society in anti-corruption policy reforms.

3. Limited enforcement/use of the existing provisions. Although poor quality of legislation is the most important reason for the weakness of many pillars of the NIS, in many cases their weak performance derives from the lack of their own initiatives to improve the actual practice of their functioning, as well as by poor enforcement of the legal provisions which are in place. The case of the SAI demonstrates that even when the law does not ensure full independence, transparency and integrity within the pillar, its actual independence, transparency and integrity in practice can be even higher than required by law. However, public administration generally tends just to follow the rules, which can be an explanation why in a lot of cases actual practice of the pillars' performance scored the same as the legislation related to the respective indicators. For instance, nothing prevents the legislature, public sector agencies and the EMB from producing annual reports on their activities to ensure a better level of their accountability and transparency than required by law, but in fact such reports, not being legally required, are not produced. The field tests conducted within the framework of the NIS assessment revealed that in many cases the institutions concerned reject to provide the information upon requests on the grounds that the legislation does not directly oblige them to do so, or recommend to address other institutions to obtain it, or just refer to their websites and periodicals, thus hindering public access to information.

The legal provisions which are in place are often not enforced even within the relevant institutions. For instance, the parliament's Rules of Procedure prescribe certain rules of conduct in the parliament, while the Constitution envisages personal voting by the MPs. The latter, however, permanently vote for absent colleagues, while the rules of conduct set forth by legislation are not enforced and their infringement mostly goes unsanctioned by the legislature. The Constitution sets incompatibility requirements to the members of the executive (e.g. the members of the government are forbidden from carrying out any paid activities and holding the positions in the governing bodies or supervisory boards of the commercial enterprises), but there have been a number of cases when the relevant provisions were violated by the members of the Cabinet of Ministers. The Ombudsman is provided with sufficient guarantees to ensure its independence, but the cases of its engagement in political activities weaken its independence in practice. It is also legally obliged to produce annual reports on its activities, however in practice does not always do so. Whereas freedom of expression is enshrined in the legal framework, provisions on editorial freedom are not effectively enforced. The actual practice of governance within NGOs does not fully comply with the corresponding requirements of their internal documents. This list of examples could be continued.

In a number of cases, the pillars do not effectively use the powers and possibilities granted by the legislation. For instance, the legislature is legally granted a certain degree of independence and powers to supervise the activities of the executive, the Ombudsman and the SAI, as well as the right to dismiss the judges for violations; it does not effectively use these powers. Whereas NGOs are able to make their financial reports transparent, as well as adopt internal codes of ethics and ensure their enforcement, they demon-

strate insufficient efforts in this regard.

4. Negative interactions across the pillars. In a number of cases the weaknesses of the pillars can be explained by negative inter-linkages between them. For instance, the legislature twice (in 2004 and 2007) passed politically motivated decisions on early termination of office of all the EMB members, while in 2007 the representatives of one of the political parties forcibly blocked up the work of the EMB. In a number of cases the head of state interfered with the activities of judiciary, while the legislature dismissed judges on the grounds which in some cases raise serious doubts in terms of their impartiality. Political influence of the president and legislature on the judiciary and law enforcement agencies diminishes accountability of the legislature and executive, independence of judiciary and law enforcement agencies. The executive is not strongly committed to and engaged in developing a well-governed public sector; the law enforcement agencies and judiciary do not effectively prosecute corruption, thus weakening the level of accountability and integrity within the public sector and decreasing its role in safeguarding integrity in public procurement.

5. Priorities for Reform[7]

In order to decrease dependence of political parties, which play a key role in forming the legislature and the executive, on private funding, the Parliament should implement comprehensive reform of the funding of political parties and electoral campaigns based on the provisions of the CM CoE Recommendation 2003 (4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns;
To facilitate internal democratic decision-making within the political parties and ensure accountability of the elected officials to the voters, the Parliament should introduce electoral systems in parliamentary and local elections which would allow the voters to vote for individual candidates on the party lists (e.g. proportional system with voting for the open or semi-open lists of candidates);

To increase the role of the law enforcement agencies in the prosecution of corruption and to strengthen their independence from political and other undue interference, the Parliament should introduce amendments to the Constitution of Ukraine aimed at enhancing independence of the prosecution service in line with European standards; to adopt the new version of the Law on Prosecution Service, which would establish objective and merit-based criteria for selection and promotion of prosecutors, and provide prosecution service with clear mandate focused on the leading of pre-trial criminal investigations and prosecutions;

As the politically dependent judiciary in Ukraine cannot properly ensure the rule of law and effective prosecution of corruption (in particular, as concerns corruption at the highest level of governance), the Parliament should bring the constitutional provisions pertaining to appointment, dismissal of judges, and composition of the High Council of Justice in line with the European standards;

Since the administrative services delivered to the citizens and businesses by public sector are of poor quality, while independence of the public sector is not ensured both in the law and in practice, the Government should submit necessary draft laws to the legislature to implement comprehensive reform of the public service, in particular, the draft Code of Administrative Procedures, a new version of the Law on Public Service (providing for clear delineation of political and professional public servants, ensuring professionalism, integrity of the servants and their protection against political interference, arbitrary discharge from office and arbitrary imposition of disciplinary sanctions, introduction of competitive, transparent, and merit-based recruitment in public service, establishing clear and stable remuneration schemes adequate to the scope of tasks assigned to public servants). The Parliament should adopt the submitted draft laws.

As integrity and accountability in overall public administration is not adequately ensured in law, the Parliament should adopt the law on prevention, detection and regulation of conflict of interests; the law on asset declaration and financial control of public service; General code of conduct for public servants, setting the rules of ethical behaviour and providing for whistleblower protection measures for employees of the public sector; while the Government agencies, based on the General code of conduct for public servants, should develop their internal codes of ethics.

7 The recommendations presented here are derived from the discussion of the NIS study at the National Integrity Workshop which was held on 16 December 2010. For other recommendations see the relevant pillar reports.

IV. COUNTRY PROFILE – THE FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

1. Political-Institutional Foundations – Score 50

To what extent are the political institutions in the country supportive to an effective national integrity system?

Ukraine has not built the stable institutions that would ensure the rule of law and the consolidation of democracy.[8] The Failed States Index 2010 ranks Ukraine 109th out of 177 countries, with low score of 7.2 for "Criminalisation and/or Delegitimization of the State" indicator and medium score of 5.3 for "Suspension or Arbitrary Application of the Rule of Law and Widespread Violation of Human Rights" (where 0 is the lowest intensity (most stable) and 10 is the highest intensity (least stable).[9]

All influential political actors accept democratic institutions and regard them generally as legitimate; but the behaviour of the country's major political actors is not always democratic.[10] Ukraine's percentile rank under the World Bank's (WB) "Government Effectiveness" governance indicator decreased from 36.9 in 2004 to 23.8 in 2009. Likewise, the scores for "Regulatory Quality" and "Control of Corruption" indicators decreased respectively from 39.5 in 2005 to 31.4 in 2009, and (for "Control of Corruption") from 32 in 2005 to 19.5 in 2009.[11] In 2010, the Economist Intelligence Unit (EIU) significantly lowered the scores for democracy in Ukraine (from 6.94 in 2008 to 6.30 in 2010, thus ranking Ukraine in 2010 67th of 167 states considered), since "some of the democratic gains... of several years ago are under threat [in Ukraine]".[12] "Functioning of government" and "Political participation" indicators were both scored by the EIU 5 of 10, while "Political culture" indicator received the lowest score of 4.38 of 10.[13]

The last presidential (2010) and parliamentary elections (2007) were generally conducted in line with most of the OSCE commitments and other international standards for democratic elections.[14] However, based on the results of the above elections, the OSCE/ODIHR Election Observation Mission suggested a number of recommendations,[15] which have yet to be addressed by the Ukrainian government. Political competition for government offices among political parties and individuals is not adequately promoted by law as independent candidates may be nominated for only presidential and certain local elections (at the basic level of local self-government), while in all other elections the candidates are nominated by political parties.[16] Nomination of independent candidates for presidential election is constrained by excessively high[17] electoral deposit (UAH 2.5 million [USD 300,000]) for balloting, which is returned if the candidate reaches the second round.[18] In practice, election campaigns are uneven playing fields, as many parties are sponsored by "oligarchs".[19]

In 2010, the Human Rights Watch (HRW) noted torture and ill-treatment in detention, hostility to asylum seekers, hate attacks on ethnic minorities as the main issues of concern.[20] Among other problems connected to violation of human

8 Freedom House, *Nations in Transit 2010*: 554.

9 The Fund for Peace, *Failed States Index 2010*; [accessed 29 December 2010].

10 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 10-11; Freedom House, *Nations in Transit 2010*: 554.

11 WB, *Worldwide Governance Indicators. Ukraine (2004-2009)*; [accessed 29 December 2010].

12 Economist Intelligence Unit, *Democracy Index 2010*: 5, 12, 22.

13 Economist Intelligence Unit, *Democracy Index 2010*: 5.

14 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 8; OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election 17 January and 7 February 2010. Final Report*, 2010: 1; OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections 30 September 2007. Final Report,* 2007: 1.

15 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections 30 September 2007. Final Report,* 2007: 26-30; OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election 17 January and 7 February 2010. Final Report*, 2010: 27-30.

16 Article 1 of the Law on Parliamentary Elections, № 1665-IV, 25 March 2004; Article 35.2 of the Law on Local Elections, № 2487-VI, 10 July 2010. See also: OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections 30 September 2007. Final Report,* 2007: 26.

17 Freedom House, *Nations in Transit 2010*: 551. See also: Venice Commission, *Joint Opinion on the Law on Amending Some Legislative Acts on the Election of the President of Ukraine adopted by the Verkhovna Rada of Ukraine on July 2009 by the Venice Commission and the OSCE/ODIHR, adopted by the Council for Democratic Elections at its 30th meeting (Venice, 8 October 2009) and by the Venice Commission at its 80th Plenary Session (Venice, 9-10 October 2009)*: 4, 6.

18 Article 49 of the Law on Presidential Election, № 474-XIV, 5 March 1999.

19 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 7.

20 HRW, *World Report 2010*: 466.

rights are the cases of police abuse, arbitrary and lengthy pre-trial detention,[21] trafficking in women and children,[22] harassment of human rights defenders,[23] poor respect to the laws on media freedom.[24] In 2010, 14.8 % of citizen complaints received by the Ombudsman were concerned with violation of human rights by law enforcement agencies, 11.2% of complaints – with violation of personal rights, 6% - with violations of political rights.[25]

Ukraine's percentile rank under the WB "Rule of Law" governance indicator remains low, ranging from 23.8 to 29.5 in 2004 – 2009.[26] Ukrainian Constitution provides for the division of powers and an independent judiciary, but the constitutional provisions are not deeply anchored in the minds of political elite.[27] All citizens have the right to fair, timely and open trial, but for several reasons (low salaries, lack of funding, misuse of the judiciary by political forces etc.) this is not respected in practice.[28] According to the Ombudsman, 18.9% of the citizen complaints received by Ombudsman in 2010 were connected to violation of the right to fair trial.[29] Under the Global Competitiveness Report (GCR) 2010-2011, Ukraine's judicial independence is ranked 134th of 139.[30] Weak protection of human rights in Ukraine encourages people to turn to the European Court of Human Rights (ECtHR) for protection. For instance, in 2004 Ukraine was ranked 6th on the number of applications to the ECtHR,[31] while in December 2010 it was 3rd.[32]

2. Socio-Political Foundations – Score 25

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

The main differences in Ukraine are ethnic, linguistic and socioeconomic. According to the 2001 census, the biggest ethnic groups in Ukraine were Ukrainians (77.8%), Russians (17.3%), Belarusians (0.6%), Moldovans (0.5%), Crimean Tatars (0.5%), Bulgarians (0.4%), Hungarians (0.3%), Romanians (0.3%), Polish (0.3%), Jewish (0.2%), and other.[33] The given percentage, however, does not represent the real number of the Ukrainian and Russian speaking population: in 2001, 14.8% Ukrainians declared Russian as their mother tongue, and 3.9 % of the Russians declared Ukrainian as their mother tongue.[34] The two major ethnic groups are territorially concentrated, with most Russians in the east and south, which are also more urbanised compared to the western regions of Ukraine. The different regional histories and socioeconomic characteristics translate into different political interests,[35] which were mostly clearly expressed in the 1994 and 2004 presidential election, 2006 and 2007 parliamentary elections.[36]

The current cleavages are reflected in the party system;[37] to mobilise the electorate politicians

21 U.S. Department of State, *2009 Human Rights Reports: Ukraine*; http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136063.htm [accessed 29 December 2010].

22 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 10.

23 http://www.amnesty.org/en/appeals-for-action/stop-harassment-ukraine-human-rights-defenders [accessed 29 December 2010].

24 Freedom House, *Freedom of the Press 2010*: 244.

25 The Parliament's Commissioner on Human Rights, *2010 Annual Report. Observance of the Constitutional Right to Address the Commissioner on Human Rights*; http://www.ombudsman.kiev.ua/dopovid_6/d_06_1.htm [accessed 1 February 2011].

26 The World Bank, Worldwide Governance Indicators. Ukraine (2004-2009); http://info.worldbank.org/governance/wgi/sc_chart.asp [accessed 29 December 2010].

27 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 8.

28 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 9. See also: Neill, Brian; Brooke, Henry (2008), *The Rule of Law in Ukraine. Report produced by the Lord Slynn of Hadley European Foundation for the EU Ukraine Business Council*: 27-28.

29 The Parliament's Commissioner on Human Rights, *2010 Annual Report. Enforcement of the Constitutional Right to Address the Commissioner on Human Rights*; http://www.ombudsman.kiev.ua/dopovid_6/d_06_1.htm [accessed 1 February 2011].

30 World Economic Forum, *GCR 2010 – 2011*: 335.

31 http://www.minjust.gov.ua/0/1957 [accessed 29 December 2010].

32 http://eu.prostir.ua/news/244531.html [accessed 29 December 2010].

33 Central Intelligence Agency, *The World Factbook: Ukraine*; https://www.cia.gov/library/publications/the-world-factbook/geos/up.html [accessed 29 December 2010].

34 Report of the Committee of Experts on the Application of the European Charter for Regional and Minority Languages by Ukraine, 2008: 5.

35 Kuzio Taras, *Contemporary Ukraine. Dynamics of Post-Soviet Transformation*, 1998: 101.

36 See, for instance: http://www.cvk.gov.ua/pls/vp2004/wp0011; http://www.cvk.gov.ua/pls/vnd2006/w6p001; http://www.cvk.gov.ua/pls/vnd2007/w6p001 [accessed 29 December 2010].

37 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 25-26.

often speculate on/prioritise the issues dividing the nation, such as 1932-1933 famine,[38] NATO membership,[39] Ukrainian/Russian language status[40] etc.

In 2003, the Committee of Ministers of the Council of Europe (CM CoE) acknowledged that Ukraine made commendable efforts in terms of designing legislation for the protection of national minorities, but noted de facto discrimination of the Roma and recommended to ensure the rights of Crimean Tatars and other formerly deported people, inter alia in terms of their participation in cultural, social and economic life and in public affairs.[41] According to HRW, in 2010 Crimean Tatars continued to endure discrimination.[42] In 2010, the UN CEDAW urged Ukraine to eliminate discrimination against women, in particular Romani women.[43] Reportedly, some minority and non-traditional religions experienced problems with registering, buying and leasing property.[44]

Social and political integration occasionally takes place not via the aggregation and representation of interests, but rather by the integration of people into vertical clientelist networks, which are hard to dissolve, especially in the countryside and in the single-industry towns where people depend on local economic leaders for their socioeconomic wellbeing.[45]

There is lack of programmatic differentiation between the party platforms; parties and electoral blocs continue to be primarily political vehicles for individual leading politicians, while their role in aggregating and representing societal interests is not very effective.[46] Party elites have only weak grassroots connections, and the shift to proportional representation in 2006 led to further centralisation of power at the top. People have little trust in parties, which are considered to serve the self-interests of their leaders.[47] In particular, according to the public opinion polls, in 2001 – 2009 only 5% of the citizens trusted political parties, while the level of complete distrust to parties during this period always exceeded 20%, reaching 40% in 2009.[48]

The political elite show little willingness to cooperate with civic organisations. Only a few interest organisations possess sufficient intellectual and institutional capacity to influence the government through policy analysis and recommendations; strong economic groups are well represented in political life, while other societal interests are less represented.[49]

Although in 2009 the NGO sector to some extent strengthened its organisational capacity and increased its ability to implement advocacy campaigns,[50] the level of its institutionalisation remains low as only about 10% of registered NGOs are active.[51] NGOs continue to suffer from outdated legislation, restrictive definition of "non-profit activity" and dependence on foreign funding.[52] Their impact in the political sphere is limited.[53]

3. Socio-Economic Foundations – Score 50

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Ukraine's economy depends on Russia for most energy supplies, especially natural gas, although

38 http://news.bbc.co.uk/2/hi/europe/6179818.stm [accessed 29 December 2010].

39 http://www.spiegel.de/international/europe/0,1518,545105,00.html [accessed 29 December 2010].

40 http://news.bbc.co.uk/2/hi/europe/4472069.stm [accessed 29 December 2010].

41 CM CoE Resolution ResCMN(2003)5 on the Implementation of the Framework Convention for the Protection of National Minorities by Ukraine, adopted by the CM CoE on 5 February 2003 at the 826th meeting of the Ministers' Deputies.

42 HRW, *World Report 2010*: 468.

43 UN CEDAW (2010), *Concluding observations of the Committee on the Elimination of Discrimination against Women. Ukraine* (CEDAW/C/UKR/CO/7): 4-6.

44 The Fund for Peace, *Ukraine Country Profile 2009*; http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=394&Itemid=553 [accessed 29 December 2010].

45 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11

46 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11.

47 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11.

48 Razumkov's Center, *Do You Trust Political Parties? (Dynamics, 2001-2009)* (in Ukrainian); http://www.razumkov.org.ua/ukr/poll.php?poll_id=82 [accessed 29 December 2010].

49 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 12.

50 USAID, *NGO Sustainability Index 2009*: 218.

51 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 13.

52 Freedom House, *Nations in Transit 2010*: 551.

53 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 13.

lately it has been trying to diversify its sources. Lack of significant structural reform made Ukraine vulnerable to external shocks. The initiated reforms (e.g. reduction in the number of government agencies, creation of legal environment to encourage entrepreneurs etc.) have not yet resulted in significant changes in practice, while reforms in politically sensitive areas of structural reform and land privatisation are still lagging.[54]

From 2005 to 2008, macroeconomic data pointed to sustainable and positive economic development in Ukraine, which was driven mainly by external factors (e.g. positive terms of trade, low prices for natural gas until 2009, capital inflows which boosted domestic demand etc.).[55] The global financial crisis exposed Ukrainian macroeconomic vulnerabilities[56] (see the Table 1 below). In 2010, Ukraine's economy benefited from global rebound, but a full-fledged recovery has yet to emerge.[57] However, a well-educated population, flexible and efficient labour markets, and a large market size set a good base for the country's future growth performance.[58]

Table 1. Key Macroeconomic Indicators, 2005 – 2009

	2005	2006	2007	2008	2009
Real GDP, change in percent	2.7	7.3	7.9	2.3	-15.1
Real Industrial Production	3.1	6.2	10.2	-3.1	-21.9
Consumer Price Index, average on period (change in percent)	13.5	9.1	12.8	25.2	15.9
Consumer Price Index, end of period (change in percent)	10.3	11.6	16.6	22.3	12.3
Exchange Rate, UAH/USD, average on period	5.1	5.1	5.1	5.3	8.1 (market exchange rate)
Current Account Balance (percent of GDP)	2.9	-1.5	-3.7	-7.1	-1.6
Foreign Exchange Reserves (USD billions)	19.4	22.4	32.5	31.5	26.5
Net FDI (USD billions)	7.5	5.7	9.2	9.9	4.7
Fiscal Balance (percent of GDP)	-2.3	-1.4	-2.0	-3.2	8.7
PPG debt (percent of GDP)	17.7	14.8	12.4	20.1	34.7

Source: WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010, 8.

54 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 8.

55 WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010: 7, 10,12.

56 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 19.

57 IHS Global Insight, *Industry Pulls Ukrainian Economy Out of Recession in 2010*, 18 January 2011, [accessed 15 January 2011].

58 World Economic Forum, *GCR 2010 – 2011*: 27.

Social inequality in Ukraine remains pronounced.[59] Owing to fast real wage growth in the economy and rising social transfers, in 2002 – 2007 poverty reduced significantly (headcount index fell from 47% in 2002 to 12.3% in 2007, using the poverty line of USD 5 in purchasing power parity).[60] Notwithstanding that, in 2008 28% of people were still living below the national poverty line of UAH 430 [USD 90] per person a month.[61] The global economic downturn has increased the poverty headcount index in 2009 to the 2006 level,[62] while by November 2010 almost 26.4 % of population have been living below the official poverty line.[63]

Ukraine's score under the Basic Capabilities Index 2010 is 97 of 100,[64] while the 2010 Human Development Index ranks Ukraine 69th of 169 as a country with high human development.[65] Nevertheless, an opinion poll of 21 nations conducted in 2008 by the WorldPublicOpinion.org[66] revealed that the overwhelming majority of respondents (80-93%) in Ukraine thought that the government ensured the basic food needs, needs for education and for healthcare not well at all or not very well.[67] The Ukrainian public education system is underfunded.[68] Health system does not provide universal access to quality health care, while adequate medical service is in fact available only in the private sector, making it too costly for most people.[69]

Ukraine's social safety net consists of two main components: services and cash transfers. The social assistance system suffers from several shortcomings: the authorities grant many categories of aid and benefits to a wide range of citizens, so that the total financial obligations exceed the country's means; social transfers are poorly targeted (about 30% of transfers are made to those who do not actually qualify); the public pension system might be jeopardised by a lack of fiscal sustainability,[70] demographic trends and large population of pensioners (more than 14 million).[71]

GCR 2010-2011 ranks Ukraine's infrastructure 68th of 139 considered.[72] On quality of roads Ukraine ranks 136th, on quality of air transport infrastructure - 110th, on quality of port infrastructure – 94th (of 139 countries included into GCR 2010-2011). However, Ukraine is ranked relatively high on quality of railroad infrastructure (25th of 139).[73] According to WB, Ukraine's limited and deteriorated infrastructure is unable to support private sector's growth, and its increasing needs were estimated to require USD 100 billion by 2015.[74]

Business sector is developed in Ukraine [see: Business], but Ukraine's standing in terms of ease of doing business is fairly weak. In particular, WB Doing Business 2011 ranks Ukraine 145th out of 183 countries on the ease of doing business,[75] while GCR 2010-2011 ranks Ukraine 89th of 139 states.[76] Among the most problematic factors for doing business in the country identified by the respondents are policy instability, corruption, constrained access to financing, tax regulations, government instability, inefficient government bu-

59 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 13.

60 WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010: 6-7.

61 http://europeandcis.undp.org/poverty/show/5C2C1F7F-F203-1EE9-B7380FF2BCFE3C9A [accessed 29 December 2010].See also: UN Economic and Social Council, the Committee on Economic, Social and Cultural Rights, *Consideration of the Reports Submitted by States Parties under Articles 16 and 17 of the Cevenant. Concluding Observations. Ukraine*, 2007: 4.

62 WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010: 7.

63 http://helsinki.org.ua/index.php?id=1289897423 [accessed 29 December 2010].

64 Social Watch, *Report 2010*: 44.

65 UNDP, *Human Development Report 2010*: 144.

66 Sample size – 1043 respondents, margin of error – 3.1, survey methodology – face-to-face, type of sample – national, field dates August 30 – September 9, 2008.

67 WorldPublicOpinion.org, *World Publics See Government as Responsible for Ensuring Basic Healthcare, Food and Education needs, But Big Variations on How Well Their Government is Performing*, 2008: 5-8; http://www.worldpublicopinion.org/pipa/pdf/nov08/WPO_Socio-Econ_Global_rpt.pdf [accessed 29 December 2010].

68 UN Economic and Social Council, the Committee on Economic, Social and Cultural Rights, *Consideration of the Reports Submitted by States Parties under Articles 16 and 17 of the Cevenant. Concluding Observations. Ukraine*, 2007: 4.

69 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 19.

70 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 19.

71 WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010: 17.

72 World Economic Forum, *GCR 2010 – 2011*: 19.

73 World Economic Forum, *GCR 2010 – 2011*: 335.

74 WB, *Ukraine. Country Economic Memorandum. Strategic Choices to Accelerate and Sustain Growth*, 2010: iv, vi.

75 WB, *Doing Business 2011*: 4.

76 World Economic Forum, *GCR 2010 – 2011*: 15.

reaucracy, inflation and tax rates (8.4 to 15.6 % of responses).[77]

4. Socio-Cultural Foundations – Score 25

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Ukrainian society is generally characterised by a low level of interpersonal trust. According to the public opinion poll conducted in 2001, only 27.2% of Ukrainians agreed that most people can be trusted.[78]

Social and political institutions do not enjoy confidence of the citizens. For instance, in 2010 only 7.5% of the citizens have had every confidence in courts, 9.3% of the citizens – complete confidence in the police, 11% - complete confidence in media, 29.1% - complete confidence in church.[79] However, the level of public apathy can hardly be considered high, as not less than 60% of the eligible voters have participated in all the national elections since 1994.[80]

Democratic values are not respected within the society: the results of public opinion poll conducted in 2007 revealed that freedom of speech is considered to be a value by only 46% of the citizens, freedom to choose the place of residence – by 40% of respondents, freedom to criticise the government's policy and activities – by 35% of respondents, freedom of vote – by each third respondent.[81]

In 2007, 52% of the citizens believed that corruption can be justified as a mean of effective solution of the problem if it arises, while only 37% of the citizens thought that corruption can never be justified (the lion's share (43.9%) of those who do not justify corruption belongs to people of 60 and more years of age, while only 30.3% of the people aged 18-29 believe that corruption cannot be justified).[82]

77 World Economic Forum, *GCR 2010 – 2011*: 334.

78 Schaik v., Ton, *Social Capital in the European Values. Study Surveys,* 2002: 19.

79 [accessed 29 December 2010].

80 Institute for Democracy and Electoral Assistance, *Voter Turnout Data for Ukraine*; [accessed 29 December 2010].

81 [accessed 29 December 2010].

82 Management Systems International, Kyiv International Institute of Sociology (2007), *Corruption in Ukraine. The Results of the 2007 National Opinion Poll (in Ukrainian)*: 13.

V. CORRUPTION PROFILE

Corruption remains one of the top problems threatening economic growth and development in Ukraine. Political and business elites collude behind the facade of political competition and colonise both the state apparatus and sections of the economy.[83] Immediately after independence, these influential elites and their organisations grew into major financial-industrial structures that used their very close links with and influence over the government, political parties, the mass media and the state bureaucracy to enlarge and strengthen their control over the economy and sources of wealth. Their tactics and their results can be viewed as a clear exercise of state and regulatory capture.[84] State and regulatory capture is one of the key reasons for widespread corruption at all levels of public administration, including political institutions. However, a high tolerance for corruption within the society also significantly contributes to its flourishing.

Corruption in Ukraine, including corruption in specific sectors, has been comprehensively assessed in a number of surveys,[85] ranging from sector specific studies in corruption-prone areas to nationwide corruption assessments. Many of them were carried out by independent institutions and funded by international partners (USAID, Millennium Challenge Corporation, European Commission etc.). However, to date no regular surveys were commissioned by the government.[86] The issues connected to corruption and governance in Ukraine are also addressed by foreign and international organisations/institutions, such as TI, WB, World Economic Forum, Freedom House, Heritage Foundation and other.

In 2009, the Ukrainian citizens ranked the problem of corruption fourth from the top of the list of problems which rise serious concern among them, whereby only poor standards of living, unemployment, costly and low quality medical services are more important to the citizens than corruption.[87]

According to the Group of States against Corruption (GRECO), corruption in Ukraine is a systemic phenomenon existing in all sections and at all levels of public administration, including law enforcement agencies, prosecution service and judiciary as well as local authorities.[88] In Ukraine, both petty and grand scale corruption are thriving.[89] The TI Global Corruption Barometer (GCB) reveals that political parties, legislature, police, public officials and judiciary are perceived by the citizens to be highly affected by corruption (see the Table 2 below). In 2009, almost 50% of the citizens thought that traffic police, judiciary, police, medical institutions, and prosecution service were affected by corruption.[90]

83 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and other*, 2006: 4.

84 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and other*, 2006: 4.

85 Surveys on corruption in Ukraine, including sector specific serveys and national public opinion polls are available, in particular at: ; [accessed 29 December 2010].

86 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 13.

87 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian)*, 2009: 18.

88 GRECO, *Joint First and Second Evaluation Rounds. Evaluation Report on Ukraine, adopted by GRECO at its 32nd Plenary Meeting (Strasbourg, 19-23 March 2007)*: 3-4.

89 Civil Society against Corruption, *Corruption in Ukraine. Report by Yemelianova Anna*, 2010: 2.

90 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian)*, 2009: 24.

Table 2. Public Perception of Corruption in Institutions of the Country*

Years	Political Parties	Parliament	Police	Business/ Private Sector	Media	Public Officials/ Civil Servants	Judiciary	NGOs	Religious Bodies	Military	Education System
2007	4.1	4.1	4.1	3.9	3.2	-	4.2	3.2	2.3	3.1	3.8
2009	4.4	4.5	-	4.3	3.8	4.5	4.5	-	-	-	-
2010	4.0	4.1	4.3	3.7	3.2	4.1	4.4	3.2	2.3	3.5	4.0

* Question: To what extent do you perceive the following institutions in this country to be affected by corruption? (1: not at all corrupt, 5: extremely corrupt). Average score.

Source: TI GCB 2007: 22, TI GCB 2009:29, TI GCB 2010:44.

There is a high tolerance for corrupt practices throughout the society. In 2009, the share of the citizens who believed that corruption can always be justified constituted 7.6%, while 43.5% of the citizens were convinced that corruption can be justified in some cases.[91] More alarming is the finding that the younger the citizen, the stronger he/she believes that corruption can be justified under certain circumstances.[92] According to the TI GCB 2010, in 2010 between 30 to 49.9% of the respondents in Ukraine reported paying a bribe to different service providers in the past year.[93] Strikingly, the share of those who reported paying a bribe to service providers has increased significantly compared to 2007, when bribes were paid by 18-32 % of the respondents.[94]

In 2009, 61.3% of the citizens were convinced that since 2004 the level of corruption in Ukraine has increased.[95] Ukraine is ranked low in TI Corruption Perceptions Indexes (CPIs) 2005-2010 (with low scores varying from 2.2 in 2009 to 2.8 in 2006), as well as in Global Integrity Indexes 2007 and 2009. Freedom House's Nations in Transit 2010 indicates that since 2005 Ukraine has made no significant progress in terms of fight against corruption. The WB scores for Ukraine's governance indicators have been low for years (see the Table 3 below). World Economic Forum's GCR 2010 – 2011 ranks Ukraine low on indicators "Irregular Payments and Bribes" (127th of 139), "Burden of Government Regulation" (125th of 139), "Judicial Independence" (134th of 139), "Favoritism in Decisions of Government Officials" (127th of 139), "Transparency of Government Policymaking" (114th of 139).[96]

91 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian),* 2009: 21.

92 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Results of the 2007 National Opinion Poll (in Ukrainian)*, 2007: 13.

93 TI GCB 2010: 12.

94 TI GCB 2007: 4.

95 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian),* 2009: 22.

96 World Economic Forum, *GCR 2010 – 2011*: 335.

Table 3. Assessment of Corruption in Ukraine: Some Quantitative Data

	2005	2006	2007	2008	2009	2010
CPI, rank among the countries considered/Score on the scale of 10 (where 0 means perceived to be highly corrupt, 10 – perceived to be highly clean)	107th of 158/2.6	99th of 163/2.8	118th of 179/2.7	134th of 180/2.5	146th of 180/2.2	134th of 178/2.4
Global Integrity Index	-	-	68 of 100 (weak)	-	58 of 100 (very weak)	-
Freedom House, Nations in Transit, "Corruption" Indicator, 1 – the highest level of democratic progress, 7 – the lowest	5.75	5.75	5.75	5.75	5.75	5.75
WB "Voice and Accountability" Indicator, percentile rank 0-100	34.6	46.2	46.2	47.1	47.4	-
WB "Political Stability" Indicator, percentile rank 0-100	38.0	47.6	51.4	47.4	34.4	-
WB "Government Effectiveness" Indicator, percentile rank 0-100	36.9	33.5	30.0	29.0	23.8	-
WB "Regulatory Quality" Indicator, percentile rank 0-100	39.5	35.6	38.3	35.7	31.4	-
WB "Rule of Law" Indicator, percentile rank 0-100	29.5	23.8	26.7	29.2	26.4	-
WB "Control of Corruption" Indicator, percentile rank 0-100	32.0	31.6	27.1	26.6	19.5	-

Sources: TI, *CPI 2005 – 2010*; Global Integrity, *Global Integrity Index: Ukraine, 2007 and 2009*; Freedom House, *Nations in Transit 2010*: 549; WB, *Worldwide Governance Indicators for Ukraine 2005 – 2009*.

VI. ANTI-CORRUPTION ACTIVITIES

Permanent low ranking in indices as well as critical assessments of Ukraine's progress in fight against corruption suggest that anti-corruption policy in Ukraine is far from being effective. Public opinion polls uphold this assumption. For instance, in 2009 only 7% of the respondents believed the government to be effective in fight against corruption, while the share of those who considered the government actions to be ineffective constituted 73%.[97] In 2010, the share of the respondents who thought that government's tackling corruption was ineffective remained significant (59%).[98]

According to the 2009 national opinion poll, the citizens consider the corruption to be rooted in: intention of the politicians to use the power for personal enrichment (19.2%), lack of control of the public officials by law enforcement agencies (15.7%), lack of political will (14.1%), imperfect legislation (10.3%), citizens' habit of solving the problems through corruption (9.3%), lack of internal control within the public authorities (7.4%). It should be noted that the citizens generally do not consider low salaries of public officials and lack of clear procedures for the actions of public administration as main reasons for committing corruption offences.[99]

The assessments and expert surveys suggest that the key factors contributing to spread of corruption in the country are: the lack of political will to address corruption, spread of corruption among the high-ranking officials, high tolerance to corruption within the society, inadequate legal framework, selective enforcement of law, excessive state regulation of the economy, executive control over judiciary and minimal oversight of the executive by the parliament, strong ties between political and business elite, manipulation of the bureaucracy by politicians, low capacity of civil society, weak accountability mechanisms, uneven transparency in government decisions and activities, resistance to decentralisation, ineffective investigation of corruption offences and impunity for corrupt behaviour.[100] Most of these factors have yet to be adequately addressed by Ukrainian government.

97 TI GCB 2009: 33.

98 TI GCB 2010: 47.

99 Management Systems International, Kyiv International Institute of Sociology, *Corruption in Ukraine. The Comparative Analysis of the 2007 - 2009 National Opinion Polls (in Ukrainian),* 2009: 20.

100 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and other*, 2006: 6-7; Razumkov's Center, *Political Corruption in Ukraine: the Current State, Factors, Mechanisms for Counteraction*, 2009: 45-47.

VI. ANTI-CORRUPTION ACTIVITIES

Since 2005, public authorities, civil society organisations, international donors and other stakeholders have taken a number of measures to address the problem of corruption in Ukraine, but most of them have not been very effective.

Anti-corruption activities of public authorities

Most of the measures which have been taken by the public authorities have been of a formal nature and limited to the adoption of the policy documents and laws, submission of anti-corruption draft laws for the parliament's consideration, establishment of the new policy coordination bodies, as well as delivery of training for officials responsible for fight against corruption. However, the most important anti-corruption reforms have not been implemented, while enforcement of the laws, has been remaining poor for years [see: Judiciary, Public Sector, Law Enforcement Agencies].

Before 2010, anti-corruption policy in Ukraine used to be based on the President's Concept of Overcoming Corruption in Ukraine "Towards Integrity".[101] This Concept contained some features of a strategy and addressed the main issues connected to corruption in Ukraine, but did not provide for monitoring of its implementation, deadlines for taking measures envisaged, priorities of anti-corruption policy, institutional responsibilities attached to each of the measures, and dedicated budget.[102] In 2007, the CMU adopted Action Plan for its implementation,[103] which, however, reflected the main problems regarding the Concept (e.g., poor prioritisation, lack of dedicated budget and other). The former president of Ukraine also approved a number of other policy documents which took into account a number of 2006 GRECO recommendations contained in the Joint First and Second Round Evaluation Report on Ukraine. Among these documents are the Concept for the Reform of Criminal Justice System[104] and the Concept for the Improvement of the Judiciary to Promote Fair Trial in Ukraine according to European Standards.[105] They provided for comprehensive reform of the judiciary, establishment of a specialised anti-corruption body with powers to conduct pre-trial investigation in corruption cases, strengthening the independence of public prosecutors and providing them with clearer mandate. However, most of the provisions laid down in these two Concepts have not been implemented in practice.

The new government, which took office in 2010, does not appear to have strong ownership of the policy documents produced by the preceding government.[106] On 20 May 2010, the parliament adopted the Law on the State Program of Economic and Social Development for 2010,[107] which stressed the importance of administrative reform and putting a curb on corruption. To achieve these goals, the Program tasked government agencies to prepare a number of draft laws, but by the end of 2010 none of these drafts was submitted to the parliament. In addition to the Program, the new government also drafted a new anti-corruption strategy, which has yet to be adopted by the head of state. Drafting of the strategy was far from a participatory multi-stakeholder process since its final version was not made publicly available.

Within the framework of anti-corruption activities, public authorities also made some attempts to improve anti-corruption policy coordination. For instance, in 2008 the CMU introduced the post of the Government Agent on Anti-Corruption Policy,[108] tasked with a wide range of functions in the field of prevention of corruption [see: Anti-Corruption Agencies]. However, in 2011 the CMU without any justification terminated the position of the Government Agent[109] and discharged the Agent from office.[110] These decisions raise doubts about real political will to curb corruption in Ukraine.

101 Presidential Decree № 742/2006, 11 September 2006.

102 OECD/ACN, *Monitoring of NationalActions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption. Monitoring Report on Ukraine*, 2006: 13; OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 11.

103 CMU Resolution № 657-p, 15 August 2007.

104 Presidential Decree № 311/2008, 8 April 2008.

105 Presidential Decree № 361/2006, 10 May 2006.

106 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 12.

107 Law № 2278-VI, 20 May 2010.

108 CMU Decree № 532, 4 June 2008.

109 CMU Resolution № 86-p, 7 February 2011.

110 Presidential Decree № 212/2011, 14 February 2011.

VI. ANTI-CORRUPTION ACTIVITIES

In 2005-2010, Ukraine ratified key international conventions pertaining to the fight against corruption, in particular, the Council of Europe Civil Law Convention against Corruption (2005), the United Nations Convention against Corruption (UNCAC) (2006), and Council of Europe Criminal Law Convention against Corruption (2006). Some efforts were also made to improve national legislation pertaining to combating corruption. In particular, on 11 June 2009, the parliament adopted so called anti-corruption "package" of laws,[111] whose enactment was initially foreseen for 1 January 2010. The legislature twice (on 23 December 2009 and on 10 March 2010) postponed the enactment of the "package", while on 21 December 2010 it was repealed at all[112] [see: Legislature]. In a positive development, the parliament adopted a number of other laws directly or indirectly connected to counteraction of corruption, such as the Law on Access to Court Decisions (2005), Law on Judicial System and Status of Judges (2010), Law on Public Procurement (2010), Freedom of Information Act (2011) [see: Legislature, Judiciary, Public Sector]. The members of the VRU Committee on Fight against Organised Crime and Corruption submitted to the legislature three important anti-corruption draft laws, some of which were produced within the framework of the Threshold Program (see below),[113] but they are still pending before the parliament. Certain decisions pertaining to prevention of corruption were also made by the CMU. For instance, in 2009-2010 the executive introduced anti-corruption screening of the draft legislation[114] and approved methodology for such screening,[115] instructed the executive bodies to set up internal anti-corruption units,[116] to inform Government Agent on the measures taken by them in the field of combating corruption on a regular basis,[117] to inform the citizens on their activities related to corruption,[118] to facilitate establishment of the public councils under the executive bodies[119] etc. In 2010, the Main Department of Civil Service (MDCS) adopted the new version of the General Rules of Civil Servant's Conduct[120] which provided for conflict of interest regulation and imposition of restrictions on the receipt of gifts by civil servants. However, the relevant provisions of the Rules will enter into legal force as soon as the Law on the Principles of Prevention and Counteraction to Corruption is enacted, while the latter has yet to be adopted by the legislature.

The anti-corruption activities of the public authorities were not only limited to development of the policy documents and legislation, but also included some other measures. For instance, in 2010 the Government Agent conducted anti-corruption screening of the draft legislation (307 reviews had been conducted by the end of October 2010), organised a number of events on anti-corruption topics for civil servants, initiated awareness-raising campaign in media, established public council to elaborate the proposals on anti-corruption policy implementation [see: Anti-Corruption Agencies, Civil Society Organisations]. For several years the Main Department of Civil Service and the National Academy of Public Administration has been delivering trainings for civil servants [see: Public Sector], while other institutions have trained judges, prosecutors and police (many of these trainings were organised/funded by the OECD, the "Support to Good Governance: Project against Corruption in Ukraine" (UPAC) project and USAID).[121]

Despite the measures taken, GRECO stated that Ukraine has implemented satisfactorily or dealt in a satisfactory manner with less than third of the

111 The "package" included the Law on the Principles of Prevention and Counteraction to Corruption № 1506-VI, 11 June 2009; the Law on Liability of Legal Persons for Corruption Offences № 1507-VI, 11 June 2009; the Law on Amendments to Certain Laws of Ukraine pertaining to Liability for Corruption Offences № 1508-VI, 11 June 2009.

112 Law № 2808-VI, 21 December 2010.

113 In particular, draft Law on the National Bureau of Anti-Corruption Investigations of Ukraine № 5031, submitted to the parliament on 2 March 2010; [accessed 29 December 2010]; draft Law on the Measures Connected to Financial Control of Public Service № 4472, submitted to the parliament on 14 May 2009; [accessed 29 December 2010]; draft Law on the Rules of Professional Ethics for Public Service and Prevention of the Conflict of Interest № 4420-1, submitted to the parliament on 14 May 2009; [accessed 29 May 2010].

114 CMU Decree № 1057, 16 September 2009.

115 CMU Decree № 1346, 8 December 2009.

116 CMU Decree № 1422, 8 December 2009.

117 CMU Decree № 1419, 8 December 2009.

118 CMU Decree № 1338, 8 December 2009.

119 CMU Decree № 996, 3 November 2010.

120 MDCS Order № 214, 4 August 2010.

121 GRECO, *Joint First and Second Evaluation Rounds. Compliance Report on Ukraine, adopted by GRECO at its 42nd Plenary Meeting (Strasbourg, 11-15 May 2009)*: 7-8, 10.

recommendations contained in the 2006 Joint First and Second Round Evaluation Report.[122] Based on the results of Ukraine's monitoring, the OECD/ACN came to conclusion that only 5 of 24 recommendations suggested by the OECD/ACN in 2006 have been fully implemented by the Ukrainian government, while 12 recommendations have not been addressed at all.[123]

Anti-corruption activities of donors and international organisations

The installation of the new administration as a result of the 2004 presidential election in Ukraine elevated the hopes of many, both domestically and internationally, that the traditional systems of Ukrainian corruption would be drastically changed.[124] These expectations triggered a number of donor initiatives aimed to address corruption in Ukraine. In particular, in 2006, the U.S. Government's Millennium Challenge Corporation (MCC) signed with Ukraine two-year USD 45 million Threshold Program, targeted at reducing the level of corruption in Ukraine. The program was administered by the USAID and implemented in Ukraine by number of institutions and companies (U.S. Department of Justice, Management Systems International, Chemonics International, and others). Among the key outputs of the program are the national opinion polls on the level of corruption (both general and sector specific), establishment of the public advocacy anti-corruption networks, preparation of the Freedom of Information Act by the CSOs (adopted by the parliament on 13 January 2011), establishment of regional legal advice centers for the journalists, increase in the number of investigative journalism publications, preparation of the anti-corruption draft laws (the latter have yet to be adopted by the parliament), introduction of the merit-based system for selection of judges, implementation of court automation to enable random assignment of cases and online access to court decisions, university admission reform etc.[125]

On 8 June 2008, the Council of Europe and the European Commission launched the project "Support to Good Governance: Project against Corruption in Ukraine" (UPAC), which lasted until December 2009. Project outputs included analytical reports (on corruption risks, lobbying, funding of political parties and elections, conflict of interest regulation and other), surveys, expert opinions on the draft anti-corruption laws, seminars, study visits and round tables on anti-corruption issues.[126] Since 2008, the Canadian International Development Agency (CIDA) has been funding 6-year project "Combating Corruption in Ukraine" (with total budget of about USD 5.64 million), which supported interaction of the Ukrainian government with GRECO, analysis of the anti-corruption "package" of laws, roundtables on policy development,[127] drafting the study on corruption in 22 regions, produced by the NGO "Institute of Applied Humanitarian Studies". Since 2007, the OECD has been implementing in Ukraine a project aimed to assist Ukrainian authorities in the establishment of a specialised anti-corruption institution with law-enforcement powers and developing specialisation within the prosecution service.[128] Anti-corruption activities are carried out/financed by many other foreign and international organisations and institutions. For instance, the American Bar Association Rule of Law Initiative (ABA ROLI), established a monthly forum for the key stakeholders to coordinate their anti-corruption efforts, funded an electronic anti-corruption resource website (http://acrc.org.ua), prepared guidelines on the UNCAC and overviews of other international treaties to which Ukraine is a signatory, assisted in assessing law enforcement institutions. The International Renaissance Foundation (Soros Network) provides funding to projects related to the rule of law, investigative journalism, and civil society participation in policy-making; while UNDP works on administrative reform, civil service reform and civil society em-

122 GRECO, *Joint First and Second Evaluation Rounds. Compliance Report on Ukraine, adopted by GRECO at its 42nd Plenary Meeting (Strasbourg, 11-15 May 2009)*: 20.

123 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 71.

124 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and other*, 2006: 1.

125 For further details on the Treshold Program implementation see: ; ; ; ; [all accessed 29 December 2010].

126 For further information on the project see: [accessed 29 December 2009].

127 See: [accessed 29 December 2010].

128 See: [accessed 29 December 2010].

powerment. The OSCE Project Co-coordinator in Ukraine implements projects aimed to develop administrative justice in the country, as well as legal and policy framework for combating corruption in the judicial sector, raise awareness of human rights and protection mechanisms etc.[129] The USAID-funded Parliamentary Development Project II financed comprehensive research on political corruption produced by the independent Razumkov's Center. The above list of the projects and donor activities is far from exhaustive.

Notwithstanding the above, OECD/ACN in its Second monitoring report on Ukraine stated that large anti-corruption programs supported by donors and international organisations did not produce many practical results; donors are therefore looking for the confirmation of political will to fight corruption in order to consider any further support.130

Anti-corruption activities of civil society and business

CSOs carry out a variety of activities aimed to address corruption in public sector. In particular, NGO advocacy campaigns on combating corruption in the judiciary, education and regulatory reform areas contributed to adoption of[130] resolutions, decrees, and regulations of the Cabinet of Ministers and other public authorities.[131] Until 2010, many NGO advocacy campaigns pertaining to corruption had been funded within the framework of the project "Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine", which concluded its activities in December 2009. Since then, advocacy campaigns have been supported mainly by the USAID-funded project "The Ukraine National Initiatives to Enhance Reforms" (UNITER), as well as by other donors (in particular, by the International Renaissance Foundation).

Many NGOs participate in the work of the expert groups established by public authorities in order to draft strategic documents and draft laws, or even drafted some legal acts on their own initiative. Within the framework of UPAC project activities, the NGOs produced studies on corruption risks, funding of political parties, lobbying and other issues. In 2009, the NGO conducted comprehensive research on political corruption, supported by the Parliamentary Development Program II. CSOs also provide expert opinions on draft laws, develop concepts and legal acts connected to court system reform, public participation in policy-making, the reform of public service etc. Owing to CSOs' activities, the new Freedom of Information Act was drafted and adopted by the parliament on 13 January 2011 [see: Civil Society Organisations].

Business sector is not very active in carrying out anti-corruption activities. It is involved in the formulation of anti-corruption recommendations, which are channelled via business associations and councils of entrepreneurs at different government agencies, including Entrepreneurs' Council at the Cabinet of Ministers of Ukraine. 88 Ukrainian companies also adhered to the UN Global Compact [see: Business]. The European Business Association has brought initiatives for creating a Common Code of Conduct and Business Action Plan against Corruption, while some large companies (e.g., Siemens Ukraine, Mott MacDonald Group, System Capital Management and others) adopted their internal codes of conduct.[132] However, taking into account a large number of businesses in Ukraine (450,000 legal persons and about 1 million individual entrepreneurs), these efforts in tackling corruption can hardly be considered sufficient.

129 For further information on the projects see: ; ; ; [accessed 29 December 2010].

130 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 10.

131 USAID, *2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia*: 222.

132 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 70.

VII. NATIONAL INTEGRITY SYSTEM

1. Legislature

SUMMARY

The legislature has sufficient scope of powers to provide itself with necessary resources to function in effective way. However, in practice, it fails to use these powers resulting in significant resource gaps, which reduce the effectiveness of the Parliament's work. A complicated procedure to override the President's veto and the necessity to adopt the Parliament's Rules of Procedure by law, not by internal Parliament's decision, restrict the Parliament's independence. In practice, the decision-making within the legislature strongly depends on the other actors, such as the President and the executive. While the activities of the Parliament as a body are generally transparent, there is a lack of transparency in the activities of most of the parliamentary committees. Accountability of the legislature is weakened by the electoral system on the basis of which it is formed, by unrestricted immunity of the MPs, and other factors. The mechanisms of integrity of the legislators are insufficient, while their behavior can hardly be considered ethical and generally goes unsanctioned. Insufficiency of human resources and control powers of the legislature, as well as shortcomings in regulation of the parliamentary control, do not allow the Parliament to exercise effective oversight of the executive. The Parliament does not effectively use its potential in terms of anti-corruption policy development.

The table below presents general evaluation of the legislature in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Legislature **Overall Pillar Score: 45.83 / 100**			
Dimension	Indicator	Law	Practice
Capacity 50 /100	Resources	75	50
	Independence	50	25
Governance 37.5 / 100	Transparency	50	75
	Accountability	50	25
	Integrity	25	0
Role 50 / 100	Executive Oversight	50	
	Legal reforms	50	

Structure and organisation

The legislature – the Verkhovna Rada of Ukraine (VRU) - is the unicameral body, which comprises 450 people's deputies of Ukraine (MPs). The Parliament is elected for a 5 year term. The members of the legislature are elected on the basis of proportional system with voting for the closed lists of candidates nominated to a single nationwide multi-member constituency. The parties and blocs who have overcome 3% electoral threshold, are admitted to allocation of the seats in the legislature. Each party and bloc which achieved not less than 3% of votes has the right to form only one faction in the Parliament. The minimum number of deputies in the faction is 15.[133] In the VRU of the 6th convocation, 5 factions have been formed, namely the faction of the Party of Regions (180 deputies[134]); faction "The Bloc of Yulia Tymoshenko – "Motherland" (113 deputies); faction of the "Our Ukraine - People's Self-Defense" Bloc (71 deputies); faction of the Communist Party of Ukraine (25 deputies); faction of the People's Party (20 deputies), while 41 MPs belong to none of the factions.

The VRU committees, whose members are elected by the Parliament, are in charge of parliamentary oversight, preparation and preliminary consideration of the issues vested to the authority of the Verkhovna Rada of Ukraine, including preparation of the draft laws for the Parliament's consideration.[135] 27 committees have been established by the Parliament of the 6th convocation.[136] The VRU may also establish temporary special commissions for the preliminary consideration of specific issues, as well as form the committees of inquiry to investigate the matters of public interest. The decision on establishment of a committee of inquiry is considered to be adopted, if no less than one-third of all MPs (i.e. 150 MPs) have voted in favour thereof. The Secretariat of the VRU, whose Head is appointed by the VRU, provides organisational, legal and other support to the VRU.

133 Articles 58-59 of the Rules of Procedure of the VRU, № 1861-VI, February 10, 2010.

134 The information on the number of MPs in each faction is as of 29 December 2010.

135 Article 89 of the Constitution of Ukraine.

136 See, for example, the VRU Resolution on the List, Compositition and Scope of Powers of the VRU committees of the 6th convocation, № 4-VI, December 4, 2007.

ASSESSMENT
RESOURCES (LAW) – SCORE 75

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The Parliament has sufficient scope of powers to provide itself with financial, human and other resources. The amount of annual funding of the VRU is determined by the Law on the State Budget of Ukraine. However, the parliament's power to independently determine the amount of its annual funding is to certain extent limited, since the State Budget Law can be drafted and submitted to the VRU only by the Government, while the President of Ukraine may veto the State Budget Law adopted by the legislature (the veto can be overridden by two-thirds of all members of the Parliament).[137] The Parliament independently determines the maximum number of the VRU Secretariat employees.[138]

The law provides for a number of privileges for the people's deputies of Ukraine: pecuniary aid during a year after expiration of the term of office, which equals to salary with all additional payments and bonuses, 45 day annual leave, the right to free usage of transport within the territory of Ukraine, the right to the office in the Parliament, and other privileges.[139]

RESOURCES (PRACTICE) – SCORE 50

To what extent does the legislature have adequate resources to carry out its duties in practice?

Whereas legislature has some resources, significant gaps reduce the efficiency of its work.

137 Articles 94, 96 of the Constitution of Ukraine.

138 See: VRU Resolution on the Number of Employees of the VRU Secretariat, № 1944-IV, July 1, 2004.

139 Articles 20 - 25 of the Law on Status of the People's Deputy of Ukraine, № 2790-XII, November 17, 1992.

In 2010, the Parliament has received UAH 757,259,800 [about USD 94,7 million] for carrying out its activities, while UAH [30]2,572,100 [about USD 37,8 million] were allocated to the Cabinet of Ministers of Ukraine.[140] While the secretariats of the parliamentary committees generally have sufficient human resources,[141] the number of employees in each secretariat does not always correspond to the workload of the relevant committee, in particular, in the Committee on State Building and Local Self-Government and some other committees.[142]

The maximum number of the VRU Secretariat employees established by the Parliament in 2004 (1,115 employees[143]), has not been revised since then, even though the scope of work to be done by the Secretariat is constantly increasing. For instance, in 2004 the VRU Secretariat employed 1,022 civil servants, while in 2008 – 1,079 civil servants.[144]

The scientific and legal examination of the draft laws is conducted by the Main Scientific and Expert Department and Main Legal Department of the Secretariat. The level of professional knowledge and practical experience of the staff of these units is relatively high.[145] However, the need for accelerated adoption of some bills often results in necessity to provide the expert opinions on the draft laws in very short terms.[146] In turn, a huge amount of work amplified by limited human resources available to the Secretariat sometimes has a negative impact on the quality of expert opinions prepared by the structural units of the Secretariat,[147] while the MPs have no possibility to commission independent expert reviews of the bills due to the lack of funding.[148]

The resources of the library of the Parliament are insufficient,[149] while most MPs have no clear idea of available information and library resources nor do they know how to use them effectively. In addition, parliamentary library resources have not yet been converted into electronic format.[150]

Each MP is provided with their own office, but the working space is often too small to work comfortably.[151] There is also a need to train Parliament's members on how to use available resources.[152] Technical supply of the committees requires improvement, since computers are passed on to the committees after having been used by the deputies of previous convocations; therefore the available technical equipment is often outmoded.[153]

The MPs' salaries are adequate to scope of their duties, especially taking into consideration the state of national economy,[154] but the funds allocated for the interaction with voters do not ensure the effectiveness of communication with the electorate.[155]

Independence (law) – Score 50

140 The Law of Ukraine on the 2010 State Budget of Ukraine, № 2154-VI, April 27, 2010.

141 Interview by Anzhela Malyuha, the head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010; Interview by Serhiy Podhorniy, the people's deputy of Ukraine, with author, 25 May 2010; Interview by Eleanor Valentine, Director of the Parliamentary Development Project II, with author, August 9, 2010.

142 Interview by Anzhela Malyuha, the Head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010.

143 Resolution of the Head of the VRU № 1944-IV, 1 July 2004.

144 The Main Department of Civil Service, *2008 Annual Report*: 30.

145 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010; Interview by Anzhela Malyuha, the Head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010.

146 Interview by Anzhela Malyuha, the Head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010.

147 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010

148 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010; Interview by Serhiy Podhorniy, the people's deputy of Ukraine, with author, 25 May 2010.

149 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

150 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

151 Interview by Serhiy Podhorniy, the people's deputy of Ukraine, with author, 25 May 2010.

152 Interview by Eleanor Valentine, Director of the Parliamentary Development Project II, with author, August 9, 2010.

153 Interview by Anzhela Malyuha, the Head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010.

154 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

155 Interview by Serhiy Podhorniy, the people's deputy of Ukraine, with author, 25 May 2010.

To what extent is the legislature independent and free from subordination to external actors by law?

The Parliament is free to appoint and discharge from office the Head of the VRU and his deputies, as well as to form the parliamentary committees.[156] The President of Ukraine may dismiss the Parliament prior to the expiration of the Parliament's term only in one case - if within thirty days of a regular session plenary sittings fail to start.[157] Regular sessions of the legislature start in the terms prescribed by the Constitution, while the Head of the VRU is obliged to convene special sessions upon request of not less than one-third of all MPs, i.e. 150 people's deputies.[158] The VRU also independently defines and approves a schedule and agenda of each session, amend them,[159] appoints and dismisses the Head of the VRU Secretariat; approves internal budget of the VRU and the structure of the Secretariat.[160] The Head of the Parliament approves list of members of staff and the number of employees in each structural unit of the Secretariat.[161] Admission to the Parliament's premises, including admission of the police, requires issuance of special permits. The MPs cannot be detained, arrested or brought to criminal liability without the Parliament's consent.[162]

However, there are two factors, which to some extent restrict the level of the Parliament's independence. First, the Rules of Procedure of the VRU which define the procedure for the Parliament's work and, accordingly, all the amendments to the Rules, have to be adopted by the law of Ukraine, not by the Parliament's internal decision.[163] Hence, the head of the state may veto any amendments to the Rules. Second, the procedure for overriding a presidential veto is quite complicated – it is considered to be overridden only if two-thirds of all members, i.e. 300 MPs, voted for it.[164] As a result of such complicated procedure, the Parliament for a long time has been failing to adopt its own Rules of Procedure (the Rules have been finally adopted only in 2010), and the Law on the special temporary commissions and commissions of inquiry (the latter was adopted only in 2009, but then was declared unconstitutional by the Constitutional Court of Ukraine).

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent is the legislature free from subordination to external actors in practice?

While there are no cases of direct interference of the judiciary with the functioning of the legislature,[165] after the 2010 presidential election the Government and the President have become major centers of policy-making process,[166] thus significantly weakening the independence of the Parliament. The head of the VRU acknowledged that "in a number of cases the Parliament decisions are made not by factions, but outside of the Parliament".[167] Some other authors go even further, stating that "since the Yanukovych [the President's] camp took office the Ukrainian legislature has been transformed into a de facto rubber stamp institution".[168] MP Yuriy Kluchkovskyi, interviewed within the framework of this assessment, also pointed out that "the legislature depends on the decisions of the Government".[169]

156 Articles 88-89 of the Constitution of Ukraine; Articles 6-9 of the Law on Committees of the VRU, № 116-95/BP, April 4, 1995.

157 Article 90 of the Constitution of Ukraine.

158 Article 83 of the Constitution of Ukraine.

159 Articles 20 – 23 of the Rules of Procedure of the VRU.

160 Article 85.1.35 of the Constitution of Ukraine.

161 Clause 5 of the Regulations on the Secretariat of the VRU, approved by the Resolution of the Head of the VRU № 459, May 31, 2000.

162 Article 80.3 of the Constitution of Ukraine.

163 Article 88.3 of the Constitution of Ukraine.

164 Article 94 of the Constitution of Ukraine.

165 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

166 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

167 Interview by Volodymyr Lytvyn, the head of the Verkhovna Rada of Ukraine, with the Channel 5, 10 January 2011; http://www.pravda.com.ua/news/2011/01/10/5770471/ [accessed 10 January 2011].

168 Taras Kuzio, *Ukrainian Democracy on the Ropes*, Business Ukraine, 2010, Volume 4, Issue 11; http://www.bunews.com.ua/index.php?option=com_content&view=article&id=488:ukrainian-democracy-on-the-ropes-&catid=6:politics&Itemid=2 [accessed 29 December 2010]. See also: Buckley N., Olearchyk R., Ukraine: *A Nation on Guard*, Financial Times, 20 October 2010; http://www.ft.com/cms/s/0/43cdd390-dc8b-11df-a0b9-00144feabdc0.html#axzz1Aoont5RD [accessed 29 December 2010], Rakhmanin S., *...I Will Repay* (in Ukrainian), Mirror of the Week, 2010, № 48 (828); http://www.zn.ua/1000/1550/71162/ [accessed 29 December 2010].

169 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

A number of important draft laws submitted by the President, the Government or by the representatives of the ruling majority in the Parliament are considered and adopted with violations of the Rules of Procedure, in the first and final reading soon after been submitted, often without any discussion.[170] Among them are the drafts 2010 State Budget Law and 2011 State Budget Law, new version of the law on Local Elections, draft Law on Ratification of the Agreement between Ukraine and the Russian Federation on the Stay of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine, the new Law on the Cabinet of Ministers of Ukraine, and other.[171] The practice of adopting laws against the will of the Government or rejection of the Government's drafts existed before the 2010 presidential election, and was explained mainly by the lack of support of the Government by the coalition and the President. [172]

As indicates the Table 3 below, the most active, but the least successful law-drafters are the members of the Parliament. In this connection, it is important to note, that after the 2010 presidential election, the role of the Government in legislating to some extent increased (44.5% of all laws enacted were initiated by the Cabinet), that can be additional evidence to prove the increase of the executive's influence on the legislature.

Table 3. The Law-making in the Ukrainian Parliament, 2008-2010

Law-drafter	2008		2009		2010	
	Submitted/ (share of enacted in submitted, %)	Adopted (share in all laws enacted, %)	Submitted/ (share of enacted in submitted, %)	Adopted (share in all laws enacted, %)	Submitted/ (share of enacted in submitted, %)	Adopted (share in all laws enacted, %)
The MPs	923 (9.2%)	85 (32.3%)	876 (7.6%)	67 (45.3%)	812 (6%)	49 (35.8%)
The Cabinet of Ministers	300 (48.3%)	145 (55.1%)	237 (24.1%)	57 (38.5%)	236 (25.9%)	61 (44.5%)
The President	62 (53.2%)	33 (12.6%)	40 (60%)	24 (16.2%)	39 (69.2%)	27 (19.7%)
Total	1285 (20.5%)	263 (100%)	1153 (12.8%)	148 (100%)	1089 (12.6%)	137 (100%)

Source: The VRU website (http://w1.c1.rada.gov.ua/pls/zweb_n/webproc2_detailed) [accessed 10 January 2010].

170 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

171 For further information on the listed drafts see: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=37585; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=39205; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=38133; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=37584; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=38680 [all accessed 29 December 2010].

172 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The principle of the transparent functioning of the VRU is enshrined in the legislation.[173] As a rule, the VRU sittings are open, and the closed sitting may be held only on the basis of a decision passed by the absolute majority of all members of the Parliament, i.e. no less than 226 MPs.[174] The most important information on the Parliament's activities (laws, resolutions, agendas, transcripts of the sittings, draft laws, results of voting by each MP, etc.) has to be made public, in particular via posting on the VRU website.[175]

The public service broadcasting companies are legally obliged to cover the activities of the legislature,[176] and other media have the right to broadcast the VRU sittings free of charge.[177] Journalists may attend the Parliament on condition of their accreditation with the Press Service of the VRU Secretariat, which allows visits to the press lodges and lobby of the session hall of the VRU building, as well as other premises of the Parliament on the days when public events or committee hearings are held.[178]

The citizens may attend the plenary sittings of the Parliament if they have temporary permits, which are issued upon the deputies' proposals and term of validity of which should not exceed one plenary week.[179]

The MPs are required to maintain relations with the electorate, to inform the latter on their activities through the media and via the meetings with voters, to consider the voters' petitions and requests, to accept the citizens in person on the days determined by the VRU.[180] Every individual has a right to obtain information on the activities of the Parliament, committees, and deputies by addressing inquiries and requests for information, while the requesters are obliged to reply to the requests.[181]

However, due and timely access of citizens to information is complicated by a number of loopholes and other shortcomings in the legislation. In particular, the law does not clearly define which information on the activities of the committees is subject to a mandatory disclosure; broadcasting, taking sound and video records at the committee sittings can be made only upon permission of the head of the committee or on the basis of the committee's decision.[182] Materials for the parliamentary and committee hearings are provided to their participants (with the exception of the MPs) only on the day when the hearings are held,[183] that makes appropriate examination of the materials supposed to be discussed quite difficult. The websites of deputy factions, committees, temporary commissions, and structural units of the VRU Secretariat can be created only on the basis of the submissions of, respectively, heads of factions, committees, commissions, and Head of the VRU Secretariat. In addition, the amount of information on each website should not exceed 2 megabyte, while the access to information posted on a website may be arbitrary restricted upon the VRU Head's resolution.[184] The legal framework also does not provide for the time frames, within which the information posted on websites should be updated. Some information on parliamentary activities is not required to be disclosed, for instance, decisions of the heads of the VRU and Secretariat, questions and requests of the MPs and responses to them, declarations on income and assets of the MPs and VRU staff.

173 Article 3 of the Rules of Procedure of the VRU, Article 3 of the Law on Committees of the VRU.

174 Article 84.1 of the Constitution of Ukraine.

175 See, for instance, Articles 3, 55, 61, 65, 66, 92, 137, 139, 203, 234, 236 of the Rules of Procedure of the VRU, Article 9 of the Law on Committees of the VRU, clause 5 of the Regulations on the Website of the VRU, approved by the Resolution of the Head of the VRU № 462, May 24, 2001

176 Clauses 3-4 of the VRU Resolution on the Coverage of the Activities of the VRU of 6th Convocation, № 3-VI, November 23, 2007.

177 Article 2 of the Law on the Procedure of the Coverage of the Activities of State and Local Authorities by Media, № 539/97-BP, September 23, 1997.

178 Clauses 2, 10 of the Regulations on Accreditation of the Journalists and Technical Personnel of the Media in the VRU, approved by the Resolution of the Head of the VRU № 420, May 19, 2006.

179 Clause 1 of the Regulations on the Procedure for Issuing the Permits for Attendance of the Plenary Sessions of the VRU, approved by the Resolution of the Head of the VRU № 359, April 25, 2006.

180 Article 24 of the Law of Ukraine on Status of the People's Deputy of Ukraine.

181 Articles 14-17 of the Law on the Petitions of the Citizens, № 393/96-BP, October 2, 1996, Articles 32-34 of the Law on Information, № 2657-XII, October 2, 1992.

182 Articles 9, 44 of the Law on the Committees of the VRU.

183 Article 235 of the Rules of Procedure of the VRU, Article 29 of the Law on Committees of the VRU.

184 Clauses 5, 8, 9 of the Regulations on the Website of the VRU.

Access to information on the Parliament's activity is to some extent constrained by shortcomings of legislation on access to information (the Law on Information and the Law on Citizen Inquiries). Among these shortcomings is a lack of clear lists of grounds for refusal of access to information, wide margin of discretion granted to public authorities in deciding on restriction of access to information, unreasonably long term (30 days) for consideration of the requests.

On 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which provides for a number of improvements in terms of access to information. In particular, it restricts the grounds for refusal to provide information and states that requests for information must be considered within 5 days; defines the list of the data subject to mandatory disclosure (such as information on the structure, mission, functions, funding, adopted decisions etc.).[185] The positive impact of the FOIA has yet to bee seen, since the Law will enter into force only in May 2011.

TRANSPARENCY (PRACTICE) – SCORE 75

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

In general, the public has appropriate access to information on the activities of the Parliament as a body.[186] The website of the legislature (http://portal.rada.gov.ua/) contains comprehensive and information on the work of the Parliament (draft laws, results of votes on the bills, agendas and transcripts of the plenary sittings etc.). The Parliament informs on its work not only through own website, but also through the satellite-cable channel "Rada", newspaper "Holos Ukrainy". The work of the legislature is actively covered by commercial media, and accredited journalists can make photo- and video records in the session hall of the VRU building free of charge.[187]

All the draft laws submitted to the VRU are published on the Parliament's website before their consideration by the legislature. However, in some cases the final versions of the drafts with all the amendments made during their consideration do not appear at the Parliament's website in time. For example, the final versions of the draft laws on Public Procurement and on Local Elections appeared on the Parliament's website only after having been promulgated by the President. The session agendas, information on planned parliamentary hearings, plans of committees' sittings and hearings are published in advance;[188] transcripts of the Parliament's sessions are posted on the VRU website on the day when session is held or the following day, while the results of voting are made available on the day of voting.

For a long time the transparency of the parliamentary funding has been an issue as the budgets of the VRU were not made public. However, in 2010, this problem has been finally solved - the Parliament's budget for the first time ever was made public in full on the VRU website.[189]

The access of the citizens to the Parliament is not restricted: individuals get permits through the people's deputies or employees of the VRU Secretariat. The accredited journalists, representatives of civil society organisations, and individual citizens are often present at the sittings of the committees.[190]

While the work of the Parliament is quite transparent, the lack of transparency exists in the activities of the parliamentary committees. For instance, only 13 of 27 committees have their own websites. Some information on the committee websites is not made public at all, in particular, minutes of the sittings, votes on the bills, information on the presence of deputies at each sitting (with the exception of the Committee for Legislative Support of Law Enforcement[191]), while the cases of making publicly available the reports on

185 Articles 6, 15, 16, 18, 20 of the Freedom of Information Act, № 2939-VI, 13 January 2011.

186 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

187 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

188 http://www.rada.gov.ua/zakon/new/RK/plan_6_7.htm; http://www.rada.gov.ua/zakon/new/RK/index.htm; http://www.rada.gov.ua/zakon/new/WR/pd_index.html; http://gska2.rada.gov.ua/pls/site/p_par_sl [all accessed 29 December 2010].

189 VRU Resolution on Approval of the 2010 Budget of the VRU, № 2255-VI, May 14, 2010.

190 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010; Interview by Anzhela Malyuha, the Head of the Secretariat of the VRU Committee on State Building and Local Self-Government, with author, 22 July 2010.

191 http://komzakonpr.rada.gov.ua/komzakonpr/control/uk/publish/article?art_id=45641&cat_id=44841 [accessed 10 October 2010].

the activities of committees are not widespread.[192]

Currently, there is no public disclosure of income, assets and financial obligations of the people's deputies. However, the FOIA, which will come in force in May 2011, provides that access to asset declarations of elected officials, including the MPs, cannot be restricted.[193]

Like many other public authorities, the Parliament often fails to provide information upon the citizens' requests. For instance, the people's deputy of Ukraine Andriy Shevchenko pointed out that journalists have failed to receive any responses to requests for information on amount of funding of the parliamentary newspaper "Holos Ukrainy".[194] However, deputies often cannot properly address the citizens' requests due to impossibility of obtaining the necessary information from the executive.[195]

The level of transparency of the legislature was tested within this assessment by addressing individual requests for information to the Secretariat of the VRU, the VRU Committee on Legal Policy and the VRU Committee on Social Policy and Labour. The results of the requests' consideration (see the Table 4 below) demonstrate that the VRU Secretariat restricts access to information on the number of staff employed by its structural units, while some parliamentary committees also restrict access to information on attendance of their sittings by the MPs.

Table 4. The Results of Consideration of the Requests for Information by the Parliament's Secretariat and Committees

The requester	Requested information	Results of the requests' consideration
The VRU Secretariat	Information on the number of the President's vetoes overridden by the Parliament in 2009	Letter of the Deputy Head of the VRU Secretariat № 07/8-397, 11 August 2010. Request fulfilled.
	Information on the number of employees in each structural unit of the VRU Secretariat	Letter of the Head of the Main Organisational Department of the VRU Secretariat, № 06/10-163(168709), 25 August 2010. Written refusal on the grounds that the requested information was classified by the internal acts of the Parliament.
The VRU Committee on Legal Policy	Information on the number of hearings held by the committee in 2009	Letters № 04-29/20-1001 and № 04-29/20-1002, 6 August, 2010. Requests fulfilled.
	Information on the number of the committee sittings missed by each member of the committee in 2009	Letter № 04-29/20-1095, 8 September 2010. Written refusal on the grounds that the requested information cannot be provided without consent of the persons concerned, and that the committee is not legally obliged to provide the requested information to citizens.
The VRU Committee on Social Policy and Labor	Information on the number of hearings held by the committee in 2009	Letters № 04-35/15-153499, 26 July 2010, № 04-35/15-695, August 16, 2010. Requests fulfilled.
	Information on the number of the committee sittings missed by each member of the committee in 2009	Letters № 04-35/15-724, № 04-35/15-725, 26 August 2010. Requests fulfilled.

192 http://budget.rada.gov.ua/kombjudjet/control/uk/publish/category?cat_id=45565; http://komekolog.rada.gov.ua/komekolog/control/uk/index; http://comeuroint.rada.gov.ua/komevroint/control/uk/index; http://komzakonpr.rada.gov.ua/komzakonpr/control/uk/index; http://kompek.rada.gov.ua/kompek/control/uk/; http://kompravlud.rada.gov.ua/kompravlud/control/uk/index; http://www.rada.gov.ua/svobodaslova [all accessed 10 October 2010].

193 Article 6.6.1 of the FOIA.

194 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

195 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

There are provisions in place aimed at ensuring accountability of the Parliament, but they contain a number of loopholes. One of the most important shortcomings of the legislation on MPs' accountability is that the immunity of the MPs is not restricted at all – they cannot be held criminally liable, detained or arrested without the consent the Parliament, while the decisions on lifting the immunity require support of not less than 226 MPs.[196]

The constitutionality of the laws and other legal acts passed by the Parliament can be contested only in the Constitutional Court of Ukraine upon the petitions lodged by no less than forty-five people's deputies of Ukraine, the Supreme Court of Ukraine, ombudsman, the Verkhovna Rada of the Autonomous Republic of Crimea.[197] Natural and legal persons are not entitled to lodge constitutional petitions with the Constitutional Court. The compliance of the actions, inactivity and decisions of the VRU with laws (but not with Constitution) may be reviewed by the Higher Administrative Court of Ukraine (HACU) upon the lawsuits lodged by the persons whose rights, freedoms and interests were infringed. Based on the results of considering a case, the HACU can declare the VRU's resolution unlawful or declare actions or inactivity illegal and oblige VRU to carry out certain activities (if inactivity of the Parliament was contested).[198]

Public consultations between the citizens, parliamentary committees and deputies may be held in the forms of parliamentary and committee hearings, involvement of the public into preliminary consideration of the bills by relevant committees, expert examination of the bills by legal and natural persons, work in advisory bodies (civic councils) formed by the committees.[199] However, it is left to the discretion of the Parliament, the committees and MPs to decide whether to carry out any public consultations.

Accountability of the Parliament, as well as the links between the MPs and electorate were significantly weakened by introduction of the proportional electoral system with voting for closed lists of candidates nominated by parties and blocs to a single nationwide multi-member constituency.[200]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent do the legislature and its members report on and answer for their actions in practice?

In the opinion of the people's deputy Yuriy Kluchkovskyi, the role of the Constitutional Court in ensuring effective judicial review of the Parliament's actions is not sufficient due to politicization of the court.[201] In addition, the individuals are not granted the right to challenge the Parliament's decisions in the Constitutional Court. A certain role in reviewing the Parliament's actions is also played by the HACU, which from 1 January 2010 till 1 October 2010 has delivered 10 judgments in cases against the VRU. However, in all these cases the HACU has dismissed all the plaintiffs' claims.[202] The role of the HACU in judicial review of the Parliament's actions is significantly weakened by the fact that the HACU is not entitled to review the constitutionality of the Parliament's activities. Hence, citizens can only challenge the compliance of the VRU acts, actions and inactivity with the adopted laws. The judgments of the HACU in cases against the legislature are final and cannot be reviewed on appeal or cassation.

The Parliament does not promote public control of its activities; there is no practice of the Parliament's reporting to public and state bod-

196 Article 80.3 of the Constitution of Ukraine.

197 Article 150.1.1 of the Constitution of Ukraine.

198 Articles 6, 18.4, 171-1 of the Code of Administrative Adjudication, July 6, 2005, № 2747-IV.

199 Articles 93.4, 93.5, 103.3, 233-236 of the Rules of Procedure of the VRU, Article 29 of the Law on Committees of the VRU.

200 Zadorozhnia G., 'The Imperative Mandate as a Form of Relations Between a Deputy and Voters' (in Ukrainian), *Yurydychnyi Visnyk*, 2009, № 1 (10), 62.

201 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

202 The data are based on the information from the Unified State Register of Court Decisions; http://www.reyestr.court.gov.ua.

ies.[203] Public consultations cannot be considered effective for several reasons. In particular, forming the civic councils at the committees is not widespread; the parliamentary hearings are not effective[204] (due to their format and absence of monitoring of implementation of recommendations suggested by the participants of the hearings), while the proposals to the draft laws developed by civil society organisations in many cases are not taken into consideration.[205]

INTEGRITY (LAW) – SCORE 25

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Rules of conduct of the members of the legislature are envisaged by the Law on Status of the People's Deputy of Ukraine and Rules of Procedure of *the VRU. The separate Code of conduct for the members of the Parliament has not yet been adopted. Articles 51-52 of the* Rules of Procedure of the VRU prohibit bringing posters and loudspeakers into the session hall, interfering with speeches of the deputies, offending the MPs, making speeches without permission of the chairman at the sitting, exceeding the time limit set for the speeches. According to Article 8 of the Law on Status of the People's Deputy of Ukraine*, an MP have to* adhere to the standards of morality; avoid actions that may compromise him/her, the Parliament or the state, and should not use the mandate for personal purposes. The Law on Fight against Corruption used to contain a number of provisions aimed to prevent MPs from being engaged in corruption*. For instance, a deputy could not restrict access to information, assist third persons in conducting business activities through the* abuse of power, illegally obtain goods, services, privileges or other benefits. However, since the Parliament works on the new anti-corruption draft legislation, the Law on Fight against Corruption was abrogated on 1 January 2011.

The control of enforcement of the ethics rules is exercised mainly by the Committee on Rules of Procedure, Ethics and Support of the Activities of the Verkhovna Rada of Ukraine[206] (which is not a politically independent body), and by the presiding chairman (as concerns adhering to ethics rules at the parliamentary sittings).

The existing integrity mechanisms contain a number of substantial shortcomings and loopholes. For instance, the legislation does not provide for effective control of obtaining presents and other material benefits by the deputies; supervision of enforcement of the ethics rules is exercised by the MPs themselves; lobbying activities of the Parliament's members remains out of control unless such activities constitute corruption offences; the notion of a lobbyist is not defined in legislation; there are no post-employment restrictions for the deputies in private sector; regulation of conflict of interest is limited to provisions on incompatibility of the deputy mandate with other activities.

INTEGRITY (PRACTICE) – SCORE 0

To what extent is the integrity of legislators ensured in practice?

As practice shows, the provisions on the MPs' conduct laid down in the Rules of Procedure are not effectively enforced, while their infringement goes mostly unsanctioned.

During the first 5 sessions of the VRU of 6th convocation, the work of the Parliament was blocked by the MPs 20 times; the practice of voting for absent MPs is widespread. [207] Twice (namely, on 22 October 2008 and on 12 November 2008) the deputies damaged the voting system "Rada".[208] In addition, on 27 April 2010, some deputies were

203 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

204 A.Pogorelova, *The Hearings in the Committees of the Verkhovna Rada of Ukraine in the Context of the Culture of Parlamentarism* (in Ukrainian); http://www.viche.info/journal/1154/ [accessed 29 December 2010].

205 ; ; Ukrainian Independent Information Agency of News, Open Society Foundation, *Human Rights* (in Ukrainian), 2009, № 49, 14; [accessed 29 December 2010].

206 Articles 51 – 53 of the Rules of Procedure of the VRU; clause 22 of the Annex to the VRU Resolution on the List, Compositition and Scope of Powers of the VRU committees of the 6th convocation.

207 http://www.niss.gov.ua/Monitor/September09/16.htm [accessed 29 December 2010].

208 http://www.niss.gov.ua/Monitor/September09/16.htm [accessed 29 December 2010].

injured in fights with each other.[209] However, committing these offences has not entailed bringing anyone to account, even though the head of the VRU repeatedly insisted on reimbursement of the cost of damaged property.[210]

The activities of the Committee on Rules of Procedure, Ethics and Support of the Activities of the Verkhovna Rada of Ukraine, which is in charge of enforcement of the rules on ethics, cannot be considered effective since there is a silent consent within the legislature not to consider the issues related to misbehaviour of its members.[211]

Since the lobbying is not regulated, the deputies are not required to disclose their contacts with lobbyists, while the cases of influencing the MPs by lobbyists are not rare.[212] There is no practice of disclosure of the deputies' assets, income and financial obligations, except for the cases when they are nominated candidates for elections. There is a widespread practice of violation of the provisions on incompatibility of the deputy mandate with other activities. For instance, as of 29 September 2010, 9 deputies appointed on positions in the executive were still maintaining their seats in the Parliament. Some of them were violating the legal requirements on incompatibility during 104 - 192 days (as of 29 September 2010), while under the Constitution the relevant term must not exceed 20 days.[213]

EXECUTIVE OVERSIGHT (LAW AND PRACTICE) – SCORE 50

To what extent does the legislature provide effective oversight of the executive?

The Parliament can exercise executive oversight both directly (e.g. in the form of questions and answers hours to the Government, parliamentary hearings) and through the committees and commissions of inquiry. The people's deputies also have the right to address the Government via questions and requests, which supplement the existing forms of the executive oversight. Parliamentary control of observance of human rights is exercised by the VRU Commissioner on Human Rights (ombudsman) who is appointed to office and discharged from office by the Parliament, while the parliamentary oversight of the usage of budget funds is performed by the Accounting Chamber, whose head is appointed and dismissed by the Parliament [see: Ombudsman, Supreme Audit Institution]. Other branches of power do not influence these appointments that can be proved by lengthy terms of offices of the ombudsman and head of the Accounting Chamber. The Budget Code of Ukraine provides the Parliament and the Accounting Chamber with sufficient powers to exercise control over allocation of budget funds.

However, the effectiveness of the parliamentary oversight of the executive is hampered by a number of loopholes in legislation, as well as by lack of the Parliament's will to use the existing mechanisms more effectively.

For instance, the commissions of inquiry have no appropriate legal basis for their operation due to the fact that the Law which defined the procedure for parliamentary investigations was declared unconstitutional by the Constitutional Court of Ukraine.[214] The commissions of inquiry are established by the legislature from time to time, but their activities can hardly be considered effective – in most of the cases the VRU just takes commissions' reports "into consideration" without any assessment of the their findings.[215] As a result, in practice the parliamentary investigations have low influence on the Government performance. The activities of a number of commissions, in particular, the Commission for Investigation of

209 http://www.pravda.com.ua/news/2010/04/27/4979062/ [accessed 29 December 2010].

210 http://www.ut.net.ua/news/155/0/2568/; http://chairman.rada.gov.ua/chairman7/control/uk/publish/article;jsessionid=8A4587408D2D9EB99573BE81462582A5?art_id=55722&cat_id=49211 [all accessed 29 December 2010].

211 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

212 Interview by Andriy Shevchenko, the people's deputy of Ukraine, with author, 28 June 2010.

213 http://www.pravda.com.ua/articles/2010/09/29/5429393/ [accessed 29 December 2010].

214 Judgement of the Constitutional Court of Ukraine № 20-рп/2009, 10 September 2009.

215 See, for instance, the VRU Resolutions № 1884-VI, February 11, 2010, № 2152-VI, April 16, 2010, № 2361- VI, June 18, 2010, № 2573-VI, September 24, 2010, № 2575-VI, September 24, 2010.

the Incident with the Participation of the Minister of Interior Yuriy Lutsenko and some other, were ineffective at all due to failures to adopt reports on their investigations.

The Constitution significantly restricts the VRU powers related to appointments and dismissals within the executive. For instance, the legislature may appoint Prime Minister only upon proposal of the President, while all other members of the Cabinet of Ministers are appointed solely by the head of state on the basis of the Prime Minister's proposals. The Parliament may discharge the President from office before the expiry of his term through the procedure of impeachment, but this right in fact can hardly be exercised due to lack of appropriate legal regulation of the impeachment procedure. In addition, the procedure of impeachment is constrained by the Constitution, providing that a decision on impeachment is considered to be adopted if supported by no less than 3/4 majority of all members of the Parliament. The Constitution also does not grant the legislature right to discharge from office members of Government (except for the Prime Minister), heads of central executive bodies and heads of regional and local state administrations. The right of the legislature to pass motions of non-confidence against the Government is restricted: a proposal to vote non-confidence cannot be considered more than one time during a session and within one year from the day of adoption of the Government's Program of Action.

The Government's Program of Action is not required to be adopted by the Parliament prior to Government's entering the office. As a result, the Cabinet of Ministers can work without any program that, in turn, does not promote the effectiveness of the executive oversight. Such form of parliamentary oversight as "questions and answers hour" cannot be considered effective tool of parliamentary control of the executive because these hours occur only twice a month and last only one hour.

LEGAL REFORMS (LAW AND PRACTICE) – SCORE 50

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

During the last years the Parliament has adopted a number of laws, aimed at prevention and fight against corruption. In particular, the VRU ratified the Civil Law Convention on Corruption (2005), the UN Convention against Corruption (2006), the Criminal Law Convention on Corruption and Additional Protocol to it (2006). The Parliament also adopted the Law on the Principles of Prevention and Counteraction to Corruption (2009), on Liability of Legal Persons for Committing Corruption Offences (2009), as well as introduced amendments to the legislation aimed at improvement of regulation of liability for corruption offences (2009). In addition, new versions of the Law on Public Procurement (2010) and on Judicial System and Status of Judges (2010) were adopted. A number of provisions of the latter received a critical response from the Venice Commission,[216] while the final version of the Law on Public Procurement received a positive assessment of the experts.[217] On 13 January 2011, the Parliament also passed the FOIA, which will significantly broaden the access of public to information if effectively enforced [see: Transparency (law)]. However, an important anti-corruption "package" of the laws, adopted by the legislature in 2009, has been repealed by the Parliament on 21 December 2010.[218] The decision on abrogation of the "package" was passed in the first and final reading on the day, when the relevant draft law was submitted to the legislature.[219] The formal reason for the was that the President submitted his own draft Law on the Principles of Prevention and Counteraction to Corruption (№ 7487, dated 17 December 2010, and adopted by the VRU in the first reading on 23 December 2010), whose provisions in many cases coincided with the provisions of the 2009 Law on the Principles of Prevention and Counteraction to Corruption.[220] However, in a

216 Venice Commission, *Joint Opinion on the Draft Law on the Judicial System and the Status of Judges of Ukraine*; http://www.venice.coe.int/docs/2010/CDL-AD(2010)003-e.asp [accessed 29 December 2010].

217 http://blogs.fco.gov.uk/roller/turnerenglish/entry/ukraine_and_eu_how_to [accessed 29 December 2010].

218 The Law on Abrogation of the Certain Laws on Prevention and Counteraction to Corruption, № 2808-VI, 21 December 2010.

219 For further details see: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=39306 [accessed 29 December 2010].

220 See: http://w1.c1.rada.gov.ua/pls/zweb_n/webproc34?id=&pf3511=39289&pf35401=180632 [accessed 29 December 2010].

negative development, the President's draft contains no provisions on liability of legal persons for committing corruption offences, in contrast to the relevant law adopted in 2009 (see above). The Parliament has not yet adopted a number of other important laws which could play an important role in prevention of corruption, such as the new version of the law on public service, on ministries and other central executive bodies, on the anti-corruption agency, on the conflict of interests and professional ethics in public service, on disclosure of income, expenses and financial obligations of public servants, etc. Therefore, parliamentary activities related to counteraction to corruption can hardly be considered comprehensive and can not ensure effective prevention and fight against corruption.

Key recommendations

- To consider amendments to the Constitution of Ukraine aimed to introduce functional immunity of the MPs and repeal of the requirement of authorisation on lifting the immunity in cases when person is caught *in flagrante delicto*;
- to improve the mechanisms for the parliamentary oversight of the executive, in particular through amendments to the Constitution requiring the Government to submit to the Parliament within the prescribed period of time its Program of Action, through adoption of the Law on Commissions of Inquiry, and through review of the relevant laws governing parliamentary oversight with aim to increase the effectiveness of the existing forms of the parliamentary oversight;
- to consider amendments to the Constitution of Ukraine aimed at streamlining the procedure for overriding a presidential veto;
- to bring the number of employees of the VRU Secretariat in line with the scope of work to be done by the Secretariat;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to adopt a separate law on asset declaration aiming to ensure transparency of income and expenses of certain categories of public officials (in particular, MPs), as well as to provide for possibility of verification of submitted declarations and to effectively detect cases of illicit enrichment;
- to adopt the law on public participation in decision-making applicable to decision-making within the legislature, other state bodies and bodies of local self-government;
- to expand the scope of information on the activities of the legislature and parliamentary committees subject to a mandatory publication, in particular, to provide for publication of the decisions of the heads of the VRU and Secretariat, questions and requests of the MPs and responses to them, minutes of the sittings of the committees, votes on the bills at the sittings of the committees, information on the presence of deputies at each committee sitting;
- to accelerate creation of the websites of all parliamentary committees;
- to adopt the Code of ethics for MPs.

2. Executive

SUMMARY

The executive generally has sufficient financial, human and technical resources to effectively carry out its duties. Its independence is not adequately ensured in the Constitution, which grants the President extensive powers to influence the activities of the executive branch of the Government. The legal provisions on transparency of the executive contain some gaps and imperfections that decrease the level of the executive's transparency in practice. Weak parliamentary oversight does not enhance the accountability of the Government. Public consultations are not effective, while criminal prosecution of the members of the executive for the committed crimes appear to be selective or politically motivated. Legal mechanisms to ensure integrity of the executive are insufficient and ineffectively enforced in practice. The lack of effective internal control over the civil servants in the ministries hampers the effectiveness of the public sector management, while the quite passive role of the Government, often limited to adoption of the secondary legislation, reduces the effectiveness of the executive's efforts in ensuring public accountability and fighting the corruption.

The table below presents general evaluation of the executive in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Executive Overall Pillar Score: 50.69 / 100			
Dimension	**Indicator**	**Law**	**Practice**
Capacity 56.25 / 100	Resources	75	
	Independence	25	50
Governance 45.83/100	Transparency	50	50
	Accountability	75	50
	Integrity	25	25
Role 50 / 100	Public Sector Management	50	
	Legal system	50	

Structure and Organisation

According to Article 113 of the Ukraine's Constitution, the Cabinet of Ministers of Ukraine (the CMU) is the supreme collective decision-making body within the executive branch of power. Although the President is granted significant powers to influence the executive's performance, under the Constitution he is not formally included into the system of the bodies exercising the executive power – he is only granted the status of the head of the state. Taking that in consideration, the below assessment does not focus on the analysis of the legal basis pertaining to the President, nor does it analyse the activities of the head of the state.

The CMU consists of the Prime Minister, the First Vice Prime Minister, three Vice Prime Ministers, and 15 ministers (three of whom are Vice Prime Ministers).[221] The Prime

221 http://www.kmu.gov.ua/control/uk/publish/officialcategory?cat_id=31410 [accessed 10 January 2011].

Minister is appointed by the President with consent of the Parliament that requires 226 MP votes in support of the appointment. All other members of the CMU are appointed by the President on the Prime Minister's proposal, and can be discharged from office at any time by the President on his own initiative.[222] The vote of no-confidence in the CMU, the entering into office of a newly elected President, the termination of office of the CMU by the President, dismissal of the Prime Minister by the President, as well as the Prime Minister's death, result in termination of office of all members of the Cabinet.[223]

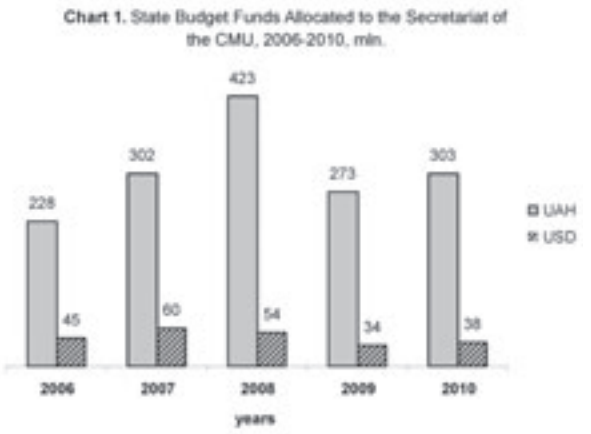
Legal, operational, technical, and expert support to the CMU is provided by the CMU Secretariat, headed by the Minister of the Cabinet of Ministers.[224]

Coordination of the activities of the Government agencies and preliminary consideration of the draft CMU decisions are carried out by four Cabinet's Committees (Uriadovi comitety), comprising of the CMU members.[225]

Assessment

RESOURCES (PRACTICE) – SCORE 75

To what extent does the executive have adequate resources to effectively carry out its duties?
In general, the Secretariat of the CMU has adequate funding, human resources and technical facilities to effectively carry out its duties, while the salary level within the Secretariat, if compared to salaries in other public authorities, is one of the highest.[226]



Sources: The 2006 Budget Law № 3235-IV, 20 December 2005; the 2007 Budget Law № 489-V, 19 December 2006; the 2008 Budget Law № 107-VI, 28 December 2007; the 2009 Budget Law № 835-VI, 26 December 2008; the 2010 Budget Law № 2154-VI, 27 April 2010.

In 2008, the CMU Secretariat employed 1,109 persons,[227] while in 2010 - 1,019 persons.[228] The number of the Secretariat's employees is comparable with the human resources of the VRU Secretariat (in 2008 it employed 1,079 civil servants) and exceeds the number of civil servants employed by the President's Administration (549 civil servants in 2008).[229] However, in order to cut the costs provided for maintenance of public administration, the President obliged the Government to dismiss not less than 30% of civil servants, employed by the ministries and other central executive bodies, and 50% of the CMU Secretariat staff.[230] This decision might have a negative impact on sufficiency of Secretariat's human resources. Nevertheless, the former head of the Secretrariat unit interviewed within the framework of this assessment, stressed that the decrease in number of the Secretariat's employees by 30-50% would not significantly influence its performance.[231]

The average monthly salary of the chief the

222 Article 106, 114 of the Constitution of Ukraine.

223 Articles 11, 12 of the Law on the Cabinet of Ministers of Ukrane (the Law on the CMU), № 2591-VI, 7 October 2010

224 Article 48 of the Law on CMU.

225 Article 47 of the Law on the CMU; CMU Resolution № 2071-p, 1 November 2010.

226 Interview of the former head of the separate unit of the CMU Secretariat, with author, 1 November 2010.

227 The Main Department of Civil Service, *2008 Annual Report*: 30.

228 CMU Decree № 398, 7 June 2010.

229 The Main Department of Civil Service, *2008 Annual Report*: 30.

230 Presidential Decree on Optimisation of the System of Central Executive Bodies, № 1085/2010, 9 December 2010.

231 Interview by the former head of the separate unit of the CMU Secretariat, with author, 1 November 2010.

Secretariat's department (the higher tier of the Secretariat's structure) equals to UAH 2,354 [USD 276] and exceeds the salary of the same level official of the Parliament's Secretariat and salary of the corresponding official of the ministry [UAH 2,140 – 2,290 or USD 269-288].

INDEPENDENCE (LAW) – SCORE 25

To what extent is the executive independent by law?

Whereas the Constitution declares the CMU the highest body within the executive branch of the Government, its provisions significantly restrict the level of the executive's independence. In particular, Article 106 of the Constitution entitles the President to coordinate policy implementation in the areas of foreign affairs, national security and defence. The scope of the President's powers in the relevant areas is not framed by the law, thus allowing him to interfere in the Government's activities in these three areas. Under the Constitution, the President may at any time dismiss any member of the CMU, as well as to repeal CMU decisions.[232] The legal acts of the President are binding for the Cabinet. The executive also has restricted powers in terms of appointment and discharge from office of the heads of local state administrations (with some exceptions to this rule, see below), the agencies assigned to enforce the legislation at regional and local level, - because the final decision on whether to appoint or dismiss them can be passed only by the President.[233] Finally, the countersigning of the President's acts is the Cabinet's obligation, but not its right (i.e. the Prime Minister and the relevant minister are obliged to countersign the President's act even if it does not go in line with the Government policy).[234]

However, the Government is not fully dependent on the President, as certain rights pertaining to the executive can be exercised by the President only upon the Prime Minister's advice. In particular, only by advice of the Prime Minister can the President appoint the members of the Government, the chiefs of other Government agencies, the heads of local state administrations. Any reorganisation, establishment or liquidation of the Government agencies by the President has to be suggested by the Prime Minister too.[235]

The Parliament is also granted some powers to influence the executive. For instance, in accordance with Article 87 of the Constitution, based on the proposal of one-thirds of all the MPs, the legislature may vote non-confidence with the CMU by 226 of all votes. However, the same Article states that the vote of non-confidence cannot be initiated twice during one session and within the year from the date of adoption of the CMU Program of Action.

INDEPENDENCE (PRACTICE) – SCORE 50

To what extent is the executive independent in practice?

The instances of severe interference with the CMU activities were especially wide-spread before the 2010 presidential election. In particular, the former President often abused his constitutional right to suspend the Government's decisions: in December 2008 - July 2009, the President suspended about 75 Government regulations.[236] The former President also required the Government to request his consent to attending the CMU meetings by the heads of local state administrations, and there were some instances when the latter refused to participate in the Cabinet's meetings.[237]

Since the election of the incumbent President, no reported cases of stand-offs between the head of state and the executive have occurred. The President, however, actively influences the Cabinet activities. Examples include review by the Government on the basis of the President's initiative of the list of paid services to be provided by the education institutions,[238] instructing the

232 Article 106 of the Constitution of Ukraine.

233 Article 118 of the Constitution of Ukraine.

234 Article 25 of the Law on the CMU.

235 Articles 106.1.10, 106.1.15 of the Constitution of Ukraine.

236 http://www.ukurier.gov.ua/index.php?articl=1&id=5425 [accessed 29 December 2010].

237 http://www.4post.com.ua/politics/97831.html [accessed 29 December 2010].

238 http://www.gart.org.ua/?lang=ua&page_id=2&news_type=1&element_id=31097 [accessed 29 December 2010].

Cabinet on price fixing in the agriculture market, on launching the negotiations pertaining to the creation of the free trade zone with the EU etc. According to the national opinion poll conducted by the independent Razumkov's Center, the President's influence on public policy was scored by the citizens 4.16 on the scale of 5, while the Government's influence was scored 3.88, and the Parliament's 3.79 out of 5.[239]

TRANSPARENCY (LAW) – SCORE 50

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

The principle of transparency of the CMU activities is enshrined in Article 3 of the Law on the CMU. The same law provides for mandatory publication of all legal acts adopted by the Cabinet (except for the acts containing classified information), as well as draft Government decisions which can be important to society or influence the rights or obligations of the individuals. The CMU is also mandated to inform public on its activities and to involve the citizens into making of the most important decisions.[240]

Notwithstanding the above, the legal framework does not fully ensure due level of transparency of the CMU activities.

In particular, paragraph 16 of the CMU Rules of Procedure provides that the presence of the journalists or making photo and video records is a subject to the Prime Minister consideration, whose discretion in these matters is not restricted. Paragraph 4 of the Rules of Procedure strictly prohibits dissemination by the CMU members of any information on the CMU meetings and opinions expressed by other members at the meetings unless allowed to do so by the Prime Minister.

Under paragraph 168 of the CMU Rules of Procedure, the Government has to make public information on the CMU activities. However, the scope of such information is not clearly defined, which makes the relevant legal provisions subject to arbitrary application. There are no provisions in place stating that meeting minutes of the CMU and Cabinet's Committees have to be made public.[241] Paragraph 24 of the Rules of Procedure envisages the possibility of holding closed meetings of the Cabinet on the basis of the Prime Minister's decision, but the reasons for holding these meetings are not listed in law. The governmental budget is included into the state budget of Ukraine for the respective year, which is a subject to publication, but the state budget does not present detailed information on the expenses of the CMU. The transparency of funding of the executive may increase as soon as the new Freedom of Information Act (FOIA) comes into force (in May 2011), since the latter explicitly states that access of the public to information on the use of budget funds cannot be restricted.[242]

Article 13 of the Law on Civil Service provides for mandatory declaration of assets by civil servants, including the servants employed by the CMU Secretariat, but currently there are no provisions in place requiring publication of the declarations. As concerns members of the CMU, the 1995 Law on Fight against Corruption used to provide that the data on income, securities, real estate and valuable movable property of the Government members and members of their families have to be published annually.[243] In this connection, it is worth mentioning that on 1 January 2011 the Law on Fight against Corruption was repealed [see: Legislature].[244] The draft Law on the Principles of Prevention and Counteraction to Corruption, submitted to the Parliament by the President and adopted in the first reading on 23 December 2010, states that the information on the property, income, expenditures and financial obligations of the CMU members is subject to annual mandatory disclosure in official media within 30 days from the date when such information was submitted, providing that the declarations which contain this information have to be submitted at the place of employment annually, by 1 April of the

239 http://news.dt.ua/news/49757 [accessed 29 December 2010].

240 Article 3, 51 of the Law on the CMU.

241 Paragraphs 22, 38 of the CMU Rules of Procedure.

242 Article 6.5 of the FOIA, № 2939-VI, 13 January 2011.

243 Article 6 of the Law on Fight against Corruption, № 356/95-BP, 5 October 1995.

244 See the Law on Abrogation of the Certain Laws on Prevention and Counteraction to Corruption, № 2808-VI, 21 December 2010.

respective year.[245] However, this draft yet has to be adopted by the Parliament and enacted. And even if enacted as a law, the draft will require further clarifications or amendments, since it does not provide for mandatory declaration of assets of public officials' family members (that might hinder the effectiveness of control over illicit enrichment), nor does it empower any specific body to verify the data presented in declarations.

The laws on public access to information, in particular the Law on Citizen Inquiries and the Law on Information, are applicable to the CMU. These laws contain a number of gaps and shortcomings hampering the access to information on the activities of the public authorities, including the CMU [see: Legislature, Public Sector, Media]. The new FOIA, passed by the Parliament on 13 January 2011, lays down a number of provisions aimed to ensure a better access of the public to information [see: Legislature, Public Sector], but it will come in force only in May 2011.

TRANSPARENCY (PRACTICE) – SCORE 50

To what extent is there transparency in relevant activities of the executive in practice?

The activities of the CMU are covered on its website (http://www.kmu.gov.ua) and in media. To ensure public participation in decision-making, in 2009 the Government launched a special website „The Civil Society and Authorities" (Gromadianske suspilstvo i vlada) available at http://civic.kmu.gov.ua. The CMU website presents the general information on the Government's activities and its composition, agendas of the meetings of the CMU and its Committees, the annual public procurement plan, draft and adopted decisions. Draft CMU decisions, draft orders of the ministers and laws drafted by the ministries are made public on the "Civil Society and Authorities" website. However, not all drafts are actually published on it [see: Accountability (practice)].

The level of transparency of the Government's activities is to some extent hindered by the lack of information on the planned meetings of the Cabinet and its Committees.[246] As the law does not require publication of the meeting minutes of the CMU and the Government's Committees, they are not available in practice. As it is not legally required to be made public, the Government's budget is not published in full. There is a lack of information on the activities of the CMU Secretariat (except for the Bureau on Anti-Corruption Policy).[247] For instance, on the Government's website there are no contact details of the key staff of the Secretariat and other information on the Secretariat's activities (except for Regulations on the Secretariat and names of the chiefs of its departments).[248]

The members of the Cabinet made the data on their assets publicly available on 11 March 2010.[249] However, since the law does not provide for public disclosure of the assets of the Secretariat's employees, the relevant information is not published at all.

The statistics on the Government's rejections of the requests for information has never been published. The ministries often do not provide information on requests.[250] The level of transparency of the executive was tested within this assessment by sending requests to the CMU Secretariat and some ministries. The results of the requests' (presented in the Table 5 below) demonstrate that the public does not have adequate access to the annual reports produced by the ministries, as well as to information on the number of staff employed by the CMU Secretariat's units.

245 Article 12 of the draft Law on the Principles of Prevention and Counteraction to Corruption; http://w1.c1.rada.gov.ua/pls/zweb_n/webproc34?id=&pf3511=39289&pf35401=180632 [accessed 29 December 2010].

246 See, for instance: http://www.kmu.gov.ua/control/uk/meetings/timeframe?d=12.1.2011 [accessed 29 December 2010].

247 http://www.kmu.gov.ua/control/uk/publish/article?showHidden=1&art_id=29046832&cat_id=9205042&ctime=1139934560869 [accessed 29 December 2010].

248 http://www.kmu.gov.ua/control/uk/publish/article?showHidden=1&art_id=59094705&cat_id=9205042&ctime=1188982583807 [accessed 29 December 2010].

249 http://tsn.ua/ukrayina/novi-ministri-oprilyudnili-svoyi-deklaratsiyi-pro-dohodi.html [accessed 29 December 2010].

250 Victor Tymoshchuk, deputy Head of the Center for Political and Legal Reforms, interview with author, 22 July 2010.

Table 5. The Results of Consideration of the Requests for Information by the CMU Secretariat and the Ministries

The requester	The content of the request	Results of the requests' consideration
The CMU Secretariat	The request to provide information on the number of employees in each unit of the CMU Secretariat	Letters № 10585/0/2-10, 6 August 2010, № 10005/0/2-10, 26 July 2010. The requested information was not provided - the Secretariat suggested finding it in the CMU Resolution № 398, 7 June 2010, but the latter does not define the number of employees in the units of the Secretariat.
	The request to provide information on the number of instructions issued by the Prime Minister to the heads of regional state administrations in the first 6 months of 2010.	Letters № 10932/0/2-10, 18 August 2010, and № 10810/0/2-10, 13 August 2010. Written refusal on the grounds that the legislation does not provide for issuing instructions by the Prime Minister to state administrations.
The Ministry of Health Protection	The request to provide the 2009 annual report of the Ministry	Letter № 590, 28 September 2010. Written refusal on the grounds that the submission of the reports to citizens is not provided for by the legislation, and the requested information was available on the website of the Ministry.
	The request to provide information on the number of legal persons which were granted licenses for certain types of business activities by the Ministry in 2009	Letter № 17.01.13-4/302-C/21-435, 10 September 2010. Request fulfilled.
The Ministry of Education and Science	The request to provide the 2009 annual report of the Ministry	Letter № 1.4/18-3225, 11 August 2010. Written refusal on the grounds that the total circulation of the report was too small. Letter № 1/11-7386, 5 August 2010. Written refusal on the grounds that all information on the activities of the Ministry was available on its website and in media.
	The request to provide information on the number of legal persons which were granted licenses for certain types of business activities by the Ministry in 2009	Letter № 16-15/5101, 6 September 2010. Request fulfilled.
The Ministry of Labor and Social Policy	The request to provide the 2009 annual report of the Ministry	Letters № 8323/0/14/-10/028-1, 3 August 2010, and № 8354/0/14-10/028-1, 3 August 2010. Request partially fulfilled (full reference to the website was provided).
The Ministry for Family, Youth and Sport	The request to provide the 2009 annual report of the Ministry	Letters № Ñ-1315/9.3, 28 July 2010, and № 9.3/8604, 22 July 2010. Request partially fulfilled (full reference to the website was provided).
	The request to provide information on the number of legal persons which were granted licenses for certain types of business activities by the Ministry in 2009	Letter № Ã-1359, 6 August 2010. Request fulfilled.

ACCOUNTABILITY (LAW) – SCORE 75

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

In contrast to the MPs and judges, the members of the Cabinet do not enjoy immunity from criminal liability.

The CMU Rules of Procedure contain a number of provisions aimed to ensure that the reasons for the Cabinet's decisions are given, and that the drafts submitted to the Government's consideration are technically sound.[251]

In accordance with Article 113 of the Constitution, the CMU is responsible to the President and accountable to the legislature within the limits defined by Articles 85 and 87 of the Constitution. The avenues for interaction between the President and the Government are defined by the CMU Rules of Procedure. In particular, the CMU is required to secure the enforcement of the President's legal acts, inform the President on the CMU activities (in particular, on the planned meetings), to consider the President's inquiries and to inform the head of the state on the results of their consideration, to prepare the opinions on the laws adopted by the parliament and submitted to the President for signing.[252]

Article 87 of the Constitution grants the legislature the right to vote non-confidence in the CMU, subject to certain restrictions [see: *Independence (law)*]. Article 85 of the Constitution empowers the Parliament to supervise the activities of the Cabinet, including the activities related to the state budget implementation. The procedure for supervising the Government's performance is regulated more precisely by the Parliament's Rules of Procedure and by the Law on the CMU. The latter requires the Cabinet to prepare and submit to the Parliament two types of the reports – the annual report on the state budget implementation and the reports on implementation of the state programs.[253] The Cabinet is obliged to provide necessary information to the Accounting Chamber (SAI) upon the Chamber's request, to ensure the ombudsman's access to legal acts and other documents of the Government and agencies under the Government's control, to consider the inquiries of the MPs and parliamentary committees, to inform the Parliament on the activities of the Cabinet during "questions and answers hours" in the Parliament.[254]

The accountability of the executive to the legislature is weakened by inadequate regulation of certain forms of the parliamentary control, such as parliamentary hearings, "questions and answers hours" etc. [see also: *Legislature*], as well as by some other shortcomings. For instance, within the first 45 days of each year, the Cabinet is required to file to the Parliament the annual report on the implementation of the Cabinet's Program of Action. [255] But since the legal framework allows the CMU to work without any program of action (it is not legally required either by Constitution, or by laws), the submission of the reports on its implementation is not always possible. In addition, there are no requirements to the structure and content of these reports.

The procedure for public consultations on the draft legislation is envisaged by the separate CMU decree.[256] The latter states that public consultations have to be conducted in the forms of public opinion polls and public discussions of the draft laws. The consultations are mandatory for the draft laws of significant importance to society, i.e. the drafts which might have impact on the constitutional rights and freedoms of the individuals, as well as for the draft state programs and financial reports of the public authorities. Consultations are held in the forms of round tables, public hearings, online etc. The duration of consultation should exceed at least one month. In addition, the CMU resolution provides for the mandatory establishment of the public councils at the ministries and other government agencies, as well as imposes an obligation on the government agencies to adopt annual schedules of public consultations.

251 See, for instance, paragraphs 61 – 63 of the CMU Rules of Procedure.

252 Paragraphs 107 – 120 of the CMU Rules of Procedure.

253 Articles 29, 30 of the Law on the CMU.

254 Articles 31 – 35 of the Law on the CMU.

255 Article 228 of the Parliament's Rules of Procedure.

256 CMU Decree № 996, 3 November 2010.

ACCOUNTABILITY (PRACTICE) – SCORE 50

To what extent is there effective oversight of executive activities in practice?

Each Friday of the weeks when the Parliament's plenary sittings are held, the members of the executive answer the MPs' questions during the "questions and answers hours".[257] The CMU annually submits to the legislature report on the state budget implementation. However, due to certain weaknesses in regulation of the parliamentary oversight, the control by the legislature of the Government's activities is not very effective in practice [see: Legislature]. Even though the ministries are not legally required to produce the reports on their activities, some of them do so (see the Table 5). The Prime Minister holds regular meetings with the President, while the latter participates in the Government's meetings where the most important issues are debated. The Accounting Chamber every year regularly prepares opinions on the state budget implementation.[258] The annual audit of the activities of all the Government's agencies is not performed [see: Supreme Audit Institution], but the Accounting Chamber performs audits of funding of the specific budget programs and some types of the Government's activities (for instance, audits of the salaries of the public sector's employees, of the effectiveness of the use of budget funds for construction of the houses for military personnel[259] etc.).

The mechanisms for bringing the members of the Government to account are formally applied quite effectively. In particular, on 3 March 2010 the Parliament voted non-confidence with the previous Government,[260] thus clearing the way to forming of the new Government. On 28 January 2010, based on its own initiative, the Parliament dismissed the Minister of Interior.[261] The same cases occurred in 2009. Moreover, the criminal proceedings against the previous Government's members were instituted (in particular, against the former Prime Minister Yulia Tymoshenko, the Minister of Economy Bohdan Danylyshyn and the Minister of Interior Yuriy Lutsenko).[262] Some politicians, however stated that the above criminal prosecution was politically motivated and applied selectively.[263] In this connection the U.S. Government in the Statement on Investigation of Ukrainian Opposition Politicians, highlighted that "while corruption should be pursued, prosecution should not be selective or politically motivated" and raised concern that "when, with few exceptions, the only senior officials being targeted are connected with the previous government, it gives the appearance of selective prosecution of political opponents".[264]

The public consultations can hardly be considered effective. The OECD/ACN Report states that "even when official mechanisms exist for public participation, public officials do not always use them".[265] The most striking example of that was the adoption of the Tax Code by the Parliament that had been submitted to the legislature following the public consultations organised by the executive, but finally failed to meet the expectations of the small businesses, which organised demonstrations against the Code. As a result, the Code was vetoed by the President.[266] According to the "Civil Society and Authorities" website,[267] the number of the draft legal acts submitted for public consultations, varies from 3-5 (for the Ministry of Foreign Affairs, the Ministry of Defence and the Ministry of the Regional Development and Construction) to 50 – 197 (for the Ministry of Economy and the Ministry of Finance). The same web resource indicates that the citizens and the civil society organisations are generally not active in the consultations. For instance, as of 10 December 2010, only 9

257 Article 25.3 of the VRU Rules of Procedure.

258 See, for instance: the Accounting Chamber, *Opinion on the implementation of the 2009 Budget Law*; ; *Opinion on the implementation of the 2010 Budget Law for the first 6 months of 2010*; [accessed 29 December 2010].

259 ; [accessed 29 December 2010].

260 VRU Resolution № 1928-VI, 3 March 2010.

261 Until September 2010, the Constitution had granted the Parliament the right to dismiss individual members of the CMU. See: VRU Resolution № 1842-VI, 28 January 2010.

262 ; ; [accessed 10 January 2011].

263 ; [accessed 29 December 2010].

264 U.S.Government, *Statement on Investigation of Ukrainian Opposition Politicians*, 30 December 2010; [accessed 10 January 2011].

265 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15.

266 ; ; [all accessed 29 December 2010].

267 [accessed 10 December 2010].

proposals for improvement were submitted to 197 draft legal acts of the Ministry of Economy. Most of the drafts of other ministries received no response from the people. In addition, according to the "Civil Society and Authorities", the suggested recommendations are taken into account only by the Ministry of Justice, while none of the proposals were taken into consideration by other ministries. The establishment of the public councils at the bodies of the executive is supposed to be finalised only in February 2011, therefore it is difficult to assess the effectiveness of their work. However, the practice has revealed that in many cases the councils do not operate in effective way, their recommendations are not always taken into consideration by decision-makers, while the authorities often consider the councils as an instrument to legitimise their decisions.[268]

INTEGRITY (LAW) – SCORE 25

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

There is no special code of conduct for members of the executive. The standards of their behaviour are laid down the Constitution and used to be prescribed by the Law on Fight against Corruption until 1 January 2011, when this law was repealed. The Constitution sets incompatibility requirements to the members of the executive (e.g. the members of the Government are forbidden from carrying out any paid activities and holding the positions in the governing bodies or supervisory boards of the commercial enterprises).[269] Under the Law on Fight against Corruption, the members of the Government were not allowed to obtain the gifts and other benefits in connection with carrying out of their duties, to assist other persons in carrying out their business activities for remuneration, to be members of the governing bodies of business enterprises, to restrict the access to information, to favor the bidders in public procurement.[270] Since the Law on Fight against Corruption was repealed on 1 January 2011 [see: Transparency (law)], the above provisions are no longer in place. Moreover, there are no regulations on whistleblowers'' protection, conflict of interest, gifts, post-employment/ revolving door restrictions for the members of the executive – the General Rules of Civil Servant's Conduct which regulate the conflict of interest and introduce some restrictions on gifts [see: Public Sector, Ombudsman, Supreme Audit Institution and other] can be applied to the CMU Secretariat employees, but not to the members of the Government.[271]

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of members of the executive ensured in practice?

Notwithstanding the fact that the Constitution provides incompatibility requirements for the Cabinet members, the cases of violations of such requirements do exist, while the infringement of the legal provisions goes unsanctioned. In particular, the Minister for Environment Protection Mykola Zolchevskyi was appointed to office on 2 July 2010, retaining the MP mandate. At the beginning of December 2010, he was still combining the position in the Government with a mandate. On 9 December 2010, due to reorganisation of the ministries he was dismissed by the President, but on the same day he was appointed to the post of the Minister of Environment and Natural Resources.

In 2010, criminal cases were instituted against the members of the previous Government who allegedly committed corruption offences. However, the fact that only the members of the previous Government are targeted raise doubts about impartiality of prosecution [see: Accountability (practice)].

Revolving door practices are not rare.[272] For instance, according to information in the media, three Vice Prime Ministers of the CMU at the

268 The Ukrainian Independent Center for Political Research, *The Analytical Report on the Results of the Focus Group Discussion "The Organisation and Conducting of the Civic Monitoring;* [accessed 29 December 2010]. See also: OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15.

269 Article 120 of the Constitution of Ukraine.

270 Articles 1, 5 of the Law on Fight against Corruption.

271 Article 9.1 of the Law on Civil Service.

272 http://www.pravda.com.ua/articles/2010/03/11/4854058/ [accessed 29 December 2010].

time of appointment belonged to the 50 richest persons in the country.[273]

As concerns the whistleblowers, since the legislation does not provide for their effective protection, the cases of informing on corruption by officials are not widely spread.[274]

PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE) – SCORE 50

To what extent is the executive committed to and engaged in developing a well-governed public sector?

The Cabinet of Ministers has limited scope of powers to ensure the effective public service management. For instance, the final decisions on appointments and dismissals of the heads of the government agencies and local state administrations are made solely by the President [see: Independence (law)].

Nevertheless, the Cabinet of Ministers takes some measures aimed to enhance the transparency and accountability in the public sector. In particular, the Government created the legal framework for more active engagement of the citizens into the policy-making process, launched a new web resource "The Civil Society and Authorities" to promote public participation in consultations on the draft legislation [see: Accountability (Law)].

The main body empowered to supervise and manage the civil service is the Main Department of Civil Service (MDCS), subordinated to the Cabinet.[275] The scope of the MDCS functions includes providing the civil servants with guidance, cooperation with the chiefs of the human resource departments of the Government agencies, participation in increasing the qualifications of the civil servants, prevention of corruption. The reports posted on the MDCS website demonstrate that it plays a significant role in enforcement of the anti-corruption legislation.[276] The effectiveness of the public sector management, however, is to large extent weakened by the lack of effective supervision over the staff within the ministries and other government agencies[277] [see also: Public Sector].

LEGAL SYSTEM (LAW AND PRACTICE) – SCORE 50

To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?

The main role in anti-corruption policy development is played by the President rather than by Government. For instance, in February 2010, the newly elected President established the National Anti-Corruption Committee[278], a consultative body under the President [see: Anti-Corruption Agencies], comprising of high ranking officials. The activities of the Committee resulted in approval of three draft laws pertaining to anti-corruption issues and national anti-corruption strategy.[279] On 17 December 2010, the President also submitted to the Parliament the new draft Law on the Principles of Prevention and Counteraction to Corruption [see: Transparency (law)], while on 12 January 2011, he approved the Action Plan for Fulfillment of the Obligations and Commitments Derived from the Ukraine's Membership in the Council of Europe, that instructed the ministries and other state bodies to take a number of measures connected to the membership in the Council of Europe, including the measures connected to anti-corruption policy. In particular, the Ministry of Justice was tasked to draft the law on public funding of political parties in Ukraine, on reform of the state media, to ensure the effectiveness and independence of the judiciary, to draft the concept of reform of the law enforcement agencies etc.[280]

The executive contributes to fight against corruption mainly by adoption of the secondary

273 [accessed 29 December 2010].

274 Victor Tymoshchuk, deputy Head of the Center for Political and Legal Reforms, interview with author, 22 July 2010.

275 Article 7 of the Law on Civil Service.

276 The Main Department of Civil Service, *Analytical information on the enforcement of the Law on Fight against Corruption by the executive bodies for the first 6 months of 2010*; [accessed 29 December 2010].

277 Victor Tymoshchuk, deputy Head of the Center for Political and Legal Reforms, interview with author, 22 July 2010.

278 See the Presidential Decrees № 275/2010, 26 February 2010, № 454/2010, 26 March 2010.

279 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 17.

280 Presidential Decree № 24/2011, 12 January 2011.

legislation and by drafting the laws upon the President's initiative. In 2007, based on the President's Decree,[281] the Government approved Action Plan on Implementation of the Concept of Overcoming Corruption "Towards Integrity" and Anti-Corruption Policy until 2011.[282] In 2009 the CMU introduced the position of the Government Agent on Anti-Corruption Policy and passed a number of regulations aimed at implementation of the anti-corruption "package" that was supposed to come into force. In particular, it adopted the procedure on informing the public on the activities connected to counteraction to corruption, approved methodology of anti-corruption screening of the draft legislation, the procedure of accumulation and use of information on the legal persons brought to account for committing corruption offences etc.[283] On 3 November 2010, to increase the level of accountability of the executive bodies, the CMU passed the Resolution № 996 on Ensuring the Public Participation in Policy-Making and Policy Implementation that provided for the procedure of public consultations and envisaged the establishment of the civic councils at the bodies of the executive. In December 2010, the Minister of Justice also informed that the executive prepared a number of the draft laws aimed to launch the administrative reform in Ukraine, in particular, the draft law on the ministries and other central executive bodies, draft law on the public service, and new version of the Law on the CMU.[284] Since these draft laws have yet to be submitted to the Parliament and published, it is difficult to ascertain the depth and substance of the proposed administrative reform.

Key recommendations

- To adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to adopt a separate law on asset declaration aiming to ensure transparency of income and expenses of certain categories of public officials (in particular, members of the Government), as well as to provide for possibility of verification of submitted declarations and to effectively detect cases of illicit enrichment;
- to supplement the Law on Cabinet of Ministers of Ukraine and the CMU Rules of Procedure with provisions clearly defining the scope of information on the Government's activities which must be made publicly available; to provide for mandatory publication of information on planned meetings of the CMU and its committees, meeting minutes of the CMU and the Government's committees, Government budget etc.;
- to improve the mechanisms for the parliamentary oversight of the executive, in particular through amendments to the Constitution requiring the Government to submit to the Parliament within the prescribed period of time its Program of Action [see: Legislature];
- to adopt a general code of ethics applicable to all public officials based on international best practice, and to develop specific code of ethics for members of the executive;
- to introduce effective mechanisms of prevention, detection and regulation of the conflict of interest, to develop special conflict of interest regulations for members of the Government.

281 The Concept of Overcoming Corruption "Towards Integrity", endorsed by the Presidential Decree № 742/2006, 11 September 2006.

282 CMU Resolution № 657-p, 15 August 2007.

283 The list of Regulations is available at [accessed 29 December 2010].

284 Interview by Oleksandr Lavrynovych, the Minister of Justice of Ukraine, with the *Mirror of the Week*, 13 December 2010; http://www.dt.ua/1000/1550/71030/ [accessed 29 December 2010].

3. Judiciary

SUMMARY

Independence of the judiciary, a cornerstone of the democracy governed by the rule of law, is not sufficiently guaranteed in Ukraine neither in law nor in practice. The judicial branch is not able to function effectively due to insufficient financing and lack of resources. Accountability mechanisms are not implemented properly in practice and judicial integrity is undermined by absence of provisions on conflict of interests and financial disclosure. However, recent comprehensive changes in the legislation on the judicial system and status of judges will significantly improve transparency, accountability and integrity of the judiciary if properly implemented. Nonetheless, any legal reform with regard to the judiciary will be incomplete without constitutional amendments, in particular regarding procedure for appointment and dismissal of judges, role and composition of the High Council of Justice.

The table below presents general evaluation of the judiciary in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Judiciary Overall Pillar Score: 40.28/100			
Dimension	Indicator	Law	Practice
Capacity 37.5/100	Resources	75	0
	Independence	50	25
Governance 45.83/100	Transparency	75	50
	Accountability	50	25
	Integrity	50	25
Role 37.5/100	Executive oversight	50	
	Corruption prosecution	25	

Structure and Organisation

Judiciary is one of the branches of state power in Ukraine, which according to the Constitution includes general jurisdiction courts and the Constitutional Court of Ukraine. By law justice is administered by professional judges, lay assessors and jurors. General jurisdiction courts are specialised in civil, criminal, administrative and economic (commercial) matters. A comprehensive judicial reform was passed in July 2010 reshaping all major elements of the judicial system in Ukraine.[285] The following assessment of the legal framework is based on the new provisions, while assessment of practical implementation is based on the situation before enactment of the new Law.

Assessment

RESOURCES (LAW) – SCORE 75

To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary?

Ukrainian legislation on the judiciary after its

285 Law on the Judicial System and Status of Judges, № 2453-VI, 7 July 2010.

2010 reform in general provides for sufficient legal guarantees of judicial tenure, salaries and working conditions. The new Law on the Judicial System and Status of Judges (Article 129) determines remuneration of judges in clear terms by providing that it is composed of the basic salary and additional payments for years of judicial experience, holding an administrative position in the court, academic degree, and state secrets clearance. For the first time basic rates of the judge's salary are defined directly in the law (in the amount of minimum state guaranteed salaries).[286] This precludes possible influence of the executive on the level of judicial remuneration and also allows for its adjustment in the light of changes in the country's economic development. Previously salary rates were regulated by the Government's resolution and were thus subject to discretionary modifications by the executive. Before enactment of the new law judicial remuneration also included various premiums (bonuses) granted to judges on different occasions by court presidents, which undermined the independence of judges and elevated the role of court presidents. The reformed provisions on the judicial remuneration significantly (up to 100%) increase salaries of the lower courts justices and increase (or at least preserve) the level of remuneration of appellate and higher court justices that was relatively high under the previous arrangement as well. There is no distinction in the remuneration system for the first-time judges (appointed for initial 5-year term) and judges in permanent posts.

The Constitution and the Law guarantee budgetary financing of the judiciary sufficient to administer justice in an impartial and full manner. According to the Law on the Judicial System and the Status of Judges for the first time each court will act as an administrator of budget allocations and have a separate line in the State Budget Law expenses. Preparation of the draft judicial budget is carried out by the State Court Administration (SCA) – a body subordinate to the judiciary according to the new Law. However, decision on allocations to the judiciary, which are included in the draft State Budget Law submitted by the Government to the Parliament, is made by the executive (Ministry of Finance and the Cabinet of Ministers). SCA is authorised to present judicial budget at the parliamentary hearing on State Budget Law for the relevant year. There is no requirement in the law that a certain part of the state budget should be allocated to the judiciary [see: Independence (law)].

RESOURCES (PRACTICE) – SCORE 0

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

In practice, financial and other resources available in Ukraine for the judiciary are significantly below the level necessary for effective administration of justice.[287] The judiciary is dependent on the executive branch at all stages of the budgetary procedure, from planning of the judicial budget to its implementation.

Budget for the judiciary in 2009 covered only 22% of the current needs (UAH 2.1 billion [USD 0.27 billion] out of UAH 9 billion [USD 1.15 billion] requested by the judiciary).[288] The ratio of final allocations in the State Budget Law for relevant year to the request submitted by the judiciary has been declining during last several years (57% in 2006, 51% in 2007, 48% in 2008, 22% in 2009), meaning that the executive branch has been consistently cutting the budget requested by the judiciary and the latter has not been able to defend its requested allocations in the Parliament.[289] About 90% of factual allocations

286 The Law on the Judicial System and Status of Judges establishes gradual increase in the basic judicial salary rates from 6 minimum salaries in 2011 to 15 minimum salaries in 2015. Minimum salaries rates are fixed annually in the laws on the State Budget of Ukraine. For comparison, in July 2010 the minimum salary rate amounted to UAH 888 (about USD 113) and was due to be raised to UAH 922 (about USD 118) by the end of the year. Additional payments are set in percentage to the basic judicial salary rate (*e.g.* for judicial work experience a judge will receive monthly from 15% of the basic salary rate for 5 years of experience to 80% for more than 35 years of experience).

287 Interview by Mykhailo Smokovych, judge of the Higher Administrative Court of Ukraine, with Denys Kovryzhenko, 29 September 2010.

288 *Visnyk Verkhovnoho Sudu Ukrayiny* (Herald of the Supreme Court of Ukraine), 2009, №. 9; http://www.scourt.gov.ua/clients/vs.nsf/(visCategor)?OpenView&ExpandView&RestrictToCategory=2009%2C%209%20(109)&Start=1&Count=300& [accessed 29 December 2010].

289 Speech by Ivan Balaklytskyi, former Head of the State Court Administration; http://zpa.arbitr.gov.ua/news/page.php?court_id=0&archive=1&&year=2008&month=11&news_id=2660 [accessed 29 December 2010].

go to the salary and social payments and only about 1% to capital expenses.

This is all the more disturbing because the monthly number of cases per general jurisdiction court judge has increased from 118 cases in 2004 to 178 cases in 2008.[290] Also there is high number of vacancies in the courts – as of the end of 2008 out of 8,585 positions in courts of general jurisdiction (except for the Supreme Court and the higher specialised courts) there were 1,619 vacancies (about 19%).[291]

According to the State Court Administration of Ukraine, out of 780 courts of general jurisdiction only 13,5% of courts are located in premises suitable for administration of justice (have sufficient court rooms, judge's chambers, rooms for defendants and guards, offices for court staff, etc.).[292] Actual funding for the implementation of the Government's Programme on Providing Courts with Proper Premises in 2006-2008 constituted only 6% from the planned amounts.[293] About 42% of judges consider that the state provide their courts with 40% or less of financial and other required resources. Almost 90% of judges consider that their remuneration level is insufficient to be independent in administration of justice.[294]

The situation with financing of the judiciary has significantly deteriorated in 2009. The Council of Judges of Ukraine twice (in May and October) addressed the Parliament, the President and the Government with information that judiciary might suspend its functioning due to lack of funding of the most basic needs (e.g. postage, stationary).[295] To cover urgent expenses the Government had to allocate funds from its Reserve Fund. Also insufficient state financing is often compensated by the out-of-budget funding received through private voluntary contributions and assistance from local self-government budgets [see: Law Enforcement Agencies].

Judicial training is provided by the Academy of Judges of Ukraine, which offers a variety of training courses for judges and court staff. Effectiveness of judicial training is hampered by the lack of proper state financing and suboptimal material conditions.[296] This is partly compensated by funding provided through international technical assistance. Until recently there was also no mandatory initial training for newly appointed judges.

INDEPENDENCE (LAW) – SCORE 50

To what extent is the judiciary independent by law?

Only 66% of judges consider that the Constitution of Ukraine provides sufficient guarantees of judicial independence, 48% consider that such guarantees are adequately envisaged in the laws on the Judiciary and on the Status of Judges, and 29% - in the Law on the High Council of Justice.[297]

The Constitution of Ukraine and the Law on the Judicial System and Status of Judges provide for security of judicial tenure as one of the guarantees of the judicial independence. Judges are appointed for permanent terms, except for Constitutional Court judges and judges appointed to the office of judge for the first time (initial appointment). Legislation provides for a closed list of grounds for early dismissal of a judge.[298] A judge cannot be transferred to another court without his/her agreement. First-time judges are appointed for a 5-year term by the President of Ukraine upon submission of the High Council of Justice. Judges are elected

290 http://court.gov.ua/3133 [accessed 29 December 2010].

291 Speech by Ivan Balaklytskyi, former Head of the State Court Administration; http://zpa.arbitr.gov.ua/news/page.php?court_id=0&archive=1&&year=2008&month=11&news_id=2660 [accessed 29 December 2010].

292 http://court.gov.ua/dsa/14/koncept [accessed 29 December 2010].

293 Speech by Ivan Balaklytskyi, former Head of the State Court Administration; http://zpa.arbitr.gov.ua/news/page.php?court_id=0&archive=1&&year=2008&month=11&news_id=2660 [accessed 29 December 2010].

294 Centre for Judicial Studies, *Monitoring of Judicial Independence in Ukraine*, *2009*; http://www.judges.org.ua/article/Mon_2009.pdf [accessed 29 December 2010].

295 Interview by Petro Pylypchuk, First Deputy President of the Supreme Court, former Chair of the Council of Judges of Ukraine, Centre for Judicial Studies, 2009; http://www.judges.org.ua/article/Mon_2009.pdf [accessed 29 December 2010].

296 Interview with Ivan Balaklytskyi, former Head of the State Court Administration, [accessed 29 December 2010].

297 Centre for Judicial Studies, *Monitoring of Judicial Independence in Ukraine*, 2009; http://www.judges.org.ua/article/Mon_2009.pdf [accessed 29 December 2010].

298 Article 126 of the Constitution of Ukraine; Article 52 and Chapter VII of the Law of Ukraine on the Judicial System and Status of Judges.

for permanent terms by the Verkhovna Rada of Ukraine upon proposal of the High Qualification Commission of Judges of Ukraine. Justices of the Constitutional Court of Ukraine are appointed by the President of Ukraine, the Parliament of Ukraine and the congress of judges of Ukraine (each appoints 6 justices).

From the standpoint of international standards on judicial independence initial short-term appointment of judges raises problems.[299] It allows authorities to refuse confirmation of a judge in the permanent post and therefore undermines independence of the judiciary. Revision of these provisions requires constitutional amendments, which have not been initiated until now. The new Law on the Judicial System and the Status of Judges (Article 76) does not provide for the list of objective criteria that allow the High Qualification Commission of Judges not to recommend a judge for permanent term.

Election of judges to the permanent posts involves final decision-making by the Verkhovna Rada of Ukraine, which politicises the process and undermines judicial independence.[300] The new Law diminished political influence of the Parliament by eliminating hearings in the Parliament's committee and any verification procedures within the Parliament. This, however, does not change the fact that the final decision on the election of a judge is to be made by the Parliament, a political body, – a problem that can be solved only through amendments in the Constitution.

Grounds for early dismissal of judges are provided for in the Constitution of Ukraine (Article 126), the Law on the Judicial System and the Status of Judges and the Law on the High Council of Judges. In May 2010 the Law on the High Council of Judges was amended to define acts that constitute a breach of the judge's oath, which is one of the constitutional grounds for dismissal of judge. New provisions lack clarity ("commission of actions that degrade the title of judge", "violation of moral and ethical principles of judge's conduct"),[301] thus failing to provide a clear definition of what constitutes the breach of judge's oath and not ensuring legal certainty in this matter.

The main problems with judicial independence in terms of procedures for appointment and dismissal of judges, their disciplining lies with the status and composition of the High Council of Justice (HCJ). The latter is a constitutional body that consists of 20 members: Verkhovna Rada of Ukraine, President of Ukraine, congress of judges of Ukraine, congress of attorneys of Ukraine, congress of legal universities and academic institutions each appoint three members of the Council, while national conference of prosecutors appoints two members. Supreme Court's President, Minister of Justice and the Prosecutor General are members of the HCJ *ex officio*. Current composition of the Council does not comply with the European standard requiring the majority of its members to be judges elected by their peers.[302] Modification of the High Council of Justice's composition requires constitutional amendments. The new Law on the Judicial System and the Status of Judges tries to alleviate this problem by providing that some of the members appointed by different institutions to the HCJ have to be judges. This, however, is a very questionable solution, as such limitation of discretion of the President and the Parliament may be found to be unconstitutional and it also fails to ensure that such members be elected by judges.

Independence of judges is undermined by the provisions of the Law on the HCJ that authorise the latter to demand from courts copies of unfinished court cases and establishes liability for failure to comply with such demand. Such authority of the High Council of Justice, along with its current composition, runs contrary to the constitutional guarantees of the judicial independence by allowing direct influence/pressure on judges and court decisions in specific cases.

299 Venice Commission, *Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine*, March 2007, §§24-26, http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed 29 December 2010].

300 Venice Commission, *Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine*, March 2007, §§24-26, http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed 29 December 2010].

301 Article 32 of the Law on the High Council of Justice.

302 §1.3 of the European Charter on the statute for judges; Consultative Council of European Judges, *The Council for the Judiciary at the Service of Society*, Opinion No. 10.

The highest judicial authority in the system of general jurisdiction courts is the Supreme Court of Ukraine, as provided in the Constitution of Ukraine (Article 125). Despite its constitutional status, the Supreme Court's position has been severely diminished by the new Law on the Judicial System and the Status of Judges.[303] According to the latter, the Supreme Court will no longer consider cases in cassation (an additional higher specialised court will be set up to review criminal and civil cases), will have limited authority and consist of 20 judges (instead of current 95). Allegedly, the rationale for such radical curtailment of the Supreme Court was affiliation of its current President with the opposition party.[304]

INDEPENDENCE (PRACTICE) – SCORE 25

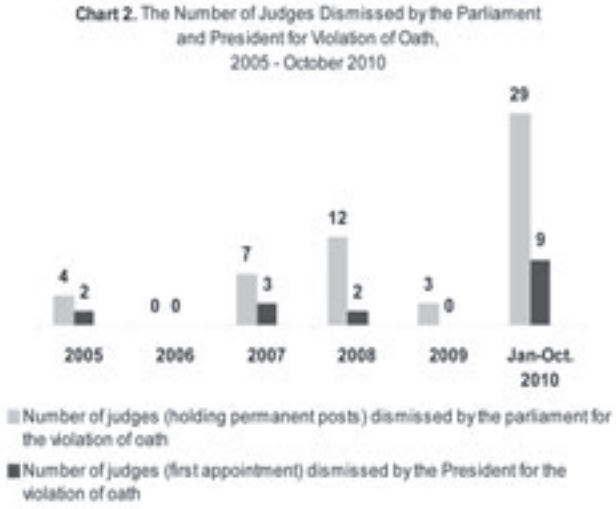
To what extent does the judiciary operate without interference from the government or other actors?

Judicial independence is not sufficiently guaranteed in practice. There are no clear objective merit-based criteria currently used for selection of judges. A significant role in the selection is given to oral interviews, which are subject to abuse. According to the Centre for Political and Legal Reforms, the procedure for selection of judges is not transparent enough and affected by corruption – it is hardly possible to become a judge without personal patronage and preliminary agreements.[305]

In 2007-2008 Ukrainian state authorities, including the President of Ukraine, took decisions which could be considered as political interference undermining judicial independence, *e.g.* by liquidating courts and dismissing judges that delivered decisions in favor of opposing political forces.[306]

In September 2007 the European Association of Judges expressed its grave concern about situation in Ukraine regarding the issue of the disciplinary liability of judges.[307]

Independence of the judiciary is also undermined by the current composition of the High Council of Justice, which includes Prosecutor General (*ex officio* by the Constitution), three Deputy Prosecutors General (two appointed by the conference of prosecutors and one by the President of Ukraine) and the head of the Security Service of Ukraine (appointed by the President of Ukraine). Such prominent role of the highest law enforcement officials in the body responsible for judicial appointments and disciplining of judges can severely undermine judicial independence.[308]



Source: Analysis of acts by the Verkhovna Rada of Ukraine and the President of Ukraine (http://zakon.rada.gov.ua)

303 Venice Commission, *Joint Opinion No. 550/2009 on the Draft Law on the Judicial System and the Status of Judges of Ukraine*, March 2010, §§24-26, http://www.venice.coe.int/docs/2010/CDL-AD(2010)003-e.asp [accessed 29 December 2010].

304 Information note by the Council of Europe's Parliamentary Assembly co-rapporteurs on their fact-finding visit to Kyiv, 22 June 2010; http://assembly.coe.int/CommitteeDocs/2010/20100622_amondoc23rev.pdf [accessed 29 December 2010].

305 Center for Political and Legal Reforms, *Independence of the Judiciary in Ukraine*, September 2009.

306 http://www.dt.ua/1000/1550/64408 [accessed 29 December 2010]. See also the 2008 Report on Human Rights in Ukraine by human rights organisations; http://www.helsinki.org.ua/en/index.php?id=1246102945 [accessed 29 December 2010].

307 European Association of Judges, *Summary Report of the Meeting Held by the European Association of Judges*; http://xoomer.virgilio.it/goberto/trondheimen.htm [accessed 29 December 2010].

308 Interview by Mykhailo Smokovych, judge of the Higher Administrative Court of Ukraine, with Denys Kovryzhenko, 29 September 2010.

The number of judicial dismissals for oath breach has significantly increased since April 2010, when several high level judges were dismissed by the Parliament upon proposal of the updated composition of the High Council of Justice (see the Chart 2). In some cases grounds for dismissal raise serious questions, in particular when it concerns dismissals of judges for decisions they took as a member of the judicial panel considering a case (often being a presiding judge who has to formally sign the decision passed by the majority of judges in the panel even if he himself voted against it), or for decisions which were not reversed by the higher courts, or for decisions which had already resulted in disciplinary liability of the judge. According to one of the HCJ members, the Council has been hastily suggesting dismissal of judges not for professional mistakes, but for "disobedience and intractability".[309]

TRANSPARENCY (LAW) – SCORE 75

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

The principle of openness of judicial proceedings and their fixation by technical means is stipulated in the Constitution of Ukraine (Article 129). The general rule is that all court cases are heard openly, except when a hearing *in camera* is ordered by the court according to procedural law. Participants of the court proceedings and others persons attending the hearing are allowed by law to use portable audio recording devices. Photo- and video recording, as well as live transmission, require court decision. All court proceedings are supposed to be documented by technical means.

Access to a court decision should be granted directly at the court premises to persons whom the decision concerns. There is also a special law – on the Access to Court Decisions, adopted in 2005 – that provides for the right of everyone to access court decisions. This is ensured by mandatory publication of all court decisions on the official judicial web-portal and their inclusion in the Unified State Register of Court Decisions. The scope of the Law, however, is impracticably broad, as it requires publication of all decisions, including procedural and interim.

The new Law on the Judicial System and the Status of Judges includes a number of provisions ensuring transparency during selection and appointment of judges (publication of information on vacancies and results of qualification exams) and in the work of the High Qualification Commission of Judges. The Law on the High Council of Justice, however, lacks provisions on transparent operation of the Council. Meetings of the HCJ are in general open, but can be held *in camera* if majority of its members decide so. In any case all decisions of the Council should be taken in close session. There is no requirement on publication of decisions of the HCJ.

TRANSPARENCY (PRACTICE) – SCORE 50

To what extent does the public have access to judicial information and activities in practice?

Regular reports are published on the official web-portal of the judiciary (http://court.gov.ua), including detailed judicial statistics, relevant legislation and information on court system and contact details of individual courts. Level of transparency of the judiciary was tested within this assessment by addressing individual requests for information to various judicial bodies. The results of the requests' consideration are presented in the Table 6 below. The Table suggests that in many cases citizens do not have appropriate access to information on the activities of the judiciary. Transparency of the activities of the Constitutional Court of Ukraine is also not ensured in practice. For instance, it denied an information request of one of the media NGOs asking to provide copies of legal opinions by several universities used by the Court in preparation of one of its judgments. The denial was based on the alleged confidentiality of the opinions, which the Court considered to be private ownership of the universities.[310]

309 http://www.zn.ua/1000/1050/69814 [accessed 29 December 2010].

310 http://www.medialaw.kiev.ua/news/1419/ [accessed 29 December 2010].

Table 6. The Results of Consideration of the Requests for Information by Judicial Bodies

The requester	The content of the request	Results of the requests' consideration
The Supreme Court of Ukraine	The request to provide information on the number of cases considered by each judge of the Supreme Court of Ukraine in 2009	Letters № 201-2990/0/8-10, 11 August 2010, № 201-2988/0/8-10, 11 August 2010. The requested information was not provided; the Supreme Court referred to its publications (however, the information is available only in the printed edition of the Supreme Court's Herald and not provided on the web-site).
	The request to provide the copy of the 2009 budget of the Supreme Court of Ukraine	Letter № 202-2899/0/8-10, 3 August 2010. The requested information has not been provided; the Supreme Court referred to Supreme Court's Herald.
The Higher Administrative Court	The request to provide information on the number of cases under the Court's consideration as of 1 January 2010.	Letter № Ã-1711, 27 August 2010. Request fulfilled.
	The request to provide information on the average monthly salary of the judge of the Higher Administrative Court in 2009, including bonuses	Letter № 1220/17/13-10, 16 August 2010. Request fulfilled.
The State Court Administration	The request to provide information on the positions of judges remaining vacant by 1 January 2010	Letter № Á 737/10, 16 August 2010. Request fulfilled. Letter № × 744/10, 21 August 2010. The requested information was not provided, the SCA referred to qualification commissions of judges.
	The request to provide information on the number of court decisions in the Unified State Register of Court Decisions	Letters № 2106, 22 July 2010, № 2172, 9 July 2010. Requests fulfilled.

Access to court decisions via Unified State Register of Court Decisions remains problematic, as only a small part of judicial decisions is included in the register and available on the web-site. Whereas Ukrainian courts annually adopt about 10 million decisions, as of July 2009 overall about 5 million court decisions were available for access.[311] The system for registration, publication and access to court decisions is ineffective due to technical barriers (*e.g.* mandatory use of digital signature, imperfect search engine on the web-site). In 2009, 38% of experts, 49% of companies and 49% of citizens stated that it was easy for them to find in the register the decision they needed; 41%, 38% and 33% respectively stated that they used a lot of time to find the decision they needed; 21%, 13% and 18% respectively couldn't find the necessary decision despite using a lot of time to search.[312]

In practice access to court hearings, which are formally open, is often not guaranteed, especially in higher courts and courts of appeal. Access is allowed only to the participants of the proceedings, while other persons are not allowed in by the court's security without permission from the presiding judge.[313] Access to court hearings is also prevented when, despite direct contradiction with the law, a case is considered in a judge's chambers which can hardly accommodate even the parties to the case.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Legislation of Ukraine provides for sufficient mechanisms of judicial accountability. Court decisions should be made public and should contain detailed reasoning behind them. According to the new Law on the Judicial System and the Status of Judges, every person has a right to file a complaint on the judge's behaviour directly with the relevant disciplinary body – contrary to the previous procedure when only several state institutions were authorised to initiate disciplinary proceedings. The High Qualification Commission of Judges (HQCJ) conducts disciplinary proceedings against judges of local and appellate court, the High Council of Justice – against judges of higher specialised courts and judges of the Supreme Court. As a result of the disciplinary proceedings, if a violation is established, the judge can be reprimanded or a recommendation can be made to the HCJ to dismiss the judge if relevant grounds are present. Decision on the disciplinary punishment should be announced on the official judicial web-portal and include a full copy of the formal decision. The judge can file an appeal against the decision imposing a disciplinary punishment with the HCJ or an administrative court.

Disciplinary proceedings against a local or appellate court judge are carried out by a member of the HQCJ, who will be picked randomly by an automated system to be set up. Relevant member of the HQCJ should recuse himself if there are doubts with regard to his impartiality in the specific disciplinary case. The Law introduces special officers - disciplinary inspectors who according to an instruction by the HQCJ member will analyse and review complaints against judge's behaviour, prepare draft decisions related to disciplinary proceedings.

While the Law on the Judicial System and the Status of Judges regulates in sufficient detail disciplinary procedure against judges conducted by the High Qualification Commission of Judges, it refers regulation of the relevant proceedings carried out by the High Council of Justice to the Law on the HCJ. The latter, however, does not provide for adequate disciplinary procedure that guarantees impartiality of the HCJ members and legal protection of judges. In particular, impartiality of disciplinary procedure in the HQCJ and HCJ is undermined the fact that a member of the HQCJ or HCJ who reviews the disciplinary case and presents it to the full composition of the HQCJ or HCJ, can also take part in decision

311 http://gca.court.gov.ua/news/page.php?court_id=0&archive=1&&year=2009&month=7&news_id=3664 [accessed 29 December 2010].

312 Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine Project in cooperation with a research company "InMind", *Corruption in the Judicial System of Ukraine. Comparative Analysis of National Surveys: 2008-2009*, 2009; http://www.pace.org.ua/images/stories/Corruption_within_the_Judicial_system_2009_Ukr_FINAL.pdf [accessed 29 December 2010].

313 Interview by Roman Kuybida, deputy head of the board of the Centre for Political and Legal Research, with author, 20 July 2010.

making and thus act at the same time as a 'prosecutor' and a 'judge'.[314]

The Law on the Judiciary and the Status of Judges does not ensure availability of proportionate and effective disciplinary sanctions, because only one sanctions is possible - a reprimand.

Accountability of judges is impeded by the broad judicial immunity – according to the Constitution (Article 126) a judge cannot be detained or arrested without prior assent by the Parliament, unless a guilty verdict is delivered by court. This precludes apprehension of a judge even if he is caught *in flagrante delicto*, regardless of the type of crime.[315] Judicial immunity is also not functional, that is it is not limited to cases when the judge performs his official duties.

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Lack of accountability of judges was named by attorneys and prosecutors as the main problem in the judicial system of Ukraine (47% of respondents in 2008 and almost 60% in 2009).[316] According to the Centre for Political and Legal Reforms, 422 judges of general jurisdiction courts were dismissed during 1 January 2006 – 1 July 2009 (overall there were about 7,900 judicial positions in the courts of general jurisdiction as of the end of 2009). Among them 37 who were not confirmed in the permanent posts after initial appointment. Other judges were dismissed due to their resignation requests (299 judges); upon their own request (49 judges); due to violation of the judge's oath (23 judges); due to reaching the age of 65 (11 judges); and due to entry into force of a criminal conviction verdict (3 judges).[317] Until recently dismissal of judges for various violations was not effectively implemented and decisions were often delayed. The situation changed in 2010 when the High Council of Justice submitted 24 proposals on dismissal of judges for the breach of oath (compared with overall 113 such submission during last 12 years).[318] According to 2009 survey, 58% of judges considered grounds for disciplinary sanctions to be not sufficiently clear and formalised and that standards of judicial independence (fair review by an independent authority, equality of arms, right to legal counsel and to question witnesses, right to appeal, etc.) are not respected in the existing disciplinary proceedings.[319]

In addition to stringent rules on the judicial immunity, in practice relevant bodies do not ensure swift and effective procedures of holding judges liable. This especially concerns the protracted parliamentary procedures.[320] Since 1998, the Parliament gave consent for detention and arrest of only six judges, while the MPs submitted to the Parliament draft resolutions on detention and arrest of ten judges.[321]

Judges are rarely held liable for corruption-related offences. In 2009 public prosecution bodies opened 45 criminal cases regarding judicial corruption. In 28 criminal cases investigation was finalized and sent to courts with charges against judges. During the same year 10 judges were found guilty of corruption offences and only 3 judges were incarcerated as a result.[322]

INTEGRITY (LAW) – SCORE 50

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

314 Venice Commission, *Opinion No. 401/2006 on the Draft Law on the Judiciary and Draft Law on the Status of Judges of Ukraine*, March 2007, §44; http://www.venice.coe.int/docs/2007/CDL-AD(2007)003-e.asp [accessed 29 December 2010].

315 GRECO, *Evaluation Report, Joint First and Second Evaluation Rounds*, March 2007; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_EN.pdf [accessed 29 December 2010].

316 Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine Project in cooperation with a research company "InMind", *Corruption in the Judicial System of Ukraine. Comparative Analysis of National Surveys: 2008-2009*, August 2009.

317 Centre for Political and Legal Reforms, *Independence of the Judiciary in Ukraine*, September 2009.

318 Interview by Volodymyr Kolesnychenko, Chairman of the High Council of Justice, Glavred, 21 June 2010, http://ua.glavred.info/archive/2010/06/21/170236-7.html [accessed 29 December 2010].

319 Centre for Judicial Studies, *Monitoring of Judicial Independence in Ukraine*, 2009.

320 GRECO, *Evaluation Report, Joint First and Second Evaluation Rounds*, March 2007; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2006)2_Ukraine_EN.pdf [accessed 29 December 2010].

321 [accessed 29 December 2010].

322 Prosecutor's General Office, *2009 Annual Report*; [accessed 29 December 2010].

According to the new Law on the Judicial System and the Status of Judges (Article 54), judges are supposed to submit annually to the State Court Administration an asset declaration that is published on the official web-portal of the judiciary. Such declaration should include information on the income, securities, real estate and valuable movable property, deposits in banks and financial liabilities of the judge, members of his family and other persons with whom he lives, as well as information on expenses that exceed his monthly remuneration. Requirement to submit asset declaration is also established for judges who apply for the permanent post. No such requirement is provided for candidates to become a judge for the first 5-year term. Non-submission or untimely submission of the asset declaration by a judge can result in disciplinary sanction (a reprimand). According to the Law on the High Council of Justice (Article 32) a breach of judge's oath as a ground for early dismissal can be understood as illegal receiving by judge of material benefits or carrying out expenses that exceed income of the judge or his family members.

Regulations on the conflict of interests, gifts and *pantouflage* (post-employment restriction) are included in the new draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine which was passed by the Parliament in the first reading on 23 December 2010. Detailed rules on the conflict of interests will need to be elaborated in a special law whose consideration is pending in the Parliament. Until these laws are adopted legislative provisions on judicial integrity are insufficient.

According to the procedural codes[323], the judge should be recused if his impartiality is affected by various reasons (*e.g.* previous participation in the case consideration, direct interest in the case outcome, relative of the party or litigation participant). Litigants or the judge himself can initiate a motion for recusal. However, procedure for deciding on such motion does not guarantee its impartial consideration.[324] The judge himself or the panel of judges including the judge whose recusal is requested decide on the recusal. Decision to refuse the requested recusal cannot be separately appealed and can be challenged only together with the judgement on merits of the case.

A Code of Professional Judicial Ethics was adopted in 2002 by the Congress of Judges of Ukraine. The Code is quite brief, duplicates legislative provisions and any lacks enforcement mechanism.[325] In February 2009 the Council of Judges of Ukraine approved comprehensive Rules of Conduct for the court (non-judicial) staff, which include provisions on the conflict of interests.[326] The Rules are a part of the official duties of the court staff members and, therefore, their violation can trigger disciplinary sanctions and dismissal.

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of members of the judiciary ensured in practice?

Until enactment of the new Law on the Judicial System and the Status of Judges there was no requirement for judges to disclose their income and assets. Due to lack of relevant legislative provisions there is no enforcement practice for the rules on the conflict of interests, gifts and post-employment restrictions. Effectiveness of the provisions regulating recusal of judges in case of their alleged bias is undermined by the procedure on how such requests are considered and decided upon. In practice judges are not often brought to disciplinary liability for misconduct, *e.g.* during 2009 and first half of 2010 the High Qualification Commission of Judges applied disciplinary sanctions only against 4 judges (1 reprimand, 1 demotion in the qualification rank and 2 recommendations for dismissal).[327]

EXECUTIVE OVERSIGHT (LAW AND PRACTICE) – SCORE 50

To what extent does the judiciary provide effective oversight of the executive?

323 Articles 56-57 of the Criminal Procedure Code, Articles 20 and 24 of the Civil Procedure Code, Article 27 and 31 of the Code of Administrative Adjudication, Article 20 of the Economic Procedure Code

324 Interview by Roman Kuybida, deputy head of the board of the Centre for Political and Legal Research, with author, 20 July 2010.

325 Interview by Roman Kuybida, deputy head of the board of the Centre for Political and Legal Research, with author, 20 July 2010.

326 [accessed 29 December 2010].

327 Analysis of information on the results of meetings of the HQCJ, [accessed 29 December 2010].

Specialised administrative courts have jurisdiction to review actions and decisions of the state authorities. Procedure for such review is defined in a separate code – Code of Administrative Adjudication. In 2009 administrative courts had under their consideration more than 1.5 million administrative cases (almost a 3-time increase compared with 2008). More than 90% of these cases concerned appeals against acts/actions/inaction of state authorities filed by natural and legal persons. In 2008 and 2009 respectively 30% and 13% of administrative cases remained pending and were not discharged.[328]

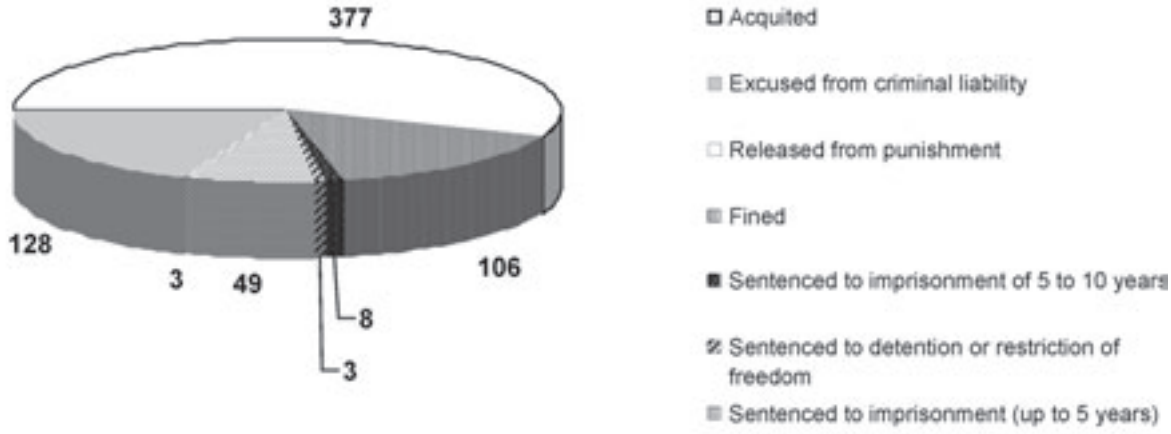
Effective review of the state authorities' actions is undermined by the lack of proper financing of the judiciary and cases of interference in administration of justice by the executive and politicians [see: *Independence (practice)*]. This situation is aggravated by frequent changes in the legislation affecting the scope of administrative jurisdiction. For instance, in February 2010 lawsuits by natural persons against state authorities that concerned social benefits were transferred from administrative courts to general courts; however, already in July they were returned within the remit of the administrative jurisdiction.[329]

CORRUPTION PROSECUTION (PRACTICE) – SCORE 25

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Judiciary is insufficiently committed to fighting corruption by delivering dissuasive sanctions for corruption offences. For example, in 2008 the Ministry of Interior registered 1,910 cases of bribery, from which 1,376 cases were sent to courts. 674 persons indicted with bribery were brought to court; the remaining cases were remitted for additional investigation. The results of consideration of these 674 cases are presented in the Chart 3.

Chart 3. The Results of Consideration of Cases of Bribery by Courts, 2008



Source: http://www.dt.ua/1000/1050/66310/ [accessed 29 December 2010].

328 http://court.gov.ua/sudova_statystyka/e575747457 [accessed 29 December 2010].

329 Law № 1691-VI, 16 February 2010, Law № 2453-VI, 7 July 2010.

There are no regular and comprehensive court statistics on criminal corruption cases[330]; only on administrative corruption.[331] Judiciary is rarely involved in suggesting anti-corruption measures/reforms. On the contrary, in 2009-2010 the Supreme Court of Ukraine has consistently opposed enactment of the new anti-corruption legislation and even addressed the Constitutional Court of Ukraine with a request to find relevant laws unconstitutional.[332]

Key recommendations

- To bring the constitutional provisions pertaining to appointment, dismissal of judges, and composition of the High Council of Justice in line with the European standards to ensure appropriate level of independence of the judiciary;
- to terminate the practice of receiving private donations by courts and exclude financing of the judiciary from local budgets;
- to review technical solutions ensuring functioning of the court decisions web-portal in order to provide for the possibility of quick search of the necessary court decisions;
- to review the role of disciplinary inspectors under the new Law on the Judicial System and the Status of Judges, in order to ensure separation of accusation and decision-making functions;
- to streamline procedures for lifting judicial immunity;
- to raise awareness on corruption offences among judges;
- to improve reporting on court statistics and provide regular and comprehensive information on consideration in courts of corruption-related criminal offences.

330 Analysis of court case-law in corruption criminal cases is available on the web-site of the Supreme Court of Ukraine, but it is a one-time exercise and is based on statistics for a limited period. See: http://www.viaduk.net/clients/vs.nsf/0/366F13D23201180FC2257607002B6EB0 [accessed 29 December 2010]. State Court Administration provides some data on dynamics in the numbers of various corruption offences considered by courts, but it is no comprehensive. See: http://court.gov.ua/sudova_statystyka/e575747457/ [accessed 29 December 2010].

331 See judicial statistics for 2009 on the web-site of the Supreme Court of Ukraine http://www.scourt.gov.ua/clients/vs.nsf/0/09F805995C5F5CA6C2257752002A196D [accessed 29 December 2010].

332 See, among others, , , [accessed 29 December 2010].

4. Public Sector

SUMMARY

Insufficient funding of the public sector and low salaries of public officials do not promote professionalism of public service and have a negative impact on the quality of public services. In practice, the independence of public sector is undermined by a lack of adequate legal mechanisms to prevent undue political interference in its activities. The law neither provides for disclosure of asset declarations of public officials, nor does it ensure transparency of recruitment into the public service. In practice, the citizens do not have appropriate access to information on public sector activities, which results in dissatisfaction with the quality of administrative services provided by public authorities. Absence of measures aiming to protect whistleblowers, loopholes in regulation of liability for administrative offences related to corruption, as well as wide margin of discretion granted to public authorities and lack of effective administrative review of executive decisions, decrease the level of accountability of the public sector. In practice, those accused of corruption often escape liability, in particular where high ranking officials are concerned. Integrity in the public sector is weakened by a lack of comprehensive codes of conduct, post-employment restrictions, rules on gifts and conflict of interest. Even though the number of trainings for public officials appears to be relatively high, training programs have not yet resulted in any significant changes in public attitude towards public officials, who are perceived to be highly corrupt.[333] Public education and awareness raising campaigns do not have significant influence on society. Cooperation of public sector with other institutions in prevention of corruption can hardly be considered effective and proactive. Strengthening of the public sector's role in safeguarding integrity in public procurement requires further amendments to the Law on Public Procurement.

The table below presents general evaluation of public sector in terms of capacity, governance and role in national integrity system. The table is followed by a qualitative assessment of the relevant indicators.

Public Sector Overall Pillar Score: 31.22 / 100			
Dimension	Indicator	Law	Practice
Capacity 18.75 / 100	Resources	25	
	Independence	25	0
Governance 41.6/100	Transparency	50	25
	Accountability	50	25
	Integrity	50	50
Role 33.33 /100	Public Education	25	
	Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption	25	
	Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement	50	

333 Transparency International, *Global Corruption Barometer 2010*: 44.

Structure and organisation

Public (administrative) services are provided by the ministries and other central executive bodies (such as services, agencies, inspectorates), by the bodies of local self-government, and by branches of the central executive bodies at local and regional levels. In addition, state enterprises and institutions also assist the Government in carrying out its decisions and administering the public services. The complete list of the public sector institutions providing administrative services, as well as the list of services which are delivered by public sector, is available on the website of the Main Department for Civil Service (MDCS).[334] Some public sector employees, including those who provide administrative services in certain public institutions (education, medical etc.) do not fall within the scope of application of the laws on public service. Public service includes civil service and service in the bodies of local self-government, which are regulated by two separate laws. Security, tax, customs and some other types of service are also regulated by separate laws, however the Law on Civil Service is also applicable to the relevant servants. Civil service is governed by the MDCS, whose activities are directed by the Cabinet of Ministers through the Minister of the Cabinet of Ministers (minister without portfolio). The Chief of the Department can be appointed or dismissed by the Government upon the Prime Minister's proposal.

Assessment

RESOURCES (PRACTICE) – SCORE 25

To what extent does the public sector have adequate resources to effectively carry out its duties?

Substantial budget deficit and insufficient funding of many budget programs[335] hamper the overall effectiveness of the functioning of public sector institutions and delivery of high-quality administrative services. The Ukrainian state remains too centralised to adequately produce administrative and budgetary alternatives for efficient Government action in the regions.[336] The salaries in the public sector are too low to attract talented people, while transparency in remuneration system is not ensured in practice.[337] Financial, technical and other resources are limited even in the ministries, while at the basic level of administration they are often insufficient to provide administrative services efficiently.[338]

Public opinion polls demonstrate that 40% of the citizens are mainly dissatisfied with the quality of administrative services, while the share of those who are completely dissatisfied with their quality constitutes 21.8% of all respondents. Among the main reasons for that are long waiting times (according to 58% of the respondents), the lack of necessary clarifications on the documents that have to be submitted in order to receive administrative service (48.7%), small or inconvenient premises (33.5%), the need in purchasing application forms (15.4%).[339]

INDEPENDENCE (LAW) – SCORE 25

To what extent is the independence of the public sector safeguarded by law?

The Law provides for some mechanisms aimed to some extent restrict undue interference in functioning of the public sector. For instance, medium and lower level positions (1-3 categories) are open for competitive recruitment; before entering the office civil servants must be sworn-in, while discharge from office can be challenged in court.[340]

However, the legislation which governs the civil service and administration in self-government bodies contains a number of significant shortcomings, which do not allow an appropriate level of independence of public sector. First, there is no special institution (other than court) tasked to protect public sector

334 [accessed 29 December 2010].

335 See, for instance, the Opinions of the Accounting Chamber on the 2009 State Budget implementation; [accessed 29 December 2010].

336 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 24.

337 UPAC, Center for Political and Legal Reforms, *Technical Document "Analytical Report on Corruption Risks in Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"*; [accessed 29 December 2010].

338 Interview by the official of the Ministry of Foreign Affairs, 28 September 2010.

339 UPAC, the "Democratic Initiatives" Foundation, *Technical Document "The Report on the Results of the Research "Corruption and Corruption Risks in State Administrative Bodies: Public Opinion, Opinion of the Experts and Businessmen"* (in Ukrainian), 2009: 26-27.

340 Articles 15, 17, 32 of the Law on Civil Service.

employees from arbitrary dismissals or political interference. Second, there is no delineation between political and professional civil servants, while there is a tendency to regulate different branches and levels of public officials by the same legislation, *e.g.* elected and appointed, senior and middle/junior.[341] Third, higher level positions (1-2 categories) are closed for competitive recruitment, and the appointments to this positions are mostly based on political decisions of the President, Parliament, and Government.[342] Fourth, independence of the lower level servants in decision-making is not ensured in law, which leads to highly centralised decision-making process in the relevant institutions; the grounds for application of the disciplinary sanctions (including discharge from office) are not clearly defined in law, which increases the risk of arbitrary imposition of sanctions.[343] In addition, public sector employees other than civil servants[344] are not legally prevented from engagement in political activities.

Whereas lobbying is not regulated in law, the Parliament is not prevented from including or excluding publicly procured projects in/from plans, programmes and budgets.

INDEPENDENCE (PRACTICE) – SCORE 0

To what extent is the public sector free from external interference in its activities?

There is a high level of fluctuations of office holders in the higher and medium levels, while recruitment into the civil service does not always follow the principle of merit, but is often determined by politics.[345] For instance, while in 2004 38,000 civil servants were dismissed, in 2005 (after the presidential elections) the number of the civil servants discharged from office increased to 48,000, among them – 250 heads of the central and local executive bodies, almost all heads of local state administrations.[346] After the 2006 local elections, about 60% of higher level officials employed by local self-government bodies were fired.[347] From 1 April 2010 to 1 November 2010, following the new change of government, the Cabinet of Ministers issued about 200 decisions on termination of office of the heads of central executive bodies, directors of state enterprises and other public sector employees, who are subject to appointment by the Government, while within the same period of time the president signed about 550 decrees on discharge from office of those officials who are subject to appointment by the head of state.[348]

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

The law does not require declarations of assets of public officials to be made publicly available.[349] Access to public information is currently regulated by the Law on Citizen Inquiries and the Law on Information. These laws contain a number of gaps and shortcomings, which do not ensure appropriate access to information [see: *Legislature*]. However, on 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which provides for a number of improvements in terms of access to information. In particular, it restricts the grounds for refusal to provide information and states that requests for information must be considered within 5 days; provides for the establishment of the registers of official documents within the authorities, as well as special internal units tasked to ensure access

341 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 52.

342 Article 25.2 of the Law on Civil Service.

343 UPAC/ Center for Political and Legal Reforms, *Technical Document "Analytical Report on Corruption Risks in Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"*; [accessed 29 December 2010]. See also: SIGMA, *Ukraine Governance Assessment*, 2006: 51.

344 Clause 1.7 of the General Rules of Civil Servant's Conduct, approved by the Order of the Main Department of Civil Service № 214, 4 August 2010.

345 Article 27 of the Law on Civil Service; Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 24; Interview by Viktor Tymoshchuk, deputy head of the Center for Political and Legal Reforms, with author, 22 July 2010; OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 52.

346 UPAC, Center for Political and Legal Reforms, *Technical Document "Analytical Report on Corruption Risks in Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"*; [accessed 29 December 2010].

347 Kuybida, M.; Rosenko, M., *Some Problems Related to the Service in the Bodies of Local Self-Government and the Ways of Improvement of Assessment of Quality of Their Performance* (in Ukrainian); [accessed 29 December 2010].

348 The data presented on the basis of the author's analysis of the Government decisions and president's decrees posted on the Parliament's website.

349 Article 13 of the Law on Service in Local Self-Government Bodies, Article 13 of the Law on Civil Service.

to information; defines the list of the data subject to mandatory disclosure (such as information on the structure, mission, functions, funding, adopted decisions, draft decisions, conditions on which the services are delivered, reports etc.).[350] The positive impact of the FOIA has yet to be seen, since the Law will come into force only in May 2011.

The Law on Public Procurement contains a number of provisions aimed to increase the level of transparency in procurement [see: *Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement*].

Transparency of appointments within the public sector is not adequately ensured in Law. In particular, only vacant medium and lower level positions must be publicly advertised, while public competition for appointments to positions referred to top two categories (1 and 2) is not provided.[351] In addition, the positions which do not fall within the scope of application of the Law on Civil Service and the Law on Service in the Bodies of Local Self-Government are not publicly advertised either. Another factor which hinders transparency of appointments is that the legislation fails to precisely define the list of official newspapers where notices of public competitions have to be published.[352]

TRANSPARENCY (PRACTICE) - SCORE 25

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Access to information on public sector activities, in particular as concerns administrative service delivery,[353] is not ensured in practice.[354] 48% of citizens state that the lack of information on the documents which have to be submitted to receive administrative services is the main reason for their dissatisfaction with administrative services.[355] Websites of the executive bodies in many cases are not regularly updated, often do not contain information on the procedure for lodging the complaints against the decisions of the relevant bodies, on public consultations and their results, while almost one-third of the bodies fail to provide information on administrative services which they provide.[356] Many local self-government bodies do not have own websites, while information on decisions made by them is often not available.[357]

The level of transparency of the public sector agencies was tested within the framework of this assessment by requesting some ministries to provide copies of the 2009 annual reports on their activities and on the number of licenses issued for legal persons in 2009. All the requesters refused to provide the copies of the annual reports, but provided information on the number of entities which were granted licenses (except for the Ministry of Labour and Social Policy, which do not reply to the requests) [see: *Executive*]. Just as asset declarations of public sector employees are not required to be disclosed, they are not actually published in practice.

Every third business operator and every fifth representative of awarding agencies considers access to information on the website on public procurement[358] to be complicated, since not all legally required documents are posted on it, and search of information on the website is rather difficult.[359]

In practice, appointments to the public sector are not

350 Articles 6, 15, 16, 18, 20 of the Freedom of Information Act, № 2939-VI, 13 January 2011.

351 Article 15 of the Law on Civil Service.

352 Clause 10 of the Procedure of Competition for Appointments on Vacant Positions of Civil Servants, approved by the Government Decree № 169, 15 February 2002.

353 UPAC, Center for Political and Legal Reforms, *Technical Document "Analytical Report on Corruption Risks in Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"*; http://www.guds.gov.ua/control/uk/publish/article?art_id=198893&cat_id=255109 [accessed 29 December 2010].

354 See, for instance, clause 2 of the Concept of Overcoming Corruption in Ukraine "Towards Integrity", endorsed by the President's Decree № 742/2006, 11 September 2006; SIGMA, *Ukraine Governance Assessment*, 2006: 31.

355 UPAC, "Democratic Initiatives" Foundation, *Technical Document "The Report on the Results of the Research "Corruption and Corruption Risks in State Administrative Bodies: Public Opinion, Opinion of the Experts and Businessmen"* (in Ukrainian), 2009: 26.

356 The State Committee on Broadcasting of Ukraine, *Analytical Note on the Results of Monitoring of Information on the Websites of the Executive Bodies in 2010* (in Ukrainian); [accessed 10 January 2010].

357 Demkova Maryana, *Problems Related to Access to Public Information*; [accessed 29 December 2010].

358 See: [accessed 29 December 2010].

359 Marusov, Andriy, *Support of the Development of the Website on Procurement and Use of the Information on the Website*, presentation at the international conference "The Important Problems within the System of Public Procurement in Ukraine", 16-17 November 2010, Kyiv.

transparent.[360] The MDCS has created a separate web page,[361] where human resource departments of the executive bodies may publicly advertise vacant positions, but they are not legally obliged to do so.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Although civil servants are obliged to inform higher level officials on any illegal instructions received by them,[362] no measures were adopted to protect whistleblowers in public sector,[363] including those who inform on wrong-doing related to procurement.

There is no separate independent body to investigate complaints on corruption. The relevant tasks are assigned to the Security Service of Ukraine, tax police, and public prosecutors [see: *Law Enforcement Agencies*]. The observance of the laws on civil service and on fight against corruption by the executive bodies is supervised by MDCS.[364] In addition, ministries, other government agencies and regional state administrations established internal anti-corruption units tasked to prevent and counteract corruption, to provide advice to the staff on anti-corruption legislation, to detect and resolve conflict of interest, to verify asset declarations, conduct internal investigations etc.[365] However, the establishment of anti-corruption units is not mandatory for all public sector institutions, in particular, for the bodies of local self-government and other public institutions.

In 2009, the Government introduced mandatory anti-corruption screening of some draft legal acts (draft legal acts submitted for the Government's consideration) by Government Agent on anti-corruption policy. However, the list of legal acts subject to mandatory anti-corruption screening appears to be rather narrow. For instance, anti-corruption screening is not mandatory for draft laws submitted to the Parliament by the MPs, draft legal acts of the central executive bodies, draft presidential decisions etc.[366]

While the actions, inaction and decisions of public sector agencies may be contested in courts, effective mechanisms for administrative review are not laid down in law: the relevant legal provisions are outdated;[367] they do not ensure protection of the rights of the complainants, impartiality of the complaint consideration, and contain some other loopholes.[368]

Due level of accountability in public sector is also hindered by wide margin of discretion granted to public sector agencies. The legal provisions on administrative procedures are dispersed among huge number of laws and secondary legislation, which in some instances leave space for abuses.[369]

The Law on Fight against Corruption used to envisage sanctions for certain administrative corruption offences, such as failure to inform law enforcement agencies on detected cases of corruption, failure to submit asset declaration, failure to provide information on citizen requests etc. However, this law was repealed on 1 January 2011 [see: *Integrity (law)*]. Even though administrative sanctions for administrative offences related to corruption were moderate (offences could entail only imposition of fines in amount of UAH 85 – 1700 [USD 10-212], cancellation of the above law can hardly be considered positive development. Corruption is also penalised under the Criminal Code, but its provisions contain some loopholes and shortcom-

360 UPAC, Center for Political and Legal Reforms, *Technical Document "Analytical Report on Corruption Risks in the Field of Administrative Services Delivery, Control and Supervisory Activities of Public Administration in Ukraine"*; [accessed 29 December 2010].

361 [accessed 29 December 2010].

362 Article 10 of the Law on Civil Service.

363 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 49.

364 See: Order of the Main Department of Civil Service № 25, 18 May 2000.

365 See: CMU Decree № 1422, 8 December 2009.

366 Clauses 2,6, 7 of the Procedure for Anti-Corruption Screening of the Draft Legal Acts, approved by the CMU Decree № 1057, 16 September 2009.

367 Pchelin V. (2010), *On Administrative Review of the Executive Acts* (in Ukrainian), [accessed 29 December 2010]; OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 55.

368 For further information see: Pchelin V. (2010), *On Administrative Review of the Executive Acts* (in Ukrainian), [accessed 29 December 2010].

369 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 54, 55.

ings [see: *Integrity (law)*].

The use of public funds is supervised by the Accounting Chamber, Main Control and Revision Department (MCRD) at the Ministry of Finance (internal audit institution within the executive branch of the Government), and by managers of the budget institutions. The powers of the Accounting Chamber are restricted by the Constitution [see: *Supreme Audit Institution*]. In 2010, OECD/ACN recommended to improve the effectiveness of the MCRD by focusing on financial inspections as its one and only task; by developing an intelligence function/unit of the MCRD; through improvement of its relations with law enforcement agencies, and through taking some other measures.[370] As concerns internal financial control within the budget institutions, the proper management structures are yet to be developed and the managers are yet to take responsibility for effective running of public institutions under their leadership.[371]

Public sector agencies are not required to submit any special reports to the legislature, but they are legally obliged to provide information on requests of the MPs and parliamentary committees.[372]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent do public sector employees have to report and be answerable for their actions in practice?

Since there are no provisions in place aiming to protect whistleblowers in public sector, the cases of informing on wrong-doing by public sector employees are almost non-existent.[373] In practice, judicial review of the actions, decisions and inaction of the public sector agencies is not very effective: due to the lack of adequate regulation of the complaints' consideration within the administrative proceedings [see: *Accountability (law)*], private and legal persons prefer to complain to the courts directly rather than to lodge complaints with public authorities, thus increasing the courts' workload, which, in turn, results in accelerated consideration of the lawsuits, violations of the procedural requirements etc.[374]

In 2010, anti-corruption units intercepted more than 190 corruption offences; as result of inspections and internal investigations 546 materials were sent to the law enforcement authorities; 116 civil servants were dismissed; 1,130 persons were brought to disciplinary responsibility.[375] However, there are no anti-corruption units within the bodies of local self-government and agencies of public sector other than listed in Government Decree № 1422 of 8 December 2009, that to some extent decrease the level of accountability in public sector. Moreover, the employees of public enterprises who are not recognised as civil servants are not covered by anti-corruption units.[376]

By 29 September 2010, the Anti-Corruption Policy Bureau had conducted 269 screenings of the draft legal acts and detected corruption-prone provisions in 74 draft acts,[377] but a number of important drafts, such as the Tax Code, the Law on Local Elections and other, were not screened.[378] The decisions of a number of public sector agencies (such as the bodies of local self-government) are not screened either.

Oversight of public procurement is not very effective. For instance, in 2009, the Government adopted 52 decisions that allowed awarding entities to avoid procurement procedures, while the Ministry of Economy, tasked to supervise procurement, failed to prevent violations in this field, which resulted in substantial budget losses.[379] In 2010, the public enterprise which administers the Kharkiv subway procured 10 wooden benches for a newly opened

370 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 59.

371 OECD/ACN. *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 57.

372 Article 226 of the Rules of Procedure of the VRU, Articles 15, 16 of the Law on Status of the People's Deputy of Ukraine, Article 17 of the Law on the Parliamentary Committees.

373 Interview by Viktor Tymoshchuk, deputy head of the Center for Political and Legal Reforms, with author, 22 July 2010.

374 Koliushko, Ihor; Tymoshchuk, Viktor, *The Administrative Procedure and Administrative Services. Foreign Experience and Proposals for Ukraine* (in Ukrainian), 2003: 71.

375 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 50.

376 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 51.

377 [accessed 29 December 2010].

378 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 54.

379 [accessed 29 December 2010].

Kharkiv underground station for UAH 28,800 [USD 3,600] per each, which has not yet resulted in any liability for overpriced procurement and ineffective use of the budget funds.[380]

High ranking officials (I-II categories) often escape liability for corruption offences,[381] while mainly medium and lower level officials are sanctioned for corruption. In addition, courts often fail to pass any decisions in the cases forwarded to them, thus allowing the accused of corruption to escape liability (see the Table 7 below).

Table 7. Administrative Cases Related to Corruption and Results of Their Consideration by Courts, 2007-2009

Categories of public officials		Number of administrative cases related to corruption forwarded to courts for consideration (2007/2008/2009)	Number of cases in which the courts managed to pass the decisions (2007/2008/2009)	Court decisions in the administrative cases related to corruption		
				Fined (2007/2008/2009)	Criminal cases instituted (2007/2008/2009)	Administrative cases closed (2007/2008/2009)
Total		**5995/6224/5389**	**5490/5732/5022**	**4551/4745/4011**	**13/7/2**	**874/923/951**
Civil servants, categories	I-II	12/15/33	10/7/18	3/3/3	0/0/0	6/4/15
	III-IV	1258/1358/200	1145/1252/181	939/1072/88	0/0/0	183/159/90
	V-VII	1864/1826/958	1720/1671/869	1406/1344/622	8/4/1	287/299/242
	Total	3134/3199/1191	2875/2930/1068	2348/2419/713	8/4/1	476/462/347
Servants employed by local self-government bodies	all categories	1927/2173/2963	1814/2055/2807	1549/1785/2430	5/3/0	248/251/334

Source: Main Department of Civil Service, *2009 Annual Report*: 16.

380 [accessed 21 January 2011].

381 See also: Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 10.

INTEGRITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure the integrity of public sector employees?

The rules of conduct of public servants are laid down mainly in the Law on Civil Service, Law on Service in Local Self-Government Bodies, the General Rules of Civil Servant's Conduct. However, public sector employees who perform administrative functions but are not recognised as public servants, do not fall within the scope of application of this legislation.

In accordance with law, civil servants and the servants of the local self-government bodies have to respect human rights, refrain from activities which might compromise their reputation or hamper the service, observe Constitution and laws of Ukraine, improve own qualifications etc.[382] The General Rules of Civil Servant's Conduct contain more detailed provisions regarding the civil servant's conduct, but they are not mandatory for servants employed by local self-government bodies.[383] The legislation prohibits direct subordination of public servants to members of their families (and vice versa).[384] The legal framework does not envisage any post-employment restrictions for public servants. The General Rules contain provisions on how civil servants should act in conflict of interest situations, but the relevant provisions come into force as soon as the new Law on the Principles of Prevention and Counteraction to Corruption is enacted.[385] The latter was adopted by the Parliament only in the first reading.

The Law on Fight against Corruption used to prohibit abuse of office, the receipt of gifts in connection with exercising official duties, carrying out business activities by public servants and their membership in the governing bodies or supervisory boards of business enterprises etc. However, on January 1, 2011, this law was repealed (it is expected to be replaced by the new Law on the Principles of Prevention and Counteraction to Corruption, which is pending in the Parliament). The General Rules prohibit the receipt of gifts in connection with official duties, but the relevant provisions will come into force as soon as new anti-corruption law is enacted.[386] The Criminal Code of Ukraine establishes the offences of both active and passive bribery, abuse of authority or office, the entry of false information into official documents.[387] However, trading in influence and illicit enrichment are not criminalised, while the notion of "bribery" has no clear definition and it appears that bribery only covers tangible advantages.[388]

Anti-corruption provisions are not legally required to be included into bidding/contracting documents.[389] Conflict of interest in public procurement is not properly regulated either [see: *Reduction of Corruption Risks by Safeguarding Integrity in Public Procurement*].

INTEGRITY (PRACTICE) – SCORE 50

To what extent is the integrity of civil servants ensured in practice?

In 2010, public officials/civil servants were perceived by the public to be highly affected by corruption (scored 4.1 on the scale of 5, where 5 means "extremely corrupt"),[390] while in 2009 they had been perceived to be the most corrupt (scored 4.5) among other institutions in the country.[391] The legal provisions on conduct for public officials are not effectively enforced in practice: the courts often fail to consider the corruption-related cases, high ranking officials escape liability [see: *Accountability (practice)*], asset declarations often contain false information.[392] While civil servants are perceived to be highly affected by corruption, the cases of termination of their office for committing corruption offences are not widely spread (see the Table 8 below).

382 Articles 5, 10 of the Law on Civil Service, Article 8 of the Law on Service in Local Self-Government Bodies.

383 See clause 2 of the Order of the Main Department of Civil Service № 214, 4 August 2010.

384 Article 12 of the Law on Civil Service, Article 12 of the Law on Service in Local Self-Government Bodies.

385 Clause 11 of the Order of the Main Department of Civil Service № 214, 4 August 2010.

386 Clauses 4.3, 4.4. of the General Rules of Civil Servant's Conduct, clause 11 of the Order of the Main Department of Civil Service № 214, 4 August 2010.

387 Articles 364-370 of the Criminal Code of Ukraine, № 2141-III, 5 April 2001. See also: GRECO, *Joint First and Second Evaluation Rounds. Evaluation Report on Ukraine*, adopted by GRECO at its 32nd Plenary Meeting (Strasbourg, 19-23 March 2007): 5-7.

388 GRECO, *Joint First and Second Evaluation Rounds. Evaluation Report on Ukraine*, adopted by GRECO at its 32nd Plenary Meeting (Strasbourg, 19-23 March 2007): 8.

389 Articles 22, 40 of the Law on Public Procurement.

390 Transparency International, *Global Corruption Barometer 2010*: 44.

391 Transparency International, *Global Corruption Barometer 2010*: 6.

392 MDCS, *2009 Annual Report*: 19.

Table 8. The Grounds for Dismissal of Civil Servants and Servants Employed by Local Self-Government Bodies

The grounds for dismissal		The number of servants dismissed				
		2005	2006	2007	2008	2009
Dismissal upon own application for dismissal		24,859	23,258	24,291	21,430	15,701
Retirement age		5,438	6,859	5,530	6,556	7,718
Resignation (I-II categories)		79	40	25	22	7
Expiration of office		1,303	7,185	252	241	185
Staff reduction, termination of institution		5,574	2,962	2,493	1,117	1,151
Other reasons		19,205	17,178	18,104	18,471	12,912
Violation of restrictions provided for by the Law on Fight against Corruption	Corruption offences	13	5	13	24	35
	Asset declaration	2	2	2	1	3
	Violation of requirements to incompatibility of office with other activities	6	11	9	12	14
TOTAL		56,479	57,500	50,719	47,874	37,726

Source: MDCS data; http://guds.gov.ua/analytics/saw.dll?Dashboard&NQUser=WWW&Syndicate=Siebel [accessed 29 December 2010].

The MDCS carries out a variety of activities aimed to raise awareness and to train public officials on matters connected to corruption prevention and public service. During 2007-2010, the number of civil servants trained by the MDCS has increased from 585 to almost 1,500 in 2010.[393] However, the MDCS does not perform any follow-up related to trainings.[394] The MDCS also issued a number of printed materials on counteraction to corruption, but this number does not appear significant enough to support effective education of public officials in Ukraine.[395]

Over the past 5 years, 11,276 graduates were trained in the National Academy of Public Administration; all of them received training on ethics, on mission of service, on legal requirements, staff relations etc. Moreover, in 2009, the National Academy of Public Administration organised trainings aimed to improve qualifications of 53,847 civil servants and 28,399 servants employed by local self-government bodies.[396] In addition, trainings are also delivered by the Bureau on anti-corruption policy and by anti-corruption units of the executive bodies. The trainings delivered by anti-corruption units brought together about 11,800 civil servants.[397] Nevertheless, these numbers seem to be insignificant if compared to the total number of civil servants and servants of local self-government bodies (384,197 in 2009).[398]

As concerns public procurement, not being required by law, anti-corruption provisions are not included into bidding documents in practice.

393 MDCS, *2009 Annual Report*: 21; OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 46.

394 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 46.

395 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 47.

396 MCDS, *2009 Annual Report*: 50.

397 http://acrc.org.ua/index.php?page=article&id=77&start=10&sort= [accessed 3 November 2010].

398 http://guds.gov.ua/analytics/saw.dll?Dashboard&NQUser=WWW&Syndicate=Siebel [accessed 29 December 2010].

PUBLIC EDUCATION (PRACTICE) – SCORE 25

To what extent does the public sector inform and educate the public on its role in fighting corruption?

There are no specific programs within the public sector aimed to educate public on corruption and how to curb it. All the education and awareness raising activities within the public sector are based on the Procedure for Informing the Public on the Activities in the Field of Counteraction to Corruption, approved by the Government Decree on 8 December 2009. However, the Decree is mandatory for only the civil servants employed by the executive bodies, while the servants employed by local self-government bodies do not fall within the scope of its application. In accordance with this Procedure, public authorities were required to post on their websites contact details of the persons to whom corruption offences can be reported, anti-corruption legislation and its interpretation, information on detected corruption offences. Within the framework of awareness raising activities, the Ministry of Education developed special courses and guidelines for secondary schools and universities, while the Ministry of Justice provided legal aid, public addresses on anti-corruption legislation and training for young lawyers. Awareness raising activities and public education are also carried out by the Government Agent on anti-corruption policy [see: *Anti-Corruption Agencies*].

However, the possible positive impact of all these activities remains to be seen, while targeted awareness raising and education of the public remain very limited and insufficient to influence the opinion of the society and its attitude to corruption.[399] According to the opinion poll conducted in 2009, in case of being requested to pay a bribe to solve the problem, almost 36.5% of respondents were ready to pay it, while only 4.6% of people were ready to turn to law-enforcement agencies, 4.6% of respondents – to complain to a higher level official, 2.7% - to turn to court for protection.[400] Therefore, awareness raising activities within the public sector can hardly be considered effective. Fewer than 1 in 10 respondents in Ukraine considered Government anti-corruption efforts to be effective.[401]

COOPERATION WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ ADDRESSING CORRUPTION (PRACTICE) – SCORE 25

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

The cases of cooperation between the public sector agencies with other agencies within the state, CSOs and private agencies in preventing the corruption are not widely spread. Among the examples of such cooperation are involvement of CSOs in drafting the proposals aimed at combating corruption during 2007 and 2008,[402] in work of the public councils formed by state bodies etc. As a rule, cooperation with public sector is initiated by NGOs rather than public sector institutions. In particular, NGO advocacy campaigns on combating corruption in the judiciary, education and regulatory reform areas contributed to adoption of 130 resolutions, decrees, and regulations of the Cabinet of Ministers, regional public administrations, public councils, and local authorities.[403] NGOs also contributed to adoption of the FOIA,[404] to curbing corruption in university admission process, decreasing corruption in permit issuing, promoting access to public [see: *Civil Society Organisations*].

Notwithstanding the above, NGOs have little impact on political decisions.[405] Their participation in anti-corruption activities is limited and there is no conclusive evidence to suggest that NGOs have influence over the anti-corruption policy decisions; many business associations and individual companies are interested in anti-corruption issues, but remain largely outside

399 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 14.

400 UPAC, "Democratic Initiatives" Foundation, *Technical Document "The Report on the Results of the Research "Corruption and Corruption Risks in State Administrative Bodies: Public Opinion, Opinion of the Experts and Businessmen"* (in Ukrainian), 2009: 16.

401 Transparency International, *Global Corruption Barometer 2009*: 17.

402 [accessed 29 December 2010].

403 USAID, *2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia*: 222.

404 [accessed 2 February 2011].

405 Bertelsmann Foundation, *BTI 2010. Ukraine*: 26

any governmental efforts to promote public participation.[406]

REDUCTION OF CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT – SCORE 50

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

On 1 June 2010, the Parliament adopted a new Law on Public Procurement, which entered into force on 30 July 2010. The Law does not regulate the purchase of small goods, works and services, the value of which is below UAH 100,000 [USD 12,500] for goods and services, and UAH 300,000 [USD 37,500] for works, as well as procurement of some other types of goods and services (*e.g.* issuing of the currency, services related to administration of elections and referenda etc.). Under Article 20 of the Law, open bidding is the main procedure for public procurement. The Law envisages a number of improvements concerning publishing requirements.[407] For instance, tender announcements, reports, all decisions related to tenders, including procurement award decisions, are subject to mandatory publication on the website of the Ministry of Economic Development and in the procurement bulletin free of charge. In addition, clarifications and amendments during the bidding process have to be shared among all the bidders.[408] The Law does not provide for e-procurement. The maintenance of the registers and statistics on contracts, irrespective of the contracting method, is mandatory,[409] and these registers are kept in practice.[410] The overall supervision of the enforcement of the Law on Public Procurement is assigned to the Ministry of Economic Development, whose structure includes Department on Public Procurement, comprising of 40 staff employed in 7 divisions of the Department.[411] The supervision over contract implementation is exercised by the awarding entities, the MCRD, and the Accounting Chamber.

Notwithstanding the above, the Law on Public Procurement contains a number of deficiencies which might have a negative impact on securing integrity in public procurement.

Definition of conflict of interest is not sufficiently clear in relation to public procurement; the Law does not establish an effective mechanism for its prevention and detection; tender documentation does not require conflict of interest declarations; members of tender committees are not obliged to declare their conflicts of interests, while the Ministry of Economic Development does not have any plans to further elaborate on conflict of interest, to provide any guidelines on training on this matter, thus leaving this crucial risk unattended.[412]
The Law on Public Procurement neither requires those involved in different stages of public contracting to have special qualifications, related to their tasks, nor does it provide that staff in charge of offering evaluations must be different from those responsible for the elaboration of the bidding documents.

While there are sufficient opportunities for training the bidders and awarding entities, in many cases the quality of such training is quite doubtful, to say the least.[413]

The Law introduces an independent review body (administrative commission at the Anti-Monopoly Committee, AMC) empowered to review complaints regarding public procurement. Capacity of the administrative commission to effectively review the complaints is questionable, since the law allows for a wider range of subjects to file

406 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15.

407 Article 10 of the Law on Public Procurement.

408 Article 23 of the Law on Public Procurement.

409 Article 8.1.19 of the Law on Public Procurement, Order of the Ministry for Economic Development № 922, 26 July 2010.

410 See, for instance: ; ; ; [accessed 29 December 2010].

411 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 59.

412 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 60.

413 Interview by Heinrich Hölzer, the Team Leader of the Project "Harmonization of Competition and Public Procurement Systems in Ukraine with EU standards", Public Procurement of Ukraine, 2010, № 12; [accessed 29 December 2010].

complaints against procurement decisions, while the AMC does not have local offices.[414]

The level of fees for complaints is rather high, *i.e.* UAH 5,000 [USD 625] for procurement of goods and services, and UAH 15,000 [USD 1875] for procurement of public works.[415] The fees may be too expensive for small and medium-sized enterprises and may provide an obstacle to use their right of appeal.[416]

Although before approval of the new Law on Public Procurement open bidding had been declared the main procedure for awarding public contracts, in 2009, 28.4 % of the funds provided for public procurement were allocated under single-source procedure.[417] Public procurement under this procedure was severely criticised by the Accounting Chamber, mainly due to the lack of effective control of its application by the Ministry of Economy, which led to abuse of the procedure by awarding entities and ineffective use of public funds.[418]

Objectivity in the contractor selection process is not ensured in law since selection criteria are defined in law broadly.[419] For instance Article 16.2 of the Law fails to define the exhaustive lists of documents which have to be submitted to awarding agency by economic operator to prove operator's financial, technical, and other capacity.

Public procurement is supervised by the Ministry of Economic Development.[420] This body can hardly be considered independent as it is subordinated to the Government. In addition, according to the Accounting Chamber, the professional level of the staff empowered to supervise the procurement is far from being satisfactory.[421]

Article 9 of the Law on Public Procurement states that the civil monitoring of public procurement has to be conducted through unrestricted access to all the information on procurement which is legally required to be made publicly available. This information is made public on special website (http://www.tender.me.gov.ua/), administered by the Ministry of Economic Development. However, this website does not contain all the information that is required to be posted on it, in particular – information on single-source procurement, minutes of the opening of the tenders, bidding documents, while the search of information is rather complicated.[422]

The Law on Public Procurement does not provide for black listing of companies convicted for corruption. There are no provisions in place providing for any sanctions which can be imposed on economic operators for violations of the legal requirements laid down in the Law on Public Procurement. Article 164-14 of the Code of Administrative Offences introduces liability for breaching the legislation on public procurement, however the sanctions prescribed can hardly be considered proportionate and dissuasive, since any infringements of the Law on Public Procurement regardless of their types result only in imposition of fines in amount of UAH 5,100-11,900 [USD 637-1,487].[423]

Key recommendations

- To implement comprehensive reform of the public service, aimed at clear delineation of political and professional public servants, ensuring professionalism, integrity of the servants and their protection against political interference, arbitrary discharge from office and arbitrary imposition of disciplinary sanctions, introducing competitive, transparent, and merit-based recruitment in public service, establishing clear and stable remuneration schemes adequate to the scope of tasks assigned to public servants;

414 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 60.

415 CMU Decree № 773, 28 July 2010.

416 EBRD, *Law in Transition online. Strengthening Public Procurement*, 2010: 10; OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 60.

417 The State Committee on Statistics, *Procurement of goods, services and works for the State budget funds in 2009*, 2009: 2.

418 ; [accessed 29 December 2010].

419 Article 16 of the Law on Public Procurement.

420 Article 7 of the Law on Public Procurement.

421 [accessed 29 December 2010].

422 Marusov, Andriy, *Support of the Development of the Website on Procurement and Use of the Information on the Website*, presentation at the international conference "The Important Problems within the System of Public Procurement in Ukraine", 16-17 November 2010, Kyiv.

423 Article 164-14 of the Code of Administrative Offences, 7 December 1984.

- to adopt the law defining hierarchy of different legal acts in the legal system of Ukraine;
- to adopt without further delay the Code of Administrative Procedures;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to introduce effective mechanisms of prevention, detection and regulation of the conflict of interest, to develop special conflict of interest regulations for different categories of officials;
- to bring the laws and secondary legislation governing public access to information in compliance with the new Freedom of Information Act (FOIA), to ensure enactment of the FOIA, to align the Law on Protection of Personal Data with the European standards by reviewing provisions hindering access to information on public officials, to supplement the legislation on information with provisions requiring public authorities to proactively make certain information on their activities publicly available, in particular via the websites or through other means;
- to adopt a separate law on asset declaration aiming to ensure transparency of income and expenses of certain categories of public servants (*e.g.* high-ranking servants), as well as to provide for possibility of verification of submitted declarations and to effectively detect cases of illicit enrichment;
- to adopt a general code of ethics applicable to all public officials based on international best practice, and to develop specific codes of ethics for different sectors of government;
- to adopt whistleblower protection measures for employees of the public sector who report suspicions of corruption within the relevant institutions against adverse consequences; to impose obligation on public servants to report on suspicious practices within the relevant institutions; and to raise awareness of the public sector employees on these measures;
- to explicitly prohibit funding of the state and local self-government bodies from the sources other than State Budget of Ukraine;
- to ensure adequate budget funding and delivery of the permanent and regular trainings for public officials on anti-corruption issues, ethics and integrity in the public service, targeted primarily at those officials who are employed in the areas vulnerable to corruption;
- to adopt the law on public participation in decision-making applicable to decision-making within the legislature, other state bodies and bodies of local self-government;
- to allocate adequate budget funds for implementation of the public education and awareness-raising programs/campaigns on anti-corruption matters;
- to introduce amendments to the Law on Public Procurement providing for the liability of the bidders for infringements of the law, mechanisms of prevention, detection and regulation of the conflict of interest in public procurement, introduction of e-procurement and inclusion of anti-corruption statements and codes of ethics into the list of bidding documents, as well as further aligning regulation of the procurement procedures with the EU standards.

5. Law Enforcement Agencies

SUMMARY

Law enforcement agencies in Ukraine are ineffective and weak institutions both in law and practice. Their accountability and integrity are undermined by insufficient state financing and widespread corruption. Investigation of corruption offences are mainly focused on low-level offenders and administrative misconduct. There is no genuine political will to prosecute high-profile corruption and law enforcement agencies lack independence to embark on a serious anti-corruption campaign. Unreformed legislation and lack of anti-corruption specialisation also contribute to the poor results in tackling corruption with law enforcement means.

The table below presents general evaluation of the law enforcement agencies in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Law Enforcement Agencies Overall Pillar Score: 39.58 / 100			
Dimension	Indicator	Law	Practice
Capacity 31.25/100	Resources	25	
	Independence	50	25
Governance 37.5/100	Transparency	50	25
	Accountability	75	25
	Integrity	25	25
Role 50/100	Corruption Prosecution	50	

Structure and Organisation

There are a number of law enforcement agencies in Ukraine, the main ones being the police, public prosecutors, the Security Service (that in addition to intelligence functions is also authorised to detect and investigate certain crimes). Criminal investigations are carried out also by the tax police. Various specialised units within existing law enforcement agencies deal with separate crime types *e.g.* organised crime and corruption offences. Public prosecutors are specialised according to stages of criminal procedure and functions of the public prosecution in Ukraine. There is no specialisation based on the type of specific crimes, *e.g.* corruption cases. Responsibility for corruption cases based on the "procedural specialisation" is therefore divided among investigators attached to the prosecutor's office who conduct pre-trial investigation, prosecutors who oversee the legality of investigations (including those conducted by investigators attached to the prosecution bodies), and prosecutors who later support accusation in courts. There are also prosecutors who oversee law enforcement agencies that perform operative and search activities, in particular in corruption cases. Investigators attached to the prosecutor's office have an exclusive jurisdiction to investigate corruption-related criminal offences.

Assessment

RESOURCES (PRACTICE) – SCORE 25

To what extent do law enforcement agencies have

adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Law enforcement agencies in Ukraine are not provided by the State with sufficient resources to operate effectively. Annual allocations from the State budget cover only about 40% of the necessary expenses – in 2009 bodies of the interior received UAH 8 billion [about USD 1 billion] out of required UAH 22 billion [about USD 2.7 billion][424]; State budget covered only 44% of the public prosecution office funding needs in 2006[425]. Lack of funding affects expenses covering salaries, equipment, material supplies, housing and social benefits for employees, etc.[426] This leads to an unacceptable practice of non-budgetary funding of law enforcement agencies through "voluntary contributions" (donations paid formally by legal entities as a non-compulsory assistance which often constitutes an indirect bribe), payments for administrative services provided by law enforcement bodies to legal and natural persons and assistance from local budgets administered by the local self-government bodies.

Out-of-budget funding of the law enforcement authorities is channelled through affiliated non-state charitable foundations, whose principal aim is to assist law enforcement agencies. Such arrangement can be characterised as nothing less than an institutionalised corruption condoned by the highest public officials. In December 2009 the Minister of Interior of Ukraine stated that the Ministry is forced to obtain money through paid services and charity and if these sources were closed "the police, as well as other law enforcement agencies, would operate ineffectively".[427] Another Minister of Interior in August 2010 acknowledged that annually the interior bodies receive about 500 automobiles as charity and also tried to justify this practice by the lack of proper state financing.[428]

According to the Accounting Chamber of Ukraine, in 2007 the law enforcement agencies and the judiciary received more than UAH 400 million [about USD 50 million] in the form of private voluntary donations and gifts, and subventions from local budgets.[429] When reviewing such practice of non-budgetary proceeds in the public prosecution bodies the Accounting Chamber called for its elimination and prohibition by the law, as it can be considered as a hidden influence on the activities of the prosecution service.[430] In April 2008 the President of Ukraine issued a decree thereby recognising that the practice of providing material, financial, organisational and other charitable assistance to courts and law enforcement authorities should be terminated.[431] The decree instructed the Government to submit in the Parliament a draft law banning such actions and to foresee in the State Budget for upcoming years necessary funds to ensure effective operation of the judiciary and law enforcement bodies. This practice, however, has persisted.

INDEPENDENCE (LAW) – SCORE 50

To what extent are law enforcement agencies independent by law?

Current legislation only partly guarantees independence of law enforcement agencies. The Law on the Prosecution Service (Article 7) forbids any interference in the work of prosecutors by state and local self-government authorities, their officials, mass media and civil society organisations. Any address by an official regarding specific cases or materials considered by the prosecutor's office should not contain any instructions or demands concerning results of its consideration.

424 According to the Accounting Chamber of Ukraine; http://www.ac-rada.gov.ua/control/main/uk/publish/article/1430832 [accessed 29 December 2010].

425 According to Press Service of the Accounting Chamber of Ukraine, 2007, http://www.ac-rada.gov.ua/control/main/ru/publish/article/997404 [accessed 29 December 2010].

426 Interview by Anatoliy Onishchuk, head of Trade Union of Interior Bodies Employees, *Zerkalo Nedeli*, December 2009; http://www.dt.ua/1000/1050/68176 [accessed 29 December 2010].

427 http://www.dt.ua/1000/1550/68189 [accessed 29 December 2010].

428 http://www.pravda.com.ua/news/2010/08/20/5316863 [accessed 29 December 2010].

429 http://www.dt.ua/1000/1550/62934 [accessed 29 December 2010].

430 According to Press Service of the Accounting Chamber of Ukraine, 2007, http://www.ac-rada.gov.ua/control/main/ru/publish/article/997404 [accessed 29 December 2010].

431 Presidential Decree № 328, 11 April 2008 on Some Measures to Prevent Corruption in Courts and Law Enforcement Agencies, http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=328%2F2008 [accessed 29 December 2010].

Prosecutor is supposed to carry out his authority in criminal proceedings independently from any bodies or officials, in accordance with the law and instructions of the Prosecutor General of Ukraine (Article 25 Criminal Procedure Code of Ukraine [CPC]). The CPC provides also for a certain level of autonomy of investigators. Decisions of the latter, however, are subject to review by heads of investigative units and prosecutors.

The public prosecution service is established by the Law as a uniform and centralised system, with prosecutors at different levels in a hierarchical subordination ultimately responsible to the Prosecutor General of Ukraine. The entire system is "based on the principle of subordination of junior public prosecutors to higher ones".[432] According to the 1996 Constitution of Ukraine (which was reinstated by the Constitutional Court decision of 30 September 2010) the Prosecutor General is appointed and dismissed by the President of Ukraine, but consent of the Parliament is required only for appointment of the Prosecutor General. The Parliament can, by simple majority, dismiss Prosecutor General through a no-confidence vote. The term of office of the Prosecutor General and subordinate public prosecutors is five years.

Provisions on tenure of pubic prosecutors (short term of office combined with the possibility of reappointment) does not guarantee their independence.[433] Appointment (and re-appointment) of the Prosecutor General by the President and the Parliament and possibility of no-confidence vote by a political body undermine independence from political interference. The law does not establish rules on merit-based appointment and promotion of prosecutors. Such rules, as well as on the dismissal of prosecutors, are set by the Prosecutor General and are not based on transparent and objective criteria.[434] The same concerns appointment, promotion and dismissal of staff in the interior bodies and the Security Service of Ukraine.

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent are law enforcement agencies independent in practice?

Law enforcement agencies and their officers are to a large extent dependent on their superiors and the political authorities. In the strictly hierarchical systems of the prosecution and the interior bodies having politically dependent Prosecutor General and the Minister of Interior on top makes all levels of these law enforcement bodies susceptible to illegal influence. There are numerous cases of undue influence on active investigations, including from the highest political level.[435] Politicisation of the law enforcement agencies, in particular of the prosecution bodies, was recognised by the President of Ukraine and the Prosecutor General himself.[436]

Appointments in practice are not carried out based on clear professional criteria and arbitrary dismissals are frequent. In 2005 and 2010 after change of the state administration following presidential elections a significant number of senior law enforcement employees were dismissed or demoted and replaced with persons loyal to the new authorities.[437] For instance, in 2010 in the Ministry of Interior after appointment of the new minister all but one deputy minister, 90% of heads of departments, most heads of units and divisions in the central office of the Ministry, as well 24 out of 27 heads of regional offices were replaced.[438]

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions in place to

432 Article 6 of the Law of Ukraine on the Prosecution Service.

433 Venice Commission, *Opinion on the Present Law and on the Draft Law of Ukraine on the Public Prosecutor's Office*, 7 December 2001, http://www.venice.coe.int/docs/2001/CDL(2001)128-e.asp [accessed 29 December 2010].

434 *Who and how can manipulate a prosecutor in independent Ukraine*, article by Oleksandr Shynalsky, former Deputy Prosecutor General of Ukraine, http://www.uap.org.ua/ua/journal/2_8.html?_m=publications&_t=rec&id=15401 [accessed 29 December 2010].

435 See, among others, cases of Valentyna Horobets freed from custody upon direct instruction of the President of Ukraine to the Prosecutor General in May 2005 (http://www.dt.ua/1000/1030/52441 [accessed 29 December 2010]) and Olena Parubiy who was also released from detention after interference of a senior official of the Presidential Administration in May 2010 (http://www.pravda.com.ua/news/2010/05/18/5053545 [accessed 29 December 2010]).

436 http://www.president.gov.ua/news/15924.html [accessed 29 December 2010].

437 http://focus.ua/politics/121018 [accessed 29 December 2010].

438 http://www.khpg.org/index.php?id=1276762812 [accessed 29 December 2010].

ensure that the public can access the relevant information on law enforcement agency activities?

While some provisions on transparency of law enforcement agencies exist, they are not sufficiently comprehensive and contain a lot of loopholes. No law requires disclosure of assets of law enforcement officials, except for those who are civil servants and fall under regulation of the relevant legislation. The latter, however, is itself deficient and does not provide for an effective system of disclosure and control over assets/income of public officials [see: *Public Sector*]. Asset disclosure by officials and employees of the prosecution bodies is envisaged by an instruction issued by the Prosecutor General and covers submission by such persons and their family members of information on "assets, income, expenses, financial liabilities, including abroad, according to procedure and in the scope as provided by legal acts".[439] A similar requirement is provided for candidates for posts in the prosecution service. However, these provisions lack detail, refer to other unspecified legal acts and therefore can hardly be effectively enforced.

Legislation on law enforcement agencies contains some requirements on publication of information on their activities. General requirement on providing information upon request is also contained in the Law on Democratic Civil Oversight over Military Organisation and Law Enforcement Agencies (see, among other provisions, Chapter V of the Law). According to the law, the prosecution service should function openly and report to the state authorities and the public on the situation with "legality" in the country. Prosecutor's General Office submits annual report to the Parliament. Regional prosecutors are also supposed to present a report twice a year at the sessions of the respective local councils. Security Service reports annually to the President and the Parliament and also informs them regularly on its activities.

Rights of crime victims are guaranteed by the Criminal Procedure Code of Ukraine (in particular, Articles 49, 52, 52-1, 267, 348, 384), including the right to access the case file after the pre-trial investigation is finalised and to take part in court hearings. However, acknowledgment of the status of a crime victim requires a special decision by investigator or judge. A victim of a crime has no right to access case file that was closed by the investigator. Legal limitations on the access to case file by victim of a crime and his representative undermine legal status of the crime victim in criminal proceedings. It can also be exploited by the investigative authority and public prosecution to conceal illegal actions or inaction, in particular induced by corruption, by arbitrarily denying access to a case-file and thus concealing possible indications of misconduct.[440]

TRANSPARENCY (PRACTICE) – SCORE 25

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

The General Prosecutor's Office publishes on its web-site annual activity reports that include detailed statistics and analysis of its main activities. Security Service and the Ministry of Interior regularly inform about detected and investigated crimes, including corruption offences.[441]

However, the results of the field tests done within the framework of this assessment have revealed that the level of transparency of the law enforcement agencies can hardly be considered high (see the Table 9 below).

439 Prosecutor General's Order on Organisation of Human Resources Management in Prosecution Bodies, № 2гн, 20 January 2006.

440 http://www.nbuv.gov.ua/portal/Soc_Gum/Vaau/2009_1/Text/09bvipks.pdf [accessed 29 December 2010].

441 See, for instance, http://ssu.kmu.gov.ua/sbu/control/uk/publish/article;jsessionid=2D420C4C6DE24F59D7148F8CD7616774?art_id=100779&cat_id=100356; http://acrc.org.ua/index.php?page=news&id=1118; http://acrc.org.ua/index.php?page=news&id=1084&start=40 [accessed 29 December 2010].

Table 9. The Results of Consideration of the Requests for Information by the Law Enforcement Agencies

The requester	The content of the request	Results of the requests' consideration
The General Prosecutor's Office	The request to provide information on the number of criminal cases instituted by the prosecutors under Articles 364-369 of the Criminal Code of Ukraine in 2009	Letters № 12/1/2-79 âèõ-10, 9 August 2010; № 21/1/2-83âèõ-10, 20 August 2010. The requested information was not provided on the ground that the prosecutors submit the relevant information to the State Committee of Statistics, from which it can be obtained by the requestors
	The request to provide information on the average salaries of the prosecutors employed by the General Prosecutor's Office	Letters № 11/1-1407 âèõ.10, 17 August 2010, № 11/1-1408 âèõ.10, 17 August 2010. Written refusal to provide information on the grounds that access to it was restricted and the positions of the prosecutors were not specified in the requests.
The Ministry of Interior	The request to provide information on the number of employees of the Main Department on Fight against Organized Crime.	No response to both requests.
	The request to provide information on the number of crimes related to corruption (Articles 364-369 of the Criminal Code) detected by the police in 2009.	Letters №. 4007 and 4008, 13 August 2010. Requests fulfilled.
The Security Service of Ukraine (SSU)	The request to provide information on the number of crimes related to corruption detected by the SSU in 2009	Letter № 6/Ã-20/2, 10 August 2010. Request fulfilled.
	The request to provide information on the number of the employees of the Main Department on Fight against Corruption and Organized Crime of the SSU	Letters № 14/Ë-619/14-20280, 27 July 2010; № 14/Ê-590/14-20281, 26 July 2010. The information was not provided because the Department on Fight against Corruption and Organized Crime of the SSU was named "Unit" in the requests, and the SSU officials stated that there was no Unit on Fight against Corruption and Organized Crime within the SSU structure, only the Department on Fight against Corruption and Organized Crime was established.

ACCOUNTABILITY (LAW) – SCORE 75

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

Ukrainian criminal law is based on mandatory prosecution principle, whereby there is no discretion on behalf of the prosecutor or investigator regarding instigating criminal proceedings when there are sufficient indications of a crime. Decision to launch or refuse a criminal investigation has to be explained and can be appealed against in court.

Rights of victims of crimes are guaranteed by the Criminal Procedure Code but with a number of limitations, starting from the recognition of the status of victim [see: *Transparency (law)*]. One of the important rights guaranteeing access to justice is the right of victim to support accusation and request prosecution of the indicted even after the public prosecutor decided to drop charges.

By law a complaint against misconduct by the police can be filed with the prosecutor's office and the Ombudsperson. Although only redress through Ombudsperson can be considered as an independent mechanism, since the prosecutor's office relies on the executive for financing and has conflicting responsibilities – presenting criminal accusation, investigating criminal offences, supervising other law enforcement agencies and ensuring legality in activity of state authorities.[442] Law enforcement officials are not immune from criminal prosecution. There is no specialised law enforcement agency or unit to detect and investigate corruption offences committed by law enforcement officials. However, investigators attached to the prosecutor's office have an exclusive jurisdiction to investigate crimes committed by employees of law enforcement agencies.

442 According to the European Court of Human Rights case-law, a complaint lodged with public prosecutors in Ukraine cannot be considered as an effective and accessible remedy, given that "the prosecutor's status under domestic law does not offer adequate safeguards for an independent and impartial review of the applicant's complaints". Judgment in case of *Melnik v. Ukraine*, application no. 72286/01, § 69, 28 March 2006 (see also the judgments in *Merit v. Ukraine*, no. 66561/01, § 63, 30 March 2004; *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 116, and *Salov v. Ukraine*, no. 65518/01, § 58, 6 September 2005).

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

The public prosecutor's office regularly reports publicly on its activities both by publishing annual reports and informing about detected and investigated crimes. Decisions of prosecutors can be challenged in courts. The independent mechanism of complaint with the office of the Ombudsperson is mostly ineffective – the office of Ombudsperson is lacking resources and legal powers to effectively address human rights violations [see: *Ombudsman*]. Public prosecutor's office remains the main mechanism for complaints by citizens[443], which is explained by the Soviet tradition of strong *Prokuratura* whose functions go far beyond criminal prosecution, weak judiciary and lack of effective free legal aid system.

The existence of several agencies authorised to detect corruption offences, including within law enforcement system, fosters mutual control among various bodies. However, due to lack of anti-corruption specialisation and existing performance evaluation system in law enforcement based on statistics of detected/uncovered cases the accountability is weak.[444] Very often law enforcement officials who are indicted are low level; many offences are punished according to administrative law, which does not provide for adequate sanctions. In cases when criminal investigations are launched they are often concluded with mild sentences, rarely an imprisonment.[445] Therefore, in practice the level of immunity among law en-

443 For example, in 2009 prosecutor's office addressed 14,700 complaints concerning compliance with legislation on administrative offences by various state authorities (including the interior bodies) and based on them filed about 30,000 acts of prosecutorial reaction; as a result more than 20,000 illegal resolution on administrative offences were quashed, 14,000 public officials were brought to liability. See: Prosecutor's General Office, *Annual Report 2009*; http://www.gp.gov.ua/ua/vlada.html?_m=fslib&_t=fsfile&_c=download&file_id=159760 [accessed 29 December 2010].

444 Interview by Mrs. Oksana Markeyeva, National Institute of Strategic Studies (former head of division on law enforcement in the secretariat of the National Security and Defence Council of Ukraine), with author, 28 July 2010.

445 Interview by Ruslan Riaboshapka, head of Government's Bureau on Anti-Corruption Policy, with author, 27 July 2010.

forcement officials is high, especially among senior staff.

Until recently there was an effective mechanism of internal monitoring and control in the interior bodies – special positions of human rights assistants to the Minister of Interior who comprised a department on human rights within the Ministry. Together with civil society representatives they operated mobile human rights monitoring groups in the regions. This mechanism was abolished by the new Minister of Interior in April 2010.

INTEGRITY (LAW) – SCORE 25

To what extent is the integrity of law enforcement agencies ensured by law?

While there is no code of conduct for the police as such, rights and duties of the police are regulated by the Law on militia (police) and the Disciplinary Statute of the Interior Bodies that is also adopted as a law. The latter, however, regulates mainly disciplinary liabilities and cannot replace the code of professional ethics. There are separate disciplinary statutes for the prosecution office (adopted by the Parliament in 1991[446]) and the customs service; the Security Service servicemen are covered by the Disciplinary Statute of the Armed Forces.

Regulations on the conflict of interests, gifts, asset disclosure and *pantouflage* (post-employment restriction) are included in the new draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine which was passed by the Parliament in the first reading on 23 December 2010. Rules on the conflict of interests and financial disclosure will need to be further elaborated in special laws which are pending in the Parliament. Until these laws are adopted legislative provisions on integrity in law enforcement remain insufficient.

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Due to lack of proper legislative mechanisms and legal culture the level of integrity in the law enforcement system is very low. The most notorious example is the case of the head of Security Service of Ukraine Mr. Khoroshkovskiy, who - being one of the most affluent businessmen in Ukraine and while continuing to manage his business assets, including the largest in the country mass media holding, - was appointed to his position[447] and also appointed by the President a member of the High Council of Justice[448] – a state authority dealing with appointment and dismissal of judges.[449]

All law enforcement agencies have units that conduct internal investigations. For example, in 2009 personnel inspection of the Ministry of Interior conducted more than 12,000 internal inquiries (including about 7,000 upon citizens' complaints and 1,000 – upon submission of prosecution bodies and courts) and 4,200 interior bodies employees were brought to disciplinary liability (from which 732 employees were dismissed).[450] Overall, there are about 300,000 employees of the interior bodies. At the same time, the inspection is a structural unit of the Ministry's Department on Staff Management, therefore has several levels of subordination and does not enjoy an adequate autonomy.

CORRUPTION PROSECUTION (LAW AND PRACTICE) – SCORE 50

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Law enforcement agencies have sufficient legal means to effectively detect and investigate corruption offences. In order to verify allegation of a criminal corruption offence and detect it, operative units

446 Disciplinary Statute of the Prosecution Service was adopted by the paliament's resolution. This does not comply with the 1996 Constitution of Ukraine that stipulates that activities of the prosecution service and disciplinary responsibility of persons should be regulated by law.

447 VRU Resolution № 1967-VI, 11 March 2010.

448 President's Decree № 644/2010, 31 May 2010.

449 http://assembly.coe.int/Documents/WorkingDocs/doc10/edoc12357Add.htm; http://www.dw-world.de/dw/article/0,,5667040,00.html [accessed 29 December 2010]. Mr. Khoroshkovskiy was dismissed by the President from the HCJ on 16 December 2010 (Decree № 1128/2010, 16 December 2010).

450 http://www.kmu.gov.ua/control/publish/printable_article?art_id=243325132 [accessed 29 December 2010].

of the law enforcement agencies can conduct special detective operations, which are regulated by a special law. Such measures include tapping and recording of telephone conversations, taking photos, making video-recording, intercepting mail, covert entry, using informants, controlled delivery, etc. Covert operative measures require court authorisation and can be taken to detect or establish evidence of serious or very serious crimes (*e.g*. aggravated forms of abuse of authority or bribery). One of such special measures is controlled bribe-giving that can be carried out by law enforcement agencies if information was filed about possible corrupt transaction (usually by the person from whom a bribe was solicited). To prevent abuse of this special technique the Criminal Code envisages responsibility for bribe provocation (Article 370).

Law enforcement agencies in Ukraine actively investigate corruption offences. However, they are mainly focused on administrative corruption and offences committed by low- and mid-level public officials. According to the Prosecutor's General Office, in 2009 there were 2102 bribery cases detected by law enforcement agencies (8.5% less than in 2008). 1,700 indictments were sent to court in corruption-related cases concerning 1,900 persons (98.6% of these cases were investigated by prosecutor's offices). At the same time law enforcement agencies submitted to courts 5,400 records on administrative corruption offences; as a result more than 4,000 officials were held responsible.[451] Among them 442 employees of the law enforcement agencies: 224 from interior bodies, 184 – tax administration, 32 – customs officials, 2 – Security Service officials.[452]

The number of senior public officials held responsible for administrative corruption has been steadily increasing (see the Chart 4).[453] This, however, does not change the fact that administrative sanctions are mild and cannot be considered as proportionate and dissuasive. After legislative amendment in 2005 administrative responsibility for corruption does not even trigger an automatic dismissal of the official. In 2009 only 52 officials were dismissed as a result of corruption offence [see: *Public Sector*].

Chart 4. Civil Servants of 1-4 Categories Brought to Administrative Liability, 2005 - 2009

451 1,658 persons or 41% in cases initiated by prosecutors, 1,277 persons or 31% in administrative cases investigated by the Security Service, 975 (24%) by the interior bodies and 158 (4%) by the State Tax Administration.

452 Prosecutor's General Office, *2009 Annual Report*.

453 Prosecutor's General Office, *2009 Annual Report*.

Cases of criminal corruption rarely end up in courts and even if they do offenders receive lenient sanctions. For example, in 2008 the Ministry of Interior registered 1,910 cases of bribery (2,146 cases in 2007), but only 674 persons indicted with bribery were brought to court (3 of them were acquitted and about 19% were released from criminal liability due to amnesty or on other grounds).[454]

Effective prosecution of corruption is also hindered by the law enforcement statistics and performance evaluation focused on the crime clearance ("elucidation") rate and on the policy whereby an acquittal is equivalent to a professional failure of the prosecutor. This policy attitude in particular contributes to the reluctance or even refusal of prosecutors to take up complex cases, use circumstantial evidence in corruption cases or deal with retroactive anti-corruption investigations.

Key recommendations

- to introduce amendments to the Constitution and laws of Ukraine aimed at reforming prosecution service, in particular, to establish objective and merit-based criteria for selection and promotion of prosecutors, to change the current procedure for appointment and dismissal of the Prosecutor General and other prosecutors in order to ensure their independence, to provide a clear closed list of grounds for early termination of office of the prosecutors;
- to set clear objective and merit-based criteria for selection of law enforcement staff based on competition; to separate administrative and political posts in the law enforcement system to prevent massive replacement of staff after change of the government;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to prohibit by law any contributions to the law enforcement agencies, other than from the State Budget of Ukraine, and to ensure sufficient budgetary allocations to the law enforcement agencies in the annual laws on state budgets;
- to adopt new version of the Criminal Procedure Code, providing for, *inter alia*, review of the criminal procedure status of crime victims, extension of the scope of their rights;
- to adopt a separate law on asset declaration providing for disclosure of income and expenses of certain categories of public officials (in particular, law enforcement employees), as well as to provide for the possibility of verification of submitted declarations to effectively detect the cases of illicit enrichment;
- to consider restoring the internal mechanism of human rights monitoring and control in the Ministry of Interior;
- to separate investigation of corruption offences from the public prosecution by abolishing investigators attached to the prosecutor's office;
- to consider setting up a specialised investigation agency to detect and investigate high-level corruption;
- to introduce anti-corruption specialisation of prosecutors, to ensure adequate budget funding and delivery of the uniform and regular trainings for prosecutors and law enforcement staff empowered to investigate corruption offences;
- to introduce an effective system of free legal aid to ensure better citizen access to justice;
- to adopt codes of conduct for the police and prosecutors, to adopt whistleblower protection measures for employees of the law enforcement agencies, to introduce effective mechanisms of prevention, detection and regulation of the conflict of interest for law enforcement agencies;
- to consider abolishing administrative corruption offences in line with international anti-corruption conventions to which Ukraine is a Party;
- to introduce criminal liability for trading in influence and illicit enrichment;
- to introduce automatic dismissal of public officials held responsible for corruption offences;
- to improve legislation on confiscation by ensuring effective forfeiture of the bribe and proceeds of bribery.

454 http://www.dt.ua/1000/1050/66310/ [accessed 29 December 2010].

6. Electoral Management Body

SUMMARY

The electoral management body (EMB) – the Central Election Commission – generally has sufficient resources. However, if the CEC managed to establish its regional offices as provided for by law, it could carry out its activities more effectively. The procedure for appointment of the EMB members, as well as the instances of political and other external interference in the work of the Central Election Commission, cast doubts on the EMB's independence. Whereas the legislation seeks to ensure the transparency of the EMB activities, the practice of making the decisions *in camera* to some extent decreases the level of transparency of the institution. The provisions to ensure that the EMB has to report and be answerable for its actions are insufficient. In practice, the accountability of the EMB is also impeded by its inefficiency in dealing with complaints regarding the elections. Although the rules of conduct for the EMB staff are laid down in legislation, the latter does not properly regulate declaration of assets, conflict of interest and the receipt of the gifts by civil servants. The Law does not provide the EMB with access to all information on funding of election campaigns, which weakens its role in campaign regulation. Legal shortcomings and piecemeal approach to voter education significantly decrease the effectiveness of the EMB activities in terms of administration of the elections.

The table below presents general evaluation of the EMB in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Electoral Management Body Overall Pillar Score: 50/100			
Dimension	Indicator	Law	Practice
Capacity 50/100	Resources	50	
	Independence	75	25
Governance 50/100	Transparency	75	75
	Accountability	25	25
	Integrity	50	50
Role 50/100	Campaign Regulation	50	
	Election Administration	50	

Structure and Organisation

The elections in Ukraine are administered by a three-level election administration, that includes the Central Election Commission (the CEC or the Commission), territorial (district) election commissions, and precinct election commissions. The CEC is the highest level commission for all other commissions, therefore it can be considered as the EMB in terms of the methodology of this assessment. The legal status and scope of powers of the CEC are anchored in the 2004 Law on the Central Election Commission (the Law on the CEC), and in three election laws, namely in the 1999 Law on the Election of the President of Ukraine (the Law on Presidential Election), the 2004 Law on the Elections of the People's Deputies of Ukraine (the Law on Parliamentary Elections), and the 2010 Law on Elections of the Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea, Local Councils, and Village, Town and City Mayors (the Law on Local Elections). As the local elections are administered mainly by the territorial election commissions rather than by the CEC, the

below assessment focuses on analysis of the laws governing the national elections.

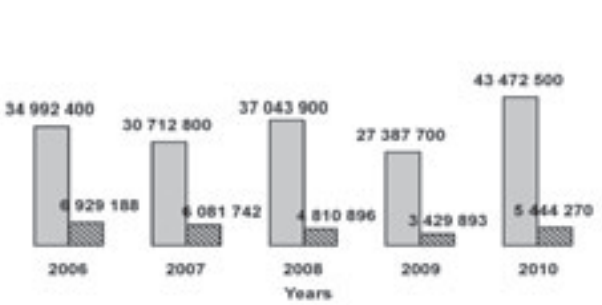
The CEC consists of 15 members, who are appointed and dismissed by the Parliament upon proposals of the President. The President's proposals have to take into account the results of consultations with the parliamentary factions. The member of the CEC is appointed for a seven-year term. The CEC members among themselves elect the head, two deputy heads and the secretary of the Commission. The Secretariat of the Commission provides the CEC with technical, legal, expert and other support. The Secretariat is headed by the Chief, who is appointed and discharged from office by the head of the Commission.[455] The structure of the Commission also includes the State Register of Voters Service, a separate unit within the CEC assigned to ensure the effective administration of the State register of voters. The chief of staff of this Service is appointed and dismissed by the head of the CEC.[456] In order to ensure the effective functioning of the CEC at the regional level, the Law on the CEC provides for the establishment of the 27 regional offices of the CEC. However, these offices have never been established.

Assessment

RESOURCES (PRACTICE) – SCORE 50

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

Chart 6. State Budget Funds Allocated to the CEC, 2006-2010



Sources: The 2006 Budget Law № 3235-IV, 20 December 2005; the 2007 Budget Law № 489-V, 19 December 2006; the 2008 Budget Law № 107-VI, 28 December 2007; the 2009 Budget Law № 835-VI, 26 December 2008; the 2010 Budget Law № 2154-VI, 27 April 2010.

The Commission's institutional costs are covered by special budget program "The Guidance and Management in the Field of Elections and Referenda". The funds allocated to the CEC under these program are presented in the Chart 5.

According to the information provided by the CEC Secretariat, the existing level of funding of the CEC as the institution generally allows the Commission to carry out its functions in effective way.[457] In addition to institutional costs, the state budget also covers the administration of the elections and the functioning of the State register of voters. When the 2009 Presidential Elections[458] and the 2010 Local Elections were held,[459] the members of Commission repeatedly complained that the budget funds to cover the CEC activities pertaining to preparation of elections were not allocated in time or were insufficient.

In general, human resources and technical facilities of the Secretariat are sufficient for effective operation of the CEC.[460] The overwhelming majority of the CEC members have university degrees in law. The Secretariat of the Commission employs 195 civil servants,[461] who have appropriate qualifications to exercise their duties.[462] The Commission is committed to some professional development initiatives for the Secretariat employees [see: *Integrity (practice)*]. A more effective functioning of the Commission could be facilitated through the establishment of the CEC regional offices (divisions of the CEC Secretariat), which could provide the lower level commissions with technical and information assistance.[463] If this was the case, the Commission's workload would

455 See: The Regulations on the CEC Secretariat, approved by the CEC Decision № 73, 26 April 2005.

456 See: The Regulations on the State Register of Voters Service, approved by the CEC Decision № 34, 26 May 2007.

457 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

458 [accessed 29 December 2010]. See also OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 4, 7.

459 [accessed 29 December 2010].

460 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

461 Annex 1 to the CEC Decision № 568, 17 December 2007.

462 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

463 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

significantly decrease.[464] For unknown reasons, these offices have never been established by the Commission, although such possibility is envisaged by Article 35 of the Law on CEC.

INDEPENDENCE (LAW) – SCORE 75

To what extent is the electoral management body independent by law?

The Constitution of Ukraine lays down the procedure for appointment and dismissal of the CEC members,[465] but it does not define the legal status of the Commission. The latter is anchored mainly in the Law on the CEC. Article 3 of the latter defines the Commission as independent collective decision-making state body. It also envisages a number of mechanisms aimed to ensure the independence of the body.

First, undue interference with the CEC activities is explicitly prohibited. Second, the members of the CEC are appointed and dismissed by the legislature on the basis of the President's proposals. Such a procedure for appointment and dismissal of the CEC members is supposed to ensure the independence of the EMB from both the political parties represented in the Parliament and the head of the state. Third, the head of the CEC, two deputy heads, and the secretary of the Commission are elected directly by the CEC members among themselves by a secret vote. Fourth, the members of the Commission are appointed for a 7-year term that exceeds the term of office of the President and the Parliament. Fifth, the Law on the CEC sets a number of requirements with which the candidates for membership in the EMB have to comply. In particular, they have to be eligible to vote; the head of the CEC, his deputies, the secretary and not less than 5 other members of the CEC must have university degrees in law. The Law, furthermore, provides for incompatibility requirements, *i.e.* the members of the Commission are not allowed to combine membership in the EMB with other positions and activities, for example, with a representative mandate, business activities, and membership in political parties. Sixth, the Law sets an exhaustive list of grounds for early termination of office of the CEC member, while all the members of the Commission can be discharged from office at a time only on condition that the relevant President's proposal is approved by two-thirds majority of votes of all members of the Parliament. The Commission can independently adopt its internal documents, such as the Rules of Procedure, the Regulations on the CEC Secretariat, as well as to determine the structure of the Secretariat and the list of members of the Secretariat staff. Seventh, before entering the office each member of the CEC has to be sworn in, committing him/herself to maintain political neutrality, honesty and impartiality (the breach of the oath constitutes the grounds for pre-term termination of the member's office).[466]

The main factor that may hamper independence of the Commission is the procedure for appointment of its members.[467] For instance, the decisions on appointment of the CEC members are made by the absolute, not qualified majority of the MP votes, thus increasing the political influence on the appointments, in particular in the case when the President represents parliamentary majority. Another factor is that, in contrast to the laws on other independent bodies with the competence framed by the Constitution (*e.g.* the Accounting Chamber, the Parliament's Commissioner on Human Rights), the Law on the CEC does not provide for the special mechanisms aimed to ensure appropriate funding of the CEC, in particular if pre-term elections are called.[468]

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent does the electoral management body function independently practice?

The decrease in confidence in the CEC is typical for electoral periods, while in between the elections the Commission is generally supported by the citizens[469] (see the Table 10 below).

464 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

465 Article 85.1.21 of the Constitution of Ukraine.

466 Articles 3, 6 – 9, 30, 31-1 of the Law on the CEC.

467 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

468 See, for example, Article 36 of the Law on the CEC.

469 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

Table 10. Confidence in the CEC in March 2005 and June 2007, %

	March 2005 (after the 2004 presidential election)	June 2007 (before the pre-term parliamentary elections)
Confidence in the CEC	44.9	22.3
Distrust of the CEC	25.9	43.8

Source: The "Democratic Initiatives" Foundation, *Press release "The attitude of the citizens towards the 2007 elections"* (in Ukrainian), 3.

The external influence on the CEC activities has mainly unofficial (informal) nature,[470] however the members of the CEC acknowledge the fact that attempts of political pressure on the Commission do exist, as well as the fact that political pressure becomes even more severe once the elections are called.[471] The Parliament twice (in 2004 and 2007)[472] passed the decisions on pre-term termination of office of all the CEC members and on appointment of new members of the Commission. In both cases the Parliament's decisions were politically motivated. For instance, in 2004, all the CEC members were sacked as a result of political compromise between the President Leonid Kuchma and two main presidential candidates, while in 2007 pre-term discharge from office of the CEC members constituted one of the preconditions for conducting early parliamentary elections and settlement of political conflict between the President and parliamentary majority.[473]

During the election campaigns, some political parties noted the cases of direct intrusion into the CEC activities. Among such cases is, in particular, the appointment on 7 June 2007 of the President's Representative in the CEC, that was considered by the Party of Regions as interference with the CEC activities,[474] since the Law on the CEC does not envisage the possibility of representation of certain officials in the Commission. Some members of the Commission noted other cases of undue interference with the Commission's activities, in particular when "certain" bodies of power and politicians blocked up launching the State register of voters.[475] In addition, in 2007, the representatives of one of political parties forcibly blocked up the work of the Commission, thus making impossible holding the meetings where the decisions pertaining to early parliamentary elections were expected to be made.[476]

The 2007 OSCE/ODIHR Election Observation Mission Report pointed out that several important decisions of the CEC were taken along party lines, and some disputes among the members on certain key issues "raised doubts as to the ability of the election administration to conduct the process free from political party interests."[477] One of the reasons for that was the political affiliation of the Commission members with parliamentary factions.[478]

TRANSPARENCY (LAW) – SCORE 75

To what extent are there provisions in place to en-

470 Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010; Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

471 Andriy Mahera, the deputy head of the CEC, *The Most Simple Way to Block Up the Elections is Not to Provide Funding*; [accessed 29 December 2010].

472 VRU Resolution on Pre-Term Termination of Office of the Members of the Central Election Commission, № 2224-IV, 8 December 2004; VRU Resolution on Pre-Term Termination of Office of the Members of the Central Election Commission, № 1120-V, 1 June 2007.

473 Paragraph 6 of the Joint Statement by the President of Ukraine, the Head of the Verkhovna Rada of Ukraine, and the Prime Minister on Urgent Measures to Settle the Political Crisis by Holding the Pre-term Parliamentary Elections, 27 May 2007.

474 See, for instance, the petition of the Party of Regions to the President of Ukraine, the Head of the Verkhovna Rada of Ukraine, the Prime Minister and Prosecutor General pertaining to pressure and direct intrusion into the activities of the CEC, 13 June 2007; [accessed 29 December 2010].

475 Mykhailo Okhendovskyi, speech at the Open Consultation Meeting of the CEC members pertaining to the problems derived from the establishment of the State register of voters, 2 July 2008; [accessed 29 December 2010].

476 [accessed 29 December 2010].

477 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 2, 7.

478 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 6.

sure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Under the Law on the CEC, the Commission has to carry out its activities in a transparent manner.[479] Article 4 of the same Law states that certain persons (for instance, the candidates for national elections, authorised representatives of the electoral subjects (*i.e.* candidates, parties and blocs in national elections), international observers and representatives of the media) may be present at the sittings of the EMB (which are the main forms of the CEC functioning) without invitation or consent of the Commission. Other persons may attend the sittings of the EMB only if allowed by Commission's decision. When the CEC considers a complaint, a complainant or his/her representative, as well as other persons concerned, may be also present at the Commission's sitting. The election laws envisage some additional mechanisms aimed to ensure transparency of the CEC activities. In particular, the CEC is legally required to publicly announce the election results, make public information on the number of voters who will vote on the basis of absentee voting certificates, the documents on the delivery and receipt of the ballots, information on the number of voters included into the voter lists, on the number of voters who received the ballots, and so forth.[480] It should be mentioned, however, that the legal provisions governing the parliamentary and presidential elections to some extent contradict each other. For instance, in the presidential election, in contrast to the parliamentary elections, the CEC is not obliged to publish on its website information on the number of voters on voter lists and on the number of voters who received the ballots at the polling stations.

All the CEC decisions, including the decisions on appointment of the members of the territorial election commissions, on establishment of the constituencies, adoption of the plans and schedules for elections, on establishment of special and foreign precinct commissions (polling stations), on announcement of warning to the candidates and parties in elections, are the subject to mandatory publication in the media. However, one of the problems hindering transparency of the CEC activities is the lack of provisions requiring the Commission to make public its draft decisions in advance before consideration.[481]

The laws on public access to information, in particular the Law on Citizen Inquiries and the Law on Information, are applicable to the CEC. The relevant legal framework contains some gaps and shortcomings [see: *Public Sector, Media*] that do not facilitate adequate public access to information on activities of the authorities, including the CEC. On 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which provides for a number of improvements [see: *Public Sector*] in terms of access to information. However, the FOIA will come into force only in May 2011.

The role of the CEC in ensuring the transparency of private funding of the election campaigns is weakened by significant gaps in regulation. For instance, the Law on Parliamentary Elections does not require the CEC to make public the reports on the receipt and use of election funds by parties and blocs. The Law on Presidential Election requires the CEC to make public information on the value of election funds and electoral expenditures, but not the information on the value of donations to election funds and on the donors whose donations exceed certain ceiling.[482] The absence of such requirements does not comply with the provisions of Articles 3 and 8 of the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, that recommend the member states of the Council of Europe to ensure the transparency of donations to political parties and transparency of electoral funding, as well as to provide that donations exceeding a fixed ceiling are made public.[483] Based on the results of the 2010 presidential election, the OSCE/ODIHR Election Observation Mission has recommended that the regulations covering campaign financing should be strengthened to improve the transparency of the funding of candidates' election campaign,

479 Article 2 of the Law on the CEC.

480 Articles 42, 79, 83, 97 of the Law on the Parliamentary Elections.

481 Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

482 Article 43.14 of the Law on Presidential Election.

483 Recommendation Rec(2003)4 of the Committee of Ministers to Member States on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies); [accessed 29 December 2010].

with data on donations and expenditure made publicly available.[484]

TRANSPARENCY (PRACTICE) – SCORE 75

To what extent are reports and decisions of the electoral management body made public in practice?

The experts interviewed within the framework of this assessment generally agreed that the CEC activities pertaining to preparation and conduct of the elections are relatively transparent.[485] The CEC website presents all the CEC decisions in timely manner, in particular on the schedule of preparation to the national and local elections, on appointment of the members of the election commissions. In addition, the website of the Commission provides access to the news on elections, information on the structure of the CEC Secretariat, biographies of the Commission members, plans and results of public procurement, comprehensive information on the results of the elections (including the results of election in each precinct) etc.

Even though the CEC sittings are generally transparent and actively covered by the media,[486] local experts[487] and the election observation missions[488] highlighted the fact that the CEC has a practice of holding closed meetings at which the agenda and draft decisions are discussed, so that coordinated position can be reached and presented in the regular sitting. According to the OSCE/ODIHR Election Observation Mission, these actions violate the legal requirements and decrease the transparency of the CEC activities.[489]

The CEC has never had call centers for queries.[490] It can be explained by the fact that the key activities on preparation and conduct of the elections are carried out not by the CEC, but by the lower level election commissions.

The level of transparency of the CEC was also tested within the framework of this assessment by addressing individual requests for information to the CEC. The results of the requests' consideration are presented in the Table 11 below. The Table demonstrates that the public access to information on the CEC decisions challenged in courts is not properly ensured.

484 OSCE/ODIHR Election Observation Mission, Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report, 2010: 28.

485 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010; OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 6; OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 7.

486 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 6.

487 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010; Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

488 Parliamentary Assembly of the Council of Europe, *Observation of the Presidential Election in Ukraine – 17 January 2010*: 6; [accessed 29 December 2010]; OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 7.

489 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010, 7; Parliamentary Assembly of the Council of Europe, *Observation of the Presidential Election in Ukraine – 17 January 2010*: 6.

490 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

Table 11. The Results of Consideration of the Requests for Information by the Central Election Commission

The requester	Requested information	Results of the requests' consideration
The Central Election Commission	Information on the number of the CEC decisions which have been challenged in courts during the 2009 presidential election campaign	Letter of Oleksandr Shelestov, the member of the CEC, № 21-30-2666, 11 August 2010; letter of the deputy head of the CEC Zhanna Usenko-Chorna, № 21-30-2671, 11 August 2010. Written refusal on the grounds that the CEC is not legally obliged to keep the requested data.
	Information on the number of staff in each unit of the CEC Secretariat	Letter of the head of the CEC, № 21-30-2875, 27 July 2010. Request fulfilled.

ACCOUNTABILITY (LAW) – SCORE 25

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

The legislation does not adequately ensure the accountability of the CEC.[491]

Article 23.6 of the Law on the CEC stipulates that the Commission within three months from the date of announcement of election results has to file with the Accounting Chamber the financial report on the use of budget funds allocated to the preparation and conduct of the relevant national elections. However, the law on the CEC does not envisage any requirements to the content of such financial reports. The level of accountability of the CEC is to significant extent weakened by the fact that it is not legally required to produce any other reports (including annual regular reports, annual financial reports and the reports on election results) except for the financial report that has been mentioned above.

The electoral subjects (candidates, parties and blocs) are granted the right to challenge the actions, inaction and decisions related to the election campaigns in courts and in election commissions. The procedure for lodging the complaints and lawsuits is defined, respectively, by the election laws and by the Code of Administrative Adjudication (as regards challenging the actions, inaction and decisions in courts). These legal acts provide for technical requirements to filing the complaints and lawsuits (deadlines etc.) and define the scope of powers of election commissions in terms of consideration of certain types of complaints.[492] Decisions, actions and inaction of the CEC pertaining to tabulation of the final election results can be challenged only in the Higher Administrative Court of Ukraine, while all other CEC actions and decisions can be reviewed by the Kyiv administrative court of appeal.[493]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent does the EMB have to report and be answerable for its actions in practice?

Since the Law on the CEC does not require the CEC to produce any other reports except for the reports on the use of funds allocated to the elections, no such reports are produced in practice. The financial reports on the use of funds on elections are adopted and submitted to the Accounting Chamber in time. For instance, after the 2010 presidential election, the respective report was approved by the decision of the CEC on 12 May 2010. The report presented comprehensive infor-

491 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

492 See: Articles 103 – 116 of the Law on Parliamentary Elections, Articles 91 – 104 of the Law on Presidential Election, Articles 172 – 179 of the Code of Administrative Adjudication of Ukraine.

493 Article 172.3 of the Code of Administrative Adjudication of Ukraine.

mation on salaries of the specialists and experts involved by the CEC in preparation of the presidential election, on media coverage expenditures, on publication of the electoral documentation (ballots, protocols etc.), on expenses on postal services, on holding the seminars for the members of the lower level commissions etc.[494] The report was posted in full on the CEC website.[495]

The Commission does not effectively address the complaints related to the elections. Even though the Law on the CEC grants the Commission the right on its own initiative to detect violations and consider the cases connected to the detected infringements, the CEC almost do not use this tool to ensure observance of the laws on elections.[496] According to the 2010 OSCE/ODIHR presidential election report, the CEC did not address complaints in a transparent manner and responded to most of them without making a formal decision, thus denying access to effective remedies. Most of the complaints were rejected by the Commission because they did not comply with technical requirements for filing a complaint. This abdication of responsibility for resolving complaints meant that most substantive complaints were resolved by the courts.[497] The 2007 OSCE/ODIHR early parliamentary elections report also noted that some of the important CEC decisions were politically influenced. [498]

INTEGRITY (LAW) – SCORE 50

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

There is no special code of conduct for the members of the CEC and employees of the CEC Secretariat. However, since both the members of the CEC and the Secretariat's staff are civil servants, they fall under the scope of legal requirements of the Law on Civil Service and General Rules of Civil Servant's Conduct. Before entering the office, each member of the CEC has to be sworn in, thus committing him/herself to respect the Constitution and laws of Ukraine, maintain impartiality and neutrality when considering the issues vested in the CEC authority, as well as to ensure the exercise and protection of the voter rights.[499]

The detailed provisions on the conduct of the civil servants are laid down in the General Rules of Civil Servant's Conduct, which are applicable to the members of the CEC and Commission's staff. In particular, under the Rules, civil servant has to refrain from expressing own political views and tolerating any influence of political beliefs on exercising the servant's authority, to maintain impartiality etc. [see: *Public Sector*, *Ombudsman* and *Supreme Audit Institution*].

Article 13 of the Law on Civil Service provides that the civil servants must annually submit their declarations of assets to the local tax inspectorates. The Law, however, neither imposes on the servants' obligation to declare their expenses, nor does it provide for mandatory examination of information presented in the declarations, thus decreasing the effectiveness of control over income and expenses of the civil servants.

The General Rules of Civil Servant's Conduct also provide for the mechanisms of the conflict of interest regulation and prohibit the receipt of the gifts by public officials in connection with exercising of their authority.[500] The main problem in this regard is that the relevant provisions will come into force only as soon as the new Law on the Principles of Prevention and Counteraction to Corruption is enacted, while the latter has not yet been adopted by the Parliament.

INTEGRITY (PRACTICE) – SCORE 50

To what extent is the integrity of the electoral management body ensured in practice?

494 The Annex to the CEC Decision № 292, 12 May 2010.

495 = [accessed 29 December 2010].

496 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010; Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

497 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 19.

498 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 2, 7.

499 Article 8 of the Law on the CEC.

500 Clauses 3.1. – 3.10., 4.3-4.4. of the General Rules of Civil Servant's Conduct, approved by the Order of the Main Department of Civil Service № 214, 4 August 2010.

Before entering office, all members of the CEC have to be sworn in [see: *Integrity (law)*]. As concerns the CEC Secretariat employees, before initial appointment they (as well as other civil servants) have to sign an oath, in accordance with which they are legally obliged to respect the Constitution and laws of Ukraine, to protect the rights and legitimate interests of the citizens.[501] For the entire period of the CEC functioning, there have been no cases when the CEC Secretariat employees either violated the provisions of the legislation on civil service, or committed corruption offences.[502] No such cases are known to the experts interviewed within the framework of this assessment.[503] The employees of the CEC Secretariat are not specifically trained on integrity issues. Nevertheless, they increase their qualifications within the framework of the general programs organised for all civil servants [see: *Public Sector*]. In particular, the CEC staff increases its proficiency level by participating in short-term courses organised by the Academy of the Public Administration under the President of Ukraine, through attending the trainings at the Parliament and Cabinet of Ministers, units of local authorities etc.[504]

CAMPAIGN REGULATION (LAW AND PRACTICE) – SCORE 50

Does the electoral management body effectively regulate candidate and political party finance?

The laws on national elections grant the CEC extensive powers in terms of campaign regulation. The Commission is empowered to register the candidates for elections and to cancel decisions on their registration, to announce warning to the candidates, to produce information posters and secure publication of election manifestos of the candidates, parties and blocs, to control the receipt and use of the election funds, to allocate airtime and printing space provided free of charge (*i.e.* at the expense of state budget) to the candidates, parties and blocs, to approve the schedule of the debates between the presidential candidates.[505]

The procedure for supervising the private funding of election campaigns is not adequately regulated by laws.[506] Nevertheless, some provisions as regards supervision over private funding of the election campaigns can be found in separate decisions of the Commission,[507] which grant the CEC sufficient powers to effectively control the receipt, registration and use of election funds. In particular, banks are required to inform the CEC on opening of the election fund accounts, to provide the CEC with information on all transactions at the accounts on a daily basis.[508] The CEC also approved the forms of financial reports on the receipt and use of election funds for national elections. The requirements to financial reports are detailed enough, so that the CEC is able to assess the comprehensiveness and correctness of the information presented in the relevant reports. In particular, the reports have to contain information on each donor who made a donation to the election fund, on the value of the donation

501 Article 17 of the Law on Civil Service, № 3723-XII, 16 December 1993.

502 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

503 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010; Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

504 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

505 Articles 25, 38, 43, 51, 56, 59-63 of the Law on Presidential Election, Articles 30, 53, 61, 64, 67-70 of the Law on Parliamentary Elections.

506 OSCE/ODIHR Election Observation Mission, *Ukraine. Parliamentary Elections, 26 March 2006. Final Report*, 2006: 14; OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 13.

507 See: The Procedure for the Control Over the Receipt, Registration and Use of the Election Funds of the Presidential Candidates, approved by the CEC Decision № 178, 22 October 2009, by the Order № 1095 of the Ministry of Transport and Communication of Ukraine, 21 October 2009, and by the Resolution of the Board of the National Bank of Ukraine № 601, 15 October 2009; the CEC Decision № 240 on the Procedure for Control Over the Receipt, Registartion and Use of the Election Funds of the Political Parties and Electoral Blocs Whose Candidates for the People's Deputies of Ukraine Were Registered by the Central Election Commission, 22 December 2005.

508 Paragraph 8 of the Procedure for the Control Over the Receipt, Registration and Use of the Election Funds of the Presidential Candidates; paragraph 7 Procedure for Control Over the Receipt, Registartion and Use of the Election Funds of the Political Parties and Electoral Blocs Whose Candidates for the People's Deputies of Ukraine Were Registered by the Central Election Commission.

and expenditure made from the election fund. Moreover, the copies of relevant financial documents (contracts etc.) have to be attached to the reports. Therefore, the Commission's control over the receipt and use of election funds can be considered effective.[509]

Some local experts,[510] however, stressed that even though the CEC can effectively supervise the receipt and use of election funds, it has no access to information on transactions at the bank accounts of political parties, through which certain campaign activities may also be financed. The control powers of the CEC are limited to examination of the financial reports and the documents attached to them, while the Commission (in contrast to the Accounting Chamber, tax authorities etc.) is not entitled to perform checks or audits directly at the premises of the parties. The role of the Commission in addressing the complaints pertaining to violation of legal provisions on funding of the presidential candidates is undermined by the Law on Presidential Election, which vests consideration of the relevant issues in the exclusive authority of the Kyiv administrative court of appeal.[511] The strengthening of the CEC role in regulation of campaign funding is also hindered by a number of shortcomings and loopholes in the legislation governing the financing of political parties and electoral campaigns [see: *Political parties*].

ELECTION ADMINISTRATION (LAW AND PRACTICE) – SCORE 50

Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

The laws on national elections comprehensively regulate the procedure for publication and registration of the ballots, protocols and other "sensitive" electoral documents, as well as the vote counting and tabulation of the election results.

The Law on the Parliamentary Elections provides effective mechanisms that allow national observers, including the NGO observers, to effectively supervise all stages of the electoral process in the parliamentary elections.[512] In contrast, the national NGOs are excluded from observation of the presidential election, in contravention of paragraph 8 of the OSCE Copenhagen Document.[513]

The Commission is not required to inform the voters on the date, time and venue of the vote, as well as on the voter numbers on the voter lists. These tasks are assigned to the precinct election commissions (polling stations), which are required to inform each voter whether he/she is on the voter list in advance before the election.[514] Moreover, before the election day (*e.g.* not later than 19 days before the vote in presidential election[515]) the voter lists have to be displayed at the precinct commissions to allow the citizens to check their names and other data. Whereas the voters can check information on them on the voter lists,[516] during the 2010 presidential election many of them failed to seize such an opportunity in advance before the election, which resulted in the increase of the number of voters on the lists on the day of election.[517] However, one of the reasons for the increase was that before the compilation of the voter lists for the second round of voting, the CEC decided that updates introduced by the precinct election commissions during the first round should be included in the new voter lists. The late adoption of the CEC clarification, in opinion of the OSCE/ODIHR Election Observation Mission, prevented the implementation of the decision.[518]

509 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010.

510 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010; Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

511 Article 99.3 of the Law on Presidential Election.

512 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

513 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 27.

514 Articles 27.1.4, 32.2 of the Law on Presidential Election.

515 Articles 31.8, 32.1 of the Law on Presidential Election.

516 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

517 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 11-12.

518 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 11.

In 2007, the OSCE/ODIHR Election Observation Mission detected some cases when voters could not exercise their right to vote in election due to their absence on the voter lists (mainly in urban areas of the eastern and western parts of the country).[519] As the Law on Presidential Election provides for the possibility of voter's inclusion into the lists on the day of election, in 2010 the OSCE/ODIHR Election Observation Mission did not note widespread cases when voters could not exercise their right to vote. At the same time, the mission noted minor problems with the secrecy of the vote, with voters finding their names on the voter lists, few cases of family voting and single instances when voters were observed taking photos of their ballots inside the voting booths, which could indicate a vote buying scheme.[520]

The role of the CEC in voter education is limited primarily to explaining the procedure of vote and notification of the legal liability for violation of legal requirements. This is made through placement of special information posters in the voting area of each precinct commission. However, the posters are placed in a short term before the day of election, thus hindering the possibility of familiarising with the relevant information. The interviewed experts believe that the CEC activities regarding voter education are piecemeal,[521] that was explained by insufficiency of budget funds allocated to the voter education.[522] The education programs are implemented by the CEC not independently, but jointly with international donor organisations and national NGOs[523] (for instance, through placement of the information notices in regional print media and on TV, participation of the CEC members in TV programs dedicated to explanation of the laws on elections to the voters).[524] Based on the results of the 2010 presidential election, the OSCE/ODIHR Election Observation Mission has recommended the CEC to implement comprehensive voter information and education programs, especially encouraging citizens to check and update their voter information.[525]

The CEC places high emphasis on the increase of the proficiency level of the members of the territorial and precinct election commissions, in particular, by publishing the handbooks on electoral issues, holding the seminars and trainings, producing the educational films on elections and so forth. The relevant activities are funded mainly by the international organisations, in particular by the OSCE Project Co-ordinator in Ukraine.[526] Despite these efforts, after the 2010 election the OSCE/ODIHR Election Observation Mission advised the CEC to provide better guidance to district and precinct election commissions on both procedural and operational matters to ensure their uniform application throughout the country, as well as to organise comprehensive and consistent training for the precinct and district election commissions' leadership.[527]

The role of the CEC in administration of the elections is undermined by the narrow scope of its powers in consideration of complaints regarding violation of the legal provisions on elections.[528] In addition, the Commission does not always address the complaints effectively [see: *Accountability (practice)*].

Key recommendations

- To implement comprehensive reform of the funding of political parties and electoral campaigns based on the provisions of the CM

519 OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 22-23.

520 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 22.

521 Interview by Oleksandr Chernenko, the Head of the Board of the national NGO "The Committee of Voters of Ukraine", with author, 4 August 2010.

522 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 26 July 2010.

523 Interview by Yevhen Radchenko, expert on electoral matters, development manager at the international public organisation «Internews Ukraine», with author, 28 July 2010.

524 See also OSCE/ODIHR Election Observation Mission, *Ukraine. Pre-Term Parliamentary Elections, 30 September 2007. Final Report*, 2007: 17.

525 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 29.

526 Interview by Mykola Dondyk, the deputy Chief of the CEC Secretariat, with author, 28 November 2010.

527 OSCE/ODIHR Election Observation Mission, *Ukraine. Presidential Election, 17 January and 7 February 2010. Final Report*, 2010: 28, 29.

528 See, for instance, Article 99.3 of the Law on Presidential Election.

CoE Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, in particular, to strengthen the role of the CEC in monitoring of funding of political parties and election campaigns;

- to supplement the Law on the Central Election Commission with provisions requiring the CEC to produce and make publicly available the annual reports on its activities and funding;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to adopt a separate law on asset declaration aimed to ensure transparency of income and expenses of certain categories of public officials (including the members of the CEC and high-ranking employees of the CEC Secretariat), to develop specific code of ethics for the CEC, to develop special conflict of interest regulations for members of the CEC;
- to provide for regular trainings of the CEC Secretariat employees on integrity issues;
- to ensure funding and implementation of comprehensive voter information and education programs;
- to allow national observers, including the NGO observers, to effectively supervise all stages of the electoral process in the presidential election.

7. Ombudsman

SUMMARY

Insufficient funding and the absence of regional offices in all the regions of Ukraine are the key resource gaps which have a negative impact on the Ombudsman carrying out its duties. Whereas the law ensures independence of the Ombudsman, some cases of its engagement in political activities make independence of the institution questionable. A number of loopholes in legislation do not help enhancing the transparency of the Ombudsman's activities. The legal provisions on accountability of ombudsman, being far from perfect, are not effectively enforced in practice. The gaps in legislation on declaration of the assets of public officials, conflict of interest and gifts, set preconditions for weakening the level of the Ombudsman's integrity. Restrictions imposed on the Ombudsman in terms of complaint consideration, the lack of specific programs to raise public awareness of the Ombudsman's activities, as well as unclear grounds for making the decisions in cases considered by the Ombudsman, decrease the effectiveness of the institution in dealing with the citizen complaints. The law neither imposes on the Ombudsman an obligation to promote the best practice of the governance, nor does it adequately define its role in the counteraction of corruption, thus decreasing its role in raising awareness within the Government and public on standards of ethical behaviour.

The table below presents general evaluation of the Ombudsman in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Ombudsman Overall Pillar Score: 46.52 / 100			
Dimension	Indicator	Law	Practice
Capacity 56.25/100	Resources	50	
	Independence	75	50
Governance 45.83/100	Transparency	50	50
	Accountability	50	25
	Integrity	50	50
Role 37.5/100	Investigation	50	
	Promoting good practice	25	

Structure and organisation

Under the Constitution, the Ombudsman (the Parliament's Commissioner on Human Rights, further – the Commissioner or Ombudsman) is entitled to exercise parliamentary control over observance of the constitutional rights and freedoms of the individuals.[529] The Constitution does not provide for the specialized Ombudsmen, authorised to supervise the observance of the rights of specific groups of citizens, for instance, the rights of a child, military servants and so forth. The Commissioner is appointed and discharged from office by the Parliament. His legal status is defined by a special Law on the Verkhovna Rada of Ukraine Commissioner on Human Rights, adopted in 1997 (further – the Law on Ombudsman). The Ombudsman's Secretariat is in charge of

529 Article 101 of the Constitution of Ukraine.

supporting the activities of the Commissioner. At the regional level, the effectiveness of the Commissioner's activities is ensured by its representatives. Whereas the law does not limit their number, the Commissioner has appointed only three representatives.

Assessment

RESOURCES (LAW) – SCORE 50

To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals?

Notwithstanding the fact that Ombudsman has some financial, human and other resources, certain resource gaps hamper the effectiveness of its activities. During 2005 – 2008 the amount of Ombudsman's funding increased from UAH 15,395,400 [USD 3 million] in 2005 to 28,382,400 UAH [USD 3.7 million] in 2008. In 2009, the funding of the Commissioner was decreased to UAH 17,832,200 UAH [USD 2.2 million].[530] The Commissioner's Secretariat employs more than 100 members of the staff; the staff resources are stable, while about 50 employees of the Secretariat have a legal background.[531]

The Ombudsman has extensive rights, in particular the right to challenge the constitutionality of laws and some other legal acts in the Constitutional Court of Ukraine, the right to apply to the Constitutional Court of Ukraine for official interpretation of the Constitution and the laws of Ukraine, the right to attend public authorities and penal institutions, the right to obtain any necessary information from the public authorities.[532] Nevertheless, the Ombudsman considers the scope of his powers to be narrow, constantly stressing the need in extending the scope of its powers, in particular, by granting it the right to submit draft laws directly to the Parliament,[533] providing for additional rights of the Ombudsman in administrative adjudication etc.[534]

The amount of funding that has been allocated to the Ombudsman during the last years did not correspond to the Commissioner's funding needs. For instance, in 2006 it received only 70% of the requested funds, in 2007 – 79.8%, in 2008 – 87.9%, in 2009 – only 38% of the requested amount.[535] A significant share of the funds allocated to the Commissioner covers mainly the salaries of the Secretariat's staff. For example, in 2009, 70% of funds were allocated to staff remuneration, while in 2008 about 50% of the Commissioner's funds were used for that purpose. In the opinion of the Ombudsman, the lack of funding has a negative impact on the effectiveness of its work.[536]

For the entire period of the Commissioner's work, only 3 regional representatives were appointed by the Ombudsman. There jurisdiction covers the eastern and western Ukraine, as well as the Autonomous Republic of Crimea. If we take into consideration the fact that the number of complaints lodged with the Ombudsman from 1998 to 2008 increased 2.6 times, absence of the Commissioner's representatives in all 25 regions negatively influences the Commissioner's functioning.[537]

INDEPENDENCE (LAW) – SCORE 75

To what extend is the Ombudsman independent by law?

The Constitution of Ukraine does not provide guarantees of the Commissioner's independence. Such guarantees are laid down only in the Law on Ombudsman. The latter prohibits undue external interference with the Ombudsman's activities, sets the precise list of requirements with which a candidate for Ombudsman has to comply.[538] Under Article 5 of the Law on Ombudsman, the Commissioner is appointed for a five-year term, with a possibility of reappoint-

530 [accessed 29 December 2010].

531 See, for example, U.S. Department of State, *2006 Human Rights Reports: Ukraine*; [accessed 29 December 2010]; *2008 Human Rights Reports: Ukraine*; [accessed 29 December 2010].

532 Article 13 of the Law on the Verkhovna Rada of Ukraine Commissioner on Human Rights (further – the Law on Ombudsman), №776/97-BP, 23 December 1997.

533 Speech by Nina Karpachova, the Parliament's Commissioner on Human Rights, at the Parliament's session, 8 February 2007; [accessed 29 December 2010].

534 [accessed 29 December 2010].

535 [accessed 29 December 2010].

536 U.S. Department of State, *2006 Human Rights Reports: Ukraine;* [accessed 29 December 2010].

537 See, for instance: Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 50.

538 Articles 5, 20 of the Law on Ombudsman.

ment for new terms. The Commissioner cannot be discharged from office in case of expiration of the Parliament's term (Article 4 of the Law on Ombudsman). Another guarantee aimed to ensure the Ombudsman's independence is that the Commissioner is forbidden from holding any positions in public authorities, carrying out other paid activities (except for teaching, scientific and creative work), and being a member of political party.[539] The financial independence of the Commissioner is ensured through two main mechanisms: first, the amount of Ombudsman's funding is defined by a separate line in the state budget of Ukraine, and, second, the Ombudsman may submit his budget for approval directly to the Parliament, not to the Ministry of Finance.[540] Furthermore, the Commissioner cannot be brought to criminal liability, detained or arrested without the Parliament's consent.[541] The Ombudsman is entitled to define the structure of its Secretariat, decide on the scope of powers of the Secretariat's employees, appoint and dismiss its staff, including the Ombudsman's representatives at the regional level.[542] The salary of the Commissioner is 18 times the minimum monthly wages[543] [UAH 16,326 or about USD 2,040], that is comparable to salaries of the Constitutional Court judges, MPs and ministers.

Even though the legal framework provides for a number of mechanisms aimed to ensure the Commissioner's independence, the Constitution and the Law on Ombudsman contain some shortcomings that might threaten its independence and impartiality.

First, the Ombudsman is elected by the absolute, not qualified majority of votes of the MPs. Such a procedure for appointment strengthens the risk of appointing to the Ombudsman's post the person loyal to the ruling coalition in the Parliament. Neither does this approach fully comply with paragraph 7 (iii) of the PACE Recommendation 1615 (2003), in accordance with which the Ombudsman should be appointed and dismissed by the qualified majority of the MPs' votes.[544]

Second, among the reasons for pre-term termination of the Ombudsman's office is the breach of its oath, by which the Commissioner commits itself to due exercising its powers, protecting the rights and freedoms of the individuals in honest manner. However, the Law fails to provide a clear definition of what constitutes due exercising the powers, nor does it precisely define the honest manner of protection of the individual's rights and freedoms.[545] In addition, the exclusive right to dismiss the Commissioner before the expiration of its term is vested in the Parliament, which is a political body.

Third, there is no body entitled to terminate the Ombudsman's office other than the Parliament.[546] Hence, if the Ombudsman violates the legal provisions that constitute the grounds for pre-term termination of its office, such violation does not necessarily entail dismissal of the Ombudsman since the relevant decision needs Parliament's approval.

INDEPENDENCE (PRACTICE) – SCORE 50

To what extend is the Ombudsman independent in practice?

The acting Commissioner was initially appointed on 14 April 1998, and since then has been reappointed several times.[547] However, on 17 November 2006, the Commissioner's office was terminated by the legislature because the Ombudsman had been elected MP,[548] which is incompatible with the Ombudsman's post (the Commissioner's post remained vacant till February 2007).

Representatives of human rights organizations repeatedly accused the Ombudsman of being

539 Article 8 of the Law on Ombudsman.

540 Article 12 of the Law on Ombudsman.

541 Article 20.3 of the Law on Ombudsman

542 Article 10, 11 of the Law on Ombudsman.

543 CMU Resolution № 521, 30 June 2005.

544 PACE Recommendations 1615 (2003) The institution of Ombudsman, para 7 (iii); http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/erec1615.htm [accessed 29 December 2010].

545 Article 7, 9 of the Law on Ombudsman.

546 Article 9.2 of the Law on Ombudsman.

547 VRU Resolutions № 214/98- CM, 14 April 1998; № 959- IV, 19 June 2003; № 621- V, 8 February 2007.

548 VRU Resolution № 371-V, 17 November 2006.

engaged in political activities.[549] For instance, in December 2005, 18 human rights organisations addressed the Ombudsman and required it to resign because of the Commissioner's participation in elections[550] as a candidate from the Party of Regions, which was in opposition at that time. After elections, the Ombudsman, in violation of legal requirements on incompatibility, have been holding the MP mandate and Ombudsman's position for almost 7 months.[551] Among the other examples of the Commissioner's engagement in political activities, the human rights organisations noted the assessment by the Ombudsman of the constitutionality of the President's Decree on dissolution of the Parliament, the fact of addressing by Ukraine's Ombudsman its colleague from Estonia with condemnation of dismantling the monument to the Soviet soldier in Tallinn (the Ukraine's Ombudsman statement generally repeated the relevant statement of the Russian Ministry of Foreign Affairs).[552] However, in 2008 – 2010 there have been no cases of the Commissioner's engagement in political activities.

TRANSPARENCY (LAW) – SCORE 50

To what extend are there the provisions in the place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?

The legal framework contains some gaps in regulation, which do not enhance the transparency of the Ombudsman's activities.

For example, the only documents on the Ombudsman's activities that are required to be made publicly available are the Commissioner's annual and special reports. The annual report has to present information on observance of the human rights and freedoms by the public authorities, officials, civic associations, institutions and organisations, as well as information on shortcomings in legal framework governing the protection of human rights, on measures taken by the Commissioner to address them, on the results of checks carried out by the Ombudsman within the period under report, key findings and recommendations for improvement in the relevant sphere.[553] As concerns special reports, the Law on Ombudsman fails to set any clear requirements to their content, stating only that special reports should deal with specific issues connected to ensuring the human rights. The law also does not envisage any deadlines for making both annual and special reports available to public.

The law on public access to information, in particular the Law on Citizen Inquiries and the Law on Information, are applicable to Ombudsman. However, these laws contain a number of deficiencies that do not promote effective citizen access to information [see: *Public Sector, Media*]. On 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which provides for a number of improvements [see: *Public Sector*] in terms of access to information. However, the FOIA will come into force only in May 2011.

The Law on Ombudsman envisages the possibility of establishment of the advisory council at the Commissioner, composed of persons with work experience in the field of human rights protection. The main task of this council is supposed to be to provide the Ombudsman with consultations and advice. However, the law leaves to the Ombudsman's discretion to decide whether to establish this council or not.[554]

Under Article 14 of the Law on Ombudsman, the Commissioner is required to maintain confidentiality in its activities, in particular as concerns securing privacy of complainants and other persons concerned. At the same time, the law fails to precisely define the scope of information that can be referred by the Commissioner to confidential.

The Commissioner itself, as well as members of its staff, are civil servants.[555] Hence, general

549 Bykalov Oleksandr, *Nina Korpachova- The Commissioner …of whom*? (in Ukrainian); [accessed 29 December 2010].

550 U.S. Department of State, *2006 Human Rights Reports: Ukraine*; [accessed 29 December 2010].

551 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 25.

552 Bukalov Oleksandr, *Nina Korpachova- The Commissioner …of whom*? (in Ukrainian); [accessed 29 December 2010].

553 Article 18 of the Law on Ombudsman.

554 Article 10.3 of the Law on Ombudsman.

555 Article 4 of the Law on Ombudsman, CMU Decree № 1258, 20 November 1991.

legal requirements to all civil servants, including obligation to declare the assets and financial obligations, and (for officials occupying certain positions) real estate, valuable movable property, deposits and securities, are also applicable to the Ombudsman and its staff.[556] However, the respective declarations are not subject to mandatory disclosure.[557]

TRANSPARENCY (PRACTICE) – SCORE 50

To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?

Whereas some information on the activities of Ombudsman is made publicly available on the Commissioner's website and in media, the general conclusion is that the Ombudsman's activities are far from being transparent. In particular, the Commissioner's website does not present the information on the structure of the Secretariat, main functions of the Secretariat's units, names and contacts of the heads of the units, contacts of the Ombudsman's representatives at regional level; information on vacant positions, on the impact of the Ombudsman's acts on governance in the country, educational and analytical documents related to Ombudsman's activities (except for annual and special reports). Some information posted on the Commissioner's website has not been updating for many years.[558] Among the website sections containing outdated information are the section on written petitions of the Commissioner to the public authorities (information has not been updated since 2006), section with information on applications and lawsuits lodged by the Commissioner (has not been updated since 2006). Notwithstanding the fact that annual reports of the Ombudsman are required to be published on annual basis, within the period from 1998 till 2010 the Ombudsman has published only 6 annual reports.[559]

The citizen requests to provide information are often considered by the Ombudsman as undue interference with its activities. In 2008, the human rights organisations monitored the transparency of the Commissioner's activities. Within the framework of the monitoring, 8 members of the Monitoring Group sent to the Commissioner their requests to provide information on the structure of the Ombudsman's Secretariat, funding, number of complaints related to certain types of cases, number of instituted proceedings, number of acts passed by the Commissioner etc. All the requestors were refused the requested information and recommended to find it on the Ombudsman's website where it had been allegedly posted.[560] The monitoring of the website revealed that the requested information was not posted on the Commissioner's website. Another striking example of the Ombudsman's lack of transparency is connected to the attempt of one of the MPs to obtain from the Ombudsman the copies of the Regulations on the Secretariat and Regulations on the Representatives of the Ombudsman, both adopted by the Commissioner, but not at that time made publicly available. The Commissioner did not provide the requested information, and the MP turned to court to obtain it. The case was considered by a number of courts of different instances, including the Higher Administrative Court of Ukraine, [561] and the Commissioner finally published the requested documents only when the Higher Administrative Court upheld the MP's claims.

In 1999, the Ombudsman established a hot line to consult and help the citizens, but this instrument of getting in touch with the citizens appeared to be not very effective, as the answering device just suggested those who called to leave their voice message for the Ombudsman.[562] The similar hot line, aimed to inform the Ombudsman on violations of the voter rights, have been introduced in the 2010 local elections (the line started its functioning on 19 October 2010). However, in

556 Article 13 of the Law on Civil Service № 3723- XII, 16 December 1993.

557 Article 9.1 of the Law of Ukraine on Civil Service.

558 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 148.

559 See: the website of the Ombudsman; http//:www.Ombudsman.kiev.ua/[accessed 5 February 2011].

560 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 145.

561 The Ruling of the Higher Administrative Court of Ukraine of 5 April 2006; http//:zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0026760-06&p=1289509834 [accessed 29 December 2010].

562 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 45 – 46.

2010, no information (for instance, on the types of complaints, most typical infringements etc.) have been provided by the Commissioner based on the results of the line's functioning.

The Ombudsman's cooperation with civil society organisations, including the human rights organisations, has remained poor for years.[563]

As the legislation does not require the declarations on assets, income and financial obligations of the Ombudsman and its staff to be made publicly available, such declarations in practice are not published.

The level of transparency of the Ombudsman was also tested within the framework of this assessment by sending the Commissioner individual citizen requests seeking to obtain certain information on the Ombudsman's activities. In all cases the requests were fulfilled (see the Table 12 below). This, as well as the fact that in 2009 the human rights groups noted that "the Ombudsman office had become more transparent by increasing media coverage of its activities and by updating information on its web site on a more regular basis",[564] might be an indication that the level of the Ombudsman's transparency is improving. In addition, in 2011 the Ombudsman plans to make public on its website the information which has not been available before and to update the data which have not been updated during the last years.[565]

Table 12. The Results of Consideration of the Requests for Information by the Ombudsman

The requester	Requested information	Results of the requests' consideration
Ombudsman	Information on the total amount of the Ombudsman's funding in 2009	Letters № 16/9-C1548886.10/26-31, 30 July 2010; № 2- 1547/33-1602-10-31, 30 July 2010. Requests fulfilled.
	Information on the number of complaints forwarded by the Ombudsman in 2009 for consideration of other authorities, entitled to settle the issues raised in complaints	Letters № 22.2/9-Ã55355.10/26-40, 3 September 2010; №22.9-C155831.10/11-40, 30 September 2010. Requests fulfilled.

563 U.S. Department of State, *2007 Human Rights Reports: Ukraine*; ; *2009 Human Rights Reports: Ukraine*; [accessed 29 December 2010].

564 U.S. Department of State, 2009 *Human Rights Reports: Ukraine*; [accessed 29 December 2010].

565 Interview by the official of the Ombudsman's Secretariat, with author, 24 December 2010.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?

The Ombudsman is accountable to the Parliament. Under the Law on Ombudsman, within the first quarter of each year, the Ombudsman has to submit to the Parliament the annual report presenting the information on observance of human rights in Ukraine and, if necessary, also submit to the Parliament special report on specific issues related to observance and protection of the human rights [see: *Transparency (law)*]. The law does not impose on the Commissioner the obligation to reflect in the reports information on internal functioning of the Ombudsman, in particular as concerns information on the Secretariat's performance, on available human and financial resources, on organisation of Ombudsman's work, on interaction between different structural units of the Secretariat, on the use of funds, on international cooperation, on measures taken by the Ombudsman to prevent corruption within its Secretariat, etc.

It is left to the Parliament's discretion to decide on whether to hold debates on the reports presented by the Ombudsman or not. In general, the accountability of the Ombudsman to the Parliament is limited to submission of the reports mentioned above. The financial accountability of the Ombudsman is not properly ensured by the Law on Ombudsman.[566] Nonetheless, since the Ombudsman's activities are financed from the state budget of Ukraine, the legality and effectiveness of the use of funds allocated to the Commissioner can be audited by the Main Control and Revision Department and by the Accounting Chamber.

The actions, inactivity and decisions passed by the Commissioner can be contested in courts.[567] The legal framework does not envisage the effective mechanisms of the whistleblower protection, including the employees of the Ombudsman's Secretariat (the only exception to this rule are the criminal proceedings where the investigators and prosecutors are entitled to take some specific measures, aiming to protect the participants of the criminal proceedings).[568]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent does the Ombudsman have to report and be answerable for its actions in practice?

For the whole term of its office, the Commissioner submitted to the legislature only 5 annual reports, *i.e.* less than half required by the Law on Ombudsman. The content of reports generally meets the requirements of Article 18 of the Law on Ombudsman.[569] The Ombudsman's reports are not always discussed by the legislature. For instance, in 2007, the Commissioner produced the report on observance and protection of the human rights and special report on protection of the rights of the persons living with HIV/AIDS. The reports, however, were not presented in the legislature by the Ombudsman due to political crises that paralysed the Parliament's work.[570]As a result of consideration of the five annual reports, the Parliament managed to adopt decisions only on 3 of them. The respective Parliament's resolutions did not contain any assessment of the reports, they just provided for the necessity of "taking the reports into consideration" and recommended the Government to consider the Ombudsman's recommendations while improving legislation in the sphere of the human rights protection.[571] In other words, two Ombudsman's reports were not addressed by the Parliament at all, while the remaining three reports received just a formal response.

As there are no provisions in place aiming to protect the whistleblowers, such protection is not ensured in practice.

In the end of 2010, the Accounting Chamber

566 See, for instance, Article 12.4 of the Law on Ombudsman.

567 Article 17.2 of the Code of Ukraine on Administrative Adjudication.

568 Article 52-1 – 52-5 of the Code on Criminal Procedure.

569 See, for example, the 5th Annual Report of the Ombudsman on Observance and Protection of the Human Rights and Freedoms in Ukraine; [accessed 29 December 2010].

570 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 30-31.

571 See, for instance, the VRU Resolution № 2778-IV, 7 July 2005.

performed the audit of the Ombudsman's activities.[572] However, the Report has yet to be published by the Chamber.

The effectiveness of the judicial review of the decisions, actions and inaction of the Commissioner depends on the types of the cases. As a rule, the Commissioner's failure to provide information upon requests of the citizens is successfully challenged in courts,[573] while, on the contrary, the courts generally support the Commissioner in cases concerned with the challenging the Ombudsman's rejection to perform certain actions requested by the citizens (such as, for instance Ombudsman refusal to submit constitutional petition to the Constitutional Court of Ukraine seeking to declare certain acts unconstitutional, refusal to ensure the right to effective remedy etc).[574]

INTEGRITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure the integrity of the Ombudsman?

The rules for the Commissioner's behaviour are set by the Law on the Parliament's Commissioner on Human Rights, the Law on Civil Service, and by the General Rules of Civil Servant's Conduct. The mechanisms aimed to prevent corruption in civil service are laid down in the draft Law on the Principles of Prevention and Counteraction to Corruption, adopted by the Parliament in the first reading on 23 December 2010.

The Law imposes on the Ombudsman obligations to respect the Constitution and laws of Ukraine, human rights, to ensure the confidentiality of information and protection of the right to privacy, as well as prohibits membership of the Ombudsman in political parties.[575] The General Rules of Civil Servant's Conduct contain the detailed provisions on standards of ethical behaviour of the civil servants, including the Ombudsman and the employees of its Secretariat. In accordance with the Rules, civil servant has to refrain from expressing his/her own political views and tolerating any influence of political beliefs on exercise of its powers, to maintain impartiality, to acquire knowledge related to the scope of his/her duties etc.[576] Article 13 of the Law on Civil Service provides that the civil servants must annually submit their declarations of assets to the local tax inspectorates. The Law, however, neither imposes on the servants' obligation to declare their expenses, nor does it provide for mandatory checks of information presented in the declarations, thus decreasing the effectiveness of control over income and expenses of the civil servants.

The General Rules of Civil Servant's Conduct also regulate the conflict of interest and prohibit civil servants from obtaining the gifts in connection with exercising of their duties.[577] However, the respective provisions of the Rules will come into force only as soon as the new Law on the the Principles of Prevention and Counteraction to Corruption is enacted, while the latter has yet to be adopted by the legislature.

INTEGRITY (PRACTICE) – SCORE 50

To what extent is the integrity of the Ombudsman ensured in practice?

The Ombudsman's integrity is not adequately ensured in practice, that can be proved by the facts of the Commissioner's engagement into political activities that has not resulted in any liability envisaged by the Law on Ombudsman [see: *Independence (practice)*]. However, as concerns the Commissioner's staff, there have been no violations of the legislation on civil service by the members of the Ombudsman's staff. Special trainings on integrity issues for the Ombudsman's staff are not conducted, but the staff participates

572 Interview by the official of the Ombudsman's Secretariat, with author, 24 December 2010.

573 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 145.

574 See, for example, the Resolution of the Rivne district administrative court of 30 June 2010 in the case № 2a-2182/10/1770 upon a lawsuit lodged against the Parliament's Commissioner on Human Rights; ; the Ruling of the Kharkiv administrative court of appeal of 6 April 2010 in the case № 2-a-4899/09/03/2018 upon a lawsuit lodged against the Kharkiv regional prosecutor, Prosecutor General, and the Ombudsman; [all accessed 29 December 2010].

575 Articles 8,14 of the Law on Ombudsman.

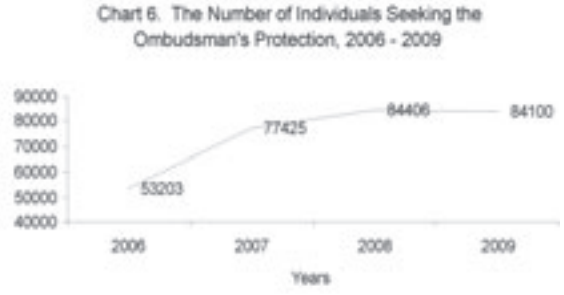
576 Clauses 1.7., 2.3., 2.9. of the General Rules of Civil Servant's Conduct, approved by the MDCS Order № 214, 4 August 2010.

577 Clauses 3.1. – 3.10., 4.3-4.4. of the General Rules of Civil Servant's Conduct, approved by the MDCS Order № 214, 4 August 2010.

in general trainings for public officials organised within the programs aiming to increase the level of professionalism of civil servants, as well as in specific trainings organised for certain categories of the employees (for instance, trainings on psychology etc).[578]

INVESTIGATION (LAW AND PRACTICE) – SCORE 50

To what extend is the Ombudsman effective in dealing with complaints from the public?



Source: http://www.Ombudsman.kiev.ua/Zvernenia_frame.htm [accessed 29 December 2010].

The right to lodge complaints with the Ombudsman is granted to the citizens of Ukraine, foreign citizens and stateless persons. Anonymous complaints, as well as complaints repeatedly lodged with the Commissioner by the same persons raising the same issues, are legally forbidden from being considered by the Ombudsman. In addition, the Law on Citizen's Petitions does not provide for mandatory consideration of petitions and complaints submitted by electronic means (for instance, sent via e-mails or websites). The procedure for lodging the complaints with the Commissioner is not explained on the Ombudsman's website.

The effectiveness of addressing the issues raised in complaints by the Ombudsman is to a certain extent limited by the legal provisions requiring that complaints must be submitted not later than within a year from the date when the human rights and freedoms were violated (this term can be prolonged by the Ombudsman, but not more than up to 2 years).[579] Another factor that hampers the effectiveness of the Ombudsman's dealing with complaints is the fact that the Ombudsman has no right to consider the complaints, that were submitted for consideration to courts, *i.e.* the Commissioner is obliged to suspend the consideration of complaint, if a person seeking the Ombudsman's protection, have turned to court to protect the violated rights.

Based on the results of consideration of a citizen complaint, the Ombudsman may adopt one of the following decisions: to institute proceedings in the case, to instruct a complainant on the measures that may be taken to protect complainant rights, to forward the complaint for consideration to another body or institution entitled to settle the issues raised by complainant, to dismiss the claims of a complainant.[580] However, the Law on Ombudsman fails to define exhaustive list of grounds for each of the above decisions. Should the Ombudsman detect the facts of violation of human rights, it may file a constitutional petition with the Constitutional Court of Ukraine seeking to have certain acts declared unconstitutional, or lodge an "ordinary" petition to a public authority or official seeking the measures to be taken by them within one month from the date of filing an "ordinary" petition in order to eliminate the human rights violations.[581]

From year to year, the number of the individuals seeking the Ombudsman's protection has been remaining high (see the Chart 6). The results of the Ombudsman's activities related to the consideration of the citizen complaints are presented in the Table 13 below.

578 Interview by the official of the Ombudsman's Secretariat, with author, 24 December 2010.

579 Article 17.2 of the Law on Ombudsman.

580 Article 17.3 of the Law on Ombudsman.

581 Article 15 of the of the Law of on Ombudsman.

Table 13. The Results of Consideration of the Citizen Complaints by the Ombudsman

Years	2006	2007	2008	2009
Complaints				
The number of complaints lodged with the Ombudsman:	17,941	23,539	22,318	22,149
individual complaints	16,855	21,833	20,608	19,735
collective complaints	1,086	1,706	1,710	1,969
The number of the proceedings instituted by the Ombudsman based on the complaints	1,993	2,650	2,537	2,414
The number of the complaints forwarded for consideration to other authorities without the Ombudsman's consideration	3,307	4,138	N/A	2,820
The number complaints (a) which were not considered (except for the complaints forwarded for consideration to other authorities without the Ombudsman's consideration) or (b) which were rejected before consideration, (c) which were forwarded to other authorities based on the results of their consideration, and (d) based on consideration of which the complainants were instructed on the measures to be taken to protect their rights	12,641	16,751	N/A	16,915
"Hot line" calls				
The number of calls	3,942	6,520	5,791	5,507
Meetings of the Ombudsman with the citizens				
The number of citizens accepted by the Ombudsman and its staff:	8,041	9,157	9,303	7,353
in Kyiv	4,054	5,750	5,426	5,230
in the regions	3,987	3,407	3,877	2,123

Sources:

1. The Ombudsman, *Information on the Citizen Complaints to the Ombudsman;* http://www.Ombudsman.kiev.ua/Zvernenia_frame.htm [accessed 29 December 2010];
2. Letter of the Ombudsman's Secretariat № 22.2/9-Ñ155831.10/11-40, 3 September 2010;
3. The Fifth Annual Ombudsman's Report on Observance and Protection of the Human Rights in Ukraine.

The Commissioner's activities related to the consideration and addressing the citizen complaints received a critical response from the human rights organisations. The latter pointed out that whereas the Ombudsman is entitled to file constitutional petitions with the Constitutional Court of Ukraine to have certain acts declared unconstitutional, the Commissioner rarely exercised this right (only 16 petitions were lodged in 1998 - 2008), that, according to the human rights organisations, "seems to be extremely small number, especially taking into account the overall low quality of legislation and the fact that the citizens are not granted the right to turn to the Constitutional Court directly".[582] In addition, the Commissioner instituted proceedings only in 30% of cases, while the significant share of the citizen complaints were forwarded for consideration to

582 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 37.

other public authorities.[583] From 2000 to 2005, in only 22% cases considered by the Ombudsman were the claims of complainants upheld.[584]

There are no special programs aimed to raise public awareness on Ombudsman's performance, although, in general, the Commissioner informs the society on its activities. According to the human right organisations, the Ombudsman generally does not actively cooperate with the civil society, while its activities concerned with public education in the human rights sphere are insufficient.[585] According to the surveys, in 2009 26.6 % of the respondents believed that the Commissioner did not carry out any activities aiming to raise public awareness of human rights issues, while 21.4 % were sure that Ombudsman hardly do something in this area. [586]

According to the survey "The Observance of the Human Rights in Ukraine", conducted by the independent Razumkov's Center, the activities of the Ombudsman aimed at ensuring the observance of human rights on the average were scored by the respondents 2.58 at the scale of 5, that is a lower than scores received by human rights organisations (2.78 out of 5) and international organisations (3.05), but higher than scores received by any other public authority. The effectiveness of human rights protection through the mechanism of lodging complaints with the Ombudsman was scored 2.57 out of 5, i.e. higher than filing complaints with other public authorities (except for courts and law-enforcement agencies), but lower than complaining to courts, prosecutor's office, attorneys, international and national organisations, and the European Court of Human Rights. [587]

PROMOTING GOOD PRACTICE (LAW AND PRACTICE) – SCORE 25

To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

The Ombudsman office's jurisdiction covers the relations involving, on the one hand, Ukraine's nationals (regardless of the country of their residence), stateless persons residing in Ukraine and foreigners, and, on the other hand, any public authority. The analysis of the Ombudsman's petitions suggests that in practice almost all public authorities fall within the scope of Ombudsman's jurisdiction, as the Commissioner often addresses the President, the Head of the Verkhovna Rada, the Prime Minister, the heads of the central executive bodies (governmental agencies), local authorities, courts, education institutions and so forth.[588] In 2009, the Commissioner submitted 34 petitions raising the issues of violation of human rights. Holding the consultations with the public authorities and institutions before criticizing them is not provided for by the legislation and, therefore, there is no such a practice. Under the Law on Ombudsman, the Commissioner has a right to file a petition with the relevant body or institution, while the latter is required to inform the Ombudsman on the measures taken to eliminate violation of human rights.[589]

The Ombudsman has organised and held a number of public campaigns, in particular, connected to liberation of the seamen captured by pirates,[590] to ensuring the rights of the people who suffered from flood.[591] However, these campaigns addressed only specific narrow problems in the human rights area rather than with the functioning of public administration. The activities of the Ombudsman pertaining to promotion

583 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 38.

584 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 47.

585 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 53.

586 Razumkov's Center, *Observance of Human Rights in Ukraine*, 2009: 14.

587 Razumkov's Center, *State of compliance with the human rights in Ukraine. Results of Public Opinion Polls*, 2009: 10, 12.

588 See, for example, the petition of the Ombudsman to the Head of the Verkhovna Rada of Ukraine pertaining to amendments to the legislation aimed at ensuring the right to social security of the citizens who departed for the permanent residence in other countries, 16 February 2005; the petition of the Ombudsman to the President of Ukraine aimed at enforcement of the constitutional guarantees of the activities of the people's deputies of Ukraine and independent constitutional bodies, such as the Accounting Chamber and the Parliament's Commissioner on Human Rights, 26 June 2006.

589 Article 15.3 of the Law on Ombudsman.

590 Speech by Nina Karpachova, the Parliament's Commissioner on Human Rights, at the Parliament's session, 10 December 2008; http://www.ombudsman.kiev.ua/Zmi_frame.htm [accessed 29 December 2010].

591 http://tsn.ua/chorna-hronika/ukrayini-cherez-poveni-zagrozhuye-vitik-otruinih-rechovin.html [accessed 29 December 2010].

of the best standards of ethical behavior are insufficient due to the fact that the legal framework does not impose the respective obligation on the Commissioner. However the Ombudsman may influence the governance indirectly, through submission of petitions containing the proposals for adoption, making changes or abrogation of the legal acts that violate the human rights.

According to the USAID, the Ombudsman does not play a significant role in fighting or preventing corruption; while it collects thousands of citizen complaints, it does not analyze this information to identify problem trends but rather acts on case-by-case basis. In addition, the Ombudsman's annual report to the Parliament primarily contains statistics on complaints and complainants but no systematic analysis or recommendations for reforms.[592] This conclusion is shared by the human rights organisations, which allege that the Commissioner shows little persistence in promotion of the raised by it issues, while his activities are generally not effective, lacking systematic approach and consistency.[593]

Key recommendations

- To provide for adequate funding for the establishment of the Ombudsman's regional offices in all regions of Ukraine;
- to consider amendments to the Constitution of Ukraine providing for clear and exhaustive list of grounds for early discharge of the Ombudsman from office, as well as the possibility of discharge Ombudsman from office by court in cases when Ombudsman violates the legal provisions which constitute the grounds for pre-term termination of its office;
- to supplement the Law on the Verkhovna Rada of Ukraine Commissioner on Human Rights with provisions clearly defining the scope of information on the Ombudsman's activities which has to be made publicly available and presented in the Ombudsman's annual reports, as well as to set precise time frames for making the relevant information publicly available;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to introduce effective mechanisms of prevention, detection and regulation of the conflict of interest for public servants, including Ombudsman and its staff;
- to adopt a separate law on asset declaration applicable to the Ombudsman and its staff, to provide for possibility of verification of submitted declarations and to effectively detect cases of illicit enrichment;
- to provide for regular trainings of the Ombudsman's staff on integrity issues;
- to clearly define in law the exhaustive list of grounds for the decisions which can be passed by the Ombudsman based on consideration of citizen complaints;
- to supplement the Law on the Verkhovna Rada of Ukraine Commissioner on Human Rights with provisions requiring the Ombudsman to promote good practice of governance and standards of ethical behaviour within the government and public.

592 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and other*, 2006: 17.

593 Koval L., *The Analysis of the Activities of the Parliament's Commissioner on Human Rights*, 2010: 163-165.

8. Supreme Audit Institution

SUMMARY

In Ukraine, the supreme audit institution – the Accounting Chamber – generally has sufficient financial and stable human resources to exercise its duties in an effective manner. The legislation envisages comprehensive mechanisms aimed to ensure independence of the SAI. Although some of them do not fully comply with the Lima Declaration of Guidelines on Auditing Precepts, the Accounting Chamber is free from external interference in the performance of its work. The law does not clarify what information on the SAI activities has to be published, nor does it to set time frames for making such information publicly available. Nevertheless, the Accounting Chamber seeks to ensure a high level of transparency of its activities, in particular, by posting the relevant information on its website and covering its activities in media. The absence of provisions requiring mandatory independent audit of the SAI activities, as well as single instances of the Parliament's debates on the Chamber's reports, to some extent decrease the level of the SAI accountability. The integrity of the SAI is not properly ensured in law, as there are no provisions in place on conflict of interest regulation, on the receipt of gifts and post-employment restrictions of the SAI officials. Restriction of the SAI powers to auditing only a part of public finances, outdated legal framework within which the Accounting Chamber operates, as well as the Chamber's failure to introduce regularity audits, significantly decrease the effectiveness of external audit of the Government's expenditures. The role of the SAI in detecting and sanctioning misbehaviour is hampered by the fact that most of its documents in practice are not followed by legal action.

The table below presents general evaluation of the SAI in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Supreme Audit Institution Overall Pillar Score: 65.97 / 100			
Dimension	Indicator	Law	Practice
Capacity 81.25/100	Resources	75	
	Independence	75	100
Governance 66.66/100	Transparency	50	75
	Accountability	75	75
	Integrity	50	75
Role 50 / 100	Effective financial audit	50	
	Detecting and sanctioning misbehaviour	50	

Structure and organization

The functions of the SAI in Ukraine are performed by the Accounting Chamber. The latter was formed in 1997 on the basis of the Constitution of Ukraine and the Law on Accounting Chamber as a special body entitled to exercise control over the use of the state budget funds on behalf of the Verkhovna Rada of Ukraine.[594] The head and other members of the Accounting Chamber are appointed and dismissed by the Parliament.[595] The members of the Chamber are its head, his first deputy and other deputies, the secretary of the Chamber, and chief inspectors. The Secretariat of the Chamber provides legal, technical and other support to the SAI activities. Organisational structure and list of members of the Secretariat's staff is a subject to approval by the Board of the Accounting Chamber upon proposal of the Chamber's head. The Board is in charge of planning and organising the work of the SAI, preparing the Chamber's reports and other documents based on the results of the SAI auditing activities. The Board is comprised of the Chamber's head, all his/her deputies, secretary of the Chamber and chief inspectors.[596] In 2004, the Accounting Chamber formed its regional offices,[597] that carry out their activities in the most regions of Ukraine (to date, 8 regional offices of the Chamber have been established).

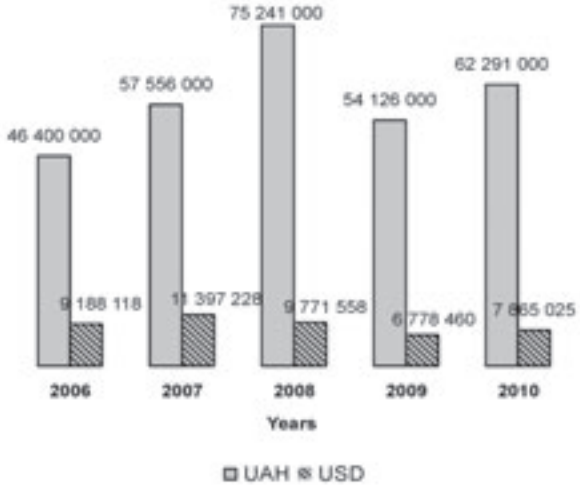
Assessment

RESOURCES (PRACTICE) – SCORE 75

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The SAI budget is not included in the budget of the legislature, however, the annual amount of the Chamber's funding is defined by the separate item of the state budget of Ukraine.[598] In 2006 – 2008, there was a trend towards the increase in funding of the Accounting Chamber, but in 2009, due to the global financial crisis, the Chamber's funding was reduced to 70% of amount allocated to it in 2008 (see the Chart 7).

Chart 7. State Budget Funds Allocated to the Accounting Chamber, 2006-2010



Sources: Accounting Chamber, *2006 Annual Report*; *2007 Annual Report*; *2008 Annual Report*; *Information on the Use of Budgetary Funds by the Accounting Chamber in 2009*

These cuts have had a negative impact on the Chamber's operation at the regional level, particularly because of reducing costs for the personnel business trips.[599] In addition, budget cuts entailed suspension of all activities connected to the development of information management system of the Chamber and renewal of technical, computer and copying facilities.[600] However, the decrease in funding of the Accounting Chamber appeared to be temporary, as in April 2010 the Chamber's funding was increased to 62 291 000 UAH[601] [USD 7,865,025] by the 2010 State Budget Law. Moreover, in July 2010 the Government passed a decision to increase the funding of the Chamber through redistribution of funds planned to be allocated to other budget programs.[602] The practice of uneven

594 Article 98 of the Constitution of Ukraine

595 Article 85.1.16 of the Constitution of Ukraine.

596 Articles 8 and 9 of the Law on the Accounting Chamber, 11 July 1996, № 315/96-BP.

597 CMU Decree on Establishment of the Regional Offices of the Accounting Chamber of Ukraine № 1577, 18 November 2004.

598 Article 38 of the Law on the Accounting Chamber.

599 The Accounting Chamber, *2009 Annual Report*: 182.

600 The Accounting Chamber, *Information on the Use of Budgetary Funds by the Accounting Chamber in 2009;* [accessed 29 December 2010].

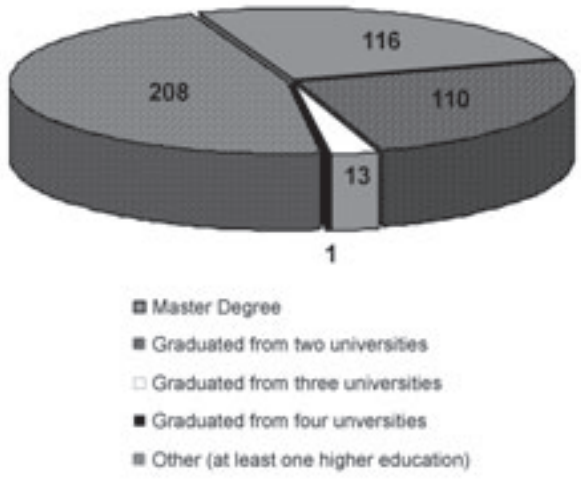
601 The 2010 Budget Law № 2154-VI, 27 April 2010.

602 CMU Decree on the Allocation of the Funds of the Stablisation

funding of the Chamber during a year (*i.e.* increase in funding by the end of the year and insufficient funding at the beginning of the year) also negatively influences the Chamber's operation since it complicates financial planning and current expenditures coverage.[603]

The Accounting Chamber generally has stable human resources. For instance, in 2008 and 2009, 40% of the Chamber's employees had been working for the Chamber for more than 5 years. In 2007 and 2008, staff turnover varied from 5 to 9%.[604] The SAI employees have adequate education (see the Chart 8) and academic background. In particular, the Chamber employs two Doctors in Economics, 22 PhDs, and 14 PhD candidates.[605] The global economic crisis influenced not only the level of Chamber's funding, but also its personnel: in 2009 the number of employees reduced by 10% in comparison with 2008, while 4% of the employees were fired. However, most of the made redundant in 2009 employees by that time had reached 60-65 years of age, that is the upper age limit for the civil servants.[606]

Chart 8. Education of the Accounting Chamber's Employees



The Chamber creates an adequate environment for the career development and improvement of the qualifications of its personnel. In particular, in 2009, 238 employees passed an annual attestation, and, based on its results, 23 of them were appointed to higher posts (in 2008 the number of appointed to higher positions reached 80 persons[607]). In 2009, to improve qualification of the employees engaged in the audit and control activities, the Chamber organised for them 10 educational programs that covered about 40% of the Chamber's employees, while in 2008 the Chamber organised 42 events that cover approximately 59.5% of the staff. It is a common practice that during the first months of work the newly appointed staff with lack of experience is advised and assisted by more experienced employees.[608]

The SAI also has adequate information, technical resources, and huge library. In particular, during the last few years the new information management system was established; in 2008 all technical facilities were modernized and made available to all members of the Chamber's staff. The library stock of the SAI contains about 160,000 items (books, periodicals etc.).[609]

INDEPENDENCE (LAW) – SCORE 75

To what extent is there formal operational independence of the audit institution?

Although the tasks of the Accounting Chamber are anchored directly in the Constitution of Ukraine, and the Chamber was acknowledged by the Constitutional Court of Ukraine as "independent body with special constitutional competence",[610] the legal mechanisms for ensuring its independence do not fully comply with the Lima Declaration of Guidelines on Auditing Precepts,[611] which is one of the fundamental

Fund to Certain Measures Related to Ensuring the Functioning of the Accounting Chamber № 571, 14 July 2010.

603 The Accounting Chamber, *2008 Annual Report*.

604 The Accounting Chamber, *2007 and 2008 Annual Reports*.

605 The Accounting Chamber, *2009 Annual Report*: 176.

606 The Accounting Chamber, *2009 Annual Report*: 177.

607 The Accounting Chamber, *2008 Annual Report*.

608 The Accounting Chamber, *2009 Annual Report*: 177.

609 The Accounting Chamber, *2008 Annual Report*.

610 Clause 1 of the explanatory part of the Judgement of Constitutional Court in the case of Accounting Chamber, 23 December 1997, № 7-зп.

611 The Lima Declaration has never been ratified by the Ukrainian Par-

documents of the International Organisation of Supreme Audit Institutions (INTOSAI), umbrella organisation for 189 SAIs from all over the world.[612]

For instance, the provisions aimed to ensure the SAI independence is laid down in the Law on Accounting Chamber, but not in the Constitution directly. Such an approach does not correspond to Section 5.3 of the Lima Declaration. The independence of the SAI members is not guaranteed by the Constitution since it does not set the exhaustive list of grounds for pre-term termination of office of the SAI members that might not comply with Section 6.2 of the Lima Declaration. Even though such a list is defined in the Law on Accounting Chamber,[613] the members of the Chamber can hardly be considered adequately protected from arbitrary dismissal at any time by the legislature, because the Parliament can decide on pre-term termination of office of the SAI members directly on the basis of the Constitution, which do not envisage any restrictions of the Parliament's powers in this regard.[614]

Furthermore, the principles of cooperation between the Accounting Chamber and the legislature are not laid down in the Constitution that does not correspond to Section 8 of the Lima Declaration and increases the risks of undue Parliament's interference into the SAI activities. Under Article 15 of the Law on the Accounting Chamber, SAI is obliged to include in its plans the proposals of not less than 150 MPs, while Article 32 of the same Law provides for the right of the legislature to direct the activities of the Chamber in order to fulfill the SAI tasks defined by the legislation. These provisions do not go in line with Section 8 of the Lima Declaration, stating that the law should guarantee high level of initiative and autonomy of the SAI even if the latter acts as an agent of Parliament and performs audits on its instructions. The relevant legal provisions also do not correspond to Section 5 of the Lima Declaration, according to which SAI should have the functional and organisational independence required to accomplish its tasks.[615]

Notwithstanding the above, the Law on the Accounting Chamber seeks to ensure the independence of the SAI, providing a number of mechanisms to protect it from undue external influence. For instance, it explicitly prohibits intrusion into SAI operation; tenure of Accounting Chamber's members exceeds the Parliament's term and equals to 7 years; the head and other members of the Chamber are appointed to office by secret ballot. The Law also provides for incompatibility of the membership in the Chamber with other activities, such as entrepreneurship, part-time job; all members of the Chamber are appointed to office on the basis of the Chamber's head proposal that can be considered as additional mechanism to prevent appointments from political interference. Under the Law, the Chamber's activities can be financed via specific item in the state budget of Ukraine.[616] The Law on the Accounting Chamber envisages the possibility of re-electing of the SAI head for the new term, while the head is entitled to independently decide on any internal appointments of the personnel, as well as to resolve any issues connected to auditing.[617] The initial version of the Law on the Accounting Chamber had provided that the members of the SAI could not be arrested, detained or brought to criminal liability without the Parliament's consent; however these provisions were later declared unconstitutional by the Constitutional Court of Ukraine.[618] Notwithstanding that, the Law on Accounting Chamber still envisages some mechanisms of

liament. However, according to the former INTOSAI Secretary General, "the Lima Declaration is equally significant for all Supreme Audit Institutions grouped in INTOSAI, no matter to what region they belong... [and]... the success of the Declaration is above all due to the fact that it contains a comprehensive list of all goals and issues relating to Government auditing". See: Foreword of the Dr. Franz Fiedler, Secretary General of INTOSAI, to the Lima Declaration of Guidelines on Auditing Precepts; [accessed 29 December 2010].

612 Ukraine's Accounting Chamber became an INTOSAI member in 1998. Further information on INTOSAI is available on its website: [accessed 29 December 2010].

613 Article 37.3 of the Law on Accounting Chamber.

614 Article 85.1.16 of the Constitution of Ukraine.

615 INTOSAI, *The Lima Declaration of Guidelines on Auditing Precepts*; [accessed 29 December 2010].

616 Articles 10, 37, 38 of the Law on the Accounting Chamber.

617 Article 10 of the Law on the Accounting Chamber.

618 Article 37.1 of the Law on the Accounting Chamber; clause 1 of the explanatory part of the Judgement of Constitutional Court in the case of Accounting Chamber, 23 December 1997, № 7-зп.

legal protection of the members of the SAI. In particular, criminal cases against the head and other members of the Chamber can be instituted only by the Prosecutor General.[619]

INDEPENDENCE (PRACTICE) – SCORE 100

To what extent is the audit institution free from external interference in the performance of its work in practice?

In general, the Accounting Chamber can operate in a non-partisan manner,[620] a clear indication of which are its critical assessments of the activities of both preceding and incumbent governments, which were formed by different political parties. According to the USAID, the Accounting Chamber is free from political and functional interference.[621] However, some representatives of the preceding Government accused the head of the Accounting Chamber of being politically dependent, biased and corrupt.[622] However the Kyiv Court of Appeal later dismissed the accusations of the SAI head of corruption.[623] Some attempts of political interference into activities of the Accounting Chamber took place in 2006, when the right to be appointed to the post of the SAI head was suggested to be vested in the opposition,[624] but since 2006 this issue has not been raised any more. The members of the Accounting Chamber have never infringed the legal requirements on incompatibility of their office with other kinds of activities. Since 2000, the Parliament has terminated office of the SAI members only upon their own requests[625] or due to expiration of their terms of office,[626] while the head of the Chamber has been holding his position since 4 December 1996, being re-elected by the Parliament for a new term in 2003.[627]

The Accounting Chamber work plans and extraordinary (*i.e.* not envisaged by annual plans) checks are influenced by the Parliament, that has a right to "direct" the activities of the Chamber. However, audits on the basis of the Parliament's resolutions, requests of the committees and MPs are performed not "automatically", but only on condition that the Chamber's Board passed a relevant decision. In 2009, the share of audits triggered by the legislature, parliamentary committees and MPs equaled 11% out of total number of audits performed by the Chamber.[628]

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Under the Law, the Accounting Chamber is required to cover its activities in media on a regular basis. Nonetheless, the Law fails to clarify what information on the Chamber's activities has to be published, as well as to set any time frames for making such information publicly available. The annual report of the Chamber is a subject to mandatory publication in the Parliament's media,[629] but there are no provisions in place defining the dead-line for publication. The laws on public access to information, namely the Laws on Information and the Law on the Citizen Inquiries, are applicable to the Chamber, but they contain a number of loopholes and imperfections, not helping to ensure a due level of transparency of public authorities' activities, including the Accounting Chamber [see: *Public Sector, Media*]. On 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which

619 Article 37.2 of the Law on Accounting Chamber.

620 Interview by the representative of the Parliament's Secretariat, with author, 17 September 2010.

621 Management Systems International, *Corruption Assessment: Ukraine. Final Report by Bertram I.Spector, Svetlana Winbourne, and others*, 2006: 38.

622 Press Service of the Main Control and Revision Department, *Speech by the Head of the Accounting Chamber is Just Another Attempt to Falsify the Data on the State Budget Execution*, 12.10.2009 p.; ; see also: [all accessed 29 December 2010].

623 [accessed 29 December 2010].

624 http://www.rbc.ua/ukr/top/show/yu_timoshenko_mozhet_stat_predsedatelem_schetnoy_palaty_1165495108/ [accessed 29 December 2010].

625 VRU Resolution № 1794-IV, 17 June 2004.

626 See: VRU Resolutions № 1793-IV, 17 June 2004; № 2330-IV, 13 January 2005; № 202-V, 5 October 2006.

627 VRU Resolution № 1374-IV, 11 December 2003.

628 The Accounting Chamber, *2009 Annual Report*: 22.

629 Articles 35, 40 of the Law on the Accounting Chamber.

provides for a number of improvements [see: *Public Sector*] in terms of access to information. However, the FOIA will come into force only in May 2011.

TRANSPARENCY (PRACTICE) – SCORE 75

To what extent is there transparency in the activities and decisions of the audit institution in practice?

The Accounting Chamber informs on its activities through publication of information notices in media, posting the materials related to the Chamber's activities on its website, holding press-conferences, participation of the SAI representatives in a special television program (*Rahunok vid Rahunkovoyi* ("The Account from the Accounting Chamber"), distributing the information bulletins of the Chamber. The total number of media publications on the SAI activities has increased from 705 in 2003 to 8768 in 2009.[630] All of the activities of the Chamber are comprehensively covered on its website,[631] where the annual reports, bulletins, job announcements, planned and made procurements, working plans of the Board, contacts and other information are posted. The lack of access to the internal SAI decisions pertaining to the audits methodology, as well as Rules of Ethics (they are not published), can be considered as a shortcoming in terms of transparency of the SAI activities.

The level of transparency of the Accounting Chamber was tested within the framework of this assessment by addressing the Chamber with citizens' requests for information. The tests revealed that access to certain information related to internal activities within the SAI (such as information on the number of staff employed by the structural units of the Chamber) is restricted, as well as the fact that citizens who do not have access to Internet in practice might encounter problems with obtaining necessary information on the Chamber's activities (see the Table 14 below).

Table 14. The Results of Consideration of the Requests for Information by the Accounting Chamber

The requester	Requested information	Results of the requests' consideration
The Accounting Chamber	Information on the number of employees in each department of the Accounting Chamber	Letters № 10-1331; № 10-1332, 22 July 2010. Written refusal on the grounds that the requested information is classified by internal SAI acts.
	Information on total amount of funds that, according to the Chamber's audits findings, were used ineffectively or illegally in 2009	Letters № 17-1483, 16 August 2010; № 17-1416, 5 August 2010. Requests were partially fulfilled. The Chamber failed to provide clear replies to the requests, but referred to the pages of the 2009 Annual Report, where it was published, and indicated a hyperlink for loading the 2009 Report from Internet.

630 The Accounting Chamber, *2009 Annual Report*: 168.

631 [accessed 29 December 2010].

ACCOUNTABILITY (LAW) – SCORE 75

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

Under Article 35 of the Law on the Accounting Chamber, the SAI is obliged to submit its written annual report to the Parliament by 1 December of each year. The report is expected to present the results of implementation of the Parliament's instructions, performed audits, expenses for the relevant activities.

In addition, the Chamber is legally required to inform the Verkhovna Rada on the results of audits and checks, detected violations of the legal provisions, as well as to provide upon the Parliament's request the expert opinions on the draft State budget law, draft laws in the areas of fiscal, financial, monetary and credit policy, draft national programs and international agreements requiring public expenses for their implementation. The Chamber also has the right to submit to the Parliament proposals on improvement of legal acts related to the fiscal, financial, civil and other spheres.[632] However, it is at the Parliament's discretion to decide on whether to hold discussion of the Chamber's reports and opinions or not.

The law does not provide for mandatory audit of economic and financial activities of the Accounting Chamber, but neither does it exclude the possibility of performing such audits by the Main Control and Revision Department (MCRD), which is in charge of supervising the public expenditures on behalf of the executive. In any case, the audits performed by MCRD cannot be considered independent as the MCRD is the Government's agent subordinated to and directed by the Cabinet of Ministers through the Minister of Finance.[633]

ACCOUNTABILITY (PRACTICE) – SCORE 75

To what extent does the SAI have to report and be answerable for its actions in practice?

The Accounting Chamber annually submits to the Parliament detailed reports on its activities and the annual reports are also posted in full on the SAI website. In practice, the information reflected in these reports goes even beyond the requirements set by the Law on the Accounting Chamber. For instance, the 2009 Annual Report contains information on enforcement of the Law on Fight against Corruption, information on human, information and other resources of the Chamber, proposals for the improvement of the legislation, the responses of the state bodies, institutions and organisations to the Chamber's findings and recommendations.

Based on the audits' findings, the Accounting Chamber prepares and distributes to the MPs information bulletins (in 2009, 15 bulletins were distributed to the members of the Parliament). In addition, in 2009 the Chamber forwarded to the legislature, executive, public institutions, enterprises and organisations 610 reports, opinions and information letters suggesting the measures to tackle with the detected infringements. Most of these documents were sent to the ministries (31%) and the Parliament (27%).[634] The documents of the Accounting Chamber are rarely discussed by the legislature (except for the opinions on the draft State Budget Law, which are discussed together with the draft State Budget Law, and other draft decisions that require opinions of the Chamber), but, as the annual reports of the Chamber indicate, these documents are actively used in the work of the parliamentary committees and committees of inquiry.[635] Since 1997, the Parliament has approved only one annual report of the Accounting Chamber,[636] while other annual reports have had no response from the Parliament.[637] The level of the Accounting Chamber's accountability is hampered by the absence of the independent financial audit of its own activities.

INTEGRITY (LAW) – SCORE 50

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

632 Articles 26, 27, 30 of the Law on the Accounting Chamber.

633 The Regulations on the MDCS, approved by the CMU Decree № 884, 27 June 2007.

634 The Accounting Chamber, *2009 Annual Report*: 24 – 25.

635 The Accounting Chamber, *2009 Annual Report*: 124 – 128.

636 VRU Resolution № 116/98-BP, 12 February 1998.

637 See: [accessed 29 December 2010].

The rules of conduct for the SAI officials are laid down in the Law on Accounting Chamber, Law on Civil Service, General Rules of Civil Servant's Conduct, as well as in the Chamber's own Rules of Professional Ethics for the Accounting Chamber's Officials approved in January 2008. Under Articles 19 and 20 of the Law on Accounting Chamber, the SAI officials are required to maintain confidentiality of information contained in the documents submitted for the Chamber's analysis and control activities. The General Rules of Civil Servant's Conduct oblige the civil servants, including the SAI staff, to adhere to the principles of impartiality and political neutrality, to respect the citizen rights, to observe the legal requirements, to inform the management of the respective institution or body on corruption offences committed by other civil servants etc.[638] The Rules of Professional Ethics for the Accounting Chamber's Officials are based on the INTOSAI Code of Ethics which guides the daily work of the auditors and obliges the SAI officials to uphold the principles of impartiality, honesty, professionalism, and confidentiality.[639] The Ethics Commission, formed within the Accounting Chamber in January 2008, is in charge of the enforcement of the Rules of Professional Ethics. There are no legal provisions in place on post-employment restrictions that can be imposed on civil servants. The detailed provisions on conflict of interest and on the receipt of gifts by civil servants are laid down in the Section 3 and clauses 4.3-4.4. of the General Rules of Civil Servant's Conduct, but the relevant provisions of the Rules will enter into force as soon as the Law on the Principles of Prevention and Counteraction to Corruption is enacted. The latter has yet to be adopted by the Parliament.

INTEGRITY (PRACTICE) – SCORE 75

To what extent is the integrity of the audit institution ensured in practice?

While being appointed to positions at the SAI, the officials are required to familiarise themselves with the General Rules of Civil Servant's Conduct and the Rules of Professional Ethics for the Accounting Chamber's Officials. The trainings aimed to raise officials' awareness on the standards of integrity and ethical behaviour are rarely conducted. For example, in 2009, such a training was held only one time in October, where the Secretary of the Chamber instructed personnel on the role of ethics in professional activities of the civil servants.[640] In 2009, there have been no cases of violations of the Rules of Professional Ethics by the SAI personnel.[641]

EFFECTIVE FINANCIAL AUDIT (LAW AND PRACTICE) – SCORE 50

To what extent does the audit institution provide effective audits of public expenditure?

The Accounting Chamber performs both legality[642] and performance audits. For instance, in 2009, it performed audit of the effectiveness of the use of budget funds allocated to applied research by the National Academy of Science of Ukraine, and of the application of the research results in the sphere of economy, audit of the effectiveness of the use of public funds allocated to the State committee for Radio and Television for production and distribution of TV and radio programs; audit of effectiveness of the State Material Reserve management, as well as number of other audits.[643] The reports on audits findings are quite comprehensive and contain detailed analysis of the legal framework in the relevant fields, the effectiveness of the division of powers between different levels of administration and internal structural units, the effectiveness of the decisions adopted by public authorities, the reasons for violations and recommendations for their elimination.

The Ukraine's governance assessment carried out in 2006 by SIGMA, pointed out that the Accounting Chamber to date did not carry out

638 Clauses 1.7, 1.8, 2.1, 2.3, 2.11, 4.1 of the General Rules of Civil Servant's Conduct, approved by the MDCS Order № 214, 4 August 2010.

639 Accounting Chamber, *2007 Annual Report*.

640 The Accounting Chamber, *2009 Annual Report*: 175.

641 Press Service of the Accounting Chamber, *The Rules of Ethics are the Standard of the Auditor's Life*, 23 October, 2009; [accessed 29 December 2010].

642 The term "legality audit" is used in the Lima Declaration of Guidelines on Auditing Precepts. See, for instance, Section 4 of the Lima Declaration.

643 See, for instance: The Accounting Chamber, *2009 Annual Report*: 23, 51-52, 70-71. Further information on legality and performance audits is available at: [accessed 29 December 2010].

regularity audits, in the sense of audits aimed at attesting the finances of each budget-spending unit, together with an opinion on the financial statements of the unit, or the financial accountability of the Government as a whole. Moreover, there was no special annual audit aimed at issuing an overall opinion on the state accounts and based on examination of the accounts of all main users of the state budget.[644] No significant progress in this field has been made since then.[645]

The effectiveness of the auditing activities of the Accounting Chamber is weakened by a number of factors. For instance, under the Article 98 of the Constitution, the Chamber is entitled to supervise only the use of budget funds. In other words, its mandate includes only a part of public finances, *i.e.* only the budget funds and only their use. These provisions of the Constitution do not comply with Section 18 of the Lima Declaration, in accordance with which all public financial operations, regardless of whether and how they are reflected in the national budget, should be a subject to audit by SAI, and excluding parts of financial management from the national budget should not result in these parts being exempted from audit by SAI.

Another factor that hampers the SAI work is that the Chamber still operates on the basis of the Law on Accounting Chamber which has not been yet revised on the basis of the Constitutional Court's judgment that declared a number of its most important provisions unconstitutional. In this regard it is worth mentioning that the Law on Accounting Chamber does not even contain the notion of "audit". Finally, even though the SAI conducts performance audits, it still to significant extent focuses on legality audits.[646]

DETECTING AND SANCTIONING MISBEHAVIOUR (LAW AND PRACTICE) – SCORE 50

Does the audit institution detect and investigate misbehaviour of public officeholders and conduct investigation according to detected facts?

The Law on the Accounting Chamber grants the SAI extensive powers allowing to detect misbehaviour and maladministration, in particular the right to obtain necessary information and documents from any agencies, the right to involve in audits specialists of other state bodies, etc.[647] The practice, however, has revealed that in some cases the Accounting Chamber is not able to exercise its rights. For instance, in 2009 SAI failed to perform audit of the State Mortgage Institution (SMI) simply because the SMI officials did not allow the Chamber's auditors to enter institution's premises.[648]

The SAI is not entitled to impose sanctions for violations of legal requirements. Should it detect the facts of misbehaviour that might entail a legal liability, it has to submit its findings to the law-enforcement agencies and inform the legislature on the detected infringements. The Chamber may also submit the audit findings to the heads of the audited institutions.[649] Public authorities respond to the SAI recommendations in a different way. The 2009 Annual Report of the SAI states that the majority of recommendations are implemented in practice; however the head of the Accounting Chamber acknowledged that in 2009 the Government failed to provide any response to the documents submitted by the Accounting Chamber.[650] In 2009, the Accounting Chamber forwarded to the Prosecutor's office and law-enforcement agencies 39 documents; 187 documents were also submitted to the government agencies.[651] Based on the Chamber's findings, the law-enforcement agencies instituted criminal proceedings in 9 cases.[652] In 2009, the SAI accused the Prosecutor's General Office of "absence of any reaction to the findings of the Accounting Chamber".[653] The latter argued

644 SIGMA, *Ukraine Governance Assessment*, 2006: 120.

645 See, for instance, the list of audits performed by the Accounting Chamber (available at: [accessed 29 December 2010]).

646 http://www.undp.org.ua/files/ua_49453roundtable_accountability_4_06_03.pdf [accessed 29 December 2010].

647 Articles 18 and 21 of the Law on the Accounting Chamber.

648 Interview by Valentyn Symonenko, the Head of the Accounting Chamber, with Volodymyr Boyko, 13 April 2010; Press Service of the Accounting Chamber, *Information notice*, 3 November 2009; [accessed 29 December 2010]; [accessed 29 December 2010].

649 Article 26 of the Law on the Accounting Chamber.

650 Interview by Valentyn Symonenko, the Head of the Accounting Chamber, with Volodymyr Boyko, 13 April 2010.

651 The Accounting Chamber, *2009 Annual Report*: 25.

652 Interview by Valentyn Symonenko, the Head of the Accounting Chamber, with Volodymyr Boyko, 13 April 2010.

653 [accessed 29 December 2010].

that the information presented in the submitted documents was thoroughly checked, while the main reason for absence of legal action was "poor quality and incompleteness of the documents, focusing on minor infringements, which do not constitute any grounds for instituting criminal or administrative cases.[654] The Prosecutor's General Office also stated that in some cases the Accounting Chamber submitted to the Office not the audit reports, but information notices which did not present any information on the amount of funds that were used illegally, neither were they substantiated by the evidence to prove the allegedly illegal actions. As a result, based on examination of 11 out of 27 documents submitted by the Chamber to the Prosecutor's General Office during 2008 – September 2009, the Office found out no reasons to institute the criminal proceedings, while checks performed on the basis of 4 other documents revealed no violations of legal provisions at all.[655]

Key recommendations

- to consider amendments to the Constitution of Ukraine providing for clear and exhaustive list of grounds for early discharge from office of the members of the Accounting Chamber, as well as extension of the scope of powers of the Accounting Chamber to allow it supervise all public funds, regardless of whether they are included into state budget of Ukraine or not;
- to replace the outdated version of the Law on the Accounting Chamber with a new Law, allowing the SAI to effectively supervise public funds;
- to supplement the Law on Accounting Chamber with provisions clearly defining the scope of information on the SAI's activities which has to be published, as well as to set time frames for making such information publicly available;
- to adopt without delay the draft Law on the Principles of Prevention and Counteraction to Corruption in Ukraine, submitted to the Parliament by the President of Ukraine, and to ensure its enactment;
- to introduce effective mechanisms of prevention, detection and regulation of the conflict of interest for public servants, including SAI's members and staff;
- to adopt a separate law on asset declaration applicable to the SAI's members and staff, to provide for possibility of verification of submitted declarations and to effectively detect cases of illicit enrichment.

654 Statement of the Press Service of the Prosecutor's General Office, 25 December 2009; [accessed 29 December 2010].

655 Statement of the Press Service of the Prosecutor's General Office, 25 December 2009; [accessed 29 December 2010].

9. Anti-Corruption Agencies

SUMMARY

In Ukraine there is no specialised, statutory and independent anti-corruption agency either with preventive or sanctioning functions. The existing institution of the Government Agent on Anti-Corruption Policy is not provided with adequate status, autonomy and resources. It therefore can be seen as non-compliant with Article 6 of the United Nations Convention against Corruption (UNCAC). Ukraine should strengthen the institution of the Government Agent and consider establishing a specialised investigative body to deal with high-level corruption.

The table below presents general evaluation of anti-corruption agency in terms of capacity, governance and role in national integrity system. Afterwards, a qualitative assessment of the relevant indicators is presented. The assessment is focused on the Government Agent on Anti-Corruption Policy, the closest body to an anti-corruption agency in the existing institutional set-up in Ukraine. The assessment according to the National Integrity System indicators is adjusted to take account of the Government Agent's mandate (anti-corruption policy coordination and prevention institution).

Anti-Corruption Agencies Overall Pillar Score: 42.36 / 100			
Dimension	Indicator	Law	Practice
Capacity 31.25/100	Resources	0	50
	Independence	25	50
Governance 45.83/100	Transparency	50	75
	Accountability	50	50
	Integrity	25	
Role 50/100	Prevention	50	
	Education	50	
	Investigation	-	

Structure and Organisation

In Ukraine there is no specialised, statutory and independent anti-corruption agency either with preventive or sanctioning functions. In June 2008 the Cabinet of Ministers of Ukraine created a position of the **Government Agent (Authorised Representative) on Anti-Corruption Policy** under the Government. This institution became operational only in April 2009 when the first Government Agent was appointed and Regulations on the Agent were adopted. The Government Agent was put in charge of "preparing proposals concerning formulation and implementation of the state anti-corruption policy". The Government Agent has no authority to conduct criminal investigations/prosecutions.

In February 2010 the President of Ukraine established **National Anti-Corruption Committee** (NAC) as an advisory body to the President. The functions of this institution are limited to providing advice and suggesting anti-corruption measures to the President, in particular it can propose draft legislation that can be further submitted to the Parliament by the President. Any decision taken by the Committee can be enforced only through relevant act of the President and within the latter's scope of authority. The President

of Ukraine chairs the Committee and also appoints its members. The Committee currently consists of the country's highest public officials, including the Prime Minister, Chairperson of the Parliament, Minister of Justice, Prosecutor General, President of the Supreme Court, Head of the Security Service. The Committee also includes several representatives of academia and universities and only one NGO representative. There is no link between the NAC and the Government Agent on Anti-Corruption Policy; the latter has not even been included in the NAC.

In the **law enforcement** area there are several divisions with different degrees of specialisation in corruption cases. None of them, however, can qualify as an anti-corruption agency. In 2007 the Ministry of Interior set up an Anti-Corruption Bureau on the basis of one of the sub-units of the Ministry's Main Department on Combating Organised Crime (GUBOZ – based on Ukrainian abbreviation of *Golovne Upravlinnya po Borotbi z Organizovanoyu Zlochynnistiu*). This Anti-Corruption Bureau remains within the structure of GUBOZ and its head is *ex officio* a Deputy Head of the GUBOZ. Despite its name the Bureau is not an autonomous unit/agency and has several levels of command above it. The Anti-Corruption Bureau has about 60 staff members and several regional offices (included in the structure of the regional GUBOZ offices). A separate Department on Combating Organised Crime and Corruption also functions within the Security Service of Ukraine. Detection of corruption offences within the tax administration (committed by tax officials) is carried out by the Tax Police.

The above-mentioned agencies/units have limited authority – their officers are authorised to detect corruption-related criminal offences (which then have to be referred to the prosecution bodies for pre-trial investigation) and administrative corruption with the following submission of such cases to courts for sanctioning. There is a lack of proper coordination among various law enforcement authorities responsible for tackling corruption with several agencies having overlapping powers.

In April 2008 the President of Ukraine adopted a Concept (Strategy) of the Criminal Justice System in Ukraine that provided for establishment of a specialised investigative anti-corruption agency and introduction of the anti-corruption specialisation of prosecutors. This idea has not been implemented so far and relevant draft legislation has not been initiated by the President or the Government. However, in 2008 a group of the Parliament's members representing all factions registered a draft law on the **National Bureau of Anti-Corruption Investigations of Ukraine**. The draft law was prepared with assistance of US Government funded project implemented by the Organisation for Economic Co-operation and Development. In March 2010 the Parliament's Committee on Combating Organised Crime and Corruption recommended its adoption in the first reading. Consideration of the Draft Law is pending in the Parliament. The Draft Law provides for creation of a new stand-alone law enforcement agency that will be specialised in detection and pre-trial investigation of high-level corruption, *i.e.* corruption and money laundering offences committed by the highest public officials and cases of corruption that caused serious damage or involved significant bribes as detailed by the law. The head and main staff of the National Bureau will be appointed based on an open competitive selection. Specialised prosecutors, as well as experts in financial, accounting, IT and other issues will be seconded to the National Bureau. The Draft Law provides for a set of guarantees of the National Bureau's impartiality and independence.

Assessment

RESOURCES (LAW) – SCORE 0

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

The existing legal framework does not provide for sufficient resources for the Government Agent on the Anti-Corruption Policy to carry out its functions. There are no special budgetary allocations to fund the Government Agent and/or his office; relevant funding is a part of the general budget

of the Government's Secretariat. Accordingly, the actual resources received by the Government Agent and his office depend on the discretion of the Government and, in particular, the minister in charge of the governmental secretariat. Since the Agent and his office are not instituted as a separate entity (*e.g.* as a separate executive agency), they have very limited, if any, possibilities in suggesting and defending the amount of budgetary funding.

RESOURCES (PRACTICE) – SCORE 50

To what extent does the ACA have adequate resources to achieve its goals in practice?

The Government Agent and his office (Anti-Corruption Policy Bureau) are provided with sufficient premises, equipment and salaries for the existing staff members.[656] This can be partly attributed to the parallel status of the Government Agent who is currently *ex officio* Deputy Minister of the Cabinet of Ministers and, therefore, can influence distribution of resources within the Government secretariat. This, however, could easily be changed should the Government Agent lose this additional position [see: *Independence (law)*].

The existing capacities of the Anti-Corruption Bureau, however, appear to be inadequate to ensure effective performance of all functions assigned to the Government Agent. This, in particular, concerns the conducting of anti-corruption surveys and studies, public education campaigns and awareness-raising measures. No budget is foreseen for these functions. The anti-corruption portal – a web-resource of the Government Agent – is funded by the international donors.[657] Also the additional control functions assigned to the Government Agent in December 2009 (see below) have not been supported by relevant staff and resources. While the scope of these powers remains questionable, unless they are retracted, the control functions should be accompanied with the commensurate resources.

INDEPENDENCE (LAW) – SCORE 25

To what extent is the ACA independent by law?

The position of the Government Agent was established by the Cabinet of Ministers in June 2008. This institution became operational only in April 2009 when the first Government Agent was appointed and Regulations on the Agent were adopted. The Law on the Principles of Preventing and Countering Corruption adopted in June 2009 used to provide that a special body (person) should be in charge of formulating public anti-corruption policy, implementation of the anti-corruption strategy and coordination of activities of central executive authorities in this regard. However, on 21 December 2010, the Parliament repealed this Law [see: *Legislature*]. If the said legal provision had been enacted, it could have been a basis for operation of the Government Agent.

The Government Agent is appointed and dismissed by the Cabinet of Ministers of Ukraine upon proposal of the Prime Minister. There are no provisions on competitive selection of the Agent, or on the tenure of the Government Agent and protection against his arbitrary removal. It is thus at the political discretion of the Prime Minister and the Cabinet of Ministers whom to appoint as Government Agent. Regulations on the Government Agent are approved by the Cabinet of Ministers of Ukraine.

One of the main preventive instruments in the hands of the Government Agent is the anti-corruption screening of legislation (verification of draft legal acts as to inclusion in them of corruption-prone provisions). However, according to the Regulations on the Government Agent and Rules of Procedure of the Cabinet of Ministers such screening is conducted only if authorised by the Government's sub-committee or the Government itself (upon request of the Agent). This significantly limits the autonomy of the Government Agent in exercising this important function.

In December 2009 the Government Agent was given a number of responsibilities of control nature with regard to the units for prevention and combating corruption that have been established in most of the ministries, other central executive bodies and regional state admin-

656 Interview by Andriy Bohdan, Government Agent on Anti-Corruption Policy, with the author, 10 September 2010.

657 www.acrc.org.ua, funded by donors (USAID, American Bar Association).

istrations[658]. These powers include:

- making proposals on the appointment and dismissal of the heads of such units;
- endorsing decisions on appointment and dismissal of deputy heads of the units;
- approving structure, number of stuff and action plans of the units;
- giving instructions to the heads of the units to conduct verification of compliance with anti-corruption legislation or carry out internal investigation into misconduct;
- inspection of activity of the units, conducting internal investigation with regard to the staff of such units;
- submitting proposals to the Government on disciplinary measures and on temporary removal from office of ministers and heads of other central executive bodies during the internal investigation conducted regarding such officials.

This has significantly expanded the mandate of the Government Agent. On this background the status and the level of autonomy of the Government Agent, as well as the capacity of his office can be found inadequate and not sufficient to allow him to exercise effectively the new powers.

INDEPENDENCE (PRACTICE) – SCORE 50

To what extent is the ACA independent in practice?

Lack of competitive selection, the absence of protected tenure and clear grounds for dismissal of the Government Agent undermine in practice the independence of this office. For example, in 2010 with the change of the Cabinet of Ministers, the Government Agent was replaced as well. It has, therefore, been in practice viewed as a political office.

The Government Agent is equalled in his rank and salary rate to the Deputy Minister of the Cabinet of Ministers. Since March 2010 he also simultaneously holds this post, thus being subordinate not only to the Government directly but also to the Minister of the Cabinet of Ministers of Ukraine – the so called minister without political portfolio in charge of the Government's Secretariat. This makes the post of the Government Agent politically and administratively dependent. And even though it may be argued that the Government Agent as a Deputy Minister of the Cabinet of Ministers is subordinated to relevant Minister only in that part of his duties (*e.g.* as Deputy Minister of the Cabinet of Ministers the Government Agent was put in charge of some departments within the Government's Secretariat), however such separation of tasks would be artificial and still leave a lot of possibilities for undue influence.

At the same time, the Government Agent is placed relatively high in the system of executive authorities and has direct access to the Government meetings. Therefore, in practice the Government Agent can exercise a high level of autonomy vis-à-vis ministries and other executive agencies. The Government Agent has no authority or influence over law enforcement agencies, but can refer detected allegations of corruption to the latter and receive from them information on the results of verification of such allegations.

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

According to the Regulations on the Government Agent, one of his functions is to inform the public about anti-corruption measures. The Government Agent also summarises information on the anti-corruption measures submitted by the executive authorities and prepares annually a report that is submitted to the Government and should also be published. The Government Agent is also authorised to place materials on the prevention and countering corruption in the mass media (there are no

658 List of the existing corruption prevention units can be found here: http://www.kmu.gov.ua/control/uk/publish/article?art_id=243717756&cat_id=243201640 [accessed 29 December 2010].

requirement though on the regularity of such materials or their contents). The Government Agent as a public authority is also subject to the legislation on access to information.

TRANSPARENCY (PRACTICE) – SCORE 75

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

The Government Agent and his office provide regular and comprehensive information on the anti-corruption measures and corruption related developments in general. This is often done in a proactive manner by placing information on the web-sites of the Government Agent (www.acrc.org.ua) and the Government itself, participation in the public events and interviews with the media.[659] Level of transparency of the Government Agent was tested within this assessment by sending individual requests for information to the Agent. The results of their consideration display that the level of transparency and openness of the Government Agent and his office is rather high (see the Table below). However, the Government Agent has yet to publish an annual report on activities of his office [see: *Resources (practice)*].

Table 15. The Results of Consideration of the Requests for Information by the Government Agent on Anti-Corruption Policy

The requester	Requested information	Results of the requests' consideration
The Government Agent on Anti-Corruption Policy	Information on the average salary of the Government Agent in 2009.	Letters № 10816/0/2-10, 16 August 2010; № 10817/0/2-10, 16 August 2010. Requests were partially fulfilled. The Agent did not provide the requested information since the law prohibits its disclosure without permission of the former Agent, discharged from office in 2010, but provided comprehensive information on the legal acts on the basis of which the Agent's salary is calculated.
	Information on the number of draft legislative acts that were subject to negative conclusions of the Agent in 2009	Letters № 10903/0/2-10, 18 August 2010; № 41-Ё-033412/04-1, 18 August 2010. Requests fulfilled.

659 Interview by Ruslan Riaboshapka, Head of the Anti-Corruption Bureau, with the author, 6 September 2010.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?

The Government Agent is accountable to the Cabinet of Ministers through procedures of appointment/dismissal of the Agent and submission of annual reports. Annual reports by the Government Agent should also be submitted for information only to the President of Ukraine and the Parliament. There are no provisions requiring the Parliament to discuss or react in any manner to such report. Annual reports should also be published, thus allowing accountability to the public. Also according to the Regulations on the Government Agent the latter informs the Cabinet of Minister of corruption facts uncovered by the Agent. The Government Agent should set up a public council to involve civil society organisations in the formulation and implementation of the anti-corruption policy. Decisions and actions of the Government Agent can also be appealed in administrative courts or through a complaint mechanism provided for in the Law on Citizen Inquiries.

ACCOUNTABILITY (PRACTICE) – SCORE 50

To what extent does the ACA have to report and be answerable for its actions in practice?

No annual report has been published by the Government Agent to date. However, extensive information on the activity of the Agent and his office has been publicised at the Government Agent's web-site. A public council was set up under the previous Government Agent but has mainly been non-functional.[660] The new Government Agent established the public council comprising of 34 members. The majority of the council's members represent civil society organisations.[661]

INTEGRITY (LAW AND PRACTICE) – SCORE 50

To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?

There are no special mechanisms for ensuring integrity of the Government Agent on the Anti-Corruption Policy and his staff. The agent and staff members of the Anti-Corruption Bureau are civil servants and therefore are covered by the general integrity provisions, which fall short of the international standards [see: *Public Sector*].

PREVENTION (LAW AND PRACTICE) – SCORE 50

To what extent does the ACA engage in preventive activities regarding fighting corruption?

Preventive measures to combat corruption are the main focus of activities of the Government Agent. Main responsibility of the Government Agent is to prepare proposals concerning formulation and implementation of the state anti-corruption policy. This includes submission of proposals on the directions of the state anti-corruption policy, coordination of its implementation by the executive power bodies, review (screening) of draft legal acts and legislation in force to detect corruption-prone provisions, organising research on anti-corruption topics, informing the public on government anti-corruption policy and measures, cooperation with the civil society organisations, public education.[662] The Law on the State Programme of Economic and Social Development in 2010 put the Government Agent in charge of drafting a new Anti-Corruption Strategy by the end of 2010. However, the latter was drafted by the Ministry of Justice and presented at the NAC meeting on 20 October 2010, but has yet to be approved by the President.

The Government Agent can initiate before the Cabinet of Ministers preparation of legal acts, including draft laws. To co-ordinate anti-corruption measures implementation by the executive bodies the Government Agent can request information from the latter and convene meetings. The Anti-Corruption Bureau has a unit for corruption analysis and research. The Agent has yet to produce any reports/studies on anti-corruption. Suggestions and comments on the government anti-corruption measures can be submitted by any-

660 Interview by Ruslan Riaboshapka, Head of the Anti-Corruption Bureau, with the author, 6 September 2010.

661 Decision of the Government Agent on Anti-Corruption Policy on Organisation of the Work of the Public Council at the Government Agent on Anti-Corruption Policy, 8 October 2010, № 3.

662 See paragraph 4 of the Regulations on the Government Agent approved by the Cabinet of Ministers' Resolution No. 410 of 24 April 2009 as amended.

one to the Government Agent via special template on the web-site dedicated to the Government Agent (www.acrc.org.ua). As of 1 November 2010 the Government Agent and his office conducted about 307 reviews (anti-corruption screening) of draft legal acts and in 84 cases found provisions which fostered corruption. In all these cases relevant provisions had been amended or deleted.[663] Several cases when corruption-prone legal acts have been prevented from adoption have been reported by the Government Agent.[664] Upon proposals of the Government Agent the Prime Minister of Ukraine issued an instruction to central and local executive bodies to review their legal acts to detect and eliminate provisions fostering corruption.[665]

The Government Agent conducts preventive anti-corruption work also through the units for prevention and combating corruption. According to the Anti-Corruption Policy Bureau, as of the end of October 2010 such units have carried out more than 4,000 various events (seminars, round-table discussions, lectures) on anti-corruption topics, in which about 26,000 civil servants took part. These units published in the mass media (made TV or radio appearances) and Internet 1,890 articles (materials) and organised more than 550 internal staff meetings in the relevant institutions. The Government Agent also works directly with the units for prevention and combating corruption by holding monthly trainings (seminars) for their representatives (so far 5 such seminars have been conducted on the issues of anti-corruption screening of draft legal acts, public procurement, interaction with the mass media, civil society and international organisations).[666]

EDUCATION (LAW AND PRACTICE) – SCORE 50

To what extent does the ACA engage in educational activities regarding fighting corruption?

Public education on anti-corruption is one of the functions of the Government Agent and it can be carried out in particular by placing information in the mass media. In October 2010 an awareness-raising campaign has been initiated by the Government Agent jointly with the UNODC.[667] It has been launched in broadcasting media and includes short infomercials raising awareness on the harm of corruption.[668] Possibility to conduct broad educational campaigns is limited by the lack of resources.

INVESTIGATION (LAW AND PRACTICE) – NO SCORE

To what extent does the ACA engage in investigation regarding alleged corruption?

The Government Agent and the Anti-Corruption Bureau are policy coordinating and preventive institutions and have no authority to conduct criminal investigation/prosecution of corruption offences.

Key recommendations

- To consider separating the Government Agent into an autonomous institution with adequate status, powers and resources to effectively carry out policy-coordination and preventive functions in line with Article 6 of the UN Convention against Corruption;
- to review the procedure for conducting anti-corruption screening of draft legislation by the Government Agent to allow his greater autonomy in this regard;
- to clarify the scope of information to be published by the Government Agent, in particular, to provide for mandatory publication of information on the anti-corruption screening, internal investigations, reports on the implementation of the anti-corruption strategy and action plans.

663 Interview by Ruslan Riaboshapka, Head of the Anti-Corruption Bureau, with the author, 5 November 2010.

664 http://www.acrc.org.ua/index.php?page=news&id=1187, http://www.acrc.org.ua/index.php?page=news&id=1185 [accessed 29 December 2010].

665 http://www.acrc.org.ua/index.php?page=news&id=1191 [accessed 29 December 2010].

666 Interview by Ruslan Riaboshapka, Head of the Anti-Corruption Bureau, with the author, 5 November 2010.

667 [accessed 29 December 2010].

668 Interview by Ruslan Riaboshapka, Head of the Anti-Corruption Bureau, with the author, 6 September 2010.

10. Political Parties

SUMMARY

Even though the number of political parties in Ukraine is constantly increasing, Ukrainian legislation contains some provisions, which might restrict the right to freedom of association in political parties. Some of these restrictions do not fully comply with democratic standards. Absence of direct public funding of political parties results in their heavy dependence on private donations. The law does not fully ensure independence of political party from state interference, and the opposition parties face different forms of government pressure in practice. The legal mechanisms to ensure transparency of party funding are insufficient, which decreases the level of parties' transparency in practice. Effective financial oversight of political parties is not ensured neither in law, nor in practice. Internal decision-making within the parties is highly centralised. The proportional system with voting for the closed lists, the lack of coherent party ideologies and programmatic differentiation between the party platforms, as well as a low level of public trust in parties, undermine the role of political parties in aggregating and representing social interests. Though reflected in election manifestos of the leading political parties, anti-corruption commitments have yet to become a reality.

The table below presents general evaluation of political parties in terms of capacity, governance and role in national integrity system. The table is followed by a qualitative assessment of the relevant indicators.

Political Parties Overall Pillar Score: 27.77 / 100			
Dimension	Indicator	Law	Practice
Capacity 50 / 100	Resources	50	75
	Independence	50	25
Governance 20.83 /100	Transparency	25	25
	Accountability	25	25
	Integrity	25	0
Role 12.5 /100	Interest aggregation and representation (practice)	0	
	Anti-corruption commitments	25	

Structure and organisation

By January 10th, 2011, there have been 185 parties registered in Ukraine,[669] of which 16 are represented in the Parliament.[670] Registration of political parties is mandatory, *i.e.* unregistered political parties are not allowed to carry out any activities. The political parties are registered by the Ministry of Justice of Ukraine, while their local organisations are registered by the relevant regional or local branches of the Ministry of Justice. The parties are supervised by the Ministry of Justice, the Central Election Commission, and by state tax inspectorates. The organisational structure of political parties includes central, regional (*oblast*), local and basic (represented by primary cells) levels. Based on the information provided by the Ministry of Justice, the Table 16 below presents the data on the number of party organisations at regional and local levels.

669 Ministry of Justice of Ukraine, *The State Register of Political Parties*; http://www.minjust.gov.ua/parties [accessed 10 January 2011].

670 http://gska2.rada.gov.ua/pls/site/p_fractions [accessed 10 October 2010].

Table 16. Party organisations at regional and local level (as of March 2010)

The parties represented in the Parliament	Approximate number of party organisations at regional and local levels	The parties without representation in the Parliament	Approximate number of party organisations at regional and local levels
The People's Party	13,000	The Socialist Party of Ukraine	16,000
The All-Ukrainian Association "Motherland"	12,000	The Social Democratic Party (United)	12,000
The Ukrainian People's Party	10,000	The Peasant's Party	6,000
The Political Party "Our Ukraine"	7,000	The Party "Democratic Union"	5,000
The Party of Regions	7,000	The People's Democratic Party	4,000
The Communist Party of Ukraine	5,000	The Party "Strong Ukraine"	2,000
The Party "Single Center"	5,000		
The People's Movement of Ukraine	3,000	The Congress of Ukrainian Nationalists	2,000
The Ukrainian Social Democratic Party	2,000		
The Ukrainian Republican Party "Sobor"	2,000	The Party for National And Economic Development of Ukraine	2,000
The People's Movement of Ukraine for Unity	2,000		
The Party "Reforms and Order"	1,000	The Party of Greens of Ukraine	1,000

Source: http://www.4post.com.ua/politics/161684.html [accessed 29 December 2010].

Assessment

RESOURCES (LAW) – SCORE 50

To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?

The right to freedom of association into political parties is enshrined in the Constitution of Ukraine.[671] Under Article 36 of the Constitution, a political party is a type of a citizen's association, whose main tasks are to assist in forming the political will of the citizens and to participate in elections. The activities of political parties are regulated by the Law on Political Parties in Ukraine, the Law on Civic Associations, election laws, and the Tax Code of Ukraine.

The legal framework generally seeks to ensure the right to freedom of association in political parties. Inaction and decisions of the Ministry of Justice pertaining to registration of political parties can be challenged in court,[672] while only the court is entitled to rule on cancellation of party's registration or its prohibition.[673] The exhaustive list of restrictions on party ideology is laid down in law,[674] which prohibits establishment and operation of the parties pursuing undemocratic aims or using undemocratic means to achieve their goals. In particular, the activities or program goals of political parties cannot be aimed at forceful change of the constitutional order, propaganda of war, inciting inter-ethnic hatred, encroaching on human rights etc. The relevant legal provisions generally comply with democratic standards.[675] There are no any restrictions in place as regards the procedure of internal decision-making within the parties. Certain restrictions on party's campaigning (*e.g.* prohibition of campaigning on the day of elections etc.) are introduced by the laws on elections, which is equally applied to all parties.

Notwithstanding the above, the Law on Political Parties in Ukraine contains some deficiencies and gaps, which might restrict the right to freedom of association in political parties.

Political parties can be established and can carry out their activities on condition that they have a legal national (all-Ukrainian) status.[676] This requirement constitutes impediment to forming parties which concentrate on matters concerning regional issues[677] and may have discriminatory adverse effects on small parties and parties representing national minorities.[678]

A decision to establish a political party must be supported by 10,000 voter signatures collected in at least two-thirds of districts of at least two-thirds of the regions of Ukraine.[679] The Venice Commission pointed out that such a threshold appears to be high.[680]

The procedure for consideration of the documents submitted for registration of political parties, including the lists with voter signatures, is not adequately defined in law. Similar to the civil society organisations, the lack of clarity in this regard grants the Ministry of Justice and its local branches an excessively wide margin of discretion in deciding whether a particular party may be registered [see: *Civil Society Organisations*].[681]

671 Article 36 of the Constitution of Ukraine.

672 Article 19.2 of the Code of Administrative Adjudication, № 2747-IV, 6 July 2005.

673 Article 37 of the Constitution of Ukraine, Article 20.2 of the Code of Administrative Adjudication.

674 Article 37 of the Constitution of Ukraine, Article 5 of the Law on Political Parties in Ukraine, № 2365-III, 5 April 2001.

675 Venice Commission, *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures, adopted by the Venice Commission at its 41st Plenary Session (Venice, 10-11 December 1999)*; http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp [accessed 29 December 2010].

676 Article 3.2 of the Law on Political Parties in Ukraine.

677 The Venice Commission, *Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002)*: 3; [accessed 29 December 2010].

678 The Venice Commission, OSCE/ODIHR, *Guidelines on Political Party Regulation, adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)*: 21; [accessed 29 December 2010].

679 Article 10 of the Law on Political Parties in Ukraine.

680 The Venice Commission, *Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002)*: 3; [accessed 29 December 2010].

681 See also Judgement of the European Court of Human Rights in the case of Koretskyy and others v. Ukraine, № 40269/02, § 47, 3 April 2008; http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830484&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649 [accessed 29 December 2010].

The law also does not precisely define the scope of powers of the Ministry of Justice in terms of control over parties' observance of their charters, as well as the grounds for announcement of warning to political parties.[682]

Independence of political parties from private financial donors is not properly ensured in law. First, the law does not envisage direct public funding of political parties. The parties are supported by the state indirectly: they are granted non-profit status,[683] do not pay VAT;[684] certain types of party's income are exempt from corporate income tax.[685] The fiscal legislation allows limited tax deductibility of private donations to political parties.[686] Some forms of party election campaigning are financed from the state and local budgets (*e.g.* publication of information posters, provision of printed space and airtime for election campaigning[687]). Second, there are no provisions in place limiting the value of private donations to political parties. As concerns funding of the elections, the limits on the value of donations to party election funds are set by the laws in elections,[688] but they can be easily circumvented: since the election laws restrict neither the value of donations of political parties to their election funds, nor the value of private donations to political parties, donors can make donations directly to political parties, while the latter may transfer them to their election funds as own donations.

RESOURCES (PRACTICE) – SCORE 75

To what extent do the financial resources available to political parties allow for effective political competition?

Due to absence of direct public funding of political parties, parties may rely on limited sources of funding, such as indirect state support [see: *Resources (law)*], membership fees, own fundraising activities, and private donations. As the financial reports of political parties do not contain any information on total value of indirect public funding, the share of this funding in parties' budgets cannot be estimated. As regards membership fees and party's fund-raising activities, their actual share in party budgets is insufficient.[689] For example, the actual share of membership fees in parties' budgets constitutes only about 5-10% of all income.[690] Hence, the political parties strongly depend on private donations from the oligarchs.[691] In particular, according to the independent Razumkov's Center, each political party whose candidates were elected to the Parliament in 2007, included to its list a leader or representative of one of the main financial and industrial groups. On the eve of the 2007 parliamentary elections each of the three leaders in the campaign, namely, the Party of Regions, the bloc "Our Ukraine – People's Self-Defence", and the Yulia Tymoshenko's Bloc had on its list at least one billionaire and a few "patrons," *i.e.* millionaires with an annual income of more than 300 million dollars.[692]

However, during the elections the parties in power have a better access to funding compared to oppositional ones due to the abuse of state resources.[693] For small parties without representation in the Parliament and strong voters' support, the access to private donations is hindered by a lack of potential donors' interest in their funding

682 Venice Commission, *Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002)*, paragraphs 23, 26-27; http://www.venice.coe.int/docs/2002/CDL-AD(2002)017-e.asp [accessed 29 December 2010].

683 Article 157.1 of the Tax Code of Ukraine.

684 Article 150 of the Tax Code of Ukraine.

685 Article 157.3 of the Tax Code of Ukraine.

686 Article 166.3.2 of the Tax Code of Ukraine.

687 Articles 67, 69, 70 of the Law on Parliamentary Elections; Articles 59, 61- 63 of the Law on Presidential Election; Articles 49, 50, and 52 of the Law on Local Elections.

688 Article 43.3 of the Law on Presidential Election, Article 53.2 of the Law on Parliamentary Elections, Article 64.2 of the Law on Local Elections.

689 Razumkov's Center, *Political Corruption in Ukraine: current state, factors, mechanisms for counteraction* (in Ukrainian), 2009: 11; Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 100.

690 Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 100.

691 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*, 7; Razumkov's Center, *Political Corruption in Ukraine: current state, factors, mechanisms for counteraction* (in Ukrainian), 2009: 12.

692 Razumkov's Center, *Political Corruption in Ukraine: current state, factors, mechanisms for counteraction* (in Ukrainian), 2009: 12. See also: Kubicek, Paul, *Problems of post-post-communism: Ukraine after the Orange Revolution*, Democratization, 2009, 16: 2, 332.

693 Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 119; OSCE/ODIHR, *Ukraine: Presidential Election 17 January and 7 February 2010:* 14; OSCE/ODIHR, *Ukraine: Pre-Term Parliamentary Elections 30 September 2007:* 17.

due to an outside chance of winning the elections.[694]

INDEPENDENCE (LAW) – SCORE 50

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The state and local authorities are legally forbidden either from unequal treatment of political parties or giving certain parties an advantage or privileges. State intrusion into establishment or internal activities of political parties is prohibited, except in the cases of prevention of illegal activities or arising the grounds for termination of a party.[695]

Nevertheless, there are some provisions in place that to some extent increase the risks of state interference with internal party activities. First, the supervision over observance of legislation and charters by political parties is exercised by the Ministry of Justice of Ukraine, which can hardly be considered politically independent body. Second, the procedure for exercising the relevant control activities is not properly defined in law, creating the possibility of selective checks of political parties and arbitrary imposition of sanctions.[696] Third, under the law, party's registration can be cancelled, in particular, if it fails to establish and secure registration of its local organisations in most of the regions of Ukraine (*i.e.* in 14 of 27 regions).[697] This ground for dissolution of political parties does not go in line with democratic standards, in accordance with enforced dissolution of political parties may only be justified in the case of parties which advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order.[698] However, the decisions on cancellation of party's registration can be made only by a court of law, which to some extent restricts the possibility of arbitrary cancellation of party's registration. Fourth, the Ministry of Justice supervises compliance of parties' activities not only with legal requirements, but also with party charters. Consequently, while assessing the amendments made to party's statutory documents submitted by the party for registration with the Ministry of Justice, the latter may refuse to register such changes on the ground that the prescribed by the party's charter procedure for amending statutory documents was infringed. Hence, in fact, the Ministry of Justice is granted the possibility of intrusion into internal party activities, in particular, in internal decision-making.

The possibility of attending the political party meetings by the state authorities is envisaged by election laws as following: the member of the Central Electoral Commission (CEC) authorised by the head of the CEC may be present at the party congress, where the MP or presidential candidates are nominated; likewise the members of the territorial electoral commissions have the right to attend the conferences of local party organisations where the candidates for local elections are nominated.[699] However, the relevant legal provisions are aimed at ensuring the observance of legal requirements to the procedure for organisation of the congresses/ conferences, rather than at interference in internal party activities.

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent are political parties in practice free from external interference into their political activity?

MP Yuriy Kluchkovskyi pointed out that political pressure on parties, as well as the practice of sacking public officials for their affiliation with parties in opposition, does occur.[700] In addition to that, there is a practice of political "self-censorship" among representatives of opposition parties at the local level, *i.e.* voluntary refusal of active participation in political life and refusal to be

694 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

695 Articles 4.2, 4.3, 20-24 of the Law on Political Parties in Ukraine.

696 See also: The Venice Commission, *Opinion on the Ukrainian Legislation on Political Parties, adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002):* 5.

697 Articles 11 and 24 of the Law on Political Parties in Ukraine.

698 Venice Commission, *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures,* adopted by the Venice Commission at its 41st Plenary Session (Venice, 10-11 December 1999), Guideline 3; http://www.venice.coe.int/docs/2000/CDL-INF(2000)001-e.asp [accessed 29 December 2010].

699 Article 58.8 of the Law on Parliamentary Elections, Article 47.7 of the Law on Presidential Election, Article 36.10 of the Law on Local Elections.

700 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010.

nominated as candidates for local elections due to fear of being harassed.[701]

Opposition parties encountered a number of problems during the 2010 local elections. In particular, opposition party candidates were often not admitted to election commissions or were again withdrawn from them through legal tricks that entailed obtaining majority in almost all precinct and territorial election commissions by the ruling party, the Party of Regions.[702] Even though the party names on the election lists have to be arranged according to the order of submission of the registration documents to the electoral commissions, the documents of opposition parties were not accepted by election commissions before the submission of the lists of the Party of Regions, that contributed to the situation when the ruling party gained first places on the lists in 85% of the constituencies.[703] Election commissions in Lviv, Kyiv and Luhansk regions, as well as in other areas, registered clone parties under the same name as the opposition party "Motherland" (*Batkivshchyna*) instead of original party, which resulted in boycotting of the election in one of the regions by *Batkivshchyna*.[704]

In 2010, the Prosecutor's General Office instituted criminal proceedings against some members of the previous Government led by Yulia Tymoshenko, the head of the *Batkivshchyna*. The former Prime Minister and two ministers of her Cabinet were accused of abuse of office and corruption.[705] In the Statement on Investigation of Ukrainian Opposition Politicians, the U.S. Government raised its concern that "when, with few exceptions, the only senior officials being targeted are connected with the previous government, it gives the appearance of selective prosecution of political opponents".[706] In addition, Bohdan Danylyshyn, the former Minister of Economy criminally prosecuted by Ukrainian authorities, was granted a political asylum in the Czech Republic.[707]

Since 2001, when the Law on Political Parties in Ukraine was adopted, none of the political parties has been banned; even though the spot checks of political parties have been regularly carried out by the Ministry of Justice. For instance, in 2003, the Ministry of Justice detected infringements of legal requirements by 46 parties, resulted in turning of the Ministry to the Supreme Court to cancel registration of 37 parties.[708] In 2004, the Ministry of Justice of Ukraine lodged a lawsuit with the Supreme Court of Ukraine seeking to prohibit the party "Ukrainian National Assembly", but the Court dismissed the plaintiff's claims because of absence of the reasons for banning the party.[709] Since 2004, the Ministry of Justice has not initiated prohibition of any political party, but regularly sued those parties which failed to register their local organisations in the most regions of Ukraine within 6 months from the date of a relevant party's registration, seeking to have their registration cancelled.[710]

701 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

702 Konrad Adenauer Stiftung-Ukraine, *Local Elections in Ukraine: Yanukovych's Consolidation of Power. Country Report*, 2010: 2; PACE, *Observation of the Presidential Election in Ukraine – 17 January 2010. Addendum to the Report*, para. 15; [accessed 29 December 2010].

703 Konrad Adenauer Stiftung-Ukraine, *Local Elections in Ukraine: Yanukovych's Consolidation of Power. Country Report*, 2010: 3; European Parliament, Delegation to the EU-Ukraine Parliamentary Cooperation Committee, *Report of the Mission to Ukraine on the Occasion of the Local and Regional Elections 31 October 2010, by Mr. Pawel Kowal and Mr. Jan Kozlowski*, 2010: 9; [accessed 29 December 2010].

704 Konrad Adenauer Stiftung-Ukraine, *Local Elections in Ukraine: Yanukovych's Consolidation of Power. Country Report*, 2010: 3; European Parliament, Delegation to the EU-Ukraine Parliamentary Cooperation Committee, *Report of the Mission to Ukraine on the Occasion of the Local and Regional Elections 31 October 2010, by Mr. Pawel Kowal and Mr. Jan Kozlowski*, 2010: 9.

705 ; ; [accessed 29 December 2010].

706 U.S.Government, *Statement on Investigation of Ukrainian Opposition Politicians*, 30 December 2010; [accessed 10 January 2011].

707 Interview by Bohdan Danylyshyn, the former Minister of Economy, with Yuriy Onyshkiv, 14 Junuary 2011; http://www.kyivpost.com/news/politics/detail/94838/ [accessed 16 January 2011].

708 http://www.kmu.gov.ua/control/publish/article?art_id=852636 [accessed 29 December 2010].

709 Supreme Court of Ukraine, *The Decision of the Supreme Court of Ukraine as of November 5, 2004, in the case on a lawsuit filed by the Ministry of Justice of Ukraine seeking to prohibit the political party* (in Ukrainian); http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0114700-04&p=1285853733277432 [accessed 29 December 2010].

710 Supreme Court of Ukraine, *Decision of the Supreme Court of Ukraine of June 25, 2003 in case on a lawsuit filed by the Ministry of Justice of Ukraine seeking to cancel the registration of the Party of Communists (Bolsheviks) of Ukraine* (in Ukrainian); http://www.scourt.gov.ua/clients/vs.nsf/0/6BB42A927D21E4B3C2256D7B003E673A?OpenDocument&CollapseView&RestrictToCategory=6BB42A927D21E4B3C2256D7B003E673A&Count=500&; District Administrative Court, *Resolution of the Kyiv District Administrative Court*

The representatives or party activists are attacked in rare instances, mostly during the election campaign. However, these cases cannot be directly linked to the governing parties or state authorities, since not only the oppositional parties' activists are attacked, but also the activists of the ruling parties (Party of Regions, the People's Party, etc.).[711] As a rule, such attacks are qualified as hooliganism and investigated by the police as any other crimes.[712]

TRANSPARENCY (LAW) – SCORE 25

To what extent are there regulations in place that require parties to make their financial information publicly available?

The legal provisions on transparency of party funding contain a number of loopholes. For example, the parties are legally obliged to annually publish in the national media a statement on income and expenses, and a property statement,[713] but the law fails to set any requirements on the form, content and terms of publication of these statements. In particular, there are no provisions in place requiring information on donations to political parties to be made public. Furthermore, a party is granted the right to publish the relevant statements in any national medium (including party's own medium), that makes quick search of financial information difficult and reduces transparency of party funding. The income and expenses statements, as well as the property statements, are not legally required to be submitted to any state bodies – they just have to be published.

An appropriate transparency of electoral financial reports is also not ensured. For example, the Law on Parliamentary Elections does not require the Central Electoral Commission to publish financial statements on the receipt and use of election funds of the parties and blocs. The electoral funds managers, who are in charge of preparing these statements and submitting them to the CEC, are not obliged to publish the statements either. In presidential and local elections, financial statements on the receipt and use of election funds are required to be published by the Central Electoral Commission (in presidential election) and the territorial electoral commissions (in local elections). However, the legislation does not require that the statements on the receipt and use of election funds be submitted to the election commissions before the elections, nor does it require making these publicly available before election day. This was critically assessed by the OSCE/ODIHR Election Observation Mission.[714] The legal framework does not provide for the publication of the complete financial statements on the receipt and use of election funds, thus decreasing the transparency of campaign funding in practice [see: *Transparency (practice)*].

TRANSPARENCY (PRACTICE) – SCORE 25

To what extent do political parties make their financial information publicly available?

According to the political scientist Yuriy Shveda, information on party funding is not publicly available.[715] Such information is not available even to party members.[716] As a rule, financial statements of political parties are not posted on parties' websites. The statements on income and expenses and the property statements contain only general information, such as the total amount of income, expenses, and book value of property at the time of preparing the statement.[717]

The information reflected in the published statements on the receipt and use of election funds in local and presidential elections is rather general and

as of October 29, 2009 in case № 2a-9157/09/2670 on a lawsuit lodged by the Ministry of Justice of Ukraine against the political party "Ukraine of the Future" seeking to cancel registration of the political party (certificate № 152-n.n. dated 18.07.2008) (in Ukrainian); http://www.reyestr.court.gov.ua/Review/5067360 [all accessed 29 December 2010]. For further information on court practice related to cancellation of registration of political parties see: Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 125-138.

711 http://novynar.com.ua/politics/138645; http://novynar.com.ua/politics/138441; http://www.zaxid.net/newsua/2010/9/10/133040/ [all accessed 29 December 2010].

712 http://novynar.com.ua/politics/90816; http://www.zaxid.net/newsua/2010/10/25/195016/ [all accessed 29 December 2010].

713 Article 22 of the Law on Civic Associations, Article 17 of the Law on Political Parties in Ukraine.

714 OSCE/ODIHR, *Ukraine: Presidential Election 17 January and 7 February 2010:* 14.

715 Interview by Yuriy Shveda, assistant professor at the Sub-Faculty of Political Science of the Philosophy Department of the Lviv National University, with author, 21 May 2010.

716 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

717 Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 109.

includes information on the total value of all individual donations to the election fund; the total value of donations from self-nominated candidates (to their own election funds) or party (to its own election fund or to the fund of a bloc that nominated a presidential candidate), and the total amount of expenditures for campaigning.[718] These statements are not posted on the Central Electoral Commission's website, they are just published in official newspapers, such as *Uriadovyi Courier* and *Golos Ukrainy* (in presidential election), or local press[719] (in local elections).

Level of transparency of the party funding was tested within this assessment by addressing individual requests for copies of the most recent statements on income and expenses to main parties represented in the legislature, such as the Party of Regions, All-Ukrainian Association "Motherland" (*Batkivshchyna*), the Communist Party of Ukraine, the party "Our Ukraine", and the People's Party. The results of the requests' consideration demonstrate that access to the information on the party funding can hardly be considered satisfactory (see the Table 17).

Table 17. The Results of Consideration of the Requests for Information by Political Parties

The requester	Requested information	Results of the requests' consideration
The Party of Regions	Requests for copies of the most recent statements on income and expenses	Letters № 218 and № 222, 2 September 2010. The requested copy was not provided; the party referred to its website (where the relevant information has appeared to be unavailable).
The All-Ukrainian Association "Motherland" (*Batkivshchyna*)		Letters № 17-03-397 and № 17-03-398, 29 July 2010. The requested copy was not provided, the party referred to the relevant issue of its newspaper where the statement was published (the date and number of issue were indicated).
The Political Party "Our Ukraine"		Letter № 08-01/295, 27 July 2010. The requested copy was not provided. The response was unclear, suggesting no idea on how to get the requested information
The People's Party		Letters № 114/2-10 and 115/2-10, 19 August 2010. The requested copy was not provided, the party referred to the relevant issue of its newspaper where the statement was published (the date and number of issue were indicated).
The Communist Party of Ukraine		No response to the requests.

718 See, for instance, the consolidated statement on the receipt and use of election fund of the presidential candidate Bohdan Boyko, published in Uriadovyi Courier, 2004, № 228 (in Ukrainian); http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=n0002359-04&p=1288449806922233 [accessed 29 December 2010].

719 Media in which the financial statements of the candidates and parties which participated in the relevant local elections have to be published, are defined by the territorial electoral commissions.

ACCOUNTABILITY (LAW) – SCORE 25

To what extent are there provisions governing financial oversight of political parties?

The legal provisions on financial reporting by political parties contain a number of significant gaps.

First, even though the parties are legally obliged[720] to produce three types of financial statements (a statement on income and expenses, a property statement, and a statement on the use of funds by a non-profit organisation), only a statement on the use of funds by a non-profit organisation must be submitted to the state authorities (namely, to the relevant local tax inspectorate), while two other reports are only required to be annually published in national media.

Second, there are no provisions in place requiring any of the party's statements to include the statements of local party organisations, as well as the statements of media and other entities which are directly or indirectly related to a political party or are otherwise under the control of a political party. In addition, parties are not obliged to identify in their statements donors, value and nature of each donation received by a party.

Third, the legal framework lacks provisions governing disclosure of in-kind donations to political parties both in electoral and non-electoral periods, while the legal definition of donation does not fully comply with the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.[721] For instance, the definition of "donation to a political party" includes only those contributions that are directly received by the party in the form of property (assets) or financial resources. Thus, the Law on Political Parties does not apply to donations in the form of services, as well as to donations in the form of property or financial resources that are not directly received by political parties.[722]

During the election campaigns, financial reporting is better regulated compared to regular reporting (see above). In particular, after the elections, the managers of the election funds are obliged to submit to the election commissions the statements on the receipt and use of election funds.[723] These statements should present information on the value of each donation and each donor who made donation to election fund of the party or candidate. However, it is almost impossible to identify donors who in fact (de-facto) financed the election campaign of a party or candidate: donors can make donations not to election funds, but directly to political parties, which, in turn, may transfer private donations to their election funds as own donations [see: *Resources (law)*].[724]

All the statements mentioned above (regular statements and election statements) are not subject to mandatory audit. Due control over funding of election campaigns is also hindered by the limited scope of powers of the electoral commissions. The latter have the right to control only the use of election funds, and they cannot supervise those party finances, from which the election funds are mainly generated. In addition, the principles of cooperation between the election commissions, the Ministry of Justice and state tax inspectorates (which are in charge of supervision of party funding) are not clearly defined.

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent is there effective financial oversight of political parties in practice?

The only type of a party's financial statement to be checked by the state authorities is a statement on the use of funds by a non-profit organisation, which must be submitted on a quarterly basis to the relevant tax inspectorate [see:

720 Article 2 of the Law on Civic Associations, Article 17 of the Law on Political Parties in Ukraine, Order of the State Tax Administration of Ukraine № 233, 11 July 1997.

721 CM CoE, *Recommendation Rec(2003)4 to Member States on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies*.

722 Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 98-100.

723 Article 42.5 of the Law on Presidential Election, Article 52.6 of the Law on Parliamentary Elections, Article 63.4 of the Law on Local Elections.

724 For further information see: Kovryzhenko, Denys, Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms, 2010: 96.

Accountability (Law)]. The accuracy of the data presented in such a statement is checked by the state tax inspectorate directly at its submission, so any violations related to the accuracy of information presented are almost impossible – inaccurate statements are not accepted by the tax authorities. The reliability of the parties' statements can be checked only during checks of the party's financial activities, which are rarely performed due to the fact that parties are non-profit organisations and do not pay most of the taxes and duties.[725] The assessment of the reliability of the reports is almost impossible task since such reports are submitted not only by parties, but also by their local organisations with legal entity status; moreover such reports are submitted to different state inspectorates throughout the country, while the State Tax Administration is not entitled to consolidate all the reports within each party and keep the relevant information. Political parties are not legally obliged to consolidate their reports as well.

There have been no cases brought before the courts connected with violations of the legal requirements on financial reporting by political parties. However, local party organisations often fail to submit the required statements to the state tax inspectorates for year or even more.[726] The court practice in these cases differs: local organisations of some political parties were terminated, while many other escaped any liability. The main reason for that is the fact that courts applied to the relevant cases provisions of different laws: under the Law on Political Parties in Ukraine local party organisation cannot be terminated in case of failure to submit financial statements to tax inspectorates, while according to Article 38 of the Law on State Registration of Legal Entities and Individual Entrepreneurs, failure of a legal entity (including local party organisation) to submit statements and financial reports to local tax authorities within one year after registration results in the termination of the legal entity.[727]

INTEGRITY (LAW) – SCORE 25

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

The Law imposes on political parties only the following obligations: parties have to be run on the basis of equality of all members, lawfulness and transparency; all main issues of the political party must be settled at the meetings of all members of the political party or their representatives; parties are forbidden from admitting and expelling members on the basis of sex or ethnicity.[728] The procedures for internal party decision-making are not regulated in the charters of political parties represented in the legislature – the charters only provide that decisions on the elections of the party leaders, nomination of candidates for elections, making changes to the programs and charters have to be made by party congresses.[729]

725 Kovryzhenko, Denys, Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms, 2010: 110.

726 Donetsk regional commercial court, Decision of *the Donetsk regional commercial court as of January 25, 2007 in case № 31/445нн on a lawsuit lodged by the state tax inspectorate of Kalinin district of the city of Donetsk against the Zhovtnevy district organisation of the Party "Reforms and Order" of the city of Mariupol* (in Ukrainian); http://www.reyestr.court.gov.ua/Review/385364; Snigurivsk district court of Mykolaiv oblast, *Resolution of the Snigurivsk district court of Mykolaiv region (oblast) of January 14, 2009, in case № 2-a-18/2009 in a lawsuit of the Snigurivsk interdistrict state tax inspectorate against the Snigurivsk district organisation of the Party "Reforms and Order" seeking to terminate the local party organisation as legal entity* (in Ukrainian)*;* http://www.reyestr.court.gov.ua/Review/2729950; Odessa District Administrative Court, *Resolution of the Odessa District Administrative Court of April 14, 2009 in case № 2-a-13401/08/1570 on a lawsuit lodged by the Kotovsk United State Tax Inspectorate against the Kotovsk district organisation of the Political Party "Forward, Ukraine!" seeking to terminate the local party organisation as a legal entity* (in Ukrainian); http://www.reyestr.court.gov.ua/Review/4585721; Donetsk District Administrative Court, *Resolution of the Donetsk District Administrative Court as of August 20, 2009 in the case № 2a-11399/09/0570 upon a lawsuit lodged by Dobropilsk united state tax inspectorate against Oleksandrivsk district organisation of political party "All-Ukrainian Association "Motherland" seeking to terminate local party organisation as legal entity* (in Ukrainian)*;* http://www.reyestr.court.gov.ua/Review/4820190 [all accessed 29 December 2010].

727 For further information on court practice in the relevant cases see: Kovryzhenko, Denys, *Regulation of Political Parties in Ukraine: the Current State and Direction of Reforms*, 2010: 125-138.

728 Articles 6,7 of the Law on Civic Associations.

729 Charter of All-Ukrainian Association "Motherland"; http://www.byut.com.ua/statute.html; Charter of the Party of Regions; http://www.partyofregions.org.ua/meet/statute/; Charter of the People's Movement of Ukraine; http://www.nru.org.ua/about/statut/; Charter of the political party "Reforms and Order"; http://www.prp.org.ua/index.php?mid=17; Charter of the European Party; http://eurorukh.org.ua/ua/european-party-of-ukraine/regulation/index.html; Charter of the Motherland's Defenders Party; http://karmazin.org.ua/?page_

INTEGRITY (PRACTICE) – SCORE 0

To what extent is there effective internal democratic governance of political parties in practice?

Most of the parties heavily depend on their leaders, which makes the process of election of the party leadership non-transparent and undemocratic.[730] Since 2006, when the elections were first time ever held on the basis of the proportional system with voting for the closed lists of candidates nominated by parties and blocs to a single multi-member constituencies, the level of income and the ability to raise funds has become one of the most important criteria for election of the leaders of local party organisations.[731] The process of making internal party decisions is highly centralised,[732] while the internal party policy-making has a rent-seeking nature and stuck rather to voters' expectations than to election manifestos of the parties.[733]

In practice, in most political parties, candidates for elected office are nominated in the same way: a leader's inner circle prepares a draft list of candidates for elections to be nominated by the party; this list is then approved by the leader; then, the approved list is presented to the executive committee for discussion, that may make minor changes to the list, and when these changes (if any) have been made, the executive committee submits the list to the party congress for final approval.[734] In most cases, the congress approves the list unanimously.[735] Therefore, the internal party decision-making can be considered as imitation of democracy, while neither the society nor party militants demand any changes to the existing practice.[736]

INTEREST AGGREGATION AND REPRESENTATION (PRACTICE) – SCORE 0

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

The role political parties play in aggregating and representing societal interests is not very effective.[737] Proportional system with voting for the closed lists of candidates has contributed to stabilisation of the party system as such,[738] but at the same time reinforced legislators' loyalty to party bosses, left parties less accountable to voters,[739] and led to further centralisation of power within the parties.[740] Political parties in Ukraine are typically little more than vehicles for their leaders and financial backers, and they generally lack coherent ideologies.[741] There is a lack of programmatic differentiation between the party platforms, while election campaigns are characterised by mostly populist slogans.[742] The experts interviewed within the framework of this assessment also agreed that Ukrainian parties are strongly dependent on business interests, in particular, interests of financial and industrial groups, widely represented in the Parliament and governing bodies of political parties, while

id=38; Charter of the Communist Party of Ukraine; http://kpu.net.ua/statute/; Charter of the Party "Our Ukraine"; http://razom.org.ua/documents/1760/i [all accessed 29 December 2010].

730 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

731 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

732 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 12; Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010; Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

733 Interview by Yuriy Shveda, assistant professor at the Sub-Faculty of Political Science of the Philosophy Department of the Lviv National University, with author, 21 May 2010.

734 Ihor Zhdanov, What Electoral System Does Ukraine Need? (in Ukrainian), *Mirror of the Week (Dzerkalo Tyzhnia)*, 2007, № 44 (673); http://www.dt.ua/1000/1550/61173/ [accessed 29 December 2010].

735 Ihor Zhdanov, What Electoral System Does Ukraine Need? (in Ukrainian), *Mirror of the Week (Dzerkalo Tyzhnia)*, 2007, № 44 (673); http://www.dt.ua/1000/1550/61173/ [accessed 29 December 2010].

736 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

737 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11; Maryna Stavniychuk, The "Closed" System Has Drained Itself (in Ukrainian), *Mirror of the Week*, 2009, № 11 (739); http://www.dt.ua/1000/1550/65790/ [accessed 29 December 2010].

738 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11.

739 Freedom House, *Freedom in the World 2010. Ukraine Country Report*; [accessed 15 January 2011].

740 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 12.

741 Freedom House, *Freedom in the World 2010. Ukraine Country Report*.

742 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 11.

nepotism constitutes another channel of the party dependency.[743]

Party elites have only weak grassroots connections, and the people have little trust in parties, which are considered to serve the self-interest of their leaders.[744] The political elite have shown little willingness to cooperate with civic organisations,[745] while the linkage between the parties and civil society is not strong.[746] The opinion polls conducted by the independent Razumkov's Center in October 2001 – October 2009 revealed that the level of full confidence in political parties has never exceeded 5%, and the level of complete distrust has varied from 48.9% to 20.6%.[747] Political parties in Ukraine are perceived by the public to be highly affected by corruption (in 2010, they were scored 4 out of 5, where 5 means "extremely corrupt").[748]

ANTI-CORRUPTION COMMITMENT (PRACTICE) – SCORE 25

To what extent do political parties give due attention to public accountability and the fight against corruption?

During the 2007 parliamentary elections, most of the parties represented in the legislature put emphasise on anti-corruption issues. They highlighted the necessity of: fighting the corruption in general, introduction of severe criminal liability for corruption offences, elimination of the shadow and corrupt practices, improvement of the budget allocation,[749] reform of the court system, reduction of the share of shadow economy,[750] equating corruption to the high treason, introduction of the mandatory declaring the income and expenses of public officials and members of their families, abolition of amnesty for persons who committed crimes related to corruption, drafting the standards of quality for public services, imposition of more strict obligations on public servants,[751] reduction of corruption in the judiciary, liberalisation of business regulation and licensing,[752] establishment of the specialised anti-corruption agency, strengthening the control over judges' incomes and expenditures, ensuring the accountability of the executive, elimination of the corrupt practices in VAT reimbursement, elimination of bribery in education.[753] The need in fight against corruption is constantly emphasised by the President,[754] the representatives of the biggest Parliament's faction of the Party of Regions,[755] and also by the opposition.[756]

While corruption remains one of the country's most serious problems,[757] rhetoric at the highest level about fighting corruption is not translated into a clear message and into deeds.[758] Raising the anti-corruption issues in election manifestos and speeches of high rank officials has the populist nature, and explained mainly by social demand for topics related to the fight against corruption.[759]

743 Interview by Yuriy Kluchkovskyi, the people's deputy of Ukraine, with author, 22 July 2010; Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

744 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 12.

745 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 12.

746 Interview by Vyacheslav Lypetskyi, assistant at the International Republican Institute (IRI), with author, 30 June 2010.

747 The Razumkov's Center, *A Survey: Do You Trust Political Parties?* (Dynamics 2001 - 2009) (in Ukrainian), 2009; http://www.razumkov.org.ua/ukr/poll.php?poll_id=82 [accessed 29 December 2010].

748 Transparency International, *Global Corruption Barometer 2010*: 44. See also: Transparency International, *Global Corruption Barometer 2009*: 6.

749 Election Manifesto of the Communist Party of Ukraine, Voice of Ukraine („Golos Ukrainy"), 2007, № 162: 5.

750 Election Manifesto of the Party of Regions; http://novynar.com.ua/files/bloki_party/party_region/1520 [accessed 29 December 2010].

751 Election Manifesto of the Lytvyn's Bloc; http://narodna.org.ua/news/2007/07/18/4293/ [accessed 29 December 2010].

752 Election Manifesto of the Yulia Tymoshenko Bloc, Voice of Ukraine („Golos Ukrainy"), 2007, № 164: 5.

753 Election Manifesto of the "Our Ukraine – People's Self-Defense" Bloc, Voice of Ukraine („Golos Ukrainy"), 2007, № 169: 5.

754 http://www.president.gov.ua/news/17866.html; http://www.epravda.com.ua/news/2010/09/29/250000/; http://tsn.ua/ukrayina/yanukovich-poobicyav-rozpechenim-zalizom-vipalyuvati-korupciyu-v-sudah.html [all accessed 29 December 2010].

755 http://www.partyofregions.org.ua/digest/4c0679dba64d4/; http://www.partyofregions.org.ua/pr-east-west/4b308f349a4b4/ [all accessed 29 December 2010].

756 http://www.tymoshenko.ua/uk/article/ve7zzusx; http://www.tymoshenko.ua/uk/article/4azn37we; http://www.tymoshenko.ua/uk/article/onemcx6o; http://www.tymoshenko.ua/uk/article/6nsne3vw [all accessed 29 December 2010].

757 Freedom House, *Freedom in the World 2010. Ukraine Country Report*.

758 Bertelsmann Foundation, *BTI 2010. Ukraine Country Report*: 25.

759 Interview by Tetiana Soboleva, political party program officer at the National Democratic Institute for International Affairs (at the time of interview), with author, 25 July 2010.

Key recommendations

- To implement comprehensive reform of the funding of political parties and electoral campaigns based on the provisions of the CM CoE Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns;
- to introduce in the parliamentary and local elections electoral systems which would facilitate internal democratic-decision making within the political parties and ensure accountability of the elected officials to the voters (*e.g.* proportional system with voting for the open or semi-open lists of candidates);
- to consider amendments to the laws on elections allowing independent candidates to appear on the ballot;
- to bring the regulation of political parties in line with the standards laid down in the documents of the Venice Commission, *inter alia* Guidelines of Political Party Regulation and Code of Good Practice in the Field of Political Parties.

11. Media

SUMMARY

While the legal framework does permit the establishment and operation of media entities, the amount of official red tape involved in the establishment and running of a media entity hampers their work. Provisions aiming to prevent unwarranted external interference in the activities of the media do not cover all aspects of media independence, contain loopholes and even to some extent restrict the freedom of expression in the country. The mechanisms for ensuring media accountability and integrity are far from perfect, while there are few rules aiming to ensure transparency of media. The media's effectiveness at informing the public on a broad spectrum of issues is complicated by the absence of reforms pertaining to privatisation of media outlets owned by the state and local self-government bodies and failure to establish an independent public broadcasting, close political connections of media owners, lack of professionalism among the journalists, low respect to freedom of speech by public officials, and lack of public demand for covering a number of important issues. Notwithstanding this, the media are active in investigating corruption cases and informing the public on corruption. However, these activities rarely entail calling to account those who committed crimes or offences connected to corruption. Informing the public on governance issues is often biased and incomplete.

The table below presents general evaluation of media in terms of capacity, governance and role in national integrity system. Afterwards, a qualitative assessment of the relevant indicators is presented.

Media **Overall Pillar Score: 42.36 / 100**			
Dimension	Indicator	Law	Practice
Capacity 43.75/100	Resources	50	50
	Independence	50	25
Governance 33.33/100	Transparency	25	25
	Accountability	50	25
	Integrity	50	25
Role 50/100	Investigation and exposure of the cases of corruption	50	
	Informing public on corruption and its impact	50	
	Informing public on governance issues	50	

Structure and organisation

By June 1, 2009, 27,696 print outlets have been registered in Ukraine: 10,109 with national distribution and 15,381 with local distribution.[760] By July 1, 2010, there have been 1,613 registered television and radio stations (TRBs). Most of the TRBs are concentrated in the Donetsk region (161), the city of Kyiv (150), Odesa region (108), and Dnipropetrovsk region (101), while the smallest number of registered TRBs is in the city of Sevastopol (12), Volyn region (20), Mykolaiv region (28), and Ternopil region (29).[761] In 2008, the number of Internet users reached 10,354 million.[762] At the local level, a significant number of print outlets are owned by the state and local self-government bodies. By now, independent public broadcasting has not been established.

There are no state bodies entitled to regulate the activities of the press and Internet media. Broadcast media are overseen by the National Broadcasting Council (NBC), which is also in charge of granting licenses. The NBC is composed of eight members, four elected by the Parliament and four appointed by the president for 5 year terms. On 29 June, 2010, the Parliament elected four new members of the NBC. All elected candidates were nominated by the parties that formed the ruling parliamentary coalition, while the candidatures proposed by civil society organisations failed to receive the required number of votes in support of their election.[763]

The interests of owners of private media entities are represented by the Independent Association of Broadcasters, Television Industry Committee, Ukrainian Association of Press Publishers, Independent Regional Press Publishers Association. The rights of the journalists are protected by a fair number of organisations, in particular by the Independent Media Trade Union, the Kyiv Independent Media Trade Union, the Trade Union "Mediafront", the National Union of the Journalists of Ukraine, as well as by civil society organisations.[764] The disputes of ethical and professional nature are settled by the Commission on Journalist Ethics. This self-regulatory body was initially created by 80 journalists in 2001, and on the 5th of March, 2003, the Commission was registered with the Ministry of Justice of Ukraine as a civic association (NGO). The Commission is composed of 15 members elected at the congress of the signatories to the Code of journalist ethics.[765] This Code was signed by about one thousand journalists.[766]

Assessment

RESOURCES (LAW) – SCORE 50

To what extent does the legal framework provide an environment conducive to a diverse independent media?

In general, the legal framework provides for media freedom and is considered to be one of the most developed in the former Soviet states.[767]

Entry into the journalistic profession in Ukraine is free.[768] Under the law, different types of media can be set up: private, state, and municipal media. The Law[769] provides for the establishment of public broadcasting, but the latter has not been established.[770]

The establishment of broadcast media entities generally is not restricted by law. The only restriction in this regard is the prohibition of establishment of broadcasting companies by legal entities registered abroad, citizens of other coun-

760 http://www.uapp.org/news_media_ua/7256.html [accessed 10 October 2010].

761 National Broadcasting Council, *The State Register of Broadcating Entities of Ukraine*; http://nrada.gov.ua/cgi-bin/go?page=93 [accessed 10 October 2010].

762 IREX, *Media Sustainability Index 2010*: 200.

763 http://www.iupdp.org/index.php/component/content/article/1-latest-news/1730-opposition-criticizes-election-of-new-members-of-national-council-for-tv-and-radio-broadcasting [accessed 29 December 2010].

764 IREX, *Media Sustainability Index 2010*: 212.

765 http://www.rjionline.org/mas/press-council/Ukraine; http://www.cje.org.ua/documents/3/ [all accessed 29 December 2010].

766 http://helsinki.org.ua/en/index.php?id=1164118046 [accessed 29 December 2010].

767 Freedom House, *Freedom of the Press – Ukraine (2009)*; IREX, *Media Sustainability Index 2006-2007*: 175.

768 IREX, *Media Sustainability Index 2010*: 204.

769 Law on the System of Public Broadcasting of Ukraine, № 485/97-BP, 18 July 1997.

770 IREX, *Media Sustainability Index 2010*, 199.

tries, persons without citizenship, political parties, trade unions, religious organisations and persons who founded them, and persons sentenced by court of law to imprisonment or incapacitated based on a court ruling.[771] Broadcasting is subject to licensing. A broadcasting license can be granted only on a competitive basis (with a few exceptions from this rule).[772] The issue of concern is that broadcasting licensing criteria are not clear and transparent[773] [see: *Independence (Law)*]. However, a decision on refusal to grant a license can be appealed in a court.[774]

Print media outlets can be set up by citizens of Ukraine and other states, stateless persons, legal entities registered either in Ukraine or in other states, employees of enterprises, institutions and organisations.[775] Print media are required to be registered with the Ministry of Justice of Ukraine or its respective local branches (depending on the area of distribution of media outlet).[776] The Law on Press grants the Ministry and its branches the right to refuse to register print media outlet if its title coincides with the titles of already registered print media outlets, if an application for registration was submitted within a year from the date of prohibition of the media outlet on the basis of court decision, or if the title or aims of outlet failed to comply with requirements of Articles 3 and 4 of the Law on Press.[777] These Articles prohibit usage of obscene language in media, the use of media for propaganda of war and violence, unlawful seizing power, forceful change of the constitutional order, violating Ukraine's sovereignty and territorial integrity, inciting inter-ethnic, racial or religious hatred, committing crimes, spread of pornography, intrusion in private life of individuals. A decision on refusal of registration can be reviewed by court.[778]

Current legislation does not provide for the effective mechanisms aiming to promote competition between media. First, state-owned and municipal media receive subsidies from state and local budgets[779] and sometimes enjoy lower prices for using state-owned printers, transmitters, offices and other services.[780] In addition, journalists employed by state and municipal media have civil servant status and therefore are assured of steady increases in salaries and pensions, while journalists employed by private media entities do not have this status.[781] As a result, media owned by state and local self-government bodies compete in unfair conditions with private media.[782] Second, even though there are certain restrictions on media concentration (*e.g.* control of more than 5 percent of print outlets or 35 percent of national, regional and local radio and television market by individual or legal entity is prohibited[783]), absence of clear definitions of the relevant markets in which control is exercised, as well as lack of transparency of media ownership, create a trend toward concentration of media ownership.[784]

According to Kateryna Kotenko, executive director at the Television Industry Committee, the activities of broadcast media entities are regulated by a number of laws which were adopted at different times and their provisions contradict each other. Many legal provisions (in particular, pertaining to quotas on language, advertising, national music/films) impose heavy obligations on media, and it is difficult for broadcasters to carry

771 Article 12.2 of the Law on Broadcasting, № 3759-XII, 21 December 1993.

772 Articles 23.6-23.8 of the Law on Broadcasting.

773 IREX, *Media Sustainability Index 200:* 199.

774 Articles 55.2 and 124.2 of the Constitution of Ukraine, Article 30.4 of the Law on Broadcasting.

775 Article 8 of the Law on Press.

776 Article 11.1 of the Law on Press, № 2782-XII, 16 November 1992; clause 1 of the CMU Decree on State Registration of Print Outlets and News Agencies and on Amounts of Registration Fees № 1287, 17 November 1997.

777 Article 15 of the Law on Press.

778 Clause 6.15 of the Regulations of the Ministry of Justice of Ukraine on State Registration of Print Outlets № 12/5, 21 February 2006.

779 IREX, *Media Sustainability Index 2010*: 199, 203; Article 13.5 of the Law on Broadcasting.

780 IREX, *Media Sustainability Index 2006-2007*: 176.

781 Articles 14.4 and 16.2 of the Law on State Support of Media and Social Protection of the Journalists; IREX, *Media Sustainability Index 2010*: 203.

782 IREX, *Media Sustainability Index 2006-2007:* 176; IREX, *Media Sustainability Index 2010*: 199.

783 Article 8 of the Law on Broadcasting and Article 10 of the Law on Press.

784 IREX, *Media Sustainability Index 2009*: 206

out their activities in strict compliance with legal requirements.[785]

RESOURCES (PRACTICE) – SCORE 50

To what extent is there a diverse independent media providing a variety of perspectives?

Ukraine has a large variety of media operating both in and outside the capital. Public authorities do not restrict access to national, foreign media, and Internet.[786] Even though the law provides for television and radio fees as a source of funding of public service broadcasting, the latter have not been introduced. Most people can afford to buy newspapers, and they do so.[787] Affordability of different sources of news, however, depends on geography. In areas with populations below 50,000, residents can get most national and some regional newspapers only by subscription through the post office.[788] Not all national terrestrial national channels have 100 percent availability all over the country (for example, national channel *K1* covers 76.5 % of the territory, *NTN* – 88.3 %, *TET* – 91.9 %, *Pyatyi Kanal* (Channel 5) – 93 %), while cable television is not accessible in small towns and villages.[789] Hence, in rural areas and small towns, people rely mostly on a limited choice of radio and television, rather than on print sources or high-speed Internet.[790]

Media generally represent the entire political spectrum, but, according to Kateryna Kotenko, executive director at the Television Industry Committee, lots of media demonstrate constant change of political priorities in their editorial policies.[791] Moreover, after the 2010 presidential elections experts[792] have noted the trends towards underrepresentation of opposition on some national channels and lack of critics of government activities in broadcasts. For instance, "thoughts of opposition [on policy issues] can be heard, but not always, on *STB* channel, *Pyatyi Kanal* (Channel 5*)* and *Ukraina* channel, more rarely – on *1+1* and *Novyi Kanal*, while on *Pershyi Kanal*, *Inter* and *ICTV* opinions of government opponents are presented rarely".[793] The results of broadcast monitoring carried out by civil society organisations in July 2010 also revealed that most channels conceal information on citizens' protests against activities and decisions of public administration, both at national and local level.[794]

Ukrainian media cover a wide variety of issues, but they tend to focus on issues that are rather superficial, easy, convenient and heavy on a scandalous content. Journalists rarely cover issues of government spending, quality of medical services, and minority issues such as anti-Semitism, racism, gender issues.[795]

The global economic crisis resulted in closures of media projects, reduction of pages and frequency of publication of print outlets or their transfer to online versions.[796] Some experts believe that access of media to financial resources is also restricted by the fact that the significant number of TV channels does not correspond to a low volume of advertising market.[797] In addition, television advertising is monopolised primarily by three agencies which send the lion's share of advertising to three biggest media holdings.[798] Nevertheless, commercial media generally have an appropriate access to financial resources[799] and technical facilities[800], even though there are lots of media subsidised either by politicians or

785 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

786 Freedom House, *Freedom of the Press – Ukraine (2009)*; IREX, *Media Sustainability Index 2010*: 204.

787 IREX, *Media Sustainability Index 2006-2007*: 178.

788 IREX, *Media Sustainability Index 2006-2007*: 178.

789 IREX, *Media Sustainability Index 2006-2007*: 179.

790 IREX, *Media Sustainability Index 2009*: 204.

791 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

792 Lange Nico, *The first 100 Days after Change of Power in Ukraine: Authoritarian Tendencies and Rapproachment with Russia,* 2010: 3; http://www.kas.de/wf/doc/kas_19723-544-2-30.pdf [accessed 29 December 2010]; http://telekritika.kiev.ua/2010-06-09/53532 [accessed 29 December 2010].

793 http://telekritika.kiev.ua/media-continent/monitoring/2010-08-12/54988 [accessed 29 December 2010].

794 http://telekritika.kiev.ua/media-continent/monitoring/2010-08-12/54988 [accessed 29 December 2010].

795 IREX, *Media Sustainability Index 2010*: 205, 206, 208.

796 IREX, *Media Sustainability Index 2010*: 208.

797 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

798 IREX, *Media Sustainability Index 2010*: 209.

799 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

800 IREX, *Media Sustainability Index 2010*: 206.

the state.[801] Among the key problems encountered by media organisations are the expensiveness of licensed software and subscriptions to news agencies, including foreign ones.[802]

There are a lot of journalists lacking basic professional skills in the field of journalism[803]. The main reason for that is the fact that the academic education system is inflexible, curricula and teaching are outdated, and education falls far short of meeting industry needs.[804]

INDEPENDENCE (LAW) – SCORE 50

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

The right to freedom of thought and speech, as well as to free expression of views and beliefs is enshrined in the Constitution.[805] Ukraine is also a signatory to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.[806] The principle of editorial freedom of media is reflected and developed in the Laws on broadcasting and press which, in addition, prohibit censorship.[807] Interference with the professional activities of journalists is considered to be a crime and entails liability under criminal law.[808] Since 2001, libel has been exclusively a civil issue.[809]

However, while a number of provisions aiming to prevent unwarranted external interference in the activities of the media exist, they do not cover all aspects of media independence, contain loopholes and even to some extent restrict the freedom of expression.

First, currently the regulation of public access to information is far from being perfect. For instance, only legislative, executive and judicial bodies are obliged to provide information upon requests; the documents and types of information that can be provided upon requests are not properly defined in law, giving the authorities the grounds for restriction of access to public information[810] [see: *Legislature*]. However, on 13 January 2011, the Parliament passed the Freedom of Information Act (FOIA), which provides for a number of improvements in terms of access to information. In particular, it restricts the grounds for refusal to provide information and states that requests for information must be considered within 5 days; defines the list of the data subject to mandatory disclosure (such as information on the structure, mission, functions, funding, adopted decisions etc.).[811] The positive impact of the FOIA has yet to bee seen, since the Law will enter into force only in May 2011.

Second, the legal framework defines the rights of the journalists who are employed only by print media entities[812] (including the right to withhold their sources), while the rights of the journalists employed by broadcasting entities are not legally defined at all.

Third, the laws of Ukraine contain some provisions which to certain extent restrict the freedom of media and journalists. For instance, in 2003, the Parliament adopted the Law on Protection of Public Morality which prohibited dissemination of pornography, information that discredits the nation or incites war, hatred, bad habits, disrespect for national shrines, etc.[813] Failing to suggest definitions of the key terms used to frame the prohibited information, the Law provided for the establishment of the National Expert Commission for Protection of Public Morality (NEC) in charge of enforcement of the Law. Distribution of any production (including media outlets) whose content may seem to be pornographic or erotic requires preliminary expert opinion of the NEC, without

801 IREX, *Media Sustainability Index 2010*: 209.

802 IREX, *Media Sustainability Index 2010:* 206, 208.

803 IREX, *Media Sustainability Index 2010:* 204.

804 IREX, *Media Sustainability Index 2010*: 212 .

805 Article 34 of the Constitution of Ukraine.

806 Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols № 1,2,4,7, and 11 to the Convention, № 475/97-BP, 17 July 1997.

807 Articles 45.1 and 45.7 of the Law on Information, Article 2 of the Law on Press, Article 5 of the Law on Broadcating.

808 Article 171 of the Criminal Code of Ukraine.

809 IREX, *Media Sustainability Index 2010:* 203.

810 Articles 31, 37 of the Law on Information, Article 27 of the Law on Press.

811 Articles 6, 15, 16, 18, 20 of the Freedom of Information Act, № 2939-VI, 13 January 2011.

812 Article 26 of the Law on Press.

813 Article 2 of the Law on Protection of Public Morality.

which its distribution is illegal.[814] The members of the NEC are appointed by the government for 5 year terms. The decisions of the NEC are subject to mandatory implementation by media. The Ukrainian Helsinki Human Rights Union stressed that "the existence of such a body institutionalises state censorship, the boundaries of which are not clearly defined and will be steadily broadened".[815]

The law imposes on the state and municipal media a fair number of obligations regarding coverage of activities of the state and local authorities.[816] The election laws prohibit unpaid political advertising in the media, spread of deliberately false information about the electoral subjects, dissemination of political advertising in news and current affairs programs.[817] Since the law neither provides for clear definition of political advertising, nor does it define information that can be considered deliberately false, journalists cannot freely discuss and analyse candidates as they may be accused of illegal dissemination of political advertising.[818]

Fourth, there are some loopholes in regulation of activities of the NBC that have negative impact on activities of the media. For instance, the procedure for checks of broadcasters is regulated primarily by the internal NBC's decision which does not clearly define the grounds for checks and their scope.[819] Broadcast media licensing deals not only with technical aspects of broadcasting, but also regulates content.[820]

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent is the media free from unwarranted external interference in their work in practice?

While a number of provisions exist to prevent external interference in the media, the right to freedom of expression cannot be properly exercised. According to Kostiantyn Kvurt, head of the board of the international public organisation "Internews Ukraine", attempts to control media sources and dissemination of information is becoming a more and more widespread phenomenon".[821]

The NBC does not operate independently of state interference.[822] There are several examples of that. In February 2010, incumbent president cancelled without any explanations the decision of his predecessor on appointment of one of the NBC members.[823] Another example is the case when the Security Service of Ukraine addressed the NBC to obtain a number of documents connected to one of the licensing competitions and copies of personal files of NBC members.[824] The procedure for appointment of the NBC members as well as lack of clear licensing criteria,[825] result in licensing that is not transparent, corrupt and politically motivated.[826] It became especially obvious during the 2008 non-transparent bid for digital multiplex broadcasting (MX 4), when the rights were won by 10 companies, eight of which were unknown and established on the eve of the bid, and owners of which were linked to high-ranking politicians.[827] Shortly after the bid, some of the winners started to offer their rights to the bid losers - well-known channels – for USD 20 million.[828]

Independent journalist associations exist,[829] but

814 Article 8.1, Article 10 of the Law on Protection of Public Morality.

815 Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine 2008*: 93.

816 Law on the Procedure for Coverage of the Activities of State and Local Authorities by Media, № 539/97-BP, 23 September 1997.

817 Article 64 of the Law on Presidential Election, Article 71 of the Law on Parliamentary Elections.

818 IREX, *Media Sustainability Index 2010*: 201; OSCE/ODIHR, *Ukraine: Presidential Election 17 January and 7 February 2010:* 15.

819 Television Industry Committee, *Comments on the 2009 NBC Report*; http://www.itk.org.ua/ua/press/item/id/361 [accessed 29 December 2010].

820 Articles 25.12, 27.4, 28 of the Law on Broadcasting.

821 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

822 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

823 Decree of the President of Ukraine on appointment of Andriy Miroshnychenko as a member of the National Broadcasting Council, № 230/2010, 23 February 2010; Decree of the President of Ukraine on Cancellation of the Decree of the President of Ukraine № 230 dated 23.02.2010, № 276/2010, 26 February 2010.

824 http://glavcom.ua/articles/329.html [accessed 29 December 2010].

825 IREX, *Media Sustainability Index 2009:* 199.

826 IREX, *Media Sustainability Index 2010*: 201.

827 IREX, *Media Sustainability Index 2009:* 199.

828 IREX, *Media Sustainability Index 2009:* 199.

829 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

they neither unite substantial number of journalists, nor do they solve major problems between journalists, managers and owners of media outlets.[830] Associations of media owners are also independent, but they mainly advocate for business interests of their members.[831]

Legal provisions on editorial freedom are not enforced; there are some cases of censorship, harassment and intimidation, violent acts against journalists, appointments by officials of their protégés as chief editors (though they do not necessarily have any journalism experience). [832] Media are easily manipulated by the agenda set by politicians; covering the issues from several points of view has not become a professional standard for journalists; lots of media just inertly broadcast products and messages of press offices, politicians and officials.[833] Moreover, so called "jeansa" („dzhynsa") or paid-for stories as well as buyouts of journalists have become an almost common phenomenon.[834]

Most journalists practice self-censorship.[835] Nevertheless, Kostiantyn Kvurt, head of the board of the international public organisation "Internews Ukraine", stressed that the establishment of the movement „Stop censorship!" by the journalists proved the possibility of expressing opinions without fear.[836] Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, also highlighted the fact that if a medium receives a significant income from sales of programs and products, it can operate more independently of advertisers, and the influence of the latter on content of newspapers and broadcasts decreases significantly.[837]

In 2009, the number of crimes against journalists increased slightly, while successful investigations of such crimes remain rather rare. For instance, according to official statistics, only two cases of violence against journalists were punished under the criminal law during the past decade.[838]

There is a tradition of defamation claims in Ukraine, but practices vary. There are also some sentences against media outlets with big amounts of damage compensation.[839]

Requests for official information are often ignored, in particular as concerns local level.[840] There are some cases when the journalists representing certain media are not allowed to attend press-conferences of public officials.[841] In addition, local authorities often tend to spread information on their activities in media which are owned or financed by them. As a result, state and municipal media usually obtain more information from official sources than others do.[842]

Media activities are also interfered by the NEC. The activities of the latter were criticised by artists, writers and journalists,[843] who accused the NEC of attempts to control the content of information.[844] For instance, in 2008, the NEC consid-

830 IREX, *Media Sustainability Index 2006-2007,* 182.

831 IREX, *Media Sustainability Index 2006-2007,* 181; IREX, *Media Sustainability Index 2010,* 211.

832 IREX, *Media Sustainability Index 2010*: 201-203; http://www.pravda.com.ua/news/2010/05/6/5013491/; http://telekritika.ua/news/2010-05-07/52819; http://IFEX.org/ukraine/2010/05/19/censorship_letter/; http://europe.ifj.org/en/articles/efj-concerned-about-reports-of-censorship-in-ukrainian-media; http://en.RSF.org/spip.php?page=impression&id_article=37988; Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010; Freedom House, *Freedom of the Press – Ukraine (2009)*; Frank La Rue, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression. Addendum 1. Summary of cases transmitted to Gevernments and replies received*, 2010: 415; RSF, *Police step up attempts to intimidate journalist Olena Bilozerska*; http://en.RSF.org/spip.php?page=impression&id_article=36946; RSF, *Open letter to Ukraine's minister of interior*; http://en.RSF,org/spip.php?page=impression&id_article=37134; IFEX, *Newspaper journalists complain of police harassment, intimidation*; http://www.IFEX.org/ukraine/2010/04/14/express_director_arrested/ [all accessed 29 December 2010].

833 IREX, *Media Sustainability Index 2010*: 204, 205.

834 IREX, *Media Sustainability Index 2010*: 204; Freedom House, *Freedom of the Press – Ukraine (2009)*.

835 IREX, *Media Sustainability Index 2010*: 205.

836 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

837 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

838 IREX, *Media Sustainability Index 2010*: 201, 202, 203.

839 IREX, *Media Sustainability Index 2010*: 203; Freedom House, *Freedom of the Press – Ukraine (2009)*.

840 Freedom House, *Freedom of the Press – Ukraine (2009)*.

841 http://en.rsf.org/spip.php?page=impression&id_article=37218 [accessed 29 December 2010].

842 IREX, *Media Sustainability Index 2010*: 203.

843 Freedom House, *Nations in Transit 2010:* 561.

844 Ukrainian Helsinki Human Rights Union, *Human Rights in Ukraine 2008*: 93; http://khpg.org/index.php?id=1272463896 [accessed 29 December 2010].

ered several photographs of half-naked women published in the "Blik" newspaper as pornography, while the drawing "crucified frog" by artist Martin Kippenberger, published in the same newspaper, was considered by the NEC as blasphemy and an insult of believers' feelings.[845] On the basis of its findings, the NEC asked the Ministry of Justice to withdraw Blik's publishing registration and recommended the Prosecutor General's Office to consider criminal charges against the newspaper.[846]

Media licenses are not issued through clear and transparent process due to lack of clear licensing criteria.[847] The decisions of the NBC regarding licensing issues do not present any grounds for granting or refusal of granting a license.[848]

TRANSPARENCY (LAW) – SCORE 25

To what extent are there provisions to ensure transparency in the activities of the media?

There are only few rules aiming to ensure transparency in the activities of the media.

The NBC is legally required to make all its decisions (including decisions on awards of licenses) publicly available within one day from the day of their adoption.[849] In accordance with the Law on Press, only general information on media is a subject to mandatory disclosure, such as information on a title of a print outlet, name of a founder and publisher, total circulation.[850] Every TRB is legally obliged to make public its editorial statute (which, in turn, defines the principles of editorial policy of a broadcaster), as well as to disclose certain information on an entity while applying for a broadcasting license.[851] The information presented in the documents submitted with application for a license has to be reflected in the State register of broadcasting entities.[852] The Law, however, leaves at the discretion of the NBC to decide on what information from the Register to make publicly available. Ukrainian legislation does not require naming the actual owners of media outlets.[853]

The rules of self-regulation do not require media to make public any information on their internal activities – these rules deal only with journalist ethics and regulate interaction between owners, managers and journalists.[854]

TRANSPARENCY (PRACTICE) – SCORE 25

To what extent is there transparency in the media in practice?

In general, transparency of media ownership remains poor.[855] The NBC makes public decisions on awards of licenses, but the decisions adopted before 2010 are not available on the NBC website.[856] Another issue of concern is that the NBC makes public only a part of information from the State register of broadcasting entities, and such information is rather general.[857] The same conclusion applies to available information from the State register of print outlets and news agencies, administered by the Ministry of Justice of Ukraine.[858] Owners of broadcasting entities at the local level,[859] as well as owners of print outlets,[860] do not disclose any information about themselves and their ownership.

845 http://amoral.org.ua/cenzura-v-ukrayini-list-yuristiv-gazeti-blik-do-vsesvitnoyi-gazetnoyi-asociaciyi [accessed 29 December 2010].

846 http://www.wan-press.org/pfreedom/articles.php?id=5196 [accessed 29 December 2010].

847 IREX, *Media Sustainability Index 2009:* 199.

848 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

849 Article 17.4 of the Law on the National Broadcasting Council.

850 Article 32 of the Law on Press.

851 Articles 24.2 and 57.6 of the Law on Broadcasting.

852 Clause 1.5. of the Rules on Administering the State Register of Broadcasting Entities, approved by the Decision of the National Broadcasting Council № 1709, 28 November 2007.

853 IREX, *Media Sustainability Index 2009*: 206.

854 See, for instance: http://www.1plus1.ua/watch/programs/about_tsn/policy_full [accessed 29 December 2010]; http://www.rivne1.tv/Articles/070201_statut/[accessed 29 December 2010]

855 IREX, *Media Sustainability Index 2010*: 199, 208; Freedom House, *Freedom of the Press – Ukraine (2009)*.

856 http://www.nrada.gov.ua/cgi-bin/go?page=5 [accessed 29 December 2010].

857 The State Register of Broadcasting Entities of Ukraine (as of July 1, 2010); http://www.nrada.gov.ua/cgi-bin/go?page=93 [accessed 29 December 2010].

858 The State Register of Print Outlets and News Agencies; http://dzmi.informjust.ua/ [accessed 29 December 2010].

859 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

860 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

Print media do not disclose any information on their internal activities, in particular on staff, editorial policy and reports to public authorities.[861] As concerns broadcasters, their editorial policies (principles of journalist ethics) are defined in their editorial statutes which are available on TRB websites, while the information on their internal activities is not available.

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

The existing regulation contains some gaps which do not ensure that media outlets are answerable for their activities.

The law ensures the right to refutation,[862] the right to reply[863], as well as the mechanisms and terms of exercising these rights. Under the law, there are no state bodies entitled to regulate the activities of the press and Internet media. The activities of the broadcasting entities are regulated mainly by the NBC. Some kinds of TRB activities can be regulated by other state bodies, such as the Anti-Monopoly Committee of Ukraine, the State Inspectorate for Communications, etc.[864] The NBC supervises compliance of TRB activities with legal requirements, ensures enforcement of the legislation pertaining to broadcasting, protection of public morality, advertising, cinematography (as regards quotas for national films), elections; licenses broadcasting and exercises control over observance of license conditions by broadcasting entities; imposes sanctions for violations.[865]

In 2001, 80 journalists who participated in the congress "Journalists for fair elections" signed the Code of journalist ethics and established the Commission on journalist ethics to ensure enforcement of the Code. Two years later, the Commission was registered with the Ministry of Justice as civic association. The Commission deals with disputes of ethical and professional nature; on the basis of their consideration it can adopt decisions in the forms of recommendations, statements, and reproaches.[866] Media do not have any specific bodies or ombudsmen entitled to consider complaints – the latter, if any, are usually considered by chief editors.[867]

Forums, chats, blogs and other similar means of communication between the journalists and the audience are not yet widespread and only start entering the life of the journalist community, most often in the Internet media[868].

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent can media outlets be held accountable in practice?

The activity of the NBC as a regulator is assessed by experts as ineffective.[869] According to Kateryna Kotenko, executive director at the Television Industry Committee, the decisions of the regulator have "tactical" nature and do not suggest any ways of development of broadcasting in mid-term perspective.[870] Moreover, the NBC has been involved in a number of scandals, such as non-transparent bid for digital multiplex broadcasting in 2008 and, in the same year, scandal with so-called exchange of logos between *K1* and *Megasport* channels (when license holders of the channels exchanged logos, but in reality they exchanged licenses and frequencies, and *K1* received wider coverage than *Megasport)*. That exchange of logos was a

861 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010; Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

862 Article 37 of the Law on Press, Article 64 of the Law on Broadcasting.

863 Article 65 of the Law on Broadcasting.

864 Article 70 of the Law on Broadcasting.

865 Article 70 of the Law on Broadcasting; Articles 13-15 of the Law on the National Broadcasting Council, № 538/97-BP, 23 September 1997.

866 http://www.cje.org.ua/documents/3/ [accessed 29 December 2010].

867 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

868 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010; Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

869 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010; Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

870 http://www.telekritika.ua/nacrada/2010-01-13/50365 [accessed 29 December 2010].

blatant violation, but the NBC closed its eyes to it.[871] One of the reasons given for ineffectiveness of the regulator is the fact that its members are appointed from the ranks of businessmen to protect business interests.[872]

Self-regulation of media is rather weak; professional associations defend primarily business interests, and do not encourage better-quality informing of the society or a higher level of professionalism.[873] According to Kateryna Kotenko, executive director at the Television Industry Committee, media industry is not ready for a self-regulation due to the lack of consensus among market operators on self-regulation rules.[874]

The Commission on journalist ethics has an NGO status, therefore some journalists believe that it has no right to resolve disputes involving journalists who are not the members of the Commission (*i.e.* the journalists who did not sign the Code of journalist ethics).[875] Since 2008, only 10 decisions and 10 statements have been posted on the Commission's website.[876] Therefore, the Commission's activities are not considered as effective.[877]

The right to refutation and the right to reply can be effectively exercised without undue delay only during elections,[878] while in a post-election period these rights can be exercised mainly by public officials and influential businessmen.[879] Correction of erroneous information spread by media exists in practice, but it is rather exception from the rule than a common practice.[880]

INTEGRITY (LAW) – SCORE 50

To what extent are there provisions in place to ensure the integrity of media employees?

The mechanisms aiming to ensure the integrity of media employees are in place in Ukraine, but they do not cover all the issues connected to integrity and contain some gaps. The standards of journalist ethics are set by the Code of journalist ethics (adopted by the Commission on journalist ethics) and the Code of professional ethics of Ukrainian journalist (adopted by National Union of Journalists of Ukraine). The provisions of these two codes are generally in line with codes of ethics of international professional associations.[881] Namely, they provide for the principles of the freedom of speech, respect to privacy, presumption of innocence in coverage of judicial matters, the right to withhold the sources of information, clear separation between facts, opinions and assumptions, representation of the variety of opinions, as well as prohibition of plagiarism, all forms of discrimination and remuneration for publications, etc.[882]

As regards separate media outlets, they do not have their own codes of journalist ethics. The commissions on ethics have been created in about twenty print media entities (out of more than 4000 print outlets which are actually published).[883] In broadcast media entities, the equivalent of codes of journalist ethics are editorial statutes, which are legally required to be adopted and made public by all broadcasting entities. The supervision over the implementation of the editorial statutes is exercised by editorial

871 IREX, *Media Sustainability Index 2009*: 199.

872 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

873 IREX, *Media Sustainability Index 2010*: 211.

874 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

875 http://www.timeofchange.com.ua/index.php?lang=ru&section=useful&sub=countries&id=923[accessed 29 December 2010]

876 http://www.cje.org.ua/statements/ [accessed 10 October 2010]; http://www.cje.org.ua/decisions/ [accessed 29 December 2010].

877 IREX, *Media Sustainability Index 2010*: 204.

878 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

879 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

880 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010; Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

881 Kateryna Tsetsura, Anastasia Grynko, 'An Explanatory Study of Media Transparency in Ukraine', *Public Relation Journal*, Vol.3, 2009, № 2, 7; http://www.prsa.org/SearchResults/download/6D-030205/0/An_Exploratory_Study_of_the_Media_Transparency_in [accessed 29 December 2010].

882 Code of Ethics of Ukrainian Journalists, adopted by the Ukrainian Ethics Commission in 2002.

883 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

councils, the establishment of which is mandatory.[884]

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of media employees ensured in practice?

The compliance of Ukrainian journalists with ethical standards remains weak.[885] There is a widespread practice of publishing pre-paid information or surreptitious advertising, also known in Ukraine as „dzhynsa". Covering issues from several points of view has not become a professional standard for journalists; plagiarism is the standard for many electronic media; most journalists practice self-censorship; forbidden topics exist.[886] There are also examples of ethics violations where journalists fail to protect victims of crimes.[887] In addition, there are cases of obtaining presents by journalists[888], but presents do not necessarily influence professional activities of the journalists, some experts stressed.[889]

Any legal entity or individual "dissatisfied" with publication or program can lodge a complaint with the Commission on journalist ethics. The complaint must specify the name of the complainant, title of the medium, essence of complaint and evidence that substantiate a complaint (copy/record of publication/program).[890] Most of the cases considered by the Commission have been initiated by public officials or third parties – there are few cases when the proceedings were started on the basis of journalists' complaints.[891] The number of the decisions that have been adopted by the Commission since 2008 as a result of considering the cases, is small – only 10.

The rights of the journalists are protected by a fair number of organisations, in particular by the Independent Media Trade Union, the Kyiv Independent Media Trade Union, the Trade Union "Mediafront", the National Union of the Journalists of Ukraine, as well as by civil society organisations.[892] These organisations, however, do not deal with issues related to ethics.

INVESTIGATION AND EXPOSURE OF THE CASES OF CORRUPTION (PRACTICE) – SCORE 50

To what extent are the media active and successful in investigating and exposing cases of corruption?

Investigative journalism has gained strength both in the capital and in the regions. There are several centers focusing on investigations: bureau *Svidomo* in Kyiv, the investigative project of the Information and Press Center in Crimea, the Investigative and Reporting Agency in Rivne, and the newspaper *Informator* in Lviv. During last few years, a number of competitions for the best anti-corruption investigation have been held.[893] The exact number of journalists dealing with anti-corruption investigations can hardly be estimated, but in opinion of Oleksiy Pogorelov, there are about 20 professionals in the field of investigative journalism, while others only declare themselves "investigators", not being investigators in fact.[894] The following problems can be identified in the field of investigative journalism: a large number of paid-for and biased investigations,[895] focusing on crimes rather than on corruption itself,[896] the absence of any results of investigations in terms of making officials (including high-ranking ones) answerable for violations brought to light by the

884 Article 57.5 of the Law on Broadcasting.

885 IREX, *Media Sustainability Index 2006-2007*: 177; IREX, *Media Sustainability Index 2009*: 202; IREX, *Media Sustainability Index 2010*: 204; Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010; Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

886 IREX, *Media Sustainability Index 2006-2007*: 176; IREX, *Media Sustainability Index 2010*: 204-205.

887 IREX, *Media Sustainability Index 2010*: 204-205.

888 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

889 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

890 http://www.cje.org.ua/documents/4/[accessed 10 October 2010].

891 http://www.cje.org.ua/decisions/66/ [accessed 10 October 2010].

892 IREX, *Media Sustainability Index 2010*: 212.

893 IREX, *Media Sustainability Index 2010*: 206.

894 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

895 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

896 Interview by Kateryna Kotenko, executive director at the Television Industry Committee, with author, 23 June 2010.

journalists' investigations.[897] According to Vitaliy Zamnius, mass media program director at the International Renaissance Foundation (Soros Network), among the newspapers, programs and websites which have a reputation for solid investigative journalism are: *Informator* newspaper (distributed mainly in western regions), materials prepared by the bureau *Svidomo* (distributed through 36 newspapers and *Ukrainska Pravda* website), publications in *Dzerkalo Tyzhnia* (Mirror of the Week) newspaper, programs *Agenty Vplyvu* (Agents of Influence) on *NTN* and *Inter* + channels, *Vopros Natsionalnoy Bezopasnosti* (the Issue of the National Security) on *TRK Chernomorskaya*, websites *Ukrainska pravda* and *Obozrevatel*.[898] However, this list is not exhaustive.[899]

INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT (PRACTICE) – SCORE 50

To what extent are the media active and successful in informing the public on corruption and its impact on the country?

The key role in education of public on corruption through the media is played by law-enforcement agencies and public authorities, rather than media themselves. The former publish articles in local press on their activities pertaining to fight against corruption, liability for corruption offences and impact of corruption,[900] while the latter focus primarily on cases of corruption in public administration. Corruption is covered on a regular basis, in particular, by newspapers *Informator* and *Dzerkalo Tyzhnia*, in programs *Vopros Natsionalnoy Bezopasnosti* on *TRK Chernomorskaya* channel and *Informator* on *UT-Zahid* channel, on the websites *Ukrainska Pravda* and *Obozrevatel.* The results of journalist investigations of corruption from time to time are also made public in regional media outlets, such as *Panorama* (distributed in Sumy), *Express* (distributed in Lviv), *Krymska Pravda* (distributed in Crimea), *Rivnenska gazeta* (distributed in Rivne), on national channels (such as *1+1*, *Pyatyi kanal, ICTV* and other). In 2009, the documentary *A Genius of the City* by the journalist Ihor Chaika brought to light corruption in Lviv city administration and was considered the best anti-corruption investigation of 2008.[901]

Anti-corruption investigations are financed by the media themselves or by the donor community (International Renaissance Foundation, U-media project of Internews Network in Ukraine, etc.), rather than by the state or local authorities. The results of these investigations vary – in some cases criminal proceedings against officials were instituted, while in most of the cases the results of investigations do not entail any liability of the officials.

INFORMING PUBLIC ON GOVERNANCE ISSUES (PRACTICE) – SCORE 50

To what extent are the media active and successful in informing the public on the activities of the government and other governance actors?

Media are generally active in informing public on the activities of the government and other governance actors.[902] These activities are covered in the state press (such as *Uriadovyi Kuryer* newspaper and outlets founded by the ministries and local state administrations), private print outlets (*Mirror of the Week* and other), numerous talk shows on national channels (*e.g. Shuster Live*, *Velyka Polityka* and *Svoboda Slova*), and Internet media (*e.g. Ukrainska Pravda*). However, coverage of these activities (especially in state media and talk shows) is often of a low quality, incomplete and biased due to the practice of presentation of only one point of view on an issue.[903] In opinion of Kostiantyn Kvurt, unbiased information can be found only if one looks through a fair

897 IREX, *Media Sustainability Index 2010*: 206.

898 Interview by Vitaliy Zamnius, mass media program director at the International Renaissance Foundation, with Denys Kovryzhenko, legal programs director at the Agency for Legislative Initiatives, 26 August 2010.

899 The list of investigations carried out by journalists is available on a website of the Regional Press Development Institute (http://irrp.org.ua/research/).

900 See, for example: http://www.kmv.gov.ua/divinfo.asp?Id=208046 [accessed 29 December 2010].

901 http://zik.com.ua/ua/news/2009/11/30/206530 [accessed 29 December 2010].

902 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

903 Interview by Oleksiy Pogorelov, director of the Ukrainian Association of Press Publishers, with author, 29 June 2010.

number of sources, but this can be done only by the representatives of a narrow well-educated audience.[904] Basically, such shortcomings in coverage of governmental activities are concerned with insufficient level of professionalism of most of the journalists, their dependence on the authorities or media owners with political ties, and overall lack of transparency within the system of governance.[905]

Key recommendations

- To adopt the law on privatisation (reform) of the media owned by the state and local self-government bodies;
- to adopt the law on public service broadcasting;
- to bring the laws on media in compliance with the European standards, in particular, as concerns registration of print media outlets;
- to supplement the Law on Press and the Law on Broadcasting with provisions aimed at enhancing transparency of media ownership and promoting effective competition between media;
- to consider mechanisms preventing interference of media owners in editorial policy of the media, in particular, to clarify relations between the owners, management of the media and journalists in codes of ethics and internal rules;
- to introduce mechanisms aimed at strengthening independence of the National Broadcasting Council from political, business and other external influence, in particular, by reviewing the procedure of appointment of the NBC members;
- to adopt framework law on editorial freedom and status of journalists applicable to all media;
- to bring the laws and secondary legislation governing public access to information in compliance with the new Freedom of Information Act (FOIA), to ensure enactment of the FOIA;
- to introduce amendments to the Law on Protection of Public Morality providing for review of the status of the NEC, the procedure of appointment of its members and the principles of its relations with media, in a long-term perspective – to consider termination of the NEC;
- to clarify directly in the Law on Broadcasting the grounds, procedure and scope of the checks of broadcasters carried out by the NBC, as well as the procedure of licensing the broadcasters;
- to align the provisions of the election laws pertaining to media coverage of elections with European standards, recommendations suggested by the OSCE/ODIHR Election Observation Missions in 2004, 2006 and 2007;
- to encourage journalists to sign and adhere to the Code of journalist ethics and the Code of professional ethics of Ukrainian journalist, to encourage media to adopt internal codes of ethics and to establish commissions on ethics tasked to supervise enforcement of the internal codes; to organise regular trainings for journalists on standards of ethical behaviour.

904 Interview by Kostiantyn Kvurt, head of the board of the international public organisation «Internews Ukraine», with author, 24 June 2010.

905 http://www.niisp.org.ua/articles/150/ [accessed 29 December 2010].

12. Civil Society Organisations

SUMMARY

Imperfect legislation and dependence on international donors' funding have a negative impact on the sustainability of the civil society organisations. Mechanisms for preventing undue external interference with the activities of civil society organisations (CSOs) are also far from being perfect. In practice, state authorities actively interfere with the activities of the CSOs. Lack of transparent reporting is the main factor that hinders transparency of CSOs' functioning. The level of accountability of CSOs is negatively influenced by the gap between actual practice of governance within CSOs and requirements of their internal documents, lack of clear governing structures and other shortcomings. The number of signatories to the sector-wide code of ethics for the civil society is small, while in practice the activities to ensure integrity within the civil society are insufficient. Strengthening the role of civil society in holding government accountable is hampered by inadequate access to public information, low professional level of CSO employees and lack of interest in cooperation with the CSOs among the public officials. Participation of CSOs in anti-corruption policy reform is limited due to absence of strong anti-corruption NGOs and ineffective mechanisms for public engagement in decision-making process.

The table below presents general evaluation of the CSOs in terms of capacity, governance and role in national integrity system. The table then followed by a qualitative assessment of the relevant indicators.

Civil Society Organisations Overall Pillar Score: 42.36 / 100			
Dimension	Indicator	Law	Practice
Capacity 43.75 / 100	Resources	50	50
	Independence	50	25
Governance 33.33 / 100	Transparency	50	
	Accountability	25	
	Integrity	25	25
Role 50 / 100	Hold government accountable	50	
	Engagement into anti-corruption policy reform	50	

Structure and organisation

Under the Law on Civic Associations,[906] non-governmental organisations (NGOs) are divided into international, national (*i.e.* operating at national level), and local (*i.e.* limiting their activities to a certain territory). The first two types of NGOs are registered with the Ministry of Justice of Ukraine, while local NGOs are registered by the relevant branches of the Ministry of Justice. Decisions on refusal of registration can be reviewed by the administrative courts. The registration of local NGOs is not mandatory: unregistered local NGOs may carry out their activities on condition that they informed the respective branches of the Ministry of Justice on their establishment (however, unregistered organisations are not granted legal entity status).

According to the State Committee of Statistics of Ukraine, by 1 January 2009, there were 664 registered NGOs with international status, 2,232

906 Article 9 of the Law on Civic Associations, № 2460-XII, 16 June 1992.

civil society organisations operating at national level, 43,930 local NGOs, and 22,021 local organisations of NGOs with national status. The largest number of organisations is registered in Kyiv (4,784), Donetsk region (3,975), Kharkiv region (2,843), Dnipropetrovsk region (2,747), the Autonomous Republic of the Crimea (2,714), Odesa region (2,691), Lviv region (2,669), while the smallest number is in Ternopil region (403), Chernivtsi region (632), Kherson region (722), Khmelnytsky region (831), Chernihiv region (835), Volyn region (851), Kirovograd region (868), Rivne region (889), and Zhytomyr region (992).[907]

Assessment

RESOURCES (LAW) – SCORE 50

To what extent does the legal framework provide an environment conducive to civil society?

Even though the Constitution of Ukraine and the Law on Civic Associations provide for the citizens' right to association into nongovernmental organisations, the research data indicate that representatives of 44% of CSOs believe the legal framework to be the main obstacle for the development of the third sector.[908]

Legal provisions on establishment of NGOs contain a number of loopholes and shortcomings. For example, according to Article 16 of the Law on Civic Associations, an NGO can be refused of registration if its name, charter or other statutory documents fail to comply with legal requirements. The European Court of Human Rights in its judgment in the case of *Koretskyy and others v. Ukraine* found that the provisions of the law, which regulated the registration of associations, had been too vague to be sufficiently "foreseeable" and had granted an excessively wide margin of discretion to the authorities to decide whether a particular association could be registered.[909] Under Article 16 of the Law on Civic Associations, the Ministry of Justice and its local branches are not required to specify in their decisions on refusal of registration the exhaustive list of grounds for such decisions. The term for consideration of applications for registration of national and international organisations appears to be too long (30 days),[910] especially if compared to the term of consideration of applications for registration of local NGOs (3 days from the date of submission of application).[911]

Furthermore, the law imposes a number of restrictions on NGOs in terms of their operation. For instance, according to Article 24 of the Law on Civic Associations, NGOs are allowed to carry out business activities via enterprises established by them rather then directly, even if business activities do not imply distribution of income among members of organisation. The above provision is criticised by both national[912] and international experts,[913] because it restricts the sources of NGO funding. The right to operate in the whole territory of Ukraine is limited to national and international organisations, while organisations with local status are obliged to operate only at local level.[914] Under the law, NGOs can defend interests only of their members.[915] Such a requirement restricts the possibility of defending and representing the interests of those who do not belong to any organisation.[916]

An NGO can be granted non-profit status only if a local tax inspectorate passed a decision on its registration as non-profit organisation. However, the law fails to define the exhaustive list of grounds for refusal of granting an NGO non-prof-

907 [accessed 29 December 2010].

908 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 67.

909 Koretskyy and others v. Ukraine, application № 40269/02, 3 April 2008; [accessed 29 December 2010].

910 Centre for Philanthropy, Counterpart Creative Centre, *Civil Society in Ukraine: "Driving Engine or Spare Wheel for Change?", 2006;* CIVICUS *Civil Society Index Report for Ukraine,* 2006: 48.

911 Article 15 of the Law on Civic Associations.

912 Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010; Interview by Oleksiy Orlovskyi, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), with author, 30 June 2010.

913 Freedom House, *Nations in Transit 2009*: 558; CIVICUS *Civil Society Index Report for Ukraine,* 2006: 50.

914 Article 9 of the Law on Civic Associations.

915 Article 3 of the Law on Civic Associations.

916 Sliusarevskyi M., 'Law of Ukraine on Civic Associations is Antipode of European Conception of Status of Nongovernmental Organisation', *Gromadianske Suspilstvo*, 2009, №4(11).

it status.[917] In addition, the list of NGOs whose income is subject to exempt from corporate income tax[918] is limited to organisations focusing on narrow range of issues (social services, environment protection, culture, education, science, sport etc). 47 % of NGOs consider imperfect tax legislation to be the main hindrance for the Ukraine's civil society development.[919]

RESOURCES (PRACTICE) – SCORE 50

To what extent do CSOs have adequate financial and human resources to function *and operate effectively?*

Notwithstanding the fact that amount of NGO funding during the recent years has increased, the civil society organisations are still funded mainly by international donor organisations.[920] In 2009, the average share of foreign funding in NGO budgets was about 42 %.[921] Access of the NGOs to the state funds has broadened, but it still remains restricted,[922] as only up to 15% of NGOs' funds are generated from the public financing.[923] Incomes from own activities and membership fees hardly play any role in NGO funding: their shares reach only 6 % and 12 % respectively.[924] The 2009 global economic crisis has had a negative impact on NGOs and led to cuts in private funding and funding from local budgets.[925] In 2008, budgets of 15% organisations did not exceed USD 500 per year, while only 12 % of NGOs had annual funding in amount of USD 50,000.[926]

In 2009, only 48% of civil society organisations had full-time employed personnel, and average number of full time employees in organisations varied from 4 to 5 persons.[927] A study by the National Employment Center claims that only 3.5 % of respondents would work for an NGO, which can be explained mainly by low salaries in the third sector. As a result, the turnover remains high. The lack of training for NGO personnel does not help the situation.[928]

NGOs also face some problems in terms of access to technical resources. For instance, in 2009, only 11 % of organisations had offices in ownership, approximately 16 % of organisations did not have own phones, 44 % had no copying equipment, 16 % had no computers, and 21 % did not have Internet access.[929]

About 89 % of organisations can be considered as member organisations. Out of them, 16% have up to 10 members, 27 % - from 11 to 30 members, and only in 25 % of organisations the number of members exceeds 100. Since 2002, no significant changes have been observed in numbers of NGOs' members.[930] Almost 76 % of organisations engage volunteers into their activities. The average number of volunteers involved into work of each organisation reaches 13 persons, who dedicate about 6 hours per week to an NGO. The majority of volunteers are students (74 % of all volunteers).[931]

917 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 50.

918 Freedom House, *Nations in Transit 2009*: 558.

919 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 67.

920 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 35-36; Freedom House, *Nations in Transit 2009*: 557; USAID, *NGO Sustainability Index 2009*: 221; Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010; Interview by Oleksiy Orlovskyi, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), with author, 30 June 2010.

921 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 42.

922 Freedom House, *Nations in Transit 2009*: 558.

923 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 42.

924 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 42.

925 USAID, *NGO Sustainability Index 2009*: 221.

926 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 42.

927 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 36.

928 USAID, *NGO Sustainability Index 2009*: 221.

929 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 39.

930 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 37.

931 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 38.

INDEPENDENCE (LAW) – SCORE 50

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

The right to freedom of association is enshrined by both the Constitution and the Law on Civic Associations. Article 37 of the Constitution and Article 4 of the above Law prohibit establishment and operation of organisations which pursue undemocratic aims or use undemocratic means to achieve their goals. For example, the law prohibits organisations whose activities are aimed at forceful change of the constitutional order, propaganda of war, inciting inter-ethnic hatred, encroaching on human rights etc. Article 8 of the Law on Civic Associations explicitly prohibits intrusion of state bodies and officials into CSO activities.

However, the legal framework pertaining to CSOs contains some loopholes, which set preconditions for the state interference into activities of the civil society organisations. For example, legislation does not provide for precise list of authorities entitled to supervise the activities of the NGOs (beside the Ministry of Justice and its local branches, this list includes also prosecutor's office, tax authorities and other bodies).[932] The Ministry of Justice and its local offices are in charge of monitoring not only the NGOs' compliance with the legal requirements, but also observance of their charters, which strengthens the risks of state interference in internal activities of civic associations (for example, through refusal to register changes to statutory documents on the grounds that the prescribed by charter procedure for making the relevant changes was violated). The procedure for exercising supervision over the NGO activities is defined not in the law,[933] but in the regulations issued by the Ministry of Justice.[934]

Article 31 of the Law on Civic Associations provides for the possibility of suspension of certain types of NGO activities (*e.g.* holding the meetings and assemblies, publishing, bank operations), as well as suspension of all the activities of NGOs for up to 3 months, if NGO violated any legal requirements. Even though a decision on suspension of activities can be made only by court of law, the lack of the exhaustive list of grounds for such decisions does not enhance the CSOs' independence from external interference.

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent can civil society exist and function without undue external interference?

Public authorities regularly interfere with activities of civil society organisations.

State interference in NGO work was an issue of concern before the 2004 presidential election, when state authorities (*i.e.* state tax inspectorates) carried out spot checks on some NGOs.[935] The next few years demonstrated a significant decrease in state intrusion into CSO activities, but since 2010 the state interference into operation of NGOs has become an issue again. Among the examples of such practices are summoning the civic activists to the State Security Service for providing explanations on the sources of their funding (for instance, the activists of *Democratic Alliance*),[936] the checks on the activities of the CSOs that received funding from the International Renaissance Foundation (Soros Network organisation) by the State Security Service, aimed to detect influence of grants on pre-election situation in the country. [937]

In 2010, the number of cases when civic activists were detained or arrested has been increasing. In particular, according to Ukrainian Helsinki Human Rights Union, "a number of cases of illegal actions against human rights and civil society activists during last 6 months [*i.e.* before October 2010] have significantly exceeded their

932 Article 25 of the Law on Civic Associations.

933 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 51.

934 See: Methodical Recommendations on Exercising Control Functions in the Field of Activities of Nongovernmental Organisations by the Ministry of Justice of Ukraine and Its Local Branches; [accessed 29 December 2010].

935 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 51.

936 [accessed 29 December 2010].

937 Interview by Yevhen Bystrytskyi, the Executive Director at the International Renaissance Foundation, with Ruslan Deynychenko, Voice of America, 7 September 2010.

number during the last five years".[938] Coordinator of the Vinnytsya Human Rights Group Dmytro Groysman pointed out the most striking examples of that: detentions and arrests of civic activists in Lviv, searches and robbery in the office of Vinnytsya Human Rights Group, persecution of the human rights activist who fought against violation of human rights in psychiatry in Crimea, detention of the activists in Zhytomyr, an attempt to use punitive psychiatry methods to human rights activist Andriy Bondarenko. The above cases have been also noted by the Amnesty International and Human Rights Watch.[939]

TRANSPARENCY (PRACTICE) – SCORE 50

To what extent is there transparency in CSOs?

Information on composition of the governing bodies of all registered NGOs (both national and local) is made public by the Ministry of Justice of Ukraine on a web-site of the Register of Civil Society Organisations.[940] The activities of the civil society organisations are covered by their own websites, in media, and by the main civil society web resource *Gromadskyi Prostir* (Civic Space). Notwithstanding that, civil society organisations are often found to be lacking transparent financial reporting, and while supporting transparent functioning of the state structures, civil society sphere is often failing to apply the principles of transparency internally.[941]

According to one of the panel researches, 58% of nongovernmental organisations make their annual reports publicly available. Out of them, 38% of organisations submit the reports to state bodies, 32% to donors, 30% to their members, 8% to clients.[942] However, according to CIVICUS, only one third of CSOs make their reports publicly available on a regular basis.[943] Oleksiy Orlovsky, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), puts this down to the lack of public interest in such reports.[944]

Another negative factor that weakens the level of transparency of NGOs is the fact that the activity and financial reports are published by NGOs primarily on their own web-sites, which to certain extent makes the search of relevant information difficult. Even though the main civil society web-site *Gromadskyi Prostir* (Civic Space) has a specific section designated for the NGO reports, only the 2009 reports of only 25 organisations have been posted there.[945]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent are CSOs answerable to their constituencies?

In 83% of NGOs members can be granted access to the NGO financial documents. According to the research data, in practice 77 % of organisations report to their members, 66 % report to the state authorities and donors, while 19 % report to their clients. From 2004 till 2009, the share of organisations reporting to their members and donors has not changed significantly.[946]

However, the overall level of CSO accountability is low.[947] A significant part of NGO internal activities is carried out only on paper (not in reality), while the actual practice of governance within the NGOs does not fully comply with corresponding requirements of their internal documents.[948] The NGO accountability is weakened by the lack of clear governing structures in most of NGOs, effective differentiation of tasks and responsibil-

938 [accessed 29 December 2010].

939 [accessed 29 December 2010]. See also: Human Rights Watch, *Letter to the Prosecutor General of Ukraine re: Andrey Fedosov, 5 May 2010*; ; Amnesty International, *Ukraine Must Stop Harassment of Trade Union Activist, 4 November 2010*; ; Amnesty International, *Ukraine: Activist May Face Forced Psychiatric Treatment*, 3 November 2010 [accessed 29 December 2010].

940 [accessed 29 December 2010].

941 Besters-Dilger Juliane, *Ukraine on Its Way to Europe. Interim Results of the Orange Revolution*, 2009: 182.

942 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009,* 2010: 64

943 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 60.

944 Interview by Oleksiy Orlovskyi, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), with author, 30 June 2010.

945 [accessed 10 October 2010].

946 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009,* 2010: 65-66

947 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 97.

948 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 58 – 59.

ity between the governing bodies of the NGOs,[949] general meetings' failure to effectively supervise the activities of management (especially in national organisations with a big number of members), inclusion of the NGO personnel paid by the management into the NGO membership.[950] In many organisations members do not understand the purpose of the supervisory boards that significantly weakens the control of the latter over activities of the management and worsens overall level of accountability within civil society in general. The importance of ensuring due governance and accountability is not adequately perceived by the members of organisations.[951]

INTEGRITY (LAW) – SCORE 25

To what extent are there mechanisms in place to ensure the integrity of CSOs?

The practice of adopting sector-wide codes of ethics is spread mainly among business and professional (legal, medical etc.) associations.[952]

In 2008, the Ukrainian Civic Action Network Project (ISC/UCAN) drafted the Code of Ethics for the Civil Society Organisations, which was signed by approximately 100 CSOs. The Code defined the general principles of CSO operation (lawfulness, honesty, transparency, democratic governance, etc.), mechanisms aimed to ensure their implementation, the principles of interaction of NGOs with political parties, businesses; the mechanisms for preventing the conflict of interests.[953] The acting director of the UCAN Project Valeriy Oliynyk once noted that the Code's drafting was initiated by the UCAN rather than by the civil society itself, as NGOs did not see the need in spending time and resources for issues connected to discussion of ethics.[954] Since the time when UCAN activities were concluded, the number of signatories to the Code of Ethics has stopped to increase, while the further implementation of the Code has suspended.[955]

The practice of adopting the codes of ethics by separate organisations is not wide-spread. In addition, there is a trend toward the decrease in the number of NGOs that have their own codes of ethics. For instance, in 2002, 64% of organisations had such codes, while in 2009 the share of organisations with own codes of ethics fell to 35%.[956] This sharp decline can be explained by the fact that in the early 2000s donor organisations used to pay much more attention (compared to 2009) to the issues connected to ethics and integrity within the civil society, financed the conferences and other events aimed to discuss the importance of the codes of ethics for the CSOs.[957] The NGO internal codes of ethics are too general - they define only general principles of behaviour and do not provide for any specific mechanisms aimed to enforce them.[958]

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of CSOs ensured in practice?

CIVICUS data indicate that 35% of respondents considered the influence of the codes of ethics to be limited, while 34% of respondents thought that within the civil society there were no any attempts aimed to implement the codes.[959]

The Code of Ethics for the Civil Society Organisations defines only the general principles to which the civil society organisations should adhere. However, the Code provides no bodies or

949 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 58.

950 Vitaliy Kuchynskyi, 'The Due Governance and Ethics in the Third Sector of Ukraine' (in Ukrainian), *Nasha Hromada*, 2006, № 4(11); [accessed 29 December 2010].

951 Vitaliy Kuchynskyi, 'The Due Governance and Ethics in the Third Sector of Ukraine' (in Ukrainian), *Nasha Hromada*, 2006, № 4(11); [accessed 29 December 2010].

952 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 32.

953 The Draft Code of Ethics of Civil Society Organisations; [accessed 29 December 2010].

954 Interview by Valeriy Oliynyk, Acting Director of the Ukraine Citizens Action Network Project, with Taras Tymchuk, Hurt Resource Center, 6 October 2008.

955 Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010.

956 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 66.

957 Interview by Valeriy Oliynyk, Acting Director of the Ukraine Citizens Action Network Project, with Taras Tymchuk, Hurt Resource Center, 6 October 2008; Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 66.

958 See, for instance: [accessed 29 December 2010].

959 CIVICUS *Civil Society Index Report for Ukraine,* 2006: 32.

institutions empowered to enforce the principles laid down in the Code.[960] The internal codes of ethics adopted by specific CSOs neither provide for any internal bodies to supervise the observance of the rules of ethics, nor do they introduce any sanctions for failure to comply with the codes' requirements.[961] This suggests that the Code of Ethics for the Civil Society Organisations and internal codes of ethics adopted by NGOs cannot be effectively enforced in practice. The same conclusion was upheld by some experts interviewed within the framework of this assessment.[962] The trainings and discussions on the rules of ethics were held mainly in 2003-2008, while there have been no any trainings or discussions dedicated to the relevant issues since then.[963] One of the experts interviewed within the framework of this assessment pointed out that the instances of unethical behaviour, such as plagiarism, are not rare, while the cases when misbehaviour was sanctioned are unknown.[964]

HOLD GOVERNMENT ACCOUNTABLE (LAW AND PRACTICE) – SCORE 50

To what extent is civil society active and successful in holding government accountable for its actions?

In 2009, the NGO sector has increased its ability to implement advocacy campaigns. A fair number of campaigns appeared to be successful, in particular as concerned campaigns focused on anti-smoking, public monitoring of the external testing for university admission, and people living with HIV/AIDS.[965] NGO advocacy campaigns had increased impact on decision-making at the local, regional and national level. According to the USAID, 114 NGO advocacy campaigns on combating corruption in the judiciary, education and regulatory reform areas contributed to adoption of 130 resolutions, decrees, and regulations of the Cabinet of Ministers, regional public administrations, public councils, and local authorities.[966] Owing to NGO activities, a new Freedom of Information Act was drafted and adopted [see: Public Sector] and anti-smoking amendments were introduced to the legislation. [967]

The effectiveness of advocacy, monitoring and public awareness campaigns often depends on the levels of their implementation. For example, national campaigns are less effective in comparison with campaigns focusing on regional and local (especially in small cities) issues.[968] Strengthening the role of civil society in holding government accountable is hampered by a number of factors. For instance, the law fails to provide appropriate mechanisms for access to public information, neither does it ensure adequate level of transparency of governmental institutions. In opinion of the representatives of 57% of organisations, the public authorities and officials are not interested in cooperation with civil society at all.[969] 31% of CSO representatives believe the professional level of NGO employees to be too low to enhance the interest of public authorities in cooperation with them. [970]

ENGAGEMENT INTO ANTI-CORRUPTION POLICY REFORM (LAW AND PRACTICE) – SCORE 50

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Civil society organisations actively participate in different anti-corruption activities at both na-

960 [accessed 29 December 2010].

961 See, for instance, the Code of Ethics of Kherson regional network of the Civic Assembly of Ukraine; ; The Code of Ethics of International Center for Policy Studies; ; The Declaration of the Principles of Ethics of the Ukrainian Helsinki Human Rights Group; [all accessed 29 December 2010].

962 Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010.

963 Interview by Valeriy Oliynyk, Acting Director of the Ukraine Citizens Action Network Project, with Taras Tymchuk, Hurt Resource Center, 6 October 2008; see also: ; ; [all accessed 29 December 2010].

964 Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010.

965 USAID, *NGO Sustainability Index 2009*: 221, 222.

966 USAID, *NGO Sustainability Index 2009*: 222.

967 USAID, *NGO Sustainability Index 2009*: 222.

968 Interview by Oleksiy Orlovskyi, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), with author, 30 June 2010.

969 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 51.

970 Palyvoda L., Holota S., *The State and Dynamics of Development of the Non-Government Organisations in Ukraine. 2002 – 2009*, 2010: 51.

tional and local levels. They draw their attention to corruption issues even if they are not directly connected to their main activities.[971] On 20 December 2009, one of the major anti-corruption projects - "Promoting Active Citizen Engagement (ACTION) in Combating Corruption in Ukraine" – concluded its activities in Ukraine. It financed the establishment and functioning of the national network of citizen advocate offices, activities of the NGO coalitions focusing on promoting information openness, curbing corruption in university admission process, decreasing corruption in permit issuing, promoting access to public information, construction-focused public anti-corruption advocacy etc. In addition, within the framework of the project the usability and the openness of the Unified State Register of Court Decisions were tested.[972] The information available on the project's web-site demonstrates that the most initiatives supported by the project have had a positive impact.[973] However, most of these initiatives were focused on the regional level (except for monitoring of university admission and establishment of citizen advocate offices) and mainly on curbing corruption at local level.

In order to ensure public involvement into elaborating the proposals on anti-corruption policy implementation, the Government Agent on anti-corruption policy established the public council comprising of 34 members. The majority of the council's members are the civil society representatives.[974] One NGO is also represented in the National Anti-Corruption Committee at the President of Ukraine [see: *Anti-Corruption Agencies*]. The Ministry of Justice of Ukraine organised NGO consultations on the anti-corruption strategy and other anti-corruption drafts, such as legislative amendments regulating corruption involving immaterial benefits, while a number of ministries involve NGOs through civic councils.[975]

A number of NGOs contributed to the work of the expert groups established by public authorities in order to draft strategic documents and draft laws, or even drafted some legal acts on their own initiative. In particular, the Center for Political and Legal Reforms prepared the draft Law on Access to the Court Decisions (adopted in 2006) and contributed to drafting of the new version of the Code of Criminal Procedure, the Concept of Overcoming Corruption in Ukraine "Towards Integrity" (the Concept was approved by the President in 2006). Other NGOs participated in preparation of the concepts and legal acts connected to court system reform, public participation in policy-making, the reform of public service etc.[976]

Notwithstanding the above, the 2010 OECD/ACN Monitoring Report on Ukraine states that participation of nongovernmental organisations in anti-corruption activities has been limited, and there is no conclusive evidence to suggest that NGOs have influence over the anti-corruption policy decisions.[977] One of the reasons for limited public participation, according to the Ukrainian authorities, is absence of strong anti-corruption NGOs – there are some 2,800 registered NGOs which deal with anti-corruption issues, mostly these are sector specific groups active in such sectors as energy, access to information, law enforcement, and others.[978] Another reason is that, according to NGOs, there are no clear criteria for selecting NGOs for consultations and no criteria for taking NGO's proposals into account in the official decision-making process [see: *Hold government accountable*].

971 Interview by Maksym Latsyba, the head of the programs of the Ukrainian Independent Center for Political Research, with author, 1 July 2010; Interview by Oleksiy Orlovskyi, Director of the Civil Society Impact Enchancement Program of the International Renaissance Foundation (International Soros Network), with author, 30 June 2010.

972 Detailed information on the Project can be found on the Project web-site: http://www.pace.org.ua/content/view/2/3/lang,uk/ [accessed 29 December 2010].

973 http://www.pace.org.ua/content/category/2/56/53/lang,uk/[accessed 29 December 2010].

974 Decision of the Government Agent on Anti-Corruption Policy on Organisation of the Work of the Public Council at the Government Agent on Anti-Corruption Policy, 8 October 2010, № 3.

975 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15

976 The National Institute for Strategic Studies, *The Dynamics and Broadening of the Range of the Activities of the Nongovernmental Organisations as Elements of Democratisation of the Ukrainian Society* (in Ukrainian); http://old.niss.gov.ua/Monitor/May08/03.htm [accessed 29 December 2010].

977 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15.

978 OECD/ACN, *Second Round of Monitoring. Monitoring Report on Ukraine*, 2010: 15.

Key recommendations

- To align the Law on Civic Associations with the European standards;
- to expand the list of NGOs whose income is subject to exempt from corporate income tax and to consider mechanisms simplifying access of NGOs to public funding;
- to consider mechanisms encouraging NGOs to make their annual reports publicly available, as well as to introduce clear governing structures and to adopt internal codes of ethics (*e.g.* through inclusion of the relevant provisions in contracts between NGOs and donors);
- to bring the laws and secondary legislation governing public access to information in compliance with the new Freedom of Information Act (FOIA), to supplement the legislation with provisions requiring public authorities to proactively make certain information on their activities publicly available, in particular, via the websites or through other means;
- to adopt the law on public participation in decision-making applicable to decision-making within the legislature, other state bodies and bodies of local self-government.

13. Business

SUMMARY

The business environment in Ukraine is not conducive to free entrepreneurship. Numerous and often conflicting regulations, policy instability, excessive discretion of public officials and arbitrary application of laws create serious barriers for opening, running and closing of businesses and discourage investment. Recent positive legislative reforms have yet to bring about practical improvement of the business climate. Government interference is frequent, both through individual actions and special interests legislation. Property rights protection remains weak. Integrity mechanisms in the private sector are not widely spread and the business sector plays a limited role in the fight against corruption.

The table below presents the indicator scores which summarise the assessment of the business sector in terms of its capacity, internal governance and its role within the national integrity system. The remainder of this section presents the qualitative assessment for each indicator.

Business **Overall Pillar Score: 31.25 / 100**			
Dimension	Indicator	Law	Practice
Capacity 31.25 / 100	Resources	25	25
	Independence	50	25
Governance 37.5 / 100	Transparency	50	50
	Accountability	50	25
	Integrity	25	25
Role 25 / 100	Anti-corruption policy engagement and support for/ engagement with civil society	25	

Structure and organisation

Private sector in Ukraine is diversified. As of 2008 there were about 450,000 active enterprises-legal entities and about 1 million active individual entrepreneurs. There are about 30,000 joint stock companies (including 9,600 publicly traded JSCs). The overall number of economic state entities was 4,100 including 3,800 state enterprises and 300 commercial partnerships in which state owned more than 50%.[979] State ownership dominates in such sectors as defence, aircraft, energy, natural monopolies (railway, utilities), academic research, social services (health protection, education, culture, etc.). There are about 2.5 million small and medium businesses, most of whom were individual entrepreneurs (there is no data, however, on how many of them are active businesses). There are a number of business associations and chambers of commerce representing both Ukrainian and foreign companies (*e.g.* European Business Association, American Chamber of Commerce, US-Ukraine Business Council, Ukrainian Committee of the ICC, Trade and Industry Chamber of Ukraine, Ukrainian Union of Industrialists and Entrepreneurs).

979 Ministry of Economy, http://www.me.gov.ua/file/link/153066/file/AnalizRP.doc [accessed 29 December 2010].

Assessment

RESOURCES (LAW) – SCORE 25

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Legislation on formation, operation and closing of businesses in Ukraine creates an unfavourable business environment and presents numerous regulatory barriers to economic development. Some positive steps have been taken recently to improve the legal framework, but they have not been fully implemented via relevant regulations and remain inadequate. Ukraine scores in the bottom of various ratings on the ease of doing business. For example, it is 142nd out of 183 countries in 2010 World Bank's Doing Business ranking[980], 162nd out of 179 in 2010 Economic Freedom Index by Heritage Foundation[981], 125th out of 139 under the Burden of Government Regulation Indicator in the 2010-2011 Global Competitiveness Index[982].

Important legislative reforms have been carried out since 2005, including the Law "On the Permit System for Business Activity" (Law No. 2806-IV of 6 September 2005) and the Law "On Basic Principles of State Supervision (Control) over Business Activity" (Law No. 877-V of 5 April 2007). They were aimed at easing conditions for operating a business in Ukraine, in particular, by introducing 'declaration principle' in obtaining of permits and streamlining inspection activities of the government agencies. However, their positive effect has been undermined by the lack of implementing regulations on the governmental and ministerial levels or slow alignment of by-laws with the new legislative provisions. Despite new laws, non-legislative regulations often extend powers of the control bodies and increase requirements to businesses, thus rendering legislative reforms ineffective.[983]

The declarative principle (also called 'self-certification'), according to which a business entity is not required to obtain permits, but can simply notify relevant authority of such entity's compliance with legal requirements, has been properly implemented only by a few government agencies and it has had a limited impact so far.[984] As of 1 August 2009, only 42 of the 85 controlling agencies introduced risk criteria of the economic activity provided for by the Law on Basic Principles of the State Supervision (Control) in Economic Activity and only six approved lists of questions (checklists) to be used during inspections.[985] Nearly 80% of safety and labour protection requirements were passed prior to 1992 and in many cases entrepreneurs must pay even to get access to the requirements.[986]

In a positive development the minimum statutory capital required to set up a limited liability company was decreased 100 times in December 2009[987] (from 100 minimum salary rates, which at the end of 2009 was an equivalent of about USD 9,500 to 1 minimum salary rate), thus simplifying access to market for new firms. However, procedure for registration of new business remains complicated, *inter alia*, by the requirement to obtain official documents from all social funds in order to register a legal entity or individual entrepreneur.[988]

In December 2009 amendments in the Law on the Permit System for Business Activity introduced a principle of an implied consent ('silence-is-consent') according to which a company is allowed to conduct business activity that requires a permit without such permit if it applied to the state authority and has not received the permit by the established deadline. The same law also excluded 6 items from the list of licensed business activities (after changes the list still contains 66 types of activities that comprise 2,268 types of works subject to licensing).

980 http://www.doingbusiness.org/economyrankings [accessed 29 December 2010].

981 http://www.heritage.org/index/Ranking.aspx [accessed 29 December 2010].

982 http://www.weforum.org/documents/GCR10/index.html [accessed 29 December 2010].

983 Interview by Oksana Prodan, former chair of the Entrepreneurs Council at the Government of Ukraine, with the author, Kyiv, 17 August 2010.

984 European Business Association, *Overcoming Obstacles to Business Success*, June 2009, 6-7; IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009, 22-23, http://www.ifc.org/ifcext/eca.nsf/AttachmentsByTitle/Ukraine_IC_report_2009/$FILE/Ukraine_IC_report_2009_eng.pdf, [accessed 29 December 2010].

985 IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009, 23.

986 IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009, 25.

987 Law on Amendments to Certain Legal Acts with a View to Simplify Conditions for Doing Business in Ukraine, № 1759-VI, 15 December 2009.

988 European Business Association, *Overcoming Obstacles to Business Success*, June 2009, 7.

Property rights for intellectual and physical property as well as financial assets are insufficiently protected in Ukraine. Ukraine ranks 135th on property rights and 113th on intellectual property rights (IPR) protection in the Global Competitiveness Rating 2010-2011.[989] In the 2010 International Property Rights Index Ukraine is 97th out 125 countries.[990] Ukrainian legislation on IPR is outdated and sometimes inconsistent.[991] Ukraine's WTO accession improved compliance with relevant standards, but relevant legislation has not been fully aligned with Ukraine's accession commitments. The Law on Joint Stock Companies that was finally adopted and came into effect in April 2009 improved protection of shareholder rights, but is not fully implemented as relevant legal acts have not to be enacted by the Securities and Stock Markets State Commission. Activities of limited liability partnerships are still governed by the outdated 1991 law. Conflicting and overlapping regulation of business activities by the Civil and Commercial Codes also adds to lack of legal certainty.[992]

Registration of property over financial assets is ambiguous and this has led to cases of unresolved ownership of companies.[993] Registration of rights to physical property is complicated and is based on the principle of registration of legal acts (deeds). Land and buildings on it are considered as separate immovable objects and are registered by different agencies.[994] In February 2010 the Parliament adopted a new Law on State Registration of Property Rights and Restrictions on Immovable Property whereby introduced the system of registration of legal titles on the real estate and established registration of relevant rights by a single institution – the Ministry of Justice. The Law, however, fails to establish state's responsibility for registering and guaranteeing real estate titles and also does not provide for open public access to the registry.

Decision on refusal to issue a business licence or permit can be appealed in court. There are, however, no legislative provisions regulating procedure of an administrative appeal.

RESOURCES (PRACTICE) – SCORE 25

To what extent are individual businesses able in practice to form and operate effectively?

Despite some positive developments in the legal framework for doing business in Ukraine they have yet to result in any significant changes in the business environment in practice. It remains extremely difficult to start, run or close business in Ukraine (see the paragraphs below for further information). The problem of business climate in Ukraine not conducive to tap into potential of entrepreneurship and private investment has been recognized on the highest political level and improvement in this area has been named as a policy priority.[995] However, reform initiatives so far have not brought significant changes in practice where businesses still face excessive regulation, frequent changes in rules and their inconsistent interpretation by enforcing authorities.

In practice opening and closing a business remains very burdensome due to a complicated procedure and ineffective work of numerous public agencies involved.[996] According to the World Bank's Doing Business assessment it takes 27 days to comply with 10 procedures in order to start a business in Ukraine (134th rank), while on average in Eastern Europe and Central Asia region it is 7 procedures and 17 days (6 and 13 respectively in the OECD high-income countries).

To wind up a business it takes almost 3 years and it is one of the costliest procedures in the world (Ukraine is 145th under this indicator in the Doing Business Rating). In July 2010 the Parliament adopted amendments in the Law on State Registration of Business Entities, whereby the procedure for closing a busi-

989 http://www.weforum.org/documents/GCR10/index.html [accessed 29 December 2010].

990 http://www.internationalpropertyrightsindex.org/2010_IPRI.pdf [accessed 29 December 2010].

991 European Business Association, *Overcoming Obstacles to Business Success*, June 2009, 55-56.

992 OECD, *Economic Assessment of Ukraine*, 2007: 69; http://www.usubc.org/reports/OECD_Ukraine07.pdf [accessed 29 December 2010]. See also 2007 EBRD assessment of the Ukrainian commercial laws, [accessed 29 December 2010].

993 World Economic Forum, *The Ukraine Competitiveness Report 2008*: 49-50; http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/Ukraine.pdf [accessed 29 December 2010].

994 Human Rights Protection NGOs, *Annual Human Rights Report 2008*, http://helsinki.org.ua/index.php?id=1245859763 [accessed 29 December 2010].

995 See, among other policy documents, Economic Reforms Programme for 2010-2014 endorsed by the President of Ukraine, http://www.president.gov.ua/docs/Programa_reform_FINAL_1.pdf [accessed 29 December 2010].

996 Interview by Leonid Kozachenko, chair of the Entrepreneurs Council at the Government of Ukraine, head of Ukrainian Agrarian Confederation, with the author, Kyiv, 20 July 2010.

ness is simplified in certain cases, but it does not concern the bankruptcy procedures.

According to the IFC, the total number of permits and other approvals in Ukraine was reduced from around 1,200 to 140. Despite this reduction, the average number of permits required from enterprises in practice remained the same in 2008 as it was in 2006.[997] Only 29% of business firms indicated in 2008 that business licensing and permits was not a problem (decreasing from 38% in 2005).[998] In 2008, three fourths of all enterprises faced at least one inspection. On average, an enterprise was inspected more than five times and spent almost three weeks under inspection. Such intensive inspections disrupt normal business activities and also result in high incidence of corruption – 20% of businesses reported that unofficial payments were solicited from them in the course of inspections.[999] IFC also estimated that businesses that underwent permit, inspection and technical regulations procedures in 2008 incurred a total cost of $1.55 billion to comply with them.[1000]

One of the main problems for business operation is tax administration, which in Ukraine is marred by overly complicated legal provisions on taxation, frequent and sometimes retroactive changes and arbitrary behaviour of tax officials.[1001] World Bank's Index places Ukraine as the second worst country in the world as regards paying taxes (with 147 payments per year and 736 hours spent per year).[1002]

Property rights are not protected in practice and often become an object of illegal takeovers with facilitation of corrupted government officials and judges.[1003] In 2006 only 20% of company managers believed in the ability of courts to enforce their contract rights.[1004] However, Ukraine ranks fairly high on the indicator of contracts enforcement in the Doing Business Index (43rd with 345 days to resolve commercial sale dispute before court, 41.5% of claim value as attorney, court and enforcement costs, and 30 steps to file the claim, obtain judgment and enforce it). But when challenging a public authority's decision/inaction complaints mechanisms are ineffective and it is almost impossible for a private entity to win a court case against local self-government body.[1005] Also enforcement of court decisions is ineffective and only 8% of judgments with pecuniary claims are enforced (with the overall rate of enforcement being 32%).[1006]

INDEPENDENCE (LAW) – SCORE 50

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

There are a number of laws which are intended to limit possibilities of government interference in business activity (for instance, Law on Principles of State Regulatory Policy in Business Activity, Law on Permit System for Business Activity, Law on Basic Principles of State Supervision (Control) over Business Activity, Law on State Registration of Legal Persons and Individual Entrepreneurs, Law on State Tax Service, Customs Code). They, however, often delegate detailed regulation of relevant regulatory, control, etc. activities to legal acts of the Government or government agencies (ministries) and leave too much discretion in the hands of public officials. This causes an unstable legal framework prone to frequent changes and arbitrary implementation of legislative provisions to the detriment of unhindered activity of private businesses. Businesses can complain through administrative appeals procedures established by relevant government authorities or in administrative courts. Draft Administrative Procedure Code, which should

997 IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009: 22.

998 The EBRD-World Bank, *Business Environment and Enterprise Performance Survey (BEEPS) 2008*, http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/704589-1267561320871/Ukraine_2010.pdf [accessed 29 December 2010].

999 IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009: 22.

1000 IFC, *Investment Climate in Ukraine as Seen by Private Businesses*, October 2009: 20.

1001 OECD, *Economic Assessment of Ukraine*, 2007: 71.

1002 http://www.doingbusiness.org/economyrankings [accessed 29 December 2010].

1003 Interview by Leonid Kozachenko, chair of the Entrepreneurs Council at the Government of Ukraine, head of Ukrainian Agrarian Confederation, with the author, Kyiv, 20 July 2010; Interview by Morgan Williams, president of US-Ukraine Business Council, with the author, Kyiv, 29 July 2010.

1004 Institute for Economic Research and Policy Consulting, *Quarterly Enterprise Survey*, Special Issue No. 3 (6), Kyiv, October 2006; www.ier.kiev.ua/English/qes/special_qes6_eng.pdf [accessed 29 December 2010].

1005 Interview by Oksana Prodan, former chair of the Entrepreneurs Council at the Government of Ukraine, with the author, Kyiv, 17 August 2010.

1006 Interview by Mykola Onishchuk, Minister of Justice of Ukraine at the time of interview, *Holos Ukrayiny*, 11 April 2008, http://www.minjust.gov.ua/0/13888 [accessed 29 December 2010].

regulate administrative complaints procedure on legislative level, has not been adopted to date despite several years of elaboration and consideration in the Parliament. In case of undue state interference businesses can file an appeal with administrative courts requesting compensation of damages together with the request to quash relevant decision of the state authority or with civil courts requesting civil compensation of damages.

INDEPENDENCE (PRACTICE) – SCORE 25

To what extent is the business sector free from unwarranted external interference in its work in practice?

Private sector in Ukraine is only partially free from undue external interference. Such interference can be aimed at economic freedom with a view to pursue certain government policy (for example, ban on export of certain commodities, like wheat or oilseeds, to freeze market prices[1007]; threats to re-privatise certain enterprises to gain popular support and increase budget revenues[1008]) or obtain personal gains by public officials (for example, modification of procurement conditions to restrict the scope of possible bidders and solicit kick-backs or establishment of restrictions on privatisation of certain state enterprises in order to strip them of assets in a concealed way[1009]). Sometimes a whole system of ambiguous regulations is set up to extort bribes and allow practically unlimited discretion of public officials in treating business – one notable example being the practice of VAT reimbursement.[1010] In another case in 2009 the Government in direct violation of the law and court decisions arbitrarily refused to return the security deposit paid by bidders at one of the privatisation tenders (by law such deposit is returned to bidders who failed to win the tender).[1011] In violation of the rule of law principles the Parliament has adopted several laws establishing a temporary ban on forced sale of property of certain branches of economy or enterprises (*e.g.* property of state companies, companies in the energy sector, ship-building, mining, etc.) – thus preventing enforcement of court decisions against such property and violating the right of property of legitimate claimants.[1012]

The above are just a few examples when the state power was abused to gain access to private sector assets and an undue authority was exercised over the economy subverting the rule of law. The existing legal avenues to complain against arbitrary decisions and illegal interference with business activities are ineffective, as their review is delayed and they impose additional significant expenses in legal costs and illegal payments. For example, when in 2007 the Government imposed a temporary ban on export of grain the traders challenged this decision in court. By the time court proceedings were final the economic situation had changed and the Government cancelled the measures, while businesses sustained financial significant losses.[1013] Similar situation has been happening in 2010 when, without declaring a formal moratorium on the grain exports, the government agencies have been obstructing actual dispatch of cargoes through customs inspections and arbitrary *ad hoc* requirements.[1014]

Complaints in courts are reviewed slowly, government agencies appeal unfavourable to them decisions up to the last possible judicial instance and even if the final decision is in favour of the business its enforcement may also take long time.[1015] During the period until they are overturned by final court decision, restrictions imposed by state authorities disrupt company's business activities and can lead to irreversible damages. In 2007 the European Court of Human Rights found that Ukraine interfered in an unjustified way with the applicant's right to peaceful enjoyment of property by continuous delays with VAT refunds and the lack of

1007 Interview by Leonid Kozachenko, chair of the Entrepreneurs Council at the Government of Ukraine, head of Ukrainian Agrarian Confederation, with the author, Kyiv, 20 July 2010.

1008 Bertelsmann Transformation Index 2010, [accessed 29 December 2010].

1009 Interview by Morgan Williams, president of US-Ukraine Business Council, with the author, Kyiv, 29 July 2010.

1010 European Business Association, *Overcoming Obstacles to Business Success*, June 2009: 86-87.

1011 http://ua.proua.com/news/2010/07/23/083033.html; http://news.finance.ua/ua/~/2/0/all/2009/10/12/174115 [accessed 29 December 2010].

1012 Human Rights Protection NGOs, *2008 Annual Human Rights Report*. See also judgments of the European Court of Human Rights in cases against Ukraine (*Sokur v. Ukraine*, application no. 29439/02, 26 April 2005 and others).

1013 Interview by Leonid Kozachenko, chair of the Entrepreneurs Council at the Government of Ukraine, head of Ukrainian Agrarian Confederation, with the author, Kyiv, 20 July 2010.

1014 See statement by the Ukrainian Grain Association, 18 August 2010, http://uga-port.org.ua/novosti/ukraina/zvernennya-ukransko-zernovo-asots-ats-do-prem-r-m-n-stra-ukra-ni-azarova-m-ya [accessed 29 December 2010].

1015 Interview by Oksana Prodan, former chair of the Entrepreneurs Council at the Government of Ukraine, with the author, Kyiv, 17 August 2010.

effective remedies to prevent or terminate such an administrative practice.[1016]

TRANSPARENCY (LAW) – SCORE 50

To what extent are there provisions to ensure transparency in the activities of the business sector?

Financial auditing and reporting standards are rather weak. On strength of auditing and reporting standards Ukraine ranked only 128th in the Global Competitiveness Report 2010-2011. Weaknesses in accounting and auditing, which result in the lack of a reliable, high quality financial information, are also highlighted by the World Bank[1017]. Ukraine has not adopted International Financial Reporting Standards (IFRS); however, International Accounting Standards (IAS) has been gradually incorporated in the national accounting regulations since 1999[1018]. According to October 2007 Government's Strategy for Implementation of International Accounting Standards in Ukraine[1019] it was planned starting from 2010 to introduce IFRS as mandatory rules for financial reporting by companies listed on stock exchange, banks, insurance companies. No such mandatory provisions have been introduced by law to date. Ukrainian Federation of Professional Accountants and Auditors adhered to the Code of Ethics of Professional Accountants by the International Federation of Accountants. Ukraine adopted International Standards on Auditing (ISA) in 2004.[1020]

Ukrainian companies are required to disclose their financial reports only nine months after the end of the fiscal year, which does not give shareholders the opportunity to familiarize themselves with the financial situation before the shareholders' meeting that usually takes place about six months after the end of the fiscal year. The law also does not require assets to be valuated at market prices before being sold or acquired. This opens the door to asset stripping, particularly in companies dominated by a few shareholders.[1021] The new Law on Securities of 2006 introduced important restrictions, like the ban on insider trading and requirement to disclose direct owners of 10% or more of the shares of publicly traded companies to the State Securities and Stock Markets Commission, which is required to make the information public.

According to the Law on Joint Stock Companies (starting from April 2011) an annual external audit will be required for companies whose shares are traded publicly. Also the new law on JSCs preserves outdated provisions on "revisionary commissions", instead of replacing them by external auditors. According to the 1991 Law on Commercial Partnerships all other partnerships (including limited liability companies) are obliged to ensure annual audit of their financial reports. National Bank conducts annual inspections of banks.

TRANSPARENCY (PRACTICE) – SCORE 50

To what extent is there transparency in the business sector in practice?

While some information on companies and their ownership structure is publicly available (see below), it does not allow access to information on ultimate ownership – only nominal shareholders are known, while ultimate owners can hide behind privately held companies or off-shore intermediaries.[1022] Data on registered companies contained in the State Register of Legal Persons and Individual Entrepreneurs is available for public access upon request (with some exceptions regarding personal data). It is not, however, available on the Internet. Information on joint stock companies, including their financial reports and major shareholders, is available on the Internet.[1023] Basic

1016 Judgment in the case of *Intersplav v. Ukraine*, application no. 803/02, 9 January 2007, http://echr.coe.int/echr/en/hudoc ("[…] the constant delays with VAT refund and compensation in conjunction with the lack of effective remedies to prevent or terminate such an administrative practice, as well as the state of uncertainty as to the time of return of its funds, upset the "fair balance" between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions").

1017 World Bank, Accounting and Auditing, Report on the Observance of Standards and Codes, December 2008, [accessed 29 December 2010].

1018 McGee, Robert W. and Preobragenskaya, Galina G., *Accounting Reform in Transition Economies: A Case Study of Ukraine*, February 2005, http://ssrn.com/abstract=686430 [accessed 29 December 2010].

1019 CMU Resolution № 911-p, 24 October 2007.

1020 McGee, Robert W. and Preobragenskaya, Galina G., *Accounting Reform in Transition Economies: A Case Study of Ukraine*, February 2005, http://ssrn.com/abstract=686430 [accessed 29 December 2010].

1021 World Economic Forum, *The Ukraine Competitiveness Report 2008*: 54.

1022 World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006, http://www.worldbank.org/ifa/rosc_cg_ukr.pdf [accessed 29 December 2010].

1023 http://smida.gov.ua [accessed 4 August 2010]; http://www.

information on non-banking financial institutions (insuring companies, pension funds, etc.) is available on the web-site of the State Commission on Regulation of Financial Service Markets. Even in the Ukraine's bank sector, which is considered to be one of the most developed and compliant with international standards, the level of transparency (including ownership structure, shareholder rights, governance structure, financial and operational transparency) remained low, at barely half leading international financial organizations' quantitative transparency scores.[1024] There is no requirement in the law to disclose any information in relation to countering corruption. According to the EBRD 2007 Legal Indicator Survey Ukraine scored low (4 out 10 points) on the effectiveness of disclosure legislation regulating securities market.[1025] Large international corporations represented in Ukraine often provide information on corporate responsibility and compliance programmes, as well as some Ukrainian companies.[1026] In 2009 and 2010 one of the print mass media compiled ratings of companies' corporate social responsibility with 43 Ukrainian firms participating in 2010.[1027]

ACCOUNTABILITY (LAW) – SCORE 50

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Legislative provisions on corporate governance have improved with adoption in 2008 of the Law on Joint Stock Companies (will be fully enacted in April 2011). However, other types of commercial partnerships, including limited liability companies, are still regulated by the outdated 1991 Law on Commercial Partnerships and two codes – Civil and Commercial Codes which overlap and conflict in many provisions. Businesses report to tax authorities and social benefits funds regarding taxation and social payments. In addition financial institutions report, respectively, to the National Bank of Ukraine and State Commission on Regulation of Financial Service Markets; institutions of securities market – to the Securities and Stock Market State Commission. Joint stock companies submit annual reports to the Securities and Stock Market State Commission. Entities providing financial services and some other types of businesses (*e.g.* intermediaries in real estate transactions, lawyers, notaries, auditors in certain cases) are obliged to submit money laundering and financing of terrorism suspicious transaction reports to the Financial Monitoring State Committee. Commercial partnerships also report to their founders/shareholders and governing bodies.

On efficacy of corporate boards Ukraine ranked 90th in the Global Competitiveness Report 2010-2011, because of the very weak legal basis for control of management by supervisory boards. The new law has significantly improved regulations on supervisory boards in JSCs and considerably strengthened the legal protections for minority shareholders. The supervisory board is authorized to approve transactions between related parties and prohibits those parties from participating in the process. The law introduces detailed requirements for disclosing conflicts of interest to the supervisory board, increasing the transparency of the company's activities. Duties of supervisory board members and their liability are established by the law. This allowed Ukraine to improve its rating in the World Bank's 2010 Doing Business Index under the protection of investors' indicator (103rd rank compared with 143 in 2009). Although proper enforcement of the new Law require additional clarifications and regulations to be issued by the Securities and Stock Market State Commission.[1028]

ACCOUNTABILITY (PRACTICE) – SCORE 25

To what extent is there effective corporate governance in companies in practice?

stockmarket.gov.ua [accessed 29 December 2010].

1024 Transparency and Disclosure by Ukrainian Banks 2009, Financial Initiatives Agency, Standard & Poor's, USAID Capital Markets Project, http://www2.standardandpoors.com/spf/pdf/equity/TD_Ukraine_Eng_final.pdf [accessed 29 December 2010].

1025 The EBRD Legal Indicator Survey assessed the effectiveness of prospectus disclosure requirements, public and private enforcement mechanisms for property protection, and market regulator (its independence, impartiality, experience, its rule-making, investigative and sanctioning powers). http://www.ebrd.com/downloads/research/law/lit08.pdf [accessed 29 December 2010].

1026 See, for instance, Siemens Ukraine http://web2.siemens.ua/upload/File/pdf/COP_Siemens_Ukraina_08-09.pdf, Telenor Ukraine http://www.telenor.ua/ua/corporate-responsibility/, Obolon http://www.obolon.ua/ukr/corporate-responsibility/social-reporting/, MTS http://company.mts.com.ua/ukr/corp_social_resp.php, SCM http://www.scm.com.ua/uk/publish/category/3778, Kyivstar http://www.kyivstar.net/responsibility/, DTEK http://www.dtek.com/ua/social_responsibility [all accessed 29 December 2010].

1027 http://kontrakty.com.ua/gvard/rating/gvard_sot2010/gvard_sot2010.html [all accessed 29 December 2010].

1028 European Business Association, *Overcoming Obstacles to Business Success*, June 2009, 22.

The new Law on the Joint Stock Companies gives two years (with deadline in April 2011) to align companies' statutory documents with the new provisions. Until then it is difficult to assess implementation of the new legal framework and this assessment is based on the situation existing in practice before full enactment of the JSCs Law. According to the World Bank's 2006 evaluation of the corporate governance in Ukraine, existing legal framework has facilitated a large number of corporate governance abuses including share dilution, asset stripping, and dubious transfer pricing.[1029] The 2005 assessment by the EBRD of how corporate governance legislation is enforced showed that in terms of disclosure (a minority shareholder's ability to obtain information about their company), redress (remedies available to a minority shareholder whose rights have been breached) and the institutional environment (capacity of a country's legal framework to effectively implement and enforce corporate governance legislation) Ukraine scored low. The survey revealed that a minority shareholder has, by law, access to different avenues to seek disclosure from the company, but all actions are deemed quite complex and lengthy as it is quite easy for the defendant to delay the proceedings. The difficult enforcement and the weak institutional environment add to the complexity of the actions.[1030]

INTEGRITY (LAW) – SCORE 25

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

There are no sector-wide codes of conduct. Some professions (auditors, accountants, attorneys) have codes of conduct (ethics).[1031] There are no provisions on whistle blowing in the private sector.[1032] Public procurement legislation has no requirements for bidders to have any ethics or anti-corruption programmes. Corporate codes of conduct are frequent among large corporations. Professional compliance officers are rare.[1033] In 2003 the State Securities and Stock Market Commission approved Principles of Corporate Governance in accordance with the relevant OECD Principles. The 2003 Principles are intended for open JSCs with publicly traded shares, but they are not mandatory. 2005 Survey by the IFC showed that board members in 30% of companies surveyed have a "fairly deep knowledge" of the mentioned Corporate Governance Principles; and almost 50% board members have a "basic knowledge". 13.2% of companies surveyed were ready to disclose complete information on their compliance with the standards established by the Corporate Governance Principles.[1034]

INTEGRITY (PRACTICE) – SCORE 25

To what extent is the integrity of those working in the business sector ensured in practice?

There are no integrity pacts signed by companies. Concern for integrity inside the private sector has been slowly rising, which can be seen from the number of corporate responsibility provisions and corporate codes of conduct applied by businesses. Their impact, however, remains limited and only few companies, mainly large corporations and/or those listed on stock exchange, pay adequate attention to these issues. Trainings on integrity and compliance issues are rare.[1035] According to 2008 survey of firms by the EBRD, corruption was not a problem for only 16% of companies. 27% of firms indicated that unofficial payments are frequent; 26% of firms stated that bribery is frequent in dealing with tax authorities (increase from 18% in 2005), 13% that bribery is frequent in dealing with customs and 16% with courts. Among firms who reported bribery "bribe tax" amounted to 3.2% of annual sales.[1036] On corporate ethics of businesses (ethical behavior in interactions with public officials, politicians, and other enterprises) Ukraine ranked 130st in the Global Competitiveness Rating 2010-

1029 World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006.

1030 EBRD, *Assessment of Commercial Laws of Ukraine*, 2007, [accessed 29 December 2010].

1031 Auditors and accountants adher to relevant international ethics standards (,). Rules on Attorneys' Ethics were approved by the Higher Qualification Commission of Attorneys in 1999 ( ). [all accessed 29 December 2010].

1032 World Bank, Corporate Governance, Report on the Observance of Standards and Codes, October 2006.

1033 Review by the author of web-sites of selected companies.

1034 World Bank, Corporate Governance, Report on the Observance of Standards and Codes, 2006.

1035 Interview by Oksana Prodan, former chair of the Entrepreneurs Council at the Government of Ukraine, with the author, Kyiv, 17 August 2010; Interview by Leonid Kozachenko, chair of the Entrepreneurs Council at the Government of Ukraine, head of Ukrainian Agrarian Confederation, with the author, Kyiv, 20 July 2010.

1036 The EBRD-World Bank, *Business Environment and Enterprise Performance Survey (BEEPS) 2008*, http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/704589-1267561320871/Ukraine_2010.pdf [accessed 29 December 2010].

2011. TI's 2009 Global Corruption Barometer noted a perception that private sector in Ukraine is highly affected by corruption (4.3 points out of 5, where 5 means "extremely corrupt").[1037]

ANTI-CORRUPTION POLICY ENGAGEMENT AND SUPPORT FOR / ENGAGEMENT WITH CIVIL SOCIETY (LAW & PRACTICE) – SCORE 25

To what extent is the business sector active in engaging the domestic government on anti-corruption? To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Problems of corruption are often raised by business associations in their contacts with the government. However, it mainly concerns unfriendly regulatory environment and red tape, which fosters corruption and hinders business development. Problems of de-regulation and elimination of conditions for corruption are often cited in the public reports and statements by business associations.[1038] 88 Ukrainian companies adhered to the UN Global Compact and only 10 of them were "non-communicating", *i.e.* failed to submit communication on progress.[1039]

Businesses are involved in formulation of anti-corruption recommendations which are channelled via business associations and councils of entrepreneurs at different government agencies, including Entrepreneurs' Council at the Cabinet of Ministers of Ukraine. However, there are no stand-alone initiatives of business and civil society on combating corruption, nor examples of business financial support to the anti-corruption initiatives known to the author.[1040]

Key recommendations

- To step up efforts on liberalisation of business climate by setting clear and ambitious goals and deadlines for their implementation;
- to adopt the Law on Limited Liability Companies;
- to adopt the Code of Administrative Procedures;
- to establish a unified single register of property rights and restrictions, run by a single government agency and open to public on Internet;
- to make the register of legal entities and individual entrepreneurs open for public access via Internet;
- to establish mandatory use of IFRS by banks, insuring companies, some other non-banking financial institutions, publicly traded companies;
- to raise awareness among members of business associations, chambers of commerce, entrepreneurs' councils about integrity mechanisms in the private sector;
- to introduce whistleblower protection in the private sector;
- to consider amendments in the procurement legislation to require from companies bidding for government contracts to have anti-corruption compliance programmes implemented;
- to introduce effective, proportionate and dissuasive sanctions for corruption offences committed by legal persons, and to establish a registration system for legal persons which would be subject to corporate sanctions.

1037 http://www.transparency.org/content/download/43788/701097 [accessed 29 December 2010].

1038 For example, reports and statements by the European Business Association ( ), US-Ukraine Business Council ( ), American Chamber of Commerce (www.chamber.ua)

1039 http://www.unglobalcompact.org/participants/search [accessed 29 December 2010].

1040 See also [accessed 29 December 2010].

VIII. CONCLUSION

Ukraine generally can be characterised as a country with a weak National Integrity System. The NIS assessment suggests that the Supreme Audit Institution (whose primary tasks are not focused as on countering corruption as most other pillars), is the strongest pillar of the NIS, while political parties, public sector and business are among the weakest. Even though political parties are not empowered to counteract corruption, their overall underperformance has a significant impact on performance of the parliament and the executive, since in the parliamentary elections they are the only vehicles to bring the citizens to power. While other pillars have significant potential for combating corruption (such as the legislature, law enforcement agencies, judiciary, ACA, media and civil society etc.), their actual influence within the NIS is moderate due to limited capacity to function (as concerns judiciary, law enforcement agencies, ACA), weak internal governance (as concerns legislature, law enforcement agencies, media, and civil society organisations), or limited role in the NIS (judiciary, ombudsman).

Most of the pillars generally play a moderate **role** (scored 50 on the scale of 100) in upholding the integrity of the whole integrity system, except for political parties, business, public sector, ombudsman and judiciary. Political parties fail to aggregate and represent social interests, while their anti-corruption commitments have populist nature and not translated into deeds. The main reasons for that are the absence of competition between the parties and independent candidates in the parliamentary and most of the local elections (where independent candidates are forbidden from being nominated) and an over-dependence of political parties on private funding, which makes them represent the interests of donors, rather than the interests of the voters. The role of business in the NIS is restricted by its insufficient engagement with government on issues of corruption prevention and lack of support to civil society as regards combating corruption. Its limited role in upholding the NIS should come as no great surprise, given the fact that many businesses themselves are involved in corrupt practices. As the legal framework does not oblige the ombudsman to promote good practice of governance, its role in promotion of such a practice is low. The judiciary, which should be a key pillar of the NIS, plays a limited role in corruption prevention as it fails to effectively prosecute corruption and to exercise effective executive oversight. Lack of respect to the independence of the judiciary and rule of law among the politicians, as well as widespread corruption within the court system are among the main factors impeding its role in the NIS.

In terms of internal **governance**, the weakest pillars of the NIS are political parties, CSOs, media, legislature, business, and law enforcement agencies, while the most successful are the SAI and EMB. The legal framework contains a number of provisions seeking to ensure the transparency of the EMB, and they are generally enforced, while the SAI tries to expand the scope of its transparency beyond the frames of legal requirements, even though the latter contain some loopholes. Therefore, overall scores for transparency for these two pillars are high, and they increase the overall average score for internal governance. EMB's internal governance could be better if the law envisaged the mechanisms to ensure accountability of the EMB, similarly to the SAI, which is required to produce and submit to the parliament a number of reports, opinions and other documents. Although the parliament has failed to introduce the appropriate mechanisms to ensure integrity of public officials, including those employed by SAI and EMB, integrity of the SAI is to large extent ensured in practice. The reasons for that are rooted in close cooperation between the national SAI, INTOSAI and supreme audit institutions in other countries, engagement of the SAI in auditing international organisations (*e.g.* OSCE), as well as in the 2006 GRECO recommendations, which suggested to consider some measures aimed to ensure a better level of integrity of the SAI. As a result, overall internal governance within the SAI is the strongest compared to all other pillars of the NIS.

This report reveals that many institutions in Ukraine continue to hide behind a veil of secrecy. Governance within political parties is hampered by lack of transparency of their funding, absence of effective financial oversight and centralised internal decision-making promoted by a proportional system with closed lists and dependence on donors, who together with the party leadership decide on the major issues related to activities of political parties. Weak governance within the media is exacerbated by lack of transparency of media ownership, insufficient self-regulation within the industry, journalists' failure to comply with ethical standards, which

mostly goes unsanctioned. Governance within civil society organisations is similarly impeded by lack of transparent financial reporting, gap between the actual practice of internal decision-making and requirements of the CSOs' charters, and insufficient actions within civil society to ensure integrity of the CSOs. Whereas transparency of the legislature is generally ensured in law and practice, its governance is weakened by poor accountability derived from the electoral system on the basis of which the MPs are elected, insufficient legal mechanisms to ensure integrity of the parliamentarians, and poor enforcement of the legal provisions related to integrity of the MPs. Weakness of corporate governance, absence of sector-wide codes of conduct and integrity pacts, as well as widespread corruption in business sector are the key factors hampering its performance in terms of internal governance. As regards the law enforcement agencies, governance of the pillar is hampered by *de facto* immunity among law enforcement officials, weak integrity and transparency within the law enforcement system.

Many, although not all, of the problems of the NIS can be explained by limited **capacity** of institutions to function. The weakest pillars in this regard are the public sector, judiciary, law enforcement agencies, Government Agent on anti-corruption policy and business, while the SAI has the strongest capacity. The latter can be explained by sufficiency of the SAI resources, effective mechanisms to protect it from external interference, absence of both external interference with SAI activities and engagement of SAI members into political activities in practice. In contrast to the SAI, the capacity of the judiciary, public sector and law enforcement agencies is undermined by insufficient funding of their needs and lack of legal protection against undue interference in their activities. Absence of special budget allocations to the Government Agent on anti-corruption policy and lack of legal protection of the Agent against its arbitrary removal are key factors impeding the capacity of the Agent to exercise its duties.

Due to limited budget resources, the executive (responsible for annual preparation of the draft budget laws) and the parliament for many years have been failing to allocate appropriate amounts of funding to the judiciary, public sector, law enforcement agencies and ombudsman, while EMB has encountered problems in terms of timeliness of fund allocation for administration of the elections. In 2008-2009, the funding of almost all public authorities was additionally impeded by the global financial crisis. Insufficient funding significantly restricts the possibility of recruiting qualified staff, creates preconditions for committing corruption offences and weakens the overall capacity of underfunded pillars. It also restricts the possibility of conducting comprehensive training for employees of the public sector, law enforcement agencies and judiciary, thus maintaining the low level of integrity of the relevant pillars in practice. A lack of public funding also decreases the role of the judiciary in oversight of the executive, the role of EMB in administration of elections (since the existing level of funding of the EMB does not allow it to effectively implement voter education programs and to provide better guidance for the members of the lower-level commissions), as well as the role of the Government Agent on anti-corruption policy in educating citizens. Limited funding of the pillars also has certain negative impact on the NIS foundations. For example, underfunded pillars employing low-paid officials are exposed to allure of corruption; they are not very effective in dealing with their duties, while corruption and inefficient use of public funds weakens socio-economic foundations and undermine public trust to the relevant institutions, thus weakening socio-cultural foundations of the NIS.

What explains the overall weakness of the NIS in Ukraine?

Here we need to look not only to the activities of separate NIS institutions and sectors which have a negative impact on performance of other NIS pillars, but also to the **NIS foundations**, in particular, the weak national economy which does not allow adequate funding of many budget programs (which is to some extent caused by corrupt pillars of the NIS), lack of respect for democratic values within society and among politicians, as well as high tolerance to corruption within society.

Since MPs, civil servants, judges and other officials are part of the society affected by **corruption**, perhaps we should not be surprised by their ineffectiveness in the fight against corruption once they take power or are appointed. In addition, the overall influence of society on the activities of public authorities is limited since independent candidates are not allowed to run in parliamentary and most of the local

elections. Therefore, the only opportunity for the voters to influence the government, is to vote for one of the parties with centralised decision-making, strong dependence on the tycoons and weak ideology. The pillars, in turn, do not help to improve the situation, since their role in public education is moderate (as concerns media, ACA) or even insignificant (for instance, in the case of public sector).

Performance of some NIS pillars is also hindered by **lack of legal culture, respect for human rights and freedoms, as well as democratic values, including the rule of law**, among the politicians, businessmen and within the society in general. This is a specific case of the parliament, judiciary, EMB, CSOs, political parties and media. For instance, integrity of MPs is scored 0 due to permanent unsanctioned fights of the MPs in the parliament and other violations of legal requirements. Political parties are not legally prevented from developing internal democracy, however the level of integrity within the parties is insufficient due to highly centralised decision-making and other undemocratic internal practices. Parties also do not play any role in aggregation and representation of interests of the voters, thus weakening the socio-political foundations of the NIS and making social cleavages deeper.

As concerns the other pillars mentioned above, the law generally provides for certain mechanisms to prevent them from undue external influence, but their independence is not respected by the other actors. In particular, in 2007 – 2008 the president of Ukraine and other public authorities took a number of decisions on termination of courts and dismissals of judges which delivered judgments in favor of opposition. The HCJ in many cases has been hastily suggesting dismissal of judges not for professional mistakes, but for disobedience and intractability. Lack of respect for the independence of the judiciary also decreases its role in oversight of the executive. Although the legal framework contains comprehensive provisions aimed to protect the EMB from political interference, the parliament twice adopted politically motivated decisions on termination of office of all the EMB members, while in 2007 the MPs forcibly prevented the EMB sittings from being held. In 2010, some opposition parties were excluded from participation in elections in certain regions through the legal tricks favoring the ruling party. Independence of the media in practice is not ensured not only due to legal shortcomings, but also due to lack of respect for freedom of expression among the politicians and media owners with close political ties. Disrespect for this freedom can be also proven by cases of detentions and arrests of civic activists, as well as by instances of pressure exercised by law enforcement agencies on certain NGOs.

One of the most important reasons for the overall weakness of the NIS is also the **absence of an adequate legal framework** to ensure independence, transparency, accountability, and integrity of a number of pillars. The lack of these provisions can be explained by quite moderate role of the legislature and executive in prioritising anti-corruption issues and good governance and legal reforms. Since the parliament and the executive has failed to present a unified approach towards ensuring transparency in the government and to effectively address deficiencies in the laws applicable to the relevant pillars, transparency of the executive, public sector, law enforcement agencies, ombudsman, SAI, ACA, political parties (as regards funding of political parties), media and business is not ensured. In terms of transparency, the legislature appeared to be supportive only of the judiciary and EMB, as the parliament have managed to adopt laws seeking to provide access to court decisions and to make most of the EMB activities related to administration of elections transparent. In 2011, the legislature also adopted the Freedom of Information Act, which will improve the legal mechanisms pertaining to transparency of actions and decisions of public authorities, if enacted in May 2011 and properly enforced.

The parliament supported the independence of the SAI, EMB and Ombudsman by adopting special laws on these institutions, which envisaged comprehensive mechanisms aimed to limit the possibilities for undue external influence on these pillars. However, the legislature appeared to be less supportive of other pillars in terms of their independence. For instance, independence of the judiciary, law enforcement agencies, public sector, political parties, media, and business requires constitutional amendments (as regards judiciary and law enforcement agencies), or adoption of the new versions of the existing laws (*e.g.* the Law on Prosecution Service, the Law on Public Service, the Law on Associations of Citizens and others), or review of the relevant legal provisions which impose restrictions on activities of

the political parties and media. The legislature, however, has not made significant attempts to adopt/review these laws.

The level of accountability of the executive, judiciary, public sector, EMB, ombudsman, and political parties could be increased if the parliament managed to improve the mechanisms of parliamentary oversight, restricted the scope of the judicial immunity, broadened the scope of anti-corruption screening, took measures to protect the whistleblowers, narrowed the margin of discretion granted to public servants by adopting the Code of Administrative Procedures, legally obliged the EMB to produce the reports on its activities, set more clear requirements to ombudsman's reporting, introduced appropriate oversight of the funding of political parties. However, almost nothing has been done by the legislature to address these issues, while the executive is not very active in suggesting the relevant amendments to legislation.

The level of integrity of civil servants, EMB members and staff, ombudsman, SAI, Government Agent on anti-corruption policy was affected by the Parliament's decision to repeal the anti-corruption "package" of laws which used to provide for regulation of conflict of interest, imposition of restrictions on the receipt of gifts by officials and *pantouflage.*

Inactivity of the parliament and executive in terms of improvement of the legal framework also limits the role of a number of pillars in the NIS. For instance, strengthening of the role of EMB in campaign regulation requires granting it some additional powers to supervise funding of the electoral campaigns at the national level, while strengthening of the role of the SAI in effective financial audits requires constitutional amendments empowering it to control all public expenses regardless of whether they are included in the state budget or not. Similarly, setting in the law clear criteria for selecting NGOs for consultations and for taking NGOs proposals into account in the official decision-making process could make civil society engagement in anti-corruption policy more active and effective.

In some cases, the **legal provisions are in place but they are not properly enforced**. For instance, the Constitution sets incompatibility requirements to the members of the executive (*e.g.* the members of the government are forbidden from carrying out any paid activities and holding the positions in the governing bodies or supervisory boards of the commercial enterprises), but there have been a number of cases when the relevant provisions were infringed by the members of the CMU, while the Speaker of the Parliament failed to turn to the courts to stop the violations. The Ombudsman is legally required to produce annual reports on its activities, but in practice it does not always do so, while the infringements of legal requirements remain unsanctioned by the legislature. Whereas freedom of expression is enshrined in the legal framework, provisions on editorial freedom are not enforced in practice. Although the Parliament's Rules of Procedure contain some mechanisms to ensure integrity of MPs, they are generally not enforced, while their violation mostly does not entail bringing MPs to any liability.

In a number of cases, the pillars **do not effectively use the powers and possibilities granted by legislation/regulations**, thus weakening their own performance and affecting the performance of other pillars. For example, the legislature is able to provide itself with necessary resources, but has not significantly reviewed the number of employees of its Secretariat, which compromises its capacity. Although it is legally granted a certain degree of independence and powers to supervise the activities of the executive, the ombudsman and SAI, as well as the right to dismiss the judges for violations, the legislature merely rubber stamps draft laws submitted by government and does not effectively use these powers related to oversight and dismissals. This in turn weakens the level of accountability of the executive, ombudsman, SAI (whose reports are rarely discussed by the parliament), and the judiciary. The judiciary has adequate powers to fight corruption by delivering dissuasive sanctions for corruption offences, as well as to exercise oversight of the executive, but in reality it does not use these powers effectively, which decreases the level of accountability and integrity within the public sector, law enforcement agencies, and the judiciary itself. Similarly to the SAI and Government Agent on anti-corruption policy, the ombudsman is able to expand its transparency beyond the frames prescribed by law, but in practice it only follows the legal requirements, which makes its activities rather opaque. Legislation also grants the ombudsman the right to apply to the Constitutional Court to have the laws declared unconstitutional (while the citizens do not have this

right), but in practice the Ombudsman rarely exercises this right. Media, political parties, CSO and business are not prevented by law from introducing mechanisms aimed to ensure their internal integrity, however they generally have not succeeded in establishing such mechanisms.

Performance of some NIS pillars is further hampered by **lack of mutual cooperation** across different pillars. For example, media and SAI are rather active in detecting and exposing cases of corruption, however, the law enforcement agencies and high-ranking officials do not use information provided to bring those who committed corruption offences to account. Whereas the legal framework contains provisions on public participation in decision-making, the executive and public sector are not very interested in close cooperation with civil society and business on integrity issues, while CSOs and business sector do not always effectively seize the opportunity of participation in decision-making and cooperation with each other.

In order to change these negative interactions between the pillars to positive ones, five major preconditions should appear: democratic values should be respected, the legislature jointly with the executive should implement necessary legal reforms aimed at strengthening capacity, governance and role of under-performing pillars; adopted laws should be effectively enforced; the pillars should use their powers more effectively and cooperate with each other more actively. Since major weaknesses of the pillars are caused by imperfect legislative framework, the review of the latter can be viewed as a key priority to ensure more effective performance of the National Integrity System as a whole.

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