

# Ukraine

by Oleksandr Sushko and Olena Prystayko

*Capital:* Kyiv  
*Population:* 46.0 million  
*GNI/capita (PPP), PPP:* US\$6,180

Source: The data above was provided by The World Bank, *World Development Indicators 2011*.

## Nations in Transit Ratings and Averaged Scores

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Electoral Process	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50	3.50	3.50
Civil Society	3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75	2.75	2.75
Independent Media	5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50	3.50	3.75
Governance*	5.00	5.00	5.25	n/a						
National Democratic Governance	n/a	n/a	n/a	5.00	4.50	4.75	4.75	5.00	5.00	5.50
Local Democratic Governance	n/a	n/a	n/a	5.25	5.25	5.25	5.25	5.25	5.25	5.50
Judicial Framework and Independence	4.75	4.50	4.75	4.25	4.25	4.50	4.75	5.00	5.00	5.50
Corruption	6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.75
Democracy Score	4.92	4.71	4.88	4.50	4.21	4.25	4.25	4.39	4.39	4.61

\* Starting with the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author(s) of this report. The opinions expressed in this report are those of the author(s). The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

## EXECUTIVE SUMMARY

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While Ukraine has boasted a relatively democratic and pluralist political environment in recent years, the system faced new challenges in 2010, including a growing concentration of power in the executive branch and a general return to a post-Soviet semiauthoritarian model.

Since gaining independence from the Soviet Union in 1991, Ukraine has held five presidential (1991, 1994, 1999, 2004, and 2010) and five parliamentary (1994, 1998, 2002, 2006, and 2007) elections. The latest presidential election in February 2010 resulted in a victory for former prime minister Viktor Yanukovich, whose previous presidential bid in 2004 had collapsed amid fraud allegations and ensuing popular protests that became known as the Orange Revolution. After Yanukovich took office as president, the parliament (Verkhovna Rada) passed a no-confidence motion to dismiss the cabinet headed by one of his rivals, Prime Minister Yuliya Tymoshenko, and a new government under the leadership of Yanukovich loyalist Mykola Azarov was inaugurated in March. A new parliamentary majority centered on Yanukovich's Party of Regions was formed that month after a questionable procedure was adopted allowing individual members, not just party groups, to create coalitions. However, the Constitutional Court reversed its own 2008 ruling on the issue and approved the procedure without proper legal justification. On September 30, the court decided to annul 2004 amendments to the constitution that had shifted powers to the parliament, effectively restoring the 1996 version of the document and reestablishing a strong presidency. As a result, the parliament is no longer authorized to appoint and dismiss cabinet ministers, though it retains the right to confirm the prime minister appointed by the president.

Among other changes during 2010, a judiciary reform that was seen as harmful to the courts' independence was enacted in July, and the news media, especially television stations with national reach, became more sensitive to the authorities' wishes. Meanwhile, the Ukrainian economy began to recover from the severe economic crisis of 2008–09, though loans from the International Monetary Fund (IMF) remained crucial for the government's financial stability.

**National Democratic Governance.** In 2010, national political power was consolidated in the hands of newly-elected president Yanukovich, in large part through questionable decisions by the Constitutional Court. In April, the court legitimized the legally dubious creation of the new parliamentary majority, and in October it reversed, for procedural reasons, the constitutional reforms of 2004, ignoring the constitutional norm stipulating that only the parliament can amend the charter. The latter decision was preceded by the politically biased replacement of

the court's chairperson and several of its members. With the constitution restored to its pre-2004 state, the president regained control over the cabinet, the security service, and the prosecutor general. Toward the end of the year, a number of criminal cases were launched against leading representatives of the former government, and human rights watchdogs criticized the prosecutions as politically motivated. *Due to the circumvention of legitimate procedures for amending the constitution, the erosion of checks and balances among the components of government, and the selective use of the judiciary for political purposes, Ukraine's rating for national democratic governance declines from 5.00 to 5.50.*

**Electoral Process.** The 2010 presidential election was held in two rounds on January 17 and February 4. Yanukovich, leader of the Party of Regions, defeated Prime Minister Tymoshenko in the runoff by a small margin, 48.95 percent to 45.47 percent. According to the Organization for Security and Cooperation in Europe (OSCE) and other independent observers, the voting met most international standards for democratic elections and consolidated progress that had been achieved since 2004. However, that progress was substantially challenged during local elections held on October 31. Electoral legislation adopted in July and amended in August allowed government supporters to dominate the majority of local electoral commissions ahead of the October voting. Registration of opposition candidates was constrained, and in some *oblasts* (regions), so-called clone parties were registered under the same names as existing factions in an apparent effort to confuse voters. The Party of Regions ultimately won in the majority of oblasts, leaving the opposition concentrated in western Ukraine. The politicized abuse of administrative resources was reported on a scale unseen in Ukraine since 2004. *Due to the combination of positive assessments of the presidential election and clear shortcomings in the local elections during this coverage period, Ukraine's rating for electoral process remains unchanged at 3.50.*

**Civil Society.** The civil society sector continues to play an important role in Ukraine, and its leading representatives appeared at the forefront of numerous public events in defense of human rights and civil liberties during 2010. However, its capacity was not sufficient to effectively resist the year's antidemocratic trend. In most cases the new government continued to engage in dialogue with civil society in the established formats, but patterns of political pressure were reported, such as unscheduled visits by police and security service officials to nongovernmental organization (NGO) offices, and even administrative detentions for one to five days of activists involved in street demonstrations. *Despite civil society's activity, signs of government hostility throughout the year keep Ukraine's rating for civil society at 2.75.*

**Independent Media.** As a result of major improvements after 2004, Ukraine has a diverse and competitive media market, and media freedoms are guaranteed by relevant legislation. However, the gains of recent years proved fragile in 2010, as coverage of politically sensitive topics took on a more pro-government bias at most

of the television stations with national reach. While the government did not engage in direct censorship, attempts were made to withdraw the licenses of television channels—namely TVi and 5 Kanal—that produced critical assessments of the regime. Moreover, the government adopted a public television plan that critics said could enable political control. In August, journalist Vasyl Klymentyev went missing in Kharkiv, and it was widely suspected that he had been murdered. *Due to growing pressure on news media, Ukraine's rating for independent media declines from 3.50 to 3.75.*

**Local Democratic Governance.** Events in 2010 revealed a gulf between the rhetoric and the actions of the authorities concerning local government. While the new central government declared its support for placing greater powers in the hands of local authorities, it did its utmost to boost its own influence, including at the expense of local government. Among other steps, the national leadership abandoned the previous administration's attempts to reform local government, and consolidated power in the executive branch through the annulment of the 2004 constitutional amendments, raising doubts about whether the central authorities would be willing to share powers and financial resources with the regions. Though supposedly intended to strengthen the Ukrainian state, these measures undermined the already weak connection between the government and the country's residents, reducing the latter's ability to influence state policy. *Consequently, Ukraine's rating for local democratic governance declines from 5.25 to 5.50.*

**Judicial Framework and Independence.** Ukraine's justice system lost a great deal of its remaining independence during 2010, in large part through the July enactment of a judicial reform that effectively subordinated the court system to the executive branch. These changes were facilitated both by the unity and active pressure of the new political leadership and by the lack of safeguards and institutional integrity within the judiciary itself. The Constitutional Court sided with the government in crucial rulings on the formation of a parliamentary majority and the reversal of 2004 constitutional amendments, with the latter coming just weeks after a major, progovernment shuffle of the court's membership. *As a result of the year's setbacks, Ukraine's rating on judicial framework and independence declines from 5.00 to 5.50.*

**Corruption.** Glaring conflicts of interest among senior officials in the new government, combined with further delays in the passage of anticorruption legislation, fueled public skepticism about the leadership's pledges to combat graft in 2010. A number of high-profile criminal cases were initiated during the year, but they focused on figures associated with the previous government—including former prime minister Tymoshenko herself—and left allies of the current government untouched. However, despite these negative conditions, the level of corruption did not change significantly in comparison with the previous year. *Ukraine's corruption rating remains at 5.75.*

**Outlook for 2011.** The year 2011 is likely to bring some temporary stabilization to the political situation in Ukraine, as no elections are scheduled and the opposition's capacity to mobilize supporters in antigovernment protests is rather limited. The opposition will remain divided, allowing the current leadership to continue its consolidation of power. Unpopular social reforms may bring some turbulence, but not enough to threaten the government's dominance. The executive branch will attempt to continue using the pliant judiciary and law enforcement bodies to neutralize actual or potential centers of political resistance, and the ongoing centralization of authority will strip local officials of their remaining political and financial autonomy. Anticorruption laws will be both weakened through new legislation and enforced in a selective manner.

# MAIN REPORT

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## National Democratic Governance

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
n/a	n/a	n/a	5.00	4.50	4.75	4.75	5.00	5.00	5.50

The transformation experienced by Ukraine’s political system during 2010 demonstrated that the country’s democratic institutions are both dynamic and fragile. On one hand, after years of paralysis stemming from deficiencies in the constitutional model and turbulent interpersonal conflicts among top leaders, Ukraine entered a period of political clarity and consistency. On the other hand, the newly established “order” was based not on the rule of law, democratic legitimacy, or effective checks and balances, but rather on the monopolization of power by one faction through the repeated circumvention of constitutional procedures.

At the beginning of the year, a cabinet headed by Prime Minister Yuliya Tymoshenko governed with the wavering support of a three-party coalition—the Yuliya Tymoshenko Bloc (BYT), Our Ukraine–People’s Self-Defense, and the Volodymyr Lytvyn Bloc. According to Article 83 of the constitution, party groupings alone are authorized to create a formal coalition and vote on the prime minister and cabinet. In practice, a number of members of parliament (MPs), especially after Tymoshenko’s defeat in the February presidential runoff, defected to the other political camp and voted with the Party of Regions, led by the winner of the presidential poll, Viktor Yanukovich.

On March 9, 2010, immediately after Yanukovich’s inauguration, the parliament voted to change its rules of procedure, allowing individual members, not just party groups, to create a coalition. This controversial rule paved the way for the resignation of Tymoshenko’s cabinet and the formation of a new coalition by the Party of Regions, the Communist Party, the Lytvyn Bloc, and a collection of lawmakers from other factions. The addition of this last group pushed the coalition from 219 members to the necessary threshold of 226. On March 11, a cabinet led by Mykola Azarov of the Party of Regions was appointed under the new rules. Ultimately, more than 50 MPs abandoned the collapsed “Orange” coalition to join the pro-presidential majority, giving it about 265 members in the 450-seat chamber. The opposition, which had already been divided while in power, grew even more fragmented and incapable of mounting any sustained resistance to the new government’s authoritarian tendencies.

In September 2008, the Constitutional Court had ruled that under the constitution, party groupings alone were authorized to create a majority coalition in the parliament. However, when the matter was submitted to the court in early 2010, the judges reversed themselves and found on April 6 that individual MPs could form a coalition.<sup>1</sup> This legitimization of the new configuration of power

effectively altered the outcome of the last parliamentary elections in 2007, in which the parties of the Orange camp won a slim majority.

In June 2010, a group of MPs referred another case to the Constitutional Court, using alleged procedural violations to challenge the entire constitutional reform of 2004, which had shifted a number of crucial presidential powers to the parliament. On September 30, the court decided to annul the 2004 reform, automatically reviving the strong presidential model created in 1996.<sup>2</sup> The judges ignored the constitutional rule that only the parliament could alter the charter. The decision was preceded by the politically biased replacement of the chairperson and several members of the court.

Yanukovych had already wielded considerable power, as his Party of Regions dominated the cabinet and the parliamentary majority. But after the September ruling, the president regained direct authority over the cabinet as well as the Security Service of Ukraine (SBU) and the Prosecutor General's Office, and was at the same time almost completely independent of parliamentary support. Whereas the 2004 constitution assigned specific powers and rights to the official parliamentary majority and the formal parliamentary opposition, the restored 1996 charter allows the president to unilaterally appoint cabinet ministers and rely on ad hoc majorities to approve his chosen prime minister and adopt legislation. The 1996 constitution does not assign an institutional role to the parliamentary opposition. Notably, Tymoshenko had supported the idea of restoring presidential powers prior to her defeat in the presidential election.

The new government also sought to extend presidential powers even beyond those that existed before 2004. For example, a new version of the law governing the cabinet, adopted on October 7, limited parliamentary oversight of the SBU, among other provisions.<sup>3</sup>

Toward the end of the year, a number of criminal cases were launched against leading representatives of the former government. Former interior minister Yuriy Lutsenko and former deputy justice minister Yevhen Korniychuk were arrested, a criminal charge against Tymoshenko restricted her political activity, and former economy minister Bohdan Danylyshyn obtained political asylum in the Czech Republic after a Ukrainian court ordered his arrest. According to assessments by human rights watchdogs and European Union politicians, these cases, regardless of the strength of the accusations, demonstrated that the judiciary was being used selectively based on political motivations.<sup>4</sup>

On December 9, Yanukovych issued a decree on "Optimization of the System of Central Executive Power Agencies," reducing the number of government ministries to 16 from 20 and the number of the cabinet members to 17 from 26 in order to reduce red tape and expenses.<sup>5</sup> All key ministers, including Prime Minister Mykola Azarov, kept their posts.

The year's raft of institutional changes had the effect of strengthening and consolidating the central government with little regard for crucial checks and balances. The new system brought more certainty and formal order, as well as more operational capacity for the government, but it also meant less accountability and public oversight.

The situation also worsened with regard to the transparency and accountability of the military, police, and security services. The Ministry of Interior dissolved its departments dealing with human rights protection, while the SBU initiated a number of nontransparent investigations against public activists. Dozens of individuals were questioned by SBU officers about their participation in mass rallies and other legitimate civic activities.

The deterioration of democratic processes in Ukraine drew the attention of European institutions. A European Parliament resolution on November 25 stated that “following the presidential elections held in January 2010, there are increasingly worrying signs of a lessening of respect for democracy and pluralism...as well as increased and politically motivated activity by the Ukrainian Security Service (SBU) and the misuse of administrative and judicial resources for political purposes.”<sup>6</sup>

#### Electoral Process

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50	3.50	3.50

Developments in 2010 raised doubts about the future of electoral processes in Ukraine, which had been generally free and fair since the 2004 Orange Revolution. While the presidential election early in the year largely matched that positive record, the local elections held in October were problematic, suggesting the beginnings of a new, negative trend.

The presidential election was held in two rounds, on January 17 and February 7. Yanukovych led in the first round with 35.32 percent of the vote, followed by Tymoshenko with 25.05 percent. Former central bank chairman Serhiy Tihipko placed third with 13.05 percent, and the remaining 15 candidates each captured no more than 7 percent. Yanukovych went on to defeat Tymoshenko in the runoff, 48.95 percent to 45.47 percent. Notably, the “against all” option received 2.20 percent of the vote in the first round and 4.36 percent in the second. About 1.65 percent of the first-round ballots were rejected as invalid, and 1.19 percent were deemed invalid in the second round. Voter turnout was about 67 percent in the first round and 69 percent in the runoff.

Voters turned to Yanukovych—or at least away from his rivals—in part because of the incumbent government’s perceived failure to respond effectively to the global economic crisis. They were also disappointed by the scandals and factional strife that had plagued the Orange coalition almost from its inception.

According to the Organization for Security and Cooperation in Europe (OSCE) and other independent observation missions, the presidential election met most international standards for democratic elections.<sup>7</sup> The process was transparent and offered voters a genuine choice between candidates representing diverse political views. However, unsubstantiated allegations of large-scale electoral fraud negatively affected the election atmosphere and voter confidence. Tymoshenko challenged the runoff results in the High Administrative Court, alleging that the vote was

marred by numerous violations, and unsuccessfully called on the court to order a third round.

The pluralistic media environment offered voters a range of information about leading presidential candidates and their platforms. At the same time, the OSCE election report noted that candidates often paid to appear on programs in the electronic media, and that media owners undermined editorial independence and the ability of journalists to report impartially.<sup>8</sup>

Transparency was enhanced by the large presence of domestic and international observers, and nongovernmental organizations (NGOs) also monitored the election, despite the fact that they were not permitted by law to register their members as observers. The international contingent included over 800 observers from 46 OSCE member states, a 117-member delegation from the OSCE Parliamentary Assembly, a 45-member delegation from the Parliamentary Assembly of the Council of Europe (PACE), a 30-member delegation from the NATO Parliamentary Assembly, and a 10-member delegation from the European Parliament.

In its postelection assessment, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) stressed the need for a complete review and harmonization of the legal framework for elections. It noted that "consideration could be given to consolidating all election laws into a unified code applicable to all elections long before the next election. The process should be inclusive of representatives from political parties, the election administration, civil society and academia so as to build a broad consensus."<sup>9</sup>

However, most of the recommendations were not considered seriously during the preparation for the local elections, which were initially scheduled for late May and later postponed to October 31. A new election law for the local polls was adopted by the parliament on July 10 and amended on August 30. It established a mixed proportional-majority system, with half of the local council deputies elected under a proportional (party-list) system and the other half elected in single-member constituencies. Members of the Crimean Autonomous Republic's legislature and of *oblast, raion* (district), and city councils were elected under this mixed system, but village councils were chosen under the majority system. Only local party branches could nominate candidates for city mayor, while both party and self-nominations were allowed for the heads of villages. Elections in the capital city of Kyiv and in Ternopil oblast had been held early in 2008, meaning there was no fresh voting there in October 2010.

The new election law contained a number of flaws, including provisions that allowed political manipulation of the formation of electoral commissions. This led to the domination of the majority of local commissions by government supporters. The law also stipulated that commission decisions could be taken by a quorum of 3 out of 18 members, which greatly increased the risk of fraud. Registration of opposition parties and candidates was restricted. In some regions, so-called clone parties were registered instead of the real parties whose names they bore. Most of these clones were ultimately removed from the ballot, but in Kyiv and Lviv oblasts the major opposition party *Batkivshchyna* (Fatherland), led by Tymoshenko, was

barred from participation, as its members were not registered by territorial election commissions.

The Central Election Commission registered 490 official foreign observers and 1,913 observers from national NGOs. According to the OPORA Civic Network, one of the largest nationwide monitoring networks, some improvements over the presidential election were achieved. It found that voting lists were more accurate, and election commission members were more disciplined in terms of their constant presence at polling stations.

However, OPORA reported numerous procedural violations and organizational problems on election day. In general, the local elections were held in an atmosphere of mistrust. Suspicions of fraud were raised by many cases in which extra ballots were printed in large numbers just before voting, as well as the uneven party representation on electoral commissions and candidates' fear of being deregistered at the last minute.<sup>10</sup> Moreover, administrative resources were reportedly abused for political purposes on a scale not seen since 2004.

The vote-counting process was obviously problematic. It took much more time than allowed by law, and there were clear signals of possible fraud, with discrepancies between the tabulations reported by election commissions at different levels. Yuriy But, the head of the Committee of Voters in Kyiv oblast, observed and drew media attention to numerous violations, including manipulation of voting lists, refusal to register candidates from opposition parties, and direct falsification of protocols.<sup>11</sup>

The various contingents of foreign observers cited similar problems. For example, the European Parliament observation group, led by Paweł Kowal of Poland, found shortcomings such as “unbalanced composition of commissions,” “unequal opportunities for pro-presidential and opposition parties,” and “the fact that some of the candidates have been arrested during the electoral campaign.” The group also noted that the election code adopted in the months before the voting “seemed in practice to favour the ruling party.”<sup>12</sup>

The U.S.-based National Democratic Institute found that “the environment surrounding Ukraine’s Oct. 31 local elections has deteriorated compared to the situation during the presidential election earlier this year.”<sup>13</sup> And members of the delegation from the Congress of Local and Regional Authorities of the Council of Europe stated that as a “consequence of this hastily drafted law, there were shortcomings with regard to the preparation phase, in particular, the registration of candidates and the composition of electoral commissions, the organizational framework and the counting of votes on election night.” As a result, the group’s report said, “the voting was not of a standard we would wish to see, namely, fully in line with the requirements of the European standards for fair, transparent and professionally organized elections.”<sup>14</sup>

According to the final results, the Party of Regions won in the majority of oblasts, including some (Rivne and Chernivtsi) in the country’s west, outside the party’s traditional heartland in the Russian-speaking east and south. Meanwhile, a small number of mayoral elections were won by opposition representatives in the east (Zaporizhya and Sumy). The extreme right-wing Ukrainian nationalist

party Svoboda (Freedom) took the lead in three oblasts in the west, illustrating the weakness of the moderate nationalist and liberal parties.

#### Civil Society

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
3.75	3.50	3.75	3.00	2.75	2.75	2.75	2.75	2.75	2.75

The civil society sector continues to play an important role in Ukraine. Its leading representatives—including the organizations OPORA, New Citizen, and Stop Censorship!—appeared at the forefront of numerous public events in defense of freedom of assembly, media freedom, electoral rights, and environmental integrity during 2010, and they remained vocal in promoting dialogue with policymakers to influence legislation and other decisions. However, a combination of societal apathy and lack of capacity among NGOs prevented them from effectively resisting the year’s antidemocratic trend. Indeed, civil society activists increasingly faced various forms of direct pressure and hostility from the authorities.

The new government’s stance on civil society was not uniformly negative. In most cases it maintained a dialogue with NGOs in the formats established under previous administrations. It also supported some potentially constructive legislation. On November 3, the cabinet adopted a new regulation (No. 996), “On the Guarantees of Civil Society Participation in Public Policymaking,” replacing a previous version adopted by Tymoshenko’s government in 2009 that had received criticism from civil society. The new regulation, if properly implemented, would represent a step forward, allowing NGOs to form freely and participate in the public councils that advise various central, regional, and local government bodies. Leading NGOs took part in the development of the new measure. However, its initial implementation demonstrated the risks of abuse, as a large number of quasi-NGOs were established to pursue personal interests or dominate the public councils.

Also in November, a new bill, “On Civil Society Organizations” (No. 7262-1), was submitted to the parliament by a group of MPs that included representatives from the majority and the opposition. The proposed legislation, which was supported by the NGO community, could substantially improve the legal environment for civil society by easing the registration process, reducing administrative barriers to NGO activity and fundraising, and allowing activists to defend broad societal interests regardless of formal membership in particular NGOs.

A large number of NGOs continued to advocate the adoption of a bill “On Access to Public Information” (No. 2763) that would determine the procedures for exercising and securing the right of every person to access information of public interest in the possession of government agencies and other entities. Activists and journalists issued a number of appeals to the president, the parliament, and international institutions in support of the bill.<sup>15</sup> The Party of Regions was opposed to the legislation and even submitted an alternative bill, but in November it agreed

to continue consultations in order to prepare a compromise version. This legislation was still pending at the end of the year.

Despite such positive signs, the overall environment for civil society clearly deteriorated, and there was a sharp increase in unlawful actions against human rights and civic activists. The number of such cases in the second and third quarters of 2010 alone far exceeded the total number of similar incidents over the previous five years.<sup>16</sup>

Among other examples during the year, in May and June police repeatedly arrested civic activists who were peacefully protesting logging in Kharkiv's Gorky Park. Officers also attempted to stop the gatherings, or simply watched as activists were beaten by hired security guards. In a separate incident on September 8, historian Ruslan Zabily, the director of the Museum of Victims of the Occupation Regimes in Lviv, was detained by the SBU as he arrived by train in Kyiv. He was held for an entire day and accused of attempting to disseminate state secrets, although his professional interests are limited to crimes of the Nazi and Soviet eras. On October 14, two Lviv-based civil activists, Oleksy Verentsov and Ihor Tanyachkevych, were arrested by the police, taken to court, and sentenced to three days of administrative detention for willful disobedience of lawful police instructions as well as violations of the procedure for organizing a peaceful gathering. The demonstration in question, held at the local prosecutor's office two days earlier, was fully legal, and the two activists had twice provided notification of their planned assembly. On October 15, the police searched the flat of Dmytro Groisman, coordinator of the Vinnytsya Human Rights Group, ostensibly as part of a criminal pornography investigation.

There were reports that SBU or police officers were carrying out undeclared meetings with civic activists to dissuade them from engaging in protests. In a number of cases, police officers asked individuals to sign a document acknowledging criminal liability for unlawful actions during a peaceful assembly. There have also been many cases, in Kyiv and Simferopol for example, in which university officials were enlisted to pressure young activists to abandon their causes.

The atmosphere for international NGOs and foreign donors has similarly worsened. In July, the director of the Kyiv office of the Konrad Adenauer Foundation, Nico Lange, was detained at Kyiv-Boryspil Airport and threatened with deportation. He was released only after the German government intervened on his behalf. In early September, Yevhen Bystrytsky, executive director of the International Renaissance Foundation (IRF), said that several civic organizations carrying out IRF-funded projects in Kyiv oblast had been approached by the SBU and asked for information about the aims, components, and financing of their activities. In response, SBU press officer Marina Ostapenko stated that the SBU had merely been "ensuring observance of the Law on the Elections, specifically with regard to preventing any possibility of financing of Ukrainian political parties by foreign institutions."<sup>17</sup>

Trade unions are not a prominent component of civil society in Ukraine. The largest unions are remnants of the Soviet system and are incapable of effectively defending the interests of their members. The leaders of these institutions, such as

Vasyl Khara of the All-Ukrainian Trade Union Federation, who is also an MP for the Party of Regions, are fully integrated into the political and economic establishment and disconnected from the wider public.

Late in the year, a strong wave of public activism arose in response to government plans for a new tax code that was expected to worsen business conditions for small and medium-sized enterprises. A protest against the proposed code on November 16 drew about 50,000 people to the parliament building. Most of those attending were not thought to be connected to political parties, and some independent trade unions took part and attempted to provide leadership. The movement was rather successful, as the most of the protesters' demands were met by the government. However, despite the peaceful nature of the rallies, the Ministry of Interior in December initiated criminal cases against some of the organizers, subjecting them to temporary detention and accusing them of "damaging public property."

The government tried to undermine or circumvent ethnic minority organizations that it regarded as disloyal. For example, in August Yanukovich altered the membership of a presidential advisory council representing the Crimean Tatars. The council, established in 1999, had previously consisted exclusively of members of the Mejlis of the Crimean Tatar People, which in turn was elected by the Tatars' national congress, or Kurultay. The Mejlis had supported one of Yanukovich's rivals in the presidential election. The president consequently incorporated new members into the advisory council who represented minor NGOs that competed with the Mejlis.

Ukraine's civil society sector has rather limited financial resources. Among foreign donors, USAID provides the largest single contribution, which is distributed through a variety of programs and projects. The IRE, which is affiliated with the billionaire investor and philanthropist George Soros, provides more than US\$7 million annually, making it the largest private donor. Several German political foundations traditionally support NGOs in Ukraine, as do aid programs from Poland, Slovakia, and other countries to the west. Several domestic private funds, such as Open Ukraine, the Viktor Pinchuk Foundation, and the Development of Ukraine Foundation, offer grants to civil society organizations. Their priorities include social welfare and charitable projects, health and education, and to a lesser extent, public advocacy, legal and human rights protection, international cooperation, and promotion of the arts.

#### Independent Media

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
5.50	5.50	5.50	4.75	3.75	3.75	3.50	3.50	3.50	3.50

Ukraine hosts a diverse and competitive media market, and the formal legal environment for the media changed little during 2010. Article 34 of the constitution guarantees freedom of opinion and speech, and Article 15 forbids censorship. Among other statutory protections, Article 10 of the Law on Printed Mass Media prohibits the monopolization of that sector, and libel is a civil rather

than a criminal offense. However, despite this generally progressive legal framework, implementation remains extremely problematic, and there was a marked trend toward politicization of the media in 2010. Judicial and extrajudicial pressure on the press increased, as did the number of violent assaults on journalists.<sup>18</sup>

President Yanukovich carefully avoided any unscripted, spontaneous interviews with national media outlets, and his government was generally more closed to public scrutiny than its predecessor. Requests for official information were frequently ignored. A draft law on access to public information was taken up by parliament in November, but was subsequently removed from its agenda, and had not been passed at the end of 2010.<sup>19</sup> Meanwhile, prosecutors became more aggressive in their requests for journalists' sources.

The new government acted swiftly to establish political control over media regulators and state-owned outlets. After the presidential election, the leadership and staff of the National Commission for Television and Radio Broadcasting was changed, and there is now no opposition representative on the commission. The leadership of the main state television channel, First National, was also replaced. Its new deputy chief, Valid Arfush, declared that the channel's mission is to "defend the government at any point."<sup>20</sup> In October, the government adopted a plan for the creation of a public-service broadcaster, but critics argued that the proposed model would allow for government control rather than editorial independence.

Although there was no evidence of direct state censorship in 2010, coverage of politically sensitive topics became more biased in favor of the government at nearly all nationwide television channels. Most private channels are owned by business magnates who view their media holdings as an appendage to their industrial and financial assets. Because their economic interests depend on good relations with the authorities, these owners' stations in most cases became more reluctant to provide critical oversight of the new government's activity. Some private channels (Inter, ICTV) covered political issues in a biased manner, while others (Novy, STB) simply limited political coverage and investigative reporting. A number of professional news managers were fired and replaced with more obedient figures. Responding to attacks on media freedom and their professional rights from both the government and private owners, journalists launched an advocacy campaign called "Stop Censorship!"

Yanukovich elevated one media tycoon to the commanding heights of the Ukrainian state, naming Valery Khoroshkovsky, partial owner of Inter, to serve as head of the SBU and a member of the Supreme Council of Justice, which appoints and dismisses judges. Subsequently, the authorities attempted to withdraw the licenses of two television channels, TVi and 5 Kanal, that compete with Inter and are considered by media watchdog Telekritika to be the last unbiased stations in the country.<sup>21</sup> As an indirect result of the pressure, 5 Kanal reduced the scope of its prime-time information broadcasting in favor of live nonpolitical shows.

Political bias in television also took the form of sponsored news. According to IREX's Media Sustainability Index, the number of paid-for news stories more than doubled in the runup to the presidential election.<sup>22</sup> Monitoring conducted

by Telekritika later in the year showed that while business-sponsored materials had almost entirely disappeared from television news summaries, political sponsorship continued to grow. Inter was the indisputable leader of this practice, followed by the state-owned First National. Third place was shared by ICTV and 1+1. Sponsored materials were also noted at Ukraina, and to a lesser extent at Novy. As usual, the smallest number of sponsored materials was detected at STB.<sup>23</sup> Meanwhile, television channels consistently neglected coverage of important socioeconomic issues, including increases in commodity prices, tax rates, utility costs, and the retirement age, as well as budget cuts that resulted in job losses.

As the space narrowed for political criticism and investigative journalism on television, online media gained importance. Internet penetration is growing rapidly, reaching 33.7 percent in 2010, compared with 11.4 percent in 2006, though the figure remained lower than in the most of Ukraine's neighbors.<sup>24</sup> There are a number of influential online publications that have no print editions, such as *Ukrayinska Pravda*, *Obkom*, and *Ostrov.org*. However, the SBU, under Khoroshkovsky's leadership, has been putting increasing pressure on online media. In October, the SBU summoned Oleg Shinkarenko, a blogger who had been critical of Yanukovych, and forced him to write a statement pledging to stop his criticism.<sup>25</sup> In December, Kirill Baranov, deputy editor of the news website *Fraza*, was forced to report to SBU headquarters and answer questions about his work.<sup>26</sup>

In addition to editorial and political pressure, journalists faced physical threats and attacks during 2010. The most serious case was that of Vasyl Klymentyev, editor of the Kharkiv-based weekly *Novyi Stil*, who disappeared in August after reportedly refusing a bribe to quash a story on corruption involving local officials.<sup>27</sup> After several months, no progress in the investigation had been reported. According to Deputy Interior Minister Vasyl Farinnyk, the authorities were weighing several alternatives to the theory that the reporter had been killed because of his professional activity.<sup>28</sup> For many observers, the case recalled the 2000 murder of Heorhiy Gongadze, which had spurred public opposition to the regime of then president Leonid Kuchma. In September 2010, prosecutors concluded that Gongadze's killing was ordered by then interior minister Yuriy Kravchenko, who had been found dead from a gunshot wound in 2005 on the day he was to submit to questioning in the case. Journalists and Gongadze's family criticized the finding, claiming that Kravchenko was being blamed in place of Kuchma, against whom there was substantial evidence.<sup>29</sup>

A number of other cases of journalist harassment and assault were reported during the year; the Committee to Protect Journalists found that over two dozen journalists were violently attacked in 2010.<sup>30</sup> In one of the more brutal cases, Vasyl Demyaniv, editor of the independent *Kolomyisky Vestnik*, was attacked by two men and hospitalized with a fractured skull and broken knee following the paper's criticism of local authorities. The spate of assaults seemed to confirm a trend of growing violence against journalists in Ukraine.

## Local Democratic Governance

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
n/a	n/a	n/a	5.25	5.25	5.25	5.25	5.25	5.25	5.50

Ukraine has four tiers of subnational administrative divisions: the Autonomous Republic of Crimea and oblasts (including two cities with oblast status, Kyiv and Sevastopol); raions and cities with raion status; cities; and villages and townships. Each raion is divided into a number of village councils. Ukraine has 24 oblasts (plus the Autonomous Republic of Crimea), 490 raions, 118 city raions, 459 cities, 886 urban settlements, 1,321 townships, and 28,480 populated rural localities.

Despite President Yanukovych's rhetoric on increasing the autonomy of local governments, his administration's actions and other developments during 2010 resulted in an increased centralization of political power.

Under the previous government, a group of experts from the Ministry for Regional Development and Construction had spent two years drafting a package of bills designed to reform local self-government, but the Yanukovych administration declared that it would develop its own framework. The ministry presented its new proposals in August,<sup>31</sup> with the stated aim of giving wider powers to local self-government bodies and regions over the next several years. However, the Constitutional Court's September decision to revoke the constitutional amendments of 2004, which had included important changes regarding local self-government, effectively undercut all previous attempts at reform, forcing the authorities to start from scratch on the basis of the 1996 constitutional language.

In August, the parliament also passed a law on local elections that excluded the Kyiv city council and mayor—as well as the Ternopil regional council—from the upcoming October 31 balloting, since they had been chosen in special elections held in 2008 and their four-year terms had not expired. Moreover, at the beginning of September, the parliament amended the Law on the Capital City, allowing the city council to abolish its raion councils, which it subsequently did. Several other cities, including Kharkiv, also abolished their raion councils prior to the elections.<sup>32</sup> As a result of these measures, voters were left with a reduced degree of local autonomy, and no balloting took place in the country's capital, where voters were known to oppose the current government.

Where elections did take place, they fell short of international standards, as described in the Electoral Process section above. Among other problems, the August electoral law was enacted just two weeks before the beginning of the campaign, giving political parties little time to adapt to the new voting system. Observers noted pressure on independent and opposition candidates, irregularities during the voting, low turnout, a large number of votes “against all,” delays in the vote counting, and a wave of legal challenges. A total of 2,375 election-related lawsuits were filed in the period between October 31 and November 11.<sup>33</sup> According to the official results, the ruling Party of Regions won a nationwide majority.

While the Yanukovych administration's emphasis on the consolidation of political power was supposedly intended to strengthen the Ukrainian state,

the authorities' actions regarding local government had the cumulative effect of undermining the already weak connection between state institutions and the country's residents, and reducing their ability to influence government policy.

#### Judicial Framework and Independence

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
4.75	4.50	4.75	4.25	4.25	4.50	4.75	5.00	5.00	5.50

President Yanukovich's campaign to centralize authority in the country placed a particular emphasis on altering the constitutional and legal systems and reducing the independence and integrity of the law enforcement and judicial systems. The steps his government took toward these ends were aggressive, sweeping, and methodical. They included the appointment of media owner Valeriy Khoroshkovsky as head of the SBU (March 11), the initiation and implementation of a judicial reform (March–July), initiation of criminal justice reforms (August), replacement of four judges on the Constitutional Court (September 16), the ensuing Constitutional Court decision to abolish the 2004 constitutional amendments (September 30), the appointment of Yanukovich loyalist Viktor Pshonka as prosecutor general (November), and the selective prosecution of officials from the Tymoshenko government.

In addition to his SBU post, Khoroshkovsky was named as a member of the High Council of Justice despite his lack of the required professional experience in the legal field. As the owner of the largest media holding firm in Ukraine, he had never worked within the state security system or in law enforcement bodies. After Khoroshkovsky's appointment, the SBU engaged in a number of widely publicized incidents of harassment aimed at civil society figures. PACE observers raised concerns about the SBU's activities, arguing that they were "all the more controversial in view of the potential conflict of interest" created by Khoroshkovsky's official posts and private business assets, which "have a considerable impact on the public sphere."<sup>34</sup>

The judicial reform process began in late March, when Yanukovich created a working group to revise the draft Law on the Judicial System and the Status of Judges of Ukraine that had been prepared and approved by the parliament's judiciary committee in June 2008. One of the men behind the new draft was Serhiy Kivalov, who had served as chairman of the Central Election Commission during the fraudulent presidential runoff election of 2004. According to another "father" of the reform, deputy head of the presidential administration Andriy Portnov, the measure was designed, among other things, to streamline court procedures, introduce automatic assignment of cases, cut the number of Supreme Court judges, restrict the parliament's role in judicial appointments, raise judges' salaries, and improve enforcement of judicial decisions. According to Portnov, "the judicial reform initiated by the head of state also draws Ukraine closer to the European legal space." Moreover, he said it "took into account the absolute majority" of

recommendations from the Council of Europe's Venice Commission, except those that required constitutional amendments.<sup>35</sup>

The quickly prepared bill was submitted to the parliament and passed in its first reading on June 2. On June 15, the Justice Ministry asked the Venice Commission for an opinion on the draft. However, the parliament did not wait for the commission's analysis, passing the bill in the second reading on July 7. The president signed it into law on July 27.

The Venice Commission nevertheless issued its opinion on the judicial reform in October. It found fault with the "drastically reduced role of the Supreme Court and the increased role of the High Council of Justice in judges' appointment, discipline and dismissal," and argued that there were still "fundamental problems in the system envisaged for the appointment and removal of judges."<sup>36</sup> The opinion included 28 recommendations for improvement of the law and 6 recommendations for amendments to the constitution.

The commission's findings echoed those of the chairman of the Supreme Court, Vasyl Onopenko. In an open letter to the president on July 12, he noted that the law not only failed to ensure proper regulation of the judicial branch and the exercise of justice, it also posed a serious threat to the independence of the judicial branch and citizens' constitutional rights to legal defense.<sup>37</sup> He argued that efforts to protect "private or narrow corporate interests" through legislation and other state actions were weakening justice and the state itself.<sup>38</sup> There were signs that the political pressure was causing many judges to leave the bench. The October sitting of the High Council of Justice was scheduled to consider more than 50 resignation requests from judges at different levels—far more than the usual two or three such requests.<sup>39</sup>

After the passage of the judicial reform, the ruling elites concentrated on their main goal: restoration of the presidential powers that had been redistributed through the constitutional amendments of 2004. The ostensible purpose of this push was to create the political stability necessary to enact economic and other reforms.

Although there were several alternatives for achieving their goal, the authorities chose to pursue a ruling by the Constitutional Court. The first step involved the resignation of four judges and their replacement by apparent Yanukovych allies on September 16. Though the outgoing judges gave no official reason for their resignation, one reported that he had been pressured to leave.<sup>40</sup> Just two weeks later, acting on an appeal by 252 MPs from the ruling coalition, the Constitutional Court ruled that the procedures for the adoption of the 2004 amendments had violated the constitution, and that the amendments were therefore unconstitutional. The court ordered the parliament to bring current legislation back in line with the constitution of 1996. According to Venice Commission secretary Thomas Markert, the ruling raised serious questions about the legitimacy of government and legislative actions since 2004, since it essentially asserted that "the authorities in Ukraine have been working for several years on the basis of an unconstitutional constitution."<sup>41</sup>

Other critics questioned the method by which the issue was brought before the court. According to law professor Viktor Musiyaka, one of the authors of

the Ukrainian constitution, the charter provided no formal grounds for the Constitutional Court to open proceedings in response to the application by 252 national deputies. He concluded that the court had improperly “arrogated to itself the right to subsequent constitutional control of laws on amendment of the Constitution,” and had “consciously” exceeded the limits of its constitutional jurisdiction.<sup>42</sup> Experts from the Kyiv-based Centre for Political and Legal Reforms also noted the “controversy” and “incompleteness” of the ruling; its weak legal grounding and inconsistency with past rulings; and its creation of “constitutional uncertainty with respect to the supreme elected bodies.”<sup>43</sup>

In a December 2010 opinion, the Venice Commission similarly pointed out that the current president and parliament were elected under constitutional rules that were no longer recognized as valid. It called for a comprehensive constitutional reform designed to strengthen the stability, independence, and efficiency of state institutions.<sup>44</sup>

Reforms of the criminal justice system that were initiated during the summer had yet to make significant progress by the end of the year. However, the appointment of Pshonka as prosecutor general in November represented a major step toward centralized political control over law enforcement. Yanukovich is the godfather of Pshonka’s son, and the two men have long-standing professional ties.<sup>45</sup>

Meanwhile, public trust in the Ukrainian law enforcement system remained very low. According to a Razumkov Centre poll conducted in September and October, the SBU was entirely supported by only 13.2 percent of respondents, and not supported by 36.3 percent. The militsiya (police) were supported by 8.7 percent and not supported by 51.2 percent. Public prosecution offices were supported by 7.4 percent, and not supported by 47 percent. Finally, the Ukrainian courts were supported by only 5 percent, and not supported by 51.5 percent.<sup>46</sup>

## Corruption

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
6.00	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.75	5.75

Corruption remains pervasive in Ukrainian society despite long-term efforts to curb it. In 2010, Transparency International’s Corruption Perceptions Index ranked Ukraine 134 out of 178 countries surveyed, placing it close to the worst performers on the list.<sup>47</sup> The Heritage Foundation’s 2010 Index of Economic Freedom also gave Ukraine a poor score, ranking it 162 out of 179 states surveyed.<sup>48</sup>

Experts from the Ukrainian Institute for Public Policy have described the anticorruption efforts of recent years as a cyclical pattern. Each major campaign includes the following stages: criticism of predecessors’ groundwork, establishment of consultative bodies responsible for the development of a new anticorruption policy, development and adoption of relevant strategies and acts, demonstrative punishment aimed at the opposition or middle-ranking officials, and demonstrative attempts at reformation of individual agencies.<sup>49</sup> The prescribed policies are generally

not implemented in an effective manner, and the entire enterprise is focused on process and appearance rather than results.

The anticorruption policy of the Yanukovich administration was no exception to this pattern. Anticorruption rhetoric from the authorities was accompanied by measures that barred any effective action, as well as new scandals like those related to Yanukovich's questionable acquisition of the Mezhyhirya estate, which had previously been public property.<sup>50</sup>

Yanukovich issued a presidential decree on February 26 to establish a National Anticorruption Committee, but almost simultaneously, the ruling parliamentary coalition voted to postpone implementation of pending anticorruption legislation until January 1, 2011, the third such delay since June 2009. The package of reforms had been in development since 2005 under pressure from international organizations, the Financial Action Task Force (FATF) and the Council of Europe above all. The changes would not only provide criminal sanctions, they would for the first time impose advanced controls on the financial activity of the authorities and every state official. Justice Minister Oleksandr Lavrynovych explained the postponement by saying that the legislation as currently worded would encourage corruption in law enforcement bodies and restrict the constitutional rights of citizens.<sup>51</sup>

International organizations were critical of the latest postponement. A PACE report said that the move, combined with the president's veto of a law on money laundering, "raise questions about the existence of the necessary political will to fight corruption effectively."<sup>52</sup> The president of the Council of Europe's Group of States against Corruption (GRECO), Drago Kos, similarly warned that the Ukrainian authorities' latest actions cast doubt on "Ukraine's resolve to fight corruption."<sup>53</sup>

Also in 2010, the government diluted one of the few anticorruption improvements implemented by its predecessor—external independent assessment (EIA) for entrance to higher educational establishments. EIA took effect in 2008 and proved to be an effective tool for reducing corruption in the education system. According to national public opinion polls by the Kyiv International Institute of Sociology (KIIS) carried out in March and April, some 40 percent of Ukrainians agreed that introduction of EIA was a step toward justice in the country (28 percent disagreed), and 43 percent were sure that EIA reduced corruption in university admissions (28 percent disagreed).<sup>54</sup> Interestingly, respondents who knew children who had passed through the EIA process reported higher approval ratings. For example, while 50 percent of all Ukrainians agreed that EIA put everyone on equal footing, the figure among those with direct or indirect experience was 69 percent. By and large, the majority admitted the good influence of EIA on the probity of the education system.

Despite this apparent success, Yanukovich's appointee for minister of education and science, Dmytro Tabachnyk, initiated new rules for university admissions that took into account a student's grade-point average along with EIA results. While the change was supposedly designed to encourage impartiality, there were already signs in 2010 that records from past years were being altered to improve student averages.<sup>55</sup>

Unlike in previous years, media coverage of corruption decreased in 2010. This can be attributed in part to self-censorship by journalists and media owners seeking to avoid clashes with the authorities, but also to increased opacity on the part of the government. Even when journalists did engage in investigative reporting, the authorities took no remedial action in response to their findings.

State procurements remain nontransparent and corrupt. The Constitutional Court noted in 2008 that MPs were obliged to pass a law on the subject, and in early February 2010, the court reminded the parliament of its previous instructions. In response, speaker Volodymyr Lytvyn accused the court of interference in the legislators' work. Nevertheless, on February 11 the parliament adopted a law on state procurements. According to expert assessments, the law contained a number of problematic provisions, including a mechanism in which tender complaints would be reviewed by a commission made up of seven agency representatives and seven independent experts approved by parliamentary committees. The involvement of MPs was especially controversial, as it appeared to breach the constitutional principle of the separation of powers. Yanukovich vetoed the bill in mid-March, but it was later adopted in June.

Politics and business remain intertwined in Ukraine, and the year featured a growing trend toward the use of high office for promotion of private business interests. The case of SBU chief and High Council of Justice member Valeriy Khoroshkovsky was a striking example. As an influential businessman with financial holdings in the media (Inter Media Group) and reported connections to the gas trade (RosUkrEnergo),<sup>56</sup> he had no experience or qualifications for his new public positions. He was believed to have engineered the judicial reversal of a January decision by the National Council for Television and Radio Broadcasting to grant transmission frequencies to the 5 Kanal and TVi television stations, which competed with his Inter station. In September, the Stop Censorship! campaign asked Yanukovich to dismiss Khoroshkovsky from the High Council of Justice and reconsider his SBU position.<sup>57</sup>

Separately, the SBU's arrest of two top managers from the Tymoshenko government—former customs official Anatoliy Makarenko and former Naftohaz Ukrainy official Ihor Didenko—was also associated with promotion of Khoroshkovsky's business interests, this time in the gas sector. The officials dealt with gas acquired by Naftohaz, the state energy company, from Russia's Gazprom on the basis of a bilateral contract arranged by Tymoshenko and Russian Prime Minister Vladimir Putin in January 2009. RosUkrEnergo, previously the intermediary in the cross-border gas trade, asserted that the transferred gas had been taken unlawfully. On June 8, 2010, the company won an action in the Stockholm Arbitration Court, and for the rest of the year tried to secure its enforcement by Ukrainian courts. In such circumstances, the arrest of the two officials may be seen as pressure on the judicial system to obtain the desired rulings.

The arrest of former interior minister Yuriy Lutsenko and the opening of criminal cases against Tymoshenko added to the impression that the new leadership was tackling corruption in a selective, politically motivated manner, as

no such cases were filed against those currently in power. This failure of effective, genuine enforcement at the top inevitably sets the tone for lower-ranking officials, perpetuating a culture of corruption that involves the widest strata of the population in corrupt acts.

■ **AUTHORS: OLEKSANDR SUSHKO AND OLENA PRYSTAYKO**

*Dr. Oleksandr Sushko is a research director at the Institute for Euro-Atlantic Cooperation in Kyiv, Ukraine. Dr. Olena Prystayko is a research fellow at the EU-Russia Centre in Brussels, Belgium.*

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