

Chapter 1.

**POLITICAL SYSTEM OF UKRAINE
– UKRAINE AFTER ELECTIONS**

1.1 Political Model of Ukraine. President, Cabinet of Ministers, Parliament

Political model of Ukraine is a product of contradictory domestic trends. The main determinants of Ukrainian political environment are following: the legacy of post-soviet policies and practices, the heritage of 2004 Orange revolution, unfinished efforts to build stable and matured democratic institutions. According to 2008 “Freedom in the World” report published in January 2008 by Freedom House Ukraine is the only one of post-soviet Newly independent states (NIS) which is considered to be a “Free state” (In comparison to Georgia and Moldova as “partially free”, Russia and Belarus as “non free” states). Ukraine enjoys this status due to the comprehensive political changes of 2004-2005, when the evident authoritarian trend was replaced by democratic breakthrough known as orange revolution.

Current political regime, led by president Victor Yushchenko has proved to be substantially more transparent and democratic than one before 2004. Ukrainian politics is competitive and pluralistic, political parties are free to conduct their activity in non-restrictive conditions. Ukrainian citizens currently enjoy full-fledged freedom of political activity as well as media freedom and free elections. All the leading political forces, including those which oppose current leadership, declare their commitments to democratic values, rule of law and respect to human rights. However, according to Freedom House “Nations in Transit 2007” report as well as other expert assessments, stable and mature institutions ensuring the rule of law and the irreversibility of democratic changes have not yet been built.

On June 28, 2006, the draft of Constitution was adopted by Verkhovna Rada (the Parliament of Ukraine). It was a compromise document, but the main features of presidential model were adopted replacing parliamentary-presidential one existed before.

According to 1996 Constitution of Ukraine President was in a capacity to issue special normative acts – Decrees of President – equal to laws, adopted by Parliament, The President of Ukraine, on the basis and for the execution of the Constitution and the laws of Ukraine, issues decrees and directives that are mandatory for execution on the territory of Ukraine. This provision, applied in practice, gave to president a part of legislative power, which was often used to avoid legislative procedures, once president hadn't controlled parliamentary majority.

President played a crucial role in forming the government. In order to appoint a prime-minister he needed an approval of parliamentary majority, but other

members of government could be appointed by president by his own - without submission to Rada. All members of government including primer-minister could be fired by president himself.

The story of 1996 Constitutional model in Ukraine was ended in December 2004, when Rada, within the compromise legislative package of orange revolution, adopted amendment to Constitution, returning major powers (including that to form a government) to the parliament. These changes were fully implemented after 2006 parliamentary elections.

A new constitutional model, introduced on January 1, 2006, set the mixed parliamentary-presidential model of power, which was a product of compromise. Formally, the new model is closer to those in other Central and Eastern European countries and stipulates a substantially stronger role for the Parliament and government and limitations on the president's powers. At the same time, introduced "dual executive" approach provided a risk of permanent conflict between President's office and the government (Cabinet of Ministers)

This ambivalent trend became visible during April–July 2006, when political parties failed to create a democratic and sustainable government based on a majority coalition. The political forces that supported the Orange Revolution in 2004 reconfirmed their credibility during the parliamentary election in March, securing a majority of seats in the new Parliament, but the lack of trust between President Yushchenko (leader of the Our Ukraine bloc) and former prime minister Yulia Tymoshenko made it impossible to create a sustainable coalition despite long-term official negotiations and informal consultations.

Finally, in July 2006 "Blue-white-red" Anticrisis Coalition was created by the Donetsk-based Party of Regions and the leftist Communist Party of Ukraine joined by the former supporters of the Orange revolution – Socialist Party of Ukraine led by Oleksandr Moroz. The unexpected shift of the Socialist Party toward an alliance with the Party of Regions, led by Viktor Yanukovich, opened a way for the political group to return to power after it was thrown out of the government in the wake of the dramatic events of late 2004.

Prior to the formation of the new government, the president, future prime minister, and Speaker of the Parliament signed the so-called Universal of National Unity, an informal consensus-based memorandum with a list of national policy priorities, including fast accession to the World Trade Organization, closer cooperation with NATO, and integration into the European Union. Later, the president, who initiated the document, accused his counterparts of ignoring its provisions.

Instead of sustainable policy and reforms political actors were preoccupied with fighting for power, pushing legislative reforms in their favor (such as draft law on the Cabinet of Ministers adopted in January 2007, which introduced further limits for president's power). The limited efficiency of this model of power was reconfirmed in the early 2008, after the new Coalition of democratic forces establishment when the new primer-minister Yulia Tymoshenko was appointed.

Within the period of August 2006-December 2007, with the president and premier-minister belonging to different political camps, the formation of Yanukovich's government posed the challenge of "cohabitation." This was the first time that Ukraine had experienced this particular political phenomenon in the country's history, and the Constitution and existing laws provided insufficient mechanisms to deal with it. This inconsistency in national governance was clearly indicated in the different positions taken by the president and prime minister on the issue of Ukraine's eventual NATO membership.

The newly established model proved to be fragile and non-sufficient, was challenged firstly in Spring, 2007 by serious political crisis resulted ultimately in the early parliamentary election of September 30. This crisis proved problematic substance of existing model with a number of institutional gaps, deficits and lack of efficient system of checks and balances. Beginning of 2007 was marked by the continuous attempts of the ruling coalition (Party of Regions, Socialist Party of Ukraine and Communist Party of Ukraine) to strengthen its position within the Parliament by recruiting of "hesitating" MPs from the opposition (Bloc of Yulia Tymoshenko – BYT, and Our Ukraine Bloc by president Yushchenko). Coalition succeeded, especially in March, when Party of Industrialists and Entrepreneurs led by Anatoly Kinakh left Our Ukraine and joined the ruling coalition, and Kinakh himself got a reward, which was a position of the minister of economy. By that time a group of BYT MPs already joined coalition as well. Promoting coalition's upgrade, founders renamed it from "Anti-crisis coalition" for "Coalition of national unity".

Being disturbed by possible loss of power (leaders of coalition declared their desire to get constitutional majority by Summer – 300 votes), president decided to respond and issued a decree of 2 April 2007 announcing the dissolution of the Verkhovna Rada and pre-term election to be held on 27th of May. This fact launched the "active faze" of crisis as Yushchenko's opponents immediately challenged his decree as illegitimate. Next two months were marked by permanent debates, negotiations and ambivalent decisions which ultimately led to

“compromise” decision to dissolve a Parliament through withdrawal of mandates by 1/3 (150) opposition MPs. Final president decree on this issue was issued on 9th of June providing December 30 as election date. The substance of these events proved that major political actors were inclined not to follow the constitution norms but play with some legislative gaps, rather manipulating by law.

Constitutional Court, which was supposed to play a role of independent arbiter to assess president’s decrees on dissolution of the Parliament became dysfunctional after some its members were accused in corruption and President suspended their duty.

As PACE stated in April, assessing political crisis in Ukraine, “The continuing political instability is the result of the systematic failure by the successive Ukrainian governments to establish coherent policies backed by substantial legal, administrative and economic reforms. The political reforms that would set “the rules of the game” and enable law-based institutions to guarantee democratic rights and freedoms and promote political competition have not been completed to date”.

During the crisis the Government (Cabinet of Ministers) led by Victor Yanukovych continued its work till December 2007, but permanent disputes with President’s Secretariat proved that the system of checks and balances doesn’t work efficiently.

The political forces that supported the Orange Revolution in 2004 reconfirmed their credibility in the early parliamentary elections of September 30, winning a slim majority in the new Parliament (228 MPs out of 450). As a result the Coalition of democratic forces was established under the leadership of Yulia Tymoshenko which was appointed a premier-minister on December 18, 2008.

Party of Regions as well as the Communist Party declared their shift to opposition. At the same time the Block of Lytvyn stays apart of both coalition and opposition trying to play some “intermediary” role, providing situative support for both sides on tactical reasons.

Election solved just the active phase of political crisis, providing some ground for the deeper solution, if majority coalition will prove its sustainability and consensus on further constitutional/legal transformations will be found.

The first two month of the new government provide evidence of tensions between the governmental leadership (Tymoshenko) and the Secretariat of president managed by Victor Baloha remained an actual challenge to stable and coherent governance in Ukraine. The subject of tensions are privatization issues, priorities of legislation process, changes in budget tenders’ procedures etc. Personal factor is still a crucial one within Ukrainian political system, the political

institutions and legitimate mechanisms are still weak being in use to strengthen particular power capacities of the leading persons and groups.

President of Ukraine Victor Yushchenko and his allies consistently argue for the idea of constitutional changes: either through the amendments to existing Constitution or through the adoption of the totally new version of the Organic Law. Opposition forces also support the idea of constitutional changes, but pursuing different goals and therefore different priorities of constitutional transformations. The idea to replace existing Constitution with the fully new version is grounded on the presumption that the fully new Constitution may be adopted via national referendum (bypassing the Verkhovna Rada), unlike the changes to existing documents which should be imperatively passed through the Parliament and adopted by 2/3 majority.

“I initiate continuation of the Constitutional Reform to bring order to the country. The Reform will end the power clash and insure irreversibility of your democratic choice,” Yushchenko declared in November 2006. “If politicians fail to agree, I’ll give the floor to the people of Ukraine,” he underlined – meaning possible constitutional referendum. During the year 2007 the idea of constitutional referendum was for many times repeated by the president. On June 27 Yushchenko came up with his own proposals for a new constitution. Addressing the nation on television, he called the 2004 reforms “interference in the constitution that has led this country into a blind alley” and suggested cutting parliament’s term in office, reducing the number of parliamentarians, and establishing a bicameral legislature. Yushchenko’s main legal adviser, Ihor Pukshyn, developed the president’s ideas in an article in *Zerkalo nedeli*. He said that the upper chamber should be formed by regional representatives, who should serve longer than parliamentarians elected to the lower chamber from party lists. Pukshyn said that a new constitution should give the president the right to dissolve parliament “for political reasons” and not just for failure to form a cabinet or inactivity for 30 days. He also suggested increasing the NSDC’s role.

Speaking during a ceremony on the Day of Lawyer on the 8th of October, 2007 President he reiterated the need to hold a national referendum on amendments to the Constitution arguing at the same time that «no one in parliament shall be allowed to adopt any amendments or a new edition of the Constitution without proper discussion, like it was in 2004”.

Legally the idea of adoption of Constitution via referendum is base upon the decision of the Constitutional Court that stipulates: “The people have the exclusive right to determine or alter the constitutional order in Ukraine through a national referendum...”

On 27 of December, 2007 President made a decision to establish National Constitutional Council (NCC) and issued corresponding Presidential Decree. The Council is to be headed by the President of Ukraine. Parliamentary fractions, political parties, Verkhovna Rada of Autonomous Republic of Crimea, local and city administrations, National Academy of Sciences, human rights-protection organizations shall all have the right to present their suggestions on staff composition of the Council. National Constitutional Council shall be responsible for “drafting a plan of modernization of constitutional social relations regulation and drafting a new Constitution of Ukraine”. The first sitting of the NCC is supposed to be organized in February.

The idea to pass a new Constitution via the referendum bypassing the parliament has been criticised not only by opposition, but also by independent experts and media. Legal experts note that his initiative runs counter to one of the basic legal principles – continuity. According to it, a new edition has to proceed from the previous one. As the authoritative political journalist Yulia Mostova wrote “No matter what corrections or recommendations may be proposed by political parties, public organizations, or experts (let alone concerned citizens) in the course of the so-called “open discussions”, it is up to Yushchenko to decide which version to submit to the referendum. A positive vote will make Yushchenko an omnipotent genie and cork up the legislative, executive, and judicial branches in a lamp”.

Nevertheless, it is unlikely that, despite the evident ambitions to regain a power limited by 2004 reform, president Yushchenko will undertake unilateral efforts which can undermine his image as a democratic leader, and to restore presidential model without reaching wide political consensus on the key issues of constitutional arrangement.

The most positive trend, once again reconfirmed by political crisis and pre-term election in Ukraine is that all political actors consider democracy as the basis of the country’s political system. The imperfect democratic practice and weak rule of law system, however, continues to be largest challenges to political system of Ukraine.

1.2 Political Parties

Ukraine is a multi-party country. Currently there are 143 political parties registered by the Ministry of Justice. Many of the parties have tiny memberships and are unknown to the general public. Small parties often join in multi-party coalitions

(electoral blocks) for the purpose of participating in parliamentary elections. Parties must overcome 3% threshold to be represented in the parliament (before 2006 the threshold was as 4%).

Major parties and blocs (represented in the 6th convocation of the parliament elected on September 30, 2007)

- **Party of Regions**
- **Bloc of Yuliya Tymoshenko**
 - All-Ukrainian Unity “Motherland”
 - Reforms and Order Party
 - Ukrainian Social Democratic Party
- **Our Ukraine–People’s Self-Defense Bloc**
 - People’s Union “Our Ukraine”
 - Civil Movement “People’s Self-Defense”
 - Civic Party “Pora”
 - People’s Movement of Ukraine (Rukh)
 - Ukrainian People’s Party
 - Christian Democratic Union
 - Ukrainian Republican Party “Sobor”
 - Forward, Ukraine!
 - Motherland Defenders’ Party
 - European Party of Ukraine
- **Communist Party of Ukraine**
- **Lytvyn’s Bloc**
 - People’s Party
 - Party of All-Ukrainian Union of the Left “Justice”
 - Ukrainian Peasant Democratic Party

Non-parliamentary parties which participated in 2002, 2006 and 2007 parliamentary elections)

- Socialist Party of Ukraine
- Party of Industrialists and Entrepreneurs of Ukraine
- Social Democratic Party of Ukraine (united)
- Republican Party of Ukraine

- Women for the Future
 - Political Party “All-Ukrainian Union Center“
 - Party of Greens of Ukraine
 - Progressive Socialist Party of Ukraine
 - Party “Russia-Ukrainian Union“
 - Party of Free Peasants and Entrepreneurs of Ukraine
 - Political Party “Integral Ukraine”
 - Party “Viche”
 - Congress of Ukrainian Nationalists
 - People’s Democratic Party of Ukraine
 - Constitutional Democratic Party
 - Liberal Democratic Party of Ukraine
 - Party of Private Property
 - Ukrainian Peasant Democratic Party
 - Communist Party of Ukraine - Renovated
 - Party “Yabluko” (Apple)
 - Party “Unity”
 - Social Democratic Union
 - Young Ukraine
 - Democratic Party of Ukraine
 - Democratic Union
 - Party of Christian-Popular Union
 - Republican Christian Party
 - Workers Resistance
 - Liberal Party of Ukraine
 - Ukrainian National Assembly - Ukrainian National Self Defence
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Party system of Ukraine is still fragmented. However during the period 2005-2007, due to fully proportional election system the country envisaged consolidation and maturing political structures, especially those of the big parties and blocks.

The most important problem of Ukrainian parties is that the most of them have been built on “top-down” rather than “bottom-up principle”. As a result, the most Ukrainian parties represent the interests of rather leading persons and their entourage than those of wide segments of Ukrainian society. Ideological identification in the most cases remains uncertain, vulnerable to the political conjuncture.

1.3 Results of September 30, 2007 Parliamentary Elections

The pre-term parliamentary elections took place on September 30, 2007. They were preceded by constitutional-political crisis determined by the decision of president Yushchenko to dissolve a parliament of 5th convocation. According to reports by major international observation missions, the elections were free and fair. The election is assessed in line with OSCE and Council of Europe commitments, other international standards for democratic elections and national legislation.

Pre-term elections were determined by contradictory political developments, some political leaders from ruling coalition and the Yanukovych's government (July 2006-December 2007) argued that the president had no ground to dissolve a parliament of 5th convocation. However, due to political crisis in late May 2007 major political forces came to consensus about necessity of the early parliamentary elections.

Ukrainian voters made their choice out of 20 political parties and electoral blocs, which were registered in a generally inclusive and transparent process. Some previously strong political parties such as Social-Democratic (United) abstained from participation.

The voting procedure was held in a free and transparent atmosphere. According to Committee of Voters of Ukraine, the greatest problem were voter's lists, which were of a unexampled low quality. However these problems infringed rights of all political parties in all regions of Ukraine so they gave no priority to any political party.

At the same time, electoral law amendments passed by the Parliament on the 1st of June didn't improve election procedure by introducing unavoidable restriction which prevented from voting large number of people leaving de-facto out of their sites of registration. Special restrictive procedure was introduced for those people traveling abroad within the period of 2 month before elections (Since the 1st of August).

The elections were held according to a proportional voting system. Governmental interference in the process in general was not detected. Major parties and blocks enjoyed equal access to media.

Largest and the most authoritative among foreign observers International Election Observation Mission (IEOM)¹ mentioned in its official statement following positive aspects of the election process:

- The campaign was conducted in a calm atmosphere, with only isolated incidents. Overall, parties and blocs were able to convey their messages to the electorate without impediment.
- A diverse media environment provided for broad coverage of the campaign, enabling voters to make informed choices. Contestants were able to present their platforms in State media.
- The Central Election Commission (CEC) handled most technical aspects of these elections in an efficient manner.
- The presence of a large number of domestic and international observers.
- District Election Commissions (DECs) administered electoral preparations in an overall open and transparent manner.
- The administrative and ordinary courts made a genuine effort to adjudicate cases in a transparent and timely manner.
- Women were well-represented in the election administration at all levels.

With regards shortcomings and problems IEOM stated the following:

- The compilation of voter lists was impeded due to the lack of clearly defined responsibilities between relevant State institutions, and to technical problems, which impacted negatively upon the quality of the voter lists, thus not fully safeguarding the right to universal suffrage.
- Provisions to exclude from the voter lists citizens recorded as having crossed the borders of Ukraine after 1 August and not recorded as having returned by 26 September, raised concerns for disenfranchisement, discrimination, invasion of privacy and lack of transparency.
- The pattern of CEC members voting along party lines on important issues at times hampered its work and delayed certain decisions, such as guidelines on voting at home

¹ The International Election Observation Mission (IEOM) for the 30 September pre-term parliamentary elections in Ukraine is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA).

- The inability or unwillingness of the Constitutional Court to fulfil its duties and to rule on election-related complaints in a timely manner.
- The removal of possibilities for absentee voting for extraordinary elections.
- Concerns remain regarding lack of transparency in media ownership, the absence of a public broadcaster and independent media regulatory body, as well as hidden political advertising.
- Parties distributed material incentives to voters under the guise of charitable activities.
- Provisions of the law under which a political party or bloc can reorganise candidates or eliminate a candidate on the list after they have been registered.
- Campaigning by State and local officials who were not candidates, in violation of the law.
- Women remain under-represented on candidate lists, especially in leading positions.

Five political forces passed the 3 percent threshold to gain seats in the Parliament: Party of Regions, Bloc of Yulia, Our Ukraine, Communist Party of Ukraine, Lytvyn's Block (see following table).

Election results detected substantial improvement of the Block of Yulia Tymoshenko results. In comparison to 2006 election this political bloc increased its result from 22% to almost 31% which was the most remarkable sensation of the poll.

Election proved that regional differences in Ukraine are still actual. For example, the Party of Regions won 72-73 percent in Donetsk and the Lugansk oblasts in the east of Ukraine and only 3 percent in Ternopil and the Ivano-Frankivsk oblasts in the west. The BYT received about 53 percent in the Kyiv region (center of Ukraine) and 57.5 percent in Volyn oblast (west), but only 3.92 percent in Donetsk. At the same time election output detected some softening of regional discrepancies: Party of Regions (which is considered to be an east-south party) improved its result in the most central and western regions, and BYT (with its traditional western and central electorate) performed better, in comparison to 2006, in the eastern (especially Kharkiv and Dnipropetrovsk) oblasts.

The special case was detected in Mariupol (Donetsk oblast, district #48) where Socialist Party of Ukraine (led by Oleksandr Moroz, speaker of former Parliament) won with 50,02% of votes, ahead of the Party of Regions, when in the

Ukraine 2007. Report on Transformation

#	Party (bloc of parties)	Percent of votes cast "for"	Votes cast "for"	Number of Seats
1	Party of Regions	34.37	8 013 895	175
2	"Block of Yulia Tymoshenko"	30.71	7 162 193	156
3	Block "Our Ukraine – Peoples" Self-Defense"	14.15	3 301 282	72
4	Communist Party of Ukraine	5.39	1 257 291	27
5	" Lytvyn's Block "	3.96	924 538	20
6	Socialist Party of Ukraine	2.86	668 234	
7	Progressive Socialist Party of Ukraine	1.32	309 008	
8	All Ukrainian Union "Freedom"	0.76	178 660	
9	Party of Greens of Ukraine	0.40	94 505	
10	Election Block of Lyudmyla Suprun – Ukrainian Regional Activists (URAh)	0.34	80 944	
11	Communist Party of Ukraine (renovated)	0.29	68 602	
12	Party of Free Democrats	0.21	50 852	
13	"Block of the Party of Pensioners of Ukraine"	0.14	34 845	
14	Party of National Economic Development of Ukraine	0.14	33 489	
15	"Ukrainian Peoples' Block"	0.12	28 414	
16	Agrarians' Block "Agrarian Ukraine"	0.11	25 675	
17	Block "Christian Block"	0.10	24 597	
18	Election Block of Political Parties "KUCHMA" (Constitution-Ukraine-Honor-Peace-Antifascism)	0.10	23 676	
19	Block "All-Ukrainian Community"	0.05	12 327	
20	All-Ukrainian Party of Peoples' Trust	0.02	5 342	

most Donetsk oblast districts Socialists didn't even reach 3% threshold. That unusual case determined by strong position of Volodymyr Boyko, industrial magnate from Mariupol belonging to SPU. This case, didn't help SPU however to cross 3% threshold as the party lost almost all its traditional Central Ukrainian electoral due to its jump from "orange" to "white-blue" camp in 2006.

1.4. Development of the Ukrainian civil society

During last three years Ukraine has managed to strengthen civil society, which as a result has become increasingly vocal, active, and influential in the development of democratic institutions and behavior. According to the latest Freedom House Report "Freedom in the world" Ukraine is a free country, although possessing an edge freedom score of 2,5, where 1 – is the freest and 7 – is not a free country. According to UNDP 2007/2008 Human Development Index Ukraine ranks 76th position (medium human development) out of 177 countries.

According to the poll conducted by Razumkov Centre in cooperation with Freedom House in February 2007 on the topic of respect for human rights in Ukraine people basically positively estimate the level of respect for basic rights (including right to life, personal freedom, freedom of speech and believes) with 3,37 points of 5 maximum points; attainment to political rights (including right to vote and to be elected, right to control representative authorities etc) were less estimated with 3,15 points out of 5; attainment to social and economic rights (including right to work, right for sufficient living standards and social protection) were poorly estimated with 2,49 points.

Institutions of civil society are in the permanent transition and strengthening. The very fact of the Orange revolution to a great extent was caused and could have had happened because of the very fact of existence of the civil society institutions, and free media NGOs were the main actors. Media and expression freedom that came after the 2004 presidential elections paved the way to strengthening civil activities of Ukrainians. It is logical, that events of the presidential elections gave a significant impact over further strengthening of the institutions of social life of Ukraine, as well as their perception by Ukrainians has been changing in a positive way. According to the national public opinion poll held by Razumkov Centre in September 2007, almost 42% of Ukraine's citizens consider the activity of non-governmental think tanks useful (12.5%) or rather useful (29.2%) for society, and only 9,3% stick to the opposite opinion.

Various organizations were involved in the democracy-building process in Ukraine, and the number of NGOs is increasing during the last period. High activity of the civil sector is to a great extent connected to general processes of political liberalization of the state. Transformations followed the presidential elections 2004 caused an increase of civil self-awareness, which lead to an increase of factual number of civil organizations. If in 2004, more than 37 000 NGOs had legal status, in the end of 2007 this number has considerably increased: according to the State Statistics Committee of Ukraine there are 54 862 registered civil organizations in Ukraine. But following different estimations, 20 000 to 25 000 of them exist only on paper.

The role of analytical non-governmental organizations cannot be underestimated in political transformations in Ukraine. Main achievements of the analytical independent sector according to the experts of Razumkov Centre expressed in a special issue of the magazine National Security and Defence in 2007, are in the fact that Ukrainian think-tanks have learned to work at subjects critical for social and political development, won recognition of the authorities, political actors and public trust, strengthened their influence over the public opinion, enjoy strong interest of the media and gradually are getting integrated in the world expert community.

At the same time the Ukrainian third sector is far from the limits of its development. There are several problems that are still on the way of its most influential impact over the future of the state. First, this is the problem of financing. Unfortunately, Ukrainian third sector is still dependent on Western funds. Despite development of small and medium-size business, Ukraine's economic arena is still dominated by big-business oligarchs. The last have several projects on supporting the NGOs and analytical centres, but they have rather image-supporting character. Support of the NGOs by the state budgeting is only in the phase of development. Second problem is the limited possibilities to impact over decision-making process by the state institutions. Nongovernmental advisory boards and councils, although being considerably increased in numbers after 2004, have comparably modest influence. Third problem lies in imperfectness of legal basis for the activity of the NGOs. This lead to certain constrains to the NGOs in, for example, possibility to provide services or to participate in state procurement procedures. The existing legal basis also does not give enough incentives for legal entities and individuals to voluntary support the third sector. Such a shortcomings considerable shorten the NGOs possibilities to broaden their financial basis. Despite these problems civil society sector of the Ukrainian society has a steadily intention of growth. This growth is caused by the needs of transformational internal processes and raise of civil consciousness of Ukrainians.

1.5. Justice, judiciary reforms and countervailing corruption

Reform of judiciary and systematic fight against corruption remain highly requested for further transformation of the state. Despite obvious gains in the area of civil freedoms, achievements in the reforming of judiciary are not so evident. Ukrainian judiciary system and protection of human rights are still inheriting shortcomings of the Soviet system. Political, social and economic transformations are hindered with a remaining high level of corruption. During the last years there were several attempts for reforming Ukrainian judiciary and campaigns on fight against corruption. Unfortunately these attempts do not lead to systematic shifts in these areas.

Such assessment corresponds with the view of the European Commission, which it expressed in its Report on Ukraine of 4 December 2006 within the implementation of the European neighborhood policy. According to the Report considerable steps have been taken towards consolidating respect for human rights and the rule of law (e.g. removing pressure on the media and civil society, reform of the customs service) and a wide range of legislative reforms has been introduced. But progress is being hindered “by endemic corruption, which is the main challenge to the development and economic growth of Ukraine, and by the lack of a truly independent judiciary.

High corruption and lack of judiciary transformation are the obstacles towards the creation of a society based on rule of law. The fact that corruption remains the strongest obstacle to Ukraine’s democratic and market transformation is proved with international and Ukrainian sociological surveys. Thus, according to the Transparency International Report “Global Corruption Barometer 2007” 30% of Ukrainian respondents pay bribes to obtain services. Legal system and judiciary are considered to be the most impacted sectors. Corruption also highly impacts over political parties, parliament, and police and tax revenue authorities. Religious bodies and the military are considered to be least corrupted. Unfortunately according to the survey, 44% Ukrainian citizens think that in the next three years corruption level will stay the same, only 18% think that it will decrease, and 38% of the respondents think that this vicious feature will only increase. Only 8% of respondents think that Ukrainian government’s efforts to fight corruption are effective, and 70% consider the governmental steps as ineffective.

These data are also corresponding to the survey “Corruption in Ukraine. Results of all Ukrainian survey 2007” conducted by Kyiv International Institute of Sociology in 2007. According to the survey, corruption among authorities is the

forth out of twelve of the most serious problems in the country. Against the ground of overall mistrust to authorities 67,6% of respondents are confident that authorities of all levels do not properly fight against corruption. The people's understanding of the corruption's causes is very illustrative: abuse of service rank, ineffective control by law-enforcement agencies and poor legislation are the main reasons for corruption.

Corruption fight overshadowed Ukraine's political life in 2005. Several anti-corruption initiatives were stipulated in a number of political statements and programs. Yulia Tymoshenko's government of 2005 program "Toward People", adopted the Parliament in February 2005, stipulated several provisions on fighting corruption, e.g. dismissal of corrupt state officials, public control on budget spending, adoption of an honor code for officials, and so forth. The government also elaborated a special program on preventing corruption and bribery called "Clean Hands" and started to develop a new National Anticorruption Strategy and Action Plan. On November 2005 the President signed a decree entitled "On priority Tasks on Denshadowing Economy and Fighting Corruption", which among other features elaborated "corruption" as a judicial term, provided a legal definition for "conflict of interests", improved procedures of income and property declaration by state officials and their family members.

Despite certain efforts in 2005, an effective countervailing corruption system was not introduced. On the contrary, corruption accusations of the prominent representatives of the President's entourage of corruption and illegal lobbying of personal business interests lead to so-called zero variant, in which the President Yuschenko dismissed the government of Tymoshenko and accused persons individually in September 2005.

2006 year did not feature a significant campaign to fight corruption. The parliamentary elections and the months-long process of creating a coalition under the new constitutional amendments put anticorruption measures on the back burner; the country witnessed a backward slide into the higher rates of previous years. The President's initiatives in the fight against corruption failed to gain the necessary support of the government and the Parliament. The government of Yuriy Yekhanurov, which came after the Tymoshenko's government in September 2005 and remained in power till August 2006, did not introduce any anti-corruption initiatives.

On September 11, 2006 President Yuschenko by his decree adopted the Concept on a Way to Integrity, which envisaged a set of measures intended to reduce corruption in executive, judicial and local self-government bodies. He also

submitted to the Parliament a number of draft laws to improve anti-corruption legal basis, but these drafts were returned by the Parliament for finalization.

The Decree on Action Plan on implementation of the President's Concept "On a Way to Integrity" has been adopted by the government of Viktor Yanukovich, which was in power from August 2006 till December 2007. The Plan set a number of concrete measures to reach the aims of the Concept. A set of draft laws on implementation of international acts in the area of corruption countervailing was adopted by the Parliament during 2007. But despite these legislation initiatives 2006 did not feature an essential decreasing of the corruption actions.

Yulia Tymoshenko's government of 2007, appointed in December 2007, program "The Ukrainian breakthrough: for the sake of people, not politicians", submitted to the Parliament in mid-January 2008, identifies corruption as "the main threat for social and economic development of the society". The program proposes around 20 steps towards fight against corruption, e.g. hardening criminal sanctions for bribing, anticorruption expertise of legal acts, creation of special anti-corruption committee for analysis of all draft laws, strengthening social security of judges and law-enforcements agencies officials and so forth. The government also took the obligation to support adoption by the Parliament of "anti-corruption package" previously submitted by the President.

Lack of real introduction of anti-corruption strategy is also pictured with a modest achievement of Ukraine in international ratings in the sphere of corruption. According to Transparency International's Corruption Perceptions Index in 2004 Ukraine was placed 122 out of 146 nations with a score of 2,2 and in 2007 - only 118 out of 180 countries, with a score of 2,7 on a scale of 1 to 10 (1 = most corrupted). Beyond anti-corruption political rhetoric, no consistent policy on corruption has been implemented yet.

The similar situation is observed in the area of judiciary of Ukraine. Also large, the court system is frequently inefficient. Main old shortcomings of the Ukrainian judiciary, including lack of public respect for court decisions and the judicial system as a whole, insufficient financing of the court system, and insufficient and non-transparent process for appointing judges remain topical for Ukraine.

According to the poll conducted by Razumkov Centre in cooperation with Freedom House in February 2007 on the topic of respect for human rights in Ukraine activities of judiciary, police and prosecution services are not highly appreciated by people in course of securing of human rights (their ranks,

accordingly, were equal to 2,51, 2,53 and 2,33 points out of maximum 5). Ukrainian Ombudsman and international organizations gained the most of the people's trust (with 3,14 and 3,01 points out of 5 maximum).

Judiciary is also considered one of the most corrupt bodies of the state. This is attributed to a number of legal, management, financial, and political reasons, including lack of full independence of judges and wide bribery among them caused partially by low wages. Judiciary also deserves low trust by the population. According to mentioned survey "Corruption in Ukraine. Results of all Ukrainian survey 2007", judiciary is the least trustful authority among other central and local authorities, like the government, the president and local powers. According to this survey judiciary is the forth among state services where people think the corruption is widely spread. This estimation also coincides with the results of the mentioned Razumkov Centre's survey. According to the survey judiciary corruption is one of the biggest problems in the process of petition the court (42,6% of respondents named this problem).

These long-standing problems in the judicial system have necessitated reforms, and attempts to reform the system have been taken in the recent years. On June 1, the Law on Access to Court Decisions came into force, and on 23 February the Law on Implementation of the Practice of the European Court of Human rights was adopted. On 20 March the President adopted the Action Plan for 2006 on improvement and Providing Fair Judicial Framework in Ukraine According to European Standards. The Concept of Improvement of Judicial Framework and Providing Fair Court Proceedings in Ukraine was adopted on 10 May 2006 for a 10-year period by the National Commission within the Ministry of Justice on Strengthening Democracy and Providing Rule of Law. The Concept was expected to bring the Ukrainian judicial system in line with European norms. The Concept got bad critics by the Ukrainian judges, as it does not provide a systematic approach over judiciary transformation to eliminate all the existing shortcomings, therefore its proper implementation is questionable. 2007 did not bring much into improvement of judiciary. The government of Viktor Yanukovich created on the basis of Anti-Crisis Coalition (since March, 2007 – the Coalition of National Unity) have made no regular steps for implementation of reforms of the law-enforcement system.

On the contrary, political developments, namely, process of preparation and holding of the early parliamentary elections of 2007 year had a destructive impact over trust to judicial bodies of the state. After a long fight the final decision on holding the early elections on 30 September 2007 was made with political

instrument, through agreement of the President Viktor Yuschenko, Prime Minister Viktor Yanukovych and the Speaker of the Parliament Oleksandr Moroz on 27 May 2007, but not with legal means. This fact on one hand lead to partly discredit the judiciary, on the other – brought old problems of the system to the light to wide public, and, generally, negatively impacted over perception of judicial power by the Ukrainian society.

The need to face problems of transformations of the judiciary is clearly understood in today's Ukraine. The governmental program of 2008 "The Ukrainian breakthrough: for the sake of people, not politicians" pays much of attention to "fair, impartial and accessible judiciary". If being properly and timely implemented the program may reform judiciary through such steps as "provision of accessible judiciary", "improvement of the system of the appointment of judges" and "guaranteed and appropriate financing of the judicial power".

Ukraine is still in the transition process towards a state of law. Many efforts should be implemented in the area of judiciary and rule of law.

1.6 Armed Forces, Security Service, other "Force Structures" in Ukraine

Military and security sphere is also suffering form domestic political battles facing gradual reforms and transformations. Former Defense Minister Anatoly Grytsenko (February 2005 – December 2007), was an active supporter of Ukraine's membership in NATO, continued transparency and accountability reforms in line with aims fixed in the NATO-Ukraine Action Plan. The security service is less subject than other areas to public oversight reforms, and the old Soviet-minded security elite is still in place in Ukraine.

The State Programme of the Armed Forces transition towards the manning on contract basis of 2002 was planned to be implemented by 2015 in three phases: 2002–2005, 2006–2010, 2011–2015. The Program foresaw the improvement of planning, organizational, financial, economic, educational activities as well as of the relevant executive and control bodies. However, according to Bonn International Center for Conversion study "*Inventory of Security sector reform efforts*", the lessons learned from defense reform efforts—as shown by the evolution of programs—the 'State Programme of Reformation and Development of the Armed Forces of Ukraine through 2005' (2000) to the 'Concept for the Structure of the Armed Forces-2010' (2001); and the 'State Programme of

Transition of the Armed Forces of Ukraine to Manning with Contracted Servicemen' (2002)—have yet to address the need for systemic transformation, instead of reductions and shrinking targets.

In the case of Ukraine's Security service and law-enforcement structures, the gap between public perceptions and official attitudes towards reform continues to be actual. The lack of political will of the country's authorities to take real steps in transformations of the Security service, police and other law-enforcement bodies (Procurator Office, Tax Police, Customs) is one of the major factors contributing to the very low trust of the population in the law-enforcement structure. The Orange revolution and its outcomes just slightly affected this sector, despite some new democratic politicians took the leading positions within this sphere (such as Yury Lutsenko, minister of interior – in 2005-2006 and since December 2007).

Participation in PfP and NATO-Ukraine mechanisms has been a driving force for defense reform. However, the influence of NATO procedures on internal processes in Ukraine is mostly limited to the Armed Forces. To effectively promote change, Ukraine's co-operation with an enlarging NATO and EU will need to better match the priorities for Security sector reforms - especially in the non-military area.

Ukrainian Border Troops have welcomed EU assistance dedicated to modernizing Ukraine's border management system and transforming this structure into a State Border Service along Euro-Atlantic standards. Border control issues have become even more crucial for Ukraine, particularly driven by Poland, Slovakia, Hungary accession to Schengen area since the 21st of December, 2007.

In the year 2007 Ukraine for the first time envisaged direct conflict between the force structures subordinated to the president (State Department of Guard Service) and those subordinated to the Cabinet of Ministers (Special unit of the Ministry of Interior). In May, during the culmination of political crisis, those units clashed in the building of the Prosecutor General's office at the attempt to set a control over the building.

Formally the "force structures" sphere remains under the auspice of president, who nominates defense minister and the Security service chief (to be approved by Parliament). Transparency and accountability was improved within the Ministry of Defense due to proper leadership of minister Grytsenko. During the period of Victor Yanukovich's government in order to balance Grytsenko, ruling coalition introduced the position of deputy premier-minister responsible for military and security sphere – MP from Party of Regions, former defense minister Oleksandr Kuzmuk was appointed for this position, claiming for leadership in the

security and defense sphere. After 2007 parliamentary election president Yushchenko decided to change his nominee at the MOD minister position by appointment of Yury Yekhanurov, who was a premier-minister in the years 2005-2006. In the new government by Yulia Tymoshenko the position of deputy premier-minister responsible for military and security sphere has been cancelled.

Defense minister Yury Yekhanurov reconfirmed his commitment to continuing reforms during Ukraine-NATO Commission held in Vilnius on the 7th of February, 2008. The meeting, which took place within the framework of the informal meeting of NATO defense ministers, included discussion on the defense sector reform in Ukraine. NATO defense ministers welcomed achievement of Ukraine in this area.

1.7 Media Sector in Ukraine

Substantial progress in the area of media freedom may be considered the most evident achievement of Ukraine since the Orange revolution. In fact, media freedom appeared as an immediate and natural outcome of the Orange Revolution itself, rather than the product of government policy. Considering the policies of Ukraine's new leadership, not enough has been done to make these positive changes irreversible.

Ukraine's media sector continued to grow due to appearance of new investments, both domestic and foreign. Media freedom in Ukraine proves to be sufficient at the national level, but the local and regional media sectors still lack restructuring and real independence.

In the "Reporters Without Borders" Worldwide Media Freedom ratings Ukraine improved its performance, now possessing 92nd position among 169 nations of the world, being substantially ahead of Belarus (151), Russia (144) and Turkey (101), but behind Georgia (66), Serbia (67) and Armenia (77).

Citizens currently enjoy wide-ranging pluralism in both electronic and print media. Governmental censorship is not a case in Ukraine in private media sector, however on regional and local level state administrations remain players on media market by owning numerous newspapers and TV-channels funded by budget, influencing their editorial policy.

The case of Kyiv municipal media is the most evident case of bureaucratic control over media. Kyiv city head Leonid Chernovetsky set up total control over editorial policy of local TV-company "TRK Kyiv", newspapers "Khreshchatyk"

and “Vechirniy Kyiv” which provide biased information policy in favor of local leadership.

On March 3, 2005, the Parliament adopted a new Law on the National Council on TV and Radio Broadcasting, prepared by the parliamentary Committee on Freedom of Speech and Information. The main features of the law are reduced grounds for the dismissal of council members to guarantee their independence; abolishment of the rotating membership procedure; election of the council chairman by its members, along with curtailing the chairman’s powers; and new means to impose sanctions on TV and radio outlets for non-compliance with legislation.

Nationwide television channels in most cases provided balanced news coverage; representatives of the ruling parties as well as the opposition had equal access to the media. Most nationwide media are privately owned by leading financial and industrial groups, which gives a ground for certain biases and subjective preferences of media. Informal payments from interest groups were also a reason of appearance of biased subjects on TV, especially during election campaign.

The most alarming negative trend visible in the year 2007 is widely-spread practice of paid information coverage ordered by political and financial interest groups. In November trade-union of independent journalists announced campaign against this phenomenon, promoting the slogan “We are not for sale”. “Pre-paid TV subjects and programs are not anymore rare cases. They are becoming an industry which compete with normal news, analysis and discussions” – said journalist in their manifesto.

The process of public TV foundation is still blocked. Despite permanently issued declarations (including commitments fixed in the Coalition of democratic forces agreement) major political leaders don’t have enough political will to facilitate the creation of public TV. Some representatives of the state leadership continue to view media as the authorities’ “resource” and advocate preservation of state control over media outlets.

The advertising market is growing, providing new financial opportunities for independent media sector. Some new independent good-quality media projects emerged including new nation-wide daily newspapers, weeklies, live political shows on TV and radio.

The most successful initiative in the sphere of printed media was establishment of new all-Ukrainian daily newspaper “Gazeta 24” funded by Ukrainian business. Owners and management declared its goal to reach high

standards of European daily newspaper. Due to professional and non-biased journalism the newspaper gained positive reputation. However in October paper's management led by widely-known journalist Vitaly Portnikov resigned, accusing owners in partisan pressure (owner Volodymyr Kosterin is a head of Green Party of Ukraine). Further future of this newspaper project remains uncertain.

Foreign media enterprises continue to invest in Ukrainian media market, but the most of such investments were provided for entertainment ("yellow") media, such as newspaper "Blick" by German "Bild" company.

The Ukrainian Internet audience continued to grow in 2006-2007, reaching nine million users (both regular and infrequent), or about 18 percent of the population. Internet media proved to be efficient mediators between politics and society. For example, the Web site *Ukrainska Pravda* (Ukrainian Truth), founded by Georgy Gongadze in 1999, became a self-sustaining media project with a substantial impact comparable to that of leading TV channels and newspapers. The full spectrum of political views is presented in Internet media in Ukraine.

Ukrainian financial-industrial groups strengthened their position within the media market. The most ambitious strategy was performed by Industrial Union of Donbass (ISD), whose owners created full-fledged printed media consortium, including *Kyiv Weekly*, "Kommentarii" weekly magazine, "Delovaya Stolitca" and other media.