

## FREEDOM IN THE WORLD

# Ukraine

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### OVERVIEW:

Ukraine's October 2012 parliamentary elections were deeply flawed, ending a string of national elections that had been considered free and fair. Former prime minister Yuliya Tymoshenko, who represented the most outspoken opposition to President Viktor Yanukovich's Party of Regions, remained in jail and was not allowed to compete. The new electoral law, revised at the end of 2011, delivered more seats to the ruling party than it would have won under the previous system. Monitors cited numerous abuses in the elections, which strengthened the position of antidemocratic factions in the parliament. Over the course of the year, the administration continued to exert pressure on the judiciary, media freedom declined, and corruption opportunities increased with the elimination of tendering requirements for state companies.

In December 1991, Ukraine's voters approved independence from the Soviet Union in a referendum and elected Leonid Kravchuk as president. Leonid Kuchma defeated Kravchuk in the 1994 presidential poll, and won reelection in 1999 amid media manipulation, intimidation, and the abuse of state resources. Kuchma faced growing criticism for high-level corruption and the erosion of political rights and civil liberties. Evidence implicating him in the 2000 murder of independent journalist Heorhiy Gongadze fueled mass demonstrations and calls for the president's ouster, but pro-presidential factions retained a majority in 2002 parliamentary elections.

In the significantly tainted first round of the October 2004 presidential election, reformist former prime minister Viktor Yushchenko led a field of 24 candidates, followed by Prime Minister Viktor Yanukovich, a representative of the eastern, Russian-speaking Donbas region who enjoyed backing from Russian president Vladimir Putin. In the November runoff, the official results showed Yanukovich to be the winner by less than three percentage points, but voting irregularities in Yanukovich's home region led the domestic opposition and international monitors to declare his apparent victory "not legitimate."

In what became known as the Orange Revolution because of Yushchenko's ubiquitous campaign color, millions of people massed peacefully in Kyiv and other cities to protest fraud in the second-round vote. The Supreme Court on December 4 struck down the results and ordered a rerun on December 26. In the middle of the crisis, the parliament ratified constitutional reforms that shifted crucial powers from the president to the parliament, effective January 1, 2006. Although technically adopted in an unconstitutional manner, the compromise changes effectively lowered the stakes of the upcoming rerun, making it more palatable to Yushchenko's opponents. However, they also created an unclear division of power, which later led to constant conflict between the president and prime minister.

The repeat of the second round was held in a new political and social

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atmosphere. The growing independence of the media, the parliament, the judiciary, and local governments allowed for a fair and properly monitored ballot. Yushchenko won easily, and his chief ally, former deputy prime minister Yuliya Tymoshenko, became prime minister. However, their alliance quickly broke down, leading to a multilateral stalemate that prevented implementation of comprehensive political and economic reform. The unproductive wrangling continued during a short-lived Yanukovich premiership (2006–07) and another stint as prime minister for Tymoshenko (2007–10) after parliamentary elections in September 2007, seriously eroding public support for the Orange Revolution.

In the 2010 presidential election, which met most international standards, Yanukovich defeated Tymoshenko in the second round of voting in February, 49 percent to 46 percent. He quickly reversed many of the changes adopted in the wake of the Orange Revolution, securing Constitutional Court rulings that enabled him to oust Tymoshenko as prime minister and replace her with a loyalist, and to annul the 2004 constitutional compromise that had reduced the power of the presidency. He subsequently launched efforts that systematically reduced Ukrainian citizens' political and civil rights. The October 2010 local elections were widely viewed as less free and fair than elections held under Yushchenko.

In 2011, Yanukovich mounted a systematic campaign to eliminate any viable opposition to his ruling Party of Regions, most visibly by securing a seven-year prison sentence against Tymoshenko, his strongest opponent, in October. Her alleged offense was abusing her office as prime minister by signing an unfavorable gas deal with Russia without seeking cabinet approval, which was not viewed as a crime by most observers. At the end of 2011 Yanukovich introduced a new electoral system for the parliament, replacing the existing proportional-representation arrangement with a hybrid in which half of the lawmakers are elected in single-member districts. The nongovernmental group OPORA denounced this change as a bid to favor the Party of Regions, arguing that it was easier for the ruling party to manipulate the district elections.

Tymoshenko and her ally Yuriy Lutsenko remained behind bars in 2012, and neither was allowed to run in the October parliamentary elections. The European Court of Human Rights ruled in July that Lutsenko, a former interior minister, had been unlawfully detained. Over 400 other candidates were rejected ahead of the vote, with half turned away based on minor technical problems. In addition, the Organization for Security and Cooperation in Europe (OSCE) complained that the elections lacked a level playing field due to the abuse of administrative resources, opaque campaign and party financing, biased media coverage, and extensive influence wielded by powerful economic groups. Other abuses included the bribery of voters in single-member districts through the façade of charity organizations, and public-works projects designed to support progovernment candidates. Monitors also found that the tabulation process lacked transparency and that important parties were not granted fair representation on district- and precinct-level electoral commissions, often leaving progovernment individuals in control of the panels.

Despite such regime manipulation, the opposition was ultimately able to limit the ruling party's hold on the parliament and prevent it from securing a supermajority of 300 seats, which would have allowed it to change the constitution. However, prodemocracy parties captured only about a third of the seats. The Party of Regions retained a plurality with 185 seats, followed by Tymoshenko's Fatherland with 101, professional boxer Vitaliy Klychko's Ukrainian Democratic Alliance for Reform (UDAR) with 40, the radical Svoboda party with 37, and the Communist Party with 32. Independents won 43 seats, and four small parties divided the remainder. Five seats remained unfilled because ballot tampering made it impossible to determine the winner, though the opposition claimed that they had won the seats. By year's end, the parliament approved the return of Prime Minister Mykola Azarov.

On November 27, Yanukovich signed a law that would allow the constitution to be amended by referendum if organizers are able to collect three million signatures from a variety of regions. Previously, constitutional amendments required a two-thirds vote in the parliament, a level of support the president would be unlikely to achieve under current conditions. The opposition fears that an increasingly unpopular Yanukovich may seek to amend the constitution to

allow the parliament to elect the next president by a simple majority vote.

## **POLITICAL RIGHTS AND CIVIL LIBERTIES:**

Ukraine remains an electoral democracy, although the numerous flaws in the 2012 parliamentary elections and the 2010 local elections have seriously threatened this status.

Citizens elect delegates to the Verkhovna Rada (Supreme Council), the 450-seat unicameral parliament, for four-year terms. The 2004 constitutional amendments, which were annulled in 2010, had extended this term to five years. Under the ruling Party of Regions, the parliament has largely become a rubber-stamp body. According to a new electoral law adopted in December 2011, Ukraine returned to a system in which half of the members are elected by proportional representation and half in single-member districts; blocs of parties are not allowed to participate. As expected, and in sharp contrast with the other major parties, the Party of Regions won most of its seats in the single-member districts during the October 2012 elections, giving it enough seats overall to forge working parliamentary majorities with the Communist Party and independents.

The president is elected to a maximum of two five-year terms. With the return to the 1996 constitution in October 2010, the president now dominates the political system. He issues decrees; exercises power over the courts, the military, and law enforcement agencies; appoints the prime minister with the Rada's approval and removes the prime minister at will; appoints and fires all other ministers without the Rada's approval; and appoints regional governors without consulting the prime minister. The Rada can dismiss the entire cabinet, but not individual ministers.

Political parties are typically little more than vehicles for their leaders and financial backers, and they generally lack coherent ideologies or policy platforms. President Viktor Yanukovich is systematically eliminating opposition to his party, either through repression (as with Yuliya Tymoshenko's Fatherland party) or cooptation (as with former deputy prime minister Serhiy Tyhytko's Strong Ukraine party, which was absorbed by the Party of Regions in early 2012).

Corruption, one of the country's most serious problems, continues to worsen. Business magnates benefit financially from their close association with top politicians. For example, a *Forbes* study has shown that businessmen affiliated with the Party of Regions win a considerable portion of state tenders. In addition, a new law in 2012 established that state enterprises do not have to use tenders when buying goods, meaning tens of billions of dollars will be disbursed each year without transparency. Separately, Yanukovich has become the de facto owner of a huge estate outside of Kyiv, raising suspicions of illicit wealth, and his two sons have amassed both power and immense personal fortunes. The apparent corruption of the administration, and the precedent set by its politicized pursuit of charges against Tymoshenko and former members of her government, have increased Yanukovich's incentives to remain in power indefinitely. Small and medium-sized businesses continue to suffer at the hands of corrupt bureaucrats, tax collectors, and corporate raiders. Kickbacks in the build-up to the Euro 2012 soccer championship, which Ukraine cohosted, may have accounted for as much as one-third of the value of the related construction contracts.

The constitution guarantees freedoms of speech and expression. Libel is not a criminal offense, though the parliament in 2012 considered the restoration of prison terms as a punishment for libel before backing down in the face of protests. Conditions for the media have worsened since Yanukovich's election. The media do not provide the population with unbiased information, as business magnates with varying political interests own and influence many outlets, and the state controls a nationwide network and local television at the regional level. Some 69 percent of Ukrainians get their news from television, and the medium now features fewer alternative points of view, open discussions, and expert opinions. An analysis of 230 outlets in August 2012 showed that the

ruling party received preferential coverage, and this was particularly true on state television during the parliamentary election campaign, though coverage of the opposition increased closer to election day. TVi, one of the last independent television channels with national reach, faces constant harassment from the authorities, including charges of tax evasion, fines, and denial of access to advertisers and cable networks. Ethical violations are a problem, and the number of paid articles in the media has been growing. Journalists continue to face the threat of violence in the course of their work. Vasyl Klymentyev, a journalist who investigated local corruption in Kharkiv, disappeared in August 2010 and is presumed dead.

Internet access is not restricted and is generally affordable; lack of foreign-language skills is the main barrier. While the Access to Public Information Act passed in January 2011, it did little to improve the overall environment.

The constitution and the 1991 Law on Freedom of Conscience and Religion define religious rights in Ukraine, and these are generally well respected. However, among other problems, Yanukovich publicly associates himself with one of the country's competing branches of the Orthodox Church (that associated with the Moscow patriarchate), and there have been some signs of anti-Semitism in political campaigns in recent years.

Academic freedom has come under pressure since Yanukovich took power. Education Minister Dmytro Tabachnyk has curtailed many programs designed to promote Ukrainian language and culture, and in 2010 he began a process aimed at bringing Ukrainian textbooks into line with those in Russia. Ministry budget cuts have focused heavily on schools with liberal reputations and universities in Kyiv and western Ukraine, while universities in the eastern Donetsk region have gained more funding.

The constitution guarantees the right to peaceful assembly but requires organizers to give the authorities advance notice of any demonstrations. Yanukovich's government has made it more difficult to assemble, and there has been a significant increase in the number of court rulings prohibiting peaceful assembly. The administration is also collecting extensive information on all protest organizers, including details about their professional activities, in order to exert pressure on them.

Although the vibrancy of Ukraine's civil society has declined since the height of the Orange Revolution, social, political, cultural, and economic movements of different sizes and with various agendas remain active. Civic activism is increasing, with a new language law driving many more protests in 2012 than occurred on other issues in recent years. Many Ukrainians also spoke out over the March murder of 18-year-old Mykolaiv resident Oksana Makar, who was brutally raped, set on fire, and left to die by three men with connections to local officials. Trade unions function, but strikes and worker protests are infrequent. Factory owners are still able to pressure their workers to vote according to the owners' preferences.

The judiciary is subject to intense political pressure and largely carries out the will of the executive branch, as the Tymoshenko case demonstrated in 2011. In a similar manner, in February 2012, the court sentenced former interior minister Yuriy Lutsenko to four years in prison and an additional three-year ban from public office. He had fought against ties between the Party of Regions and organized crime. Centralization of court administration in 2010 gave the authorities extensive control over the pay, promotion, and dismissal of judges. In 2011 Ukraine became the only state to ignore a pilot ruling of the European Court of Human Rights, having failed to implement a judgment designed to improve the enforcement of court decisions in the country.

Reports of police torture have grown in recent years. The number of raids by tax police and the security service against opposition-aligned businesses has also increased. Since 2010, Ukrainian authorities have misused psychiatry to intimidate civil society activists.

A language law adopted in August 2012 effectively favors Russian over Ukrainian by allowing regions to give Russian official status if it is spoken by more than 10 percent of the population. Genuine minorities—Crimean Tatars, Poles, Hungarians, and Ruthenians, among others—see no benefit from the

law. While the country's Romany population suffers from discrimination, the government has generally interceded to protect the rights of most ethnic and religious minorities, including the Tatar community. Tatars continue to suffer discrimination at the hands of local authorities and communities in Crimea in terms of land ownership, access to employment, and educational opportunities.

In October 2012 the parliament began approval of a bill that would outlaw "pro-homosexual propaganda" and ban any positive depiction of gay people. It had not been adopted by year's end.

Gender discrimination is prohibited under the constitution, but women's rights have not been a priority for government officials. The cabinet in place until late 2012 did not include any women, making it the first of 14 Ukrainian governments to be exclusively male. However, the cabinet appointed on December 24 has three women. Human rights groups have complained that employers openly discriminate on the basis of gender, physical appearance, and age. The trafficking of women abroad for the purpose of prostitution remains a major problem.

#### **TREND ARROW:**

Ukraine received a downward trend arrow due to a decline in the quality of its legislative elections, greater government pressure on the opposition, and a new language law that favored Russian speakers while neglecting smaller minorities.

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