

International Assistance and Human Rights in Post-Soviet Ukraine

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Jeffrey T. Checkel
University of Oslo
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A decade into its independent, post-Soviet existence, words or phrases like laggard, diminished expectations or basket case typically capture the headline story about Ukraine. In the human-rights policy area, the country has gone from being one of the Western community's star pupils to a problem child. What accounts for this disturbing progression, if, indeed, it is accurate? Where has international assistance gone wrong (and right)? What policy lessons can be gleaned from the experience of seeking to create a rule-of-law polity in a transition state like Ukraine? To answer such questions, a baseline for comparison needs to be established as well as two key terms, international assistance and human rights, defined. Such preliminaries are essential if we are to put Ukraine's human-rights record in its proper context.

Baselines

Three points need to be stressed. First, Ukraine's civil society was weakly developed when it gained independence. Moreover, the minimal social activism that existed in the late 1980s and early 1990s was channelled largely along nationalist/independence lines. These facts matter. Research across a range of countries and regions shows that the implementation of human-rights norms is difficult absent a strong "bottom up" push from civil society.

Second, the building of rule-of-law polities is a slow, uneven process, marked equally by advances and setbacks. In many instances, it has taken countries well more than a decade before respect for core human rights becomes a taken-for-granted, normal part of everyday politics.

Finally, getting laws on the books is the easy part. Their implementation is something else entirely. From the international community's perspective, Ukraine could do little wrong regarding rights through 1996. Progressive laws on minority rights were enacted and a new constitution with liberal human-rights standards was promulgated. However, numerous problems have arisen since then as decisionmakers and civil society activists sought to craft policies and administrative regulations consistent with them.

Definitions

The international assistance that promotes human rights in Ukraine comes in two forms: high-visibility/short-term, and low-visibility/long-term. Perhaps understandably, many policy analysts and journalists emphasize the former. Indeed, there have been many well-publicized, near-term efforts to help Ukraine get its human rights laws “right.” These include bilateral assistance (aid from the U.S. and German governments to help draft human-rights legislation), as well as multilateral programs (money from the European Union [EU] and Council of Europe [CE] to strengthen civil society and nongovernmental organizations).

Longer-term and thus lower-visibility assistance has included many programs where the goal is less to fix a particular piece of Ukrainian legislation than to change core attitudes on human rights. Here, for example, the focus has been on education (introducing a human-rights curriculum in schools and universities) or integrating Ukrainians into pan-European legal networks (recruiting judges for membership in the European Court of Human Rights in Strasbourg, France).

Of course, all this Western aid seeks to promote human rights in Ukraine. Yet, in assessing the country’s record in this area, it is important to understand the term as Ukrainians themselves do. When asked about rights, Ukrainians raise many concerns that are prominent in the West—fair elections and freedom of the press, most notably. However, they also highlight issues such as the internal registration system or the death penalty that are no less important just because they receive less attention in the Western media.

Lessons

The Western community’s track record of promoting human rights in Ukraine is decidedly mixed. This suggests four lessons for policymakers: (1) combining near- and long-term policy objectives is important; (2) a mix of hard and soft instruments needs to be used to attain these; (3) clear human rights norms trump fuzzy standards; and (4) the special role Europe can play should be better appreciated.

Policy Objectives

Through the mid-1990s, most Western bilateral or multilateral assistance was premised on a quick-fix approach. Legions of foreign consultants and specialists would descend on Kyiv, hoping to assist in the drafting of legislation or administrative regulations that addressed rights questions.

This emphasis on the near term was problematic. It did nothing to shrink the gap separating word and deed in Ukrainian human-rights policy; if anything, it contributed to making the gap bigger. Equally important, this led to a diminished role for Ukrainian expertise. Many in the West assumed that they knew best for Ukraine; as a result, local knowledge and context were devalued.

More recent Western policy has come to emphasize the longer term alongside the near. There is a much greater appreciation that not simply laws, but social practice, attitudes, and institutions in Ukraine must change for human rights to be ensured. This new emphasis has also led to a more concerted effort to involve Ukrainian experts, for longer-term change is impossible without their active participation. This development is not only good in its own right, it also helps

minimize the so-called ownership problems that arise when reforms look like they are being imposed from abroad.

A good example of the payoffs from a longer-term approach is the successful effort to persuade ordinary citizens in Ukraine that the legal system can be an ally in the pursuit of human rights. After the Soviet experience, most Ukrainians were deeply cynical about courts, viewing them as just another form of government power. Yet, in Europe, such bodies play a central role in ensuring rights. This is especially true at the supranational level, where one has the European Court of Human Rights (ECHR). Beginning four years ago, several governments and regional organizations began an educational campaign in Ukraine, distributing information via pamphlets and on the Internet that explained the ECHR and the procedures for appealing to it. Partly as a result, the number of appeals to the ECHR from Ukraine has increased by nearly 100 percent during the past 18 months. By early 2002, the court will render its first decisions, and is expected to rule against the Ukrainian government in several cases concerning nonpayment of salary and other social benefits.

Policy Instruments

Not only did policy objectives change in welcome ways, but the instruments used to attain them have also evolved. Early on, there was a tendency to rely on soft methods, such as persuasion, lectures, and sharing of expertise, for promoting human rights in Ukraine. This was especially true of the Council of Europe, the main European rights institution. The CE's approach through 1996 was gently to prod Ukraine toward compliance with basic rights standards. In many cases, however, this did not happen, leading both Strasbourg and other international actors to shift gears.

Now, Western policy toward the promotion of rights in Ukraine employs a mix of both soft and hard instruments, with the latter including overt efforts at pressuring the country. The change in policy has been salutary, leading to several key improvements in Ukraine. Consider the case of the death penalty. For many in the United States, considering a prohibition on capital punishment as a fundamental human right may seem odd; however, in Europe such a norm has become deeply embedded in the legal fabric. Despite this fact, in 1996–1997, Ukraine was second in the world in carrying out death sentences. What to do? The initial strategy by both the CE and European governments was to employ soft instruments such as seminars and publicity campaigns to convince Kyiv that rule-of-law polities do not execute their own citizens. These efforts had minimal effect, leading Ukraine to place a moratorium on further executions while doing nothing to remove death-penalty statutes from its legal codes.

Only when arm twisting complemented this gentle prodding did qualitative changes occur, with Kyiv in late 2000 outlawing and declaring unconstitutional the death penalty. The arm twisting included explicit threats from the Council of Europe to suspend Ukraine's membership in that body, as well as a regional campaign organized by nongovernmental organizations to shame Kyiv.

The policy lesson to draw is not that hard instruments should be favored over soft. Rather, a careful reconstruction of the case reveals that the application of both soft and hard strategies was key in leading to the desired outcome. Different instruments reached different segments of Ukrainian society and did so in differing ways. In some instances, they affected cost/benefit calculations, while, in others, they influenced the very way in which individuals thought about

capital punishment. Moreover, this mix allowed the international community to reach beyond state decisionmakers—most importantly to the courts, where the Ukrainian Constitutional Court played a central role, and to civil-society activists.

European governments and regional organizations have thus relearned in Ukraine a lesson driven home in many other contexts. If the international community wishes to bring about sustainable, long-term change in a particular country, it needs to employ a multifaceted compliance strategy, seeking to change not only near-term behavior and choices, but social practice and institutions as well.

Clear, Robust Norms Are Always Better

The successful case of outlawing the death penalty indirectly highlights a third policy lesson. The mixed strategy highlighted above works best when the human-rights standards it seeks to promote are clear and robust. By clear, I mean codified in international/regional legal statutes; by robust, I mean shared by a wide range of the relevant states and regional organizations. The death penalty met both criteria, with its prohibition enshrined in the CE's European Convention on Human Rights and with virtually all European states strongly supporting the ban.

Now, consider freedom of the press, where the international community also sought to employ a multifaceted compliance strategy to bring about progressive change in Ukraine. Here, the relevant norms are less clear, in part because states have honest disagreements on what constitutes an open and free press. For example, they disagree over how much state support and subsidization are consistent with media independence. As a result, when the CE and other European states sought to pressure and convince Ukraine on this issue, the efforts were not successful. Instead, media freedom remains a serious problem—a fact sadly driven home by the still unresolved murder of journalist Heorhiy Gongadze.

There's No Place Like Home...Err, Europe

A final policy lesson concerns the importance of Europe when promoting rights in Ukraine and other transition states. Of course, at a basic level, Europe has to matter. Policymakers in Kyiv and elsewhere never tire of stating that creating a democratic, rule-of-law polity is a necessary step in the process of "rejoining Europe." However, Europe matters in a much more specific way as well, specifically membership in various regional organizations and, especially, in the EU. When one considers two groups of countries in Eastern Europe and the former USSR—those with membership in the Council of Europe who have a real chance of early membership in the EU (for example, Poland, Hungary, and Slovakia); and those with CE membership but no realistic possibility of EU membership (Romania, Ukraine, and Russia)—a striking pattern emerges. When it comes to compliance with core European rights standards, the record of the first group is good and getting better, while that for the second is at best holding steady.

For sure, simple material facts partly explain this divergence. EU membership brings with it increased possibilities for trade, as well as access to its various financial resources (regional funds, agricultural subsidies, etc.). On a cynical read, the rights record of the first group is improving because it wants access to these goodies. However, on a less cynical read, an increasingly evident normative commitment by both the European Union and the Council of Europe to the promotion of basic rights, with the biggest changes on the part of the EU also explains the divergence. In its negotiations with applicant countries, the EU now insists on

compliance with the basic norms and treaties of the CE. Moreover, it has begun to elaborate its own human-rights mechanisms—in particular, the Charter of Fundamental Rights and Freedoms decreed at the Nice Summit of December 2000.

What are the policy implications of these developments for Ukraine—a country with virtually no chance of EU membership and a so-so record on rights? The West should do all it can to minimize the appearance of new dividing lines, for example, along the Polish-Ukrainian border as Poland gears up for EU membership in 2004 or 2005. In particular, the EU should make clear to Ukraine that it both cares about rights and about having a strong bilateral relationship, even if it stops well short of full membership.

Conclusions

Ten years after independence, Ukraine's record on human rights is not what either the Western community or many Ukrainians would desire. In large part, this outcome must be attributed to dynamics internal to the country, including failures of political leadership, an ill-informed and at times corrupt administrative apparatus, and a civil society with a seemingly ingrained sense of passivity.

Yet, if the analysis presented here is correct, we should not paint an excessively gloomy picture of the rights situation in Ukraine, nor should we try to locate all the blame in one place. A better appreciation of the baseline from which the country started suggests real, if uneven, progress in several areas. Just as important, the Western community needs to recognize that its policies on rights compliance in Ukraine have not always been optimal. The experiences and disappointments of the past decade provide abundant lessons for the West as well.