CHARLES UNIVERSITY

FACULTY OF SOCIAL SCIENCES

Institute of International Studies

Department of Russian and East European Studies

Master's thesis

2018 **Jáchym Srb**

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Lustration laws in Ukraine:
Between post-communism and post-authoritarianism

Master's thesis

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Study programme: BECESC

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Year of defence: 2018

Declaration

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that the thesis has not been used to obtain any other academic title.
3. The author fully agrees to his work being used for study and scientific purposes.

Prague, 10 May 2018 Jáchym Srb

References

SRB, Jáchym. *Lustration laws in Ukraine: Between post-communism and post-authoritarianism,* Prague, 2018. 95 pages. Master's thesis (Mgr.) Charles University, Faculty of Social Sciences, Institute of International Studies. Supervisor PhDr. Jan Šír, Ph.D.

Length of the thesis: 138 965 characters

Abstract

The master thesis examines the phenomenon of lustration laws in Ukraine as a legal measure of transitional justice. It maps the history of unsuccessful attempts to adopt lustration laws from the independence in 1991 until the Euromaidan revolution in winter 2014. It then analyses the two lustration laws adopted in 2014 and their implementation between years 2014 and 2017. Finally it analyses the legal review that the laws have faced or are likely to face in the future. It comes to a conclusion that Ukrainian laws were not adopted after the independence in 1991 because of structural reasons and after the Orange Revolution in 2004 due to a lack of political will. In the second part, the thesis concludes that Ukrainian lustration laws adopted after Euromaidan were some of the most extensive ones in the region of post-communist Europe. Nevertheless, their implementation fell short of meeting most of their goals. In the third part, the thesis concludes that the laws might be spared constitutional review, but they are likely to face a negative scrutiny before the European Court of Human Rights.

Abstrakt

Diplomová práce zkoumá fenomén lustračních zákonů na Ukrajině jako prostředku "tranziční spravedlnosti" (transitional justice). Práce nejprve mapuje historii neúspěšných pokusů o přijetí lustračních zákonů od nezávislosti Ukrajiny v roce 1991 po události Euromajdanu v zimě roku 2014. V následující části práce analyzuje dva lustrační zákony přijaté roku 2014 a jejich implementaci mezi roky 2014 a 2017. V závěrečné části se práce věnuje právnímu přezkumu těchto zákonů jak vnitřními tak vnějšími institucemi. Práce dochází k závěru, že po roce 1991 nebyly lustrace přijaty ze strukturálních důvodů a po roce 2004 bylo jejich nepřijetí způsobeno nedostatkem politické vůle vládnoucích politiků. Ve druhé části práce dochází k závěru, že lustrační zákony přijaté roku 2014 jsou jedny z nejrozsáhlejších v post-komunistické Evropě, nicméně jejich implementace skončila ve většině ohledů neúspěšně. V poslední části práce dochází k závěru, že zákony trpí řadou právních nedostatků a jako takové jsou vystaveny riziku negativních soudních rozhodnutí pře Evropským Soudem pro Lidská Práva.

Keywords

lustrations, transitional justice, Ukraine, Euromaidan, screening, vetting, de-communisation, corruption, Yanukovych, Venice Commission, ECHR

Klíčová slova

lustrace, tranziční spravedlnost, Ukrajina, Euromajdan, prověrky, dekomunizace, korupce, Janukovyč, Benátská Komise, ESLP

Český název práce: Lustrační zákony na Ukrajině: Mezi post-komunismem a post-autoritarismem

Acknowledgement

The author is grateful especially to his supervisor, Jan Šír, for his thoughtful comments and meticulous corrections, to all the people who offered their help with the thesis, and to his parents, who generously tolerated his presence in the family house during the laborious months of finishing the writing.

TEZE Diplomové práce
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Semestr: zimní
Akademický rok: 2016/2017
Název práce: Lustration laws in Ukraine: Between post-communism and post-authoritarianism
Předpokládaný termín ukončení (semestr, školní rok): **letní, 2017/2018**
Vedoucí diplomového semináře: Doc. PhDr. Luboš Švec, CSc., PhDr. Kateřina Králová, Ph.D.
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V čem se oproti původními zadání změnil cíl práce? Oproti původnímu projektu jsem upustil od snahy práci pojmout jako komparativní studii, která by srovnávala různé aspekty ukrajinských lustrací a lustrací jiných středo- a východoevropských států. K této změně mě vedl jednak problém krátkého trvání lustračních procedur na Ukrajině a tím způsobené omezené množství empirického materiálu ke zkoumání, neméně důležitě však také příliš rozsáhlý původní záměr, který by při kvalitním zpracování výrazně přesahoval rámec diplomové práce. Práci tedy pojmu jako případovou studii, kde část komparační bude spadat do kapitoly kontextualizace ukrajinských lustrací: budou zde srovnány s lustracemi provedenými ve státech střední evropy a některých bývalých státech SSSR.
Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu? Časové a teritoriální vymezení zůstává beze změny - práce by se měla zabývat Ukrajinckými lustracemi, teritoriálně je tedy vázána na území Ukrajiny (s výjimkou Krymu, kde od r. 2014 Ukrajina fakticky nevykonává státní moc). Časově se práce zaměří na období mezi začátkem roku 2014 a koncem roku 2017 (k druhému okamžiku se bude vázat ukončení sběru dat).
Jak se proměnila struktura práce (vyjádřete stručným obsahem)? Podle mých současných představ by měla být struktura práce následující: **1.** Úvod (a) Zhodnocení zdrojů, b) metodologie výzkumu) **2.** Koncept lustrací a tranziční spravedlnosti (transitional justice) ve středoevropském a východoevropském kontextu **3.** Ukrajinské lustrace (a) politický a historický kontext vzniku ukrajinckých lustrací, b) tři cíle ukrajinských lustrací - analýza lustrační legislativy d) implementace lustračních zákonů v rozmezí let 2017-2018 **4.** Ukrajinské lustrace v kontextu mezinárodního a ústavního práva **5.** Závěr (a) zhodnocení výzkumu, b) praktické využití výsledků výzkumu

Jakým vývojem prošla metodologická koncepce práce?

Ustoupil jsem od představy čistě koparativní studie, která by srovnávala právní akty v jednotlivých zemích, které provedly po roce 1989 lustrace, a zároveň by zkoumala, jak byly tyto akty vykonávány. Místo toho jsem se rozhodl zvolit metodu více syntetickou - pohlédnout na ukrajinské lustrace z vícero zorných úhlů - politického, právního a komparativního. Tento přístup ospravedlňuje především novost tématu a relativní nedostatek informací jak v české tak v zahraniční literatuře; to vše vybízí spíše k širšímu pojetí tématu, než k hlubší analýze jednotlivostí.

Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?

Do chvíle odevzdání tohoto dokumentu byl nově zpracován článek Evgenie Leziny: Evgenia Lezina, "Ukarainskaya lyustracia. Dva goda spustya," *Vestnik obshestvennovo mnenia* 122, No. 3-4 (July/December 2016): 170 - 180. Práce nadále vychází především z primárních pramenů, tj. lustrační legislativy na Ukrajině (a pro účely srovnání v jiných státech regionu), ragistru návrhů zákonů, databáze stenoprotokolů plenární debaty v Ukrajinském parlamentu a databáze rozhodnutí ESLP. Jako sekundární zdroje práce bude vycházet především z odborných publikací o lustracích a tranziční spravedlnosti (David, Horne, Stan, Nedelsky, Bezák, Kosař).

Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech):

Hlavním pokrokem v práci byla změna metodologické koncepce práce a její celkové podoby, kerá vzešla z debaty o projektu v rámci diplomového semináře I. Jednotlivé změny jsou popsány výše v tomto dokumentu.

Podpis studenta a datum:

Schváleno:	**Datum**	**Podpis**
Vedoucí práce		
Vedoucí diplomového semináře		

Table of Content

List of Abbreviations

ECHR - European Court of Human Rights

ILO - International Labour Organisation

KPU - Communist Party of Ukraine

KPSU - Communist Party of the Soviet Union

KGB (in Ukrainian KDB) - Soviet internal secret service

SBU - Ukraine's internal secret service

CEE - Central-East Europe

CCU - Constitutional Court of Ukraine

HCJ - High Council of Justice

HQCJ - High Qualification Council of Justice

ATO - counter-terrorist operation in the East Ukraine

Note on translations

The names of political parties, public institutions, and laws are used in their English translation with the exception of Verkhovna Rada (Ukrainian parliament), which in english literature mostly appears in transliteration to latin script. Concerning the terms, where the English translation is not yet established, this thesis draws from the translation used by the Venice Commission; however, it recognises that other versions are being used. For example the law on "Government Cleansing" (as translated by Venice Commission) can be often found in English texts as the law on "Purification of Power." In the bibliography, all laws and other legal acts are listed in their English translation and in transliteration of their original name. Legal terms for normative acts are used in the translation listed below:

Закон - law

Наказ - order

Указ - decree

Постанова - regulation

Пояснювальна записка - Explanatory memorandum

Законопроект - draft law

Introduction

In February 2014, a revolution widely known as Euromaidan, or Revolution of Dignity, spelled end to the four year rule of Victor Yanukovych in Ukraine. After a subsequent government reshuffle a series of reform steps took place, among them the introduction of lustration laws. These laws aimed to address the problem of personal continuity of officials compromised by their past actions in the public institutions of the newly reasserted democracy. Through these laws, persons posing threat to the democratic direction of the country should have been prevented from holding or entering key positions within the state and other public institutions.

The concept of lustrations is not novel both in the context of Ukraine and in wider context of post-communist Europe. After the fall of communist regimes, many states, predominantly in the Central-East Europe (CEE), introduced some kind of lustration measures. Even in the history of independent Ukraine, there have been unsuccessful attempts prior to Euromaidan to adopt lustrations addressing past communist abuses of power. However, the lustrations were only adopted in 2014 representing a fusion of the old approach and new content. They copy the form of lustration laws adopted in other states but address wider array of past abuses, not always linked to the Ukrainian Soviet past. As such, they put another figurative puzzle on the lustration map in post-communist space.

The thesis seeks to explain the phenomenon of lustrations in Ukraine, which has not been thus far explored in depth in the academic literature. Two articles concerning the Ukrainian lustrations appeared in the anthology on post-Soviet transitional justice published in January 2018,[1] one by Cynthia Horn and the other by Roman David. Both of them focus merely on the legal side of lustrations, without analysing their genesis or implementation. Although this thesis uses these articles, it strives to go further. Its aim is fourfold: to introduce Ukrainian lustrations in the broad historical context of their conception, mapping their roots in the previous unsuccessful legislative attempts in

[1] Horne, Cynthia and Lavinia Stan (Eds.), *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking toward the Future,* (Cambridge: Cambridge University Press, 2018).

Ukraine; to analyse the content of the lustration laws and contextualise it using lustration laws adopted in the CEE states; to analyse their implementation; and to analyse the external legal review they have faced or are likely to face in the future. As such, the thesis has the ambition to offer a comprehensive text which could serve as a basic literature on the topic of Ukrainian lustrations.

The organisation of the text follows the outlined aims. In the first chapter, it will introduce concepts of transitional justice and lustrations. In the second chapter, it will examine the history of legislative attempts to introduce lustrations and the history of power abuses of Yanukovych regime, which formed the content of lustrations. In the third, seminal, chapter, it analyses the content of the lustration laws adopted after Euromaidan and their implementation. In the final chapter, it analyses the constitutional and international legal review of the laws and the judicial challenges the laws will face in the future.

Methodology and research design

The thesis is an intrinsic case study, explaining the phenomenon of lustrations in Ukraine. It therefore does not have the ambition to generalise or modify existing theories about lustrations in post-communist Europe, although it occasionally comments on discrepancies between existing lustration theories and Ukrainian lustration experience. Based on a preliminary study of the topic, the explanation of the phenomenon was formulated in four research questions: Why in Ukrainian case it took so long to adopt lustrations after the fall of communism compared to other post-communist European states? What objectives do Ukrainian lustrations pursue and what makes them distinctive? Have they been successful in meeting these objectives? Do the lustrations meet national and international legal standards?

To answer these questions the study has had to apply an interdisciplinary methodology, generally framed by the *law and society* approach. This approach, which borrows tools of social sciences to study normative acts, examines the law not only as a self-contained normative matrix, but examines in its social, political and historical

context.[2] The respective methodological approaches used in this text vary according to the studied subject.

In the history chapter, the thesis draws largely from analysis of the draft lustration laws submitted to Verkhovna Rada on several occasions prior to 2014 and from transcripts of parliamentary debates, where the topic of lustrations had been discussed. It puts these lustration attempts on a historical line of Ukraine's post-Soviet political development. It also examines what parts of the submitted lustration drafts made their way into the lustration laws adopted after Euromaidan.

In the central chapter, focused on the lustration laws adopted after Eurmaidan, the thesis contains legal analysis of the lustration laws based on a framework developed by authors like Inga Švarca,[3] Roman David,[4] Brian Grodsky,[5] or Tomáš Bezák[6] for analysis of post-communist lustration in CEE countries. It analyses the lustrations based on their "protected positions," "prohibited positions," "temporal scope," and "procedure." All these terms are further elaborated in the introduction part of the chapter. In addition, the thesis uses lustration laws of other post-communist European states to pinpoint the main specifics of the Ukrainian lustrations.

In the subchapter focused on implementation of lustration laws, the thesis uses qualitative tools, comparing data measuring the numbers of lustrated persons between 2014-2017 and the surveys examining public attitudes with the official goals of lustrations. The dataset, containing among others numbers of lustrated and dismissed

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[2] Kitty Calavita, *An Invitation to Law and Society* (Chicago: University of Chicago Press, 2010), 3-4.

[3] Inga Švarca, „Transitional justice mechanisms applied by Latvia in its transition from communist regime," *Hitotsubashi Journal of Law and Politics č.* 40 (2012).

[4] Roman David, „Transitional Injustice? Criteria for Conformity of Lustration to the Right to Political Expression," *Europe-Asia Studies* 56, č. 6 (2004), Roman David, „Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)," *Law & Social Inquiry* 28, č. 2 (2003).

[5] Brian Grodsky, „Beyond Lustration Truth-Seeking Efforts in the Post-Communist Space," *Taiwan Journal of Democracy* 5, č. 2 (2009).

[6] Tomáš Bezák, „Posttranzičná spravodlivosť v regióne stredovýchodnej Európy," *Sociológia* 43, č. 4 (2011).

individuals, was gathered from the public registers with the aid of cURL software (and under generous guidance of author's IT savvy friends).[7]

In the last chapter, focused on the legal review of the laws, the thesis uses legal analysis of the decisions of CCU, opinions of Venice Commission and past judicial decisions of the European Court of Human Rights against others post-communist countries in the cases concerning lustrations to draw conclusions about the legality of the Ukrainian lustration laws. The author acknowledges that the outlined approach may be perceived as too disperse for the genre of master thesis but he firmly believes it is legitimised by the minimal presence of the topic of Ukrainian lustrations in the academic literature.

Review of primary sources and literature

Primary sources for the thesis have been mostly Ukrainian official documents. These include laws and other normative acts such as orders or decrees (accessed mostly from the official online database of legal acts at web pages of Verkhovna Rada),[8] transcripts from plenary debates in Verkhovna Rada between 1991 and 2016,[9] draft laws submitted to legal procedure during the same period,[10] registers of lustrated persons accessible at the web pages of the ministry of justice,[11] and official documents of the Ukrainian Constitutional Court (CCU). The thesis also drew from the laws of other other post-communist states, judicial decisions of the ECHR (accessed from the HUDOC database),[12] opinions of the Venice Commission and the International Labour Organisation. As unofficial primary sources, the thesis makes use of public surveys conducted in Ukraine measuring trust in public institutions conducted mostly by Razumkov Center, and Transparency International's corruption perception indexes. All these materials are publicly accessible at the internet from the databases of named

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[7] Freely accessed at https://curl.haxx.se/download.html.

[8] "Zakonodavstvo Ukrayiny, poshuk za rekvizytamy," http://zakon2.rada.gov.ua/laws/a#Find.

[9] "Stenohramy plenarnykh zasidan′ 1991 - 2017," http://iportal.rada.gov.ua/meeting/stenogr.

[10] "Poshuk zakonoproektiv, zareyestrovanykh Verkhovnoyu Radoyu Ukrayiny" http://w1.c1.rada.gov.ua/pls/zweb2/webproc2.

[11] "Yedynyy derzhavnyy reyestr osib, shchodo yakykh zastosovano polozhennya Zakonu Ukrayiny Pro ochyshchennya vlady," https://lustration.minjust.gov.ua/register, "Vidomosti pro stan prokhodzhennya perevirky," https://lustration.minjust.gov.ua/main/checking.

[12] Database of ECHR official documents, https://hudoc.echr.coe.int/eng.

institutions.[13] Certain methodological problem is posed by the laws, which can undergo changes in time (law under same name can have different content in different time period). We confront this problem by always mentioning amendments to the examined laws if they alter the normative content in a substantial way. Otherwise, the laws are considered in the form corresponding to their time of adoption.

The thesis operates with secondary sources mainly in the theoretical parts and in the chapter mapping history of Ukrainian lustrations.[14] Concerning the basic time frame of post independence Ukraine it uses book *Dějiny Ukrajiny*.[15] For mapping the progression of Euromaidan and the political and military development in the eastern regions of Ukraine after Euromaidan, the thesis draws from Andrew Wilson's *Ukraine Crisis*.[16]

For the theoretical part, to explain general concepts of lustrations and transitional justice in the post-communist Europe, the thesis draws mostly from the articles analysing lustrations in other post communist states. Most notable authors from this group are Roman David and Cynthia Horne, who during past two decades published several articles on lustrations in CEE states and who also published perhaps the only two academic articles in English concerning lustration laws adopted in Ukraine. As the thesis in the analytical part uses similar framework as Roman David, it quotes his article often to distinguish ideas first expressed by him.[17] Another academic article focused on Ukrainian lustrations was published by Evgenia Lezina in Russian sociological journal Russian Public Opinion Herald (Vestnik Obshchestvennogo Mneniya) published by Levada Center. The thesis draws from this article mostly in the

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[13] Database of sociological surveys, *Razumkov Center,* http://razumkov.org.ua/napryamki/sotsiolohichni-doslidzhennia, Corruption perception index 2013-2017, *Transparency International,* https://www.transparency.org/research/cpi/overview.

[14] See chapter "Long path to Ukrainian lustrations".

[15] Jan Rychlík, Bohdan Zilynskyj, and Paul R. Magocsi, *Dějiny Ukrajiny* (Praha: Nakladatelství Lidové noviny, 2015).

[16] Andrew Wilson, *Ukraine Crisis: What it Means for the West,* (New Haven: Yale University Press, 2014).

[17] Roman David, "Lustration in Ukraine and Democracy Capable of Defending Itself" in *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking toward the Future,* eds. Cynthia Horne and Lavinia Stan, (Cambridge: Cambridge University Press, 2018).

parts dedicated to the lustration of judges.[18] For the subchapter about the implementation of lustration law in Ukraine, the thesis uses reports from NGOs (Mostly Open Dialog Foundation) and newspaper articles (Mostly Kyiv Post and Ukrayinska Pravda), which map infringements of the lustration law.[19]

1. Conceptual background

1. Transitional justice

The thesis often operates with the term transitional justice, which describes a wide set of measures, often including lustrations, which the states adopt to deal with past abuses of a toppled undemocratic regimes. According to the report by UN Secretary General "the notion of transitional justice […] comprises full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation."[20] In the post-communist Europe, the term transitional justice mainly referred to the measures connected to the transfer from communist to democratic regime, but it has also been applied to other types of transition. Such was the case of the countries of former Yugoslavia, where the term transitional justice mostly refers to the measures taken after the end of Balkan wars in the 90s and most usually to the acceptance of the jurisdiction of ICTY (International Criminal Tribunal for the former Yugoslavia).[21]

Inga Švarca distinguishes between two main branches of transitional justice: criminal sanctions aimed against individual wrong-doers and non-criminal ones, such as lustrations, institutional reforms, truth seeking, reparations (pecuniary and non pecuniary) and reconciliation.[22] Historically, the prosecution of past crimes was mostly

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[18] Evgenia Lezina, "Ukarainskaya lyustracia. Dva goda spustya," *Vestnik obshestvennovo mnenia* 122, No. 3-4 (July/December 2016).

[19] https://www.kyivpost.com, https://www.pravda.com.ua, http://en.odfoundation.eu.

[20] "The Rule of Law and Transitional Justice in conflict and post-conflict societies" *Report of the Secretary General, (published 24. 8. 2004)* https://www.un.org/ruleoflaw/files/2004%20report.pdf (accessed 1. 6. 2017), 4.

[21] Brian Grodsky, "Transitional justice and political goods" in *Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience*, eds. Lavinia Stan and Nadya Nedelsky (Cambridge: Cambridge University Press, 2015), 13, 16.

[22] Švarca, „Transitional justice mechanisms," 72.

done through derogation of statutes of limitation on certain crimes. Such has been the case of Poland,[23] Latvia[24] or the Czech Republic, where it was achieved by a law on the Illegality of Communist Regime, which symbolically condemned the communist regime and abolished statute of limitation for crimes committed with the political cover of the Communist party.[25] The non-criminal measures mostly included symbolical condemnation of the past regimes (through laws and political declarations), restitutions of property, opening of archives,[26] creating various institutes of national memory (such as those in Poland, Czech Republic or Slovakia) and also lustrations.

In the Ukrainian case, the concept of transitional justice can be applied to two periods. First was after Ukrainian transit from a Soviet republic to an independent state in 1991 (post-communist period); the second one was following the Euromaidan. This paper is based on a premise that the Euromaidan revolution in 2013-2014 was a transformative moment for Ukraine. It succeeded in toppling an undemocratic regime of Victor Yanukovych with the aim to establish a more democratic regime and thus Ukraine became a country in transition. Some scholars even call this moment the "second transit."[27] Some of the measures which could be described as "transitional justice" were adopted already between 1991 and 2013 following the "first transit." However, for reasons explained in the second chapter, none of them reached the intensity of the transitional justice measure applied in the CEE countries. Only after Euromaidan, a broad range of transitional justice measures has beed adopted, with the aim of cutting off symbolic, legal and personal ties with both the Yanukovych regime and the more distant Soviet past.

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[23] Boleslaw Banaszkiewicz, "Ústavněprávní kontexty vyrovnání se s totalitní minulostí v Polsku" in Vladimír Klokočka, *Ústavněprávní kontexty vyrovnání se s totalitní minulostí ve státech střední Evropy: sborník příspěvků z Konference středoevrospkých ústavních soudů* (Praha: Linde, 2003), 48.

[24] Švarca, „Transitional justice mechanisms," 71.

[25] Law on the Illegality of the Communist Regime 198/1993 Sb., art. 5, (Zákon o protiprávnosti komunistického režimu a o odporu proti němu).

[26] Law on the Access to the Documents of Former National Secret Service, 140/1996 Sb., (Zákon o zpřístupnění svazků vzniklých činností bývalé Státní bezpečnosti), Law on the access to the documents of secret services Dz.U. 2017 poz. 2186, (O ujawnianiu informacji o dokumentach organów bezpieczeństwa państwa z lat 1944–1990 oraz treści tych dokumentów).

[27] Evgenia Lezina, "Ukarainskaya lyustracia," 171.

While this paper will focus only on lustrations, other transitional measures have been adopted alongside of them in the aftermath of Euromaidan. To name just a few, in 2015, law on the *Condemnation of Communist and Nazi regimes* was signed by president Poroshenko. It makes a historical statement about the criminal nature of the communist and Nazi totalitarian regimes[28] and calls on the state to investigate the crimes of the above regimes and make educational efforts to inform the public about their atrocities.[29] The law also bans propaganda and public display of symbols of the above regimes such as sickle and hammer.[30] According to a memo by Institute of National Remembrance, by the end of December 2016 as many as 51 493 streets and 987 towns and villages were renamed, and 1 320 Lenin statues and 1 069 statues of other communist figures were put down.[31] Other similar laws were passed with the aim to break from the Soviet past and from Soviet (and currently Russia's) narrative of Ukrainian history.[32]

2. Lustrations

The term "lustration" comes from the latin word *lustro* which means "to illuminate" or "to review something". It was paradoxically used already before 1989 by Czechoslovak police for reviewing whether the "lustrated" person was in the police records.[33] After fall of communist regimes in Europe, the connotations of the term changed substantially. According to the Encyclopedia of Transitional Justice, "lustration —a form of vetting—describes the broad set of parliamentary laws that restrict members and collaborators of former repressive regimes from holding a range of public offices, state management positions, or other jobs with strong public influence (such as in the media or academia) after the collapse of the authoritarian regime."[34] The most

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[28] Law on the condemnation of the Communist and Nazi regimes, (ВВР), 2015, No 26, ст.219. preamble and art. 2. (Pro zasudzhennya komunistychnoho ta natsional-sotsialistychnoho (natsyst·s′koho) totalitarnykh rezhymiv v Ukrayini ta zaboronu propahandy yikhn′oyi symvoliky).

[29] Ibid., art. 5.

[30] Ibid., art. 3 and 4.

[31] "Ponad 50 tysyach vulyts′ zminyly nazvy vprodovzh 2016 roku," Official site of the Institute of NationalRemembrance, http://www.memory.gov.ua/news/ponad-50-tisyach-vulits-zminili-nazvi-vprodovzh-2016-roku (accessed 1. 12. 2017).

[32] Alexander J. Motyl, "Facing the Past. In Defence of Ukraine's New Laws," World Affairs, vol. 178, No. 3 (2015), 58-66.

[33] David, „Lustration Laws in Action," 387, 388.

[34] Monika Nalepa, "Lustration," in *Encyclopedia of Transitional Justice,* Lavinia Stan and Nadya Nedelsky, eds. (New York: Cambridge University Press, 2013), 46.

mentioned objectives for lustrations are threefold: protection of the democratic institutions from exponents of former regime whose loyalty to democracy is in doubt; preventing the possible extortion of high public officials through secret files evidencing their collaboration; and the demand for public knowledge of the past of individuals with public authority.[35]

As such, lustrations are situated somewhere between criminal process and verification process for public employees, common to established democracies. Same as in criminal process, there is an aspect of past wrong that has to be legally mended. Lustration is also seen by some as a retributive tool. Unlike criminal process, lustration allows for rapid procedure without legal guarantees of criminal process, it does not entail criminal sanction (imprisonment, sanctions on property) and it does not necessarily operate with culpability. The difference between lustrations and ordinary labour laws for public employees—which can also limit some of the fundamental rights—is the connection of lustrations to recent democratic transition following the end of rule of the previous non-democratic regime.

This paper shall adhere to the above definition, considering lustrations as a legal measure, restricting some members of former regime from entering certain positions of public importance in the current, more democratic regime, for a defined period of time. However, it must be noted that there is not a terminological consensus. Other sources often define lustrations in a more extensive way, including measures aimed merely at publication of names of former perpetrators (mostly secret service agents and collaborators), or naming the crimes of the undemocratic regime (closer to the original sense of *lustro)*.[36] It must also be noted that while there is a consensus on which laws in Ukraine are the lustration laws, the word "lustration" has been used also in other

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[35] Kieran Williams, Aleks Szczerbiak, and Brigid Fowler, „Explaining Lustration in Eastern Europe: 'A Post-communist politics approach'," *SEI Working Paper* no. 62 (2003), 9-10.

[36] Bezák, „Posttranzičná spravodlivosť", 423, Natalia Letki, „Lustration and Democratisation in East-Central Europe," *Europe-Asia studies* 54, no. 4 (2002), 530.

contexts, most visibly during the Euromaidan protests, whereby public officials were being thrown to the trash containers in what was widely called "trash-bin lustrations."[37]

3. Retroactivity, collective guilt and militant democracy

Ukrainian lustration laws face a complex legal and ethical challenge resulting from their retroactive nature and the application of collective punishment. These two aspects, inherent to any lustration law, are generally considered incompatible with democracy and the rule of law. Explanatory memorandum to the main lustration law (on Government Cleansing*)* in Ukraine tries to conceal this reality: "The authorities, both at the central level and locally, have completely compromised themselves, since they are associated with the violation of the rights and legitimate interests of citizens, committing corrupt acts, [lustrations] will enable the formation of a public apparatus from persons who have not compromised themselves"[38] However, the text confuses terms "authorities", which is collective with "persons," which refers to individuals. Certainly not all the people in the position of public authority during Yanukovych regime, as this discourse would suggest, committed illegal or reproachable acts. In fact, lustrations largely do not attempt to establish individual guilt, but rather construct an administrative procedure which affects the guilty and innocents alike. In addition, many past acts punishable by a lustration ban were not illegal at time they were issued. In this way, the legislators tried to eschew the debate on the problems of retroactivity and collective punishment and to avoid explaining, what exactly legitimises such an indiscriminate approach.

The question of retroactive nature of lustrations appeared with the introduction of lustration laws in the post-communist European states. In the Czech Republic, the lustration law was object of a fierce debate among constitutional lawyers, historians and social scientists. While some, such as Jiří Příbáň, saw it as a retroactively applied administrative sanction punishing past actions during communist regime,[39] others,

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[37] Yana Polyans′kaa, "Lyustratsiya cherez shturkhany ta smittyevi baky" *Radio Free Europe, (Published 1 October 2014)*, https://www.radiosvoboda.org/a/26614181.html (accessed 14 2. 2018).

[38] Explanatory memorandum to the law on Government cleansing, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51795 (accessed 31. 11. 2017).

[39] Jiří Přibáň, "Ústavnost a retroaktivita ve střední Evropě: teoreticko-historická reflexe," *Trestní právo* 12/2002, VII., 4.

among them Constitutional Court judge Kateřina Šimáčková or Jiří Kozák, considered it a prospective condition for employment in public office, comparable to the requirement of clean criminal record.[40]

The discussion about the nature of lustrations as a collective punishment has also not been settled. Lustrations certainly affects collectives of people defined by general traits (members of Communist party/KGB/holders of certain office) and not by individual actions, but there isn't a general agreement as to whether the lustration ban should be considered as a punishment. According to Letki, lustrations constitute a prospective measure aimed to help democratic institutions,[41] whereas Grodsky opines that they clearly amount to a punishment.[42] It seems that these differences in opinion stem mostly from the perception of the underlying purpose of lustrations. If one sees them as a retributive tool and takes the perspective of lustrated officials, lustrations will seem as retroactive and employing collective punishment. From the perspective of the protected institutions, it seems rather like a prospective measure. It is nevertheless uncontentious that lustrations negatively affect individuals, some of whom might be innocent both by legal and moral standards.

To reconcile the un-democratic nature of lustrations with their pro-democratic aims authors most often resort to the concept of "militant democracy" (or "democracy capable of defending itself" - term used by the ECHR). This concept was developed in the U.S. during the late 1930s by Karl Loewenstein and was based on an observation of the gradual breakdown of Weimar Republic.[43] As its main argument stands, in order to prevent or resist undemocratic tendencies, a state might resort to measures which interfere with the exercise of individual human rights, such as freedom of expression, association, or a fair trial; these measures in themselves being undemocratic. After 1989, the concept of militant democracy has been reiterated in three lustration cases of

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[40] Šimáčková: K některým otázkám retroaktivity. In *In dubio pro liberate,* Pospíšil, Kokeš eds. (Brno:Masarykova Univerzita, 2009)*, Jiří* Kozák, *Právo na pomezí diktatury a demokracie: právní vyrovnání s totalitní minulostí v České republice po roce 1989,* (Praha: Auditorium, 2014) *106.*

[41] Letki, „Lustration and Democratisation," 535.

[42] Grodsky, „Beyond Lustration," 24.

[43] Karl Loewenstein, "Militant Democracy and Fundamental Rights", 31 *American Political Science Review*, 417 (1937).

the post-communist states before the ECHR.[44] Roman David argues that since Ukraine falls within the categories specified by this concept (it is a democracy and it is in need of protection because of transition and war), its lustrations are legitimate.[45] However, the concept of militant democracy does not legitimise any type of lustration, as was noted by the ECHR in the Zdanoka case[46]. It is therefore necessary to analyse the extent and implementation of the Ukrainian lustrations to assess their legitimacy.

[44] ECHR No. 58278/00, *Ždanoka v. Latvia*, ECtHR No. 17851/91, *Vogt v. Gemany*, ECtHR No. 2258/08, *Soro v. Estonia.*

[45] David, "Lustration in Ukraine", 142.

[46] ECHR No. 58278/00, *Ždanoka v. Latvia.*

2. Long path to Ukrainian lustrations

This chapter explains why, unlike in other post-communist countries of the region, no serious effort to conduct lustrations took place in Ukraine before 2014. This question is pertinent for two reasons. Firstly, it helps to answer what was the nature of regime change, followed by the transitional justice measures. Secondly, it is important from a legal standpoint, as the late application of lustration measures is considered problematic when assessing their legitimacy.[47] Further, the chapter seeks to explain, why the Ukrainian lustrations fuse several groups of prohibited positions, what were the main problems that the lustrations seek to address, and how these problems have emerged.

We argue that the reason behind late lustration in Ukraine was initially structural and later political. In the first years of independence, due to the type of regime change, personal continuity of country leadership and economic constrains, lustrations or wider personal purges in public institutions were simply unattainable. After 2004, the internal conditions changed enough to permit lustrations, but the political incompetence of president Yushchenko and the government prevented such reform from taking place. The consequent rule of Victor Yanukovych not only froze any lustration attempts for three years but also created new incentives for their adoption in 2014.

Due to their late adoption, Ukrainian lustration laws were addressing somewhat different problems than the CEE countries. Rather than an infiltration of state apparatus by former communists and members of communist security services, whose loyalty to the democratic state is in question and who might be subject to external extortion, it had to address problems such as widespread corruption of public officials or authoritarian tendencies of the overthrown country leadership. As this chapter will show, these phenomena are not isolated but rather intertwined. Personal continuity of the old nomenklatura in state institutions contributed to the later state of affairs. However, the

[47] More in the subchapter “European Court of Human Rights - future prospects”.

lustration laws treat these problems as separate categories. The final form of Ukrainian lustration laws is therefore unique, as it does not target merely the communist legacy but rather multiple lustration goals corresponding to the major problems which the country has amassed since the independence.

1. Independent Ukraine

Ukraine (Soviet republic), which in 1922 was one of the founding members of the Soviet Union, was also among the last states witnessing its breakdown in 1991. Unlike Baltic states, it had neither a credible history of pre-SSSR independence, nor political elites capable of taking over the state institutions from the communist apparatus. Since the transition from a Soviet republic to an independent state wasn't revolutionary but negotiated, the political and army elites naturally moved into the same functions of the new state.[48] The same was true with the first Ukrainian president Leonid Kravchuk. Prior to his presidency, he was a chairman in the Supreme Soviet of the Ukrainian Soviet Socialist Republic. In such a political constellation, introduction of any kind of post-communist lustration measures, similar to those which by that time were being introduced in CEE states was simply not on the table. In 1991, two legislative acts related to de-communisation transitional justice were adopted: a decree abolishing the Communist party and decree abolishing *Komitet Derzhavnoyi Bezpeky* (KDB, Ukrainian name for KGB).[49] These were however mostly superficial changes, as the people forming these institutions largely remained in the public life in the same functions and positions, only under a different name.

The only political actor with lustrations on its program was *Narodnyi Rukh Ukrainy*[50] - a former dissident protest movement with its roots in 1989, which after independence transformed into a political party. However, soon after independence in 1991, all the centre-right democratic parties were marginalised and for several years[51]

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[48] Jan Rychlík, Bohdan Zilynskyj, and Paul R. Magocsi, *Dějiny Ukrajiny* (Praha: Nakladatelství Lidové noviny, 2015), 398.

[49] Decree on banning of the activity of the Communist Party of Ukraine, (BBP), 1991, No. 44, Item 595. (Pro zaborony dijal'nosti Kompartii Ukraini), Decree on creating National Security Service of Ukraine (BBP) 1991, No. 49, item 689 (Pro stvorenia Sluzhby nacionalnoy bezpeki Ukrainy).

[50] Lezina, "Ukarainskaya lyustracia," 171.

[51] Rychlík, "Dějiny Ukrajiny," 400.

there hasn't been a relevant political actor with lustration agenda. The harsh economic reality of the newly independent state along with the shift of public support to the left and also a relatively strong position of the Communist party, legalised again in October 1993, did not create a political environment conductive to measures of transitional justice. Even as late as in 2002, the Communist party came second strongest in the parliamentary elections with 20 % of votes.

To some extent, the issue of lustrations was interconnected with the question of relations between Ukraine and Russia. On a political level, Ukraine gravitated more towards Russia, which became even more apparent during the second presidential term (2000-2004) of Leonid Kuchma, the successor of Kravchuk.[52] A large scale lustration would be likely perceived as a hostile act towards Russia, as most of the affected individuals would come from a more pro-Russian side of Ukrainian politics. On an institutional level, Russia had strong links to the security apparatus of Ukraine, including army and secret services. Without lustrations, the KGB was after independence merely renamed *Sluzhba Bezpeky Ukrainy* (SBU, Security Service of Ukraine). The former KGB agents were simply obliged to take an oath to the new country in order to remain in service.[53] As Lezina points out, the majority of newly established local branches of the Security Service of Ukraine (set up in 1992) were headed by former associates of KGB.[54] Considering the centralised nature of KGB, the loyalty of its officials to the Ukrainian state was dubious at best. The perceived entrenchment of potentially pro-Russian officials in Ukrainian security services became after Euromaidan the formal legitimisation for the de-communisation clauses in Ukrainian lustration law.

The inability of Ukraine to implement lustrations after independence was discussed also during the plenary session of Verkhovna rada (Ukrainian unicameral parliament) in September 2014, which voted through the Law on Government

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[52] Rychlík, "Dějiny Ukrajiny," 407.
[53] Julie Anderson and Joseph Albini, "Ukraine's SBU and the New Oligarchy," *International Journal of Intelligence and Counter Intelligence*, 12(3) (1999), 283.
[54] Lezina, "Ukarainskaya lyustracia," 171.

Cleansing. Some of the deputies were lamenting that "[the lustrations] should have been done immediately after independence, [before] the communists gradually became a democratic government of the state."[55] Considering the political reality described above, such complaints testify rather to wishful thinking of some of the deputies then to the possibilities of newly independent Ukraine.

2. *Unfulfilled promise of Orange Revolution*

First serious legislative attempts to proceed with lustrations and to rid the country of the Soviet (and Russian) legacy happened after 2004 in the aftermath of the so-called Orange Revolution. After the falsified presidential elections in 2004, which saw the pro-Russian candidate Viktor Yanukovych declare victory after a blatant election fraud,[56] a series of street protests ensued. They led to an annulment of the election results and calling of new presidential elections. In these elections, which proceeded under intense domestic and international scrutiny, won Viktor Yushchenko, Yanukovych's main rival. Shortly thereafter, a new pro-Western government was formed with Yulia Tymoschenko as prime minister and with a slight majority of deputies in Verkhovna rada. In this situation, the structural pre-conditions for lustrations or other types of transitional justice measures seemed to be favourable. Nevertheless, most of the legislative attempts fell short.

The Orange Revolution was at the time seen by many intellectuals as a defining moment for the future democratic direction of Ukraine. Michael McFaul, Stanford scholar and former US ambassador to Russia, assumed this revolution would be the "democratic breakthrough" which would push the country irreversibly onto a democratic trajectory and out of the orbit of Russia.[57] Later development proved him wrong. Jacques Rupnik put it to context with "colour revolutions" in other post-Soviet countries and claimed that while many of the protagonists saw it as a continuation of the revolutions in East-Central Europe in 1989 it was in fact a revolution not against

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[55] Ihor Yeremeyev (Sovereign European Ukraine party), plenary debate transcript, 16. 9. 2014 http://iportal.rada.gov.ua/meeting/stenogr/show/5696.html (accessed 31. 1. 2018).

[56] Rychlík, "Dějiny Ukrajiny," 411.

[57] Michael McFaul, Valerie Bunce, and Kathryn Stoner-Weiss, *Democracy and authoritarianism in the post-communist world,* (Cambridge: Cambridge University Press, 2010), 189.

communism but against post-communism, which can be best defined as a combination of "authoritarian power and mafia capitalism".[58] This assessment is especially poignant as the draft laws of lustrations which appeared shortly after Orange Revolution already combined de-communisation clauses with anti-corruption ones in a similar way as the lustration law finally passed in 2014.

Between 2004 and 2006, two laws were adopted pertaining to the transitional justice agenda. Firstly, the law on *Holodomor*[59] which defined the period of famine in 1932-1933 as a Soviet sponsored genocide. Along the lines of this law, a court proceeding had been initiated, which in 2009 resulted in a criminal process with Soviet leaders, by that time long dead.[60] Secondly, an Institute of National Remembrance was founded by a special decree.[61] However, the law did not give it any authority concerning lustrations, as opposed to other similar institutes, such as the one in Poland, which was charged with verifying lustration declarations of lustrated officials.[62] Both these Ukrainian laws were therefore only of symbolic nature.

In 2005, two lustration draft laws were submitted to Verhovna rada. First draft law, by Yushchenko's *Our Ukraine* and Tymoschenko's *Fatherland* reacted to the Orange Revolution. It included two components: next to the characteristic de-communisation lustration focusing on former communist functionaries and secret service agents it also contained vetting of the public service officials "involved in the falsification of the Presidential Elections in 2004, political persecution, vote-buying and pressure on voters to influence their vote, censorship […] and other violations of the

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[58] Jacques Rupnik, *1989 as a political world event: democracy, Europe and the new international system in the age of globalization,* (Abingdon: Routledge, 2014), 61.

[59] Law on Holodomor in 1932 - 1933, (BBP), 2006, No. 50, Item 504 (Pro Golodomor 1932 - 1933 rokiv v Ukrainy).

[60] "SBU obvynuvatchue Stalina u Golodomori", *Ukrainskaya Pravda, (published* 23 December 2009), https://www.pravda.com.ua/news/2009/12/23/4562267 (accessed 1 December 2017).

[61] Regulation of the Cabinet of Ministers on Institute of National Remembrance, 2006, No. 927 (Pro zatverdzhennya Polozhennya pro Ukrayins′kyy instytut natsional′noyi pam'yati).

[62] Law on disclosure of work or service for state security bodies or cooperation with them in the period between 1944-1990 by persons performing public functions, Dz.U. 1997, no. 70 poz. 443, (O ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne).

electoral legislation."[63] Thus the law already included not only de-communisation rationale but also anti-Yanukovych rationale. Second draft law, introduced by the nationalist *Freedom* party,[64] contained only de-communisation provisions banning communist leaders, secret agents and their informers from occupying certain state positions.

Both draft laws were met with a strong opposition from Yanukovych's *Party of Regions* and from the Communist party. More striking is the fact that lustrations did not have a unanimous support from the governing parties. Yushchenko himself did not support the implementation of lustrations,[65] allegedly because he was aware of how many of his own colleagues were former KGB collaborators.[66] In the end, no lustration law had been adopted before the parliamentary elections in 2006. In that election, Yanukovych's P*arty of Regions* emerged victorious and although several attempts on passing lustration laws (including anti-corruption clauses)[67] were made after that, none had any chance of success.

If initially the structural preconditions were the major obstacle to implementation of lustrations, between 2004 and 2006 it was more due to the decision of ruling political elites not to pursue a lustration path. Shift towards democracy was not fostered by an institutional reform (and by lustrations) and the four years of Yushchenko presidency turned out to be a major failure. The lustration attempts in the aftermath of Orange Revolution provide however certain insight into the lustrations adopted ten years later. They point to one Ukrainian specific, which is the departure from a long-held concept of lustrations as a de-communisation measure. Going further, the draft-laws consisted of a mix of de-communisation lustrations and lustrations of those

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[63] Draft law submitted by deputies Chervoniy, Shkil, Oleksiyuk., Art. 4, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=22947 (accessed 15 January 2018).

[64] Draft law submitted by deputy Tyahnybok, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=23762 (accessed 15. 1. 2018).

[65] Lavinia Stan, *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (New York: Routledge Press, 2009), 239.

[66] Galyna Saltan, "Lustration in Post-Soviet Ukraine: A study on unsuccessful transitional justice" (Master Thesis, University of Tartu, 2016), 38.

[67] Gerashchenko I. ("Our Ukraine"), speech in VI parliament, 17.03.2009 http://rada.gov.ua/meeting/stenogr/show/672.html (accessed 15. 12. 2017).

officials, who had compromised themselves already after the fall of the communist regime.

3. Yanukovych years 2010-2013

The period of Yanukovych presidency was not important in terms of lustration draft laws or attempts to introduce any kind of lustration agenda. With Yanukovych's and *Party of Region*'s general political orientation, it is no surprise that no lustration bill had been proposed in Verkhovna Rada (despite attempts of opposition deputies). However, his presidency is important in explaining the scope of the lustrations adopted in 2014. To understand the lustration laws adopted after Euromaidan, it is necessary to understand the nature of the regime created by Victor Yanukovych, because the main lustration law directly addresses it.

Yanukovych first came to power after parliamentary elections in March 2006, when the likely candidate for prime minister, the leader of *Fatherland* party Yulia Tymoschenko, could not come to terms with president Yuschenko and, consequently, a self proclaimed "anti-crisis" coalition led by Yanukovych (and joined by the Communist party and Socialist party) came into government. After early elections in September 2007, Yanukovych was again replaced by Tymoschenko, but the cooperation between the president and prime minister, both nominally pro-Western and pro-democratic, did not work well. It was plagued by mutual accusations and infighting, and, as consequence, no significant reforms or attempts to curb ever present corruption had been made. Moreover, Ukraine entered a very turbulent times, starting with the world financial crisis in 2008, which had negative impacts on Ukrainian economy, the Russian invasion of Georgia in the same year and a gas crisis a year after that. In the international politics, Yushchenko wanted more integration with the EU and other western countries, but in the domestic policy he failed to introduce any reforms that would curb the corruption and make Ukraine a credible partner.[68]

[68] Rychlík, "Dějiny Ukrajiny," 415.

Because Yushenko's presidential term was generally perceived as a failure, during the presidential elections in January and February 2010, disappointed electorate turned to the main opposition figure, Viktor Yanukovych. Although this time the presidential elections were legitimate, unlike the ones in 2004, where Yanukovych was "elected" a president for the first time, what followed might be described as an assault on the state institutions. Yanukovych reversed the pro-democratic course of the country and under auspices of a so-called "administrative reform", he started to centralise power and shift the Ukrainian political course more to the East. In order to do so, he was also empowered by a decision of the Constitutional Court from September 2010 abolishing a previous constitutional amendment from 2004, which limited the presidential powers.[69] Soon after elections, Yulia Tymoschenko was deposed and replaced by Mykola Azarov from Yanukovych's *Party of Regions.* This government reshuffle did not mean only her transition to opposition, as she was soon criminally charged for her decisions as prime minister, and in a court process, largely seen as politically motivated, sentenced to 7 years of prison. The October 2012 parliamentary elections were conducted according to a newly amended law which favoured the *Party of Regions* and with Tymoschenko (now the main opposition figure) in jail.

Annual Freedom House reports show that Ukraine slipped during Yanukovych's presidential term from 2,5 points in 2010 to 3,5 in 2013 on a 7 point scale of political freedom and from the status "free" to "partly free".[70] In the analytical part of the reports, the most mentioned reasons behind this degradation of freedom are the purposeful change of parliamentary election laws, deteriorating media freedom, secret services' pressure on universities to prevent students from joining anti-government protests, hostility towards foreign NGOs or politicised use of courts.

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[69] Tadeusz A. Olszanski, "Ukraine's Constitutional Court reinstates presidential system" *Osrodek Studiow Wschodnich* (published 6, 10. 2010), https://www.osw.waw.pl/en/publikacje/analyses/2010-10-06/ukraines-constitutional-court-reinstates-presidential-system (accessed 1. 10. 2017).

[70] Freedom House annual reports on Freedom in the World 2010, https://freedomhouse.org/report/freedom-world/2010/ukraine (accessed 31 January 2018), 2013 https://freedomhouse.org/report/freedom-world/2013/ukraine (accessed 31 January 2018).

Another troubling aspect of Yanukovych presidency was omnipresent corruption which reached even the highest echelons of government and state institutions. Although Ukraine had been struggling with high levels of corruption ever since its independence, during Yanukovych presidency, corruption levels increased even more. According to the Transparency International corruption perception index, Ukraine went down from being 134th out of 178 measured countries in 2010 to 144th out of 175 countries in 2013.[71] The amassing of great amounts of wealth by state officials became shockingly apparent after the revolution. The luxury residencies of Yanukovych or general procurator Pshonka are now notorious for their ostensible lavishness and Yanukovych's "dacha" in Mezhyhirya was later even turned into museum witnessing the corrupt nature of Yanukovych regime.[72]

Concerning the lustration agenda during Yanukovych presidency, it was not entirely absent from the political discourse, but was usually presented in different context. According to the transcripts of plenary debates of the 6th parliament from the 2012 elections until the Euromaidan protests, the topic of lustrations was mentioned only by opposition parties and with few exceptions only in connection with anti-corruption measures. The word "lustration" was altogether mentioned at 6 plenary sessions[73] from the 2012 elections until November 2013. It has been brought forward most often by nationalist *Freedom* party, Tymochschenko's *Fatherland* and newly elected pro-Western party *UDAR*, led by former boxing champion Vitaly Klitschko. It has been mostly framed as a necessary anti-corruption measure, avoiding the de-communisation or anti-Yanukovych rationale. Only the *Freedom* party deputies

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[71] Transparency International Corruption Perception Index 2010 https://www.transparency.org/cpi2010/in_detail (accessed 31 January 2018), 2013 https://www.transparency.org/country/UKR# (accessed 31 January 2018).

[72] "Inside the Museum of Corruption, *NY Times,* (published 25. 2. 2014), https://www.nytimes.com/video/world/europe/100000002732759/inside-the-museum-of-corruption.html (accessed 31. 1. 2018).

[73] Transcripts from the plenary sessions on 13 December 2012 (*UDAR*) http://iportal.rada.gov.ua/meeting/stenogr/show/4116.html, 19 April 2013 (Fatherland, Svoboda) http://iportal.rada.gov.ua/meeting/stenogr/show/4967.html, 14 May 2013 (Fatherland, Svoboda) http://iportal.rada.gov.ua/meeting/stenogr/show/4970.html, 21 May 2013 (*UDAR*) http://iportal.rada.gov.ua/meeting/stenogr/show/4983.html, 21 June 2013 (Svoboda) http://iportal.rada.gov.ua/meeting/stenogr/show/5022.html, 5 September 2013 http://iportal.rada.gov.ua/meeting/stenogr/show/5046.htm, (all transcripts accessed 31. 1. 2018).

mentioned it in the context protection against "Russification" or "Putinisation"[74], a declaration that at the time could be seen rather as a publicity stunt than a serious legislative proposal, given the pro-government majority in Verkhovna rada. Only after the violent clashes in the beginning of 2014, opposition deputies started to mention lustration in context of wider measures against the Yanukovych government.

4. Euromaidan as historical milestone

Euromaidan revolution constituted a major disruption of Ukraine's politics and an irreversible break from the past state of affairs. Although such claims have been made before about the Orange revolution,[75] there are several reasons to believe that political disruption brought about by Euromaidan was of different order of magnitude. The revolution itself brought significantly higher degree of actual violence, with some of the protesters striving to physically depose the president and exponents of his regime, it created one of the most sensitive geopolitical problems in the post-Soviet space with a potential to turning into a military confrontation between NATO and Russia and it ended up with deposition of president, marginalisation of his party and openly pro-Russian politicians, and with a long-lasting war in the East between Ukraine on one side and Russia and Russia-sponsored separatists on the other.

4.1. Political conditions for lustrations

On 21 November 2013, the government unexpectedly suspended preparations for implementation of an Association Agreement with the EU and in the end of November, Yanukovych stopped short of signing the agreement with EU representatives at summit in Vilnius. A series of protests ensued, supported by the opposition parties, mostly in the western part of Ukraine and in Kiev. There, they took a permanent form with the establishment of a protest "city" at the main square in Kiev (*Maidan).* From the second half of January, the protests got more confrontational with the first casualties resulting from clashes with the police and *BERKUT* special forces.[76] After massacre on 20 February, during which at least 200 people perished, the protests transformed into

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[74] Transcript from plenary session on 19 April 2013 http://iportal.rada.gov.ua/meeting/stenogr/show/4967.html (accessed 31.1. 2018).

[75] McFaul, "Democracy and authoritarianism," 189.

[76] Wilson, "Ukraine Crisis," 83.

street fights. Under international mediation, an agreement with opposition was signed, promising early elections and restoration of the 2004 constitutional amendment diminishing presidential powers.[77] However, this compromise did not satisfy already radicalised protesters[78] and the following day, Victor Yanukovych fled Kiev along with many deputies of the Party of Regions and was subsequently impeached by Verkhovna Rada. New acting president, Oleksandr Turchynov, appointed a new prime minister, Arseniy Yatsenyuk, (both from *Freedom* party) and new presidential elections were called on 25 May, which were won by Petro Poroshenko, former foreign minister from 2009 and one of the richest Ukrainians.

As protests were unfolding in Kiev and other major cities, a Russian-sponsored operation has been under way in mostly Russian populated Crimea. Ukrainian navy was blocked by Russian Black see fleet and its troops ambushed in their bases by "volunteers" in unmarked uniforms, who were in fact members of Russian special forces.[79] Under these circumstances, Ukraine was forced to withdraw all its units to the mainland and leave the peninsula to the Russians. On 16 March 2014 a so-called "referendum" took place in Crimea in which allegedly 97 % of voters chose to join the Russian Federation. The referendum is widely held as illegitimate and as of 2016 only 6 countries represented in the UN recognised Crimea as part of Russia.[80] In April, similar scenario started to unfold near the cities of Donetsk, Lugansk and Kharkiv in the east of Ukraine. Consequently, Russian speaking protesters with the Russian support managed to take control of large parts of country in the south-east of Ukraine and a military confrontation with Ukrainian army followed, which gradually developed into an undeclared and locally limited war between Ukraine and Russia. It was under these internal and external conditions an under popular demands resulting from them that deputies in Verkhovna Rada started to consider adopting a lustration law.

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[77] Ibid., 91.

[78] Daryna Schevchenko, "Poll discovers Euromaidan evolution from dreamy to radical" *Kyiv Post,* (6 February 2014), https://www.kyivpost.com/article/content/ukraine-politics/poll-discovers-euromaidan-evolution-from-dreamy-to-radical-336389.html (accessed 15 January 2018).

[79] Wilson, "Ukraine Crisis," 111.

[80] Jeremy Bender, "These are the 6 countries on board with Russia's illegal annexation of Crimea," Vusiness Insider (published 31 May 2016) "http://www.businessinsider.com/six-countries-okay-with-russias-annexation-of-crimea-2016-5 (accessed 31. 1. 2018).

4.2. Popular demands for lustration

The paper shall assess only the demands expressed by the protesters, which, at the end of Euromaidan, represented a dominant political force. However, it must be noted that even though the opinions of general public aligned more and more with protestors as Eurmaidan evolved, the clearly formulated demands of protesters were not necessarily an expression of a broad nationwide consensus. It is difficult to assess the popular support of the Euromaidan (and of its main goals) during its course for two reasons. Firstly, the demands of the active protesters developed with the time. As survey among the protesters at *Maidan* shows, the same people became more and more radicalised both in terms of their demands and the means they were willing to use, moving from calls for Yanukovych's resignation and new elections to demands of a complete institutional change and willingness to physically seize administrative buildings.[81] This radicalisation corresponded to an increased level of violence from January 2014. Secondly, any survey conducted during this politically charged period may be suspected of bias based on the affiliation of its commissioner. According to two surveys from December 2015, the attitude of Ukrainians towards Euromaidan protests were either 50% negative and 45% supportive[82] or 42% negative and 50% supportive.[83] As can be seen from the survey from end of January 2014, there was also a significant country divide between the west and north (more supportive) and east and south (more against).[84] Nevertheless, after the consolidation of new regime, there had been an overall support for the Euromaidan objectives, one of which was a broad lustration of state officials. According to survey from April 2014, the implementation of lustrations had 78% public support.[85]

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[81] Schevchenko, "Poll discovers Euromaidan"

[82] "Half of Ukrainians don't support Kyiv Euromaidan, R&B poll" *Interfax Ukraine*, (pubished 30 December 2013), http://en.interfax.com.ua/news/general/184540.html (accessed 15 January 2018).

[83] "Poll reveals Ukrainian majority supports EuroMaidan" *Ukraine Business Online*, (published 30 December 2013) http://www.ukrainebusiness.com.ua/news/11002.html (accessed 15 January 2018).

[84] "Dva misyatsi protestiv v Ukrayini: shcho dali? - zahal′nonatsional′ne opytuvannya", *Fond Demokratychni initsiatyvy (*http://old.dif.org.ua/en/polls/2014_polls/dva-misjaci-protestiv-v-ukraini-sho-dali_---zagalnonacionalne-opituvannja.htm (Accessed 15 January 2018).

[85] "Socio-Political Expectations: April 2014", *Reyiting,* http://ratinggroup.ua/en/research/ukraine/obschestvenno-politicheskie_ozhidaniya_grazhdan_aprel_2014.html (accessed 15. 1. 2018).

It is to be noted that although there has been a majority support for lustrations, the protestors and numerous groups and NGOs who, during and after the revolution, pushed the lustration agenda, understood the term in various ways, both in terms of its broader purpose and in terms of specific lustration goals. It is not possible to state, without thorough analysis, what was the mainstream perception of lustration or what specific lustration provisions would be supported by a majority of Ukrainians. It may be nevertheless stated that while some saw it primarily as a matter of retribution after bloody protests, others saw it as a necessary evil applied in order to suppress corruption and protect democratic institutions. The more retributive understanding of lustrations was illustrated by a statue of Ukrainian trident combined with guillotine and a word "lyustratsya" which appeared during the protests in the city of Dniepropetrovsk[86] or by so-called "trash-bin lustrations", whereby public officials including deputies of Verkhovna Rada were being thrown by protesting mob into trash containers thus being "lustrated".[87] Whether the general nature of the eventually accepted lustration laws was rather retributive or a security issue is debatable. While this thesis argues for the latter interpretation, many Ukrainians including political actors saw them as the former.

The specific lustration goals expressed in demands of the protestors included dismissal of all corrupt officials and judges, dismissal of members of the armed forces participating in violent repression of Euromaidan protest, and, with the unfolding of military conflict in the east, dismissals of incompetent and disloyal officers of the army.[88] The first demand addressed a corruption problem along the lines of the ongoing lustration debate from the times of Yushchenko presidency. The second was an understandable response to the violent repression of the protests and its many casualties. The third was a response to the incompetence in the early stages of the ATO (counter-terrorist operation) campaign in the east, which resulted in major losses among Ukrainian armed forces. According to a report by Open Dialog Foundation, there was a

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[86] "Lustration stele in Ukrainian city" *Life in Ukraine*, (published 15. 9. 2015) https://lifeinua.info/lustration-stele-ukrainian-city-remainder-officials-video (accessed 1. 6. 2017).

[87] Yana Polyans′kaa, "Lyustratsiya cherez shturkhany".

[88] Agnieszka Piasecka "Summary of Legislative Work on Lustration Act No. 4359 "On Purification of Government", *Open Dialog Foundation,* (published 20. 11. 2014) http://ua.odfoundation.eu/a/5546,pidvedennya-pidsumkiv-shchodo-rozrobki-zakonu-pro-lyustraciyu-4359a-pro-ochishchennya-vladi (accessed 15. January 2018).

widespread public suspicion that the military leadership was intentionally clumsy in carrying out their operations because of large scale infiltration of the Ukrainian armed forces by Russian intelligence.[89]

4.3. Lustration draft laws

The institutionalised process, which led to the adoption of the two lustration laws, started already at the time of culmination of the protests. During plenary sessions of Verkhovna Rada on 22 February, a deputy from *Freedom* party Martsinkiv pronounced that "people demand lustrations".[90] Later, other deputies of *Freedom* party called for broad lustrations of judges, who illegally helped the regime to suppress the protests, for lustration of other state officials and for immediate dissolution of BERKUT.[91] From February forward, the topic of lustration became one of the most discussed issues in Verkhovna Rada. The adoption of lustration laws followed the order of priority expressed by the *Freedom* party deputies. Hence, on 8 April, a law on Restoration of Trust in Judiciary[92] was adopted by Verkhovna Rada, which provided legal basis for a first wave of lustration of judges and court officials. It took another five months until a general lustration law on the Government cleansing[93] has beed passed.

The proposals for general lustration have been drafted both by political parties, independent groups and individuals. They varied substantially in the scope of proposed lustration and in the proposed procedure.[94] Until 8 April 2014, Verkhovna Rada registered four different draft lustration laws: by Oleh Tyahnybok from the *Freedom*

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[89] Ibid.

[90] Transcript from plenary debate 22 February 2014, http://iportal.rada.gov.ua/meeting/stenogr/show/5168.html (accessed 15. 1. 2018).

[91] Transcripts from plenary sessions 24 February, http://iportal.rada.gov.ua/meeting/stenogr/show/5173.html, 25 February, http://iportal.rada.gov.ua/meeting/stenogr/show/5177.html (both accessed 15 January 2018).

[92] Law on restoration of trust in Judiciary (ВВР) 2014, No 23, ст.870, (Про відновлення довіри до судової влади в Україні).

[93] Law on Government Cleansing, (ВВР) 2014, No 44, ст.2041, (Про очищення влади).

[94] Piasecka, "Summary of Legislative Work".

party[95], Volodymyr Ariev from *Fatherland,*[96] Valeriy Patzkan from *UDAR*[97] and by Roman Chernehy also from *UDAR*.[98] The strictest draft law came from *Freedom* party and included automatic dismissal of all judges and prosecutors working during Yanukovych rule and lustration of practically all officials of central and regional branches of government on their actions during Euromaidan without possibility of appeal at court. The draft from *Fatherland* did not foresee such a strict lustration, but it included de-communisation rationale, adding to the prohibited position Soviet-time communists or KGB members and collaborators. The drafts from *UDAR,* generally most liberal one, combined de-communisation clauses with lustration of officials based on their affiliation with Kuchma regime and Yanukovych regime.

In order to sort through this collection of competing legislative drafts, Turchynov proposed to withdraw all of them from the legislative process and requested the Civic Lustration Committee, an independent non-governmental organisation, created during protests, to work through all the options and to present a compromise version of lustration law, which would be subsequently submitted to Verkhovna Rada as a draft law.[99] Nevertheless, even after that the *UDAR* deputies still managed to submit another two draft proposals on their own behalf.[100] The Civic Lustration Committee was headed by Yegor Sobolev, a Euromaidan activist and currently (as of 2014 elections) deputy at Verkhovna rada for the *Self Reliance* party. Because of the need for quick adoption, the authors drew heavily from the experience of another CEE and post-Soviet states. This is confirmed by Yegor Sobolev, who admitted that the Law on Government Cleansing was strongly influenced especially by the Czech lustration law adopted in 1991 and also by

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[95] Lustration draft law by *Freedom* party http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50422 (accessed 31. 1. 2018).

[96] Lustration draft law by *Fatherland* party http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50566 (accessed 31. 1. 2018).

[97] Lustration draft law by *UDAR* party http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50567 (accessed 31. 1. 2018).

[98] Second lustration draft law by *UDAR* party http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50579 (accessed 31. 1. 2018).

[99] Piasecka, "Summary of Legislative Work".

[100] Third and fourth lustration draft laws from *UDAR* party, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50613, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50659 (both accessed 31.1. 2018).

Georgian anti-corruption measures adopted after "Rose revolution" in 2003.[101] Several draft proposals were drafted by the Committee during summer 2014, including proposals for polygraph examinations or lustrations of directly elected officials.[102]

Finally, on 16 September 2014, under great pressure from society, Verkhovna Rada voted in favour of the act on the law on Government Cleansing in form of the third draft (and following numerous changes) submitted by the Civic Lustration Committee with a slight majority of 252 deputies. At the same time, mass protests went on throughout the day in front of the parliament building demanding the deputies to adopt the law. From the transcript of the parliamentary debate, it is apparent that many of the deputies of the *Party of Regions* and *Communist* party were absent from the vote. Deputy Rozenko from *UDAR* slightly ironically proposed that the best lustration would be if all the deputies who boycotted the vote were stripped of their mandate by the Central election commission.[103] However, some of the deputies of the *Party of Regions* joined the vote, including Vitaly Zhuravsky, one of the people thrown into a trash container during the "trash-bin lustrations". Both lustration laws were adopted before the parliamentary election, which is unique among post-communist states in transition. The sufficient majority was achieved largely due to public pressure by adding up votes of former opposition deputies and some of the deputies of the *Party of Regions*.

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[101] Yegor Sobolev, Interview with Zhanar Kassymbekova, *Open DialogFoundation*, June 18, 2014, http://en.odfoundation.eu/a/3903,it-is-all-about-the-people-an-interview-with-yehor-sobolev (accessed 15. 1. 2018).

[102] Lustration proposals drafted by Civic Lustration Committee (english translation by Open Dialog Foundation), http://en.odfoundation.eu/i/fmfiles/pdf/yd1306144-proekt-12-06-14-eng-done.pdf%20, http://odfoundation.eu/i/fmfiles/pdf/draft-law-purification-government-4359a-eng.pdf%20 (accessed 18 January 2018).

[103] Transcript of plenary debate from 16 September 2014, http://iportal.rada.gov.ua/meeting/stenogr/show/5696.html (accessed 31. 1. 2018).

3. Lustration laws in Ukraine

The most apparent distinction of Ukrainian lustrations is that they are multi layered: they cover many past wrongs and follow many lustration goals, which sets them apart from the lustrations in the CEE countries. They also function only as a vanguard of much broader cluster of reforms, on which Ukraine embarked after Euromaidan. From a legal perspective, they appear in two separate laws adopted in 2014 - on the Restoration of Trust in Judiciary and on the Government Cleansing - a distinction which seems prima facie to be based on the public offices they seek to lustrate. The former is for lustration of judges and judicial bodies, the latter for lustration of the executive power. Nevertheless, the law on Government Cleansing also contains provisions for lustration of judges and the law on the Restoration of Trust in Judiciary provides legal basis for lustration of only semi-judiciary public offices, such as High Qualifications Commission of Judges (HQCJ). The main difference between the two laws rests in the fact that the earlier adopted one has a very narrow aim, while the second law is much broader in scope, lustrating all types of public offices, from ministers to judges and scrutinising all kinds of past wrongs, from allegiance to communist structures to corruption and misdeeds of Yanukovych regime. The different scope of the laws is also demonstrated by the number of people affected by the them.[104] For this reason, most of the focus will be given to the law on Government Cleansing and the law on the Restoration of Trust in Judiciary will be covered only rudimentarily, as it is much less consequential in the context of all Ukrainian lustrations.

1. Law on Restoration of Trust in Judiciary

The reform of the judiciary has been seen by the protesters and politicians alike as the most urgent one. The corrupt judges and the courts with links to the previous regime could hinder implementation of any further legislative reforms. Overall, the judiciary has been the least trusted branch of state power before the revolution with 71% of Ukrainians not trusting the courts according to the survey in 2013.[105] Soon after being sworn in, President Poroshenko branded the judiciary reform “the reform of all

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[104] More in the subchapter “Implementation”.

[105] Lezina, “Ukarainskaya lyustracia,” 176.

reforms", promising that it will be one of the first and major changes.[106] The law on the Restoration of Trust in Judiciary was adopted by Verkhovna Rada on 9 April 2014 and was ratified by the acting president one day later. As envisaged by the government, it ought to be the first legislative step towards a broad judicial reform, which included other laws not based on lustration principle, such as constitutional amendments reshaping the organisation of courts or creating new procedural rules for High Council of Justice, charged with appointing and dismissing the judges.[107] The law on the Restoration of Trust in Judiciary does not mention the word "lustration" but as it employs means inherent to lustrations described in the previous chapters, we need to consider it as one.

The explanatory memorandum to the law states as a reason for adoption of this law the great number of "unequivocally unlawful" decisions of Ukrainian courts as evidenced by a great number of successful cases with the ECHR.[108] However, the law mostly focuses on a shorter time period, affecting only those judges who issued legally dubious decisions during the time of Euromaidan protests. (It usually takes several years before a first-instance court judgement reaches the ECHR). It envisages an analysis of decisions by an independent commission and release of those judges who will not pass the certification. According to the law, a judge is subject to review if he or she broke the judicial oath and issued an illegal decisions in a particular category, mostly concerning political prosecution from November 21, 2013 until the date of adoption of the law.[109] The law lists categories of decisions falling within its scope, such as approving administrative penalties, detentions or indicting people participating in the Euromaidan protests.

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[106] "Vsi proekty reform mayut′ buty intehrovani v «Stratehiyu 2020» - Prezydent Ukrayiny," Official site of the president of Ukraine (published 7. 8. 2014) http://www.president.gov.ua/news/vsi-proekti-reform-mayut-buti-integrovani-v-strategiyu-2020-33407 (accessed 12. 2. 2018).

[107] Mykhailo Zhaernakov, "Will Judicial Reform Survive?" *Ukrainska Pravda* (published 17. 8. 2016) https://www.pravda.com.ua/eng/columns/2016/08/17/7117997 (accessed 31. 1. 2018).

[108] Explanatory memorandum to law on the Restoration of Trust in Judiciary, art. 1, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50133 (accessed 1. 12. 2017).

[109] Law on the Restoration of Trust in Judiciary, art. 3, para. 1, al. 1, 3 - 9.

The law also establishes Interim Special Commission charged with conducting the lustration. The commission consists of 15 members: 5 members from the Supreme Court, Government Commissioner for Anti-Corruption Policy, and Verkhovna Rada of Ukraine.[110] As a result of the examination of judges by the Temporary Special Commission, a conclusion is reached,[111] which is sent to the Higher Council of Justice (HCJ) in order for it to make a decision on the career of the judge concerned. The Council has the authority to decide whether to permit the judge to maintain his position, force him or her to retire or – where applicable – initiate disciplinary or criminal proceedings. Motions to initiate verification of an individually determined judge may be submitted by any person or legal entity.[112] The examination of judges should have been conducted within one year from the moment of formation of the composition of the Interim Special Commission.[113] However, the proceedings took longer than expected, because in practice, the commission was often unable to gather with sufficient quorum, so it continued until June 2016.[114]

In a separate part, the law also dismissed all heads and deputy heads of the courts (except the Supreme Court and Constitutional Court)[115] and also terminated powers of all the members of the HCJ and the HQCJ[116] in an apparent attempt to weaken the ancient court structures. However, these provisions of the law cannot be considered lustrations *stricto sensu* as they do not contain any verification process but merely general dismissal. Moreover, after new elections of court functionaries in April/ May 2014, around 80 % of the judicial officials were elected back to their seats and the HCJ and HCQJ successfully resisted major personal exchange in a direct contradiction of the law.[117]

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[110] Ibid., art. 4.

[111] Ibid., art. 7.

[112] Ibid., art. 2 para. 2.

[113] Ibid., art. 2, para. 1.

[114] "Diyal′nist′ Tymchasovoyi spetsial′noyi komisiyi z perevirky suddiv sudiv zahal′noyi yurysdyktsiyi bude ofitsiyno prypyneno," official site of the High Council of Justice (published 10. 6. 2016), http://www.vru.gov.ua/news/1578 (accessed 31. 1. 2018).

[115] Law on the Restoration of Trust in Judiciary, section 2, para. 2.

[116] Ibid., section 2, para. 3.

[117] Maria Popova, "Ukraine's Judicial Reforms," Vox Ukraine (published 15. 12. 2014) https://voxukraine.org/en/ukraines-judicial-reforms (accessed 15. 2. 2018).

The lustration provisions of this law were later doubled by the law on Government Cleansing, which put them into much broader system of lustrations of public officials and further reform steps in the judiciary reform did not proceed through lustration measures. The co-existence of these two laws has also created a legally problematic state, when the lustration of same protected position is covered by two different laws and followed two different procedures.

2. Law on Government Cleansing

Law on Government Cleansing was adopted after long deliberations by Verkhovna Rada on 16 September 2014, and came into force on 15 October after ratification by president Poroshenko. As the law was approved by the old parliament (same as the law on the Restoration of Trust in Judiciary) and was criticised by the Venice Commission,[118] it was expected to be amended after the elections to Verkhovna Rada, which took place later in October 2014. There were indeed two amendments[119] to the law by the newly elected parliament before the end of 2017; however, none changed the law substantially. The first of the two was mostly a reaction to the armed conflict in the East Ukraine, giving president some deliberation to maintain the war readiness of the army. The second amendment brought only minor changes concerning the lustration procedure.

There are several ways to look at the purpose of the law. As we know, the popular understanding of lustrations differed among the public and even among politicians and, accordingly, the perceptions of its desirable effects differed as well. For some, it was a tool of retribution, for others a necessary measure to protect key state institutions and yet for others it may have been a tool of political infighting. Since it is virtually impossible to categorise all the individual attitudes to the law, the paper shall go with the aims officially expressed and in response to these aims, it will assess the law's success. The aim as expressed in the preamble is to "protect and affirm democratic

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[118] Venice Commission, Opinion no. 788/2014, Interim opinion on the Law on Government Cleansing.
[119] Amendments of the Law on Government Cleansing, (BBP) 2015, No 10, ст. 66, (BBP) No 1798-VIII.

values, the rule of law and human rights."[120] The explanatory memorandum to the final draft states that "in recent years, officials of bodies of state power, performing their official duties, were guided not by laws, but by illegal instructions of the supreme government of the state," and that "the purpose of this law is to restore confidence in the government and create conditions for building a new system of government in line with European standards."[121] It follows that the two main aims are the removal of compromised personnel from the public institutions and the restoration of public trust these institutions, all while upholding the standards of human rights and democracy. That restoring public trust in government would require more than dismissal only of those objectively proven to be perpetrators was eloquently expressed by Roman David: "Inherited personnel may be not only objectively lacking in competence and integrity, but also subjectively perceived to lack, loyalty, impartiality and trustworthiness. This negatively affects the daily operation of the state such as the effectiveness of law enforcement, the reliability of tax collection, and the making of nonprejudicial administrative decisions."[122]

The structure of the law very closely copies the main Czech lustration law.[123] In the first part, it enumerates positions in the public institutions whose occupants need to undergo the lustration check (protected positions or what David calls "forward looking aspect").[124] In the second part it lists the positions and time periods, which prohibit their former holders from staying in the protected positions ("backward looking aspect").[125] The third part contains procedural arrangements for the lustration process. This structure will be followed in the analysis of the law: firstly, the paper will focus on the scope of the protected positions, then on the prohibited positions, on the temporal aspect of the law, and lastly on the lustration procedure. To contextualise the scope of the law, the analysis will use comparison with the lustration laws applied in the Czech Republic and

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[120] Low on Government Cleansing, preamble.

[121] Explanatory memorandum to the Law on Government Cleansing, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51795 (accessed 1. 12. 2017).

[122] David, "Lustration in Ukraine," 139.

[123] Large lustration law, 451/1991 Sb. (Zákon, kterým se stanoví některé další předpoklady pro výkon některých funkcí ve státních orgánech a organizacích České a Slovenské Federativní Republiky, České republiky a Slovenské republiky).

[124] David, "Lustration in Ukraine," 140.

[125] Ibid., 140.

Poland and in some cases Baltic states. These laws represent some of the first lustrations adopted in the post-communist Europe and have thus served as a reference point for other lustrations in the region adopted since.

2.1. Protected positions - forward looking aspect

The scope of the "protected positions" expresses the opinion of Ukrainian legislators on what are the most important and vulnerable public offices, which require special protection. These are the positions, whose holders must undergo the lustration procedure. In general, the law lists among the protected positions almost all administrative offices, offices in the military and police, state prosecution, judges and members of judicial bodies and many others. In this aspect, it is closest to the Czech lustration law. For analytical purposes, it is possible to derive from the lustrations adopted in the CEE states three basic categories differentiating the scope of protected positions and to apply them on the law on Government cleansing. These categories are as follows:

Public - private

In the first category, Ukrainian lustration law stays almost exclusively on the side of public offices (understood as a position created by law or other legal norm or positions with administrative authority) with the possible exception of the heads of state-owned companies in the arms industry and state-operated companies.[126] In this respect, both the Czech and the Polish lustration laws went much further. The Czech law listed, among others, the university deans and academic senators[127], heads of companies with majority state ownership[128] or even certain licensed professions.[129] The Polish lustration law from 1997[130] included also legal attorneys, and in an amendment from 2007[131] added also university professors, journalists or directors of publishing houses

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[126] Law on the Government Cleansing, art. 2, para. 9

[127] Czech (Large) lustration law, §1, para. 3.

[128] Ibid., §1, para. 1, al. f.

[129] Ibid., §1, para. 3.

[130] Polish lustration law, Dz.U. 1997 no. 70 poz. 443, (O ujawnieniu pracy lub służby w organach bezpieczeństwa państwa lub współpracy z nimi w latach 1944-1990 osób pełniących funkcje publiczne) §3.

[131] Cecylia Kuta, „Lustracja v Polsce na tle krajów Europy Środkovej," *Horyzonty Polityki* 5, č. 11 (2014), 108.

(most of the amendment was subsequently repealed by Constitutional Court). It is therefore possible to conclude that unlike other comparable lustration laws, the law on Government cleansing did not reach to the private sector in any substantial way.

Executive - non executive (legislative/judiciary/media et al.)

In the second category, Ukraine is placed somewhere near the Czech Republic, as it lustrates mostly the offices within executive power (all ministers, heads of central executive authorities including National Bank, State Funds,[132] top two layers in state prosecution, secret services including SBU and tax authority,[133] top three layers in presidential administration,[134] military and police officers[135], and other officers and officials of the central and local government[136]) and the judiciary (professional judges, members of HCJ, members of HQCJ, chairman of the State Court Administration and his/hers deputy)[137] The formulation sometimes causes interpretation problems, as the law usually mentions top two/three layers of certain administrative body as being subject to lustration but at the end it lists also "other officers and officials of the central and local government"[138] which is a category that makes the above specification seem redundant. The Czech lustration law solved this problem by listing all positions within specific category (government, state funds etc) occupied by election, naming or designation.[139] Another problematic question arose, as to whether the judges of Constitutional Court should be seen as "judges" as listed in the law.[140] The broadest scope of protected positions in the second category is in the Polish lustration law, which included also the position of President and also reached to the legislative power, introducing lustration of all the deputies of Sejm (lower chamber of Polish parliament) and Senate.[141]

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[132] Law on Government Cleansing, art. 2, para.1.
[133] Ibid., art. 2, para. 2.
[134] Ibid., art. 2, para. 5.
[135] Ibid., art. 2, para. 3, 6, 7.
[136] Ibid., art. 2, para. 10.
[137] Ibid., art. 2, para. 4.
[138] Ibid., art. 2, para. 10.
[139] Czech lustration law, §1, para 1.
[140] Oleg Sukhov, "Lustration law faces sabotage, legal hurdles" *KyivPost* (October 23, 2014), https://www.kyivpost.com/article/content/reform-watch/lustration-law-faces-sabotage-legal-hurdles-369135.html (accessed 31. 1. 2018).
[141] Polish lustration law, art. 3.

Directly elected - indirectly elected/named

In the last category, the Ukrainian law also stands near its Czech predecessor. All the directly elected positions (such as deputies in Verkhovna Rada, elected members of local assemblies or president) are entirely absent from the scope of the law, despite the propositions in some of the draft laws submitted to Verkhovna rada. The draft submitted by *Freedom* party contained propositions for including the office of president[142] and the original draft by the Civic Lustration Committee included the deputies in Verkhovna Rada. This provision was, according to Sobolev,[143] strongly rejected by Poroshenko and the pro-president *UDAR,* who argued that the election itself is sufficient lustration. However, the argument of election seems to fall short considering that Ukrainians saw fit to elect Yanukovych as a president in 2010 even after the experience of his fraudulent election bid in 2004. The inclusion of directly elected positions also has its precedent in the Polish lustration law, which included in lustrated positions both the presidential office and the deputies in parliament,[144] or the laws on parliamentary and communal elections in Latvia, which also includes directly elected positions of deputies.[145]

2.2. War exemptions

Two specific provisions of the law concerning the protected positions address the military conflict in the east, which ensued after the Euromaidan and continues until present. As the protected positions include all military officials in the Ukrainian Armed Forces and other military units established by law[146] and as many of these officials fell within some of the "prohibited" positions in the past, there were fears that the fighting capacity of the army would be compromised, should the lustrations be strictly implemented. This created a paradoxical situation. On one hand, there was a need for unity in the Ukrainian institutions and most notably the army, which the harsh lustration measures threatened to imperil; on the other hand, the military conflict heightened the

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[142] Lustration draft law by *Freedom* party, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50422 (accessed 31 January 2018).

[143] Sukhov, "Lustration law faces sabotage".

[144] Polish lustration law, art. 3.

[145] Švarca, „Transitional justice mechanisms", 74.

[146] Law on Government Cleansing, art. 2, para. 3.

need to purge the army from people whose loyalty to Ukraine could be in doubt. This paradox, also noted by Lezina,[147] was resolved by two means.

Firstly, the war in the east addressed the inclusion of a provision that allowed a specified (large) group of otherwise affected officials to avoid the lustration, if they participated in the so-called "counter-terrorist operation" (ATO), which is an official name for the war in the east.[148] This group, defined in terms of prohibited positions, includes "perpetrators" as diverse as former communists and KGB agents, judges who handed politically motivated decisions during Euromaidan or certain officials of the executive power.[149] The main idea behind this provision was that by actively participating in the war effort these people proved their loyalty to the democratic regime. The obvious problem is that the positive relation to the Ukrainian territorial integrity does not *per se* translate to the loyalty to the democratic institutions or the resistance to corruption and also that such an "escape" provision creates space for abuse. As the paper will later demonstrate, this was often the case.

Secondly, the war was addressed by adopting an amendment to the law already at the end of January 2015, which gave president the powers to exempt individual higher military officials from the scope of the law, should he deem it necessary for the defence of the country.[150] It is interesting that in a reversal of positions, Egor Sobolev (author of the law and newly a deputy) backed the amendment on the terms that it be an interim war measure, whereas the Opposition Bloc (former Party of Regions), in an opinion voiced by deputy Mikhail Papiyev, derided the amendment for being undemocratic as it introduced selective approach to the persons affected by the lustration (in other words, if the collective punishment has to be employed, at least do not make exceptions from it).[151]

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[147] Lezina, "Ukarainskaya lyustracia," 172.

[148] Law on Government Cleansing, art. 1, para. 7.

[149] Ibid., art. 3, para. 4, 3, 2.

[150] Law on Government Cleansing, art. 1, para. 8.

[151] Transcript of plenary debate on 25. 1. 2015 on the amendment to Government Cleansing law, http://iportal.rada.gov.ua/meeting/stenogr/show/5771.html (accessed 31.1. 2018).

2.3. Prohibited positions - backward looking aspect

The "prohibited position" are a central part of any lustration law, as they express the opinion of legislator on what were the past wrongs that must be legally mended. In this respect, the Ukrainian lustration law surpasses the lustration experience thus far acquired in the ECC region. While the lustration laws introduced in other post-communist European states (Czech Republic, Poland, Baltic states, Hungary) all focused only on the repressive and undemocratic nature of the Communist regime, Ukrainian lustrations are multi-faceted. The law on Government Cleansing strives to fulfil its two main goals (protection of institutions from compromised individuals, building public trust) by aiming at three targets: Yanukovych regime, corruption and communist legacy. As these are the most important distinctions among the prohibited positions, the paper will not follow the structure of the law, which categorises the positions by the type of "punishment", but it will rather follow the three above categories.

Anti-Yanukovych rationale

The most prominent group of prohibited positions is linked to the Yanukovych regime. It was the undemocratic course of Yanukovych regime what ushered the Euromaidan protests and it was the regime's violent repression of these protests what eventually caused the revolution which ushered its fall. Most of the backward looking provisions of the law are therefore centred at the Yanukovych regime, as the dismantling of its power structures was largely seen as the most pressing priority of the post-Euromaidan Ukraine. This part of the law aims at two separate groups of individuals: those who occupied important public offices during the period of Yanukovych presidency and those who, from a position of legal authority, participated in suppressing the Euromaidan protests.

In the first group, which is delimited by 25 February 2010 (Yanoukovych elected president) and 22 February 2014 (Verkhovna rada impeaches Yanoukovych), the law lists all the top executive functions in the state, including president and all ministers,[152]

[152] Law on Government Cleansing, art. 3, para 1, al. 1.

top two layers of all central executive bodies[153], military[154], intelligence services[155] prosecution[156] and several other groups. Any person who occupied for at least one year cumulatively any of these offices would be banned from occupying any of the protected positions. The ban also applies to law enforcement officials, public prosecution officials and judges who approved or upheld guilty verdicts or approved decisions of compelled appearance and detention or took steps to criminally prosecute persons subject to a special law.[157]

The second group, delimited by 21 November 2013 (Yanoukovych suspends the EU association agreement talks) and 22 February 2014, contains an extended version of the positions listed in the first group. The lustration ban applies directly to any person occupying the listed office during this period who was not dismissed at his/hers request, and the one year limit does not apply. In addition, it includes law enforcement officers, public prosecution officers and judges who acted during the protests agains persons that were later released from detention based a special law.[158]

Apart from these two groups where the lustration ban is applied directly without the need to investigate individual case and thus resorts to a *sui generis* collective punishment, the law also includes three groups of offenders on whom the lustration ban applies based on a court verdict. These are officials not listed in the above parts, who were proven by a court judgement to contribute to the power usurpation by Yanukovych during his presidency,[159] all public officials including judges, who were proven by a court judgement to have sought to prevent the exercise of the constitutional right of

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153 Ibid., art. 3, para 1, al. 2.

154 Ibid., art. 3, para 1, al. 10.

155 Ibid., art. 3, para 1, al. 3.

156 Ibid., art. 3, para 1, al. 3.

157 Law on amending the amnesty law regarding full rehabilitation of political prisoners, (BBP) 2014, No 14, ст.257 (Pro vnesennya zmin do Zakonu Ukrayiny "Pro zastosuvannya amnistiyi v Ukrayini" shchodo povnoyi reabilitatsiyi politychnykh v'yazniv).

158 Law on preventing prosecution and punishment of persons in regard to events that happened during peaceful assemblies and recognising certain laws of Ukraine as invalid, (BBP) 2014, No 12, ст.186, (Pro nedopushchennya peresliduvannya ta pokarannya osib z pryvodu podiy, yaki maly mistse pid chas provedennya myrnykh zibran′, ta vyznannya takymy, shcho vtratyly chynnist′, deyakykh zakoniv Ukrayiny).

159 Law on Government Cleansing, art. 3, para. 5.

Ukrainian nationals to peaceful assemblies during the Euromaidan protests,[160] and all public officials including judges who were proven by a court judgement to cooperate as secret informers with secret services of other countries, acted to undermine the national security and integrity, publicly call for breach of territorial integrity and sovereignty, incited ethnic hostility or have taken decisions which were found by the ECHR as breach of human rights.[161]

We may observe that the "anti-Yanukovych" part of the law combines two approaches of legal accountability. Firstly it employs the idea of collective guilt, where the implied offence is not-stepping down during the Yanukovych rule, or, as the law justifies this provision, "[lustrations] shall be performed to keep away from public governance those persons who made decisions, took action or inaction, facilitating power usurpation [by Yanukovych.]"[162] Secondly, it employs the individual punishment, which expands the scope of the law to any public official proven by the court to do harm to the pro-democratic cause during Yanukovych rule.

Compared to the post-communist lustrations in the CEE states, the prohibited positions in the Ukrainian law are defined more broadly. They are also defined by state institutions and not by a position within the party. While the Polish, Czech or Lithuanian lustration laws focused on the secret services (which represented the main repressive element of the toppled regimes) and the Czech lustration law added also positions in the Communist party and National front, Ukrainian law on Government cleansing follows positions in the executive branch and in judicial institutions. However, this difference is somewhat diminished considering the central, almost state-like position which the Communist party held in the mentioned states. Overall, the scope seems to prove the argument put forward already in 1991 by Samuel Huntington, who linked the severity of the transitional justice measures to the degree of violence accompanying the regime change.[163] In Ukraine, the revolution was violent and the scope of the lustrations (and

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[160] Ibid., art. 3, para. 6.

[161] Ibid., art. 3, para. 7.

[162] Ibid., art. 1, para. 2.

[163] Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), 228.

other transitional justice measures) relatively broad as compared to other states with similar experience.

De-communisation rationale

The second group of prohibited positions and, from a legal viewpoint, perhaps the most problematic, aims at members of secret services and Communist party from the Soviet times. This group also most closely resembles the provisions of the post-communist lustrations in the CEE states. The Government Cleansing law lists three separate groups within the de-communisation category: all elected officials in senior positions in Soviet, Ukrainian or any Soviet republic's communist party from the position of the secretary of district committee higher,[164] elected senior positions in Komsomol[165] and employees or covert agents of the Soviet KGB, KGB of any of the Soviet republics or military intelligence and graduates of KGB education institutions.[166] These provisions closely resemble the Czech lustration law, which lists among prohibited positions higher communist party positions,[167] students of three Soviet universities for security forces[168] and members or collaborators of Czechoslovak State Security Service (StB).[169] The Polish lustration law[170] as well as Lithuanian lustrations[171] diverged from this line, as they listed only positions from within the secret services. In Polish case, this may be explained by the negotiated transition of power after 1989 along the lines of Huntington's argument.

In this category, the Ukrainian lustrations are bound to face two main problems. Firstly, there is a problem of legitimacy in lustrating people not directly involved in the "usurpation of power by Yanukovych," which the preamble sets as the objective of the law on Government Cleansing. Even more problematic is doing so after almost quarter

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[164] Law on Government Cleansing, art. 3, para. 4, al. 1.
[165] Ibid., art. 3, para. 4, al. 2.
[166] Ibid., art. 3, para. 4, al. 3.
[167] Czech (Large) lustration law, art. 2, para. 1, al. d.
[168] Ibid., art. 2, para. 1, al. h.
[169] Ibid., art. 2, para. 1, al. a, b.
[170] Polish lustration law, art. 2.
[171] Czarnota, Adam, „Lustration, Decommunisation and the Rule of Law," *Hague Journal on the Rule of Law* č. 1 (2009), 327.

century during which these people were perceived as legitimate (as the second chapter demonstrates, in 1991 most of the former KGB agents entered directly SBU). The problem of legitimacy of late lustrations is not only a theoretical one, as it is an issue often raised with the ECHR.[172] The necessity of inclusion of this category has been therefore most often legitimised not by the need of de-communisation but by the ongoing military conflict with Russia. As David summarises this argument, the de-communisation lustrations are justified because there is an intense security threat stemming from links that former communists in the state apparatus or the members and collaborators of the KGB have with Russia - a war enemy. Either through sympathies and personal ties, or through blackmail by documents in Russian possession concerning these persons, their loyalty might be easily compromised.[173] However, there is also a competing opinion, stating that the introduction of lustrations has precisely opposite effect, as it increases the possible impact on people whose secret service past is uncovered (they might lose their job), thus making them more vulnerable to extortion.[174] This argument articulated by Horne in 2009, long before the law on Government Cleansing has been adopted, seems all the more pertinent in the Ukrainian case, since prior to 2014, accidental revelation of person's affiliation with KGB would not be necessarily considered as great social stigma.

Second problem, connected to the first one, is the difficulty in implementing these provisions. While the names of former communist party apparatchiks are publicly accessible, the names of former KGB agents and collaborators are in secret evidence files, administered by the very services the lustration law is set to cleanse. Given the personal continuity in the secret services from Soviet to post-Soviet times, it would be easy for individuals with access to these documents to have theirs (or others) names removed (or even added) or to destroy entire documents. There is no hard evidence of this happening in Ukraine, but based on the experience of other states (where the security services had much less time to tamper with documents), we must assume it to

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[172] More in the chapter "Legal review of lustration laws"

[173] David, "Lustration in Ukraine," 144.

[174] Cynthia M. Horne, „International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context," *Law & Social Inquiry* 34, no. 3 (2009), pp 4, 5.

be highly probable. Both Poland and the Czech Republic experienced this first hand. It is estimated that some 40 to 50 % of documents of communist secret services have been destroyed in Poland after transition and as many as 90 % in Czechoslovakia (although many documents were saved in electronic version).[175] In the post-Soviet countries, the problem was exacerbated by the activities of central branch of KGB, which, largely successfully, sought to destroy or carry away as many sensitive documents as possible. In Lithuania in 1991, after the archives were made accessible to Lithuanian officials, they often found folders with many pages torn out or even trash bins full of smoking ash.[176]

Anti-corruption rationale

Perhaps one of the most original contributions of law on Government Cleansing to the regional corpus of lustration laws is its inclusion of corruption among the societal and political ills the law strives to banish through lustrations. There is no doubt about the rampant level of corruption in Ukraine. According to the Transparency International's corruption perception index for 2013, Ukraine ranked 144th out of 175 countries[177] and corruption is widely perceived as the most pressing social problem (followed by Donbas conflict and inflation).[178] As one of the authors of the law, Yegor Sobolev, noted in October 2014, "the most important thing is to get rid of corrupt officials, regardless of whether they worked under [presidents] Kuchma, Yushchenko, Yanukovych or Poroshenko."[179] However, there is no precedent in trying to solve this problem through lustration procedure.

The anti-corruption provisions of the law on Government Cleansing function as an extension of the law on the Principles of Preventing and Combating Corruption,[180]

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[175] Letki, „Lustration and Democratisation", 542.

[176] Tomas Skucas, „Lithuania: A Problem of Disclosure," *Demokratizatsiya, vol.* 12, no. 3 (2004), 417.

[177] Transparency International Corruption Perception Index 2010 https://www.transparency.org/cpi2010/in_detail (accessed 31 January 2018), 2013 https://www.transparency.org/country/UKR# (accessed 31 January 2018).

[178] "Public Opinion Survey of Residents of Ukraine 2017," *Center for Insights in Survey Research,* http://www.iri.org/sites/default/files/2017-11-28_ukraine_poll_presentation.pdf (accessed 15. 2. 2018).

[179] Sukhov, "Lustration law faces sabotage".

[180] Law on the Principles of Preventing and Combating Corruption, (ВВР) 2011, No 40, ст.404 *(Pro zasady zapobihannya i protydiyi koruptsiyi).*

adopted already in 201 but successively amended after 2014, which sets out a mandatory form ("transparency report"), whereby public officials are obliged to resume their property, income, expenses and obligations on yearly basis. The lustration ban should be applied on those whose transparency reports have been found unreliable or containing a mismatch between their net acquisitions and income from legitimate source during their time in one of the protected positions.[181] Given the complicated structure of the transparency reports, which also include property and financial relations of family members, and the possibility of judicial appeal against the lustration decision, it is difficult to explain why the process was included into the law. It would seem to be more rational to achieve dismissal of corrupt officials through already existing option of criminal (or other judicial) proceeding sanctioned with lost of office. As will be demonstrated in later chapter,[182] this anti-corruption provision has turned out to be one of the most criticised provisions of the Government Cleansing law and also one of the most difficult to implement.

2.4. Temporal aspects

To understand the scope of the law, it is also important to understand the time periods to which it links legal consequences. In terms of prohibited positions (backward looking aspect), these are the periods, the law considers problematic. In terms of protected positions (forward looking aspect), it implies the periods during which these positions should remain under protection. This effectively translates to the duration of the lustration ban. For the law as a whole, the temporal aspect might be understood as a time in which the law was adopted relative to the transition period, and the time it loses legal force.

The temporal scope of prohibited positions was largely discussed in previous part. It considers three time periods as being exposed to lustration scrutiny: the four years of Yanukovych presidency, the three months of Euromaidan protests and the whole Soviet period. While the two former categories are specified to an exact date (25 February 2010 to 22 February 2014 and 21 November 2013 to 22 February 2014), the

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[181] Law on Government Cleansing, art. 3, para. 8.

[182] More in chapter "Legal review of lustration laws".

latter is not. Only in the laws on Condemning the Communist and Nazi regimes from 2015[183] and in the Rehabilitation law from 1991[184] this period is "specified" as 1917 - 1991. Given the lapse of time, the exact delimitation of the starting point is redundant. The endpoint likely is 26 August 1991 (dissolution of the KPU) for KPU functionaries and 20 September 1991 (renaming of KGB to SBU) for KGB agents and collaborators as opposed to 26 December 1991 when the SSSR officially dissolved. However, for other agencies named by the law, this delimitation might prove more difficult. The anti-corruption provisions of the Government cleansing law are not linked to any specific period of time as they stretch always one year backward.

The temporal scope of the forward looking part is set by two possible lustration bans. The first one is delimited by ten years from the Government Cleansing law entering to force[185]. This ban applies in most cases and affects virtually all persons lustrated directly on the basis of law, without the need of court verdict. All persons falling within the scope of this lustration ban should be prohibited from entering (or keeping) any of the protected offices until October 2024. The second ban is set at five years[186] and applies to all persons, whose lustration is based on a court verdict. The five year period starts upon the date of legally binding court verdict, which means that the possible end date is indefinite and depends mainly on the swiftness of Ukrainian courts, statute of limitations on the court procedure and the Government cleansing law staying in force.

From comparative perspective, this part of Ukrainian lustrations does not stand out. Similar type of ban prohibiting entry into protected positions for ten years was used in Lithuania, where the lustration law was adopted in 1999 and the ban lasted until 2009.[187] In Poland, the lustration ban is also set at ten years, but it is not pegged to the

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[183] Law on the condemnation of the Communist and Nazi regimes, (BBP), 2015, No 26, ст. 219, (Pro zasudzhennya komunistychnoho ta natsional-sotsialistychnoho (natsyst·s′koho) totalitarnykh rezhymiv v Ukrayini ta zaboronu propahandy yikhn′oyi symvoliky).

[184] Law on rehabilitation of victims of political repression in Ukraine, (BBP), 1991, No. 22, ст. 262 (Pro reabilitatsiyu zhertv politychnykh represiy na Ukrayini).

[185] Law on Government Cleansing, art. 1, para. 3.

[186] Ibid., art. 1, para. 4.

[187] Czarnota, „Lustration, Decommunisation and the Rule of Law", 327.

date of the force of Polish lustration law (adopted in 1997, in force since 1999), but rather to the date when a lustration declaration of a person subject to the law is proven false.[188] Czech Republic is a specific case, as the ban in the law is set indefinitely, but the law itself had a limited duration of five years. However, in 1996, the law was extended for another five years and in 2000 the time limitation was entirely dropped thus making the ban permanent. The Ukrainian legal construction makes any future extension of the lustration ban unlikely as the law explicitly states the end date. Attempted change would amount to an obvious breach of the principle of legal certainty. In this respect, the Czech legal construction accidentally (Czech lustration law was the first one adopted) made the law much more flexible. Although both extensions were reviewed by the Czech Constitutional Court, in both cases the law passed.

The temporal aspect of the law itself is important as regards its legitimacy and legality. The lustration principle constitutes a significant breach of individual rights and contains elements of legal retroactivity and collective guilt, which are considered incompatible with a democratic state based on the rule of law. Such a breach can be legitimised only by exceptional conditions such as democratic transition. As the basic argument goes, with the longer time lapse between the transition and the introduction of lustration measures, the lustrations are becoming less and less legitimate. In the Ukrainian case, only the de-communisation part is objectionable in this respect, as the other provisions aim at dismantling remnants of an un-democratic (Yanukovych's) regime toppled less then a year prior to the adoption of the lustration law. The central question thus is, whether after 23 years from dissolution of the SSSR such a measure is still legitimate. This may be approached from more sides.

If these provisions are seen as a standard de-communisation lustration akin to those conducted in the CEE countries, we may resort to comparative analysis. In Ukraine, it lapsed 23 years between the end of the communist regime and introduction of the lustration law. In the Czech Republic it took 3 years,[189] in Lithuania it took 8

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[188] More in the subchapter "Procedure".

[189] The first lustration law was introduced already in 1991 by the Federal assembly.

years, in Poland 8 - 10 years.[190] From this point of view, 23 years seems like an excess. However, many CEE lustrations were later amended in a way that extended their temporal or material scope. In Czech Republic, the time limitation was abolished in 2000 (11 years after transition) thus making the lustration bans in a limited form applicable until this day (28 years after transition). In Poland, the law was significantly extended in 2007 (18 years after transition) and although large part of the amendment was repealed by the Constitutional Tribunal, some parts remained and the law is also applicable until today. Perhaps this makes the Polish and Czech lustrations also illegitimate, but from this viewpoint, the late Ukrainian lustrations at least do not appear so exceptional.

The second view, largely adopted by the Ukrainian supporters of the law, is that Ukrainian case is different from those of the CEE countries. Although the law contains nominally de-communisation provisions, the reason behind them is different from the CEE countries altogether. The aim of these provisions is not to uproot communist structures in the public institutions, but rather to protect the state in the time of war from individuals whose past makes them open to extortion by Russia or could mean that they are loyal to Russia rather than to Ukraine.[191] On the other hand, this line of argument pointing to the military conflict in the East of Ukraine is a rather popular figure among Ukrainian politicians to justify any kind of extraordinary measures (or inaction).

2.5. Procedure

The lustration process is regulated by the Government Cleansing law and is detailed in an order by the Ministry of Justice.[192] Unlike in other CEE countries, the lustration process in Ukraine is decentralised, which means that heads of each administrative body and the presidents of courts are accountable for the verification of their respective institutions.[193] In comparison, in the Czech Republic, the process is centralised and all lustration checks are conducted by the Ministry of Interior, which is

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[190] The law was adopted in 1997 but became enforcable only in 1999.

[191] More in the subchapter “De-communisation rationale”.

[192] Order of Ministry of Justice on the implementation of the Law on Government Cleansing, 2014, No. 2428 (Pro pochatok provedennya v terytorial′nykh orhanakh yustytsiyi perevirky, peredbachenoyi Zakonom Ukrayiny Pro ochyshchennya vlady).

[193] Law on Government Cleansing, art. 5, para. 4.

also in possession of the lists of secret agents and collaborators. Another approach was chosen in Poland, where the truthfulness of lustration declarations is controlled by the Institute of National Memory, which was entrusted with safekeeping the documents of communist secret services. Although Ukraine has also created an institution called Institute of the National Remembrance, which after 2014 was also entrusted with safekeeping some KGB archives,[194] it has no authority over lustrations. This decentralised system has been chosen as it allows more expediency, which is in line with Ukraine's goal to conduct lustrations within 2 years. Nevertheless, its apparent weakness is that the lack of procedural uniformity jeopardises equal position for all the lustrated officials, and it also creates space for settling personal accounts at workplace.

On the central level, the process is monitored by the Lustration Department, which is a special body operating under the auspices of the Ministry of Justice. The Ministry of Justice also issues a list of agencies, which check the reliability of information provided by lustrated officials and issues a screening schedule for every organ of the pubic authority. The basic schedule is already outlined in the law, which lays down the order of priority for lustrating separate public institutions beginning with the Ministry of Justice and central state institutions, starting from their heads down to employees of lesser importance.[195] More detailed schedule outlining the first two years of lustrations followed in an order by Cabinet of Ministers adopted immediately after the law came into force.[196] Despite these schedules, the law does not specify a deadline for completing the process of individual verifications, nor for the lustration process as a whole. It therefore seems that the process will go on until the 10-year period of lustration ban is reached in 2024. Furthermore, the law also provides for a uniform register of persons subject to the lustration law which is publicly accessible at the

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[194] Law on access to the archives of repressive bodies of the communist totalitarian regime of 1917-1991 (ВВР), 2015, No. 26, ст.218, (Pro dostup do arkhiviv represyvnykh orhaniv komunistychnoho totalitarnoho rezhymu 1917-1991 rokiv).

[195] Law on Government Cleansing, art. 5, para. 6.

[196] Order of the Cabinet of Ministers of Ukraine on approval of the plan for conducting inspections in accordance with the Law of Ukraine on Government Cleansing, No. 1025-p, (Rozporyadzhennya Kabinetu Ministriv Ukrayiny pro zatverdzhennya planu provedennya perevirok vidpovidno do Zakonu Ukrayiny pro ochyshchennya vlady).

Ministry of Justice website,[197] and includes amendments to labour code, law on judiciary and other laws concerning the dismissal of the lustrated persons.

On individual level, all persons holding or applying to protected positions must within due time according to the lustration schedule submit a written lustration statement that they are or aren't subject to any of the bans specified in the law and that they consent with the screening and publication of the information. These statements are subsequently assessed by the screening agencies, who examine the reliability of submitted information concerning the lustration bans and the property reports. Should the persons subject to lustration refuse to comply, automatic application of the lustration ban ensues. If the lustration declaration is proven inaccurate or contains information pointing to them falling within the scope of prohibited positions, a lustration ban applies. Any person may file an appeal against the assessment of the screening agency in the administrative court. The system of lustration declaration, where a lustrated person has to state whether the lustration ban applies to him/her and on what legal grounds, and only then the veracity of such statement is assessed, is similar to the Polish system where lustrated officials also have to submit such a declaration. However, in Poland, only a false declaration is grounds for dismissal, and if a person holding or applying to a protected position openly admits to being a former agent or collaborator, he is free to retain his/hers post. As the Polish lustration law included among protected positions primarily directly elected posts, this procedure is often considered as a "truth-finding[198]" or "reconciliatory[199]" lustration. Opposite to that, Czech lustration does not provide any space for exculpation, hence the term "exclusive."[200] The Ukrainian law contains a combination of the Polish "self-accusation" principle in the lustration declaration and the exclusionary nature of the Czech lustration, thus taking the harsher part of both laws.

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[197] Register of dismissed persons, https://lustration.minjust.gov.ua/register.

[198] Maria Łoś, "Lustration and Truth Claims: Unfinished Revolutions in Central Europe", *Law & Social Inquiry, 1995,* Vol. 20, No. 1, 144 - 148.

[199] David, „Lustration Laws in Action," 426.

[200] Ibid.

3. Implementation

The following part analyses the implementation of the law during the first three years of its existence. The questions this part seeks to answer are twofold: firstly, to what degree did the law succeed in accomplishing its main goals, and secondly, what are the main problems obstructing its full implementation and how are these problems addressed.

3.1. Fulfilling the lustration goals

There are two separate categories that allow us to measure the success of the implementation of the law. First category is the degree to which the persons targeted by the law were actually lustrated and whether these lustrations led in legally defined cases to actual dismissals. This category might be called "primary goal" of the law. Second category examines the success of the law in achieving its more general goal, that is the increase of public trust in institutions (or "secondary goal"). The measurement of these figures poses several problems.

Concerning the primary goal, the main problem is the reliability of data and its interpretation. This paper uses the data publicly available at two lustrations registers administered by the Ministry of Justice, which contain a database of all persons who underwent the lustration procedure and all persons who were dismissed. The results were compared to the proclaimed goals of the lustrations and also to the scale of lustration in the CEE countries. However, the data in the registers might not be entirely reliable, as the lustration is decentralised and the data is supplied by separate administrative bodies, which are both administrator of and subject to lustrations. The interpretation is made difficult by the fact that the registers reveal information only about the numbers of people lustrated (and dismissed) in specified positions, but they do not convey information about the importance of these people. This data set is therefore ill-designed to examine the "big fish" avoiding the lustrations, a problem that has a severe impact on the final effect of lustration and their public perception. The paper tries to deal with this setback of quantitative analysis in the following subchapter, where the problem of "avoidance schemes" is analysed.

Perhaps a bigger problem still is the measurement of the secondary goal. This paper uses the data from public surveys that measure the level of public trust in institutions and from Transparency International reports that measure the level of corruption perception. Although both these measurements (public trust in institutions and corruption perception) should correspond to the secondary goal of the law, the question remains, whether the increased or decreased trust in institutions can be liked to lustrations. There were many other reform steps taking place after Euromaidan, so it is close to impossible to make a direct inference. However, there is no apparent better way to analyse the impact of the law and so the paper applies this approach.

Primary goal

In September 2014, after the adoption of the law on Government Cleansing but before it came to force, Arsenyi Yatsenyuk, the then prime minister of Ukraine, claimed that lustrations would cover approximately 1 million public officials.[201] By another estimate, the total number should have been between 700 and 900 thousands.[202] As we can see from the registers, these estimates vary substantially from the actually achieved numbers. According to the lustration register, 290 thousands acting officials and 88 thousands applicants have been screened on the basis of the Government cleansing law by the end of December 2017.[203] This number amounts to approximately one third of the original target. Given the two year period allocated for conducting most of the lustrations, it is unlikely that the number would substantially rise.

Concerning the numbers of dismissed officials, as of the end of January 2018, the register of dismissed persons showed 934 people positively lustrated and dismissed.[204] The register contains evidence of the position, from which the person has

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[201] "Yatsenyuk: Ukraine lustration will cover 1 million officials," *KyivPost,* (published 17. 9. 2014) https://www.kyivpost.com/article/content/ukraine-politics/yatsenyuk-ukraine-lustration-will-cover-1-mln-officials-law-enforcers-364963.html (accessed 1. 12. 2017).

[202] Tadeusz A. Olszanski and Piotr Żochowski, "The bumpy road. Difficult reform process in Ukraine" *Osrodek Studiow Wschodnich* (published 3. 12. 2015), https://www.osw.waw.pl/en/publikacje/osw-commentary/2015-12-03/bumpy-road-difficult-reform-process-ukraine (accessed 1. 10. 2017).

[203] Register of lustrated persons (Vidomosti pro stan prokhodzhennya perevirky), https://lustration.minjust.gov.ua/main/checking.

[204] Register of dismissed persons (Yedynyy derzhavnyy reyestr osib, shchodo yakykh zastosovano polozhennya Zakonu Ukrayiny "Pro ochyshchennya vlady") https://lustration.minjust.gov.ua/register.

been removed, the legal title for dismissal, the time of the final decision and the time period for which he/she is banned from entering a public office protected by the law. The register also files people by name so it is possible to track, if they attempted to move to another protected position. Firstly, it is worth noting that all of the dismissed people are banned for the period of 10 years (i.e. until 2024), most likely because the 5 year ban requires a final court judgement, which takes a long time to achieve. After extracting the complete dataset from the register of dismissed officials, we sort the data according to specified variables.

Sorting the dismissed persons by the protected positions, the results are as follows:

Table 1: Dismissed officials by protected position

Protected position	State fiscal service	State prosecution	Ministry of Internal Affairs	Security Services of Ukraine	Regional and district state administration	Other central executive bodies (ministries and central state agencies)
Number of dismissed	258	206	190	59	48	173

Source: register of dismissed officials: https://lustration.minjust.gov.ua/register (accessed 20. 12. 2017).

Sorting the dismissed persons by the prohibited positions, the results are following:

Table 2: Dismissed officials by prohibited position

Prohibited position	Involvement (at least one year) in Yanukovych presidency	Involvement during Euromaidan protests	Police or other law enforcement officials prosecuting Euromaidan protesters	KPU officials	KGB agents or collaborators	Anti-corruption lustrations	Failure to submit lustration declaration
Number of dismissed	447	106	113	4	43	110	111

Source: register of dismissed officials: https://lustration.minjust.gov.ua/register (accessed 20. 12. 2017).

From these numbers, it is possible to make several observations. The ratio of prohibited de-communisation positions among the dismissed persons is relatively low compared to other positions. This might be explained partially by generational change but it still seems implausibly low considering the likely number of KGB agents and collaborators in public offices. Another explanation is disappearance of or meddling with the files containing names of agents and collaborators (alike the ones recorded in other CEE states). The KGB archives containing these information were not publicly accessible until the 2015 legislative change.[205]

[205] Law on access to the archives.

Second observation is the relatively low ratio of people dismissed based on the anti-corruption clauses compared to other groups of prohibited positions. Given the wide-spread corruption in Ukraine, the number of officials dismissed for corruption totalling at 110 is very low. It is obvious that implementation of this part of the law didn't go anywhere near the numbers that would reflect the actual state of affairs.

Perhaps the most important observation is that the overall number of dismissed persons seems to be relatively small compared to the number of lustrations and considering the breadth of the prohibited positions. This might be partially explained by the large number of individuals who left voluntarily before the lustration procedure took place. In this manner, according to the head of SBU, more than 3,000 employees left the security service compared to 59 dismissed by lustration.[206] However, even if the numbers were correct, there is no reason to assume that the voluntary departures were specific to Ukrainian lustrations. Given the similar scope of Czech and Ukrainian laws (see the table below), the ratio appears all the more surprising. The most important factor therefore seems to be the inefficiency of the lustration process and corruption linked to the implementation of Ukrainian lustration in all groups of protected positions.

Table 3: Number of lustrations after first three years comparative table

	Number of citizens (rounded to millions)	**Number of people lustrated**	**Number of people dismissed**
Ukraine	42 000 000 (excluding Crimea)	290 000 officials 88 000 applicants	934
Poland	38 000 000	25 000	No automatic dismissal
Czech Republic	10 000 000	250 000 lustration certificate requests	over 14 000

Sources**:** register of dismissed officials: https://lustration.minjust.gov.ua/register (accessed 20. 12. 2017), https://zpravy.idnes.cz/historik-blazek-o-lustracnich-zakonech-a-spolupraci-s-stb-p3p-/domaci.aspx?c=A131206_165129_domaci_jav (accessed 1. 12. 2017), Roman David, „Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001),“ *Law & Social Inquiry* 28, no. 2 (2003), p. 423.

A special part in the lustration process concerns the judiciary, which is covered by two overlapping laws. The lustration registers accessible at the Ministry of Justice cover only lustrations under the Government Cleansing law. Within the lustrations set

[206] "V SBU za dva goda lyustrirovany pochti 60 sotrudnikov, boleye 3,3 tys. chelovek uvolilis' sami" *Interfax*-Ukraine, (30. 3. 2016), published https://interfax.com.ua/news/general/334339.html (accessed 31. 2. 2018).

up by this law, no judge has been dismissed. Concerning the law on Restoration of Trust in Judiciary, we must rely on secondary sources. According to Lezina, during the course of first two years, the Interim Special Commission received more than 2000 requests, issued 300 findings and made recommendations to High Council to dismiss 46 judges. As of 2016, 29 of those judges were dismissed. However, most of them later overturned their dismissal at Higher Court of Administration.[207] Because of these obstructions, an extraordinary session of Verkhovna Rada gathered on 29 September 2016 and voted to dismiss 29 of 33 judges formerly recommended by High Council for dismissal.[208] The overall results are rather underwhelming and are in line with the implementation of the law on Government Cleansing.

The overall results of the implementation relative to estimated numbers are nothing short of a failure. Put together, no more than one third of protected positions as estimated were actually lustrated. Even bigger failure seems to be the ratio of dismissed people to the lustrated ones. Compared to the Czech Republic, country four times smaller by population, Ukraine had during first three years only 1,5 times more people lustrated and less than 1/15 officials dismissed as a result of lustrations. According to one of its architects, Yegor Sobolev, during the first year especially the anti-corruption lustrations and lustrations of judges completely failed.[209] However, considering the chaos in which Ukraine entered the first post-revolution years and the capacity of its institutions, it is necessary to take this evaluation with a grain of salt. The bottomline is that at least some people were expelled, although, judging by the numbers, by far not enough.

Secondary goal

If the number of lustration bans fell short of expectations, the level of public trust in lustrated institutions during the first three years followed suit. Looking at the development of public trust in the three central institutions of state subjected to lustrations - the army, the government and the judiciary - there is no apparent

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[207] Lezina, "Ukarainskaya lyustracia," 176.

[208] Ibid., 177.

[209] Yegor Sobolev, "Yaki rezul′taty lyustratsiyi za rik" *Ukrainska Pravda blogi* (October 16, 2015), https://blogs.pravda.com.ua/authors/sobolev/56213ff5302b3 (accessed 31. 1. 2018).

improvement in any of the three. The army has since 2014 retained quite high degree of public trust (possibly due to its crucial role in the ATO operation), while the government and the judiciary remained among the least trusted institutions (see the table below). Considering that the lustration law aiming at the judiciary had its goal declared in its very name, the results on this front are especially dire.

Table 4: Public trust in lustrated state institutions

Year	2014	2015	2016	2017
Government	16,2 %	19,8 %	15,8 %	19,8 %
Army	No data	57 %	61,8 %	57,3 %
Judiciary	14,1 %	5 %	10 %	9,3 %

Sources: "Dovira do orhaniv vlady ta suspil′nykh instytutiv v Ukrayini," *Gromadskiy Prostir,* (published 13. 3. 2014) https://www.prostir.ua/?news=dovira-do-orhaniv-vlady-ta-suspilnyh-instytutiv-v-ukrajini (accessed 20. 12. 2017), "Otsinka hromadyanamy sytuatsiyi v Ukrayini ta stanu provedennya reform, stavlennya do politykiv ta suspil′nykh instytutiv, elektoral′ni reytynhy," *Razumkov Center*, (published 2015) http://old.razumkov.org.ua/upload/1427287523_file.pdf (accessed 20. 12. 2017), "Otsinka hromadyanamy sytuatsiyi v krayini, stavlennya do suspil′nykh instytutiv, elektoral′ni oriyentatsiyi," *Razumkov Center*, (published 2016) http://old.razumkov.org.ua/upload/1463122497_file.pdf (accessed 20. 12. 2017), "Stavlennya hromadyan Ukrayiny do suspil′nykh instytutiv, elektoral′ni oriyentatsiyi," Razumkov Center, (published 23. 10. 2017) http://razumkov.org.ua/napryamki/sotsiolohichni-doslidzhennia/stavlennia-hromadian-ukrainy-do-suspilnykh-instytutiv-elektoralni-oriientatsii-2 (accessed 20. 4. 2017), "National public opinion survey on democratic, economic and judicial reforms, including implementation of the law on the purification of government" *USAID,* (published 21. 7. 2016) http://www.fair.org.ua/content/library_doc/FAIR_LustrSurvey_Summary_2016_ENG.pdf (accessed 20. 12. 2017), "ZVIT za rezul′tatamy sotsiolohichnoho doslidzhennya Stavlennya hromadyan Ukrayiny do sudovoyi systemy," *Rada suddiv Ukrayiny,* (published 2017) http://rsu.gov.ua/uploads/article/final-report-survey-e07f150174.pdf (accessed 15. 1. 2018)

The anti-corruption index shows a slight improvement from 2014 to 2017, seeing Ukraine rise from 26 to 30 on a hundred-point scale and from 142nd place among 174 measured countries to 130th among 180.[210] However, the number of reforms introduced in Ukraine since Euromaidan, and especially those focused on the corruption, has been so vast that it is impossible to ascribe the results of the opinion polls directly to the failures or successes in lustrations. This seems to be the case explaining the mismatch between poor performance of anti-corruption lustration measures and positive (albeit slight) trend in corruption perception. Apparently, some anti-corruption measures (other than lustration) had to have a somewhat positive effect on the public perception.

[210] Transparency International Corruption Perception Index 2014, https://www.transparency.org/cpi2014/results (accessed 31 January 2018), Transparency International Corruption Perception Index 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (accessed 31 January 2018).

Nevertheless, it is possible that without any lustrations (as "successful" as they were) the public trust in institutions would be even lower. Furthermore, the introduction of lustrations (although the opinion of what they entail varied) was one of the main demand of the Euromaidan protesters and so the very introduction of the two laws can be seen as a success in its own right. Falling short of proving any measurable positive effect of lustrations on the public trust in institutions, the results at least serve to refute some of the previous conceptions about the effect of lustrations. Perhaps most notably, our results seem to contradict the argument voiced by Horne in her paper analysing the effect of lustrations in CEE countries on public trust in institutions. She stated that lustrations have positive effect on the trust in non-political public institutions, while the trust in political institutions is not likely to be much influenced by lustrations.[211] In Ukrainian case, neither the apolitical institutions (such as judiciary or army) nor the quintessentially political ones (government) seemed to gain any trust through lustrations.

3.2. Avoidance schemes and political pressure

According to the available evidence, the large discrepancy between the estimates and the number of officials actually dismissed can be broken down to two main causes: successful individual attempts to avoid the law, and political and institutional resistance towards the law. On the individual level, the system created many loopholes through which the affected officials could escape the lustrations. According to the reports of NGOs monitoring the progress of reforms, we may identify main avoidance schemes used by lustrated officials.

One possible way to avoid lustrations lay in being granted the status of the ATO participant, without being its actual subject. This has been facilitated by an exemption provision in the law on Government Cleansing.[212] According to the records of Open Dialog Foundation, this loophole has been widely used by many officials to whom this

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[211] Cynthia M. Horne, "Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe," *Comparative Political Studies* 45:4 (2012): 412-446.

[212] Law on Government Cleansing, art. 1, para. 7.

provision applied, who traveled for few days near the front line and used their personal connections in the army to be granted the coveted status of ATO participant without ever being exposed to enemy fire.[213] Another recorded way consisted in being transferred to a lower status position which does not fall within the scope of lustrations for the period of lustration screening of the particular administrative body.[214] Third common way of avoiding lustration ban is appealing the decision (or whole procedure) in the administrative court. Given the notorious qualities of Ukrainian judiciary, this method provides a reliable way for many officials with good connections to avoid dismissal.

Illustrative of this approach is the case of senior prosecutor, Oleg Valendyuk, who managed to escape the lustration during the first year of its application. The position he held before the Euromaidan put Valendyuk squarely in the ranks of officials subject to lustration. He used his connections and within a week from the law being in force, he received a preventive ban on his dismissal from a court. Considering the normal speed of Ukrainian court proceeding, that in itself is astounding. Characteristically, the judge who handed the decision, Viktor Danylyshyn, should himself have fallen within the scope of the lustration as he banned public gatherings on Kyiv's central streets on November 21, 2013.[215]

On the level of state, there has not been a unanimous support for the whole lustration process among political elite and some of the most prominent politicians, president Poroshenko among them, were even accused of boycotting the lustrations. It was largely due to Poroshenko's pressure that the directly elected positions were excluded from the lustrations. The power of president to free military men from lustrations, which was incorporated into the law in an amendment on Poroshenko's

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[213] Agnieszka Piasecka "Report: Purification of government or vetting Ukrainian style. The first year's experience", *Open Dialog Foundation,* (published 5. 11. 2015) http://en.odfoundation.eu/a/7029,report-purification-of-government-or-vetting-ukrainian-style-the-first-year-s-experience (accessed 15. January 2018).

[214] Agnieszka Piasecka and Oleksandra Drik, "Current challenges of lustration in Ukraine", *Open Dialog Foundation,* (published 8. 6. 2015) http://en.odfoundation.eu/a/6507,current-challenges-of-lustration-in-ukraine (accessed 15. January 2018).

[215] Katya Gorchinskaya, "Avoiding Lustration in Ukraine: Senior Prosecutor Evades Sweep Of Yanukovych-Era Officials" *Radio Free Europe* (published 18. 7. 2015), https://www.rferl.org/a/ukraine-lustration-prosecutor-valendyuk/27135678.html (accessed 14. 2. 2018).

demand, was according to some, also abused.[216] Between March 2015 and January 2016, seven high commanders were exempted by presidential decrees.[217] Among them was general Tereshchuk, who allegedly ordered violent suppression of the Euromaidan protests in Lutsk. Equally criticised has been minister of interior, Arsen Avakov, for resisting lustration of many high ranking officials within the Interior Ministry.[218] Most recently, in what has been largely seen as a politically motivated pushback against the reformers, head of the Civic Lustration Committee and a parliamentary deputy, Yegor Sobolev, was dismissed as head of anti-corruption committee in Verkhovna rada.[219] The implementation of the law also faces persistent opposition from significant part of judiciary from lower instances to the top courts. In the summer of 2016 the constitutional court almost struck down the key provisions of the law on Government Cleansing.[220]

Because of this hostile environment, role of civil society and NGOs such as Civic Lustration Committee or Open Dialog Foundation became instrumental in enforcing the law. Especially the former contributed significantly to bringing lustrations to the upper echelons of state power. It made a publicly accessible register of people in protected positions who fall within the criteria for lustration ban and still have not been dismissed,[221] and published several analyses identifying the administrative bodies most reluctant to implement lustrations. In this manner, it succeeded it mounting sufficient public pressure to achieve dismissals of several high positioned individuals, such as Vitaliy Yarema (General Prosecutor of Ukraine) or Vitaly Sakal (Deputy Minister of Internal Affairs).[222] However, these were only individual victories (albeit symbolically

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[216] Roman Romanyuk. "Restavratsiya na marshi. Chy skasuyut′ lyustratsiyu, i yaka rol′ v ts′omu Poroshenka", *Ukrainska Pravda*, (15. 6. 2016) https://www.pravda.com.ua/articles/2016/06/15/7111830/ (accessed 31. 1. 2018).

[217] Presidential decrees Nos. 157/2015, 229/2015, 330/2015, 388/2015, 3/2016.

[218] Sobolev, "Yaki rezul′taty lyustratsiyi za rik"

[219] "Rada dismisses anti-corruption committee chairman Yegor Soboliev," *KyivPost* (published 7. 12. 2017) https://www.kyivpost.com/ukraine-politics/rada-dismisses-anti-corruption-committee-chairman-yegor-sobolev.html (accessed 31. 1. 2018).

[220] More in the subchapter "Constitution court review - between law and politics".

[221] "Reyestr osib, shcho pidlyahayut′ lyustratsiyi", *Civic Lustration Committee,* https://registry.lku.org.ua/dashboard (accessed 12. 12. 2017).

[222] Piasecka, "Current challenges of lustration".

important) and in reality, most of the middle and low level officials who avoided lustrations remained unchallenged.

4. Legal review of lustration laws

There are three institutions dedicated to review laws on their conformity with fundamental rights' standards, whose decisions and opinions are relevant to Ukrainian lustrations: Constitutional Court of Ukraine (CCU), European Court of Human Rights (ECHR), and the Venice Commission. The CCU is an intrastate judicial body; the ECHR and Venice commission are international bodies founded by an international treaty. Both the CCU and Venice Commission have already received petition to assess the Ukrainian lustrations. The ECHR has thus far (until the end of 2017) not received any submission concerning Ukrainian lustrations. However, this is quite likely to change in the future as its already existing decisions concerning lustrations from other post-communist European states provide good insights into weaknesses of the legal construction of lustrations in Ukraine. Other than these three institutions, the law was not assessed by any other public institution with the exception of International Labour Organisation (ILO), which issued a brief memo. In it, the Committee of Experts of ILO merely noted the potentially broad impact of the Government Cleansing law and asked the Ukrainian government to ensure that it does not lead to discrimination based on political opinion, without analysing the law in depth.[223]

1. Constitutional review - between law and politics

According to Ukrainian Constitution, CCU is the only judicial instance that can conduct a constitutional review of the laws and its rulings are legally binding.[224] It can review the laws on their own merits, without individual infringement case being brought before it (abstract review) and has authority to repeal laws that do not conform with the constitution. Soon after adoption of the law on Government Cleansing, it has received three petitions, one from the External Intelligence Service of Ukraine, other from the Supreme Court of Ukraine and third from 47 deputies of the Opposition Block (former Party of Regions). On 1 April 2015 it united the proceedings on three constitutional

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[223] Direct Request (Committee of Experts on the Application of Conventions and Recommendations) 2014, published 104th ILC session (2015).

[224] Constitution of Ukraine, (BBP), 1996, No. 30, ст. 141 (Konstytutsiya Ukrayiny), art. 147.

petitions in one constitutional proceeding.[225] The petitioners mostly complained that the collective dismissals contradicts Ukrainian Constitution[226] and demanded that several parts (most of the protected positions in the article 3) be repealed.

The constitutional review of lustration laws, including their annulation is not without precedent in post-communist states. In Poland, the first proto-lustration called "lustration resolution" issued by interior minister Macierewicz was repealed by Constitutional tribunal in 1992 for the lack of legal remedies after a public outcry, which even caused the fall of government of Jan Olszewsky.[227] Subsequently adopted lustration law was reviewed by the Constitutional tribunal in 1998 having some of its parts removed[228] and substantial part of its amendment adopted in 2007 has been also annulated by the tribunal.[229] In the Czechoslovakia and later in the Czech Republic, the Constitutional court reviewed the lustration law two times (after adoption and after extending its temporal scope in 2000), always finding it within limits of constitution.[230]

There would seemingly be no problem with CCU weighting the constitutionality of the Ukrainian lustration laws. However, there is one significant difference from the above cases. In the Czech case, the Constitutional court was newly instituted after 1989 from individuals not burdened by the communist legacy. In Poland in 1992 (tine of first lustration decision), half of members of the Constitutional tribunal had joined after 1989.[231] On the contrary, in Ukraine in 2014, when the CCU was petitioned to review the law on Government Cleansing, it was occupied by the same judges who served there during Yanukovych rule. Furthermore, 8 of the 17 members including the president of

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[225] "Konstytutsiynyy Sud Ukrayiny zavershyv usne slukhannya spravy shchodo konstytutsiynosti okremykh polozhen′ Zakonu Ukrayiny "Pro ochyshchennya vlady" ta pereyshov do zakrytoyi chastyny plenarnoho zasidannya", *Constitutional Court of Ukraine*, press release, http://www.ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-zavershyv-usne-sluhannya-spravy-shchodo-konstytuciynosti-okremyh (accessed 15. 2. 2018).

[226] Constitution of Ukraine, art. 61.

[227] Zuzanna Zaleska, „Lustration of Clergymen in Poland – A Linguistic Representation in the Catholic Media," *Revista Romana de Comunicare si Relatii Publice* (2008), 20.

[228] Banaszkiewicz, "Ústavněprávní kontexty vyrovnání se s totalitní minulostí", 62.

[229] Katarína Šipulová, Vít Hloušek, „Rozdielne cesty tranzitívnej spravodlivosti – prípady Českej republiky, Slovenska a Polska," *Středoevropské politické studie* 14, č. 1 (2010), 75.

[230] Federal Constitutional Court Pl. ÚS 1/92, Czech Constitutional Court Pl.ÚS 9/01.

[231] "Sędziowie Trybunału Konstytucyjnego w latach 1985-2016", *Polish Constitutional* Tribunal, http://trybunal.gov.pl/fileadmin/content/dokumenty/Sedziowie_TK_1985_2016.pdf (accessed 25. 2. 2018).

the court Yurii Baulin were the same judges who in 2010 allowed Yanukovych to usurp power by abolishing the constitution amendment of 2004.[232] This would put them squarely within the ranks of prohibited positions. Although there exists legitimate grounds for assessing the constitutionality of certain provisions of the law, in Ukrainian context, the court does not function as an "independent other" but rather as an actor, potentially judging his own case.

The politicised debate surrounding the whole case marked significantly the proceedings. In March 2016, the court decided to move to the closed plenary discussion,[233] and a draft decision appeared in the media, seemingly repealing substantial parts of the law.[234] However, by the end of 2017, the case was still pending. Several judges including the president Baulin have left the court in the meantime and the draft law to reform the CCU has been submitted to Verkhovna rada,[235] leaving the court in a limbo. The whole constitutional review of the lustrations thus became an another example of the microcosm in which lustrations are being implemented in Ukraine rather then a serious legal challenge to the law.

2. Venice Commission - misplaced hopes

The Venice Commission (Commission) is an advisory organ of the Council of Europe, whose task is to counsel the member states on human rights issues. It releases opinions on the legislative acts of the states assessing their compatibility with the European standards of protection of human rights. These opinions, accessible in the online register, are not legally binding. However, they have an authority stemming from the consistent counselling activity of the Commission and erudition of its members. They are thus often used as a supplemental argument in legal disputes and they also foreshadow possible legal challenges that any contestable new laws are likely to face.

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[232] Piasecka, "Current challenges of lustration".

[233] "Konstytutsiynyy Sud Ukrayiny zavershyv usne slukhannya".

[234] "KS zbyrayet″sa skasuvaty lyustratsiyu", *Ukainska Pravda,* (published 9. 6. 2016) https://www.pravda.com.ua/news/2016/06/9/7111308 (accessed 15. 2. 2015).

[235] "Rada passes at first reading bill on constitutional court", *KyivPost (published 22. 6. 2017),* https://www.kyivpost.com/ukraine-politics/rada-passes-bill-constitutional-court-first-reading.html *(accessed 12. 2. 2018).*

The Commission issued two opinion concerning the law on Government Cleansing, one in December 2014 (interim opinion) and other in June 2015 (final opinion). The law on the Restoration of Trust in Judiciary was presumably assessed by the Council of Europe,[236] but as of December 2017, it was not accessible in its database. Both opinions largely drew from the standards for lustrations and other transitional justice measures adopted in 1996 in form of a resolution by the Parliamentary Assembly of the Council of Europe[237] and its annex (Lustration Guidelines).[238] In the interim opinion, the Commission conducted a thorough legal analysis of the law as it was adopted by the Verkhovna Rada, pinpointing numerous shortcomings, which require amendments. In the final opinion, the Commission took much more conciliatory position, based on a long list of proposed amendments to the law, submitted to the Commission by representatives of Ukraine.[239] However, these amendments, quoted throughout the final opinion,[240] were never implemented. This opinion, although "final," thus bears less relevance to the law than the interim one.

The Commission confirmed that in principle, lustrations do not violate European legal standards, reiterating the argument of militant democracy.[241] However, it came with a long list of complaints pertaining to individual provisions of the law. On procedural grounds, the Commission voiced concern about the parliamentary procedure leading to adoption of the law. It complained that during the second reading, which preceded the vote, the amendments to the draft law haven't been made available to the deputies and the vote itself took place under pressure from protesters.[242] It then stated that the overlap between the Government Cleansing law and the law on Restoration of Trust in Judiciary is legal aberration creating lack of legal certainty and possibly

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[236] Venice Commission, Opinion no. 788/2014, (Interim opinion on the Law on Government Cleansing), art. 9.

[237] Parliamentary Assembly of the Council of Europe (PACE) Resolution 1096, (1996).

[238] Report of the Committee on Legal Affairs and Human Rights of the Council of Europe, doc. 7568, 1996.

[239] Venice Commission, Opinion No. 788/2014, (Final opinion on the Law on Government Cleansing), art. 6.

[240] Final opinion, articles 11, 12, 29, 37-40, 55, 65, 66, 84-96, 99, 102.

[241] Interim opinion, article 17.

[242] Ibid., art. 14.

violating the principle *ne bis in idem*, making it possible for the same person to be lustrated twice for the same "offence."

Concerning the material provisions of the law, the complaints target both the scope of lustrations and the process of implementation. The main eight concerns are as follows: First, the anti-Yanukovych part, targeting four year period of his rule, questions "actual functioning of the constitutional and legal framework of Ukraine."[243] In 2010, Yanukovych was elected in fair elections and the prohibited functions were filled in accordance with the law. Inclusion of these positions is thus admission of non-functionality of Ukrainian institutional framework. Second, the de-communisation part of lustrations targets people based on their membership in former communist structures and not on their conduct, which is not acceptable, when the lustrations are adopted with almost quarter century delay.[244] Third, the 5 year ban from a court judgement is problematic, because it leaves the lustration process open ended, possibly stretching it far beyond the presumed 2024 deadline.[245] Fourth, the list of protected positions in the administration should be restricted.[246] Fifth, the anti-corruption part should be removed from the law and other means than lustration should be used to pursue this agenda.[247] This complaint was included also in the final opinion.[248] Sixth, the ATO exemption is unsystematic.[249] Seventh, the collective punishment (as opposed to individual liability) should be restricted to only the most extreme cases of past abuses, which is not the case of Ukrainian lustration law.[250] Eight, the decentralised structure of the lustration process risks the lack of uniformity and even creating space for settling of private accounts.[251]

While the separate complaints voiced in the interim opinion are well placed, it might be argued that the Commission did not fully appreciate the authoritarian and

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[243] Ibid., art. 34.
[244] Ibid., art. 37.
[245] Ibid., art. 44.
[246] Ibid., art. 54.
[247] Ibid., art. 67
[248] Final opinion, art. 111a.
[249] Interim opinion, art. 69.
[250] Ibid., art. 32.
[251] Ibid., art. 90.

kleptocratic nature of the Yanukovych regime and its terrible consequences for the country. Considering the state of corruption, trust in public institutions and the war in the east after the end of Yanukovych's rule, the restrictions, which the lustration law placed on the officials in his administration seem more justified than the Commission's interim opinion presents. It also needs to be added that given the date of adoption of the PACE guidelines of 1996, it is necessary to take them with certain reservations. The experience of the CEE lustrations already proved some of the recommendations pointless. To name just a few, the Guidelines presumed that elected positions or all private and semi-private positions should be excluded from the lustration, that the maximum lustration ban should not exceed five years and that all the lustration laws should strictly abide by the principle of individual accountability. On the other hand, the final opinion failed to grasp the fact that Ukraine is not a country with fully established rule of law, as it based the whole argument on document containing future changes which never materialised. In the end, none of the recommendations in the interim opinion or in the final opinion had been implemented. This makes a future challenge of the law before ECHR ever more likely.

3. *European Court of Human Rights - future prospects*

The European Court of Human Rights based in Strasbourg is an independent judicial organ which decides cases brought before it by individuals against the signatory states of the European Convention on Human Rights. The jurisdiction of the court is limited to the review of alleged violations of the Convention by the member states. Since 1989, all European post-communist states with the exception of Belarus signed the Convention (Ukraine joined in 1995), and the ECHR became to a certain degree a guardian of the adherence of the newly democratic states to the European human rights standards. As a *sui generis* instance of last remedy, it took on the role of both the guarantor of individual rights and a warden of legislative excesses of the states. In some cases, its consistent decisions on lustration cases even brought certain states to change their laws, such as in Lithuania.[252] Application to the ECHR is conditioned by exhausting all domestic legal remedies so it mostly takes several years before the

[252] "Report on the political rights in Lithuania" Freedomhouse official website, https://freedomhouse.org/report/freedom-world/2008/lithuania#.VRsC1rr9M9k (accessed 15. 12. 2017).

alleged violation can be assessed by the ECHR. Since Ukraine started to implement lustrations at the end of 2014, no case so far has reached the ECHR. However, the law on Government Cleansing is comparable to other lustration laws adopted in the post-communist Europe. Analysis of ECHR's past lustration decisions may reveal main legal shortcomings of Ukrainian lustrations and forecast the outcome of future lustration cases brought before the court.

The set of judicial decisions was gathered through HUDOC database, which contains all the legal rulings of the ECHR. The keyword "lustration" was used to sort through all the decisions concerning post-communist states and after preliminary reading, all ECHR rulings that assessed lustrations on their merits were selected. Since 1989 there has been altogether 15 lustration cases[253] from the countries of post-communist Europe brought before the ECHR. From these, three were against Lithuania, five against Latvia, one against Estonia, three against Poland, two against Slovakia, one against FYROM and one against Romania. It would seem that countries with most cases had the strictest lustrations, but there are many other aspects, such as the availability of domestic legal remedies, which contribute to the number of cases that end up in Strasburg. For example no case from the Czech Republic, which has some of the most sweeping lustrations, has ever got to the ECHR.

In its decisions, ECHR reviewed both the material provisions of the laws and the process of their implementation. Based on the *ratio decidendi* of the final judgments, we may identify four main areas, in which the lustration laws and their application are susceptible to being found in violation of the European human rights standards as codified in the European Convention.[254]

Lapse of time from regime change

In three out of four lustration cases where ECHR considered this argument, it found a violation of the rights of the applicant. In the case of Sidabras and Džiautas v. Lithuania (which was also the first lustration case before heard ECHR), the ECHR ruled

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[253] The number may differ based on how we define lustration.

[254] European Convention on Human Rights

in favour of the applicants. It quoted the time lapse of 9 and 13 years respectively from the end of applicants' employment in the KGB and their dismissal through lustrations as one of the main reasons for the violation.[255] Another two cases, where ECHR found violation was Adamson v. Latvia, where the applicant was dismissed in 2003 after more than a decade of active political life,[256] and Soro v. Estonia, where the applicant was not even dismissed but left voluntarily after his name was revealed as a KGB agent as late as in 2004.[257] On the opposite side, ECHR dismissed the case of Ždanoka v. Latvia, where the applicant complained about the lustration ban preventing her from standing in parliamentary elections due to her past in the Latvian communist party (KPL). The court decided that given the Russian military presence in Latvia until 1994 and the country's vulnerable geopolitical situation[258] the late introduction of the law in 1995 is not legally problematic. It is a piece of trivia that Ms Ždanoka was later elected a member of European Parliament, because the election rules for European Parliament do not allow lustration limitation of passive election right.

These decisions are pertinent to the Ukrainian case. The de-communisation parts of the law, which constrain the former members and and affiliates of Communist party, Komsomol and KGB, were adopted 23 years after these institutions were abolished. That is much longer time lapse than the one in three Baltic countries, where ECHR found the late lustration problematic. While the provisions affecting former KGB agents and collaborators might be possibly defended on the grounds of agents' affiliation with Russia, as an extraordinary measure adopted in time of war between Ukraine and Russia (along the lines of Ždanoka case), there seems to be no justification for inclusion of the KPU and Komsomol officials.

Broadly defined prohibited positions

ECHR considered the scope of prohibited positions in two cases. In the case of Ždanoka v. Latvia, it examined whether the inclusion of members of the KPL among the prohibited positions was legitimate. It came to a conclusion that lustration of the

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[255] ECHR Nos. 55480/00, 59330/00, *Sidabras and Džiautas v. Lithuania*, art. 60.
[256] ECHR No. 3669/03 *Adamson v. Latvia.*
[257] ECHR No. 2258/08, *Soro v. Estonia*.
[258] ECHR No. 58278/00, *Ždanoka v. Latvia*, art. 119, 121.

applicant did not violate her fundamental right as the lustration ban required active participation in the KPL during the time of coup attempt in January 1991,[259] In the case Adamson v. Latvia, the ECHR found an infringement of applicants fundamental rights because the prohibited position was not sufficiently specified. Mr. Adamson was member of a boarder patrol, which administratively fell within KGB, and thus was lustrated as an employee of the KGB.[260]

The problem of insufficient individualisation is also applicable to the Ukrainian lustrations in all three de-communisation categories. The law on Government Cleansing links its effects to the formal membership and not to any particular action. It targets any person formally employed by the KGB, thus possibly including positions as absurd as charwomen or drivers. In a hypothetic case, according to the article defining the KGB-related prohibited positions, Mr. Adamson would be dismissed from any protected office in Ukraine as an "employee of KGB of other Union republic in the former USSR.[261] It is almost certain, that if any comparable case appeared before the ECHR, it would rule against Ukraine. The problem of overly extensive/poorly defined prohibited positions could also apply to certain prohibited positions from the anti-Yanukovych group. Although there hasn't been any similar lustration and therefore there is no applicable case-law, ECHR generally demands that any limitation of individual rights (such as lustration) has to be based on a legitimate reason. It might be hard for Ukrainian legislators to explain why for instance each deputy head of regional prosecution office[262] is by default considered a threat to the democracy in transition.

Broadly defined protected positions

The problem of overly broadly or vaguely defined protected positions was reviewed in three cases by the ECHR. In Sidbaras and Dziautas v. Lithuania case, ECHR stated that the lack of explanation for the inclusion of (private sector) jobs into the protected positions (constitutes a violation of the Convention.[263] In the two

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[259] ECHR No. 58278/00, *Ždanoka v. Latvia*, art. 126.
[260] ECHR No. 3669/03 *Adamson v. Latvia.*
[261] Law on Government Cleansing, art. 3, para. 4, al. 2.
[262] Ibid., art. 3, para. 1, al. 8.
[263] ECHR Nos. 55480/00, 59330/00, *Sidabras and Džiautas v. Lithuania*, art. 59

following cases[264], both against Lithuania, ECHR ruled in favour of the applicants - two advocates and one telecommunications worker - stating that the lack of explanation for inclusion of these private sector positions among protected positions in the lustration law infringes the fundamental rights of the applicants. Based on these decisions, Lithuania dropped all private sector positions from the lustration law in 2007.[265] As there is no private sector position included among the protected positions in Ukrainian lustration law (with the partial exception of heads of state-owned companies), and the public sector protected positions are rather limited compared to lustration laws of other states, Ukrainian lustrations in this respect seem legally irreproachable.

Due Process

Last aspect of lustrations, the ECHR has often found contentious is the due process of law when applying the lustration laws on individuals. In fact, the illegality of the lustration proceeding has been the most common complaint of the applicant in lustration cases. In three cases,[266] the ECHR found violation because the applicants were not given sufficient opportunity to get acquainted with the documents on the basis of which the were dismissed. In two cases,[267] the ECHR ruled in favour of applicants, who were effectively prevented from accessing documents of secret services concerning their personality. In possibly the most public case, Ivanovski v. FYROM, ECHR ruled in favour of a former Constitutional court judge who was dismissed through lustration. The dismissal happened in a highly politicised process, in which prime minister had been accusing the Constitutional court of conspiracy against government reforms and Ivanovski's appeal was judged among others by a judge, who replaced him at the Constitutional Court.[268] In Ukraine, neither the rules of judicial process applicable during the court appeal against lustration ban, nor the rules regulating access to KGB documents are part of the lustration law. It is therefore impossible to draw concrete conclusions applicable to Ukrainian case. Besides, until now the experience with the

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[264] ECHR Nos. 70665/01, 74345/01, *Rainys and Gasparavičius v. Lithuania*, ECtHR No. 26652/02, *Zickus v. Lithuania.*

[265] "Report on the political rights in Lithuania".

[266] ECHR No. 33637/02, *Ternovskis v. Latvia*, ECtHR No. 38184/03, *Matyjek v. Poland*, ECtHR No. 68761/01, *Bobek v. Poland.*

[267] ECHR No. 43932/08, *Szulc v. Poland*, ECtHR No. 57986/00, *Turek v. Slovakia.*

[268] ECHR No. 29908/11, *Ivanovski v. FYROM.*

application of lustrations in Ukraine has mostly shown that the major breaches of the law were to the advantage of lustrated individuals, not to their detriment. We may therefore merely state that in the states with poor level of the rule of law (such as Ukraine) it is inevitable that the application of any law as politically charged as lustration will in individual cases lead to legally contentious results.

Considering the legal implications of all the above cases, it s very likely that Ukrainian lustration laws, especially the de-communisation part of the law on Government Cleansing, fall short of the standards asserted by the ECHR. However, ECHR conducts only concrete legal review, assessing individual cases of alleged infringements of fundamental rights (as opposed to abstract control, common to constitutional review, which assesses the law in itself). With the number of cases of people actually dismissed from their positions, as evidenced by the previous chapter, it is possible that Ukrainian lustrations will not face criticism by the ECHR on all of their legally contentious parts. The Ukrainian legislators may have failed in creating a law adhering to standards of the European Convention, but they also largely failed in actually implementing it.

Conclusion

Ukrainian lustrations created a new model of lustrations in the post-communist Europe. Firstly, they were adopted almost decade later than the last of the other post-communist states adopted their lustrations. The reason for the late adoption can be broken down to two missed opportunities: after independence of Ukraine in 1991, when most of the CEE countries adopted lustration laws, there was a personal continuity with the old Soviet regime, the population did not perceive lustrations as a political priority and the country leaned more towards Russia than the West. When another window of opportunity to adopt lustrations opened after the Orange Revolution in 2004, due to a lack of political will of the country leadership, this opportunity was missed. Only after the political climate dramatically changed with the successful Euromaidan revolution in 2014, two lustration laws were finally adopted. Secondly, although the Ukrainian lustrations adopted the same legal frame used by other de-communisation lustration laws in the region, they filled it with new content. They did not address only the abuses of the (communist) Soviet regime but primarily the abuses of the Yanoukovych regime. Concerning protected positions, they chose a rather restraint approach. They didn't go that far as lustrations in Poland (which lustrated also elected officials) or in Czech Republic (which included also private positions). On the other hand, concerning the scope of prohibited positions, Ukrainian lustrations adopted a very extensive approach, both in the understanding of past abusers (Yanukovych apparatus, Communist, Communist secret services and corrupted officials) and in the enumeration of prohibited positions (covering wide range of executive, administrative, and judicial posts). This made Ukrainian lustrations *de iure* the strictest lustration laws adopted in the post-communist Europe.

Their scale and procedure also put them at odds with some of the fundamental rights standards, as they are understood in the European legal culture. Although the lustration laws are not likely to undergo an objective legal review before the Ukrainian Constitutional Court for political reasons, they are likely to face scrutiny by the

European Court of Human Rights. In certain aspects, such as inclusion of de-communisation part after almost quarter century or de-centralising their implementation, they go against the established ruling practice of the ECHR on lustration cases. Ukrainian legislators also didn't take into consideration complaints about the law voiced by the Venice Commission and even submitted for a final review a version of the law with amendments that were never adopted.

Although from the legal perspective the Ukrainian lustration laws are indeed very broad-ranging, the Ukrainian authorities largely failed to implement them in a way that would correspond to their stated aims. This thesis concludes that the number of persons actually lustrated is no more than one third of the initial target; that the number of people dismissed through lustrations is no more than one fifteenth of the people dismissed in the Czech Republic which, by populations, is four times smaller than Ukraine, and that the lustrations were not successful in enhancing the public trust to the lustrated institutions. The reasons behind these dire results were primarily the reluctance of the country leaders to diligently pursue the lustration agenda, the dysfunctional court system and many loopholes in the law allowing individuals to avoid lustration.

Although the thesis in general gives a rather negative assessment of the Ukrainian lustration laws, it must be noted that given the state of affairs prior to Euromaidan, the very adoption of the laws may be seen as a success and a progressive move in its own right. It has to be also noted that lustrations - everywhere they were applied - made up only part of the reforms designed to deal with the past abuses and foster democratic institutions for the future. There is therefore no direct link between the strictness of the laws or numbers of dismissed officials and the future success of the country in transition. To illustrate this on an example, we may use the case of Czechoslovakia. Those who hailed the democratic progress of the Czech Republic after the fall of communism and linked it to strict lustration laws and comparatively many dismissals, would be surely surprised to learn that presently the acting prime minister is a former agent of communist secret services while the president seems to be acting like an agent of Russia. It would come as another surprise to see that Slovakia, which

ditched lustrations immediately after the dissolution of Czechoslovakia, is currently led by a clearly pro-Western president.

The final observation concerns the paradox stemming from the nature of lustrations anywhere they are applied. If their aim is to hasten the replacement of compromised, incompetent and disloyal officials with better ones, the dismissals constitute only first half of the solution. And unfortunately, like with the Eskimo roll on kayak, the first half is always easier. If there is not a sufficient pool of people to replace the ones dismissed, pursuing large-scale lustrations is little like fighting the windmills. The modest insights this thesis offers might come useful for other post-Soviet countries which remained largely unreformed after the breakdown of the Soviet Union. This includes countries such as Turkmenistan or Kazakhstan, which likely to face a leadership change in near future, Uzbekistan, which copes with a long record of human rights abuses or Belarus, with enduring communist power structures. This list would not be complete without mentioning Russia, which is possibly the most glaring example of a post-Soviet country that failed with transition; it is led by a former KGB agent with close circle of aids with background in Soviet security services and its track-record on democracy is dire. Should any of these countries experience in the future similar turnout of events as Ukraine, perhaps a more moderate (as to the scale of prohibited positions), centrally administered and better enforced lustration would prove more suitable.

Bibliography

(all the internet sources accessible on 31 January 2018)

Primary sources:

Ukrainian laws and other legal documents

Constitution of Ukraine, (BBP) 1996, No. 30, ст. 141.

Law on Government Cleansing - (BBP) 2014, No. 44, ст. 2041.

Law on restoration of trust in Judiciary - (BBP) 2014, No. 23, ст. 870.

Law on the condemnation of the Communist and Nazi regimes, (BBP) 2015, No. 26, ст. 219.

Law on rehabilitation of victims of political repression in Ukraine, (BBP), 1991, No. 22, ст. 262 (Pro reabilitatsiyu zhertv politychnykh represiy na Ukrayini).

Law on the Holodomor, (BBP) 2006, No. 50, ст. 504.

Law on access to the archives of repressive bodies of the communist totalitarian regime of 1917-1991 (BBP) 2015, No. 26, ст. 218.

Law on amending the amnesty law regarding full rehabilitation of political prisoners, (BBP) 2014, No. 14, ст. 257.

Law on preventing prosecution and punishment of persons in regard to events that happened during peaceful assemblies and recognising certain laws of Ukraine as invalid, (BBP) 2014, No. 12, ст. 186.

Law on the Principles of Preventing and Combating Corruption, (BBP) 2011, No. 40, ст. 404.

Decree on banning of the activity of the Communist Party of Ukraine, (BBP) 1991, No. 44, ст. 595.

Decree on creating National Security Service of Ukraine (BBP) 1991, No. 49, ст. 689.

Regulation of the Cabinet of Ministers on Institute of National Remembrance, 2006, No. 927.

Order of Ministry of Justice on the implementation of the Law on Government Cleansing, 2014, No. 2428.

Order of the Cabinet of Ministers of Ukraine on approval of the plan for conducting inspections in accordance with the Law of Ukraine on Government Cleansing, 2014, No. 1025-p.

Presidential decree No. 157/2015 (war exemption).

Presidential decree No. 229/2015 (war exemption).

Presidential decree No. 330/2015 (war exemption).

Presidential decree No. 388/2015 (war exemption).

Presidential decree No. 3/2016 (war exemption).

“Konstytutsiynyy Sud Ukrayiny zavershyv usne slukhannya spravy shchodo konstytutsiynosti okremykh polozhen′ Zakonu Ukrayiny "Pro ochyshchennya vlady" ta pereyshov do zakrytoyi chastyny plenarnoho zasidannya”, *Constitutional Court of Ukraine*, 2016, press release, http://www.ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-zavershyv-usne-sluhannya-spravy-shchodo-konstytuciynosti-okremyh.

“Diyal′nist′ Tymchasovoyi spetsial′noyi komisiyi z perevirky suddiv sudiv zahal′noyi yurysdyktsiyi bude ofitsiyno prypyneno,” *official site of the High Council of Justice* (published 10. 6. 2016), http://www.vru.gov.ua/news/1578.

Database of draft laws (Poshuk zakonoproektiv, zareyestrovanykh Verkhovnoyu Radoyu Ukrayiny), http://w1.c1.rada.gov.ua/pls/zweb2/webproc2.

Transcripts of plenary sessions of Verkhovna rada 1991 - 2015 (Stenohramy plenarnykh zasidan′), http://iportal.rada.gov.ua/meeting/stenogr.

Register of dismissed persons, https://lustration.minjust.gov.ua/register.

Register of lustrated persons, https://lustration.minjust.gov.ua/main/checking.

Czech laws and official documents

Large lustration law - 451/1991 Sb.

Small lustration law - 279/1992 Sb..

Law on the illegality of the communist regime 198/1993 Sb.

Law on the access to the documents of former National secret service 140/1996 Sb.

Law on the Institute of study of totalitarian regimes -181/2007 Sb.

Finding of the Federal Constitutional Court Pl. ÚS 1/92.

Finding of the Czech Constitutional Court Pl.ÚS 9/01.

Polish laws and official documents

Lustration law of Poland, Dz.U. 1997 no. 70 poz. 443.

Law on the access to the documents of secret services, Dz.U. 2017 poz. 2186,.

List of judges of the Constitutional Tribunal between years 1985-2016, *Polish Constitutional* Tribunal, http://trybunal.gov.pl/fileadmin/content/dokumenty/Sedziowie_TK_1985_2016.pdf.

International legal norms and opinions

European Convention on Human Rights.

Charter of International Labour Organisation.

Parliamentary Assembly of the Council of Europe (PACE) Resolution 1096, (1996).

Report of the Committee on Legal Affairs and Human Rights of the Council of Europe, doc. 7568, 1996.

Venice Commission, Opinion no. 788/2014, Interim opinion on the Law on Government Cleansing.

Venice Commission, Opinion No. 788/2014, Final opinion on the Law on Government Cleansing.

Direct Request (Committee of Experts on the Application of Conventions and Recommendations) 2014, published 104th ILC session (2015).

ECtHR cases (accessed taken from HUDOC database, https://hudoc.echr.coe.int)

ECtHR Nos. 55480/00, 59330/00, *Sidabras and Džiautas v. Lithuania.*

ECtHR Nos. 70665/01, 74345/01, *Rainys and Gasparavičius v. Lithuania.*

ECtHR No. 26652/02, *Zickus v. Lithuania.*

ECtHR No. 3669/03 *Adamson v. Latvia.*

ECtHR No. 58278/00, *Ždanoka v. Latvia.*

ECtHR No. 33637/02, *Ternovskis v. Latvia.*

ECtHR No. 55707/00 *Andrejeva v. Latvia.*

ECtHR No. 48321/99 *Slivenko v. Latvia.*

ECtHR No. 38184/03, *Matyjek v. Poland.*

ECtHR No. 68761/01, *Bobek v. Poland.*

ECtHR No. 43932/08, *Szulc v. Poland.*

ECtHR No. 24157/94 *Matějka v. Slovakia.*

ECtHR No. 57986/00, *Turek v. Slovakia.*

ECtHR No. 2258/08, *Soro v. Estonia.*

ECtHR No. 29908/11, *Ivanovski v. FYROM.*

Surveys of public opinions, reports of Transparency International

"Dovira do orhaniv vlady ta suspil′nykh instytutiv v Ukrayini," *Gromadskiy Prostir,* (published 13. 3. 2014) https://www.prostir.ua/?news=dovira-do-orhaniv-vlady-ta-suspilnyh-instytutiv-v-ukrajini (accessed 20. 12. 2017)

"Otsinka hromadyanamy sytuatsiyi v Ukrayini ta stanu provedennya reform, stavlennya do politykiv ta suspil′nykh instytutiv, elektoral′ni reytynhy," *Razumkov Center*, (published 2015) http://old.razumkov.org.ua/upload/1427287523_file.pdf (accessed 20. 12. 2017)

"Otsinka hromadyanamy sytuatsiyi v krayini, stavlennya do suspil′nykh instytutiv, elektoral′ni oriyentatsiyi," *Razumkov Center*, (published 2016) http://old.razumkov.org.ua/upload/1463122497_file.pdf (accessed 20. 12. 2017)

"Stavlennya hromadyan Ukrayiny do suspil′nykh instytutiv, elektoral′ni oriyentatsiyi," Razumkov Center, (published 23. 10. 2017) http://razumkov.org.ua/napryamki/sotsiolohichni-doslidzhennia/stavlennia-hromadian-ukrainy-do-suspilnykh-instytutiv-elektoralni-oriientatsii-2 (accessed 20. 4. 2017)

"National public opinion survey on democratic, economic and judicial reforms, including implementation of the law on the purification of government" *USAID,* (published 21. 7. 2016), http://www.fair.org.ua/content/library_doc/FAIR_LustrSurvey_Summary_2016_ENG.pdf (accessed 20. 12. 2017)

"ZVIT za rezul′tatamy sotsiolohichnoho doslidzhennya Stavlennya hromadyan Ukrayiny do sudovoyi systemy," *Rada suddiv Ukrayiny,* (published 2017) http://rsu.gov.ua/uploads/article/final-report-survey-e07f150174.pdf (accessed 15. 1. 2018).

Freedom House annual reports on Freedom in the World 2010, https://freedomhouse.org/report/freedom-world/2010/ukraine (accessed 31 January 2018).

Freedom House annual reports on Freedom in the World 2013 https://freedomhouse.org/report/freedom-world/2013/ukraine (accessed 31 January 2018).

Transparency International Corruption Perception Index 2010 https://www.transparency.org/cpi2010/in_detail (accessed 31 January 2018).

Transparency International Corruption Perception Index 2013 https://www.transparency.org/country/UKR# (accessed 31 January 2018).

Transparency International Corruption Perception Index 2014, https://www.transparency.org/cpi2014/results (accessed 31 January 2018)

Transparency International Corruption Perception Index 2017, https://www.transparency.org/news/feature/corruption_perceptions_index_2017(accessed 31 January 2018)

"Public Opinion Survey of Residents of Ukraine 2017," *Center for Insights in Survey Research,* http://www.iri.org/sites/default/files/2017-11-28_ukraine_poll_presentation.pdf (accessed 15. 2. 2018).

"Report on the political rights in Lithuania" Freedom House official website, https://freedomhouse.org/report/freedom-world/2008/lithuania#.VRsC1rr9M9k (accessed 15. 12. 2017).

Secondary sources:

Academic literature

Anderson, Julie and Albini, Joseph, "Ukraine's SBU and the New Oligarchy," *International Journal of Intelligence and Counter Intelligence*, 12(3) (1999): 282-324.

Appel, Hilary, „Anti-Communist Justice and Founding the Post-Communist Order: Lustration and Restitution in Central Europe," *East European Politics and Societies* 19, č. 3 (2005): 379 – 405.

Bezák,Tomáš, „Posttranzičná spravodlivosť v regióne stredovýchodnej Európy," *Sociológia* 43, č. 4 (2011): 420 – 446.

Calavita, Kitty. *An Invitation to Law and Society*. Chicago: University of Chicago Press, 2010

Czarnota, Adam, „Lustration, Decommunisation and the Rule of Law," *Hague Journal on the Rule of Law* č. 1 (2009): 307 – 336.

David, Roman, „Transitional Injustice? Criteria for Conformity of Lustration to the Right to Political Expression," *Europe-Asia Studies* 56, č. ž (2004): 789 – 812.

David, Roman, „Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001)," *Law & Social Inquiry* 28, č. 2 (2003): 385 – 439.

Drulák, Petr. Jak zkoumat politiku: kvalitativní metodologie v politologii a mezinárodních vztazích. Praha: Portál, 2008, p. 34.

Grodsky, Brian, „Beyond Lustration Truth-Seeking Efforts in the Post-Communist Space," *Taiwan Journal of Democracy* 5, č. 2 (2009): 21 – 43.

Holzer, Jan et al., eds., *Komunismus v České republice: vývojové, systémové a ideové aspekty působení KSČM a dalších komunistických organizací v české politice* (Brno: Masarykova univerzita v Brně, 1999).

Horne, Cynthia M., „International Legal Rulings on Lustration Policies in Central and Eastern Europe: Rule of Law in Historical Context," *Law & Social Inquiry* 34, č. 3 (2009): 413 – 744.

Horne, Cynthia M., "Assessing the Impact of Lustration on Trust in Public Institutions and National Government in Central and Eastern Europe," *Comparative Political Studies* 45:4 (2012): 412-446

Horne, Cynthia and Lavinia Stan (Eds.), *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking toward the Future,* (Cambridge: Cambridge University Press, 2018)

Huntington, Samuel, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991)

Klokočka, Vladimír, *Ústavněprávní kontexty vyrovnání se s totalitní minulostí ve státech střední Evropy: sborník příspěvků z Konference středoevrospkých ústavních soudů* (Praha: Linde, 2003).

Kosař, David, "Lustration and Lapse of Time: 'Dealing with the Past' in the Czech Republic," *Eric Stein Working Paper* č. 3 (2008): 460 – 487, http://www.ericsteinpapers.cz/papers/2008-3 (accessed 1. 3. 2015).

Kozák, Jiří, *Právo na pomezí diktatury a demokracie: právní vyrovnání s totalitní minulostí v České republice po roce 1989* (Praha: Auditorium, 2014).

Kuta, Cecylia, „Lustracja v Polsce na tle krajów Europy Środkovej," *Horyzonty Polityki* 5, č. 11 (2014): 97 – 114.

Letki, Natalia, „Lustration and Democratisation in East-Central Europe," *Europe-Asia studies* 54, č. 4 (2002): 529 – 552.

Lezina, Evgenia "Ukarainskaya lyustracia. Dva goda spustya," *Vestnik obshestvennovo mnenia* 122, No. 3-4 (July/December 2016): 170 - 180

Łoś, Maria, "Lustration and Truth Claims: Unfinished Revolutions in Central Europe", *Law & Social Inquiry,* Vol. 20, No. 1, pp. 117-161

Alexander J. Motyl, "Facing the Past. In Defence of Ukraine's New Laws," World Affairs, vol. 178, No. 3 (2015), 58-66.

McFaul, Michael, Valerie Bunce a Kathryn Stoner-Weiss. Democracy and authoritarianism in the post-communist world. (Cambridge: Cambridge University Press, 2010)

Pospíšil, Ivo and Marián Kokeš (Eds.), *In dubio pro liberate,* (Brno: Masarykova Univerzita, 2009).

Přibáň, Jiří, "Ústavnost a retroaktivita ve střední Evropě: teoreticko-historická reflexe," *Trestní právo* 12/2002, VII.

Přibáň, Jiří et al., eds., *Systems of Justice in Transition: Central European Experiences since 1989*, (Farnham: Ashgate, 2003).

Rupnik, Jacques. *1989 as a political world event: democracy, Europe and the new international system in the age of globalization* (Abingdon: Routledge, 2014).

Rychlík, Jan, Bohdan Zilynskyj a Paul R. Magocsi. *Dějiny Ukrajiny* (Praha: Nakladatelství Lidové noviny, 2015).

Saltan, Galyna, "Lustration in Post-Soviet Ukraine: A study on unsuccessful transitional justice" (Master Thesis, University of Tartu, 2016), 51 pages.

Skucas, Tomas, „Lithuania: A Problem of Disclosure," *Demokratizatsiya* 12, č. 3 (2004): 411 – 425.

Stan, Lavinia, *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past* (New York: Routledge Press, 2009).

Stan, Lavinia and Nedelsky, Nadya (Eds.). Post-Communist Transitional Justice: Lessons from Twenty-Five Years of Experience, (Cambridge: Cambridge University Press, 2015).

Šipulová, Katarína, Vít Hloušek, „Rozdielne cesty tranzitívnej spravodlivosti – prípady Českej republiky, Slovenska a Polska," *Středoevropské politické studie* 14, č. 1 (2010): 55 – 89.

Šír, Jan et al., *Ruská agrese proti Ukrajině,* (Praha: Karolinum, 2017).

Švarca, Inga, „Transitional justice mechanisms applied by Latvia in its transition from communist regime," *Hitotsubashi Journal of Law and Politics č.* 40 (2012): 59 – 85.

Williams, Kieran, Aleks Szczerbiak, Brigid Fowler, „Explaining Lustration in Eastern Europe: 'A Post-communist politics approach'," *SEI Working Paper* č. 62 (2003): 1 – 30.

Wilson, Andrew, *Ukraine Crisis: What it Means for the West,* (New Haven: Yale University Press, 2014).

Zaleska, Zuzanna, „Lustration of Clergymen in Poland – A Linguistic Representation in the Catholic Media," *Revista Romana de Comunicare si Relatii Publice* (2008): 19 – 27.

News articles, internet and other sources

Agnieszka Piasecka ”Summary of Legislative Work on Lustration Act No. 4359 "On Purification of Government”, *Open Dialog Foundation,* (published 20. 11. 2014) http://ua.odfoundation.eu/a/5546,pidvedennya-pidsumkiv-shchodo-rozrobki-zakonu-pro-lyustraciyu-4359a-pro-ochishchennya-vladi.

Agnieszka Piasecka ”Report: Purification of government or vetting Ukrainian style. The first year's experience”, *Open Dialog Foundation,* (published 5. 11. 2015) http://en.odfoundation.eu/a/7029,report-purification-of-government-or-vetting-ukrainian-style-the-first-year-s-experience.

Agnieszka Piasecka and Oleksandra Drik, “Current challenges of lustration in Ukraine”, *Open Dialog Foundation,* (published 8. 6. 2015) http://en.odfoundation.eu/a/6507,current-challenges-of-lustration-in-ukraine.

“The Rule of Law and Transitional Justice in conflict and post-conflict societies” *Report of the Secretary General* https://www.un.org/ruleoflaw/files/2004%20report.pdf.

Katya Gorchinskaya, “Avoiding Lustration in Ukraine: Senior Prosecutor Evades Sweep Of Yanukovych-Era Officials” *Radio Free Europe* (published 18. 7. 2015), https://www.rferl.org/a/ukraine-lustration-prosecutor-valendyuk/27135678.html.

Yana Polyans′kaa, “Lyustratsiya cherez shturkhany ta smittyevi baky” *Radio Free Europe, (Published 1 October 2014)*, https://www.radiosvoboda.org/a/26614181.html.

“SBU obvynuvatchue Stalina u Golodomori”, *Ukrainskaya Pravda, (published* 23 December 2009), https://www.pravda.com.ua/news/2009/12/23/4562267.

“Ponad 50 tysyach vulyts′ zminyly nazvy vprodovzh 2016 roku,” Official site of the Institute of National Remembrance, http://www.memory.gov.ua/news/ponad-50-tisyach-vulits-zminili-nazvi-vprodovzh-2016-roku.

Tadeusz A. Olszanski, “Ukraine’s Constitutional Court reinstates presidential system” *Osrodek Studiow Wschodnich* (published 6, 10. 2010), https://www.osw.waw.pl/en/publikacje/analyses/2010-10-06/ukraines-constitutional-court-reinstates-presidential-system.

Tadeusz A. Olszanski and Piotr Żochowski, “The bumpy road. Difficult reform process in Ukraine” *Osrodek Studiow Wschodnich* (published 3. 12. 2015), https://www.osw.waw.pl/en/publikacje/osw-commentary/2015-12-03/bumpy-road-difficult-reform-process-ukraine.

“Inside the Museum of Corruption, *NY Times,* (published 2014), https://www.nytimes.com/video/world/europe/100000002732759/inside-the-museum-of-corruption.html.

Daryna Schevchenko, “Poll discovers Euromaidan evolution from dreamy to radical” *Kyiv Post,* (6. 2. 2014), https://www.kyivpost.com/article/content/ukraine-politics/poll-discovers-euromaidan-evolution-from-dreamy-to-radical-336389.html.

Jeremy Bender, “These are the 6 countries on board with Russia's illegal annexation of Crimea,” Business Insider (published 31 May 2016) ”http://www.businessinsider.com/six-countries-okay-with-russias-annexation-of-crimea-2016-5.

"Half of Ukrainians don't support Kyiv Euromaidan, R&B poll” *Interfax Ukraine*, (published 30. 12. 2013), http://en.interfax.com.ua/news/general/184540.html.

"Poll reveals Ukrainian majority supports EuroMaidan" *Ukraine Business Online*, (published 30. 12. 2013) http://www.ukrainebusiness.com.ua/news/11002.html.

"Dva misyatsi protestiv v Ukrayini: shcho dali? - zahal′nonatsional′ne opytuvannya", *Fond Demokratychni initsiatyvy (*http://old.dif.org.ua/en/polls/2014_polls/dva-misjaci-protestiv-v-ukraini-sho-dali_---zagalnonacionalne-opituvannja.htm.

"Socio-Political Expectations: April 2014", *Reyiting,* http://ratinggroup.ua/en/research/ukraine/obschestvenno-politicheskie_ozhidaniya_grazhdan_aprel_2014.html.

"Lustration stele in Ukrainian city" *Life in Ukraine*, (published 15. 9. 2015) https://lifeinua.info/lustration-stele-ukrainian-city-remainder-officials-video.

Yegor Sobolev, Interview with Zhanar Kassymbekova, *Open DialogFoundation*, June 18, 2014, http://en.odfoundation.eu/a/3903,it-is-all-about-the-people-an-interview-with-yehor-sobolev.

Yegor Sobolev, "Yaki rezul′taty lyustratsiyi za rik" *Ukrainska Pravda blogi* (October 16, 2015), https://blogs.pravda.com.ua/authors/sobolev/56213ff5302b3.

Lustration proposals drafted by Public Lustration Committee (english translation by Open Dialog Foundation), http://en.odfoundation.eu/i/fmfiles/pdf/yd1306144-proekt-12-06-14-eng-done.pdf%20, http://odfoundation.eu/i/fmfiles/pdf/draft-law-purification-government-4359a-eng.pdf%20.

"Vsi proekty reform mayut′ buty intehrovani v «Stratehiyu 2020» - Prezydent Ukrayiny," Official site of the president of Ukraine (published 7. 8. 2014) http://www.president.gov.ua/news/vsi-proekti-reform-mayut-buti-integrovani-v-strategiyu-2020-33407.

Mykhailo Zhaernakov, "Will Judicial Reform Survive?" *Ukrainska Pravda* (published 17. 8. 2016) https://www.pravda.com.ua/eng/columns/2016/08/17/7117997.

Maria Popova, "Ukraine's Judicial Reforms," Vox Ukraine (published 15. 12. 2014) https://voxukraine.org/en/ukraines-judicial-reforms.

Oleg Sukhov, "Lustration law faces sabotage, legal hurdles" *KyivPost* (October 23, 2014), https://www.kyivpost.com/article/content/reform-watch/lustration-law-faces-sabotage-legal-hurdles-369135.html.

"Yatsenyuk: Ukraine lustration will cover 1 million officials," *KyivPost,* (published 17. 9. 2014) https://www.kyivpost.com/article/content/ukraine-politics/yatsenyuk-ukraine-lustration-will-cover-1-mln-officials-law-enforcers-364963.html.

"V SBU za dva goda lyustrirovany pochti 60 sotrudnikov, boleye 3,3 tys. chelovek uvolilis' sami" *Interfax*-Ukraine, (30. 3. 2016), published https://interfax.com.ua/news/general/334339.html.

Roman Romanyuk. "Restavratsiya na marshi. Chy skasuyut′ lyustratsiyu, i yaka rol′ v ts′omu Poroshenka", *Ukrainska Pravda*, (15. 6. 2016) https://www.pravda.com.ua/articles/2016/06/15/7111830/.

"Rada dismisses anti-corruption committee chairman Yegor Soboliev" *KyivPost* (published 7. 12. 2017) https://www.kyivpost.com/ukraine-politics/rada-dismisses-anti-corruption-committee-chairman-yegor-sobolev.html.

"Reyestr osib, shcho pidlyahayut′ lyustratsiyi", *Civic Lustration Committee,* https://registry.lku.org.ua/dashboard.

"KS zbyrayet″sa skasuvaty lyustratsiyu", *Ukainska Pravda,* (published 9. 6. 2016) https://www.pravda.com.ua/news/2016/06/9/7111308.

"Rada passes at first reading bill on constitutional court", *KyivPost (published 22. 6. 2017),* https://www.kyivpost.com/ukraine-politics/rada-passes-bill-constitutional-court-first-reading.html.