

Non-governmental Organisation

**Civic  
Lustration  
Committee**



OPEN DIALOG

# **POLICY PAPER**

## Current challenges of lustration in Ukraine

May 2015

## Current challenges of lustration in Ukraine

*This analysis has been created to present the current status of lustration in Ukraine and reflect the need for its implementation and improvement. It is a joint work of the Open Dialog Foundation and Civic Lustration Committee.*

*The text of the law and report on the legislative works undertaken up to 16<sup>th</sup> October 2014 can be found here: <http://en.odfoundation.eu/a/5537,summary-of-legislative-work-on-lustration-act-no-4359-on-purification-of-government>. The broader social and political context of the law and justification of the momentum is discussed in the mentioned report.*

### 1. Assumed schedule of lustration

The plan, approved by the Cabinet of Ministers, has been devised for implementation over 2 years, officials shall be subjected to lustration in stages: from the country's top-ranking leadership, to officials of local self-governments. Between March and May, the third wave of lustration has been ongoing. The plan can be found by the following link: <http://zakon4.rada.gov.ua/laws/show/1025-2014-p>. Additionally it was prepared by the Civic Lustration Committee in the form of infographics: <http://lku.org.ua/pages/plan>. About one million positions are subjected to the process.

### 2. Challenges of implementation

#### 2.1. General overview of problems faced during implementation of the law

Acts of violation of the Law have been registered in each and every state institution; some deliberately avoid dismissing officials from work, others fail to publish statements, declarations or results of lustration on time, conceal property in declarations, do not provide information about the property of their family members etc.

*The Ministry of Internal Affairs* is a restricted and most neglectful structure. In addition, the leadership have not to date dismissed persons who were subject to lustration during first stage of the procedure that supposed to end in February 2015. Until recently no information about the lustration process was published on their website.

A very unclear situation surrounds *the State Fiscal Service (SFS)*. According to the information of the Department of Lustration under the Ministry of Justice, there are incidents in which the SFS turns a blind eye to discrepancies between the property declared and owned by some officials, while it unjustifiably dismisses others. When responding to inquiries, the SFS indicates, for example, that a specific person has been dismissed, but the verification of the information proves that the person, allegedly dismissed, has simply been transferred to a different structural unit within the same body.

During the tenure of former General Prosecutor, Vitaliy Yarema, it was the Prosecutor's Office that was the greatest saboteur of the execution of the Law of Ukraine 'On the Purification of Government'. The situation has slightly improved in *the General Prosecutor's Office* following the dismissal of Mr. Yarema. One positive impact, in particular, was the arrival of the Georgian Deputy General Prosecutor David Sakvarelidze, who is responsible for human resources policy. In response to the inquiry from the Civic Lustration Committee, he gave an exhaustive answer of 73 pages, which helped the activists to determine four persons among the leadership, who were to be dismissed. Following the notification

regarding these persons, two of them were immediately dismissed. However, two of them are still in office for reasons unknown.

*The Presidential Administration* shows inconsistency. Despite the fact that the Cabinet of Ministers submitted a recommendation to the President to dismiss the chairman of Kirovograd Regional State Administration Serhiy Kuzmenko in 16 October 2014, Mr. President has neglected the direct provision of the Law. Moreover, in response to one of the inquiries as to why this person hasn't been dismissed from his post, the Civic Council on Lustration associated with the Ministry of Justice created in accordance to the Law received a comprehensive response, which confirms that the person falls within the criteria of the Law and shall be dismissed, and the administration has already prepared an order of dismissal, but, for some reason, the President has been unable to sign it over the course of the last half a year.

Another illustrative example is the Deputy Head of Presidential Administration of Ukraine, Aleksey Dneprov who, before his appointment to his current position, worked as the Deputy Minister of Education, Youth and Sports of Ukraine during Yanukovich's rule and has been subject to numerous corruption scandals. The President simply did not have the right to appoint him to the post in the Presidential Administration of Ukraine, as Dneprov is subject to the provisions of the Law.

Although *The Cabinet of Ministers* is probably the only state authority that has published timely statements, declarations and conclusions regarding the process of lustration, it has also been neglecting its duties in dismissing some officials subject to the Law.

## **2.2 Examples of sabotage of the Law**

In general, the common schemes, used by officials to avoid lustration, are the following:

1. Being granted the status of the ATO participant, without being its subject;
2. Transferal to lower status positions for the period of lustration;
3. Postponement of the date of commencement of the lustration process.

Authors focus more attention on the situation at the Ministry of Internal Affairs. Recently, the prominent media campaign, some persons resigned from the top-ranking public offices in the MIA, namely: Deputy Minister of Internal Affairs Vitaliy Sakal, who fell under the effect of the lustration law, Deputy Minister of Internal Affairs Serhiy Chebotar and acting Head of GAI Alexander Yershov, who owned undeclared assets.

Despite numerous inquiries by the Civic Lustration Committee and the public campaign demanding their dismissal, the officials remained in their posts, and the MIA management ignored these facts entirely. It was only after several scandalous journalist investigations, carried out by members of the Civic Council on Lustration associated with the Ministry of Justice, were published and a resolution on dismissal of Interior Minister Avakov was registered in the Parliament by Iegor Sobolev that the situation was finally resolved.

There are MIA's officials who meet the criteria of lustration, but still remain in their posts. They include, for instance Alexander Tereshchuk, Head of the Interior Ministry of Ukraine in Kiev who apart from being subject to lustration criteria had been chasing activists during Euromaidan.

As already indicated, the Ministry of Internal Affairs is the most restricted structure and

does not provide answers to inquiries, or replies only by sending excerpts; it does not publish sufficient information online and does not cooperate with the public at all.

### **3. Judiciary towards lustration in Ukraine**

There is a complex procedure which relates to the election and dismissal of judges from office. The Law "On the Purification of Government" does not change the procedure of dismissal of judges, but merely adds two criteria: whether the judge handed down illegal decisions during Euromaidan and whether his actual property was acquired legally. The process is provided for by judicial bodies: the High Qualification Commission of Judges, the High Council of Justice, as well as by Parliament and the President.

On December 1, 2014, the lustration of employees of the State Judicial Administration and heads of regional branches of the SJA of Ukraine was launched. The verification of judges for their compliance with the lustration criteria will take the entire year - from December 2014 to December 2015 (during the period, judges themselves must decide when they are going to be subjected to verification). Thus far, no judges have been dismissed due to the paralyzation of the work of the High Council of Justice. There are almost 9000 judges in Ukraine to be screened for their assets, more than 300 judges are subjected to revision of their work during verdicts in cases of Euromaidan activists.

An indicator of the unpreparedness of courts for lustration is the fact that, on the proposal of MPs from the 'Opposition Bloc' and the Supreme Court, on 16<sup>th</sup> April, 2015, Ukraine's Constitutional Court heard the case on compliance of the Law of Ukraine 'On the Purification of Government' with the Constitution of Ukraine.

But the problem is that Ukraine does not trust the CCU, as 8 of the 17 current members are the same judges, who in 2010, allowed Yanukovich to usurp power by abolishing the constitution of 2004. These judges were also involved in the adoption of a number of decisions, which are now being investigated in criminal proceedings in the General Prosecutor's Office and the Security Service of Ukraine.

Since last year, a large-scale campaign to discredit the law 'On the Purification of Government' has been ongoing and judges play an important role in it.

Some judges refuse to consent to be subjected to lustration verification, which, according to the Law 'On the Purification of Government' constitutes grounds for dismissal. Currently, the list of those who refused to be the subjects of lustration includes 44 names, in particular: in Lugansk Province - 24 judges; in second place: Donetsk Province - 13 judges. In Odessa Province, 4 judges denied lustration, while in Kiev - 3.

A more detailed example of opposing the law can be observed in the attitude of the Kiev Appellate Court where 16 judges openly refused to report property and funds belonging to their families. In the section on family property, Judge Alexander Bepalov wrote: 'information is not provided'. Another judge, Yelena Hanychko refused to specify how much money is held in the account of her husband, lawyer Igor Parubochiy. At the same time, her husband's phone numbers appear in various commercial advertisements - he is selling his Porsche Cayenne, and his house for USD 300,000.

### **4. The role of society and its attitude towards the law**

There is a common notion in Ukraine that lustration is going on by the efforts of society and

a small bunch of politicians that have taken the offices after the Euromaidan. The reason is that the Law has been developed by civil activists and organisations, and its adoption by Parliament under great pressure of Ukrainians all over the country. Also, after it had been approved, the public and a small number of representatives of the authorities, who were appointed to their posts after the Euromaidan, played a significant role in monitoring its implementation. These representatives of the authorities include, for example, co-founders of the Civic Lustration Committee and co-authors of the Law 'On the Purification of Government' Iegor Soboliev, now an MP and the chairman of the Committee for Combating and Preventing Corruption, and Tatiana Kozachenko, the Director of the Lustration Department at the Ministry of Justice.

In January 2015, the Civic Lustration Committee published the results of its analysis, according to which the General Prosecutor's Office was the greatest saboteur of lustration. MP Iegor Soboliev initiated the collection of signatures for the dismissal of General Prosecutor Vitaliy Yarema that resulted in his dismissal. Following the change of leadership in the GPU, lustration in the department started to be implemented in a much more transparent manner. In February, the Civic Lustration Committee published a list of TOP-50 officials to be dismissed on the basis of lustration. These are those officials who are directly subject to the provisions of the law, but either still remain in their positions or should have been dismissed by the end of April the latest. Thus far, more than half of the listed persons have been dismissed. In particular, due to public pressure, some officials were dismissed or resigned from office.

They include:

- **Vitaliy Yarema** (General Prosecutor of Ukraine);
- **Oleg Bachun** (Deputy General Prosecutor of Ukraine)
- **Anatoliy Danilenko** (Deputy General Prosecutor of Ukraine)
- **Dmitry Isayenko** (Deputy Minister of Regional Development, Construction and Housing and Communal Services of Ukraine)
- **Nikolay Frantovskiy** (Prosecutor of Donetsk Province)
- **Alexander Yershov** (Acting Head of the Traffic Police)
- **Vitaly Sakal** (Deputy Minister of Internal Affairs)
- **Sergey Yuldashev** (Prosecutor of the city of Kiev)
- **Alexander Polyezhayev** (Prosecutor of Zaporozhye)
- **Anatoliy Boyko** (First Deputy Head of the State Emergency Service of Ukraine)
- **Mykola Frantovskiy** (Prosecuter of Donetsk)
- **Dmitriy Kravchenko** (Deputy Chairman of the State Committee for Television and Radio Broadcasting)
- **Igor Myronyuk** (Deputy Chairman of the State Property Fund)

Representatives of the Civic Lustration Committee also held meetings with the Venice Commission and were part of the working group that prepared the amendments to the Law. In April, the Civic Lustration Committee activists brought about the initiation of proceedings of the judges of the Constitutional Court, who, along with former President Yanukovich, participated in criminal collusion, which led to the tragic events in Ukraine. On the day of consideration of the Law 'On Lustration of the State Structures' by Constitutional Court, activists held a large rally by the walls of the Constitutional Court with a demand that 8 of the 17 judges, against which the criminal proceedings have been ongoing, be banned

from participation in the consideration of the Law.

In April, the Civic Lustration Committee opened its own Lustration Register: a list of persons who are subject to the ban on holding public office for 10 years. The aim of the Registry is to prevent the reappointment of those officials who are subject to the provisions of the Law but were not included to the official register of the Ministry of Justice. This register has become the main source of information regarding officials who wish to avoid lustration.

## 5. Suggested changes to the law

In January 2015, a working group was established with the aim of improving the law. It included MPs, lawyers, social activists and representatives of the Ministry of Justice. At the beginning of February, when Ukraine was visited by the chairman of the Venice Commission Gianni Buquicchio, appropriate consultations and negotiations were conducted. On 19 March, 2015, a Ukrainian delegation held a meeting with representatives of the Venice Commission on the improvement of the Law of Ukraine 'On the Purification of Government'.

Following the consultations, the working group has worked on the following changes to the law:

- harmonisation of the provisions of two laws - the Law 'On restoration of trust to the judiciary' and the Law "On the Purification of Government";
- creation of the new institution responsible for the supervision of lustration in Ukraine and control of its implementation with a larger scope of full powers;
- extension of the range of persons who will be subjected to verification, in particular, officials holding elective positions; informing voters as to which officials are subjected to lustration bans;
- increasing liability for violation of the Law of Ukraine 'On Lustration of the State Structures', both by means of the application of lustration bans and imposing criminal liability on the grounds provided by law.

Suggested amendments directly address the mentioned challenges and are expected to improve the situation with its implementation. The amendments have been already registered with the Parliament and can be found here: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54873](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54873).

Authors observe progress in the works on the law, in particular more coherent cooperation between different representatives of institutions either implementing or being subjected to lustration, such as SFS and MIA.

Overall authors see the need for support from the EU experts and authorities in terms of quality advice and friendly supervision of reforms in Ukraine. There won't be any second chance for Ukraine. This law, if imperfect for now, helps to break old schemes and detach the state from its past.

With questions regarding the status of implementation of the law, challenges, analysis and specific data please turn to **Oleksandra Drik**, Civic Lustration Committee [news@lku.org.ua](mailto:news@lku.org.ua), [sasha.drik@gmail.com](mailto:sasha.drik@gmail.com)

With questions regarding legislative and juridical discussions please turn to **Agnieszka Piasecka**, Project Coordinator of the Open Dialog Foundation [agnieszka.piasecka@odfoundation.eu](mailto:agnieszka.piasecka@odfoundation.eu)