



Anne Souleliac, Attorney, France

Short commentary on draft law of Ukraine “On Purging State Public Authorities”

The following publication is a part of an ongoing project of the Open Dialog Foundation aimed at support of the lustration reform in Ukraine.

Since June 2014 ODF collects analysis and opinions from variety of international experts on the topic of lustration and verification of state public authorities and immediately shares it with the Lustration Committee of Yehor Sobolev.

The collected set of analysis will be published by 11th September 2014 in a downloadable digital form.

Experts worked both on the first draft of law that was published in June 2014 and was made available for open discussion, and on an updated proposal that was accepted by Verkhovna Rada of Ukraine on 14th of August 2014.

About the author:

A lawyer. Legal advisor of the French Bar Council. Specializes in human rights and humanitarian aspects of international law among others.

The following commentary is only a brief analysis indicating the most important issues in aythor's opinion.

Article 10. Conclusion on audit results

Auditees shall be entitled to review the conclusion of the audit results and, in the event of disagreement with the audit results, may submit their concerns in writing to the specified agencies.

In the event of commentary from the auditee regarding the audit results, the agencies (departments) which carried out the special audit shall issue a response in writing to the auditee within ten days of receipt of the commentary, a copy of which was received by the auditing agency. - It is not clear , how to appeal decisions of lustration commission.

Article 129 of the Constitution of Ukraine provides for the right of every citizen to appeal and cassation.

Article 11. Consequences of Audit

A finding on the audit results of judges of courts of general jurisdiction containing information of the auditees which does not meet the requirements established herein for continued presence in the position shall be sent by the auditing agency to the High Council of Justice and High Qualification Commission of Judges of Ukraine within 3 days of its signing by the director of the auditing agency. The

High Council of Justice and High Qualification Commission of Judges of Ukraine shall consider the report within a three-month period.

The creation of the High Council of Justice is established by the Constitution (article 131-3). It consists of twenty members. It is formed by the Parliament of Ukraine, President of Ukraine, congress of judges of Ukraine, congress of lawyers of Ukraine, congress of representatives of higher educational and scientific establishments. Each of them appoints three members of the High Council of Justice. So, there are only three judges out of the 20 members of the High Council of Justice, who are elected by the judges. Thus, it violates the European standard: at least half of that organ should be composed of judges who were elected by the judges in order to be considered as independent - case "Alexander Volkov" c. Ukraine (January 9, 2013 European Court of Human Rights).

In order to approach European standards in terms of the current Constitution, in 2010, the legislator has provided that the President, Parliament, lawyers, prosecutors, academics appoint the part of "their" members of the judges. But the European Court of Human Rights has recognized these changes as insufficient, because there are not judges who are elected by the judges.

Thus, the order of dismissal of a judge does not correspond to European standards (the European Court of Human Rights and the conclusions of the Venice Commission).

Article 16. Grounds for failure of audit

In accordance with the article 24 of the Constitution of Ukraine, *"citizens have equal constitutional rights and freedoms and are equal before the law. It can not be privileges or limitations after the signs of race, color of skin, political, religious and other persuasions, sex, ethnic and social origin, property state, place of residence, linguistic or other characteristics."*

Also according to the article 14 of the European Convention on Human Rights : *"the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"*.

Here, the tenure of positions listed in this article could show signs of discrimination. A qualifying sign of lustration (in this case "dismissal") is the mere existence of notation in the personal documents of a worker (workbook) that the person held certain position at one time or another. It is without proof of their guilt. Such dismissal is even against the article 7 of the European Convention on Human Rights - "No punishment without law" - which states that all persons are equal before the law and all are entitled to equal protection against any discrimination and against any incitement to such discrimination.

So, this article might not correspond to the Constitution of Ukraine and to international human rights standards. A dismissal is not like the kind of individual responsibility for a particular **fault**, but because of mistrust. Lustration violates the principles of civil rights: the right to profession, the right to declaration of will, the right to non-discrimination.

For more information please contact:

Agnieszka Piasecka, the project coordinator: agnieszka.piasecka@odfoundation.eu