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УКРАЇНСЬКА МОДЕЛЬ ЛЮСТРАЦІЇ: ПРАВОВІ ОСОБЛИВОСТІ ТА СОЦІАЛЬНІ НАСЛІДКИ

Анотація. *Метою даної статті є системний аналіз правових особливостей і соціальних наслідків української моделі люстрації. Спираючись на формально-юридичний метод та метод правової інтерпретації, автори досліджують понад 20 міжнародних та національних «люстраційних» актів, що регулюють різні аспекти очищення влади. За результатами правового аналізу автори розробляють власну періодизацію етапів правового регулювання очищення влади в Україні. В роботі запропоновано вважати початком люстрації в Україні не традиційно визначене встановлення правових заборон щодо обіймання державних посад, а відновлення парламентсько-президентської республіки, здійснення деконцентрації та децентралізації влади. Послуговуючись методом правового моделювання, автори обґрунтовують доцільність концептуалізації люстрації у вузькому та широкому розумінні. Це актуалізує дослідження люстрації як правового феномену не лише з позицій персонального оновлення влади, а як законодавчого посилення демократичних засад публічного управління. Автори підкреслюють необхідність осучаснення міжнародних нормативно-правових актів, що закріплюють стандарти люстрації. На підставі вторинного аналізу даних соціологічних досліджень у роботі визначено такі негативні соціальні наслідки люстрації в українському суспільстві, як стигматизація «люстрованих» державних службовців, депрофесіоналізація інституту державної служби та послаблення соціальної згуртованості в Україні. Дана робота представляє практичну цінність для країн демократичного транзиту, що мають можливість забезпечити діалектичний баланс між дотриманням прав людини та захистом демократії, спираючись на особливості українського досвіду*

Ключові слова: *очищення влади, люстраційне законодавство, узурпація влади, публічне управління, стигматизація, соціальна згуртованість*

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UKRAINIAN MODEL OF LUSTRATION: LEGAL SPECIFICITIES AND SOCIAL CONSEQUENCES

Abstract. *The purpose of this article is a systematic analysis of the legal specificities and social consequences of the Ukrainian model of lustration. Based on the formal-legal method and the method of legal interpretation, the authors study more than 20 international and national "lustration" acts that regulate various aspects of government cleansing. Relying on the results of the legal analysis, the authors develop their periodisation of the stages of government cleansing of legal regulation in Ukraine. The obtained results allow considering the beginning of lustration in Ukraine not as traditionally defined legal prohibitions on holding public service by certain categories of civil servants; but restoration of parliamentary-presidential republic model in Ukraine, power deconcentration, and decentralisation. Using the method of legal modeling, the authors substantiate the feasibility of providing the entire theoretical approach to lustration in a narrow and broad sense. This actualises the study of lustration as a legal phenomenon not only from the standpoint of personal renewal of power, but as a legislative strengthening of democratic principles of public service. The authors emphasise the need to modernise international regulations establishing lustration standards. Based on the sociological research secondary data analysis, the paper identifies such negative social consequences of lustration in the Ukrainian society as the stigmatisation of "lustrated" civil servants, public service deprofessionalisation, and weakening of social cohesion in Ukraine. This work is of practical value for countries in democratic transit, which have the opportunity to ensure a dialectical balance between respect for human rights and the protection of democracy, relying on the peculiarities of the Ukrainian experience*

Keywords: *government cleansing; lustration legislation; power usurpation; public service; stigmatisation; social cohesion*

INTRODUCTION

The Ukrainian model of lustration differs significantly from lustration practices of Central and Eastern European countries in time-lapse, socio-political conditions of origins, and chosen lustration criteria. Lustration legislation in Germany, the Czech Republic, Poland, Bulgaria, Hungary was introduced in the 1990s to overcome the negative effects of the communist political system on the way to the establishment of young democracies and had a role of "transitional justice" institution. Both Polish laws of 1997 [1] and 2006 [2] were aimed at restoring the truth and historical justice as a basis to build a new democratic state [3]. Somewhat later, lustration started in Serbia (2003), Macedonia (2008), and Georgia (2004) [4]. In Ukraine, however, this mean of government cleansing was implemented on the 24th year of independence of a young democratic state which had already had a democratic constitution and established democratic values.

The Ukrainian researchers traditionally link the beginning of lustration in Ukraine with the adoption of two lustration laws – "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII from April 8, 2014, and "On Government Cleansing" No. 1682-VII from September 16, 2014 [5; 6]. These laws have appeared to be the state response to the request of civil society after the events of the Revolution of Dignity in 2013-2014.

In contrast to the other European countries which have applied lustration legislation to overcome the negative effects of the communist regime, the Ukrainian model of lustration provides government cleansing on three criteria simultaneously. In particular, it implies restricted access to the public service for:

1) involvement in power usurpation at times of President V. Yanukovych ("lustration for V. Yanukovych regime" – the authors' nomination); 2) holding office on leading positions in the Communist Party system or holding office in the Communist Party as full-time employees or undercover KGB agents ("lustration for the communist past"); 3) misstatement on property availability or inconsistency of property value indicated in declarations with the income received legally during this period ("lustration for corruption"). The purpose of government cleansing (lustration) is declared as "non-admission to the management of state affairs for people who carried out measures by their decisions, actions, or omissions aimed at power usurpation by President V. Yanukovych, undermining the national security and defense of Ukraine or violation of human rights and freedoms" (Paragraph 2 Art. 1, Law of Ukraine "On Government Cleansing" [7]).

The experience of some European countries shows that lustration is a non-linear and dynamic process that may occur in several waves, clearing its direction and scope. Such an example is Polish and Romanian experiences – they renewed the existing lustration programs in the mid-2000s. Analysing them, C.M. Horne sums up that the policy of late lustration was aimed at embracing "positions of public trust" and was used as a mean of promoting democratic changes by eradicating corruption, mistrust, and inequality in society [8]. She emphasises that new lustration laws in these countries have been restructured and merged with other reform programs, including anti-corruption programs [8]. In contrast, the European countries followed the path of renewing lustration legislation due to fulfillment of its primary goals while the significant difference of the Ukrainian law "On Government Cleansing" [7] is the absence of possibility for such transition and simultaneously involvement of lustration criteria with different legal nature. These criteria have formed three types of lustrations – "lustration for the regime of V. Yanukovych", "lustration for the communist past" and "lustration for corruption". In fact, lustration criteria formed by the Law of Ukraine "On Government Cleansing" [7] testify hybrid nature of the Ukrainian lustration model due to the combination of heterogeneous legal relations.

Evaluation of the Ukrainian lustration process inefficiency is a common position among national scientists. Having reflected lustration "failure" in the national legal practice, Yu. Zadorojniy explains it both by objective (conflict of lustration legislation norms and constitutional norms, a low level of lustration legislative technique) and subjective (lustration delaying, actual lack of political will for conducting lustration, corruption, corporate unity of state power representatives, etc.) factors [5]. V. Kravchuk emphasises the inefficiency of civil society institutions being integrated into the lustration process in Ukraine [9].

The recent decision of the European Court of Human Rights in the case Polyakh and Others v. Ukraine [10] is a no less meaningful event that provides legal law assessment and significantly determines the future of lustration in Ukraine. According to the document, the Court found the violation of Paragraph 1 Art. 6 and Art. 8 of the European Convention on Human Rights [11], underlining that the Ukrainian authorities did not provide convincing grounds for justification of the lustration of people who had simply held certain Communist Party positions until 1991. The Court acknowledged the disproportionate nature of the lustration measure, emphasising that interference with any applicants was not necessary for the democratic society, and ordered the respondent State (Ukraine) to compensate the applicants' non-pecuniary damage. Considering that the decision of the European Court of Human Rights is a source of law in Ukraine, the analysed document questioned one of the lustration criteria – person's "communist past" (holding leadership positions in the CPSU, working full-time or being an undercover agent in the KGB of the USSR).

The above testifies the necessity to analyse legal specificities and social consequences of the Ukrainian model of lustration that forms the *aim of this paper*.

1. LITERATURE REVIEW

The existed lustration studies are not based on the single fundamental theory of lustration as a legal phenomenon. Studying foreign and domestic researches of lustration allows to defining some theoretical approaches to its analysis:

1) lustration consideration in dialectical relationships with human rights [12];
2) lustration study within the concept of transitional justice and transitological paradigm [13-15];
3) determination of lustration essential features through legislation analysis (degree of lustration measures rigidity, legal shortcomings, etc.). To specify the analysis of each of these approaches, we turn to the context of defining the Ukrainian model of lustration.

Lustration review in dialectical relationships with human rights highlights the necessity to consider legal safeguards and protect against possible power abuses. Bearing in mind the experience of Central and Eastern European countries, the lustration process has a dialectical nature: acting as an institution of "transitional justice" aimed at overcoming negative consequences of the communist political system and protection of democratic norms and values [14], lustration might become a tool of political struggle and possibility of power

abuse, it leads to real threats to democratic transformations and reconstruction of the totalitarian regime [15]. This dialectic is represented by the approach of the European Court of Human Rights in cases involving lustration. The need to strike a balance between the concept of "democracy capable of defending itself" and the principle of respect for human rights and freedoms guaranteed by the European Convention on Human Rights [11] is stressed. The former provides the principle of political loyalty for civil servants ("a democratic state has the right to demand from civil servants loyalty to constitutional principles on which it is based" [16]).

The review of comments to the Law of Ukraine "On Government Cleansing" in the final opinion of the European Commission for Democracy through Law [17] it is stated that Ukraine has failed to provide legal safeguards for human rights effectively in the main lustration law. In the final opinion, Venice Commission emphasised violation of the principles of individual responsibility and presumption of innocence; personal application of the law is too wide; absence of a specially created independent commission to administer lustration process; violation of the requirements of the 1996 Lustration Guidelines [18] for 5-year removal from office; law inconsistency with traditional approaches to lustration and legal relations mixed of different legal nature (in particular, regarding the anti-corruption component and lustration of judges), etc. These comments have not been "addressed" at the national level by making appropriate legislative changes. The Ukrainian researchers – [5; 6; 9] – agree that the further application of the current version of the Law of Ukraine "On Government Cleansing" under Venice Commission recognition of its non-compliance with international standards will mean significant violation of the constitutional rights and freedoms of the Ukrainian citizens. Moreover, it will require state reimbursement of court costs and wages during the forced absence of illegally fired [6].

Within the concept of transitional justice, lustration is shown as a personnel policy for key individuals of the "ancient regime". While in the transitological paradigm, it is defined as a tool and part of the democratisation process. The common is to determine the purpose of lustration – protection of the newly established democracy from the negative impact of the past [13]. The Law "On Government Cleansing" [7] might be considered from the standpoint of transitional justice concept while the "ancient regime" concept refers to the times of power usurpation by President V. Yanukovych that is captured in this legislative act. At the same time, this law simultaneously involves three lustration criteria: "lustration for the Yanukovych regime", "lustration for the communist past" and "lustration for corruption". The transitological paradigm is heuristic at explaining the strategic goal of the law aimed at strengthening democracy. However, means chosen by the legislator to ensure this goal are quite debatable.

In the theoretical studying of lustration measures, content researchers usually distinguish two models of lustration – "rigid" and "soft". The "rigid" model of lustration is based on the traditional approach to lustration providing removal of individuals from politics or legal punishment for past actions during the previous regime [13]. Actually, this model is laid down in Art. 1 of the Law "On Government Cleansing", which defines lustration as "established by law or court decision prohibition for certain individuals to hold definite positions (being on service) (except elective positions) in public authorities and local governments" [7].

The degree of lustration measures "rigidity" provides a misconception about its direct impact on democratisation results. Comparing Spain's and Portugal's democratic transitions after the fall of authoritarian regimes, Omar Encarnación concluded that democracy nature and transition effectiveness are influenced not by the level of repressions but by the country's political development at the stage of late authoritarianism [19]. In Portugal, for example, a policy of cleansing aimed at liberating the state and society from the authoritarian past has nearly thwarted a democratic transition which has become a real "witch hunt". In Spain, as O. Encarnación highlights, abandonment of the past based on compromise and consensus, the politics of oblivion and the movement further turned into the basis of democratic consolidation [19]. It is worth considering that among the Ukrainian scholars there is no unity of positions about a successful and adequate choice of the Ukrainian model of lustration. M. Kutepov and S. Levitsky consider the Polish ("soft") model of lustration laws to be more acceptable for Ukraine, opposing the implemented "rigid" model [20].

The key focus of legal lustration research in Ukraine is aimed at analysing compliance of the Law of Ukraine "On Government Cleansing" with lustration international legal standards [7]. However, such a strategy in the legal field is, in the authors' opinion, limited, as it ignores other legal acts forming an array of lustration legislation. It affects the fact that in most scientific papers on lustration studying the latter is considered in the sense enshrined in the Law of Ukraine "On Government Cleansing" as "established by this Law or court decision prohibition for certain individuals to hold definite positions on public service (except elective positions) in public authorities and local governments" [7]. This legislative definition enshrines a narrow understanding of lustration which by essence and content does not cover all the legislation adopted for its implementation, according to which the cleansing of power in Ukraine was conducted.

It is proposed to consider lustration in a broad sense, based on the purpose of its application, defined in Art. 1 of the Law as "prevention of person's participation in the public affairs management carrying out activities aimed at power usurpation of President of Ukraine V. Yanukovych" [7]. This goal is realised not only by the Law "On Government Cleansing", but also by numerous legislative acts, which are traditionally not considered as "lustration". To show up lustration in a broad sense, let us turn to the analysis of the legal acts contributed to power usurpation by President of Ukraine V. Yanukovych as a key legal basis for the adoption of lustration legislation.

2. MATERIALS AND METHODS

To carry out the study, a system of scientific methods was used. Among general methods that were applied are the following: analysis, synthesis, typologisation, and periodization. Among special legal methods that were implemented are a formal-legal method and legal interpretation referring to laws studying, decisions of the Constitutional Court of Ukraine, Presidential decrees, and other legislative acts regarding lustration regulation that in some cases were not defined as "lustration" acts. The stated methods were used both for the complex studying of the lustration phenomenon and defining stages of government cleansing of legal regulation in Ukraine. Methods of legal comparative studies and modeling also were underpinned in the paper by the development of the authors' proposals to define lustration narrow and broad understanding and highlighting legal specificities of the Ukrainian model of governmental cleansing.

The research's empirical basis consisted of the following legal acts: laws of Ukraine "On Government Cleansing" No. 1682-VII September 16, 2014 [7], "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII April 8, 2014 [21], "On the Cabinet of Ministers of Ukraine" No. 2591-VI October 7, 2010 [22], "On Central Executive Bodies" No. 3166-VI March 17, 2011 [23], "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII February 21, 2014 [24]; the Presidential Decree "On measures to Ensure the Enforcement of Executive Power by Local State Administrations on the Relevant Territory" No. 307/2013 May 24, 2013 [25]; the Decision of the Constitutional Court of Ukraine No. 20-RP/2010 in case No. 1-45/2010 September 30, 2010 [26]; the Cabinet of Ministers Resolution "About Adoption of the Procedure for Powers Transfer to Local State Administrations of the Highest Level Executive Bodies and their Return" No. 740 October 09, 2013 [27]; Order of the Cabinet of Ministers "Issue of concluding the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" No. 905-r November 21, 2013 [28]; Amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" March 27, 2014 [29]; the Final Opinion on The Law "On Government Cleansing" of Ukraine, adopted by Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) [17]; Decision of the European Court of Human Rights in the Case Polyakh and Others v. Ukraine (Application No. 58812/15 and 4 other applications) 24.02.2020 [10].

Additionally analysed were the Verkhovna Rada Resolution "On Response to Violations of Judges' Oath by Judges of the Constitutional Court of Ukraine" No. 775-VII February 27, 2014 [30]; Regulation of the Uniform Register of Person Subject to Lustration approved by the order of the Ministry of Justice of Ukraine No. 1704/5 October 16, 2014 [31]; Regulation of the Lustration Community Council in the Ministry of Justice of Ukraine approved by the Order of the Ministry of Justice of Ukraine No. 1884/5 November 04, 2014 [32] to define stages of government cleansing of legal regulation in Ukraine.

The secondary analysis of the sociological research results and the sociological modeling method were used to identify the social consequences of lustration for Ukrainian society.

3. RESULTS AND DISCUSSION

The main reason for the events defined in Ukraine as Revolution of Dignity 2013-2014 has become factual power usurpation made by President of Ukraine V.F. Yanukovych and his entourage during 2010-2013. As a matter of law, this was achieved by gradual power concentration, strengthening the presidential vertical and weakening the governmental role in state administration; the President's intervention in the judiciary and legislative power branches; transformation of the regional government system with shifting priorities between the executive power and local self-government in the direction of executive power strengthening. In this regard, the Decision of the Constitutional Court of Ukraine No. 20-RP/2010 in case No. 1-45/2010 [22] is denotative. It has declared the Law of Ukraine "On Amendments to the Constitution of Ukraine" (Law on Political Reform) No. 2222-IV [33] unconstitutional and reactionary [34]. This model empowered the President to nominate the Prime Minister and exert leverage on the formation of the Cabinet of Ministers. It restored the Presidential right to regulate legal relations by own decrees without regulating laws; appoint heads of other central executive bodies as well as heads of local state administrations; terminate their powers; create and

liquidate ministries and other central executive bodies. The Parliament was relieved of its obligation to form a coalition and nominate the Head of Government. These changes marked the transformation of Ukraine from the parliamentary-presidential republic to the presidential-parliamentary one.

The Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 2591-VI [22] became the next step towards strengthening the presidential power vertical. According to the latter, the Cabinet of Ministers of Ukraine (hereinafter – CMU) as the highest executive body was appointed responsible to President of Ukraine. The President got the decisive authority to form the Government, while the CMU's program of actions had to be based on the President's election program. Such changes contributed to the transformation of the Cabinet of Ministers into a dependent body. The President himself actually acquired the status of executive power branch head of the state.

To confirm the concentration of presidential power, it is worth mentioning the Law of Ukraine "On Central Executive Bodies" No. 3166-VI [23]. According to this legal act, ministries, and other central executive bodies except for the Constitution of Ukraine [34] and current legislation had to be guided by the acts and instructions of the President. This law provided by ministries to ensure the formation and implementation of state policy in one or more areas determined by the President has established the President's authority to approve provisions of ministries. It has deepened his powers to establish, reorganise and liquidate ministries and other central executive bodies. Adoption of the Presidential Decree "On measures to Ensure the Enforcement of Executive Power by Local State Administrations on the Relevant Territory" No. 307/2013 [25] is considered an important step to strengthen the presidential power vertical. It provided the heads of local state administrations (hereinafter – LSA) power to approve the appointment and dismissal of territorial executive power bodies leaders and the heads of enterprises, institutions, and organisations belonging to the ministries' sphere of management and other central executive bodies. This decree obliged the heads of central executive bodies to determine priorities of territorial bodies by the prior agreement with heads of the LSA to ensure implementation of their orders by relevant territorial bodies.

Implementing the aforementioned Presidential Decree, the Cabinet of Ministers of Ukraine by Resolution No. 740 [27] the Procedure of power transfer of higher-level executive authorities to the LSA and their return was approved. According to it, the right to initiate the power transfer to ministries and other central executive bodies, local state administrations of the highest level (regional relatively district (rayon)) was granted to regional state administrations and Kyiv and Sevastopol city administrations with the further decision on transfer or return of CMU powers. In fact, these state administrations were equated with ministries and other central executive bodies in such a way.

This transformation of the constitutional order towards strengthening the presidential power vertical was "ensured" by the support of the parliamentary majority of the pro-presidential political force – the Party of Regions deputy's fraction. Realising its competence to enact laws, the Parliament thus led to and promoted power usurpation of President V. Yanukovych. The coordinated and purposeful activity of the President, the Parliament, and the Government was carried out "undercover" in an attempt to substantiate conceptually the amendment of the Constitution of Ukraine [34] to implement democracy principles developed by the Constitutional Assembly. However, the changes achieved by the scientists of the Constitutional Assembly have not been implemented in the current legislation of Ukraine. Meanwhile, the above analysed legal acts determined the maximum power concentration of the President of Ukraine. The reaction of civil society to numerous cases of power usurpation turned growing dissatisfaction of the pro-presidential team politics and the denial of trust to this political force. Thus, according to the annual monitoring of the National Science Academy of Ukraine Institute of Sociology, the number of Ukrainians who do not trust the President increased from 31% in 2012 to 39% in 2013; the courts – from 32% to 45% consequently; the Verkhovna Rada – from 36% to 44%; the Government – from 34% to 42%. Since 1994 (the year of the beginning of the annual monitoring), this was the highest level of distrust to all the above state institutions [35].

In autumn 2013, the reason for the civil protest was the adoption of the order "Issue of concluding the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" No. 905-r [28] by the M. Azarov's Government. According to this legal act preparation for conclusion initiated on 12.03.2012 by the parties, the Association Agreement between Ukraine and the EU was suspended. As the order states, several measures were envisaged to restore trade and economic relations with the Russian Federation in favor of Ukraine's national security. Furthermore, Russia's involvement in Ukraine's negotiations with the EU in the form of a tripartite commission was included. This Government decision was accepted extremely critically in Ukraine, as it testified to the change of the state's foreign policy course from the European integration to rapprochement to the Russian Federation. On November 24, 2013, peaceful protests against the Government's policy to refuse European integration began in Kyiv; on November 30, 2013, Special Forces of the Ministry of Internal Affairs

of Ukraine violently dispersed the participants of peaceful rallies. Such power actions led to resistance increasing, prolonging the political crisis and, unfortunately, human casualties. This caused the protesters' demand for the removal of the president and his entourage from power.

After V. Yanukovych's escape at the end of February 2014 power reformatting began in Ukraine: a new majority was formed in the Parliament; a new speaker, Oleksandr Turchynov, was elected to serve as a current head of the state. On February 21, 2014, full re-election of the Government took place. During February-April 2014 the heads of LSAs and territorial branches of central executive bodies were dismissed while opposition politicians and public figures were appointed to these positions. Extraordinary presidential elections were scheduled on May 25, 2014; parliamentary elections – on October 31, 2014.

The new power formed from opposition to V. Yanukovych's part of politicum received civil society's credibility: they had to satisfy its request not only for personal renewal but also for changing the model of public administration. It involved issues of parliamentary-presidential republic restoration, the establishment of the constitutional system based on the rule of law, overcoming consequences of president V. Yanukovych's state management by power deconcentration, decentralisation, and cleansing of all branches. Moreover, it led to defining the appropriate areas of legislative activity. ***Therefore, it might be useful to deal with lustration in Ukraine in a broad sense, as a state-building process of changing the public administration model, accompanied by the formation of personnel capable to ensure its implementation and functioning on a democratic basis.***

For further comprehensive research of the Ukrainian model of lustration, it is essential to analyse the key legislative acts that led to the restoration of the parliamentary-presidential republic, power deconcentration, decentralisation, and cleansing of all branches (i.e., the legislation we offer to define as lustration legislation). It corresponds to the concept "lustration" in the proposed broad sense. Following this approach, lustration legislation means not only traditionally stated laws "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine", but also other legislative acts aimed at overcoming consequences of V. Yanukovych's power usurpation. Adoption time of lustration legislative acts, analysis of their intention and content allows us to define three stages of government cleansing of legal regulation in Ukraine (see table 1). In the framework of this paper, the authors will analyse in detail the lustration legislation features of the first stage of government cleansing of legal regulation in Ukraine:

Table 1. Stages of government cleansing of legal regulation in Ukraine

Name of stage	Period	Aim	Core legislative acts
The first stage of government cleansing (broad sense of lustration)	21.02.2014-08.04.2014	Overcoming consequences of V. Yanukovych's power usurpation at the level of changing the public administration model	Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII [24]; New version of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" No. 794-VII [36]; Amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" [29]; Law of Ukraine "On Recognition as Having Lost Force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Their Bringing into Compliance with the Constitution of Ukraine" No. 763-VII [37]; Resolution of the Verkhovna Rada of Ukraine "On Response to Violations of the Judge's Oath by Judges of the Constitutional Court of Ukraine" No. 775-VII [30]
The second stage of government cleansing (narrow sense of lustration)	08.04.2014-16.10.2014	Increasing the judiciary power and trust of citizens to it; restoring the rule of law and justice	Law of Ukraine "On the Restoration of Trust in the Judiciary in Ukraine" No. 1188-VII [21]
The third stage of government cleansing (narrow sense of lustration)	16.10.2014-up to present	Non-admission to management of state affairs for people carrying out measures by their decisions, actions or omissions aimed at power usurpation by President V. Yanukovych	Law of Ukraine "On Government Cleansing" [7]; Regulation of the Uniform Register of Persons Subject to Lustration, approved by the order of the Ministry of Justice of Ukraine No. 1704/5 [31]; Regulation of the Lustration Community Council in the Ministry of Justice of Ukraine, approved by the Order of the Ministry of Justice of Ukraine No. 1884/5 [32]

Source: *made up by authors*

The first stage is related to power usurpation by President V. Yanukovych, consequences overcoming on the level of changing the public administration model. The key legislative act of this stage is the Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine" No. 742-VII [24]. This Law restored the constitutional status of the Verkhovna Rada of Ukraine (hereinafter – the VRU) as a body of parliamentary control of the state and regulated its functioning. The activity of the Parliament became open and public which was ensured by the adoption of amendments to the Law of Ukraine "On the Regulation of the Verkhovna Rada" [29]. Amending Art. 83 of the Constitution of Ukraine [34], the coalition status of parliamentary fractions was restored. Henceforth, the coalition had to submit proposals to the President of Ukraine on the candidacy of the Prime Minister and candidates to the CMU. The law updated the provisions of Art. 85 on the appointment of the Prime Minister, the Minister of Defense, the Minister for Foreign Affairs, the appointment of other members of the Cabinet of Ministers, their dismissal, resolution of the Prime Minister's resignation issue, appointment and dismissal of members of the Cabinet of Ministers due to proposal of the President of Ukraine and the Head of the Security Service.

The Law [24] restored the provisions of Art. 90 of the Constitution [34] by limiting the President's right to terminate powers of the Verkhovna Rada. The strengthening of parliamentarism was guaranteed by changes to Art. 94 established its immediate official publication in case the President does not sign the law adopted by the Verkhovna Rada by at least two-thirds of its constitutional composition during reconsideration. The role of the Cabinet of Ministers in the executive system has been strengthened. According to Art. 113 of the Constitution [34], the Government became accountable to the President of Ukraine and the Verkhovna Rada. It was to be guided in its activity, considering parliamentary resolutions. Art. 113 was also brought in line with Art. 85 and 106 of the Constitution [34] on the appointment of the Prime Minister by the Verkhovna Rada on the proposal of the President of Ukraine on the proposal of a coalition of parliamentary fractions. Art. 115 built on the constitutional responsibility of the Government by its resignation due to the adoption of a resolution of no confidence in the Cabinet of Ministers by the Verkhovna Rada. The law restored resignation provisions before the Verkhovna Rada was newly elected, while the President of Ukraine did not, as in the case of 2010-2013.

Art. 116 of the Constitution of Ukraine [34] amended by Law No. 742-VII [24] gave the Cabinet of Ministers constitutional authority to form, reorganise and liquidate ministries and other central executive bodies, as well as to appoint and dismiss heads of central executive bodies upon the Prime Minister's request which are not part of the CMU. As for the mentioned constitutional changes, the Verkhovna Rada adopted the Law of Ukraine "On the Cabinet of Ministers of Ukraine" from February 27, 2014 [36] in the new wording. These changes contributed to the redistribution of constitutional powers in favor of the Parliament and Government to achieve a power balance between the executive, legislative branches, and the President of Ukraine. The analysed law which became one of the defining acts of lustration legislation restored the model of the parliamentary-presidential republic in Ukraine, overcoming the consequences of power usurpation by the previous president. Such constitutional changes have formed institutional protection to ensure the "government cleansing" further by minimising the risks of re-usurpation. At the same time, these changes have not provided the lustration safeguards against the activity of People's Deputies (the parliamentary activity of people's deputies during V. Yanukovych's presidency contributed to power usurpation in the state). Such a proposal does not contradict Lustration Guidelines requirements regarding lustration non-proliferation on the elective positions – it should provide the establishment of legal mechanisms that would minimise risks of constitutional changes recurrence towards power usurpation by any of its branches.

Researchers of the Sociology of Law note that draft laws should go through sociological expertise. It determines "draft law compliance with social needs and legal awareness conditions, meaning assessment of the possibility of its adequate perception and implementation" [38, p. 136]. The statutory prohibitions on holding public office positions have led to different social consequences of lustration legislation implementation for the society and separate socio-professional groups. From the standpoint of E. Goffman's concept of stigma [39], this law establishes a stigma relating to a certain socio-professional group – civil servants – by ascriptive principle. On the one hand, this stigma is socially "invisible", but it is "set up" into the actor's life experience and actualised during appealing to his biographical project – during employment, public and political activities, etc. "Life experience" space formed by certain categories of civil servants holding senior positions during the regime of President V. Yanukovych is becoming a criterion of their social discrimination on professional, moral, and value grounds. It is facilitated by the presumption of guilt and absence of individualisation of punishment in lustration legislation.

In addition, the lustration procedure enshrined in the lustration legislation is the basis for constant reproduction of prior social distrust to the professional community – civil servants. Such stigmatisation at the group level forms additional social divisions, intensifying social disintegration. The authors find consistent conclusions in the works of the American researcher Cynthia N. Horne, who sums up that lustration procedures

may increase trust in targeted social institutions, but have a negative impact on interpersonal trust in transitional societies [14]. Such state of affairs is a risky zone for the social cohesion in decentralised Ukraine, as far as interpersonal trust [40] and the absence of intergroup cleavages [41] are recognised as the most important components of social cohesion [42]. In this regard, actors of stigma reproduction are the media, through which political opponents use "lustration discrediting" against people with "political past" ensuring fixation and reproduction of civil servants of V. Yanukovych's regime social stigma. In turn, it provides a space for additional opportunities for the political advancement of new political elites, competition elimination between "predecessors" and "new faces" in the political field and civil service. Thus, the Law of Ukraine "On Government Cleansing" established a new criterion of social inequality providing a downward direction of professional mobility to a certain socio-professional group and at the same time creating conditions for socio-professional advancement and growth of all 'illustrated' (not lustrated) [7].

Such stigmatisation at the value level has formed and adapted the Ukrainians' perception to an obvious idea that the civil service or policy experience are signs of officials' corruption, perceived as prior and a factor of professional discredit. In contrast, the absence of civil service experience and participation in politics has become one of the most powerful grounds for sociopolitical advancement and led to the emergence of the phenomenon of "new faces" as was evidenced by the results of both Ukrainian presidential and parliamentary elections in 2019. Thus, many representatives of different professions have entered the Verhovna Rada [43]. The adoption of lustration legislation and further civil service reform in Ukraine has significantly changed the socio-professional landscape of the civil service institute. Lustration principles of multiplicity and widespread law individual application have led to excessive coverage of public positions that fall under lustration prohibitions. On the one hand, the implementation of lustration bans has led to the dismissal of thousands of civil servants at all levels of public administration. On the other hand, the new version of the Law of Ukraine "On Civil Service" from 2015 [44] significantly simplified requirements for people applying for admission to the civil service. Weakening of educational and professional requirements both contributed to deprofessionalisation of civil service institutions, filled by representatives of other professional activity branches and young people without experience in public office. It has become another practical consequence of lustration stigma and the manifestation of demand for "new faces" in Ukrainian politics.

CONCLUSIONS

Legal analysis of the Ukrainian model of lustration has allowed us to look at the lustration phenomenon in a broad and narrow sense. The basis to distinguish a broad lustration understanding is the analysis of the purpose of the Law of Ukraine "On Government Cleansing" that defines power usurpation by President V. Yanukovych as a key legal problem. Legal analysis has shown that the beginning of lustration in Ukraine and lustration legislation adoption as a legal basis for overcoming consequences of power usurpation by President V. Yanukovych should not be associated with the establishment of legal prohibitions on holding public office, but with the restoration of the parliamentary-presidential republic model, implementation of power deconcentration and decentralisation. In these terms, the "lustration legislation" is not only traditionally defined Laws of Ukraine "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine" but also aimed at overcoming the power usurpation made by the former president systematically.

On the one hand, the goal of government cleansing in a broad sense was achieved by establishing a balance between various branches of power and Ukraine's return to the parliamentary-presidential republic model reflected in the Law of Ukraine "On Act Restoration of Certain Provisions of the Constitution of Ukraine". On the other hand, a narrow interpretation of the lustration purpose as non-admission to the management of state affairs was implemented by the Laws of Ukraine "On Government Cleansing" and "On the Restoration of Trust in the Judiciary in Ukraine" only partially. This outcome is explained by the fact that the system of bans on holding public office has been implemented and continues to act in Ukraine. Still, it did not affect a key social entity that contributed directly to power usurpation by President V. Yanukovych (People's Deputies). For this reason, we consider it appropriate to raise the issue of revising the Lustration Guidelines at the level of international law aimed at updating the lustration challenges of transitional democracies accordingly.

Our study has shown the existence of three stages of government cleansing of legal regulation in Ukraine; distinguished dependence on time of lustration legislation acts adoption, their direction, content, and decisions taken to implement it. We link the first stage with legislative acts array adopted at the end of February 2014 and aimed at overcoming the consequences of power usurpation by President V. Yanukovych on the level of changing the public administration model. The second stage covers legal acts on "judicial lustration" aimed at increasing the authority of the judiciary of Ukraine and restoring public confidence in the

judicial branch of power that took place in spring 2014. The third legislative stage of government cleansing in Ukraine deals with the Law of Ukraine "On Government Cleansing" and other acts adopted for its implementation. The third stage that began on October 16, 2014, continues up until now due to the ongoing updating of procedural acts and the prospect of basic lustration law changing in the near future.

Analysis of provisions of the Law of Ukraine "On Government Cleansing" and Venice Commission remarks from the standpoint of Sociology of Law has shown social discrimination phenomenon of civil servants of certain categories holding senior positions during V. Yanukovych's presidency on professional, moral, and value grounds. The acting of the law has led to further deprofessionalisation of the civil service in Ukraine and risks of social cohesion weakening.

The Ukrainian experience will be beneficial for all countries during government changes to their protection from the prospect of applying legal prohibitions named lustration, but, in fact, more inclined to political revenge instruments.

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