

ЛЮСТРАЦІЯ ЯК ЗАСІБ ДЕМОКРАТИЗАЦІЇ ПОЛІТИЧНОЇ СИСТЕМИ УКРАЇНИ

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Розглянуто люстрацію як інститут перехідної справедливості, що має своєю метою запобігання рецидивів авторитаризму, захист демократичних надбань і формування нової політичної системи. Виокремлено особливості, принципи та ресурси люстраційного процесу в Україні.

Ключові слова: люстрація, Україна, демократизація, ресурси, принципи, особливості, загрози, світовий досвід.

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LUSTRATION AS A TOOL OF POLITICAL SYSTEM DEMOCRATIZATION IN UKRAINE

The paper deals with lustration as an institution of transitional justice, aimed at preventing recurrence of authoritarianism, protecting democratic achievements and creating a new political system. The principles of lustration and essential resources in Ukraine are defined in the article.

Keywords: lustration, Ukraine, democratization, resources, principles, features, threats, global experience.

Being one of post-Soviet countries with the transitional government system, Ukraine has not yet managed to build a contemporary statehood type, without archaic totalitarian stereotypes. The inefficiency of the government system should be notified. Its institutes appeared to be the most sensitive to the Soviet regime recurrence, namely the rebirth of the social and political tendencies and phenomena that are contradictory to the democratic transformations, rule of law and legitimacy, human rights and freedom of speech or expression decentralization of authority, and the plurality of political parties development.

The countries which like Ukraine acquired their national and state sovereignty in the end of 20th century as a result of split of the socialist camp also encountered similar problems. Positive experience in handling such social anomie is clearly reflected in the policy of the Visegrád Group. The countries of the group have successfully carried out political and economic reforms and now are completely integrated into European structures and have become influential objects in the system of international relations. The priorities of the Visegrád Group policy were destruction of state-party type of governing, elimination of totalitarian standards and values system, establishment of efficient governing bodies and capable administrative structures, implementation of democratic norms and values. In order to prevent the recurrence of authoritarianism, protect democratic achievements and create a new political system, the above mentioned countries employed lustration as an institute of transitive justice.

The notion “lustration” has Latin origin and is encountered in Ancient Greek and Roman mythology in the meaning of purification through sacrifice [6, c.552]. In general, there are two conceptually different approaches to determining its sense. According to the traditional approach, lustration is defined as removing individuals from political life or legal punishment for the actions during a former regime. The retroactive one interprets lustration as establishing justice by means of informational component, in other words relieving information about criminal acts of a certain person [11]. Thus, in policy lustration denotes purge of staff from functionaries of a previous regime. They are banned from state administrative bodies; they are not allowed to establish justice and be elected to state representative bodies. It is not restricted to legal actions only since, first of all, it is exploited in resistance between new and former ruling elite. Therefore, lustration law does not belong to criminal law and is aimed at state restructuring of the bureaucratic system of governing, involvement the individuals who contribute to the establishment of a democratic regime [ibid.]. Lustration is also a form of legitimation of a new political regime of the state [9, p.18].

Lustration and peculiarities of putting it into operation are quite popular subjects of studies among foreign scientists. Contribution of E. Blankenburg, P. Blazhek, R. David, P. Hzhelyak, N. Letki,

A. Opalinska, H. Schwarz, Ya.Volenskiy, P. Zacek has to be stressed. The problem of lustration was raised in the researches of such Ukrainian scientists as V. Deinychenko, N. Meninkova, A. Rudenko, O. Sakhno, O. Stepanenko, S. Shevchuk. Meanwhile, there are no scientific works that describe lustration not only from the theoretical point of view, but provide analyses of its implementation as a democratization factor of the politic system of Ukraine triggered by the events in 2014.

As it was mentioned above, in post-communist countries “lustration” denoted legislative initiatives, which prevented state machinery and law enforcement bodies from admitting people who discredited themselves with their cooperation and collaboration in the previous political system. The lustration process in various countries differs. As a result the consequences are also different. Some scientists believe that the lustration that took place in Czech Republic after legislation of the law on Decommunization was a vivid example. It is worth mentioning that despite being consistently criticized by international institutions (Administrative Board of the International Institute of Labor, The Council of Europe, and The European Parliament) the laws on lustration in Czech Republic were implemented [1, c.200]. Dramatic change in the state machinery staffing led to reconsideration of the state system of the Czech Republic and people’s mentality. In contrast, the similar law on decommunization of Science and Education passed in 1992 was not put into practice, due to prohibition of disclosure of secret police files. Some countries, e.g. Estonia, Russia, Romania, renounced the mechanism of authority purification, alluding to the contradictory effects of lustration for social development. Thus, the practice of other countries shows that the effectiveness of lustration reforms depends on “moral power” of new authorities, the society’s support of the idea of restructuring public authorities and existence of a legislative framework that meets international standards and practices [6, s.553].

In order to obtain comprehensive understanding of the problem, it is essential to determine the goal that can be reached as a result of applying lustration. First of all, lustration is an effective tool, which prevents re-establishment of the former regimes and recurrence of the past. Moreover, lustration fosters democratization of public institutions and promotes democratic principles. To some extent, lustration is a national idea, the unifying point of the society that strives for transformations, reforms and changes in existing social order. Meanwhile, experience of post-soviet countries has proved that lustration could be exploited as means of political struggle or abuse of power. In this case, it is posing a real threat to democratic transformations because it leads to greater stagnation of the state and society. As a result, instead of strengthening the rule of law corruption flourishes, instead of establishing democracy - oligarchy is reinforced, instead of protecting human rights –organized crime is fostered, and instead of establishing a democratic system - totalitarian regime being restored. American researcher H. Schwarz believes that lustration initiators often do not take into account the correspondence between guilt and punishment. He states that this is the reason why in some countries, namely Bulgaria, Albania, Czechoslovakia, communist ideology opponents appealed against the lustration law to the constitutional court. The fact is that they were afraid, and not unreasonably, that these drastic measures would bring about split of the society and provoke significant human turmoil [10, c.190].

Aiming at preventing mentioned above negative phenomena, the basic principles and mechanisms of introducing lustration were fixed in a number of international acts, e. g. the Resolution 1096 on measures to dismantle the heritage of former communist totalitarian systems, which was passed by the Parliamentary Assembly of the Council of Europe in 1996. Its aim is to prevent representatives of totalitarian communist regimes, who held high positions in governance of the former regime and could encumber transformations, from violation of human rights. The Assembly recommended countries of transitive type to get rid of totalitarian rudiments of an institutional system by means of demilitarization, decentralization, demonopolization and privatization, debureaucratization of society, which in the perspective must entail transformations in the entire society mentality [8].

The Parliamentary Assembly also stressed that lustration law and other administrative measures must correspond to the requirements of the rule of law and focus on protecting human rights and on democratization. Key provisions of the resolution 1096 are regulated by “Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of the state based on the rule of law”. The main goal of lustration is protection of emerging democracies, and not punishment of guilty people, which is a responsibility of a criminal court. It is recommended to adhere to a number of principles in the process of lustration. They are: 1) lustration must be conducted by specifically created committees, which consist of the reputable citizens suggested by the head of the state and approved by legislative bodies; 2) lustration can be applied only with the aim of eliminating or reducing danger caused by the object of lustration in the process of establishing and functioning of free democracy; 3) lustration cannot be used for punishment, reprisal or revenge; 4) lustration can be applied only to high-rank officers whose authority gives

their ability to influence formation and implementation of state policy in the Homeland Security or violate human rights, e.g. law enforcement officers, national security and intelligence services, the judiciary and prosecution; 5) lustration must not be applied to elective offices, with the exception when the prospective object of lustration requests for undergoing the procedure; 6) lustration of semiprivate and private establishments and organizations cannot be applied; 7) one cannot be deprived of the right to hold a position for more than five years, there are two reasons for that: possibility of positive changes in the outlook and habits and strengthening of democratic principles in former communist systems; 8) only people who gave orders and committed or abetted significant human rights violation could be withdrawn from their positions; 9) relation and cooperation with a legal at that time organization or personal views and beliefs are not sufficient for lustration reason; 10) lustration of "conscious employees" is acceptable only when they were involved in serious human rights violations or caused harm to others, being aware of the negative effect of their actions; 11) it is unlawful to apply lustration to the underage, who of their own accord quitted the organization or ceased cooperation with it before transition to a democratic regime or who acted under duress; 12) lustration is applicable only to the actions, labor activity, membership in organizations that took place during the period from January 1, 1980 to the overthrow of the communist dictatorship; 12) an individual cannot be subjected to lustration unless being offered procedural defense [5, c.164-167].

In Ukraine the problem of lustration was discussed since the dissolution of the Soviet Union. Ideas of lustration were vividly promoted particularly after the Orange Revolution in 2004. Bills introduced by Lukianenko (2004), Tiahnybok (2005), Chervoniy (2005) and NGO "Ukrainian lustration"(2008) are to be mentioned here. As a result of passing the Law "On purge of power" the question of lustration is topical once more. It is considered in the context of democratic transition of Ukraine after the Revolution of Dignity. In this law the term "purge of power" (lustration) denotes the prohibition for certain individual people to occupy certain positions in state and local authorities (except for elective ones). The intention of the law is to prevent from participating in governance of people whose decisions, actions or lack of actions were aimed at usurpation of power by the former president of Ukraine V. Yanukovich, undermining the foundations of the National Security and Defense Council of Ukraine, violation of human rights and freedoms. The rule of law and legitimacy, openness, transparency and publicity, presumption of innocence, individual responsibility, and guaranteeing the right to legal defense are recognized as major principles of lustration [4].

It should be noted that some provisions of the law "On Purge of the Power" were criticized by Ukrainian analysts as well as by the Venice Commission. In the conclusions of the international institution the following drawbacks were stated: there is automatic prohibition on holding public office by a person who occupied a position in the former regime. It is a form of discriminatory punishment which does not comply with the principles of presumption and may become a political tool to pressure opponents; there is a lack of clear and obvious reasons for lustration that, in a case of large-scale lustration, great number of structures involved into its implementation and ambiguity of wording, could lead to inconsistent application of the law; absence of a clear distinction between lustration and criminal prosecution is detected. The conclusion states that involvement in corruption should be subjected to criminal penalties, not to lustration measures; the absence of a clear procedure of creating a special body to control lustration process is indicated since according to European standards as regards the independence the Ministry of Justice of Ukraine cannot perform this function; there are unjustified provisions for the implementation of lustration in respect of people who were involved in the Soviet regime 20 years after the Declaration of Independence; lustration of the court system should be held in accordance with the adopted Law of Ukraine "On Restoring confidence in the judicial system of Ukraine", etc. International experts also stress that lustration process should be followed by prosecution of guilty people and supplemented by structural reforms that are aimed at strengthening the rule of law, fighting corruption and eliminating the system of personal connections in government. In extreme conditions lustration can serve as a component of these activities, but should not substitute them by any means [7].

The experience of post-soviet countries has shown that lustration might have contradictory results, sometimes it is difficult to correlate them with democratic principles. It is worth mentioning that Ukrainian society has different opinions on lustration expediency and its possible outcomes. Apparently, the Soviet past of Ukraine is not unanimously blamed. Until recently, communist party was represented in the Parliament. National System of Public Administration corresponds to Soviet traditions, as it is still based on personal connections. This impedes not only lustration, but the process of transformation as a whole. The majority of politicians are not interested in lustration because the provision of the Law "On Purge of the Power" could become an obstacle to a successful political career. Average population supports the idea of lustration. They see it as an anti-corruption weapon and believe that it would enable social changes. Meanwhile, representatives of big business maintain a more conservative position: according to their opinion, change of

political elites would bring about new investments in newly formed political projects. The prerequisite for applying lustration is social approval and political will of the elite [6, c.555]. Therefore, it is important for the elite and society to have a clear idea of principles, objective and tasks of lustration as an important institution of transitional justice. Furthermore, the society has to have a consolidated stance on the criteria and methods of its implementation.

Full-fledge implementation of lustration requires significant resources, mainly organizational, legal, financial, ideological, and educational ones. This will allow refreshing the staff of the public service. Lustration effectiveness to the large extent depends on the informational resource. Used appropriately, information resource will persuade the majority of Ukrainian citizens of expediency of lustration and lay the foundation for the further action, i. e. organizational and legal stage of its implementation.

Nowadays Ukrainian society supports the idea of lustration, but understand its criteria and main goal differently. According to the poll conducted by the sociological group "Rating", 71% of Ukrainian citizens believe that individuals involved in corruption and illegal actions have to be lustrated regardless of political orientation and the time of being in office. The citizens were asked to determine the main criteria of the lustration: involvement in corruption schemes (54%), involvement in political corruption (10%), adherence to a particular ideology (7%), human rights violations during recent protests (6%). 10% of respondents appeared to be against lustration, as they were convinced of its destabilizing effects. Meanwhile, 5% of respondents believe that lustration should be applied also to those who were in power at the time of Yushchenko and Tymoshenko [2]. Therefore, it is obvious that the majority of Ukrainians understand lustration as a means of combating and preventing various types of corruption. However, such criteria as ideological affiliation (mainly support of the communist ideology) or involvement in activities that violate human rights have much less support from the public. For comparison, the main reasons for lustration in Czechoslovakia were human rights and ensuring the rule of law, territorial integrity and public confidence in the government, while in Poland – establishing historical accuracy, minimal justice and state security [11]. In these cases the necessity in lustration ensued from the need to strengthen the new democratic society and respect for human rights and the rule of law. Apparently, in Ukraine the main motive of lustration is fighting corruption, an idea that actually serves as a unifying platform for wider Ukrainian society. Fighting corruption is perceived as the main and mandatory prerequisite for changes in politics, economics and education.

The effectiveness of lustration in Ukraine depends on the type of the ruling regime. It has to be taken into account that the structure of government, not the type of a regime, has changed so far. To make matters worth, since the independence political regime in Ukraine has been creating so-called presumption of guilt. In other words, authority created an environment where everyone was forced to break the law (of course, to different extent). This has led to a lack of clear characteristics which should determine the way of conducting lustration. As a result, there is a real danger in the Ukrainian society that lustration may lead to the loss of highly qualified personnel of public administration who performed their duties appropriately during the presidency of Viktor Yanukovich. In this context, the American financial expert George Soros said that, if, instead of people dismissed in a result of lustration, new officials were appointed solely on the basis of political affiliation, and not of professional or personal qualities, the new political regime in Ukraine would not differ from the old one. This will cause the "drain" of professionals in the administration and aggravate already critical political and economic state of Ukraine.

The professional characteristics of the officers that are responsible for holding lustration cannot be disregarded. According to the Law of Ukraine "On Purge of the Power" the competent authority for verification of lustration is the Ministry of Justice of Ukraine, which also creates a public advisory body on lustration. The later encloses representatives of the media and the public and aims at realizing public supervision of the purge of authorities [4]. Obviously, the main part in controlling lustration should be played by society through NGOs. Instead, the immediate performer of lustration should have a moral authority with the society, work with public institutions and inform the public about the prospects and results of their work. In this way, corruption would be prevented from increasing in the process of the purge of the power.

It should be noted that nowadays the public authorities do not have sufficient resources to complete lustration at central, regional and local levels. At the present stage, efficiency of lustration reforms in Ukraine is rather questionable. In general the society supports the lustration and understands it primarily as a tool to fight corruption, the "moral authority" of the new government is not sufficient to make lustration. This can be largely attributed to the lack of reforms after the Revolution of Dignity. There are conflicting provisions of legislation on lustration, which meets neither international standards nor needs of Ukrainian society and, therefore, need correction. The structures which directly carry out lustration have to perform

information activity, particularly in order to involve the society in the process of lustration. They have to demand sufficient funding for such activities from the authorities. The requirements of the modern transformation process and primary tasks of reforms should be taken into consideration in the process of lustration implementation. First of all, it is necessary to create mechanisms for combating usurpation of power, unlawful pressure on the activities of public authorities, secret collaboration of senior officials of the state with intelligence agencies of foreign countries, illegal acquisition of property by civil servants or politicians and others, development of separatism in the political and social spheres. At the same time, an effective system of social, political and state control over the activity of the subjects of public authorities formation should be created (public associations and political parties, opposition forces) [3]. These questions constitute the basis for further research in the field of the political science.

In conclusion, lustration is a means of providing transitional justice for so-called transitional societies which have given the preference to democratic values in the arrangement of the state. Lustration measures have to comply with the rule of law, fundamental freedoms, conceptual principles of democracy, and also be accompanied by certain guarantees on preventing lustration from being used for settlement of political and personal scores with opponents.

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