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Council of Europe constitutional experts to co-operate with Ukraine on improving lustration law, adopt interim opinion

Venice, 12 December 2014 – The European Commission for Democracy through Law (the [Venice Commission](#)), the Council of Europe's advisory body on constitutional matters, in its interim opinion on Ukraine's law on government cleansing adopted today, 12 December 2014, concluded that the law in its current form contained several serious shortcomings and welcomed the readiness of the Ukrainian authorities to amend the law in line with the Ukrainian Constitution and European standards.

"The Venice Commission recalls that lustration does not constitute a violation of human rights *per se*, as a democratic state is entitled to require civil servants to be loyal to the constitutional principles on which it is founded," the Venice Commission said in the interim opinion. "However, in order to respect human rights, the rule of law and democracy, lustration must strike a fair balance between defending democratic society on the one hand and protecting individual rights on the other. Lustration procedures, despite their political nature, must be devised and carried out only by legal means, in compliance with the Constitution and taking into account European standards concerning the rule of law and respect for human rights. If this is done, then lustration procedures can be compatible with a democratic state governed by the rule of law."

The Venice Commission experts noted that while the general principles governing the lustration process are all enumerated in the law in line with European guidelines, the law does not live up to these principles.

One of the principles is that the lustration must meet strict limits of time in both the period of its enforcement and the period to be screened. The Commission found questionable the time scope of the application of the law covering the period of the Soviet Communist regime up to the Maidan events of February 2014. "Applying lustration measures in respect of the recent period during which Mr Yanukovich was President of Ukraine would ultimately amount to questioning the actual functioning of the constitutional and legal framework of Ukraine as a democratic state governed by the rule of law", they concluded, pointing to the need to fix an end to the lustration process, to avoid creating a "never-ending" story.

The Venice Commission recalled the different functions and aims of lustration, on the one hand, to protect the newly emerged democracy, and on the other criminal law, i.e. punishing people proved guilty. The experts concluded that the role of lustration should be "specific and narrowly tailored"; it might complement other means of ensuring justice but can never replace them. At any rate, the Venice Commission does not find that lustration measures are the most appropriate means to combat corruption," the experts added.

The experts also noted that the list of positions to be lustrated should be reconsidered, as lustration must concern only positions that may genuinely pose a significant danger to human rights or democracy. The Venice Commission also considers that the lustration of judges should be regulated only in one law.

Guilt must be proven in each individual case, and cannot be presumed on the basis of merely belonging to a category of public offices, and therefore the criteria for lustration should be reconsidered, concluded the Venice Commission experts. The Lustration law should specifically provide for the guarantees of a fair trial (right to counsel, equality of arms, right to be heard in person); court proceedings should suspend the administrative decision on lustration until the final judgment.

The Venice Commission recommended relieving the Ministry of Justice of responsibility for carrying out the lustration and entrusting it to a specifically created independent commission, with the active

involvement of civil society. Information on the persons subject to lustration should only be made public after the final judgement delivered by a court, concluded the experts.

The Monitoring Committee of the Parliamentary Assembly of the Council of Europe asked the Venice Commission to analyse the Lustration law of Ukraine on 3 October 2014. Given the time constraints, it has not been possible to carry out a visit to Ukraine. However, the discussions with the Justice Minister of Ukraine Pavlo Petrenko and the Verkhovna Rada deputies that started in Venice on 11 December will continue when the Venice Commission experts will travel to Ukraine at the beginning of next year.

"The Ukrainian authorities have agreed that the Lustration law requires improvement in order to meet the applicable international standards and have sought the assistance of the Venice Commission," the experts stated in the interim opinion. "The Venice Commission welcomes the commitment of the Ukrainian authorities and is ready to provide its support for the amendment of the Lustration law."

The full text of the interim opinion will be published on the Venice Commission's website early next week.

Background:

The European Commission for Democracy through Law is the Council of Europe's advisory body on constitutional matters. The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law. The Commission has 60 member States; its individual members are law professors, supreme and constitutional courts judges and national parliamentarians designated for four years by member States, but acting in their individual capacity.

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