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UPDATE OF THE STATE AUTHORITY IN UKRAINE: LYUSTRATIVE LEGISLATION AND PRACTICE OF REALIZATION

The article analyzes the lustration laws and the practice of lustration in Ukraine. Concludes that the lustration Institute in the national legal system does not «work». The low «effectiveness» of lustration laws can be explained by a number of objective and subjective factors: low level of legislative technique of lustration laws, the conflict of laws of the lustration law and the norms of the Constitution of Ukraine, protraction of the lustrating process, corruption, the corporate unity of the status of representatives of public authorities (judges, prosecutors and other officials persons).

Key words: *updating of state power, collision of legislation, political volition.*

Задорожня Галина, Задорожній Юрій. Оновлення державної влади в Україні: ілюстративне законодавство та практика реалізації.

У статті проаналізовано законодавство про люстрацію і практику люстрації в Україні. Зроблено висновок, що інститут люстрації в національній правовій системі не «працює». Низька «ефективність» законів про люстрацію зумовлена системою об'єктивних і суб'єктивних факторів: низький рівень законодавчої техніки законів про люстрацію, колізія люстраційного законодавства і норм Конституції України, тривалість люстраційного процесу, корупція, корпоративна єдність статусу представників органів державної влади (суддів, прокурорів та інших посадових осіб).

Ключові слова: *оновлення державної влади, колізія законодавства, політична воля.*

Urgency of the research. 2019 year is the period of different elections in Ukraine: presidential, parliamentary and local. Ukraine has elected a new President of Ukraine and a new parliament. In the future – local elections, the formation of a new government, the renewal of central executive bodies, etc. Will 2019 be the year of the renewal of public power in Ukraine? Will 2019 be the year of the effective development of our state, its economic growth, the end of the war in the East, the eradication of poverty and high mortality in Ukraine, increase of social protection of Ukrainian citizens?

The answer to this question depends on which political forces and personalities will come to power: young people and professional pro-European politicians who can effectively upgrade the political and economic development of the state, or corrupt politicians who have been in power for years and failed to do anything useful for the state, they can not generate new ideas.

An important guarantee of legal responsibility of corrupt politicians in Ukraine should be the judicial system and legislation on lustration. The quality of such legislation is extremely important for the renewal of state power. The need to analyze the quality of such legislation will actualize the subject of the study.

Target setting. Legislation on lustration in Ukraine was adopted in 1914, but the process of purging the state power did not finish. The provisions of the lustration law turned out to be powerless in the struggle for the purge of state power; in the state there is total impunity for senior officials; corrupt officials are again returning to positions to state authorities. The objective of this publication is to analyze the issue: why implementation of the provisions of the law on lustration in Ukraine is ineffective. Thus the topic of this publication is not only relevant, but also necessary.

Actual scientific researches and issues analysis. Scientists investigated certain theoretical-legal, constitutional and other aspects (political science) of purging the state power (M. Antonovich, I. Bezklubiy, O. Sahan, S. Shevchuk and others). The subject of their research deals with the general theoretical issues of purging the state power, certain aspects of the international law in the national legal system, but scientists have not analyzed the practical experience of using lustration law in Ukraine. In connection with this, there is a need analysis of the reasons for the ineffectiveness of lustration processes in Ukraine.

The statement of basic materials. The lustration institute is new in the national legal system. However, the lustration institute was known in ancient times. The word «lustration» means:

- a) release from something unnecessary, foreign;
- b) moral, religious, spiritual purification;
- c) deprivation of the presence of something, anyone undesirable;
- d) updating, improving, gaining a certain quality.

Lustration means the complete or partial replacement of the anti-democratic regime by the government, carried out in a legally determined manner. Lustration is an effective political and legal instrument: the «old» representatives of state power are eliminated, vacant political, judicial and other positions in state power bodies appear (1). In general, lustration provides an update of state power.

The relations regarding the purification of state power in Ukraine were settled in 1914. Parliament passed the Laws of Ukraine «On purification of power» dated 16 September 2014 № 1682-VII (2) and «On restoring confidence in the judiciary in Ukraine» dated 08 April 2014 № 1188-VII (3). We will try to analyze the results of the practical implementation of the norms of these laws, which, unfortunately, are extremely negative.

The low «effectiveness» of these laws can be explained by a number of objective and subjective factors. Objective factors are.

1. *Low level of legislative technique of lustration law.* For example, the Law of Ukraine «On purification of power» is overloaded with the norms-specifications, exceptions for its implementation. In addition, the law is not an ancillary act, but a normative legal act of general action, therefore, the law can not contain the names of concrete persons, even if it is the surname of the former President of Ukraine, etc.

2. *The conflict of laws of the lustration law and the norms of the Constitution of Ukraine.* For example, the Constitution of Ukraine (Part 6 of Article 126) identified six grounds for dismissal of judges from positions:

- 1) incapability to exercise his powers for health reasons;
- 2) violation by the judge of requirements concerning incompatibility;
- 3) committing a substantial disciplinary offense, gross or systematic non-fulfillment of duties, which is incompatible with the status of a judge or has revealed his inconsistency of occupy position;
- 4) the submission by a judge of a statement of resignation or of voluntary dismissal from the office;
- 5) disagreement with the transfer to another court in the event of the liquidation or reorganization of the court, where the judge of occupy the position;
- 6) violation of the duty to confirm the legality of the source of the property.

This list of constitutional grounds for dismissal of judges is exhaustive and can not be supplemented by another law.

However, the Law of Ukraine «On purification of power» of September 16, 2014 (Article 3) established additional grounds for the dismissal of a judge of occupy position.

There is a collision of the norms of the Constitution of Ukraine, the Law of Ukraine «On the High Council of Justice» of December 21, 2016 (4) and the norms of lustration legislation in terms of determining the grounds for dismissal of members of the High Council of Justice.

The lustration law broadens the constitutional grounds for dismissal from the positions of members of the High Qualifications Commission of Judges of Ukraine, the Central Election Commission, etc. At the same time, disciplinary cases against judges are massively closed in connection with the expiration of the three-year period for bringing judges to disciplinary action.

Thus, the Law of Ukraine «On purification of power» contains a number of provisions that contradict the norms of the Constitution of Ukraine (5).

Let's try to analyze the subjective factors of the ineffectiveness of lustration laws in Ukraine.

1. *Protraction of the lustration process.* By its legal nature lustration law is similar to the transitional provisions of the constitution, its realization must be carried out within a reasonable time, without delay. The force of this law is the determinism of its application.

2. *There is no political will in the state to hold lustration.* No law contains the definition of «political will», its components and forms of implementation. However, political will is realized within the limits of political power. However, not all political authorities are state-owned, such as: political parties that did not overcome the electoral barrier in elections, but are active in political life in society. An important aspect of political will is its legitimacy. Civil society supports lustration, while state authorities – do not support.

Political will is something that our politicians are almost always lacking. The unwillingness of politicians, officials and judges to lustration is obvious. Why? Because they themselves or their children or relatives obey the rules of lustration laws.

3. *Corruption has in fact become the next irrefutable obstacle to lustration in Ukraine.* In recent years, it only intensifies, as repeatedly point out by international experts.

4. *The corporate unity of judges, prosecutors and other status representatives of state power* is another factual obstacle in the national system of public administration, which is hindering democratic processes in the state.

Conclusion. Summarizing the results of comparative analysis of lustration laws and other constitutional laws we can come to the following conclusions:

1. Effectiveness of the lustration law is currently lost, therefore, the institution of legal responsibility in full compliance with the constitutional principle of equality of all citizens before the law must function fully to ensure the democratic development of society and the state.

2. The low «effectiveness» of lustration laws can be explained by a number of objective and subjective factors.

3. The objective factors are: low level of legislative technique of lustration law, the conflict of laws of the lustration law and the norms of the Constitution of Ukraine. The subjective factors are: protraction of the lustration process, there is no political will in the state to hold lustration, corruption, the corporate unity of judges, prosecutors and other status representatives of state power.

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