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Theoretical Understanding of Lustration as a Mechanism of Personnel Policy in the Field of Public Management

1. Introduction

In the early 1990s, many Central and Eastern European countries faced the problem of organizing a new personnel policy for the formation of the state apparatus of young democracies. This was due to the fall of communist regimes, significant public distrust of the officials of that era and a clear delineation of the vector of these states for civilized accession to the advanced countries of Western democracy. A lustration as special mechanism of personnel policy in the field of public administration was chosen to carry out such changes.

Terminological understanding of this procedure dates back to ancient times, when lustration had a different from modern meaning. However, over time, it has transformed into another concept as we know it today. The need to purge the authorities in Central and Eastern Europe from the rulers of the communist era formed the characteristics and features of the term “lustration”. Its functional diversity allows us to consider this procedure in different meanings – from philosophical to political and legal.

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Given the fact that the Law on Purification of Power has been in force in Ukraine since 2014, it is extremely important to study the terminological basis of lustration, based on the historical context and experience of foreign countries. Giving the definition of lustration with the peculiarities of the Ukrainian model will ensure its most effective implementation and a clear separation as a mechanism of personnel policy in the field of public administration. Such research results may become important in the context of legislative changes and the formation of further case law.

Analysis of doctrinal problems of understanding of the term “lustration” is found in the scientific works of foreign authors, including Burakova, L.; Wilke, K.; David, R.; Karstedt, S.; Letki, N.; Nisnevich, Y.; Oleshchik, J.; Osik, P.; Offe, K.; Rezanovich, A.; Priban, J.; Rozhych, P.; Charnota A. and others. Considerable attention was also paid to the definition of the lustration procedure as a mechanism of personnel policy in the field of public administration among Ukrainian scholars. Thus, some aspects of this issue were studied by Antonovych, M.M.; Bezklubyi, I.A.; Khazratova, N.V.; Minenkowa, N.E.; Radchenko, O.V.; Shevchuk, S.V. and others.

The purpose of this article is to characterize the theoretical understanding of lustration as a mechanism of personnel policy in the field of public administration.

The author set the following research objectives to achieve the purpose of the article:

- 1) to analyze approaches to the definition of the term “lustration” in the historical dimension;
- 2) to determine the understanding of lustration in scientific circles;
- 3) to establish what definition is provided by lustrations in practice at the present stage;
- 4) to provide the author’s own vision of the definition of “lustration” as a mechanism of personnel policy in the field of public administration.

Historical, analytical, comparative, systemic, axiological, and epistemological methods were used to perform the set research tasks.

2. Understanding of lustration in a historical context

The concept of lustration is considered in many meanings, which have the necessary terminological basis, due to its diverse content.

In ancient times, lustration was understood as magical rites aimed at purifying people, protecting against diseases, lighting a “living fire”, smoking and so on. This explanation is primarily based on the etymological origin of the term, because the Latin word “lustratio” translates as purification through sacrifice. The terms “piacula, piamenta, caerimoniae” were also used in ancient Rome to denote such “purifying” measures².

Also, the term “lustratio” in its original meaning in Greco-Roman mythology meant a ritual of purification from moral defilement. However, already in the V century BC during the development of democratic processes in Greece, measures aimed at overcoming the severe negative consequences of previous anti-democratic political regimes began to be called as lustration³.

In this context, we should agree with the views of Bezklubyi, I.A. and Kochkodan, I.V. that at this time the term “lustration” has essentially lost its sacred meaning and ritual character and moved from the mythological-mystical to the political sphere, which manifested itself in the change of generic concepts used to define its substantive characteristics⁴.

For example, lustration was known as a description of state estates, as well as the value of property, monetary and natural obligations of the nobility, which were introduced in feudal Lithuania, and then in the Rzeczpospolita in the XVI century. The purpose of lustration in this sense was to establish the composition of the taxable population⁵.

² Porfimovych, O.L. (2014), *Infernalizatsiia imidzhu yak pidstava dlia liustratsii abo sanatsii obiekta pozytsionuvannia* [Infernalization of the image as a basis for lustration or rehabilitation of the object of positioning]. Kyiv: Taras Shevchenko National University of Kyiv. [in Ukrainian].

³ Busel, V.T. (2004), *Velykyi tлумachnyi slovnyk suchasnoi ukrainskoi movy* [Large explanatory dictionary of the modern Ukrainian language]. Kyiv: Perun. [in Ukrainian].

⁴ Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

⁵ Porfimovych, O.L. (2014), *Infernalizatsiia imidzhu yak pidstava dlia liustratsii abo*

In communist Czechoslovakia, the term “lustration” was used to verify the identity of a person in his or her own secret databases by the police for their own purposes. Such inspections were carried out by the security service and aimed at determining the loyal or disloyal attitude of a person or group of persons to the socialist order⁶.

3. Understanding of lustration in the theory of political and legal sciences

There are many different approaches to the concept of lustration in the theory of political and legal sciences. In particular, lustration is defined as the removal of individuals from political life or as a legal punishment for past actions during the previous regime⁷.

According to this approach, lustration contains two main complex content blocks or, according to professor Karstedt, S. “two types of public proceedings”: 1) criminal prosecution of elite representatives and government officials who were senior management in the system of public administration of the previous regime; 2) procedures of mass investigations into those who voluntarily cooperated with the previous regime, party members or employees of state organizations of middle and lower ranks in the bureaucratic hierarchy⁸.

We must agree with the views of Bezklubyi, I.A. and Kochkodan I.V. that the definition of lustration as a legal punishment is valid only for

sanatsii obiekta pozytsionuvannia [Infernalization of the image as a basis for lustration or rehabilitation of the object of positioning]. Kyiv: Taras Shevchenko National University of Kyiv. [in Ukrainian].

⁶ Shevchuk, S.V. (2006), *Liustratsia ta retroaktyvna spravedlyvist: yevropeiski standarty zahystu prav liudyny pry perehodi do demokratychnoho pravlinnia* [Lustration and retroactive justice: European human rights standards in the transition to democratic governance]. Kyiv: Ministry of Science of Ukraine. [in Ukrainian].

⁷ Minenkowa, N. (2013), *Liustratsia v Ukraini yak chynnyk systemnoi transformatsii* [Lustration in Ukraine as a systemic transformation factor]. Zhytomyr; Kyiv; Krakow: Polish science society. [in Polish].

⁸ Shevchuk, S.V. (2006), *Liustratsia ta retroaktyvna spravedlyvist: yevropeiski standarty zahystu prav liudyny pry perehodi do demokratychnoho pravlinnia* [Lustration and retroactive justice: European human rights standards in the transition to democratic governance]. Kyiv: Ministry of Science of Ukraine. [in Ukrainian].

one of the concepts of the legal nature of lustration – understanding it as a kind of legal responsibility⁹. Indeed, the removal of individual officials from active political participation in government circles is a logical consequence of lustration.

The understanding of lustration as a verification procedure cannot be considered successful, as such a procedure is only one of the components of lustration measures. The main purpose of lustration in this case is purification as a result, not a direct process¹⁰.

The definition of lustration as a system of political decisions shifts the logical emphasis and unjustifiably expands the scope of the defined concept. The introduction of lustration measures is impossible without the appropriate will of the subjects of the political system of society – not only the political forces that come to power after the overthrow of the old regime, but also the general population.

In my opinion, it is correct to single out the legal norms governing lustration measures to a separate legal institution. This position was substantiated by Lazarev, V.V. based on subjective and objective signs of lustration. In particular, according to researchers, the normative array of lustration processes is characterized by homogeneity of content, legal unity of legal norms, completeness of regulation¹¹.

There are three main concepts of the legal nature of lustration in the theory of public administration. The first concept interprets lustration restrictions as one of the types of special requirements for certain categories of public servants, similar in nature to professional requirements (education and experience requirements), age, residency, and so on. Lustration restrictions, as well as other special requirements, are designed to ensure the selection of persons who are able to effectively perform

⁹ Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

¹⁰ Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

¹¹ Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

the functions assigned to them. This concept is grounded in the doctrine of West German labor law¹².

According to the second point of view, lustration restrictions are the sanctions, an element of the mechanism of a person's responsibility for certain actions. This approach makes a number of requirements, non-compliance with which creates the problem with the legitimacy of lustration measures¹³.

Another concept is based on international human rights instruments, which establish mandatory rules for the removal of persons involved in certain criminal offenses from holding public office. In particular, such provisions are contained in the Principles for the Effective Investigation and Recording of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (approved by UN General Assembly Resolution № 55/89 on December 4, 2000) and Declaration on Protection against Enforced Disappearance (approved by UN General Assembly Resolution № 47/133 on December 18, 1992). Based on these norms, lustration restrictions can also be considered as measures aimed at ensuring an impartial investigation of crimes committed by bodies and organizations of the anti-democratic regime, by preventing the influence of stakeholders related to the activities of such institutions¹⁴.

4. Understanding of lustration in the modern dimension

At the end of the twentieth century the term "lustration" has come to be used to describe a special procedure for checking persons who, after a change in a country of totalitarian rule to a democratic one, hold public positions. These persons had been checked for their cooperation

¹² Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

¹³ Kharkiv Human Rights Group (2014), *Svoboda vyslovliuvan i pryvatnist* [Freedom of expression and privacy]. Kharkiv: information and analytical bulletin "Human Rights". [in Ukrainian].

¹⁴ Bezklubyi, I.A., Kochkodan, I.V. (2009), *Poniattia, sutnist ta pravova pryroda liustratsii* [The concept, essence and legal nature of lustration]. Kyiv: Bulletin of Ministry of Justice of Ukraine. [in Ukrainian].

with the state security bodies in the past. Such political steps in public administration became especially widespread in 1990–1993 in Estonia, Latvia, Poland, Romania, Hungary, the Czech Republic and other post-socialist countries. It passed laws on lustration, which prohibited such persons from holding certain public office and from being elected to representative bodies.

Today lustration is not only a way to purify state bodies, public morals, but also the highest measure of social protection of citizens from encroachment to replace the power of the people with the power of corruption, the power of money, the power of secret organizations and foreign structures. According to Stepanenko, O.H. lustration is the most humane means of dismissal and prevention of inexperienced, unprofessional people in politics. As for the forecasts of further development of lustration processes in the politicum of Ukraine, the author believes that they will continue to gain scale. After all, the foundation for transformations and reforms has already been laid. The only thing to follow is not to lose the chance for the future elected government to fulfill the main fundamental tasks of lustration. First of all, it is:

- 1) creation of a mechanism that will prevent the usurpation of power in the form of secret pressure on the authorities, civil servants, judges, their manipulation;
- 2) exclusion of the possibility of secret cooperation of senior state officials, judges (and lawyers) with special services, secret societies;
- 3) creation of an effective system for detecting the facts of illegal acquisition of property and property rights by civil servants, elected officials, politicians, the facts of concealment of their income;
- 4) preventing the negative influence of oligarchic circles and large capital on high-level officials, i.e. preventing the usurpation of power;
- 5) creation of a system of socio-political and state control over the actual functioning of political parties and public associations as subjects of the initial stages of formation of government and official opposition, prevention of the formation and existence of fictitious or totalitarian political structures (parties) and public organizations in order to penetrate power;

6) prevention of separatist attitudes and ideas in both the political and social spheres¹⁵.

The phenomenon of lustration, due to its special legal nature, raises many questions and causes various problems of a practical nature during direct implementation.

In 1996, in its General Review, the Committee of Experts on the Application of Conventions and ILO Recommendations, addressing the issue of lustration measures introduced in a united Germany, expressed a dissenting opinion in the context of compliance with Convention № 111. Thus, it was noted that when a person was accused of political activity in the former GDR, the more such a person identified himself with this unjust regime by performing certain functions, the more responsibility he bears, and therefore it is less reasonable to find such a person a position in the current administration¹⁶.

In my opinion, the approach of the UN Human Rights Committee on the understanding of the right to participate in public affairs is correct, which states that the effective implementation of the right to vote and be elected to public office and the possibility of being elected provide that persons entitled to vote must have free choice of candidates. Any restrictions on the right to be elected, such as the minimum age, must be justified by objective and reasonable criteria. Persons who are otherwise eligible for election should not be deprived of such a right on the basis of unreasonable and discriminatory requirements, such as education, place of residence or origin, or political affiliation.

Based on the provisions above, it is proposed to give the following definition of lustration. In my opinion, lustration as a mechanism of personnel policy in the field of public administration is a set of measures regulated by law, which are aimed at checking the past of persons who cooperated with undemocratic regimes and imposing special sanctions on these persons to prevent their participation in the state bodies.

¹⁵ Stepanenko, O.H. (2014), „ Politychna liustratsiia: teoretychni zasady poniattia [Political lustration: theoretical basis of category]. Mykolaiv: Scientific works of the Petro Mohyla Black Sea State University of the Kyiv-Mohyla Academy complex. [in Ukrainian].

¹⁶ Shevchuk, S.V. (2006), Liustratsia ta retroaktyvna spravedyvist: yevropeiski standarty zahystu prav liudyny pry perehodi do demokratychnoho pravlinnia [Lustration and retroactive justice: European human rights standards in the transition to democratic governance]. Kyiv: Ministry of Science of Ukraine. [in Ukrainian].

5. Conclusions

Thus, the terminological understanding of lustration as a mechanism of personnel policy in the field of public administration has a long history. Beginning with the religious procedure of purification, the definition of the word has undergone a difficult stage of transformation to take root in the modern sense.

Today, lustration is mostly understood in the context of how it was applied in the state policy of Central and Eastern European countries, including Germany (after World War II), Poland, Czech Republic, Estonia, and Lithuania during the 1990s and 2000s. However, even around the current understanding of lustration, there is no unanimity and debate in scientific circles.

Thus, if we summarize the existing views, we can say that there are three main approaches to understanding lustration:

- 1) a variety of special requirements for certain categories of public servants, which are similar in nature to professional requirements, age requirements, etc.;
- 2) an element of the mechanism of responsibility of the person for illegal actions in the form of sanctions;
- 3) norms of an imperative nature regarding the removal of persons involved in the commission of certain criminal offenses from holding official positions.

However, it should be noted that the understanding of lustration differs depending on the state and the time when it was applied.

Examining various models of purification of power, lustration can be described as a mechanism of personnel policy in the field of public administration in the form of a set of measures regulated by law, aimed at verifying the past of persons who cooperated with undemocratic regimes and imposing special sanctions on these persons. participation in the activities of public authorities.

Measures to purify the government have been introduced in Ukraine since 2014, so it is necessary to approach the correct definition of lustration in order to avoid ambiguity in the practice of public administration. Thus, the study of this issue is relevant to the science of public

administration, is important both for further improvement of the legislation in this area, and for the practice of its application. In particular, it is important to conduct further research in order to formulate a unified theoretical approach to understanding lustration for its legislative consolidation.

References

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Summary

The article is devoted to the analysis of the problem of defining the term “lustration” as a mechanism of personnel policy in the field of public administration. The main approaches to the interpretation of the concept of “lustration” through the prism of historical development are studied. Emphasis is placed on the understanding of lustration in ancient times and how the meaning of this term was transformed under the influence of the evolutionary development of public administration. Modern scientific approaches to the definition of lustration, its place in public administration are analyzed, its characteristic features are singled out. The author studies the scientific approaches of both foreign and Ukrainian scholars to the interpretation of the lustration, singled out the main common and distinctive features between them. It is established that the current approaches to understanding of lustration are based on three concepts. Based on the analyzed material, the author formulates his own definition of lustration as a mechanism of personnel policy in the field of public administration. The author concluded that the correct definition of lustration will help reduce differences in its application in the practice of public administration and will form a reliable mechanism for the lustration. It is determined that the legislation requires a modern understanding of the term “lustration” with the peculiarities of its implementation in a particular state.

Keywords: lustration, conception of lustration, problems of defining of lustration