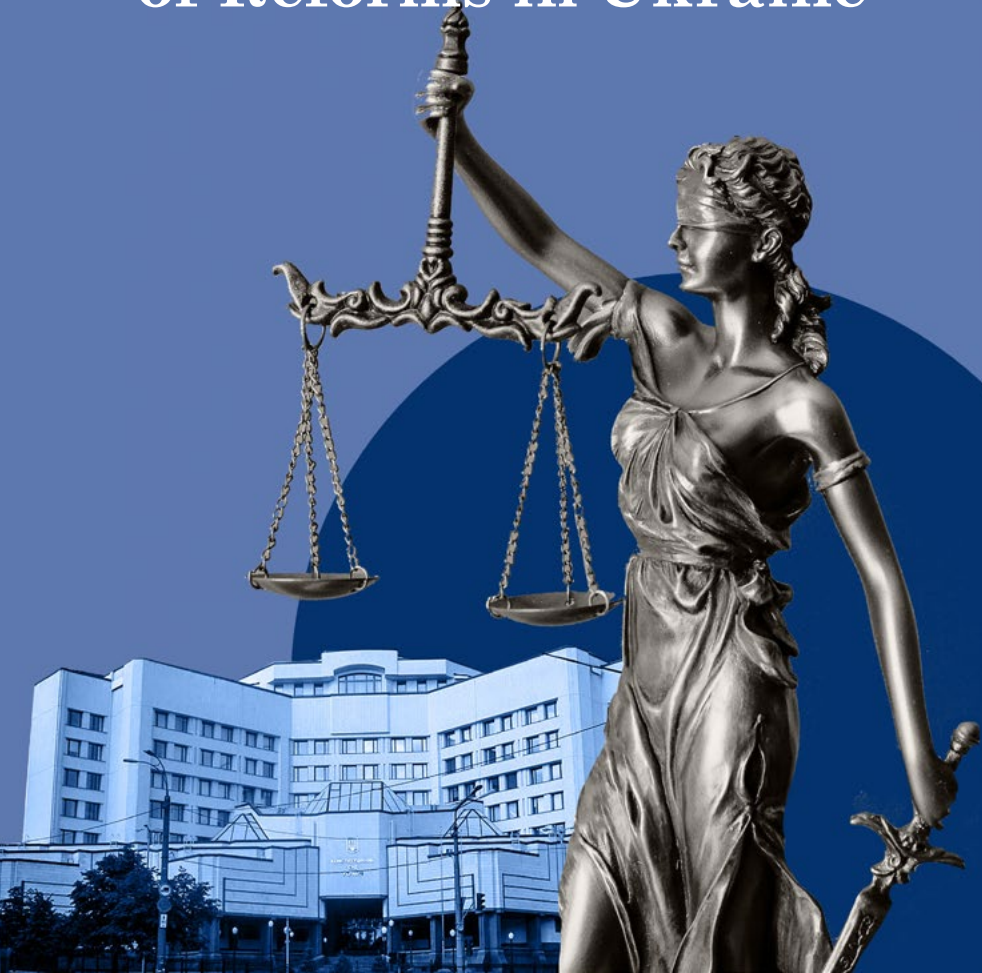


# Report

---

## Judicial Influence in Implementation of Reforms in Ukraine



*This report was prepared within the framework of the project “Civil Society for Ukraine’s Post-war Recovery and EU-Readiness”, which is implemented with the support of the EU.*

*The content of the report is the sole responsibility of Agency for Legislative Initiatives NGO and does not necessarily reflect the position of the European Union.*

*The report is as of 11 March 2024, as clarified and supplemented.*

*The report was peer reviewed by the following experts:*

**Anatolii Pavlovych Zaiets**

Doctor of Law, Professor, Head of the Department of Legal Theory and Public Law, Faculty of Law, National University of Kyiv-Mohyla Academy, Associate Member of the National Academy of Legal Sciences of Ukraine, Honoured Lawyer of Ukraine

**Yurii Bogdanovych Kliuchkovskiy**

Doctor of Law, Associate Professor at the Department of Legal Theory and Public Law, Faculty of Law, National University of Kyiv-Mohyla Academy, Senior Research Fellow, Ukrainian MP of convocations III-VI

**Oleksii Viktorovych Tseliev**

Candidate of Legal Sciences, Associate Professor, Associate Professor at the Department of Legal Theory and Public Law, Faculty of Law, National University of Kyiv-Mohyla Academy, expert at the Rule of Law Research Centre, National University of Kyiv-Mohyla Academy

**Yurii Viktorovych Ishchenko**

Candidate of Legal Sciences, Associate Professor, Associate Professor at the Department of Legal Theory and Public Law, Faculty of Law, National University of Kyiv-Mohyla Academy

**Yuliia Ivanivna Matvieieva**

Senior Lecturer at the Department of Legal Theory and Public Law, Faculty of Legal Sciences, National University of Kyiv-Mohyla Academy, Head of the Experimental Training Laboratory “Legal Clinic” at the National University of Kyiv-Mohyla Academy

**Karyna Ivanivna Aslanian**

Judicial reform expert



# **Report**

---

## **Judicial Influence in Implementation of Reforms in Ukraine**

# Contents

---

METHODOLOGY 7

JUDICIAL ACTIVISM VS JUDICIAL INFLUENCE? 13

JUDICIAL INFLUENCE IN UKRAINIAN CONTEXT 20

CASE STUDY 1.

Challenging of the 2014 lustration (government cleansing) procedure 21

1. Design of the lustration (government cleansing) procedure 21

2. Implementing the lustration procedure 25

3. Judicial challenging of the government cleansing procedure 28

4. Results of the challenging 32

5. Reaction to the results of the challenging 44

6. Conclusions 47

CASE STUDY 2. Challenging of the attestation results of the personnel  
at the National Police of Ukraine in 2015–2016 49

1. Design of the reform 49

2. Implementation of the reform 54

3. Judicial challenging of the re-attestation of police officers 59

4. Results of the challenging 62

5. Reaction to the results of the challenging 77

6. Conclusions 78

CASE STUDY 3. Challenging of the dismissal of 'Maidan judges' 80

1. Design of the procedure for cleansing courts from 'Maidan judges' 80

2. Implementation of the procedure for cleansing courts  
from 'Maidan judges' 85

3. Judicial challenging of the dismissal of 'Maidan judges' 90

- 4. Results of the challenging 93
- 5. Reaction to the results of the challenging 110
- 6. Conclusions 111

**CASE STUDY 4. Challenging of the attestation results of prosecutors at the General Prosecution Office of Ukraine in 2019 113**

- 1. Design of the reform 113
- 2. Implementation of the reform 118
- 3. Judicial challenging of the attestation of prosecutors at the General Prosecution Office of Ukraine 123
- 4. Results of the challenging 125
- 5. Reaction to the results of the challenging 140
- 6. Conclusions 141

**CASE STUDY 5. Challenging of the ban on pro-Russian parties in Ukraine in 2022-2023 144**

- 1. Design and organisation of the process of banning pro-Russian parties 144
- 2. Implementation of the ban on pro-Russian parties at the law enforcement level 150
- 3. Appealing against the ban on pro-Russian parties 162
- 4. Problems identified in the process of hearing cases 169
- 5. Response to the judicial ban on pro-Russian parties 171
- 6. Conclusions 174

Influence of judgements of the Constitutional Court of Ukraine  
on designing reforms 177

1. Judgement of the Constitutional Court of Ukraine as a manifestation  
of judicial activism in the Ukrainian context 177

2. Role of the CCU in assessing the constitutionality of reforms 178

3. Results of challenging the constitutionality of reforms  
in the case studies under scrutiny 181

CONCLUSIONS 187

RECOMMENDATIONS 202

ANNEX 208

# Methodology

---

The main purpose of the report is to highlight the phenomenon of judicial influence on the course of reforms in the Ukrainian context. Reforming social relations has oftentimes controversial nature and is accompanied by some shortcomings. Consequently, disputed points are supposed to be resolved by judicial authorities, which sometimes have certain influence on public policy. Still, this phenomenon has not been significantly highlighted at the level of doctrinal developments. There are also no doctrinal elaborations devoted to this matter. So, this study offers a solution for this challenge based on the analysis of national courts' practice in considering cases on reforms, as well as government cleansing measures.

In order to conceptualise the notion of 'judicial influence' and delineate it from the adjacent term judicial activism, the report examines judicial bodies' practice, which impacted public policy in various states. In particular, a distinction was made between the set of powers vested in courts in Ukraine and foreign countries. It was found that the term judicial activism may be applicable to a limited extent to characterise the activity of Ukrainian general jurisdiction courts (predominantly in the practice of the Supreme Court). Its individual aspects manifest themselves more fully in the activity of the Constitutional Court of Ukraine, given its exclusive powers to hand down decisions on the constitutionality or unconstitutionality of legislative norms. So, taking into account the specifics of the effect that Ukrainian general jurisdiction courts' decisions make on public policy in reforms, it was suggested that their activity should be coined with the concept of 'judicial influence'. Following the analysis of court decisions, typical forms of judicial influence in the Ukrainian context were specified.

In order to systemically assess the concept of judicial influence in Ukraine, five case studies were selected. They concern mass judicial challenges of the results of reforms and the results of government cleansing through the implementation of prohibition policy. The list of case studies includes those representing the most recent high-profile cases in judicial challenging for the period from 2014 to 2023. The case studies were selected as to reflect the position of courts of various instances regarding certain aspects of the assessment of the said areas. With that in mind, the subject of the study was the cases where all possible stages of judicial appeals had been passed.

Such approach made it possible to reflect, as representatively as possible, general trends in assessing reforms and government cleansing measures, which are typical of courts of various instances.

### *1. Challenging of the 2014 lustration (government cleansing) procedure.*

So, the following belongs to the list of the selected case studies.

Subsequent to the government cleansing procedures, there was a mass dismissal of persons who held positions during the presidency of Viktor Yanukovich. Later, the lustrated officials challenged such dismissal in court and were reinstated in their positions, as it was not possible to prove their personal responsibility related to the usurpation of power by the fourth Ukrainian president. Following consideration and adjudication in this category of cases, courts revealed a significant number of legislative and organizational gaps in the lustration process. Therefore, the analysis of the identified cases allows establishing the aspects of the design and conduct of this procedure that provoked the need for judicial challenging and the consequences of the judicial influence on the effectiveness of lustration in the Ukrainian setting.

### *2. Challenging of the 2015-2016 police reform on the re-attestation of the personnel at the National Police of Ukraine.*

Re-attestation of the police is among the components of the comprehensive reform of law enforcement agencies in Ukraine. Still, despite the good goal of 'rebooting' these institutions, among other things, in terms of staffing, the reform had a significant number of shortcomings, which were established by the courts following challenges of the dismissal of those police officers who failed the attestation. A flawed approach to the design and implementation of the reform caused a major number of police officers to be reinstated. Therefore, the study of this case makes it possible to establish the shortcomings of the regulation and the practice of its implementation, which have been identified by the courts and called into question the effectiveness of the staffing renewal of the National Police of Ukraine in 2015-2016.

### *3. Challenging of the dismissal of 'Maidan judges'.*

In 2014, the Ukrainian authorities launched processes to cleanse the courts of the so-called 'Maidan judges', who during the Revolution of Dignity, made decisions to ban peaceful assemblies or have restrictive measures applied to protesters. Following reviews, a special board initiated the dismissal of some judges, yet most of them later challenged their dismissal in court. When considering the cases, the courts, in turn, revealed shortcomings of a rulemaking and rule-enforcement nature, which accompanied the cleansing and became an obstacle to the undisputed implementation of this procedure in practice.

*4. Challenging of the attestation results of prosecutors at the General Prosecution Office of Ukraine in 2019.* The attestation of 2019 was another attempt to renew the staffing of the prosecutorial bodies. However, it was not properly settled from the regulatory perspective, which called into question the legality of the reform in this part. Prosecutors who failed the re-attestation filed mass lawsuits with courts demanding reinstatement. The judicial review of the cases identified a significant number of problematic moments that arose both at the stage of designing the reform and at the stage of its implementation, nationally and locally. In view of this, the scrutiny of the case study makes it possible to establish the shortcomings of the reform, emphasised by the courts, which led to the violation of the principles of legal certainty and legality.

*5. Ban on pro-Russian political parties in Ukraine in 2022-2023.* After the full-scale invasion of the Russian Federation into Ukraine, the processes of significantly updating the legislation and the practice of its implementation began in order to counteract the existing and potential destructive manifestations of Russian influence. One of the aspects of the novelties concerned the ban on the activities of pro-Russian parties in order to prevent, detect and stop crimes against the foundations of national security of Ukraine, peace and security of mankind, terrorism and other illegal actions. In this case, the courts not only participated in the direct implementation of the ban in practice, but also reviewed decisions introducing the ban as a matter of appellate proceedings. In contrast to the previous case studies, the scrutiny of this aspect of the influence of court decisions points to factors and organisational features that are recognised by the courts as legitimate and corresponding to a legitimate purpose and an urgent public need. So this case study is used for comparative purposes.

So, the sample includes case studies that demonstrate the diverse influence of court decisions on the further course of reforms implementation: the subject of analysis were the cases of mass judicial repealing of the results of reforms and measures to cleanse government, the cases when the courts confirmed with their decisions the correct nature of the vector of social relationships reforms chosen by the state, as well as the cases where judicial challenging had limited impact. Such cases are used for comparison, as well as to identify the causes that become the reason for judicial influence.

Since the reforms and government cleansing measures are put in place through the implementation of power bodies' decisions, the subject of this study was the cases that had been considered in administrative courts. Court proceedings in criminal cases were used as an illustration to reflect a broad spectrum of court

decisions' influence on the process of implementation of public policies.

In total, a qualitative analysis of 259 court decisions<sup>1</sup> was carried out during the research. They reflect the progress of cases and the state of their consideration in three instances – first, appeal and cassation appeal (in those cases where the case category involves a smaller number of appeal stages – in the order of two instances – first and appeal instances were looked into). 67 court decisions were analysed on government cleansing (lustration), 51 cases – on the reform dealing with the attestation of the personnel at the National Police of Ukraine, 41 – on the dismissal of 'Maidan judges', 74 – on the attestation of prosecutors of the General Prosecution Office of Ukraine and 26 – on the banning of pro-Russian political parties. Decisions were collected from the data placed in the Unified State Register of Court Decisions and in Opendatabot. The subject of the scrutiny was judgements, resolutions and rulings of administrative jurisdiction courts.

In order to cover the widest range of legal positions of the courts, the analysis included both court decisions handed down before the judicial reform that began in 2016 (including rulings and resolutions of district administrative courts, administrative appeals courts, the High Administrative Court of Ukraine and the Supreme Court of Ukraine) and judicial decisions that were adopted after the said reform (rulings and judgements of district administrative courts, as well as resolutions of administrative appeals courts, the Administrative Court of Cassation as part of the Supreme Court and the Grand Chamber of the Supreme Court). Court decisions were selected in such a way for the legal positions of the courts to be covered as fully as possible and reflect the key trends and consequences of a given judicial influence.

As of the time of writing the report, the judicial review of some of the cases was not completed. In this regard, the database contains both court proceedings where final decisions have already been handed down and are no longer subject to appeal and those where a final decision is yet to be adopted.

In the cases where the final decisions of national courts were appealed to international judicial institutions, the decisions of those bodies also became the subject of the scrutiny (for example, judgements of the European Court of Human Rights).

In order to comprehensively characterise the influence of court decisions on the state of legal regulation of reforms in Ukraine, the subject of the scrutiny

---

<sup>1</sup> Court decisions, in line with paragraph 12 of Article 4 (1) of the Code of Administrative Procedure of Ukraine, are understood to be judgements, resolutions and rulings of courts of any instance.

was not only the decisions of general jurisdiction courts, but also those of the Constitutional Court of Ukraine. In this regard, the report investigated the state of challenging the constitutionality of the norms of relevant legislation on the reforms and government cleansing measures. So, the source base also includes constitutional motions authored by Ukrainian MPs and the Supreme Court of Ukraine and constitutional complaints filed by persons who believed that the legislation applied to them contradicts the Constitution and violates their constitutional rights. As a whole, 6 constitutional motions and 42 constitutional complaints were analysed. Still, the judgements of the Constitutional Court of Ukraine are not a key subject of research. The main focus is on decisions of general jurisdiction courts. In this regard, the judgements of the Constitutional Court of Ukraine are used rather to emphasise the consequences that accompany reforms in Ukraine in case of their improper preparation.

It is important to note that the report does not assess court decisions as to how legal, reasoned and motivated they are. Rulings, judgements and resolutions of courts are used exclusively as evidence to assess the degree of influence of court decisions on the progress of reforms in Ukraine.

Also, for the purpose of researching the state of preparation of normative legal acts on reforms, draft laws and supporting documents thereto, as well as the provisions of current laws and by-laws in force at the time of the emergence of disputed legal relations were analysed. In some cases, the study of the scale and consequences of judicial influence took the analysis of independent expert opinions as a basis. A comprehensive study of this array of documents helped to reveal trends that traditionally go along with the process of regulatory and legal support for the reforms and government cleansing measures.

The collected data on which analysis results are founded are current as of July 2023.

Within the scope of the report, two levels of implementation of the reforms and government cleansing measures were distinguished, as it was expedient to make avail of them as the basis of the analysis.

*The first level is rulemaking*, which concerns the design of the essence and purpose of the reform/government cleansing, the undertaking of preparatory work (including the development of draft laws and by-laws) and the adoption of normative legal acts regulating the reform/government cleansing process.

*The second level is law enforcement*. At this stage, the reform/government cleansing is put into practice through the activities of authorised authorities (and sometimes representatives of the civil society sector). This stage is reflected by the national and local functioning of these institutions.

The case studies were analysed through the lenses of singling out typical mistakes made by the reform/government cleansing developers and public bodies authorised to implement them, which led to mass appeals in the courts.

In this regard, looking into the case studies on the reforms/government cleansing, among other things, stipulated the following:

- ▶ Analysing the design of the reform/procedure in question (essence and purpose of the reform/procedure, preparatory work and legal regulation);
- ▶ Analysing the process of implementation of the reform/procedure in question (implementation of legislative norms in practice nationally and locally);
- ▶ Analysing entities that dispute legal relations;
- ▶ Studying the procedure for challenging the results of the reforms/procedures (identification of the reasons that caused challenges and the features of the plaintiffs' claims);
- ▶ Analysing results of the challenges, which includes the analysis of the rationale for handing down decisions;
- ▶ Analysing feedback on the results of the challenges from civil society and public bodies (including in terms of amending legislation).

# JUDICIAL ACTIVISM VS JUDICIAL INFLUENCE?



The concept characterising the active role of the court and judges in carrying out social changes was first conceptualised by the American historian A. Schlesinger in 1947. This process was called judicial activism. Initially, the concept was used in the context of describing the conflict between the judges of the US Supreme Court, namely, 'judicial activists', who were represented by the Black-Douglas group and advocated for an active role of the court in carrying out social changes, and proponents of the concept of 'judicial self-restraint', that is, the Frankfurter-Jackson group, who believed that the court's role in the process of social transformation should be more limited. The Frankfurter-Jackson group reasoned their standpoint by arguing that the legislative and executive branches of government know 'how best to take care of progress and social development'<sup>2</sup>. Still, the term judicial activism has acquired new meanings over time. In this regard, its definition was repeatedly subject to changes and clarifications. However, *to date, there is still no unified understanding of the essence of this concept*<sup>3</sup>, as different researchers incorporate slightly differing aspects in its construing.

For example, what the approach to defining the essence of judicial activism put forward by G. Jones boils down to is that, in a broad sense, this term refers to cases when the court intervenes and invalidates some legislative provisions, as well as addresses the issue of legality of the actions of the executive power<sup>4</sup>. L.A. Graglia gives a somewhat similar sense to this phenomenon, indicating that judicial activism should be understood as judicial practice which would not recognise the results of government policy, or the activities of public authorities, not being explicitly prohibited by the constitution<sup>5</sup>.

The American judge R.A. Posner believes that judicial activism is manifested in the case of the court 'acting contrary to the will of the other branches of government', for example, in the case of striking down a statute<sup>6</sup>. This opinion is backed by C.R. Sunstein, who emphasises that a marker of judicial activism is the frequency with which courts overturn decisions and actions of other branches of government<sup>7</sup>. In view of this, within the American understanding

---

2 Shevchuk S. Judicial law-making: world experience and prospects in Ukraine. K.: Library-research paper, 2007. 640 p.

3 Kmiec, Keenan D. The Origin and Current Meanings of 'Judicial Activism.' *California Law Review*, vol. 92, no. 5, 2004, p. 1443.

4 Jones, Greg. Proper Judicial Activism. 14 Regent Univ LR 141. 2002, p. 143.

5 Graglia, Lino A. It's Not Constitutionalism, It's Judicial Activism. *Harvard Journal of Law & Public Policy*, vol. 19, 1996, p. 293.

6 Posner, Richard A. The Federal Courts: Challenge and Reform, Revised Edition. Harvard University Press, 1996, p. 320.

7 Sunstein, Cass R. Radicals in Robes: Why Extreme Right-Wing Courts Are Wrong for America. Basic Books, 2005, pp. 42-43.

of the essence of this phenomenon, a 'standard' was derived as a measure of judicial activism. This standard was named the '*Thayer's claim*', given that it was conceptualised by J.B. Thayer. He argued that the court should repeal only those statutes whose unconstitutionality is obvious<sup>8</sup>.

F.B. Cross and S.A. Lindquist maintain the position that judicial activism manifests itself when the judiciary takes over the powers of other branches of government, and striking down statutes is the most visible type of such 'activity'<sup>9</sup>. Accordingly, using the example of the activities of the US Supreme Court, the researchers came up with 6 criteria for analysing manifestations of judicial activism:

- 1) The degree to which policies adopted through democratic processes are judicially negated;
- 2) The degree to which earlier court decisions, doctrines or interpretations are altered;
- 3) The degree to which constitutional provisions are interpreted contrary to the clear intentions of their drafters;
- 4) The degree to which judicial decisions make substantive policy rather than affect the preservation of democratic processes;
- 5) The degree to which a judicial decision establishes policy itself as opposed to leaving discretion to other governmental actors;
- 6) The degree to which a judicial decision supersedes serious consideration of the same problems by other governmental actors<sup>10</sup>.

Further, the researchers point out that activism might be found in the mere interpretation of statutes. This takes place when a Justice might interpret a statute in a manner contrary to what the legislature meant or wrote as its text. Such activity of courts is commonly referred to as 'judicial lawmaking'.

So, *the term judicial activism is polysemic and is used to denote various aspects of the activities of judicial authorities in the countries of the Anglo-American legal system* (for example, the US, the UK, Canada). Still, extrapolating the broad approach to the interpretation of the essence of this concept,

---

8 Thayer, James B. The Origin and Scope of the American Doctrine of Constitutional Law. *Harvard Law Review*, vol. 7, no. 3, pp. 129-56.

9 Cross, Frank B. and Lindquist, Stefanie A. The Scientific Study of Judicial Activism. *Minnesota Law Review*, Forthcoming. *Vanderbilt Law and Economics Research Paper No. 06-23*, University of Texas Law, *Law and Economics Research Paper No. 93*, 2006, p. 11.

10 *Ibidem*, pp. 10-11.

proposed by F.B. Cross and S.A. Lindqvist, in the field of reform implementation, it can be stated that the phenomenon of judicial activism manifests itself in the following aspects:

- ▶ Courts' repealing of regulatory acts of the other branches of government (legislative or executive one). In this case, what is essentially meant is that *judicial institutions do not recognise the results of government policy*. So, on the whole, this situation looks like 'legislative regulation from the court bench'.
- ▶ Departure from established precedents (that is, courts' positions, which were set forth in previous decisions and became a mandatory rule and a reference point for consideration of similar cases in the future). Of its part, such activity also has an impact on reforms. In particular, there were cases *when the courts' departures from precedents resulted in repealed legislative acts that implemented reforms*.
- ▶ Deviation from generally accepted methods of interpretation of legislation. This aspect in some cases also results in the adjustment of government policy. So, based on the results of cases consideration, the courts may conclude that *the provisions of normative legal acts dealing with the reforms actually have a completely different meaning* than the one originally intended by lawmakers.

Thus, court decisions that significantly influence the implementation of socio-political changes in a state are considered activist. Such broad powers of the courts are aimed at correcting mistakes made by other authorities in the policymaking process.

However, it is worth noting that *so broad understanding of the essence of judicial activism is topical only for the countries of the Anglo-American legal system*. That is, this vision of the courts' role in the implementation of public policy is not fully in place in the states of the continental legal system, to which, among others, Ukraine belongs.

In the continental system states (which constitute the majority of European states), this framework operates in a slightly different way. A distinctive feature is that courts do not set precedents in the traditional sense. For instance, in Ukraine, certain features of activism in the context of the formation of precedent practice at the level of general jurisdiction courts can be traced in the activities of the Supreme Court. This is explained by the fact that the Supreme Court, as the highest court in the judicial system, ensures the stable

and unified nature of judicial practice<sup>11</sup>. That is, the positions of this court, set out in the rulings, become a guideline for the application of legal norms by other courts in similar cases in the future. Thus, it is possible to refer to the existence of so-called 'quasi-precedents' in Ukraine. Furthermore, a peculiar manifestation of activism in the practice of the Supreme Court is also observed in the case when the Supreme Court changes its legal positions regarding the adjudication of the same cases. This happens because social relations evolve over time and that is why the Supreme Court resorts to the application of dynamic interpretation of legal norms. In other words, the positions of the Supreme Court are not stable for a long time but change in view of the emergence of new conditions for the application of legal norms. This is where the active role of the Court is manifested, i.e., to make changes in the practice of rulemaking, considering the new challenges of the present day.

It is worth emphasising that this approach is not something extraordinary for European judicial institutions. For example, the European Court of Human Rights (hereinafter referred to as the ECHR) periodically reviews the practice of applying legal norms and makes changes thereto. This process is called 'evolutionary interpretation'<sup>12</sup>, because the ECHR interprets and applies the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, taking into account the change in legal relations. In particular, the essence of the evolutionary approach was characterised in the judgement *Tyler v. the United Kingdom* dated 25 April 1978<sup>13</sup>: 'The Court must also recall that the Convention is a living instrument which [...] must be interpreted in the light of present-day conditions'.

Moreover, it is possible to refer to judicial activism in Ukraine in the context of the activity of the Constitutional Court of Ukraine. So, the CCU, as the only court of constitutional jurisdiction, is authorised to interpret the provisions of the Basic Law and repeal the effect of those provisions of legislation, primarily laws that do not comply with the Constitution of Ukraine. In this case, the direct influence of the judgements of the CCU on the practice of (non-)application of legal norms is traced. This manifestation of judicial activism will be analysed in more detail in the section *Influence of judgements of the Constitutional Court of Ukraine on designing reforms*.

---

11 *On the Judiciary and the Status of Judges*: Law of Ukraine dated 02 June 2016 No. 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>.

12 Застосування практики та виконання Україною рішень Європейського Суду з прав людини (Policy Paper). Лабораторія законодавчих ініціатив. 2017. С. 3. URL: [https://parlament.org.ua/wp-content/uploads/2017/11/Propoziciji\\_Politiki\\_ECHR.pdf](https://parlament.org.ua/wp-content/uploads/2017/11/Propoziciji_Politiki_ECHR.pdf).

13 Judgement of the ECHR in *Tyler v. the United Kingdom* dated 25 April 1978, application No. № 5856/72. Paragraph 31. URL: <https://hudoc.echr.coe.int/?i=001-57587>

However, even despite these nuances, classic judicial activism of the American<sup>14</sup>, Canadian<sup>15</sup> or British<sup>16</sup> model still does not exist in Ukraine. In our country, when adjudicating cases, general jurisdiction courts (with the exception of the Supreme Court) actually control the legality of reforms being implemented only, but do not in any way interfere with the activities of other public authorities (legislative or executive one).

## **Therefore, no general jurisdiction court may directly repeal legislative provisions concerning novelties.**

It is traditional for most European countries that only constitutional courts have such authority.

However, this does not mean at all that the courts of general jurisdiction in the states of the continental legal system do not have any influence on policy. No, that influence is still exerted, but in a more indirect fashion. This is why specific features of judicial activist sometimes can be traced even in lower instance courts (although this happens seldom). Its essence consists in the rejection of orthodox positivism (when the court is recognised as the 'mouth of the law') and the application of the broad understanding of law, taking into account various social factors. So, first of all, judicial activism manifests itself in the appropriate interpretation of norms, in particular dynamic construing, etc. That is, judicial activism is in place also when cases are adjudicated with no direct nor, through the prism of the rule of law.

Still, coming back to the issue of reforms, it is worth noting that in the states of the continental legal system, the influence of the courts on this area is mainly exercised through the mass cancellation of their results at the level of individual challenging. In fact, the direct but very tangible effect of judicial decisions by

---

14 For example, Judgement of the US Supreme Court in *Shelby County v. Holder* (2013). URL: <https://www.justice.gov/crt/shelby-county-decision>; *Dobbs v. Jackson Women's Health Organization* (2022). URL: [https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf); *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022). URL: [https://www.supremecourt.gov/opinions/21pdf/20-843\\_7j80.pdf](https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf).

15 Why Canada has the most activist Supreme Court in the world – and how it's changed the country. 2023. URL: <https://nationalpost.com/news/canada/canada-most-activist-supreme-court-world>.

16 For example, cases *R (Reilly) v. Secretary of State for Work and Pensions* (2015). URL: <https://www.supremecourt.uk/cases/docs/uksc-2014-0079-judgment.pdf>; *R (Aguilar Quila) v. Secretary of State for the Home Department* (2011). URL: <https://www.supremecourt.uk/cases/docs/uksc-2011-0022-judgment.pdf>; *Serious Organised Crime Agency v. Perry* (No. 2) (2012). URL: <https://www.supremecourt.uk/cases/docs/uksc-2010-0182-judgment.pdf>.

courts, which has essential consequences for the ultimate assessment of reforms results as a whole.

Therefore, taking into account the number of specific points that accompany the process of influence of court decisions on public policy in Ukraine and are different from identical processes in the countries of the Anglo-American legal system, *the active role of courts in this context is more appropriately characterised as the very 'judicial influence' on reforms.*

In general, judicial influence is quite a handy political and legal phenomenon, which helps to exercise judicial control over the quality of reforms that are being implemented, and in case of their inefficiency, it indicates which mistakes made in designing them are worth correcting.

This phenomenon will be considered in greater detail within the scope of this report. Conceptualising 'judicial influence' is among the objectives of the study, so its definition will be formulated on the basis of a comprehensive analysis of judicial practice. With these reasons in mind, the term 'judicial influence', key aspects of its manifestations and a generalised description of the impact on the course of the reforms/procedures will be provided in the Conclusions.

In addition, here and there throughout the text of the report, along with the terms 'judicial influence', the term 'judicial challenge' will be used. The latter has a somewhat different content load and, accordingly, the specifics of use. The term 'judicial challenge' is used exclusively to refer to the process whereby the parties concerned file lawsuits, appeals or cassation appeals with courts. Still, this term has no direct correlation with the reflection of the scale of court decisions' influence on policy.

# JUDICIAL INFLUENCE IN THE UKRAINIAN CONTEXT



## CASE STUDY 1.

### Challenging of the 2014 lustration (government cleansing) procedure

---

#### 1. Design of the lustration (government cleansing) procedure

##### 1.1 Essence and goal

The process of reforming the staffing of government bodies in Ukraine through lustration (government cleansing) began with a large delay compared to similar processes in European countries<sup>17</sup>. In Ukrainian realities, remarkable public demand for lustration grew rapidly during the Revolution of Dignity period from November 2013 to February 2014 in response to distrust of corrupt authorities. As a result, on 16 September 2014 – as late as in the 24th year of the existence of independent Ukraine, – the Ukrainian Parliament adopted the Government Cleansing (Lustration) Law<sup>18</sup> (hereinafter – *the Law*). Yet the mechanism of lustration provided by this statute had characteristic features, which are not typical of the legislative regulation of this procedure in Eastern European countries.

According to the the Government Cleansing (Lustration) Law, lustration is a ban established by the Law or a court decision for certain persons to hold certain positions (to be in the service) in public authorities and local self-government bodies.

**Government cleansing (lustration) is carried out for the purpose of preventing from participating in the management of public affairs persons who, by their decisions, actions or inaction, carried out, and/or contributed to implementation of, measures aimed at the usurpation of power by Ukrainian President Viktor Yanukovich, undermining the foundations of national security and defence of Ukraine or illegal violation of human rights and freedoms.**

---

17 The trend of taking measures to clean up authorities in Europe dates back to the 1990s. In particular, lustration started in the Czech Republic in 1991 and in Hungary in 1992, while in the Baltic countries lustration legislation was adopted in the period from 1992 to 1999. In the late 20th century, similar processes were also initiated in Germany, Poland and Bulgaria.

For more information, please see: Government cleansing: Why is it necessary? Open Dialogue Foundation. Kyiv. 2015. 56 p. URL: <https://ua.odfoundation.eu/content/uploads/i/fmfiles/pdf/odf-lustration-brochure-print.pdf>.

18 *On Government Cleansing*: Law of Ukraine dated 16 September 2014 No. 1682-VII. URL: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>.

That is, the lustration procedure provided for reforming the staffing of public authorities and local self-government bodies by cleansing the government of persons involved in the usurpation of power in Ukraine during the period from 25 February 2010 to 22 February 2014. Lustration applies to senior officials of the state, officials and officers of other public authorities (except elected positions), employees of law enforcement agencies, defined in Article 3 (2) of the Government Cleansing (Lustration) Law, as well as persons applying for these positions. The Law stipulated banning these persons from holding positions for 5 and 10 years, depending on the criteria.

## 1.2 Preparatory work

Public pressure after the Revolution of Dignity contributed to the fact that, starting in March 2014, Ukrainian MPs actively began to work on the development of lustration bills. As a result, seven drafts of relevant laws were registered in the Ukrainian Parliament – Nos. 4570<sup>19</sup>, 4570-1<sup>20</sup>, 4570-2<sup>21</sup>, 4570-3<sup>22</sup>, 4678<sup>23</sup>, 4678-1<sup>24</sup>, 4359a<sup>25</sup>. Yet only the last bill was destined to become law. However, voting for its adoption within the walls of the Parliament did happen with difficulties. It is indicative that the Ukrainian Parliament managed to pass the bill as a whole only on the fifth attempt. 231 MPs voted for the adoption of the Government Cleansing (Lustration) Law.

At the stage of drafting, MPs faced two challenges:

*First*, it was necessary to establish clear criteria for access to the civil service, which would prevent from applying a subjective approach and would also allow for a quick government cleansing.

*Second*, problems emerged with the establishment of a single lustration body, which would have been devoid of administrative and political influence and

---

19 Draft Law *On Lustration in Ukraine* dated 26 March 2014 No. 4570.

URL: [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50422](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50422)

20 Draft Law *On Lustration in Ukraine* dated 08 April 2014 No. 4570-1.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50566](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50566)

21 Draft Law *On Lustration in Ukraine* dated 08 April 2014 No. 4570-2.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50567%20](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50567%20).

22 Draft Law *On Lustration in Ukraine* dated 08 April 2014 No. 4570-3.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50579](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50579).

23 Draft Law *On Lustration in Ukraine* dated 10 April 2014 No. 4678.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50613](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50613).

24 Draft Law *On Lustration in Ukraine* dated 15 April 2014 No. 4678-1.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50659](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50659).

25 Draft Law *On Government Cleansing* dated 24 July 2014 No. 4359a.

URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=51795](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=51795).

would also have been financially secure for the implementation of its functions and powers.

Hence MPs decided to legislate the criteria by which the lustration procedure takes place. In addition, the authority to carry out lustration was entrusted to public bodies and local self-government bodies as such. Ensuring the publicity of this process became an important condition for conducting the government cleansing procedure.

At the same time, even at the stage of consideration and adoption of the bill, experts emphasised potential risks inherent in the provisions of the future law. The main remarks related to its norms being worded in an unclear way, which called into question the possibility of their proper implementation in practice, a separate body for lustration not being established, unlike it was the case in most countries, the procedure for checking officials not being limited in time, and the mechanism for its implementation actually duplicating the provisions of already existing laws<sup>26</sup>.

Consequently, failure to address all problems at the stage of drafting the Law caused significant troubles in implementing its provisions in practice. The lustration procedure was designed in violation of the principles of legality, legal certainty, proportionality as components to the rule of law<sup>27</sup>. Thus, the entire lustration procedure was easily challenged in court.

### 1.3 Legal regulation

For the successful implementation of the government cleansing procedure, it is important to ensure its proper regulatory and legal support.

The main normative legal acts aimed at regulating the lustration procedure in 2014 were as follows:

- ▶ Law of Ukraine *On Government Cleansing* dated 16 October 2014 No. 1682-VII. This Law is a fundamental act establishing the general legal and organisational principles for lustration of persons involved in the usurpation of power by ex-president Viktor Yanukovich in 2010–2014.

---

26 PR on Lustration. Impossible to Implement the Government Cleansing Law. URL: [https://texty.org.ua/articles/55473/Piar\\_na\\_lustraciji\\_Zakon\\_Pro\\_ochyshhenna\\_vlady-55473/](https://texty.org.ua/articles/55473/Piar_na_lustraciji_Zakon_Pro_ochyshhenna_vlady-55473/).

27 How should we go about lustration? URL: <https://www.ukrinform.ua/rubric-society/2711856-ak-nam-buti-z-lustracieu.html>.

- ▶ Resolution of the Cabinet of Ministers of Ukraine dated 16 October 2014 No. 563 *Some Issues of Implementation of the Law of Ukraine On Government Cleansing*<sup>28</sup>. In pursuance of the Law, this Resolution established a mechanism to review the accuracy of details on the application of lustration bans, as well as defined the scope of competence of the bodies authorised to carry out reviews.
- ▶ Ordinance of the Cabinet of Ministers of Ukraine dated 16 October 2014 No. 1025-r *On Approval of the Plan for Reviews under the Law of Ukraine On Government Cleansing*<sup>29</sup>. This act contains a list of officials for whom reviews are scheduled, with an indication of the period thereof.
- ▶ Order of the Ministry of Justice of Ukraine dated 16 October 2014 No. 1704/5 *On Approval of the Regulation on the Unified State Register of Individuals to whom the Provisions of the Law of Ukraine On Government Cleansing Have Been Applied*<sup>30</sup>. The order regulated the procedure for establishing and maintaining the register, which is an electronic database containing information about persons banned from holding the civil service positions.
- ▶ Order of the Ministry of Finance of Ukraine dated 03 November 2014 No. 1100 *On Approval of the Procedure to Review the Accuracy of Details, Provided for in paragraph 1 of Article 5 (2) of the Law of Ukraine On Government Cleansing, and the Form of an Opinion on Review Findings*<sup>31</sup>. The procedure to review the accuracy of details in declarations about property, income, expenses and financial obligations for the previous year was determined by this order.

The lustration procedure, defined by the Law in question and the specified by-laws, did have some shortcomings at the stage of their design. It was this circumstance that became the basis for the judicial challenging of the legality of

---

28 *Some Issues of Implementation of the Law of Ukraine On Government Cleansing*: Resolution of the Cabinet of Ministers of Ukraine dated 16 October 2014 No. 563. URL: <https://zakon.rada.gov.ua/laws/show/563-2014-%D0%BF#Text>.

29 *On Approval of the Plan for Reviews under the Law of Ukraine On Government Cleansing*: Ordinance of the Cabinet of Ministers of Ukraine dated 16 October 2014 No. 1025-r. URL: <https://zakon.rada.gov.ua/laws/show/1025-2014-%D1%80#Text>

30 *On Approval of the Regulation on the Unified State Register of Individuals to whom the Provisions of the Law of Ukraine On Government Cleansing Have Been Applied*: Order of the Ministry of Justice of Ukraine dated 16 October 2014 No. 1704/5. URL: <https://zakon.rada.gov.ua/laws/show/1025-2014-%D1%80#Text>

31 *On Approval of the Procedure to Review the Accuracy of Details, Provided for in Paragraph 1 of Article 5 (2) of the Law of Ukraine On Government Cleansing, and the Form of an Opinion on Review Findings*: Order dated 03 November 2014 No. 1100. URL: <https://zakon.rada.gov.ua/laws/show/z1280-14#Text>

these acts and the government cleansing procedure as a whole. The problems in legal regulation that provoked the judicial challenges of lustration are considered below.

## 2. Implementing the lustration procedure

Nationally, the lustration procedure was entrusted to be organised by the Ministry of Justice of Ukraine. In particular, within a month from the date of entry into force of the Law, the Ministry of Justice established the Civic Council on Lustration<sup>32</sup> operating under the Ministry. The functioning of the civic council sought to ensure participation of the public in monitoring the government cleansing procedure.

In addition, in order to comply with the provisions of the Law, the Ministry of Justice compiled a list of bodies authorised to carry out lustration reviews. The Ministry also developed a plan for reviews in each public authority and local self-government body or enterprise in line with the order of priority. A lustration review was entrusted to be organised by the head of the authority in question.

The lustration procedure for local officials consists of several step-by-step procedures. The essence of these stages differs slightly depending on whether the person already holds an office or is just applying to get it in the future.

In the first case, lustration requires the official to go through the following two stages:

### *1. Submission of a statement on the ban*

At this stage, the person who holds an office independently submits to the manager or the authorised body a statement of the prescribed format, where s/he informs that the bans defined by the Government Cleansing Law apply (or do not apply) to her/him. Where the official indicates that the ban applies to him/her, this serves as a reason for his/her dismissal from the office s/he holds. If the statement is not submitted within a 10-day period from the date of the start of the review, the official is also subject to dismissal.

---

32 *On Establishment of the Civic Council on Lustration under the Ministry of Justice of Ukraine:* Order of the Ministry of Justice of Ukraine dated 04 November 2014 No. 1844/5.  
URL: <https://zakon.rada.gov.ua/laws/show/z1386-14#n6>

## *II. Carrying out the review*

This stage involves finding out:

- 1) accuracy of the details specified in the statement;
- 2) reliability of the details about property in the official's declaration, compliance of expenses with her/his income received from legal sources.

In case inaccurate data was found following the lustration review, the controlling body is obliged to notify the relevant official, in respect of whom the review is carried out. After that, that official provides a written explanation of the reason for the non-compliance and attaches supporting documents. Of its part, the controlling body is obliged to consider those documents and explanations and take them into account when compiling a review opinion.

A copy of the review opinion is sent to the Ministry of Justice for official publication on its website. This information is then entered into the Unified State Register of Individuals to Whom the Provisions of the Law of Ukraine *On Government Cleansing* Have Been Applied (hereinafter referred to as the *Register of Listed Persons*). The manager of the body where the official worked, after receiving the opinion, dismisses him/her from her/his office.

In the event that review findings reveal that the official does not fall under the government cleansing criteria, a corresponding opinion is drawn up. On its basis, the head of the body where the official works draws up a review certificate, where s/he notes information about the lack of grounds to apply lustration. Such information shall be published on the official website of the relevant authority.

If a person just applies for an office covered by the Law of Ukraine *On Government Cleansing*, s/he must go through the following stages:

### *I. Submitting a statement*

With this statement, the person informs that lustration bans do not apply to her/him and, accordingly, gives his/her consent to further review.

### *II. Carrying out a special review*

The details specified in the statement are checked during a special review

in accordance with the Prevention of Corruption Law<sup>33</sup>. If it is established following the review that the person belongs to the list of those to whom lustration bans apply, s/he will be refused appointment to the position.

However, during the period of martial law, the lustration review into candidates for offices in public authorities, stipulated by the Law of Ukraine *On Government Cleansing*<sup>34</sup>, is not carried out. This novelty emerged in the Law of Ukraine *On the Legal Regime of Martial Law* in May 2022 after relevant amendments were made on the basis of Law No. 2259-IX<sup>35</sup>. Yet this does not mean at all that these officials will no longer be subjected to any reviews. After the cancellation or termination of martial law in the state, the review in question must be carried out within three months. An exception to this rule can only be a situation in which such an official was dismissed from his/her position before the termination or cancellation of martial law or the completion of the specified review during martial law.

In general, according to official data provided by the Ministry of Justice of Ukraine following a request for public information, as of 4 July 2023, the official website of the Ministry of Justice of Ukraine posted 492,549 notices on starting a review under the Law of Ukraine *On Government Cleansing*. The Ministry of Justice also reported that, as of 21 June 2023, the Register of Listed Persons contains details on 596 officials to whom the provisions of the Law of Ukraine *On Government Cleansing* have been applied.

Still, certain officials of Viktor Yanukovich's era still managed to avoid the lustration procedure. For example, this concerns those resigned from offices at their own will. Such 'latent' lustration took place both before the Government Cleansing Law officially entered into force and thereafter. And although those officials were not officially covered by the Law, they still turned out to be closely eyed by the Civic Committee on Lustration, which set out a corresponding list of 'undercleansed' ex-officials on the basis of monitoring their declarations and backgrounds<sup>36</sup>. Indicative is the fact that during the first year of lustration in Ukraine, the number of people who decided to avoid reviews in this way

---

33 *On the Prevention of Corruption*: Law of Ukraine dated 14 October 2014 No. 1700-VII. URL: <https://zakon.rada.gov.ua/laws/show/1700-18#Text>

34 *On the Legal Regime of Martial Law*: Law of Ukraine dated 12 May 2015 No. 389-VIII. URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

35 *On Amendments to Some Laws of Ukraine regarding the Functioning of the Civil Service and Local Self-Government during the Period of Martial Law*: Law of Ukraine dated 12 May 2022 No. 2259-IX. URL: <https://zakon.rada.gov.ua/laws/show/2259-20#Text>

36 We check all Ukrainian officials manually – Civic Committee on Lustration. URL: <https://www.radiosvoboda.org/a/26814666.html>.

reached almost 30%<sup>37</sup>. This is evidence that there was a particular side effect of lustration, whereby what took place de facto is government cleansing, which cannot be challenged de jure.

However, the implementation of the cleansing procedure locally was not always smooth, because now and then the implementation of legislative norms on lustration came along with violations of the aforementioned procedure by the authorised bodies<sup>38</sup>. This, in particular, became a formal basis for filing lawsuits with administrative courts by lustrated officials. After all, ex-officials considered the lustration procedure as unlawful, and the decisions made by the authorised bodies as illegal.

### 3. Judicial challenging of the government cleansing procedure

The largest percentage of lawsuits challenging the application of the Government Cleansing Law came from ex-employees of customs authorities and prosecutorial bodies. Lawsuits concerned relations in the civil service, including cases regarding the acceptance of citizens into the civil service, staying in, and dismissal from, it.

Notably, reasons for challenging the lustration procedure varied significantly before and after 17 October 2019. This is caused by the Judgement of the European Court of Human Rights (hereinafter referred to as the ECHR) in *Polyakh and others v. Ukraine*<sup>39</sup>, which entered into force on 24 February 2020. In this decision, the ECHR indicated that the lustration procedure in Ukraine violated the principle of the rule of law. Although on the whole the European Court of Human Rights recognised the very fact of conducting lustration in Ukraine as legal and justified, it drew attention to shortcomings and mistakes in applying the relevant procedures. In this regard, the position taken by the ECHR became the starting point in a new wave of lawsuits with the aim of declaring the conducted lustration procedure illegal. Accordingly, it affected the reasoning of ex-officials, which they used in their lawsuits, substantiating the need to cancel lustration results. That is the very reason why this report analyses the results of

---

37 Government Cleansing: Why Is It Needed? Open Dialogue Foundation. Kyiv. 2015. P. 25.

URL: <https://ua.odfoundation.eu/content/uploads/i/fmfiles/pdf/odf-lustration-brochure-print.pdf>.

38 *On the Analysis of the Practice of Application by Administrative Courts of Certain Provisions of the Law of Ukraine On Government Cleansing dated 16 September 2014 No. 1682-VII*:

Resolution of the Plenum of the Higher Administrative Court of Ukraine dated 18 September 2015 No. 16. URL: <https://zakon.rada.gov.ua/laws/show/v0016760-15#Text>

39 Judgement of the European Court of Human Rights in *Polyakh and others v. Ukraine* dated 17 October 2019, application No. 58812/15. URL: [https://zakon.rada.gov.ua/laws/show/974\\_e71#Text](https://zakon.rada.gov.ua/laws/show/974_e71#Text)

the challenges by comparing the position of the plaintiffs and that of the courts following the consideration of lawsuits, appeals and cassation appeals, as before and after the Judgement of the European Court of Human Rights in *Polyakh and others v. Ukraine* (i.e., before and after 17 October 2019).

### 3.1 Reasons for challenging

Before *Polyakh and others v. Ukraine*, when reasoning their lawsuits, appeals and cassation appeals, the lustrated officials predominantly emphasised that the review of the accuracy of details in the statement and the review of details about property in the declarations are illegal. The ex-officials came to this conclusion on the basis that the controlling bodies violated the statutory lustration procedure. This is why, according to the lustrated officials, controversial dismissal orders were made contrary to the principles and requirements of the Government Cleansing Law<sup>40</sup>.

After the ECHR's Judgement in *Polyakh and others v. Ukraine* entered into force, the plaintiffs began to focus on the Government Cleansing Law provisions significantly violating their constitutional rights. Among other things, the plaintiffs' reasoning was based on the following:

- 1) In accordance with Article 61 (2) of the Constitution of Ukraine<sup>41</sup>, the legal responsibility of a person has an individual character, while the lustration procedure in Ukrainian realities has acquired the characteristics of collective responsibility.
- 2) The provisions of Article 62 of the Constitution of Ukraine set out that a person is considered innocent of committing a crime and may not be subjected to criminal punishment until their guilt is proven in a legal manner and established by a court verdict. No one is obliged to prove their innocence in committing a crime. Accusation may not be based on illegally obtained evidence or assumptions.

---

40 E.g., the Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 31 January 2018 in the case No. 815/3268/15. URL: <https://opendatobot.ua/court/71979644-7c63105346908f6ca91ddd1b5a26c87a>; Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 14 February 2018 in the case No. 820/4398/15. URL: <https://opendatobot.ua/court/72290090-08348f7c49e5fe4286140347dbd06456>; Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 16 August 2019 in the case No. 812/1441/16. URL: <https://opendatobot.ua/court/83692111-195612d05f237175446eblaf9cd3eac4>.

41 Constitution of Ukraine dated 28 June 1996 No. 254k/96-VR.

URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

3) The provisions of the Government Cleansing Law create prerequisites for violating the equality of opportunities to exercise the right of access to the civil service, provided for in Article 38 of the Constitution. Furthermore, according to the Resolution of the Parliamentary Assembly of the Council of Europe<sup>42</sup>, disqualification may apply only to those persons who ordered to commit, committed serious violations of human rights or seriously assisted in their commitment. Therefore, the said constitutional principle of the presumption of innocence shall be applied also when lustration is carried out.

4) The plaintiffs refer to the Interim Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine by the Venice Commission<sup>43</sup>, which states that 'no one can be the subject of lustration solely because of personal opinions and beliefs; Conscious employees can be prosecuted only if their actions actually caused harm to others, and they knew or should have known about it'.

5) The lustration carried out in Ukraine contradicts the sustained practice of the European Court of Human Rights (including the above-mentioned case of *Polyakh and others v. Ukraine*, as well as *Engel and others v. The Netherlands*<sup>44</sup>, *Matyjek v. Poland*<sup>45</sup>).

6) The Ukrainian version of the lustration procedure violates the norm on the prohibition of discrimination established by Convention No. 111 concerning Discrimination in Respect of Employment and Occupation dated 25 June 1958<sup>46</sup>.

Believing that the lustration does not meet the above conditions, the lustrated officials asked the courts to satisfy their claims.

---

42 Resolution 1096 (1996). Measures to dismantle the heritage of former communist totalitarian systems. Parliamentary Assembly. URL: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=165078&lang=en>.

43 Interim Opinion on the Law on Government Cleansing (Lustration Law) of Ukraine, adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014). Paragraph 62. URL: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29044-ukr>.

44 Judgement of the ECHR in *Engel and others v. The Netherlands* dated 08 June 1976, applications Nos. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72. Paragraph 82. URL: <https://hudoc.echr.coe.int/eng?i=001-57479>

45 Judgement of the ECHR in *Matyjek v. Poland* dated 24 April 2007, application No. 38184/03. Paragraphs 49-58. URL: <https://hudoc.echr.coe.int/eng?i=001-80219>.

46 Convention No. 111 concerning Discrimination in Respect of Employment and Occupation dated 25 June 1958, Article 2. URL: [https://zakon.rada.gov.ua/laws/show/993\\_161](https://zakon.rada.gov.ua/laws/show/993_161)

## 3.2 Claims

The analysis of judicial practice indicates that the *typical claims, which are inherent nearly in all lawsuits of the lustrated officials*, regardless of the date of filing with courts (both before *Polyakh and others v. Ukraine* and after the judgement was handed down as a result of its consideration) are the following:

- ▶ Recognise as illegal and repeal the order to dismiss the lustrated person from the office;
- ▶ Reinstate her/him in her/his current office;
- ▶ Collect the average pay for the period of forced absenteeism.

**At the same time, until 17 October 2019, the plaintiffs mainly did not focus on the illegality of lustration as such but pointed to the illegality of the actions of the controlling bodies due to their failure to comply with the requirements of the law in conducting reviews.**

In view of this, the following predominantly supplemented the list of claims:

- ▶ Recognise as illegal the actions to review the accuracy of the details specified in the statement on the non-application of bans and the details on the property, specified in the official's declaration for the previous year;
- ▶ Recognise as illegal and repeal the review opinion.

Accordingly, after the ECHR's Judgement in *Polyakh and others v. Ukraine*, the essence of the claims has changed. From that point onwards, the lustrated officials were not limited by reviews' non-compliance with the formalities and also emphasised the illegality of the lustration procedure as a whole.

In addition, sometimes plaintiffs mistakenly ask the courts to oblige the Ministry of Justice to remove information about the plaintiffs from the Register of Listed Persons. However, the courts note that this claim cannot be satisfied, because the Law of Ukraine *On Government Cleansing* and the Regulation on the Register do not provide for the possibility of recalling details. Instead, it is stipulated that in the event that the registrar, i.e., the Ministry of Justice of

Ukraine, receives a relevant court decision, which has entered into force, the person's details will be *removed* from the register. That is, the current legislation clearly defines the mechanism for *removing* details from the register, and therefore there are no grounds for satisfying the claim.

## 4. Results of the challenging

### 4.1 General characteristics of court decisions following the challenging

Following the consideration and resolution of cases on lustration, the courts as a whole conclude that it is unlawful and illegal. So, judicial bodies are mostly inclined to satisfy the claims of the officials. In particular, according to the details received from the Ministry of Justice of Ukraine following a request for public information, in the period from 16 October 2014 to 21 June 2023, details on 466 civil servants were removed from the Register of Listed Persons by court decision. Yet it is worth noting that the practice of the courts cannot be called completely unambiguous.

Before the Judgement in *Polyakh and others v. Ukraine*, first instance courts approached the issue of satisfaction of the lustrated persons' claims in different ways. This trend can be explained by the fact that this was a completely new category of cases, and therefore there was no established practice for their consideration yet. In this regard, each judge adjudicated the dispute based on his/her personal understanding of law. A similar trend of lacking a unified position in considering lustration disputes is observed at the level of courts of appeal. At the same time, it is important to emphasise that *the courts of cassation appeal (Higher Administrative Court of Ukraine and the new Supreme Court<sup>47</sup>) mostly recognised the lustration procedure as illegal. This position of the courts emphasised the presence of shortcomings in the process of its implementation.* However, it should be underlined again – in that period, the courts did not assess the conduct of lustration from the perspective of compliance with the principle of the rule of law but only reviewed the procedure for legality, that is, its formal compliance with the procedure established by normative legal acts. As a rule, all lawsuits concerned establishing if there are facts of inaccurate details on the presence of property in the declaration submitted by the plaintiff as part of the review.

---

<sup>47</sup> In the period from 2015 to December 2017, the cases were reviewed by the Higher Administrative Court of Ukraine in the cassation procedure. However, after the judicial reform and changes in the Ukrainian judiciary, from 15 December 2017 onwards, the Supreme Court became the court of cassation appeal in the cases on lustration.

After the decision *Polyakh and others v. Ukraine*, the situation changes radically: *all courts, starting with the first instance, refer to the ECHR's Judgement in this case and state the illegality of the lustration*. As a result, the dismissal of civil servants from their offices is recognised as illegal. So, the position of the courts of all instances is now unanimous because the ECHR's standpoint serves as an unconditional guideline for decision-making on the merits of the given case.

The courts are guided by this decision irrevocably, given that, under Article 17 of the Law of Ukraine *On Enforcement of Judgements and Application of the Practice of the European Court of Human Rights*<sup>48</sup>, national courts use the ECHR's practice as a source of law when adjudicating cases. That is, the ECHR's practice with the case of *Polyakh and others v. Ukraine*, after the Judgement entered into force on 24 February 2020, is mandatory and must be accommodated by courts when adjudicating similar disputes as a standard for consideration of lustration cases.

Given that for a long time there was no reference point for the courts of lower instances in adjudicating lustration cases, the courts refrained from making a decision on the merits of the dispute whenever possible. In particular, such an option became available when in 2014 the Supreme Court of Ukraine appealed to the Constitutional Court of Ukraine (hereinafter referred to as the CCU) to rule on the unconstitutionality of certain provisions of the Government Cleansing Law. Subsequently, constitutional motions were also received from Ukrainian MPs and the Supreme Court of Ukraine regarding other parts of the Law<sup>49</sup>. However, although more than eight years have passed since the first constitutional motion, the CCU has not yet made a final decision. Accordingly, the courts of lower instances satisfy the motions of the participants in the case (mainly representatives of the defendants – authorities) to adjourn proceedings in the case until the Constitutional Court of Ukraine makes a decision. However, *the Supreme Court* steps away from this position and rules *to continue the consideration of cases, not waiting for a decision of the CCU*, because mostly the courts provide no adequate arguing for the justified need to cease the proceedings. In addition, the Supreme Court emphasises that those actions will delay the consideration and adjudication of this category of disputes, which

---

48 *On Enforcement of Judgement and Application of the Practice of the European Court of Human Rights*: Law of Ukraine dated 23 February 2006 No. 3477-IV.  
URL: <https://zakon.rada.gov.ua/laws/show/3477-15#Text>

49 The Constitutional Court of Ukraine concluded the oral hearing of the case on the constitutionality of certain provisions of the Law of Ukraine On Government Cleansing and proceeded to the closed part of the plenary session. URL: <https://ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-zavershyv-usne-sluhannya-spravy-shchodo-konstytuciynosti-okremyh>.

negatively affects the process of protecting violated rights<sup>50</sup>. Being guided by this position of the Supreme Court, the courts of lower instances actively take the initiative in this matter and reinstate the lustrated officials.

So, as evidenced by the analysis of court practice, the lustration procedure launched in Ukraine did not endure judicial challenging. The Ukrainian courts and the ECHR completely flattened the consequences of this procedure, which showed the low level of its effectiveness and efficiency.

## 4.2 The rationale of courts in cancelling lustration results

The lustrated officials massively win in courts. This is related to the fact that the judicial challenging revealed a number of problematic moments accompanying the government cleansing. In general, the judges in their decisions mostly unanimously emphasise the existence of the following *backbone shortcomings, which ultimately led to the unsuccessful results of lustration implementation*:

*At the regulatory level:*

1. Non-compliance of the lustration procedure with the proclaimed principles of the government cleansing;
2. Application of the concept of collective responsibility;
3. Violation of the right to access the civil service;
4. Disproportionality of interference with the rights of officials.

*At the law enforcement level:*

1. Application of lustration to offices that are not subject to the government cleansing procedure;
2. Unfounded nature of the decision of the controlling bodies;
3. Violation of the order and terms of the review.

---

50 E.g., the Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 12 December 2019 in the case No. 826/25204/15. URL: <https://opendatobot.ua/court/863333355-e37f239e85a869e331a11775b5de62ba>; Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 26 February 2020 in the case No. 823/739/16. URL: <https://opendatobot.ua/court/87839095-f8d50775b71fb73b9be7325a18e06de4>; Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 22 December 2021 in the case No. 372/3967/20. URL: <https://opendatobot.ua/court/102221067-a21e46d8e0328f7e9a3de77ca59e99c8>.

Let's consider in more detail the courts' rationale concerning each typical reason for the reinstatement of lustrated persons in offices.

*Non-compliance of the lustration procedure with the proclaimed principles of the government cleansing*

Non-compliance of the lustration procedure with the proclaimed principles of the government cleansing:

- ▶ *rule of law and legality;*
- ▶ *openness, transparency and publicity;*
- ▶ *presumption of innocence;*
- individual responsibility;*
- guaranteeing the right to protection.*

However, other norms of this Law, which lay out the very process of government cleansing from the officials of the period of Viktor Yanukovich's presidency, contradict these principles. This was repeatedly underlined by national courts<sup>51</sup> referring to the ECHR's decision in *Polyakh and others v. Ukraine*<sup>52</sup>. The courts attribute the existence of that gap to the Ukrainian Parliament not paying due attention to the matter of the application of restrictive measures in drafting the Government Cleansing Law.

---

51 E.g., the Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 March 2021 in the case No. 808/2109/15. URL: <https://reyestr.court.gov.ua/Review/9591776>.

52 Paragraphs 72, 297.

“*The Government did not mention any consideration of the grounds for the application of such large-scale and restrictive measures during the discussion of Law No. 1682-VII by the Ukrainian Parliament. On the contrary, Article 1 of the Law lists the presumption of innocence and individual responsibility among the principles that should govern the cleansing process. In the Court’s opinion, this indicates a certain inconsistency between the proclaimed goals of the Law and the rules actually promulgated thereby.*

*Resolution of the Supreme Court in the case No. 808/2109/15<sup>53</sup>*

A similar position on non-compliance with the principles by which the government cleansing (lustration) is performed, i.e., presumptions of innocence, individual responsibility, guaranteeing the right to defence, was expressed by the Supreme Court in its Resolution dated 30 July 2020 in the case No. 805/4893/15-a<sup>54</sup>.

### *Application of the concept of collective responsibility*

The next common ground for recognising the lustration procedure as illegal is that the courts establish a violation of the principle of applying an individual approach in conducting a lustration review. This legislative miss was one of the key arguments that formed the basis of the Resolution of the Supreme Court of 3 June 2020 in the case No. 817/3431/14<sup>55</sup>. From that point onwards, the courts of lower instances were guided thereby in providing a rationale for repealing the lustration results.

The courts emphasise that it has never actually been alleged that the ex-officials themselves committed any specific anti-democratic actions aimed against national security, defence or human rights. In fact, the lustrated were dismissed on the basis of the Law only because they held certain relatively senior positions in the civil service during the presidency of Viktor Yanukovich.

---

53 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 March 2021 in the case No. 808/2109/15. URL: <https://reyestr.court.gov.ua/Review/95917761>

54 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 July 2020 in the case No. 805/4893/15-a. URL: <https://reyestr.court.gov.ua/Review/90674423>

55 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 03 June 2020 in the case No. 817/3431/14. URL: <https://reyestr.court.gov.ua/Review/89627492>

“

*In other words, the reason for the application of restrictive measures [...] is the coming to power of Mr Yanukovich, and not any event that undermined the democratic constitutional order which may have occurred during his rule and in which the official in question may have been involved.*

*Resolution of the Supreme Court in the case No. 826/1137/16<sup>56</sup>*

Therefore, the unconditional application of the lustration procedure to persons who held high positions in the period from 25 February 2010 to 22 February 2014 without establishing their involvement in negative and anti-democratic events in Ukraine contradicts the goals of the Government Cleansing Law and indicates that a kind of collective responsibility is present. That is, the process of lustration was not finding out whether ex-officials had been connected to such events. So, the courts ascertained a violation of Article 61 of the Constitution of Ukraine.

“

*The mere fact of persons occupying the positions specified in the Law and during the period established by the same is not sufficient for the application of the prohibitions defined by Article 1 (3) of the Government Cleansing Law.*

*Resolution of the Supreme Court in the case No. 817/3431/14<sup>57</sup>*

In support of this position, the courts<sup>58</sup> refer to the Resolution of the Parliamentary Assembly of the Council of Europe No. 1096 (1996)<sup>59</sup> and indicate that lustration

56 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 07 June 2020 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/89869136>

57 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 03 June 2020 in the case No. 817/3431/14. URL: <https://reyestr.court.gov.ua/Review/89627492>

58 E.g., the Judgement of the Kyiv City District Administrative Court dated 28 April 2021 in the case No. 826/20537/14. URL: <https://reyestr.court.gov.ua/Review/96650697>

59 Paragraph 12.

applies only if guilt is proven in each specific case. *Lustration may not be a tool for formal dismissal from office*. Lustration activities must take place subject to mandatory compliance with certain criteria, namely:

- ▶ *Firstly, guilt, being individual, rather than collective, must be proven in each individual case.* This emphasises the need for an individual, and not collective, application of lustration laws.
- ▶ *Secondly, the right of defence, the presumption of innocence until proven guilty, and the right to appeal to a court of law must be guaranteed.* Revenge may never be a goal of such measures, nor should political or social misuse of the resulting lustration procedure be allowed.

In their decisions<sup>60</sup>, the courts also appeal to the position of the Venice Commission, given in the Interim<sup>61</sup> and Final<sup>62</sup> Opinions No. 788/2014 regarding the Law of Ukraine *On Government Cleansing*. In particular, these acts indicate the need to take into account the proven guilt of each person who is subject to lustration procedures as a generally recognised international standard.

**Accordingly, the courts believe that restrictive measures of such severity may not be applied to civil servants based on the mere reason that they remained in their civil service positions after the election of a new head of state<sup>63</sup>.**

### *Violation of the right to access the civil service*

As the judges have it<sup>64</sup>, the provisions of the Law of Ukraine *On Government Cleansing* create prerequisites for violating the equality of opportunities to exercise the right of access to the civil service, service in local self-government bodies and in the management of public affairs. Consequently, this entails

---

60 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 03 June 2020 in the case No. 817/3431/14. URL: <https://reyestr.court.gov.ua/Review/89627492>

61 Paragraphs 64, 82 and 104.

62 Paragraph 18.

63 E.g., the Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 July 2020 in the case No. 805/4893/15-a. URL: <https://reyestr.court.gov.ua/Review/90674423>; Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 17 June 2020 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/89869136>.

64 E.g., the Judgement of the Volyn District Administrative Court dated 21 December 2020 in the case No. 803/806/15-a. URL: <https://reyestr.court.gov.ua/Review/93922894>.

a direct violation of Article 38 of the Constitution of Ukraine. Judicial authorities are convinced that establishing a ban on holding positions for 5 and 10 years for certain categories of civil servants in view of the very fact of being in a given office creates a *discriminatory approach*.

Accordingly, the Ukrainian version of the lustration procedure violates international labour standards. In particular, the Universal Declaration of Human Rights of 10 December 1948<sup>65</sup> declares everyone's right to equal access to the civil service in their country. Courts also cite provisions of the European Social Charter<sup>66</sup>, which establishes:

- a) the right of all workers not to have their employment terminated without valid reasons;
- b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

So, the courts once again stated the inconsistency of the lustration procedure with established international standards. Such conclusions significantly undermine the legitimacy of the said procedure in Ukraine.

### *Disproportionality of interference with the rights of officials*

In case officials failed lustration reviews, information about them was entered into the publicly available Unified State Register. The register operated on the principles of publicity and openness, that is, anyone could freely familiarise him/herself with the web-based database of listed persons. It was this circumstance that became key in recognising the violation of the right to private life, guaranteed by Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms<sup>67</sup>. As a rule, the courts made this conclusion following the assessment of the lawfulness of the controlling bodies' opinion.

---

65 Articles 21 and 23.

66 Article 24.

67 The Convention for the Protection of Human Rights and Fundamental Freedoms (with Protocols) (European Convention on Human Rights) dated 04 November 1950.

URL: [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text)

“*The Supreme Court concluded that the challenged order [...] was issued disproportionately, that is, without observing the necessary balance between any adverse consequences for the rights, freedoms and interests of the person and the goals that this decision aims to achieve.*

*Resolution of the Supreme Court in the case No. 805/4893/15-a*<sup>68</sup>

Such conclusions of the national courts are based on the ECHR’s position in *Polyakh and others v. Ukraine*<sup>69</sup>. So, according to the assessment of the European Court of Human Rights, *the application of lustration measures had very serious consequences for the ability of ex-officials to establish and develop relations with others and for their social and professional reputation*. Indeed, the lustrated officials were not simply removed, demoted or transferred to a less responsible position, but were *dismissed with a ban on holding positions, immediately losing all their gains. They were forbidden to hold any positions in the fields where they had worked for many years.*

In addition, the courts of all instances emphasise that the measures applied to the applicants were very restrictive and broad in scope. Accordingly, very compelling reasons should have been to dismiss the person. According to the courts, the mere fact of holding office during Viktor Yanukovych’s tenure is not a convincing argument. Therefore, officials were unjustifiably subjected to the harshest measure of government cleansing.

---

68 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 July 2020 in the case No. 805/4893/15-a.

URL: <https://reyestr.court.gov.ua/Review/90674423>

69 Judgement of the ECHR in *Polyakh and others v. Ukraine*, Paragraph 209.

“[...] assessing the proportionality of the restrictions applied to the plaintiff to the legitimate goal (government cleansing) that the public authorities sought to achieve, the court considers them disproportionate, unfounded and not necessary in a democratic society, and the application to the plaintiff of the so-called automatic lustration only in connection with the presence of the fact of the plaintiff's tenure in positions for which a ban has been established, for a total period of more than one year, is unlawful.

*Judgement of the Kyiv City District Administrative Court in the case No. 826/20537/14<sup>70</sup>*

A similar assessment of the circumstances of the case was given by the Supreme Court in the decision of 3 June 2020 in the case No. 817/3431/14<sup>71</sup>.

### *Application of lustration to positions that are not subject to the government cleansing*

This type of offences, which yielded the cancellation of the results of lustration, was allowed to happen at the stage of its implementation locally. That is, this category of misses was no longer related to the designing of the lustration, but exclusively concerned shortcomings in the work of the controlling bodies.

---

70 The Judgement of the Kyiv City District Administrative Court dated 28 April 2021 in the case No. 826/20537/14. URL: <https://reyestr.court.gov.ua/Review/96650697>

71 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 03 June 2020 in the case No. 817/3431/14. URL: <https://reyestr.court.gov.ua/Review/89627492>

The analysis of judicial practice indicates that the application of lustration to officials who are not subject to the government cleansing procedure has mainly the following manifestations:

- ▶ Banning officials whose term of office was shorter than required by the Law *On Government Cleansing*<sup>72</sup>;
- ▶ Dismissal based on the results of the lustration reviews of persons whose positions are not on the list of those to which the ban applies<sup>73</sup>.

Consequently, the courts concluded that entering details about those officials into the Unified State Register of Listed Persons following the reviews is illegal. In fact, the controlling bodies arbitrarily and unlawfully interpreted the provisions of the Law in a broad way. Such legal positions were expressed in the Resolution of the Supreme Court dated 29 November 2019 in the case No. 826/13735/15, as well as in the Resolution of the Supreme Court dated 2 October 2019 in the case No. 820/6160/15.

### *Unfounded nature of the decision of the controlling bodies*

The lack of substantiation for the opinions that the official has failed the lustration review is an extremely common phenomenon. Typical violations of the lustration procedure at this stage are the following:

1. In practice, certificates on review findings often did not contain details about the presence of facts of public officials' illegal behaviour aimed at the usurpation of power by the ex-president of Ukraine, Viktor Yanukovich<sup>74</sup>.
2. The controlling bodies conducted reviews in a pro forma way, not taking account the provided documents and explanations of the lustrated officials<sup>75</sup>.

---

72 E.g., the Resolution of the Kyiv City District Administrative Court dated 09 December 2014 in the case No. 826/16237/14. URL: <https://reyestr.court.gov.ua/Review/43961600>

73 E.g., the Resolution of the Kyiv City District Administrative Court dated 16 April 2018 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/73482070>; Resolution of the Kyiv City District Administrative Court dated 17 July 2018 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/75428809>

74 E.g., the Resolution of the Kyiv City District Administrative Court dated 28 April 2021 in the case No. 826/20537/14. URL: <https://reyestr.court.gov.ua/Review/96650697>; Resolution of the Sixth Administrative Court of Appeal dated 13 September 2021 in the case No. 826/20537/14. URL: <https://reyestr.court.gov.ua/Review/99625839>

75 E.g., the Resolution of the Donetsk Administrative Court of Appeal dated 11 July 2017 in the case No. 812/403/17. URL: <https://opendatabot.ua/court/67682848-4fa2bc976f66b5ca7d682e76d5e06b72>

3. The opinions of the controlling bodies contained no proper substantiation for the decision made following the review. At the same time, Convention No. 111 concerning Discrimination in Respect of Employment and Occupation allows the use of measures directed against a person, only if there are reasoned suspicions about her/him, or it is proven that s/he is engaged in activities that undermine the security of the state.

4. Sometimes there were cases where certificates and opinions were not drawn up at all following the reviews, with that being contrary to the requirements of the Law *On Government Cleansing*<sup>76</sup>. That is, the review was not properly documented, therefore it was impossible to prove its actual conduct.

So, the documents accepted as a result of the lustration review, which formed the basis of the decision to dismiss officials from their positions, did not meet the principles of legal certainty and legality, as well as a proper legal procedure.

### *Violation of the order and terms of the review*

This block of violations is comprehensive and combines cases when the controlling bodies acted contrary to the requirements of the effective legislation. The analysis of judicial practice gives grounds to conclude that typical violations of the lustration procedure, which can be attributed to this category, are the following:

- ▶ Essentially, reviews on officials were not carried out at all within the time limit established by the law. So, as a consequence, no opinions were drawn up regarding these officials' ineligibility for the position. Therefore, there was no legal basis for applying the ban<sup>77</sup>.
- ▶ The orders for the dismissal of the lustrated officials may not have been communicated to them, which violates the procedure established by law.
- ▶ The persons who were reviewed were not informed about the detection of inaccuracies and inconsistencies<sup>78</sup>, etc.

---

76 E.g., the Resolution of the Kyiv City District Administrative Court dated 16 April 2018 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/73482070>; Resolution of the Kyiv Administrative Court of Appeal dated 17 July 2018 in the case No. 826/1137/16. URL: <https://reyestr.court.gov.ua/Review/75428809>

77 E.g., the Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 30 July 2020 in the case No. 805/4893/15-a. URL: <https://reyestr.court.gov.ua/Review/90674423>

78 E.g., the Resolution of the Donetsk Administrative Court of Appeal dated 11 July 2017 in the case No. 812/403/17. URL: <https://opendatabot.ua/court/67682848-4fa2bc976f66b5ca7d682e76d5e06b72>

Ignoring all these problematic points at the stage of drafting the Law *On Government Cleansing* and non-observance of the lustration procedure on the part of the controlling bodies at the local level eventually led to the fact that many officials managed to get reinstated in their positions. Such consequences are explained by a significant number of gaps that were not timely eliminated by the relevant authorities. So, judicial challenging once again focused on the imperfect lawmaking and enforcement processes that accompany reforms in Ukraine.

## 5. Response to the results of the challenging

Naturally, after the lustrated officials challenged their illegal dismissal in court and were reinstated, *representatives of the state responded by filing appeals and cassation complaints en masse*. However, their efforts were still in vain. Although before the decision of the ECHR in *Polyakh and others v. Ukraine* the state sometimes managed to sway the court to its side, after 17 October 2019, the courts were unanimous in refusing to satisfy appellate and cassation complaints about the recognition of the lustration as legal.

Even the decision of the European Court of Human Rights in *Polyakh and others v. Ukraine* of 17 October 2019 did not stop the Ukrainian Government's efforts to prove its right in the matter of the lawful nature of the lustration procedure. The Government tried to substantiate the need for the adoption of the lustration law, referring to various arguments, such as the appointment of corrupt officials to the civil service positions during Viktor Yanukovich's era, the expansion of the ex-president's powers based on the controversial decision of the Constitutional Court of Ukraine in 2010<sup>79</sup> and the politically motivated persecution of Euromaidan activists. However, these matters were of no relevance in the decision on applying the Law *On Government Cleansing* to the applicants. All in all, no link was found between them and those adverse events. Although it is worth emphasising that the ECHR did not recognise lustration in general as unlawful, but only stated its excessive volume. Still, on behalf of Ukraine, an appeal was filed with the ECHR against the decision in *Polyakh and others v. Ukraine*. On 24 February 2020, the Grand Chamber of the European Court of Human Rights heard this appeal but confirmed its position in the case. So, Ukraine's appeal was rejected. This Judgement of the Grand Chamber of the ECHR is final and not subject to appeal. That is, the state of Ukraine has exhausted all national means of protection and the possibility of appealing to

---

79 Judgement of the Constitutional Court of Ukraine in the case on compliance with the procedure for amending the Constitution of Ukraine dated 30 September 2010 No. 20-rp/2010. URL: <https://zakon.rada.gov.ua/laws/show/v020p710-10#Text>

the European Court. Ultimately, Ukraine had to recognise the illegality of the conducted lustration, pay financial compensation to the lustrated former officials and reinstate them in their positions. In November 2020, the Government of Ukraine reported to the Department for the Execution of Judgements of the European Court of Human Rights on the payment of compensation to the applicants in *Polyakh and others v. Ukraine*, having sent the corresponding 'Action Plan'. So, 6,500 euros (192,140.65 UAH) were transferred to Mr Polyakh, 5,300 euros (156,668.53 UAH) to Mr Basalayev, 5,300 euros (156,668.53 UAH) to Mr Yas, 5,300 euros (156,668.53 UAH) to Mr Yakubovskyy and 5,300 euros (156,668.53 UAH) Mr Bondarenko<sup>80</sup>.

In addition, *in pursuance of the Judgement of the ECHR, as well as the recommendations of the Venice Commission, the Ministry of Justice of Ukraine started the development of amendments to the Law On Government Cleansing*. For instance, on 13 April 2020, a draft law on amendments to the Law of Ukraine *On Government Cleansing* (as regards the prevention of external influence on the interests of the state) was registered in the Ukrainian Parliament<sup>81</sup>. This bill, *firstly*, proposes to narrow the circle of persons to whom lustration applies. In particular, it is proposed to keep the 'automatic' cleaning, but to extend its effect exclusively to top officials (for example, members of the Ukrainian Government during Viktor Yanukovich's tenure).

*Secondly*, it is stipulated that other former representatives of the authorities will have the right to cancel the restrictions imposed on them. For this purpose, a special Board is planned to be established to consider the applications of the lustrated officials and to make a decision on whether the government cleansing procedure was lawfully applied to them. According to the draft law, the Board will include representatives appointed by the Government, as well as civic activists elected through ranked online voting, in equal numbers.

However, the analysis of this bill gives grounds to conclude that the position of the courts and the recommendations of the international institutions, which point to systemic errors in the lustration procedure, were not taken onboard in its development. Particularly, as a contrast to the ECHR's decision and those of the national courts referring to the positions of the former, the draft law is aimed at expanding the range of persons to whom lustration prohibitions can be applied.

---

80 Action Plan (19 November 2020) – Communication from Ukraine concerning the case of Polyakh and Others v. Ukraine (Application No. 58812/15). URL: [https://hudoc.exec.coe.int/ENG/?i=DH-DD\(2020\)1074E](https://hudoc.exec.coe.int/ENG/?i=DH-DD(2020)1074E).

81 *On Government Cleansing* (As Regards the Prevention of External Influence on the Interests of the State) dated 13 April 2020 No. 3326. URL: [http://wl.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68576](http://wl.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68576).

In addition, a draft law, which generally proposes to recognise the Law of Ukraine *On Government Cleansing* as having lost its validity<sup>82</sup>, was registered on 18 October 2019. Yet this stance of the lawmakers also looks questionable, given that court practice does not establish the completely unlawful nature of lustration as such. On the contrary, government cleansing as a process of reforming the staffing of government bodies corresponds to world trends, only its scope in the Ukrainian version is recognised as excessive. Therefore, the Law *On Government Cleansing* needs to be amended rather than completely abolished.

Finally, on 18 May 2022, the draft *Law on Amending the Law of Ukraine On Government Cleansing As Regards the Expansion of the List of Criteria for Government Cleansing (Lustration)* was registered in the Parliament<sup>83</sup>. The authors of this bill insist on extending the effect of the lustration law to the MPs of the sixth convocation who voted for the ratification of the so-called 'Kharkiv agreements' of 2010, which authorised the presence of the Russian fleet in the Crimea and adopted a package of 'dictatorship laws' in 2014. Again, this draft law does not seek to completely solve the problems of lustration in Ukraine, which were revealed during the judicial challenging.

*Civil society mostly takes the position that the Law On Government Cleansing should remain in force*<sup>84</sup>. This approach is quite understandable, because the lustration was a long-awaited process, which was finally catalysed by the Revolution of Dignity. This procedure was designed to establish social justice and hold the guilty accountable. In particular, representatives of the Civic Council on Lustration under the Ministry of Justice believe that the introduction of changes carries the potential risk of partially or completely distorting the essence of the Law. Further, defending their position, they emphasise that amending the Law *On Government Cleansing* is a right, not an obligation, because the decision concerns the circumstances of the dismissal of specific persons who filed lawsuits with the European Court of Human Rights<sup>85</sup>.

---

82 *Draft Law On Acknowledging the Law of Ukraine On Government Cleansing as Having Lost Its Validity* dated 18 October 2019 No. 2287. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67130](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67130)

83 *Draft Law on Making Amendments to the Law of Ukraine On Government Cleansing As Regards Expanding the List of Criteria for Government Cleansing (Lustration)* dated 18 May 2022 No. 7391. URL: [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=74254](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=74254)

84 New Law on Lustration: Legal Stretch or Requirements of the ECHR.

URL: <https://suspilne.media/43126-novij-zakon-pro-lustraciju-uridicna-roztazka-ci-vimogi-espl/>

85 Final Cleansing: Why the Authorities Are Changing the Lustration Law. URL: <https://www.rbc.ua/ukr/news/finalnaya-ochistka-budet-lyustratsiye-ukraine-1580845136.html>

However, in this context, important are the provisions of the Law *On Enforcement of Judgements and Application of the Practice of the European Court of Human Rights*<sup>86</sup>, which establish the need to take measures aimed at eliminating systemic shortcomings identified by the ECHR, as well as eliminating the grounds for repeated appeals to the court regarding the same matters. Such measures, among others, are as follows:

- ▶ *making amendments to the current legislation* and changes to the practice of its application;
- ▶ *making changes to administrative practice;*
- ▶ *provision of legal expert reviews of draft laws.*

Therefore, the identified problems and recommendations for solving them should still be taken onboard by the Ukrainian competent authorities in order to prevent the occurrence of similar situations in the future.

## 6. Conclusions

Although it was a significant and long-awaited event, the lustration of officials who held positions during Viktor Yanukovich's tenure still did not live up to the public's hopes. The government cleansing had several shortcomings that ultimately negated its gains. The courts revealed a significant number of mistakes made at various stages of preparation of the public authorities staffing reform through lustration, which led to the significant violation of human rights.

In particular, at the stage of designing the lustration, MPs did not take into account that the developed procedure contradicts the established international standards of conducting lustration, contains unconstitutional provisions and has shortcomings of the rulemaking technique. That said, subsequent to trials, courts established that the procedural mechanism for lustration is not consistent with the principles of government cleansing set out by the Lustration Law, the norms of the Law violate an individual approach to the assessment of officials' performance, the constitutional provision on the presumption of innocence is applied, the violation of the right to access the civil service is allowed and also there is disproportionate interference with the right to private life of the lustrated persons.

Investigating the circumstances of the cases, the courts found that at the stage of the implementation of the lustration procedure, the controlling bodies allowed

---

86 *On Enforcement of Judgements and Application of the Practice of the European Court of Human Rights*: Law of Ukraine dated 23 February 2006 No. 3477-IV, Article 13.  
URL: <https://zakon.rada.gov.ua/laws/show/3477-15>

violations of the procedure and terms of the review, applied lustration to persons who are not subject to the government cleansing procedure and made decisions on dismissal without proper substantiation.

Thus, the Ukrainian version of government cleansing was based on a significant violation of international and national standards for the protection of human rights and freedoms. However, such an approach is unacceptable in a democratic state that believes in the principle of the rule of law. Unconditional provision of human rights is the basis of the human-centred approach as the uniform modern Europewide trend of legal regulation. In this regard, it is worth paying tribute to those Ukrainian judges who stood up for these values, although not without hesitation. Judicial influence in this case made it possible to rectify significant shortcomings in public policy in the field of lustration reviews. So, thanks to the position of the courts, it was possible to return the vector of government cleansing towards ensuring and protecting human rights and implementing the principle of the rule of law.

Hence, as evidenced by the analysis of court practice, the lustration procedure launched in Ukraine did not withstand judicial challenging. The Ukrainian courts and the ECHR smashed the effects of this procedure into smithereens, having proven its ineffectiveness, as due to the allowed shortcomings a significant number of the lustrated officials managed to get reinstated in their positions. Therefore, this example of the poorly designed and implemented lustration procedure should be taken onboard by the authorities when developing reforms in the future.

## CASE STUDY 2. Challenging of the attestation results of the personnel at the National Police of Ukraine in 2015–2016

---

### 1. Design of the reform

#### 1.1 Essence and goal of the reform

The re-attestation of the personnel of the National Police of Ukraine became a landmark event in a whole series of measures to reform the system of law enforcement agencies. It is the re-attestation as a component of the reform that is most remembered by the public in 2015–2016.

The political course towards European integration, chosen by the state, required the transformation of the framework of law enforcement agencies in Ukraine. Attestation of police officers at the stage of reform designing was considered as an important tool to improve the quality and efficiency of the police's performance of the tasks entrusted in it. Primarily, there was a need to change the then existing *militsiya* [Soviet-legacy police] bodies into a police framework. This required recruiting competent employees who would meet the new standards of law enforcement agencies. Thus, reform designers needed to find criteria that would allow selecting the best police officers who have integrity and want to continue their service in the newly established body.

**The attestation procedure was supposed to be this very tool. It was also envisioned that the police reform, among other things, would play an important role in increasing the authority and public trust in law enforcement agencies, which would positively impact the level of the population's safety.**

**So, the purpose of the introduction of attestation, as defined by the Law On the National Police<sup>87</sup> (hereinafter — the Law), was to review the business, professional, personal qualities, educational and qualification levels, physical training of police officers on the basis of deep and comprehensive scrutiny, determination of suitability for positions, as well as prospects of their official career.**

The implementation of this mechanism, according to the reform developers, was supposed to ensure compliance of the Ukrainian police with the best traditions of police activity in foreign countries<sup>88</sup>.

## 1.2 Preparatory work

The preparatory stage of the comprehensive reform of the National Police of Ukraine began in 2014. It was then that the foundations of many reforms in the law enforcement bloc of government were laid down. In order to achieve the highest quality indicators and results, representatives of Ukrainian authorities decided to bring into life the successful experience of foreign partners. To that end, changes were made in staffing: Eka Zguladze was appointed as a new first deputy minister of internal affairs. In 2005-2012, she held the office of deputy minister of internal affairs of Georgia and took an active part in the radical reform of Georgian internal affairs bodies.

During 2014-2015, active work was carried out to develop a law that would regulate the operation of the newly created central body of executive power – the National Police of Ukraine. Ultimately, three draft laws were submitted to the Ukrainian Parliament. In early 2015, a bill authored by Yu. Lutsenko, MP<sup>89</sup>, was registered in the Parliament, but it was withdrawn later on. Then the Government

---

87 *On the National Police*: Law of Ukraine dated 02 July 2015 No. 580-VIII.

URL: <https://zakon.rada.gov.ua/laws/show/580-19#Text>

88 Assessment of the effectiveness of police work in Ukraine: from 'sticks' to a new system (using the example of pre-trial investigative bodies). Scientific and practical edition / Krapyvin Ye. O. Kyiv: Sofia-A, 2016. P. 78-94.

89 Draft Law *On the National Police* dated 12 January 2015 No. 1692. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=53287](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=53287)

(draft law No. 2822 *On the National Police*<sup>90</sup>) and the President (alternative draft law No. 2822-1 *On Police and Policing*<sup>91</sup>) developed their editions.

Following consideration of these bills in the Parliament, MPs endorsed in the first reading the Government's draft law No. 2822 *On the National Police*, casting 284 votes for it. Accordingly, the Law was adopted on 2 July 2015, and it entered into force on 7 November the same year.

*The police reform proposed in the Law looked promising and budding*<sup>92</sup>. In particular, even before the entry into force of the Law *On the National Police*, on 4 July 2015, in Sofia Square in Kyiv, the employees of the new police took an oath of allegiance to the country. Their example was followed in other cities of the state, i.e., in Lviv, Odesa, Kharkiv, Uzhhorod, Mykolaiv, etc. At the initial stage of the reform, the whole country had high hopes for the new Law that sought to implement it.

### 1.3 Legal regulation

The fundamentals of re-attestation of the personnel at the National Police of Ukraine are determined in the relevant Law and by-laws adopted in its pursuance. Accordingly, the system of legal regulation of the police officers attestation procedure during the 2015-2016 reform period consists of:

- ▶ Law of Ukraine *On the National Police*. Of pivotal importance here are the provisions of Article 57, which defines the purpose of attestation, the conditions and procedure for its implementation, as well as the powers of competent authorities;
- ▶ *Instructions on the Procedure for the Attestation of Police Officers*, approved by Order of the Ministry of Internal Affairs of Ukraine dated 17 November 2015 No. 1465<sup>93</sup> (hereinafter – the Instructions). This regulation capitalises on the provisions of the Law and defines the police officers attestation procedure in greater detail. Further, the Instructions

---

90 Draft Law *On the National Police* dated 13 May 2015 No. 2822.

URL: [http://w1.cl.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55082](http://w1.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55082)

91 Draft Law *On Police and Policing* dated 20 May 2015 No. 2822-1.

URL: [http://w1.cl.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55253](http://w1.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55253)

92 The Failed Police Reform. Facts That Should Not Be Forgotten. URL: <https://yur-gazeta.com/dumka-eksperta/provalena-reforma-policiyi-fakti-yaki-varto-ne-zabuvati.html>

93 *On Approval of the Instructions on the Procedure for the Attestation of Police Officers*: Order of the Ministry of Internal Affairs of Ukraine dated 17 November 2015 No. 1465.

URL: <https://zakon.rada.gov.ua/laws/show/z1445-15#Text>

contains standard forms of attestation documents, which are passed following attestation assessment;

- ▶ Order of the National Police of Ukraine *On Organisation of Activities to Test the Personnel of the National Police of Ukraine* dated 23 November 2015 No. 102. The provisions of the order reveal the essence and procedure for determining the theoretical and practical readiness of police officers to perform official duties;
- ▶ Order of the National Police of Ukraine *On Conducting Attestation of the Police Officers of the National Police of Ukraine* dated 26 November 2015 No. 116. In order to fulfil the requirements of the relevant Law and the Instructions, the order obliged the authorised bodies to carry out organisational measures for the preparation and conduct of attestation;
- ▶ Law of Ukraine *On Professional Development of Workers*<sup>94</sup>. This Law does not belong to the list of mandatory acts that determine the conditions for attestation of police officers. Yet the Higher Administrative Court of Ukraine (hereinafter – *HACU*) expressed the position that it can be considered as a source of legal regulation<sup>95</sup>. For instance, Article 12 of this Law defines the general (basic) conditions for the regulation of relations on attestation of workers, which, among others, also apply to the relations on the attestation of police officers.

At the same time, the re-attestation of the National Police bodies, determined by the relevant Law and the specified by-laws, did have flaws at the stage of their design. This refers to a number of gaps that were embedded in these documents by their developers. On the whole, these inaccuracies relate to the fact that individual stages of the attestation procedure were spelled out superficially and not clearly enough (this especially applies to the interview stage)<sup>96</sup>. Furthermore, there are inconsistent provisions in the Law *On the National Police* itself.

---

94 On Professional Development of Workers: Law of Ukraine dated 12 January 2012 No. 4312-VI. URL: <https://zakon.rada.gov.ua/laws/show/4312-17#Text>

95 Resolution of the Plenum On the Judicial Practice of Appealing the Decisions of the Attestation Boards of Bodies (Facilities, Institutions) of the National Police of Ukraine on the Dismissal of Police Officers due to their Failure to Pass the Attestation dated 29 September 2016 No. 11. URL: <https://zakon.rada.gov.ua/laws/show/v0011760-16#Text>

96 Attestation of Police Officers: An Unfortunate Victory of the Militsiya over the Police. URL: [https://lb.ua/blog/boris\\_malyshev/348471\\_atestuvannya\\_politseyskih\\_prikra.html](https://lb.ua/blog/boris_malyshev/348471_atestuvannya_politseyskih_prikra.html)

*Thus, the main shortcomings that have turned the legal framework of the police officers attestation into a 'ticking time bomb' can be narrowed down to the following:*

- ▶ Inconsistency of the provisions of Article 57 of the Law of Ukraine *On the National Police* regarding the conditions for attestation with Clause 9 of the Final and Transitional Provisions of this Law. Contrary to Article 57, the Final and Transitional Provisions essentially established an additional ground for attestation.
- ▶ Neither the Law *On the National Police* nor the *Instructions on the Procedure for the Attestation of Police Officers* contained clear requirements for drawing up attestation lists.
- ▶ Provisions of normative legal acts on the attestation did not provide for the need to properly record the attestation procedure.
- ▶ From the norms of the Instructions, it is impossible to clearly establish the grounds and conditions for the attestation boards' adoption of decisions on failed police attestation.

Accordingly, these shortcomings triggered a row of mistakes in implementation of the reform locally and became the basis for challenging the legality of these acts and the attestation procedure as a whole in court. The problems of legal regulation that provoked the judicial challenging of the reform are considered below.

## 2. Implementation of the reform

Representatives of the Ukrainian authorities planned to re-attest all employees of police units during the effectiveness period of the Concept: 100 Days of Quality of the National Police of Ukraine. This means that the re-attestation should have been completed by 7 February 2016, that is, within three months from the day the National Police started operating<sup>97</sup>. These 100 days were supposed to be a transitional period for the adaptation of all employees of the National Police units to the new standards of operation. Yet in reality this process got much protracted, as the attestation of police officers essentially ended only in October 2016<sup>98</sup>.

The organisation of the police officers re-attestation procedure consisted of several successive stages.

### *I. Establishing a Recruiting Centre for the National Policy of Ukraine*

The recruiting centre is an independent entity that is not part of the National Police, and it selects applicants to serve in the newly established police bodies. The Centre was professionally staffed took place with facilitation by ICITAP, an international technical assistance project. The main task and purpose of the Recruiting Centre was to provide technical assistance in the selection and actual attestation of employees of the National Police of Ukraine.

### *II. Shaping attestation boards*

The Instructions on the Procedure for the Attestation of Police Officers stipulated that the attestation boards may include both police officers and members of the public. In particular, the members of such boards could be employees of HR units, the Internal Security Department of the National Police of Ukraine, the practical psychology unit and other managers of the National Police of Ukraine or a police body, as well as Ukrainian MPs (subject to their consent), staff of the Ministry of Internal Affairs, civic and human rights organisations, representatives of international technical assistance projects, the public and mass media. Candidates were selected on the basis of assessment and analysis of their activities. Special attention was paid to the reputation, expertise and its scope,

---

97 Concept: 100 Days of Quality of the National Police of Ukraine. Official website of the National Police of Ukraine. URL: <https://www.npu.gov.ua/uk/publish/article/1714126>

98 The re-attestation of police officers is completed, 26% of the leadership is dismissed. URL: <https://interfax.com.ua/news/general/377831.html>

authority in the civil society community, motivation to participate in the work of boards, temperance and politically unbiased nature, etc.<sup>99</sup>. *Theoretically, the possibility of participation of the public in providing a new staff for the National Police is a rather positive trend*, with its aim being to ensure the legitimacy of this process and increase the transparency of the activity of the attestation boards. At the same time, *in practice, there were cases of abuse of those powers due to the influence of biased persons or political forces*. As a rule, the proper work of the members of attestation boards was questioned in regional centres, where ‘puppet activists’ controlled by vested interests could become their members. These trends started gaining in momentum after representatives of the Ministry of Internal Affairs, rather than the National Police Recruiting Centre, began to organise the recruitment of public activists to the attestation boards<sup>100</sup>. Consequently, as a sign of protest, representatives of civil society organisations then announced their withdrawal from the police attestation procedure<sup>101</sup>.

### *III. Testing*

At this stage, the police officers took tests using computer equipment. The involvement of information technologies was supposed to ensure proper control against external interference with, and, accordingly, influence on, test results.

The police officers were tested in two main substages:

*1) Test of professional skills;*

*2) Test of general abilities and skills (GST test<sup>102</sup>).*

The nuance of the professional skills test was that its organisation depended on the specifics of the unit in which the police officer served. The duration of

---

99 Krapyvin Ye. Police Attestation: Results and Conclusions. URL: <https://antydot.info/analytics/atestuvannya-politsiji-rezultaty-ta-vysnovky/>

100 Civic Activists Announced Their Exit from the Police Re-Attestation Process Due To the Actions of the Ministry of Internal Affairs. URL: [https://galinfo.com.ua/news/gromadski\\_akyvisty\\_zayavyly\\_pro\\_vyhid\\_z\\_protsevu\\_pereatestatsii\\_v\\_politsii\\_cherez\\_dii\\_kerivnytstva\\_mvz\\_230569.html](https://galinfo.com.ua/news/gromadski_akyvisty_zayavyly_pro_vyhid_z_protsevu_pereatestatsii_v_politsii_cherez_dii_kerivnytstva_mvz_230569.html).

101 Civic Activists on the Police Attestation: We Don't Want to Be a Shopping Window for 'Showing Off'. URL: <https://www.ukrinform.ua/rubric-society/2029650-gromadski-aktivisti-pro-atestaciju-policii-ne-hocemo-buti-sirmou-pokazuhi.html>; Civic Activists Commented on their Exit from the Ministry of Internal Affairs' Attestation Board. URL: <https://www.slovoidilo.ua/2016/06/06/novyna/suspilstvo/hromadski-akyvisty-prokomentuvaly-svij-vyxid-z-atestacijnoyi-komisiyi-mvz>

102 General skills test.

the professional test was up to one hour. During this period, the police officer had to answer questions and solve situational tasks. The electronic system generated a unique set of test tasks for each participant. The police officers could get acquainted with the results of the test immediately after passing it.

The GST test, which followed the professional skills one, involved testing the police officers' ability to think logically, their information processing skills, verbal and mathematical abilities and the ability to analyse data and draw conclusions. Similarly to the previous stage, being attested, each police officer received a unique list of questions, the answers to which s/he had to provide within one hour. The results of the test became known immediately after completion.

For each of these tests, a police officer could get a maximum of 60 points if passed. At the same time, the passing score for each of the tests was 25 (this was the minimum that a police officer had to score in order to be admitted to the interview stage).

Essentially, with this set-up of testing, police officers who did not score the minimum number of points were left behind the re-attestation procedure. This point of attestation was criticised, including as part of the judicial challenging of the reform results, as the police officers could fail this stage of testing even if there has been a technical failure of the equipment on which it was carried out or the police officer felt unwell during the test. This, among other things, was repeatedly highlighted by the participants of the attestation procedure<sup>103</sup> and the expert community<sup>104</sup>.

It is indicative that the right to appeal, according to the Instructions on the Procedure for the Attestation of Police Officers, was guaranteed only to those police officers who managed to score a total of 60 or more points for both tests<sup>105</sup>. Accordingly, the attestation procedure participants who scored fewer points

---

103 E.g., the Resolution of the Vinnytsia Administrative Court of Appeal dated 30 November 2016 in the case No. 822/440/16. URL: <https://opendatabot.ua/court/63188948-1e711a9800f1235bb2036f58a1364dd7>; Resolution of the Kyiv City District Administrative Court dated 06 October 2016 in the case No. 826/3141/16. URL: <https://opendatabot.ua/court/62117160-88830e3757ee512a9d6950efd6e770f2>; Resolution of the Ivano-Frankivsk District Administrative Court dated 07 November 2017 in the case No. 809/1790/16. URL: <https://opendatabot.ua/court/70184914-0de3a01adf2ca1c96d638c4ed89bdb9>; Resolution of the Ternopil Administrative Court of Appeal dated 30 November 2016 in the case No. 819/1261/16. URL: <https://opendatabot.ua/court/63152591-1665834e3d4112cfe87f97bd824773ba>.

104 Krupyin Ye. Police Attestation: Results and Conclusions. URL: <https://antydot.info/analytics/atestuvannya-politsiji-rezultaty-ta-vysnovky/>.

105 Paragraph 5 of Section VI of the Instructions on the Procedure for the Attestation of Police Officers.

were deprived of this opportunity. This issue was especially pressing in the event that police officers did not obtain the minimum passing score due to objective reasons (for example, in the case when technical failures did occur, or the police officers failed the test due to unsatisfactory health).

In addition, as part of the attestation, police officers underwent additional *testing to assess reliability and professional ethics, i.e., the MIDOT test*. It was conducted in order to determine the ‘honesty and trustworthiness’ of the candidate, as well as to establish her/his propensity to violate the law, including obtaining an improper benefit<sup>106</sup>. The peculiarity of this testing was that it was conducted voluntarily. The assessment of the relevant indicators was carried out on the basis of the judgements of the police officers, which they expressed as answers to the questions. The marker of successful completion of this substage was receiving a result marked ‘Recommended’. The results of the test were later submitted to the attestation boards, which had to take them into account during the interview.

#### *IV. Interview*

This stage is considered to be the central link in the process of the attestation of police officers. The purpose of the interview was to find out the police officers’ motivation for work, their honesty, degree of trust, readiness to accept changes, etc. Conducting the interview was entrusted to the relevant attestation boards.

In order to assess each candidate, the board considered the following documents:

- ▶ a track record paper;
- ▶ an extract from the personal file;
- ▶ a copy of the income statement declaration;
- ▶ a character reference from the last place of service;
- ▶ test results (test of professional skills and test of general abilities completed at the previous stage);
- ▶ MIDOT psychological test results;

---

106 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 25 April 2019 in the case No. 815/1386/16. URL: <https://opendatabot.ua/court/81431048-b5c577981324115e5890686a966a2c09>.

- ▶ details on a police officer in the electronic database on the website of the Ministry of Internal Affairs, which could be submitted by any citizen of Ukraine<sup>107</sup>.

The attestation board asked each candidate questions based on which her/his suitability for police service was assessed. In general, the assessment was carried out on the following three substantive blocks – honesty, motivation and gearing towards changes.

All in all, based on the findings of the analysis of all available data regarding the police officer in question, the attestation board made one of the following decisions (as an opinion):

- 1) conforms to the position held;
- 2) conforms to the position held, deserves appointment to a higher position;
- 3) does not conform to the position held, shall be subject to transfer to a lower position due to service incompetence;
- 4) does not conform to the position held, shall be subject to dismissal from the police service due to service incompetence.

The opinion on attestation results was communicated to the police within five days or publicised on the official website of the Ministry of Internal Affairs.

#### V. Lie detector

This stage of attestation was not mandatory, but the attestation board had the right to activate it when it was in doubt and could not make a final decision. Yet the lie detector testing could be conducted only with the consent of the police officer. Practice shows that most candidates, if necessary, agreed to go ahead with this additional attestation stage.

At the same time, individual cases from this stage of attestation prove that the police officers did not fully realise the nature of the lie detector test. This is highlighted by the fact that when evaluating the attestation procedure, the police officers sometimes used the wording 'I was *referred* to undergo a lie detector'<sup>108</sup>.

---

107 Head of the National Police Khatia Dekanoidze Told How to Turn Militisya People into Police Officers. URL: <https://nv.ua/ukr/publications/glava-natspoltisii-hatija-dekanoidze-rozpovila-jak-peretvoriti-mentiv-v-politsejskih-86063.html>.

108 From 'Old' Militisya People to 'New' Police Officers. Is It Easy for Former Militisya People to Get Re-Attested? URL: <http://umdp.info/news/zi-staryh-militsioneriv-u-novi-polismeny-chy-lehko-projty-pereatestatsiyu-kolyshnim-militsioneram-2/>

However, according to the Instructions on the Procedure for the Attestation of Police Officers, this check is voluntary, so it could be carried out only with the consent of the police officer, and not as an imperative requirement. Such cases evidence the inadequate familiarity of individual police officers being attested with the provisions of relevant normative legal acts, which indicates the insufficiency of knowledge, the lack of professionalism or fitness for service in some representatives of the 'old' militsiya.

## VI. Appeal

The appeal against the board's opinions is not a mandatory element of the attestation procedure either. However, the Instructions on the Procedure for the Attestation of Police Officers allows a candidate to file a complaint with the appellate attestation board where s/he disagrees with the board's opinion. Of its part, the appellate attestation board had to get acquainted with the entire submitted file, consider it comprehensively and, accordingly, make one of the following two decisions – either to reject the police officer's complaint or to repeal the previous opinion of the attestation board and adopt a new one.

As a whole, according to the National Police of Ukraine, **82,578** police officers took part in the attestation procedure<sup>109</sup>. However, not all police officers were able to pass it successfully.

### 3. Judicial challenging of the re-attestation of police officers

Official statistics shared on the website of the National Police of Ukraine suggest that **5.6%** of former police officers were dismissed as a result of the attestation<sup>110</sup>. After the announcement of the attestation results, a significant number of police officers did not agree with them and filed lawsuits. In particular, according to the National Police of Ukraine, following the attestation, the opinion 'Does not conform to the position held, shall be subject to transfer to a lower position due to service inadequacy' was drawn up regarding **4,898** police officers, 'Does not conform to the position held, shall be subject to dismissal from police service due to service incompetence' – regarding **5,388** police officers. *As per the opinions of the attestation boards, 4,661 employees were dismissed from*

---

109 National Police of Ukraine Performance Report for 2016, p. 1. URL: [https://media-www.npu.gov.ua/npu-pre-prod/sites/1/Docs/Dialnist/Richni\\_zvity/zvit\\_2016.pdf](https://media-www.npu.gov.ua/npu-pre-prod/sites/1/Docs/Dialnist/Richni_zvity/zvit_2016.pdf)

110 National Police of Ukraine Performance Report for 2016, p. 1. URL: [https://media-www.npu.gov.ua/npu-pre-prod/sites/1/Docs/Dialnist/Richni\\_zvity/zvit\\_2016.pdf](https://media-www.npu.gov.ua/npu-pre-prod/sites/1/Docs/Dialnist/Richni_zvity/zvit_2016.pdf)

*the police due to service incompetence*<sup>111</sup>. In total, almost **10,000** police officers remained dissatisfied. About **3,300** of them decided to appeal their dismissal<sup>112</sup>.

### 3.1 Reasons for challenging

It is indicative that the attestation procedure was subject to criticism from the very beginning, and this pointed at its bleak prospects. At the initial stages of the attestation, the expert community, scientists<sup>113</sup> and members of the attestation boards<sup>114</sup> drew attention to the general inefficiency of the attestation procedure.

First of all, a significant number of critical remarks addressed the text of the Instructions on the Procedure for the Attestation of Police Officers, drawn up by the team of the Ministry of Internal Affairs. This regulation was developed for the attestation to be carried out in accordance with its requirements could be easily challenged in court. Essentially, any dismissed police officer could be reinstated through courts without too much of an effort. Summarising the main reasons for challenging the reform, we can conclude that its failure was caused by the following factors:

- ▶ *imperfect regulation of the grounds for the attestation;*
- ▶ *unfounded nature of boards' opinions;*
- ▶ *lack of clearly defined grounds for dismissal.*

So, from the very beginning of the attestation procedure, the experts were cognizant of the fatality of the mistakes made by the reform designers<sup>115</sup>. This was also emphasised by attestation boards members who were representatives of civil society and observed the process from the inside<sup>116</sup>. The logical conclusion was that unless the detected mistakes were corrected, the result would be even more negative consequences in the future. First of all, this

---

111 Ibidem.

112 3,300 police officers appealed the failed attestation and most of them were reinstated in their positions – adviser to the head of the Ministry of Internal Affairs. URL: <https://hromadske.ua/posts/zvilnennya-oskarzhili-3300-policejskih-i-bilshist-z-nih-ponovili-na-posadah-radnik-glavi-mvs?tag=reforma-politsii>.

113 7.7% of Dismissed Police Officers – How To Understand the Results of the Attestation? URL: <http://umdpl.info/police-experts.info/2016/10/12/7-7-zvilnennyh-politsejskyh-yak-rozumity-rezultaty-atestatsiji/>.

114 Reform by Avakov. Cops Are New – Militsiya People Are Old. URL: <https://www.pravda.com.ua/articles/2016/12/14/7129640/>.

115 Attestation of Police Officers: An Unfortunate Victory of the Militsiya over the Police. URL: [https://lb.ua/blog/boris\\_malyshhev/348471\\_atestuvannya\\_politsejskih\\_prikra.html](https://lb.ua/blog/boris_malyshhev/348471_atestuvannya_politsejskih_prikra.html)

116 Civic Activists Announced Their Exit from the Police Re-Attestation Process Due To the Actions of the Ministry of Internal Affairs. URL: [https://galinfo.com.ua/news/gromadski\\_aktyvisty\\_zayavyly\\_pro\\_vyhid\\_z\\_protsestu\\_pereatestatsii\\_v\\_politsii\\_cherez\\_dii\\_kerivnytstva\\_mvs\\_230569.html](https://galinfo.com.ua/news/gromadski_aktyvisty_zayavyly_pro_vyhid_z_protsestu_pereatestatsii_v_politsii_cherez_dii_kerivnytstva_mvs_230569.html)

concerns the poor outcome of the re-attestation and, accordingly, the unsatisfactory outcome of the police reform as a whole, as well as, just as it was predicted, that resulted in a significant number of lawsuits in administrative courts that satisfied the claims of police officers who failed the attestation.

However, despite those warnings, the police authorities did not respond properly to the stated criticism and did not act proactively. So, miscalculations and gross errors were not corrected until the end of the entire attestation procedure. At the stage of reform implementation, no significant changes were made to the attestation procedure. Accordingly, the consequences represented by lawsuits were not long in coming.

### 3.2 Claims

Considering the decisions on failed attestation as unlawful, police officers demanded them to be repealed. In general, *the analysis of court practice evidences that a typical list of claims contains four points:*

- ▶ recognise as unlawful and repeal the attestation board's decision on the ex-police officer's lacking conformity to the position s/he holds;
- ▶ recognise as illegal and repeal the dismissal order triggered by service incompetence;
- ▶ reinstate the police officer in his/her position;
- ▶ collect the average pay for the period of forced absenteeism.

Naturally, sometimes (seldom) police officers shortened this list of requirements. However, wording the claims in this way significantly increased the chances of the police officers to obtain the most positive outcome in the case. The only nuance was that the courts did not always agree with the plaintiff's proposed amount of the average pay for the period of forced absenteeism to be compensated. So, those amounts were subject to adjustment by the courts.

## 4. Results of the challenging

### 4.1. General characteristics of court decisions following the challenging

When considering lawsuits, the courts mostly concluded that the police re-attestation was unlawful. Sometimes there were singular cases when first or appellate instance courts could make decisions against the police officers. But in the future, these decisions were still overturned by the courts of cassation.

**So, in the matter of cancelling the results of the National Police of Ukraine reform, what is traced is essentially the unanimity of the courts in making decisions following the review.**

All in all, it is a situation when the judicial authorities en masse satisfy the demands of the police plaintiffs and, accordingly, reinstate them in their positions. So, the judicial challenges revealed weaknesses in the re-attestation procedure. Such effects of the judicial review indicate that the reform in this part was clearly designed in a poor way, as its procedure and results were very easy to challenge.

In fact, the poorly organised attestation procedure and, ultimately, the dismissal of police officers from their positions were a new category of cases. Accordingly, at the time of their consideration by lower instance courts, there was no established practice of addressing such cases. Therefore, when making a given decision, judges were guided exclusively by their understanding of the law. At the same time, it is indicative that *the courts mostly did not delay the consideration and resolution of disputes, waiting for the decisions of the cassation instance, but rather actively took the initiative in this matter and reinstated the police officers*. The proper nature of the course chosen by them was later acknowledged by the courts of appeal and cassation appeal. Although, in fairness, it should be noted that sometimes there were cases when first instance courts suspended the consideration of the case, waiting for the Kyiv City District Administrative Court<sup>117</sup> to express its position as regards the challenged lawfulness of the provisions of the Instructions.

---

117 First instance courts ceased the proceedings until the Kyiv City District Administrative Court adjudicated administrative case No. 826/27744/15 as regards the challenged lawfulness of the provisions of the Instructions.

However, in those situations, appellate courts<sup>118</sup> overturned the relevant rulings and ruled to continue the proceedings.

Unlike the challenging of the lustration (government cleansing) procedure, when the courts also massively reinstated officials in their positions following the review, the re-attestation of police officers was not appealed to the European Court of Human Rights. That is, the police reform challenging process was limited exclusively to the national level. Although the attestation was not declared as unlawful at the judicial institutions of the Council of Europe, the fact of the failure of the reform was still established by the unanimous position of Ukrainian courts. All in all, according to official data provided by the National Police of Ukraine following a request for public information, *as of 1 July 2023, there are 3,931 police officers who managed to get reinstated in their positions with police bodies based on court decisions.*

Therefore, as evidenced by the analysis of court practice, the National Police personnel re-attestation process launched in Ukraine did not withstand judicial challenging. Decisions of the Ukrainian courts significantly influenced the final assessment of the efficiency of this reform in terms of re-attestation, which proved its low level of effectiveness.

## 4.2. Courts' rationale in cancelling the reform results

The police officers who failed the attestation were massively victorious in the courts. These consequences are explained by a significant number of gaps that were allowed at the stage of development of the Instructions on the Procedure for the Attestation of Police Officers, as well as due to the attestation boards' non-compliance with the procedure locally. In particular, the Instructions were characterised by poor quality and an insufficient level of legal regulation. Later, this caused the ambiguous construing of its provisions during application in practice.

On the whole, for the most part, the courts unanimously emphasised the existence of the following *backbone problems, which ultimately led to unsuccessful results of reform implementation:*

*1) conducting the attestation with no proper prerequisites;*

*2) approval of the member composition of the attestation board with no clearance by the National Police of Ukraine (that is, attestation*

---

118 First instance courts ceased the proceedings until the Kyiv City District Administrative Court adjudicated administrative case No. 826/27744/15 as regards the challenged lawfulness of the provisions of the Instructions. URL: <https://reyestr.court.gov.ua/Review/57895572>.

*being conducted by unauthorised persons);*

*3) unfounded nature of the board's decision (opinion):*

- a) No rationale for the decision (opinion) that has been made;*
- b) The circumstances referred to by the attestation board have not been proven;*
- c) The circumstances of the file have not been investigated in full;*
- d) Inconsistency of the circumstances, which the attestation board considers as established, with the actual evidence in the case;*
- e) Failure to take into account all available evidence as a whole.*

All these misses, as noted above, manifested back at the first stages of the police reform, but were ignored by the Ministry of Internal Affairs. Accordingly, as early as following the analysis of the state of re-attestation challenging in 2016, the Plenum of the Higher Administrative Court of Ukraine established the systemic nature of these problems<sup>119</sup> and expressed its position as to how such cases should be resolved by the courts from that point onwards. The analysis of court cases entered in the Unified State Register of Court Decisions<sup>120</sup> in the period from 2016 to 2023 gives grounds to conclude that for the most part these trends have not changed. Consequently, systemic remain the problems that were identified due to judicial review of the cases on the police reform. Hence, we will consider in more detail the courts' rationale in decision-making favouring the ex-police officers regarding each of the above problems of the reform.

### *Conducting the attestation with no proper prerequisites*

Considering the first lawsuits of the police officers, the courts had diverse approaches to construing Article 57 (2) of the Law of Ukraine On the National Police. The law established that the attestation of police officers shall be carried

---

119 Resolution of the Plenum *On the Judicial Practice of Appealing the Decisions of the Attestation Boards of Bodies (Facilities, Institutions) of the National Police of Ukraine on the Dismissal of Police Officers due to their Failure to Pass the Attestation* dated 29 September 2016 No. 11. URL: <https://zakon.rada.gov.ua/laws/show/v0011760-16#Text>

120 <https://reyestr.court.gov.ua>

out with the following conditions being in place:

- 1) upon appointment to a higher position, if the replacement of this position is carried out without holding a competition;
- 2) to address the matter of transfer to a lower position due to service incompetence;
- 3) to address the matter of dismissal from the police service due to service incompetence.

**On the one hand, the given list of grounds is exhaustive, as it does not indicate a possible emergence of other conditions for attestation, that is, the attestation of police officers possibly in exceptional cases. This position was adhered to by most courts in the review process.**

So, the courts concluded that any assessment of business, professional, personal qualities, educational and qualification levels of police officers, carried out for other reasons, was conducted by the National Police at its own discretion. It means that in those cases the attestation took place with no legal grounds<sup>121</sup>. So, the courts tended to make decisions in favour of the police officers, because attestation, carried out contrary to legal requirements, is groundless and, accordingly, unlawful. That is, the list of police officers who are subject to attestation may include only those three categories that are clearly provided for by the Law *On the National Police*<sup>122</sup>.

Courts supporting this position emphasise that in a decision to conduct attestation, the police body must indicate the specific grounds for attestation, as defined by Article 57 (2) of the Law of Ukraine *On the National Police*<sup>123</sup>.

---

121 E.g., the Ruling of the Dnipropetrovsk Administrative Court of Appeal dated 16 June 2016 in the case No. P/811/119/16. URL: <https://reyestr.court.gov.ua/Review/58430004>

122 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 21 June 2016 in the case No. 810/780/16. URL: <https://reyestr.court.gov.ua/Review/58579374>; the Ruling of the Kyiv Administrative Court of Appeal dated 07 July 2016 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/58812362>

123 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 21 June 2016 in the case No. 810/780/16. URL: <https://reyestr.court.gov.ua/Review/58579374>

*On the other hand, some courts tended to construe the provisions of the Law more broadly*, considering Article 57 in a systematic conjunction with Clause 9 of the Final and Transitional Provisions. In this case, the judicial authorities indicate that the Final and Transitional Provisions of the Law established an additional ground for attestation – the police officers passing the attestation at their own will in order to enter the police service. For instance, the Odesa Administrative Court of Appeal in the case No. 815/1119/16 ruled that Clause 9 of the Final and Transitional Provisions directly and expressly stipulates the possibility for a police officer to independently initiate attestation regarding him/her, and the police body has no right to refuse him/her<sup>124</sup>. A similar position was expressed by the Kharkiv Administrative Court of Appeal in the case No. 820/1870/16<sup>125</sup>. At the same time, the opposite one is taken by the Kyiv Administrative Court of Appeal<sup>126</sup>, as it has repeatedly ruled that this clause of the Law does not provide for re-attestation of former police officers.

The Supreme Court put an end to this conflict of positions. *The court of cassation supported the position that the list of grounds for attestation is exhaustive and may not be expanded*<sup>127</sup>. Therefore, attestation may be stipulated only for those police officers who apply for a higher position or are subject to transfer to a lower position, or in respect of whom the issue of dismissal due to service incompetence is being decided. Thus, attestation must be conditioned by the existence of real grounds established by current legislation.

---

124 Resolution of the Odesa Administrative Court of Appeal dated 22 June 2016 in the case No. 815/1119/16. URL: <https://reyestr.court.gov.ua/Review/58504808>

125 Resolution of the Kharkiv Administrative Court of Appeal dated 05 July 2016 in the case No. 820/1870/16. URL: <https://reyestr.court.gov.ua/Review/58897096>

126 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 07 July 2016 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/58812362>; the Ruling of the Kyiv Administrative Court of Appeal dated 06 July 2016 in the case No. 810/637/16. URL: <https://reyestr.court.gov.ua/Review/58812276>; the Ruling of the Kyiv Administrative Court of Appeal dated 26 May 2016 in the case No. 826/2010/16. URL: <https://reyestr.court.gov.ua/Review/58040914>

127 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 21 March 2018 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/72965592>



*Attestation of an employee right after hiring him/her (including to the police service), in no relation to addressing career matters (appointment of a police officer to a higher position or transfer to a lower position) or disciplinary proceedings, does not meet the purpose and task of attestation and contradicts the requirements of Law No. 580-VIII.*

*Resolution of the Supreme Court in the case No. 810/581/16<sup>128</sup>*

The Supreme Court also expressed a similar position as regards the grounds for attestation in its Resolutions dated 24 July 2019 in the case No. 826/2008/16<sup>129</sup> and dated 24 September 2020 in the case No. 804/6340/16<sup>130</sup>.

### *Approval of the member composition of the attestation board with no clearance by the National Police of Ukraine*

The Instructions on the Procedure for the Attestation of Police Officers<sup>131</sup> stipulates that the member composition of the attestation boards must be approved by the order of the head of the relevant police body with clearance by the National Police of Ukraine. However, contrary to this provision, in practice there have been cases of violation of this requirement of the Instructions. For instance, cases were brought to the courts<sup>132</sup>, when the member composition of the attestation board was approved with no clearance by the National Police of Ukraine. Accordingly, the judicial authorities considered this as a basis for recognising the attestation as unlawful and, as a result, repealed the orders for dismissal from the police service.

---

128 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 21 March 2018 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/72965592>

129 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 24 July 2019 in the case No. 826/2008/16. URL: <https://reyestr.court.gov.ua/Review/83244201>

130 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 24 September 2020 in the case No. 804/6340/16. URL: <https://reyestr.court.gov.ua/Review/91752691>

131 Paragraph 2(2) of Section II of the Instructions.

132 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 07 July 2016 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/58812362>; the Ruling of the Kyiv Administrative Court of Appeal dated 23 June 2016 in the case No. 810/936/16.

URL: <https://reyestr.court.gov.ua/Review/58493363>

The Plenum of the Higher Administrative Court of Ukraine also voiced support of this position. In the conclusions following the generalisation of judicial practice as regards the re-attestation of police officers, the Higher Administrative Court of Ukraine emphasised that in that case the composition of the board is unauthorised, which automatically triggers the need to repeal the order.

“Approval of the member composition of the attestation board with no clearance by the National Police of Ukraine is a violation of paragraph 2(2) of Section II of the Instructions, and therefore constitutes grounds for recognising that composition of the attestation board as unauthorised. Accordingly, the given circumstance serves as one of the grounds for repealing the order on dismissal from the police service.

*Resolution of the Plenum of the Higher Administrative Court of Ukraine dated 29 September 2016 No. 11<sup>133</sup>*

### *Unfounded nature of the board's decision (opinion)*

The lack of proper substantiation for the board's adoption of a given decision following the attestation is the most common problem for the stage of the police reform under scrutiny. The essence of the lack of substantiation is that no proper and sufficient arguing was given to confirm the grounds for the dismissal of the police officers. This gross mistake committed by the board members had various manifestations. The analysis of court cases gives grounds to single out five typical mistakes in the attestation boards' decision-making subsequent to the testing and interviews.

#### *a) No rationale for the decision (opinion) that has been made*

Quite often, the attestation boards 'forgot' about their duty to provide a rationale for the decision on the police officer's unfitness for the position. However, court practice initially assessed the consequences of such actions of the boards in different ways.

---

133 Resolution of the Plenum *On the Judicial Practice of Appealing the Decisions of the Attestation Boards of Bodies (Facilities, Institutions) of the National Police of Ukraine on the Dismissal of Police Officers due to their Failure to Pass the Attestation* dated 29 September 2016 No. 11. URL: <https://zakon.rada.gov.ua/laws/show/v0011760-16#Text>

Sometimes there were cases when the courts sided with the defendant and recognised that the adoption of the conclusion belongs to the discretionary powers of the attestation board, and therefore no one (not even the court) may interfere in this process. In particular, this opinion was held by the Kyiv Administrative Court of Appeal at one time<sup>134</sup>. The court noted that in the matter of determining the results of the attestation, the attestation board is vested with exclusive discretionary powers and has the right to independently and discretionally make one of the decisions provided for by the Law and the Instructions. Therefore, the court concluded that assessing the board's conclusion indicates the court's intervention in the exclusive competence of the attestation board, which, of its part, contradicts the principle of separation of powers enshrined in the Constitution of Ukraine.

However, it is important to emphasise that this position of the courts has subsequently changed. Gradually, *the courts began to uphold the opinion that the attestation board is obliged to provide a rationale for its decision (opinion)*, as compliance with this requirement is a guarantee of compliance with the principle of the rule of law. In particular, it serves as a safeguard against making a decision based solely on the subjective perception of attestation board members.

*“ [...] neither the Law of Ukraine On the National Police nor the Instructions give the attestation board members the right to decide on the possibility of a person's stay in the police service solely on the basis of their own, subjective perception thereof, since such an approach to assessment can lead to the adoption of biased, unfounded and, as a result, unlawful decisions.*

*Ruling of the Administrative Court of Appeal in the case  
No. 826/3477/16<sup>135</sup>*

---

134 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 06 July 2016 in the case No. 810/637/16. URL: <https://reyestr.court.gov.ua/Review/58812276>

135 Ruling of the Administrative Court of Appeal dated 12 April 2017 in the case No. 826/3477/16. URL: <https://reyestr.court.gov.ua/Review/66046133>

These same requirements also apply to individual stages of attestation. The courts pay special attention to the interview, which, unlike testing, *a priori* cannot be conducted in an automated mode, and therefore in any case contains (albeit minor) elements of subjectivism. In view of these considerations, the judicial authorities note that the procedure for conducting an interview as a stage of attestation should be transparent enough so that it is easy to find out the factual grounds that the attestation board used as the basis for its decision. Such review into the grounds should be available both to the head of the police body and to the police officer who is interviewed, or to the court, which reviews the legality of the attestation.

The Supreme Court also takes the position that the decision of the attestation board must necessarily have a rationale<sup>136</sup>. This opinion is justified given that the results of the attestation can have extremely negative consequences for the police officer, and therefore, in order to avoid misunderstandings or accusations of subjective perception, it is better for the attestation boards to give a detailed rationale for their opinions.

“*Since the negative decision of the attestation board entails legal consequences represented by the dismissal of a person from the service due to service incompetence, such a decision, regardless of the form of its execution (minutes, separate act), must have a rationale, be detailed and complete, reflect all the essential circumstances that impacted its adoption.*”

*Resolution of the Supreme Court in the case No. 810/809/16<sup>137</sup>*

Accordingly, judicial practice established an imperative requirement was that the attestation board is obliged to give a rationale for its decision (opinion). Of its part, the court is authorised to review how reasoned that decision is in the manner of exercising judicial control.

---

136 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 16 May 2018 in the case No. 810/809/16. URL: <https://reyestr.court.gov.ua/Review/74078220>

137 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 16 May 2018 in the case No. 810/809/16. URL: <https://reyestr.court.gov.ua/Review/74078220>

### *b) The circumstances referred to by the attestation board have not been proven*

Judicial practice takes the path that the attestation board's decision is recognised as justified if the attestation board has provided a sufficient amount of proper evidence to confirm the circumstances it considers as having been established. In the other case, the opinion of the board will be considered unfounded, and the dismissal of the police officer based on it will be considered as unlawful.

The analysis of judicial practice shows that, nonetheless, sometimes the boards in their opinions following the attestation prescribed provisions that became the basis for dismissal but did not provide arguments to support that opinion. For example, there were cases when the attestation boards referred to the plaintiff's low level of motivation for further service in the police<sup>138</sup>, unclear motivation of the police officer regarding further work, low professional level/capacity, ignorance of the legal framework<sup>139</sup>, etc., but could not actually prove it.

It is quite expected that in these cases the courts completely sided with the police officers, satisfying their claims, because the lack of necessary evidence was the basis for recognising the decisions of the attestation boards as unfounded.

### *c) The circumstances of the file have not been investigated in full*

The list of criteria that must be found out by the attestation board in drawing up an opinion following the attestation is contained in the Instructions on the Procedure for the Attestation of Police Officers<sup>140</sup>. Therefore, in accordance with this regulation, the board must investigate eight positions that characterise the identity of a police officer and his/her performance of official duties, namely:

- 1) how complete performance of functional duties (job instructions) is;
- 2) in-service performance indicators;
- 3) a level of theoretical knowledge and professional qualities;
- 4) assessments of professional and physical training;

---

138 E.g., the Resolution of the Kyiv City District Administrative Court dated 05 July 2016 in the case No. 825/556/16. URL: <https://reyestr.court.gov.ua/Review/58861675>

139 E.g., the Ruling of the Dnipropetrovsk Administrative Court of Appeal dated 16 June 2016 in the case No. P/811/119/16. URL: <https://reyestr.court.gov.ua/Review/58430004>

140 Paragraph 16 of Section IV of the Instructions.

- 5) availability of incentives;
- 6) presence of disciplinary sanctions;
- 7) testing results;
- 8) lie detector test results (if taken).

At the same time, the courts established that the minutes of the attestation boards<sup>141</sup> did not always contain substantiation of the inconsistency of the data set out in certain sections of the police officer's attestation letter. That is, in fact, the board did not comply with the requirement to fully find out the circumstances of the case, and its conclusions were superficial.

Separately, it is worth dwelling on the issue of incorporation of compliance with the requirements of Article 61 of the Law *On the National Police* into the review at this stage. Sometimes, lower instance courts noted that the attestation board did not resort to reviewing the presence (or absence) of circumstances that entail restrictions related to the police service. In other words, the courts emphasised that, in addition to the requirement to investigate the above eight criteria provided for by the Instructions, the attestation boards should have found out whether there are any violations of Article 61 of the Law of Ukraine *On the National Police*, which defines restrictions related to the service in the police<sup>142</sup>. After all, if these circumstances exist, a person a priori cannot be a police officer.

However, the Supreme Court rejects this position. According to the court of cassation, the determination of a person's conformity to the requirements for a police officer, defined in Articles 49 and 61 of Law No. 580-VIII, should be established before that person is accepted for service, and not after.

---

141 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 12 July 2016 in the case No. 810/586/16. URL: <https://reyestr.court.gov.ua/Review/59017189>

142 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 12 July 2016 in the case No. 810/586/16. URL: <https://reyestr.court.gov.ua/Review/59017189>

“ Thus, the panel of judges agrees with the conclusions of the courts of preceding instances that it was in addressing the issue of accepting the plaintiff for police service that the defendant had the right to hold a competition during which to assess business, professional, personal qualities, an educational and qualification level, physical training and to make a decision on hiring her/him or refusing to hire her/him. However, after enrolment in the position, the defendant has the right to dismiss the employee only in case of improper performance of his/her duties (Article 58 of Law No. 580-VIII).

*Resolution of the Supreme Court in the case No. 810/809/16<sup>143</sup>*

*d) Inconsistency of the circumstances, which the attestation board considers as established, with the actual evidence in the case*

Situations of this type arose when, based on the results of studying the circumstances of the case, the attestation board made a negative decision regarding the police officer's conformity to the requirements of the position, in spite of the case file containing information that positively characterised the police officer's work. That is, the board essentially gave a negative assessment of the police officer's business, professional, personal qualities, her/his educational and qualification levels, completely ignoring the positive characteristics set out in the attestation letter for each of the eight attestation circumstances<sup>144</sup>. It is especially telling that the board could not refute the positive description of the police officer given in the attestation letter with proper and admissible evidence.

Naturally, such decisions of the attestation board were once again recognised as illegal by the courts. Under such circumstances, the dismissal of the police officer was considered unfounded.

---

143 Resolution of the Kyiv City District Administrative Court dated in the case No. 810/809/16. URL: <https://reyestr.court.gov.ua/Review/74078220>

144 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 26 May 2016 in the case No. 826/2010/16. URL: <https://reyestr.court.gov.ua/Review/58040914>; the Ruling of the Kyiv Administrative Court of Appeal dated 07 July 2016 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/58812362>

### *e) Failure to take into account all available evidence as a whole*

The analysis of court practice shows that sometimes in decision-making, the attestation boards resorted to a cherry-picking approach in the selection of arguments to state that the police officers failed the attestation. This means that the boards could refer exclusively to one or more pieces of evidence but did not consider all available evidence as a whole. In some cases, the boards completely ignored the results of individual attestation stages. Having discovered these mistakes of the attestation boards, the courts once again emphasised the fallacy of that approach to the assessment of evidence.

Let's dwell in more detail on individual manifestations of such mistakes in the activity of the attestation boards. In particular, cases where a police officer had scored less than the required number of points based on the test results became the subject of court proceedings (please recall that the minimum passing score for each of the tests was 25). The Instructions on the Procedure for the Attestation of Police Officers contain an imperative requirement to take into account the test results in decision-making. At the same time, *the courts in the review process emphasise that the test results are not decisive and should be assessed together with other pieces submitted for attestation*<sup>145</sup>. This position as a correct one was flagged out also by the Higher Administrative Court of Ukraine.

“*Also, the panel of judges deems that the testing results are required to be taken into account by the attestation board, but they are not of decisive significance and must be assessed together with other pieces submitted to the attestation, and accordingly, that decision, regardless of the form of its execution (minutes, separate act), must have a rationale, be detailed and complete, reflect all the essential circumstances that impacted its adoption.*

*Ruling of the Higher Administrative Court of Ukraine in the case No. 821/274/16*<sup>146</sup>

---

145 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 07 July 2016 in the case No. 810/581/16. URL: <https://reyestr.court.gov.ua/Review/58812362>; the Ruling of the Kyiv Administrative Court of Appeal dated 21 June 2016 in the case No. 810/780/16.

URL: <https://reyestr.court.gov.ua/Review/58579374>

146 Ruling of the Higher Administrative Court of Ukraine dated 25 October 2016 in the case No. 821/274/16. URL: <https://reyestr.court.gov.ua/Review/58812362>

Sometimes, on the contrary, there were cases when the attestation boards made decisions only on the basis of the interview, not taking into account the test scores. In that situation, the board essentially made decisions about dismissal, demotion or non-conformity based on the interview alone, completely ignoring the previous two stages. But it is indicative that the police officer in question still possibly passed the testing stage itself.

Another interesting category of cases are those where the attestation boards made a decision on unfitness for the police, based only on the negative results of the lie detector test. In this case, the courts once again emphasised that *the results of the lie detector test are required to be considered* (as stipulated by the Instructions), *but they are not decisive and should be assessed together with other pieces that were submitted for attestation*<sup>147</sup>.

Separately, the courts dwell on the matter of the need to conduct a deep and comprehensive scrutiny of the documents present in the case. Judicial practice once again indicates that failure to take into account all available evidence as a whole becomes the reason for the court's conclusion that the decision of the attestation board is unlawful and unfounded. The Supreme Court also came to this conclusion in its Resolution dated 16 May 2018 in the case No. 820/1890/16. Considering the case, the Court noted that the *attestation board*, in violation of the requirements of the Law *On the National Police* and the Instructions, *did not conduct a deep and comprehensive scrutiny of the documents of the plaintiff's personal file, did not analyse in the aggregate the completeness of the plaintiff's performance of functional duties* (job instructions), *indicators of his/her official activity, the level of theoretical knowledge and professional qualities, did not take into account the presence of incentives and disciplinary sanctions, etc.* On this basis, the Supreme Court ruled that *the decision of the attestation board and the dismissal order are to be repealed, and the lawsuit is upheld*. A similar legal position was expressed in the Ruling of the High Administrative Court of Ukraine dated 3 March 2017 in the case No. 826/2010/16<sup>148</sup>, in the Resolution of the Supreme Court dated 23 January 2019 in the case No. 803/555/16<sup>149</sup>.

Finally, the courts draw attention to the fallacy of the position regarding the possibility of referring to data from open sources, primarily from the Internet, in the board's conclusion about the police officer being unfit for the position s/he holds. Courts established that *information from the Internet may not serve as*

---

147 E.g., the Ruling of the Odesa Administrative Court of Appeal dated 13 July 2016 in the case No. 821/274/16. URL: <https://reyestr.court.gov.ua/Review/59017414>

148 Ruling of the Higher Administrative Court of Ukraine dated 03 March 2017 in the case No. 826/2010/16. URL: <https://reyestr.court.gov.ua/Review/65163140>

149 Resolution of the Administrative Court of Cassation as part of the Supreme Court dated 23 January 2019 in the case No. 803/555/16. URL: <https://reyestr.court.gov.ua/Review/79410777>

*evidence of a police officer's negative behaviour while in service*, the presence of illegally obtained property, since such data have not been verified and their accuracy has not been established and confirmed by relevant evidence and opinions of competent authorities<sup>150</sup>.

So, summarising the position of the courts regarding the consequences of adopting an opinion not taking into account all the available evidence as a whole, it can be stated that such a decision will obviously be recognised by the courts as unfounded and unlawful. And this will have a further manifestation in having that decision repealed in court. Having summarised judicial practice, the Plenum of the Higher Administrative Court of Ukraine<sup>151</sup> ruled that the decision (opinion) of the attestation board should be deemed as unfounded, and therefore it is to be repealed, in the event that:

- ▶ The defendant failed to provide the court with evidence to confirm the circumstances that are considered as having been established in the decision (opinion) of the attestation board. In particular, when the details obtained during the interview with the police officer and the details from open sources, which the attestation board refers to as evidence of the police officer's low level of motivation for further work, the police officer's low professional level/capacity, her/his ignorance of the legal framework, were not provided.
- ▶ The attestation board's decision (opinion) does not contain conclusions regarding the circumstances stipulated in Clause 16 of Chapter IV of the Instructions, and the fact of the police officer's conformity to the requirements imposed on him/her as a person holding a relevant position.
- ▶ The negative assessment of the police officer's business, professional, personal qualities, his/her educational and qualification levels provided by the attestation board is inconsistent with the evidence of a positive assessment of the same police officer, and at the same time, the attestation board failed to give reasons for not taking into account that evidence.

---

150 E.g., the Ruling of the Kyiv Administrative Court of Appeal dated 19 July 2016 in the case No. 826/2008/16. URL: <https://reyestr.court.gov.ua/Review/59163551>

151 Resolution of the Plenum *On the Judicial Practice of Appealing the Decisions of the Attestation Boards of Bodies (Facilities, Institutions) of the National Police of Ukraine on the Dismissal of Police Officers due to their Failure to Pass the Attestation* dated 29 September 2016 No. 11. URL: <https://zakon.rada.gov.ua/laws/show/v0011760-16#Text>

A police officer scores a number of points lower than the minimum required level based on the test results, or the attestation board assessed the negative results of the lie detection test not considering the rest of the evidence.

- ▶ Data from the Internet about the police officer were taken into account by the attestation board, although their accuracy has not been established.

## 5. Response to the results of the challenging

Naturally, after the police officers challenged their illegal dismissal in court and were reinstated, *the National Police bodies responded by filing appeals and cassation appeals en masse*. However, it is indicative that representatives of the National Police, as defendants in cases, sometimes allowed themselves not to appear in court at all<sup>152</sup>. Civic activists regarded these actions as a kind of sabotage by the Ministry of Internal Affairs.

However, the efforts of the National Police in respect of appeals and cassation appeals against court decisions that were not in its favour were still in vain. Ultimately, **97%** of the police officers<sup>153</sup> who filed with the courts managed to get reinstated in their positions and also receive compensation. Thus, the National Police bodies accused the courts of promoting 'revenge of the police system'. Khatia Dekanoidze, who took an active part in the establishment of the National Police in 2015, commented on this situation as an attempt by the old judicial system to do everything to forfeit the police reform<sup>154</sup>.

A significant amount of criticism of the reinstatement was expressed by civic activists who were engaged in the process of the attestation of police officers and representatives of organisations monitoring the work of the police.

---

152 E.g., the Resolution of the Chernivtsi District Administrative Court dated 06 October 2017 in the case No. 824/184/16-a. URL: <https://opendatabot.ua/court/69422086-6d3e47fce7ecb11bbad0a42677691d9d>; Resolution of the Odesa District Administrative Court dated 21 April 2017 in the case No. 815/7160/16. URL: <https://opendatabot.ua/court/66153765-b0857efc25a7b55972f308c1cfc7ed38>; Resolution of the Zhytomyr Administrative Court of Appeal dated 04 October 2016 in the case No. 817/744/16. URL: <https://opendatabot.ua/court/61860689-7b3041f949beeddef7fc98e247dea4e9>

153 3,300 police officers appealed the failed attestation and most of them were reinstated in their positions – adviser to the head of the Ministry of Internal Affairs. URL: <https://hromadske.ua/posts/zvlnennya-oskarzhili-3300-policejskih-i-bilshist-z-nih-ponovili-na-posadah-radnik-glavi-mvs?tag=reforma-politsii>

154 Dekanoidze Feels the Revenge of the Old Militsiya System. URL: [https://texty.org.ua/fragments/66710/Dekanojidze\\_vidchuvaje\\_revansh\\_staroji\\_milicejskoji\\_systemy-66710/](https://texty.org.ua/fragments/66710/Dekanojidze_vidchuvaje_revansh_staroji_milicejskoji_systemy-66710/)

For instance, the public once again emphasised that the 'return' of police officers once again confirmed the ineffectiveness of the reform. Considering the problematic aspects of the attestation revealed during the trials, *civic activists support the idea the legislation should have been prepared properly before the reform*. At the same time, some members of the public express the opinion that the developers of the re-attestation procedure could deliberately refrain from correcting existing gaps for loopholes to remain in the legislation<sup>155</sup>. In addition, the public fear that the reinstatement of the former police officers will cause the return of the old methods of the work of the police<sup>156</sup>. Accordingly, in such situations, the index of citizens' trust in the police raises a lot of doubts.

Summarising the position of the public, one can say that it is extremely disappointed with the situation, because in fact all hopes for the success of the reform and the efforts of activists have been negated.

## 6. Conclusions

The re-attestation of police officers in 2015-2016 as a component of the National Police reform was budding. It was envisioned that the transformation of the law enforcement framework would provide an opportunity to implement the political course chosen by the state towards European integration, as well as to increase the quality and efficiency of the work of the newly established police. These hopes could have become a reality, had there been no shortcomings committed in the development stages of the reform design and in the process of its implementation locally.

In particular, the legal and regulatory acts for the attestation were spelled out very superficially. And the lack of precise wording caused numerous practical issues that accompanied the reform as part of law enforcement. Firstly, the grounds for the attestation were formulated quite ambiguously, since the provisions of the Law *On the National Police* contained internal inconsistencies (between the norms of Article 57 and Clause 9 of the Final and Transitional Provisions). This became the reason for different approaches to the interpretation of the conditions of attestation. Secondly, the relevant Law and the Instructions on the Procedure for the Attestation of Police Officers did not stipulate the need for proper recording of the attestation process. The gap was most vividly mani-

---

155 Civic Activists Announced Their Exit from the Police Re-Attestation Process Due to the Actions of the Ministry of Internal Affairs. URL: <https://novynarnia.com/2016/06/06/gromadski-aktivisti-na-znak-protestu-viyshli-z-protsestu-atestatsiyi-natspolitsiyi/>

156 Members of the Boards Assure that Re-Attestation at the Ministry of Internal Affairs Turned into a Show-Off. URL: <https://www.unian.ua/politics/1367007-chleni-komisii-zapevnyayut-scho-perateatsiya-u-mvs-peretvorilasya-na-pokazuhu.html>

fested during the interview stage, which turned out to be particularly problematic. This was due to the fact that, unlike other stages of attestation, interviews were conducted live, i.e., without a technological component. Therefore, at this stage, the members of the attestation boards had to substantiate the grounds particularly carefully for their decision on the attestation results. In this process, the technical recording of communication with the candidate would have helped a lot, but the developers of the reform design did not foresee that option. Thirdly, significant problems were caused by the norms of the Instructions failing to contain clearly defined grounds and conditions for the attestation boards to make decisions on the failed police attestation.

Consequently, the shortcomings of legal regulation triggered a massive wave to challenge the attestation results in court. Following consideration of the cases, the courts had to reinstate those who failed the attestation procedure. The re-attestation flopped because it turned out to be illegitimate. This result was possible due to the imperfectly spelled norms of the Law *On the National Police* and the provisions of the Instructions on the Procedure for the Attestation of Police Officers. So, the courts established that in practice the attestation of police officers was allowed to be carried out without proper prerequisites, violations were permitted in the procedure for approving the composition of the attestation board, the board's opinion were adopted on the basis of subjective conviction and were unfounded.

Hence, as evidenced by the analysis of judicial practice, a significant number of mistakes made it impossible to attain the expected results of the reform and to meet the expectations of the authorities and the public. The outcome of the attestation is low and does not correspond to the stated goals and tasks at all. Ultimately, more than 90% of the old police officers joined the ranks of the National Police, which makes it difficult to build a truly new police force geared towards pro-European standards of the work.

So, the court decisions stated the ineffectiveness of the implemented reform. This unsuccessful experience in the design and implementation of the police reform should be taken on board by the authorities when arranging reforms in the future in order to prevent similar problems from occurring.

## CASE STUDY 3. Challenging of the dismissal of ‘Maidan judges’

---

### 1. Design of the procedure for cleansing courts from ‘Maidan judges’

#### 1.1 Essence and goal

The total mistrust of the society towards Ukrainian judiciary<sup>157</sup> became the reason for the repeated efforts of the authorities to reform the domestic justice system. The issue of reform has become especially pressing after the events of the Revolution of Dignity in 2013-2014, when the courts took an active part in suppressing civil protests against Viktor Yanukovich’s regime. During this period, judges massively passed arbitrary and unlawful decisions banning peaceful gatherings, deprived Automaidan participants of their driving licences, detained protesters, etc. With those actions, the servants of Themis discredited the judicial system and once again were undermining the already weak trust in the judiciary in Ukraine.

In response to the arbitrary decisions of the ‘Maidan judges’, the public demanded that there should be a review into them. The key demands of the society were the punishment of the guilty and the immediate cleansing of the courts from judges who lacked integrity. So, as early as in April 2014, the Ukrainian authorities adopted the Law *On Restoring Confidence in the Judiciary in Ukraine*<sup>158</sup> (hereinafter – the Law) that provided for the dismissal from office of persons who made iniquitous decisions against Maidan participants.

The purpose of conducting a special review was to find out the facts that would indicate the violation of the oath by the judges, to hold the unscrupulous servants of Themis accountable, as well as to reinforce the rule of law in society, as well as the principles of independence and impartiality in the activities of judicial authorities.

---

157 According to sociological surveys, in 2014 the level of trust in the judicial system was one of the lowest in Europe and globally. Ukrainians trusted only the Russian mass media less than the courts. URL: <https://www.freiheit.org/ukr/ukraine-and-belarus/ohlyad-sudovoyi-reformy-v-ukrayini>

158 On Restoring Confidence in Judiciary Authorities: Law of Ukraine dated 08 April 2014 N° 1188-VII. URL: <https://zakon.rada.gov.ua/laws/show/1188-18#Text>

## **On the whole, the Law sought to enhance the authority of the judiciary and citizens' trust in the judicial branch of government, as well as to restore legality and justice.**

The implementation of this procedure was aimed at preventing the repetition of mass arbitrariness in the justice system in the future.

### **1.2 Preparatory work**

In order to fulfil the demands of society and restore public trust in the judiciary authorities, in March 2014, Ukrainian MPs came up with six draft laws<sup>159</sup> to define the principles of the review into judges. Following consideration, the Ukrainian Parliament adopted as a basis and passed in the second reading the draft law<sup>160</sup> authored by MPs Yu.B. Derevianka, N.V. Ahafonova, A.V. Labunska, L.O. Yemets, O.V. Bondarchuk and R.V. Stadniuchuk.

However, the procedure for adopting the draft law did face difficulties. They included that MPs managed to adopt the law as a whole only on the third attempt. 234 parliamentarians voted 'for'.

Not only were there shortcomings in the text of the draft Law – they also committed in the process of its adoption. It is telling that the violation of the adoption procedure, caused by non-compliance with the Rules of Procedure of the Ukrainian Parliament<sup>161</sup>, became the basis for the appeal of 76 MPs to the Constitutional Court of Ukraine (hereinafter referred to as the CCU) with a request to declare the Law *On Restoring Confidence in the Judiciary in Ukraine* unconstitutional. However, the CCU refused<sup>162</sup> the MPs to open constitutional proceedings due to the non-compliance of the submission with the requirements of the law and because the issues raised in it did not fall into the jurisdiction of the Constitutional Court of Ukraine.

---

159 Law drafts. Ukrainian Parliament. URL: [http://w1.cl.rada.gov.ua/pls/zweb2/webproc2\\_5\\_1\\_J?ses=10008&num\\_s=2&num=4378&date1=8&date2=8&name\\_zp=8&out\\_type=8&id=](http://w1.cl.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10008&num_s=2&num=4378&date1=8&date2=8&name_zp=8&out_type=8&id=160)

160 Draft Law *On Restoring Confidence in the Judiciary of Ukraine* dated 11 March 2014 No. 4378-1. URL: [http://w1.cl.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50133](http://w1.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50133)

161 *On the Rules of Procedure of the Ukrainian Parliament*: Law of Ukraine dated 10 February 2010 No. 1861-VI. URL: <https://zakon.rada.gov.ua/laws/show/1861-17#Text>

162 Ruling of the Constitutional Court of Ukraine on the refusal to open constitutional proceedings in the case based on the constitutional motion of 76 Ukrainian MPs regarding compliance with the Constitution of Ukraine (constitutionality) of Law of Ukraine *On Restoring Confidence in the Judiciary in Ukraine* dated 06 July 2017 No. 12-y/2017. URL: <https://zakon.rada.gov.ua/laws/show/v012u710-17#Text>

In addition, even before the Law entered into force, the Main Legal Department of the Parliament expressed several comments<sup>163</sup> on the procedure for holding judges accountable. So, the main problems that arose at the stage of drafting the law and testify to its non-compliance with international standards in the field of justice were the following:

- ▶ **First**, the procedure for the establishment and functioning of the special board to review judges, was stipulated in the draft, was not consistent with the provisions of certain articles of the Constitution of Ukraine;
- ▶ **Second**, the Main Legal Department stated in many cases when regulatory wording violates the principle of legal certainty and does not take into account the legal positions of the Constitutional Court of Ukraine regarding the precision and unambiguity of a legal norm.

The existence of these circumstances indicated the need for technical and legal revision of the draft law. However, despite this, not all gaps were rectified in the final version of the Law.

In addition, the provisions of the statute were criticised by other public and international institutions, as well as representatives of civil society, as early as at the stage of its development. For instance, a concern about the amendments to the draft law was expressed by the Venice Commission<sup>164</sup>, the Council of Europe<sup>165</sup>, the Supreme Court of Ukraine<sup>166</sup>, the Higher Economic Court of Ukraine<sup>167</sup> and the Council of Judges of Ukraine<sup>168</sup>. The text of the bill was also

---

163 Comments by the Main Legal Department for the Law of Ukraine *On Restoring Confidence in the Judiciary in Ukraine* dated 07 April 2014. URL: <http://wl.cl.rada.gov.ua/pls/zweb2/webproc34?id=8pf3511=501338pf35401=297224>

164 Opinion on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary as approved by the Constitutional Commission on 4 September 2015, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015). URL: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29027-e>; The President of the Venice Commission: The Lustration of Former Authorities As Such Is Acceptable. URL: <https://web.archive.org/web/20141213015013/http://www.euointegration.com.ua/interview/2014/12/12/7028700/>

165 Special Representative of the Council of Europe: The Investigation of the Events in Odessa and on the Maidan Has Things that Cannot Be Corrected. URL: <https://www.euointegration.com.ua/interview/2015/11/9/7040488/>

166 Proposals of the Supreme Court of Ukraine to the draft law *On Restoring Confidence in the Judicial System of Ukraine*. URL: [https://web.archive.org/web/20140408214517/http://www.scourt.gov.ua/clients/vsu/vsu.nsf/\(documents\)/1E341ADF3D0560B9C2257C9200538660?OpenDocument&year=2014&month=03&](https://web.archive.org/web/20140408214517/http://www.scourt.gov.ua/clients/vsu/vsu.nsf/(documents)/1E341ADF3D0560B9C2257C9200538660?OpenDocument&year=2014&month=03&)

167 Address of the judges of the economic court system of Ukraine to the leadership of the state regarding the draft law *On Restoring Confidence in the Judicial System of Ukraine*. URL: <https://web.archive.org/web/20140322001716/http://vgsu.arbitr.gov.ua/news/1432/>

168 Appeal by the Council of Judges of Ukraine. URL: <https://web.archive.org/web/20140322000958/http://court.gov.ua/95329/>

criticised by the legal community<sup>169</sup>.

The Parliament adopted the final version of the Law *On Restoring Confidence in the Judiciary in Ukraine* on 8 April 2014, and the Law entered into force on 11 April. With that, the work on cleansing the courts from 'Maidan judges' has just begun. However, legislative shortcomings, not addressed at the design stage of this process, did not keep anyone waiting. Putting this Law into practice brought about a significant number of questions due to the inconsistency across individual mechanisms of its implementation. A more detailed analysis of these problems is provided below.

### 1.3 Legal regulation

The implementation of the procedure for cleansing the judicial authorities from the 'Maidan judges' was regulated by a number of normative legal acts. In order to develop a procedure for reviewing judges, MPs adopted several new laws and made amendments to some existing acts.

Accordingly, the regulatory and legal framework for reviewing judges who made unlawful decisions during protests on the Maidan consists of:

- ▶ *Law of Ukraine On Restoration of Confidence in the Judiciary in Ukraine* dated 08 April 2014 No. 1188-VII. This law is a core element in the entire framework, as it defines the legal and organisational principles for reviewing judges, establishes conditions for bringing them to disciplinary liability and regulates the procedure for dismissal from office in connection with the violation of the oath.
- ▶ *Law of Ukraine On Government Cleansing* dated 16 October 2014 No. 1682-VII<sup>170</sup>. This Law contains separate regulations prohibiting 'Maidan judges' from holding positions for 5 or 10 years (depending on the criteria) from the date of entry into force of this act (i.e., 16 October 2014).
- ▶ *Law of Ukraine On the Judiciary and the Status of Judges* dated 07 July 2010 No. 2453-VI<sup>171</sup> (as amended on 11 April 2014). The changes made to this Law determined the peculiarities of the functioning of judicial bodies after the reviews in question. As of now, a significant number of provisions

---

169 E.g., Tailor and Partners lawyer association. 'Wild Lustration': Cleansing Judiciary Authorities – Restoration of Confidence or Revenge? URL: [https://jurliga.ligazakon.net/analitycs/127457\\_dika-lyustratsya-ochishchennya-sudovo-vladi---vsnovlennya-dovri-abo-pomsta](https://jurliga.ligazakon.net/analitycs/127457_dika-lyustratsya-ochishchennya-sudovo-vladi---vsnovlennya-dovri-abo-pomsta)

170 *On Government Cleansing*: Law of Ukraine dated 16 September 2014 No. 1682-VII. URL: <https://zakon.rada.gov.ua/laws/show/1682-18#Text>

171 *On the Judiciary and the Status of Judges*: Law of Ukraine dated 07 July 2010 No. 2453-VI. URL: <https://zakon.rada.gov.ua/laws/show/2453-17#Text>

of the act have become invalid. To replace it, the Ukrainian Parliament adopted a new Law *On the Judiciary and the Status of Judges* of 2 June 2016 No. 1402-VIII<sup>172</sup>.

- ▶ *Law of Ukraine On the High Council of Justice* dated 15 January 1998 No. 22/98-VR (as amended from 11 April 2014)<sup>173</sup>. Adoption of the Law *On Restoration of Confidence in the Judiciary in Ukraine* required the introduction of changes that determined new nuances of the work of the High Council of Justice (hereinafter – the *HCJ*). In this version, the Law *On the High Council of Justice* was in effect until 2017, until the Parliament adopted the Law *On the Supreme Council of Justice*<sup>174</sup>. The peculiarities of the functioning of the Supreme Council of Justice as the successor of the High Council of Justice regarding the conduct of reviews were preserved in the new Law.
- ▶ *Law of Ukraine On Amending the Constitution of Ukraine (As Regards Justice)* dated 2 June 2016 No. 1401-VIII<sup>175</sup>. The norms of this Law amended Article 131 of the Constitution of Ukraine regarding the procedure for dismissing a judge from office. From that moment onwards, the adoption of such a decision is assigned to the powers of the Supreme Council of Justice.

The regulation of the procedure for reviewing the legality of the decisions of the ‘Maidan judges’, which was contained in these laws, was far from ideal. The shortcomings of the rulemaking technique, highlighted by experts, quickly became apparent in implementing this process in practice. Misses made by lawmakers enabled some of the judges to successfully challenge the lawful nature of their dismissal in court (as covered below).

---

172 *On the Judiciary and the Status of Judges*: Law of Ukraine dated 02 June 2016 No. 1402-VIII.

URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

173 *On the High Council of Justice*: Law of Ukraine dated 15 January 1998 No. 22/98-VR.

URL: <https://zakon.rada.gov.ua/laws/main/22/98-%D0%B2%D1%80#Text>

174 *On the Supreme Council of Justice*: Law of Ukraine dated 21 December 2016 No. 1798-VIII.

URL: <https://zakon.rada.gov.ua/laws/show/1798-19#Text>

175 *On Amending the Constitution of Ukraine (As Regards Justice)*: Law of Ukraine dated 02 June 2016 No. 1401-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1401-19#Text>

## 2. Implementation of the procedure for cleansing courts from ‘Maidan judges’

Primarily, it is important to note that *the Law On Restoration of Confidence in the Judiciary in Ukraine applied only to judges of general jurisdiction courts*. Judges of the Constitutional Court of Ukraine could not be dismissed from office on the basis of this Law. This provision is quite sensible, because decisions on the banning of peaceful assemblies, deprivation of driver’s licences and detention are within the competence of general jurisdiction courts. In addition, the very judges of these courts made arbitrary and unlawful decisions in order to suppress protests during the regime of Viktor Yanukovych.

Implementation of the process for cleansing the judiciary from ‘Maidan judges’ took place in several stages.

### *1. Review into judges*

In order to fulfil the requirements of the Law *On Restoration of Confidence in the Judiciary in Ukraine*, a special body was set up to review the judges – the Temporary Special Board to Review Judges of General Jurisdiction Courts (hereinafter referred to as the *Temporary Special Board, TSB*). The purpose of this body was to consider the issue of the possible bringing of judges to disciplinary liability and their dismissal from office in connection with the violation of the oath<sup>176</sup>. The Temporary Special Board had the status of an advisory body that operated under the High Council of Justice. The TCB consisted of 15 members who were proportionally appointed by three institutions – the Plenum of the Supreme Court of Ukraine, the Government Commissioner for Anti-corruption Policy and the Ukrainian Parliament. Accordingly, the Plenum of the Supreme Court of Ukraine elected five representatives from among retired judges as members of the TCB<sup>177</sup>. Likewise, the Parliament<sup>178</sup> and the Government Commissioner for Anti-corruption Policy<sup>179</sup> each appointed five representatives

---

176 Rules of Procedure for the Temporary Special Board to Review Judges of General Jurisdiction Courts, approved by the decision of the Temporary Special Board to Review Judges of General Jurisdiction Courts dated 03 July 2014 No. 1. URL: <https://zakon.rada.gov.ua/rada/show/va001423-14#Text>

177 *On Selection of Members of the Temporary Special Board to Review Judges of General Jurisdiction Courts*: Resolution of the Plenum of the Supreme Court of Ukraine dated 25 April 2014 No. 3. URL: <https://zakon.rada.gov.ua/laws/show/v0003700-14#Text>

178 *On Approval of Members of the Temporary Special Board to Review Judges of General Jurisdiction Courts*: Resolution of the Ukrainian Parliament dated 05 February 2015 No. 166-VIII. URL: <https://zakon.rada.gov.ua/laws/show/166-19#Text>

179 The Government Commissioner for Anti-corruption Policy Appointed Five Members of the Temporary Special Board to Review Judges of General Jurisdiction Courts. URL: <https://zib.com.ua/ua/88021.html>

of the public. The Board was supposed to conduct all reviews within one year from the date of its formation, that is, starting from 12 June 2014. However, due to the lack of authorised members, the TCB actually was not operational from October 2014 to March 2015.

Statements on the need to carry out a review into a specific judge could be submitted to the Temporary Special Board by legal entities or individuals within six months from the publication of the notice on the establishment thereof in the Voice of Ukraine newspaper.

The law set out the criteria by which judges became subjects of review. In particular, the review was applied in the event that the judge made a decision individually or in a panel of judges regarding the participants of the Revolution of Dignity to:

- ▶ select detention as part of restrictive measures;
- ▶ leave decisions on the selection of detention as part of restrictive measures (in case of an appellate procedure);
- ▶ extend the term of detention; as well as
- ▶ adjudge guilty.

The review was conducted in the event that these decisions were made by a 'Maidan judge' in connection with the participation of persons in protests in the period from 21 November 2013 to the date of entry into force of this Law.

In order to properly exercise its powers, the Temporary Special Board was authorised to demand and receive necessary information from judicial authorities and law enforcement agencies.

Following the review of judges, the Temporary Special Board passed an opinion, which was published on the official website of the High Council of Justice. Yet the further fate of this opinion depended on what violations on the part of the judges were revealed as a result of the review. For instance, where the conclusion of the Temporary Special Board contained information about the *violation of the oath by the judge*, together with the complete file of the review, it was shared with the High Council of Justice for confirmation. Where the review revealed grounds for *disciplinary liability*, the opinion was shared with the High Council of Justice (for judges of higher specialised courts and the Supreme Court of Ukraine) or with the High Qualification Commission of Judges of Ukraine (for judges of local and appellate courts). However, where *features of a criminal offence* were detected according to the review, the opinion of the Temporary Special Board was shared with the General Prosecution Office

of Ukraine. In the event that the findings of the review did not establish any facts indicating a violation, the TSB made a decision to terminate the review into the judge in question.

In total, according to official data provided by the Supreme Council of Justice (which became the legal successor of the HCJ in 2017) following a request for public information, *the High Council of Justice received 41 opinions of the Temporary Special Board on the features of the violation of the oath in the actions of 46 judges (two opinions were drawn up regarding the same judge).*

The TSB's activity has been criticised repeatedly. This includes the fact that shortcomings emphasised by the Main Scientific and Expert Department and the Main Legal Department began to come into being in practice. In their opinions, these bodies drew attention that the status of the Board is not well-regulated, and therefore there comes a question as to whether it has a mandate to conduct reviews into judges. In addition, it was noted that the activity of the Temporary Special Board in fact duplicates the powers of the High Qualification Commission of Judges of Ukraine and the High Council of Justice, since under the Law On the Judiciary and the Status of Judges it is they that may conduct disciplinary proceedings against judges. Consequently, the functioning of the TSB in that form may lead to a violation of international standards in the field of judiciary and the status of judges, because:

- ▶ The Temporary Special Board interferes with the exercising of the professional duties of judges, which violates the principle of independence of judges;
- ▶ Unjustifiably discloses professional secret, as it becomes the subject-matter of consideration in review cases<sup>180</sup>.

Based on these considerations, the Main Scientific and Expert Department and the Main Legal Department concluded that the TSB's reviews would lead to

---

180 Opinion of the Main Scientific and Expert Department for the Law of Ukraine On Restoring Confidence in the Judiciary of Ukraine dated 11 March 2014. URL: <https://w1.cl.rada.gov.ua/pls/zweb2/webproc34?id=8pf3511=50133&pf35401=295132>; Comments by the Main Legal Department for the Law of Ukraine On Restoring Confidence in the Judiciary in Ukraine dated 07 April 2014. URL: <http://w1.cl.rada.gov.ua/pls/zweb2/webproc34?id=8pf3511=50133&pf35401=297224>.

Lustration: What to Do? URL: <https://www.dw.com/uk/люстрація-в-україні-перезавантаження-чи-окозамилування/a-17498191?maca=ukr-rss-ukrnet-ukr-all-3816-xml>

Opinion of the public anticorruption expert review into the Law of On Restoring Confidence in the Judiciary in Ukraine. URL: [https://pravo.org.ua/wp-content/uploads/old/files/Corruption/Expertise/zakon\\_1188.pdf](https://pravo.org.ua/wp-content/uploads/old/files/Corruption/Expertise/zakon_1188.pdf).

a violation of the rule of law principle and unjustified interference in the professional activity of a judge. As illustrated below, similar reasoning will be the basis of the lawsuits filed by the judges dismissed as a result of the review. And what is important, a significant percentage of those lawsuits will ultimately be satisfied by the courts of the first and appellate instances.

## *II. Consideration of the opinion of the Temporary Special Commission by the authorised body*

### *1. Adoption of a decision by the High Council of Justice*

After receiving the opinion from the Temporary Special Board, the High Council of Justice considered the matter of dismissing a judge from office (in particular, in the case of the judge's violation of oath). The High Council of Justice was obliged to invite the judge in respect of whom the decision was made to a meeting. In the event that the judge could not be present in person, s/he submitted written explanations, which were announced at the meeting of the High Council of Justice and supplemented the case file. The decision following the review was made by the High Council of Justice by majority vote and secret ballot.

Where an opinion on the grounds for disciplinary liability against judges of higher specialised courts and the Supreme Court of Ukraine was shared with the High Council of Justice, the issue of opening disciplinary proceedings was decided. Where there were no grounds for opening it, a decision was made to refuse to open a disciplinary case. However, when the grounds for bringing to disciplinary liability were still in place, the disciplinary case against the judge was considered in an open meeting. After all, by a majority of votes, the High Council of Justice decided whether to impose a disciplinary sanction on the judge. Following the consideration of the disciplinary case, the HCJ could make a decision to file a motion to dismiss the judge from his/her position.

The decision-making procedure for the dismissal of a judge from office in different periods had certain different peculiarities in conjunction with the introduction of amendments to the Constitution of Ukraine in 2016. In particular, before 30 September 2016 (i.e., before the constitutional amendments entered into force), the High Council of Justice filed a motion to dismiss judges from their offices to the relevant body. The Law *On the Judiciary and the Status of Judges* of 2010 stipulated those bodies to be the President of Ukraine and the Ukrainian Parliament. It was these two institutions that were empowered to dismiss 'Maidan judges' from their positions at the time of consideration of their cases by the HCJ.

## *2. Consideration of the review file by the Higher Qualification Commission of Judges of Ukraine*

In the event that the TSB's opinion contained details on the grounds for bringing a first or appellate instance judge to disciplinary liability, the review file was submitted to the High Qualification Commission of Judges (hereinafter referred to as the HQCJ). In the future, the HQCJ considered this file, on the basis of which it made a decision on the presence or absence of features of disciplinary misconduct in the judge's actions.

Where those features were present, the HQCJ decided whether to open disciplinary proceedings against the judge in question. Following the proceedings, the HQCJ imposed a disciplinary penalty on the judge on the basis of the detected features of a disciplinary offence, one of which could be an opinion to appeal to the High Council of Justice with a recommendation to consider the issue of the judge's dismissal from office.

Where the Higher Qualification Commission of Judges concluded that there were no features of disciplinary misconduct, it made a decision to bring the judge to liability.

## *3. Sending the TSB's opinion to the General Prosecution Office of Ukraine*

The Law *On Restoring Confidence in the Judiciary in Ukraine* stipulated that the file of the review conducted by the Temporary Special Board should be sent to the General Prosecution Office only where features of a criminal offence were found in the judge's actions. In the future, prosecutorial bodies had to carry out their probe in order to identify features that would evidence the judge's commissioning of a criminal offence. After all, the probe by the General Prosecution Office was supposed to either confirm or refute the TSB's opinion.

Still, the files in the cases on 'Maidan judges', sent to the General Prosecution Office (Attorney General's Office) on the above grounds, are examined at an extremely slow pace. This, among other things, is evidenced by the status of consideration of indictments in courts<sup>181</sup>. In particular, as of June 2023, the indictments against 19 judges had been pending for several years, with no final court decisions having been handed down yet.

---

181 The database of Maidan judges created by activists of Automaidan All-Ukrainian Association. Who are the Maidan judges? URL: [https://www.maidan-judges.info/who\\_are\\_they](https://www.maidan-judges.info/who_are_they)

**As a whole, according to official data provided by the Supreme Council of Justice upon a request for public information, as of July 2023, following reviews into judges on the basis of the Law On Restoring Confidence in the Judiciary in Ukraine, the High Council of Justice made 25 decisions regarding 29 judges. On the grounds of these decisions, the HCJ filed a motion for dismissal for the violation of the oath in respect of 10 judges — to the President of Ukraine and in respect of 19 judges — to the Ukrainian Parliament.**

### *III. Dismissal of judges from their offices*

Before the 2016 amendments to the Constitution, based on the motion by the High Council of Justice, the President of Ukraine issued a decree, and the Ukrainian Parliament adopted a resolution on the dismissal of a judge from office.

The Law *On Amending the Constitution of Ukraine (As Regards Justice)* changed the procedure for dismissing a judge from office. From that point onwards, under Article 131 of the Basic Law, the adoption of a decision on dismissal is assigned exclusively to the powers of the Supreme Council of Justice.

The small number of judges, who were still dismissed following the review, believed that their removal from office was illegal. So, they decided to challenge the decisions of the High Council of Justice in court. This is how the servants of Themis hoped to get a ‘green light’ for further tenure and adjudication of justice.

### **3. Judicial challenging of the dismissal of ‘Maidan judges’**

The dismissed ‘Maidan judges’ tried to have the decisions of the High Council of Justice repealed through administrative courts. The process of judicial challenging for this category of cases was quite long and somewhat complicated due to the reform of the system of judicial bodies in 2016–2017. That is why the consideration of most cases on the ‘Maidan judges’ was started by the Higher Administrative Court of Ukraine (hereinafter referred to as the *HACU*) and concluded by the Supreme Court (hereinafter referred to as the *SC*).

It is important to emphasise that lawsuits on the dismissal of ‘Maidan judges’ belong to a special category of cases<sup>182</sup>. In this regard, their consideration does not take place classically in the order of three instances (first instance, appeal and cassation) and may take place only in two instances (the first one and the appellate instance).

Until 15 December 2017<sup>183</sup>, the first instance court in the cases on the ‘Maidan judges’ was the HACU, and the court of appeal was the Supreme Court of Ukraine. After the judicial reform and the changes in the Ukrainian judiciary system took place, the Administrative Court of Cassation as part of the Supreme Court became the first instance court for the cases on the ‘Maidan judges’, and the appellate review is carried out by the Grand Chamber of the Supreme Court (hereinafter referred to as the *GCoSC*).

### 3.1 Reasons for challenging

The ‘Maidan judges’ used a large number of gaps and inaccuracies in the legislative regulation of the special review procedure as arguments to confirm the unlawfulness of the decision adopted by the High Council of Justice to dismiss them for the violation of the oath.

Naturally, the rationale of judges varies somewhat depending on the specific circumstances of the dismissal. However, on the whole, all plaintiffs emphasise that the decision of the HCJ was issued in violation of the norms of international law and current legislation, and therefore, that decision is illegal.

---

182 According to Article 27 (2-3) of the Law *On the High Council of Justice*, the decision of the HCJ to file a motion for the dismissal of judges from office may be appealed exclusively to the High Administrative Court of Ukraine.

In accordance with Article 18 (4) of the Code of Administrative Procedure (as amended in 2012), the jurisdiction of the Higher Administrative Court of Ukraine as a first instance court covers cases on the challenging of acts, actions or inaction of the Ukrainian Parliament, the President of Ukraine, the High Council of Justice, the High Qualification Commission of Judges of Ukraine.

183 On 15 December 2017, the Supreme Court started operating, and the Law of Ukraine *On Making Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts* dated 3 October 2017 No. 2147-VIII entered into force.

On the basis of the analysis of lawsuits, it was found that judges predominantly emphasised the following points in lawsuits and appeals:

1. *The persons who appealed the Temporary Special Commission for the Review of Judges* (for example, the Deputy Prosecutor General, experts of charitable foundations, etc.) *did not have the authority to make those appeals*. Accordingly, the dismissed judges believed that the procedure for making the challenged decision was violated in this way. Therefore, the decision of the TSB should be recognised as illegal;

2. *The High Council of Justice made a decision beyond the scope of its powers*. The ‘Maidan judges’ emphasised that the HCJ essentially replaced a judicial body with itself, as it got down to assess the legality of decisions that acquired the status of final. According to the plaintiffs, the correctness, legality and substantiation of a court decision may be reviewed only by a higher court;

3. *The High Council of Justice violated the terms of application of disciplinary penalties* and the procedure for consideration of a disciplinary case. The plaintiffs believed that the term for bringing them to disciplinary liability had expired, which once again proved the illegality of the dismissal;

4. *The decision of the High Council of Justice does not contain a proper substantiation for the violation of a judge’s oath by the ‘Maidan judges’*. The plaintiffs asserted the position that the HCJ did not provide convincing evidence that the judges had committed actions covered by the concept of ‘violation of the oath’. In this regard, the ex-judges do not see grounds for filing a motion for their dismissal from office.

Believing that the special review does not meet the requirements of the current legislation, the ‘Maidan judges’ insisted on satisfying their claims.

## 3.2 Claims

The analysis of judicial practice indicates that the lawsuits of ex-judges predominantly *contained only one claim – to declare illegal and repeal the decision to dismiss the judge from office for violating the oath*.

However, it is important to dwell on a nuance here. The wording of the claims differed slightly depending on which entity – the President or the Parliament – made the final decision to dismiss the judge. As already mentioned in Section 2, until 30 September 2016, the High Council of Justice operated, which submitted a motion to the President of Ukraine or the Ukrainian Parliament to dismiss

a judge. It was the President and the Parliament before the introduction of constitutional changes that were empowered to make a final decision on the dismissal of judges. Therefore, until 30 September 2016, the typical wording of the claim was as follows: 'Declare illegal and repeal the decision of the High Council of Justice on submitting to the Ukrainian Parliament/the President of Ukraine a motion to dismiss a judge from office for violating the oath'.

In addition, it should be noted that after the amendments were made to the Constitution in 2016, the authority to make a decision on the dismissal of judges was transferred to the High Council of Justice. Therefore, all claims sent to the court after this event were addressed to the very Supreme Council of Justice as the legal successor of the High Council of Justice.

## 4. Results of the challenging

### 4.1 General characteristics of court decisions following the challenging

**The positions of the courts following consideration of the lawsuits of the dismissed 'Maidan judges' are significantly different (even diametrically opposed).**

In fact, no unanimity can be mentioned for the matter of confirming the results of the judges dismissal or their cancellation. However, even within a wide spectrum of arguments by court, it is possible to trace more or less typical positions inherent in the decisions of courts of specific instances.

For example, the Higher Administrative Court of Ukraine, which considered this category of cases as a first instance court in 2014–2017, generally agreed with the arguments of ex-judges about the unlawful nature of their dismissal. Accordingly, *the HACU, for the most part, satisfied the claims of the 'Maidan judges' and overturned the decisions of the High Council of Justice. In fact, the Higher Administrative Court of Ukraine repealed their dismissal by its decisions*, although there were also cases when the HACU sided with the HCJ and made decisions in its favour. However, the analysis of court practice shows that the latter occurred much less often.

Of interest is the position of the Supreme Court of Ukraine, which reviewed the Judgement of the High Council of Justice.

**In a significant number of cases, the SC did not hand down a final decision following the case review but ruled to overturn the Judgement of the Higher Administrative Court of Ukraine and send the case to the first instance court (i.e., the HACU) for a new consideration.**

The Supreme Court of Ukraine provided a rationale for this position on the basis of the first instance court's failure to properly argue its conclusions in the case. Much rarer are cases when the SC made decisions in favour of the High Council of Justice and refused to repeal the decision to dismiss a judge.

*The Administrative Court of Cassation as part of the Supreme Court*, which began operating on 15 December 2017 after the implementation of the institutional reform of the judiciary, *made decisions on the possibility of the dismissal of the 'Maidan judges', which differed dramatically by their content*. Accordingly, the resolutions of the Supreme Court contain diametrically opposed arguing to confirm the lawful (or unlawful) nature of a decision of the Higher Council of Justice. Therefore, referring to unanimity in the positions of the SC appears impossible.

The Grand Chamber of the Supreme Court reviewed the SC's decision on the dismissal of judges in the appellate procedure. *The GCoSC predominantly tended to keep the decision of the High Council of Justice on the dismissal of the judge in force*. Though there are isolated cases when the Grand Chamber sides with a dismissed judge (but this happens extremely rarely). Sometimes the GCoSC makes a decision in favour of ex-judges, but mostly this is in place due to the specific circumstances of the case. So, this position cannot be applied to all other cases, without exception, regarding the dismissal of the 'Maidan judges' for the violation of the oath. An important peculiarity of the decisions of the Grand Chamber of the Supreme Court is that *these decisions are final and no more subject to appeal*. At the same time, it should be underlined that not all judgements of the Administrative Court of Cassation as part of the Supreme Court were appealed and reviewed by the Grand Chamber. Many cases still await their consideration. In particular, according to official data provided by the Supreme Council of Justice following a request for public information, as of July 2023, *only six judges had faced final decisions on recognition of*

*the unlawful nature and repealing of the decision of the High Council of Justice (Supreme Council of Justice) to file a motion for dismissal from positions of judges. In general, this is about 20% of the total number of motions made by the High Council of Justice for the dismissal of the 'Maidan judges'.*

Decisions of national courts following consideration of cases on the dismissal of the 'Maidan judges' were not appealed to European or international judicial institutions. However, national judicial bodies take into account the positions of the European Court of Human Rights (hereinafter referred to as the ECHR), expressed in other cases regarding Ukraine (for example, *Oleksandr Volkov v. Ukraine* of 9 January 2013<sup>184</sup>). Further, to reinforce the argument about the unlawful nature and arbitrariness of the decisions of the 'Maidan judges', national courts refer to the decisions of the ECHR, adopted in January 2021 in *Shmorhunov and others v. Ukraine*<sup>185</sup>, *Lutsenko and Verbytskyi v. Ukraine*<sup>186</sup>, *Kadura and Smaliy v. Ukraine*<sup>187</sup>, *Dubovtsev and others v. Ukraine*<sup>188</sup>, *Vorontsov and others v. Ukraine*<sup>189</sup>. In these cases, the European Court of Human Rights noted that many of the decisions of Ukrainian courts during the Revolution of Dignity regarding protesters were arbitrary.

So, as evidenced by the analysis of court practice, the process of cleansing the judicial system from the 'Maidan judges' launched in Ukraine is characterised as quite ambiguous. Assessment of the quality of the legislative regulation of this procedure by national courts varied. However, *the judicial challenges still revealed a number of serious problems of the rulemaking technique, which caused different interpretations of one and the same provisions of the Law by different entities.*

---

184 Judgement of the ECHR in *Oleksandr Volkov v. Ukraine* dated 9 January 2013, application No. 21722/11. URL: <https://hudoc.echr.coe.int/eng?i=001-208818>

185 Judgement of the ECHR in *Shmorhunov and others v. Ukraine* dated 21 January 2021, application No. 15367/14. URL: <https://hudoc.echr.coe.int/fre?i=001-210235>

186 Judgement of the ECHR in *Lutsenko and Verbytskyi v. Ukraine* dated 21 January 2021, applications No. 12482/14 and No. 39800/14. URL: <https://hudoc.echr.coe.int/eng?i=001-210241>

187 Judgement of the ECHR in *Kadura and Smaliy v. Ukraine* dated 21 January 2021, applications No. 42753/14 and No. 43860/14. URL: <https://hudoc.echr.coe.int/eng?i=001-210225>

188 Judgement of the ECHR in *Dubovtsev and others v. Ukraine* dated 21 January 2021, application No. 21429/14. URL: <https://hudoc.echr.coe.int/eng?i=001-210233>

189 Judgement of the ECHR in *Vorontsov and others v. Ukraine* dated 21 January 2021, application No. 58925/14. URL: <https://hudoc.echr.coe.int/eng?i=001-210234>

## 4.2 Courts' rationale in assessing the results of the dismissal of 'Maidan judges'

The judicial challenges revealed a number of problematic points that called into question the legality of the dismissal of the 'Maidan judges'. In general, the analysis of judicial practice allowed establishing that *the backbone problems committed at the rulemaking level* have caused different approaches to the interpretation of the provisions of the Law as follows:

- 1) imprecise wording of the grounds for the review into a judge;
- 2) inconsistency of the Law regarding the powers of the High Council of Justice with the provisions of the Constitution;
- 3) the ambiguity of the provisions of the Law on the possibility of the judge's responsibility for the decision made by her/him;
- 4) no clear legal definition of the criteria for dismissing a judge for the violation of the oath;
- 5) lack of a clear statutory term for holding accountable due to the violation of the oath.

In addition, sometimes *as part of law enforcement, there were cases when the authorised bodies made procedural errors* that ultimately resulted in repealing the decision to dismiss judges. In particular, this concerns the violation of the procedure for handling complaints against the decisions of the Disciplinary Chamber of the Supreme Council of Justice.

Let's consider in greater detail the rationale of the judicial authorities regarding each of the problems that became a cornerstone in assessing the legality of the dismissal of the 'Maidan judges' from their offices.

### *Imprecise wording of the grounds for the review into a judge*

The Law *On Restoring Confidence in the Judiciary in Ukraine* established that a judge is subject to review where s/he made, among other things, a decision to:

- ▶ select detention as part of restrictive measures;
- ▶ leave decisions on the selection of detention as part of restrictive measures (in case of an appellate procedure);

- ▶ extend the term of detention; as well as
- ▶ adjudge guilty.

Judges of the Higher Administrative Court of Ukraine tend to construe this norm in such a way that *the review does not apply to judges of appeal courts, because the Law does not contain a clear indication to that effect*. For example, this position was taken by the Higher Administrative Court of Ukraine in the Resolution dated 11 July 2016 in the case No. 800/261/16<sup>190</sup>.

“*Law No. 1188-VII does not provide that in that category of cases [...] the judges of appeal courts who considered appeals against the decisions of an investigating judge on the application of such measures are subject to review. That is, the decisions of judges of the appellate instance in those cases may not be subject to that review.*

*Resolution of the Higher Administrative Court of Ukraine in the case No. 800/261/16<sup>191</sup>*

Therefore, the dismissal took place without legal grounds, since the Law does not expressly provide for the possibility of conducting a special review into judges of appeal courts. In summary, the HACU emphasised that a broader interpretation of the above provisions of the Law *On Restoring Confidence in the Judiciary in Ukraine* would violate the requirements for its quality.

A similar position was endorsed also by the Administrative Court of Cassation as part of the Supreme Court in the case No. 800/22/17<sup>192</sup>.

However, the Supreme Court of Ukraine did not agree with these conclusions.

---

<sup>190</sup> Resolution of the Higher Administrative Court of Ukraine dated 11 July 2016 in the case No. 800/261/16.

URL: <https://opendatabot.ua/court/58984133-e0f67726ad344f988f4cac7dd9b3857b>

<sup>191</sup> Resolution of the Higher Administrative Court of Ukraine dated 11 July 2016 in the case No. 800/261/16.

URL: <https://opendatabot.ua/court/58984133-e0f67726ad344f988f4cac7dd9b3857b>

<sup>192</sup> E.g., the Judgement of the Administrative Court of Cassation as part of the Supreme Court dated 12 September 2019 in the case No. 800/22/17 (800/267/16). URL: <https://opendatabot.ua/court/84634126-aceeb00e90c60d96612c5d2e431633af>

The SCU noted that the Law *On Restoring Confidence in the Judiciary in Ukraine* does not specify the courts of which instance make decisions on choosing preventive measures through detention, leaving them unchanged or extending the term of detention. *Thus, the content (character) and scope of the legal relations must be interpreted in the context of the provisions of the criminal procedure law.* Of its part, the Criminal Procedure Code<sup>193</sup> gives the right of an *appellate instance court* to leave a decision on detention unchanged. Therefore, in the SCU's view, the judges of courts of appeals are not responsible for making unjust decisions regarding the participants of mass protest actions during the Revolution of Dignity<sup>194</sup>.

All disputes were put to an end by the Grand Chamber of the Supreme Court, which ruled in a number of cases<sup>195</sup> that *reviews may also be applied to judges of the appellate instance. Therefore, these judges should bear responsibility on the same level as the other 'Maidan judges'.*

**This lack of uniformity in the positions of the courts emphasised the large scale of the problems that arise as a result of the violation of the principles of legal certainty and the quality of the law.**

Even the highest courts in the Ukrainian judiciary system faced difficulties in construing the norms on the possibility (or impossibility) of reviews. Naturally, these problems could have been avoided if, at the process design stage, the lawmakers had clearly spelled out the provisions of the draft law.

*Inconsistency of the Law regarding the authorities of the High Council of Justice with the provisions of the Constitution*

Almost every lawsuit raised the question of whether the HCJ was the proper body for reviews into judges. On the one hand, the Law *On Restoring Confidence in the Judiciary in Ukraine* expressly stipulated the HCJ's authorities to conduct reviews. On the other, such activity of the HCJ could indicate its interference in the administration of justice.

---

193 Article 309.

194 Resolution of the Supreme Court of Ukraine dated 22 November 2016 in the case No. 800/261/16. URL: <https://opendatobot.ua/court/63839764-bef4be18f26d28c45ac31e5e3fe15a44>

195 E.g., the Resolutions of the Grand Chamber of the Supreme Court in the cases No. 800/25/17 (No. 800/274/16), No. 800/26/17 (No. 800/261/16) and No. 800/17/17 (No. 800/268/16).

The specified problem arose because *the authorities of the High Council of Justice to conduct reviews were not expressly stipulated in the Constitution*. Article 131 of the Basic Law contained only an indication that the High Council of Justice is authorised to file a motion to dismiss a judge from office. That is why this constitutional norm was subject to different interpretations by the courts in considering the cases of the ‘Maidan judges’. Again, when assessing the circumstances, the courts divided into two camps.

The Higher Administrative Court of Ukraine was a proponent that the authorities of the High Council of Justice to carry out reviews provided for in the Law *On Restoration of Confidence in the Judiciary in Ukraine* were unconstitutional. The court assumed that the High Council of Justice carried out reviews in violation of Article 19 of the Basic Law, which obliges public authorities to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine. So, the HACU emphasised that *how legal and substantiated the decision of an investigating judge is may be reviewed only in the appeal procedure by the appellate court*, as established by procedural legislation. Reviewing under another procedure is not provided. Therefore, the High Council of Justice is not authorised to clarify how correct, legal and substantiated a court decision is<sup>196</sup>.

Contrary to this position, the Supreme Court of Ukraine recognised the HCJ as a competent and authoritative body. In particular, the Court in the Resolution dated 28 February 2017 in the case No. 800/42/16<sup>197</sup> emphasised that, based on the provisions of the Constitution of Ukraine, *the High Council of Justice is the only constitutional body in the state, which is empowered to file motions for the dismissal of judges* from their offices. On the basis of this, the SCU concludes that the Basic Law clearly authorised the High Council of Justice to conduct reviews into judges. Similarly, the right of the High Council of Justice to carry out reviews into ‘Maidan judges’ was recognised by the Administrative Court of Cassation as part of the Supreme Court<sup>198</sup> and the Grand Chamber of

---

196 E.g., the Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15. URL: <https://reyestr.court.gov.ua/Review/55644919>; Resolution of the Higher Administrative Court of Ukraine dated 07 July 2016 in the case No. 800/42/16. URL: <https://opendatabot.ua/court/58954999-262ccb9bb54c2d9b5bd0926a106a243a>; Resolution of the Higher Administrative Court of Ukraine dated 08 November 2016 in the case No. P/800/511/15. URL: <https://opendatabot.ua/court/63132437-48f78d6e7f0c0fcd8407e4a30c36565>

197 Resolution of the Supreme Court of Ukraine dated 28 February 2017 in the case No. 800/42/16. URL: <https://opendatabot.ua/court/66203433-a8f466c4d888d79f96e95d0b15962797>

198 E.g., the Judgement of the Administrative Court of Cassation as part of the Supreme Court dated 07 October 2020 in the case No. 800/23/17 (800/182/16). URL: <https://opendatabot.ua/court/92173147-9d821aeaa566c37d78b27f1256b28eb9>

the Supreme Court<sup>199</sup>. In general, the GCoSC believes that the activity of the High Council of Justice is legal and does not violate the international principles of independence of the judiciary, if it does not interfere in the substance of the rendered court decisions, but only reviews the circumstances of their adoption.

“

*The body conducting disciplinary proceedings against a judge is not authorised to check the legality of a court decision but is obliged to review the judge's actions in the adoption of that decision in terms of the presence of violations that are grounds for applying disciplinary liability.*

*Resolution of the Grand Chamber of the Supreme Court in the case No. 800/493/15 (P/9901/311/18)<sup>200</sup>*

A similar legal position is laid out in the Resolutions of the Grand Chamber of the Supreme Court dated 24 May 2018 in the case No. 11-233sap18<sup>201</sup> and dated 18 October 2018 in the case No. 800/445/16<sup>202</sup>.

Therefore, the lack of uniformity in the interpretation of the authorities of the HCJ was caused by the improper legal regulation of its status. Accordingly, if the lawmakers had introduced the necessary changes and clarifications to the text of the Constitution before the start of the reviews, the court proceedings could have been avoided.

---

199 E.g., the Resolution of the Grand Chamber of the Supreme Court dated 4 February 2021

in the case No. 800/22/17 (800/267/16). URL: <https://opendatabot.ua/court/96150434-afbc23060c2913b6b897a1b303be3a5a>; Resolution of the Grand Chamber of the Supreme Court dated 02 September 2021 in the case No. 800/23/17 (800/182/16). URL: <https://opendatabot.ua/court/99765543-6ac211ed08d013f85da90b07elc8b4cc>

200 Resolution of the Grand Chamber of the Supreme Court dated 01 November 2018 in the case No. 800/493/15 (P/9901/311/18). URL: <https://reyestr.court.gov.ua/Review/77764421>

201 Resolution of the Grand Chamber of the Supreme Court dated 24 May 2018 in the case No. 11-233sap18. URL: <https://opendatabot.ua/court/74475974-fe3d813f3292c19294112934cf6d64f5>

202 Resolution of the Grand Chamber of the Supreme Court dated 18 October 2018 in the case No. 800/445/16. URL: <https://opendatabot.ua/court/77611558-888db27f0720e8elfce83edebcc02639>

*The ambiguity of the provisions of the Law on the possibility of the judge's responsibility for the decision made by her/him*

Analysing the norms of national legislation and international standards for the judiciary, national courts once again took different positions on the matter of the possibility (or impossibility) of holding the judge accountable for the decision made. In judicial practice, two diametrically opposed views on this matter are dominant.

First of all, the Higher Administrative Court of Ukraine tends to conclude that the 'Maidan judges' may not be brought to disciplinary liability for their decision. The HACU believes that this principle is of decisive importance for observing the independence of the judge in the administration of justice. In support of its position, the Court refers to the norms of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia<sup>203</sup>, and the Law of Ukraine *On the Judiciary and the Status of Judges*<sup>204</sup>. In particular, the Law *On the Judiciary and the Status of Judges* in the version valid at the time of reviews provided that the repealing or change of a court decision does not entail disciplinary liability for the judge who participated in its adoption, except for cases when the violation was committed as a result of intentional violation of legal norms or improper attitude to official duties.

**The Higher Administrative Court of Ukraine construed the specified norm in such a way that even an illegal and/or unfounded court decision is not a reason to bring a judge to disciplinary liability, except for the specified exceptions<sup>205</sup>.**

Accordingly, the HACU concludes that the violations pointed out by the High Council of Justice were not significant and did not violate a judge's oath.

A similar position is endorsed in some cases by the Grand Chamber of the Supreme Court. In particular, the GCoSC notes that *the incorrect interpretation of*

---

203 Paragraph 25 of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (23-25 June 2010). URL: <https://www.osce.org/files/f/documents/f/7/86319.pdf>

204 Article 83.

205 E.g., the Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15. URL: <https://reyestr.court.gov.ua/Review/55644919>; Resolution of the Higher Administrative Court of Ukraine dated 07 July 2016 in the case No. 800/42/16. URL: <https://reyestr.court.gov.ua/Review/58954999>

*the law must be resolved by way of appeal, and disciplinary liability may not be applied to a judge*<sup>206</sup>. To substantiate this opinion, the Grand Chamber refers to Recommendation CM/Rec(2010) 12 of the Committee of Ministers of the Council of Europe to member states – Judges: Independence, Efficiency and Responsibilities, adopted on 17 November 2010<sup>207</sup>, and the Opinion of the Venice Commission of 16–17 March 2007 No. CDL-AD(2007)003 regarding the draft law on the judiciary and the draft law on the status of judges of Ukraine<sup>208</sup>. These acts contain a caveat that the interpretation of the law, the judge’s assessment of the facts and evidence in the case should not be grounds for liability, except in cases of criminal intent or gross negligence.

The opposite position, found in other decisions of the Great Chamber of the Supreme Court, boils down to that the ‘*Maidan judges’ handing down of arbitrary decisions regarding the protesters is a sufficient basis for the disciplinary liability of the judge*<sup>209</sup>. However, this interpretation has a nuance. The Great Chamber of the Supreme Court notes that in the case of the ‘Maidan judges’ it is worth referring not to the violation of a judge’s oath (as the High Council of Justice believed), but to a gross violation of the norms of procedural law in the administration of justice (in particular, failure to provide sufficient rationale for the court decision made<sup>210</sup>). So, the Grand Chamber agrees with the conclusion of the HCJ on the need to bring judges to disciplinary liability, but on other grounds. A similar legal position is contained in the Judgement of the Administrative Court of Cassation as part of the Supreme Court dated 24 June 2020 in the case No. 800/331/16 (800/13/16)<sup>211</sup>.

---

206 E.g., the Resolution of the Grand Chamber of the Supreme Court dated 12 December 2019 in the case No. 800/623/16 (800/98/16). URL: <https://opendatabot.ua/court/87179353-451587a4620df30f70779f6ee5049ca4>

207 Recommendation CM/Rec(2010) 12 of the Committee of Ministers of the Council of Europe to member states – Judges: Independence, Efficiency and Responsibilities, adopted on 17 November 2010. URL: [https://adm.cv.court.gov.ua/userfiles/CM\\_Rec\\_2010\\_12\\_2010\\_11\\_17.pdf](https://adm.cv.court.gov.ua/userfiles/CM_Rec_2010_12_2010_11_17.pdf)

208 Opinion of the Venice Commission of 16-17 March 2007 No. CDL-AD(2007)003 regarding the draft law on the judiciary and the draft law on the status of judges of Ukraine. URL: [https://www.viaduk.net/clients/vsu/vsu.nsf/\(print\)/229B826C8AC787DEC2257D87004987C3](https://www.viaduk.net/clients/vsu/vsu.nsf/(print)/229B826C8AC787DEC2257D87004987C3)

209 E.g., the Resolution of the Grand Chamber of the Supreme Court dated 15 April 2021 in the case No. 800/331/16 (800/13/16). URL: <https://opendatabot.ua/court/96669464-f40b11ceff0d76029be91688637f1b2c>

210 Article 83 (2) of the Law of Ukraine *On the Judiciary and the Status of Judges* as amended in 2010.

211 Judgement of the Administrative Court of Appeal as part of the Supreme Court dated 24 June 2020 in the case No. 800/331/16 (800/13/16). URL: <https://opendatabot.ua/court/90458731-ee476ed65ab49c668a122dd9d6c77dd3>

## *No clear legal definition of the criteria for dismissing a judge for the violation of the oath*

This point is among the most challenging ones in all cases concerning the ‘Maidan judges’. Violation of a judge’s oath as a basis for holding accountable has not been clearly defined in Ukrainian legislation. In particular, during the period of reviews into the ‘Maidan judges’, the Law *On the High Council of Justice* defined the substance of this violation through its following manifestations:

- ▶ actions by a judge that dishonour the judge’s title or may cause doubts in his/her *objectivity, impartiality and independence*, in the honesty and incorruptibility of judicial bodies;
- ▶ non-compliance by the judge with the requirements and restrictions established by the Law of Ukraine *On Principles of Prevention and Combating Corruption*;
- ▶ deliberate delay by the judge of the terms of consideration of the case beyond those established by law;
- ▶ violation of the moral and ethical principles of a judge’s behaviour.

Essentially, certain aspects of the violation of a judge’s oath are defined through a set of abstract concepts, the precise meaning of which is quite difficult to establish (for example, ‘objectivity’, ‘impartiality’, etc.). Consequently, in practice, the courts faced the problem of how to qualify the decisions of the ‘Maidan judges’ regarding the protesters: did the actions of the judges constitute the violation of the oath or not?

Such a gap in the legislation faced significant criticism from international institutions. For instance, having familiarised with the provisions of the Law *On the High Council of Justice* regarding the dismissal of a judge for the violation of the oath, the Venice Commission emphasised that it is essential ‘not to confuse ethical principles with disciplinary matters’. That is why *the law should specify in detail all conduct that might give grounds for disciplinary proceedings* and imposing sanctions. Precision and foreseeability of the grounds for disciplinary liability is desirable for legal certainty and particularly to safeguard the independence of the judges; therefore, an effort should be made to avoid vague grounds or broad definitions<sup>212</sup>. However, Ukrainian legal acts contain very general concepts, which violates the principle of legal certainty. In this regard,

---

212 Paragraph 45 of the Joint opinion on the law amending certain legislative acts of Ukraine in relation to the prevention of abuse of the right to appeal by the Venice Commission of 15–16 October 2010 No. CDL(2010)029.

the Venice Commission recommended that *Ukraine should more clearly define the concept of ‘violation of the oath by a judge’ in the legislation*<sup>213</sup>. Importantly, this opinion of the Venice Commission dates back to 2010, but in 2014 this gap still remained unaddressed. In this regard, there is a situation whereby poorly prepared legislation ‘recalled’ itself after a certain time, when it was subject to repeated application. This aspect exemplified that ignoring problems in the legislation is not equal to solving them, since negative aftermaths will appear every time law enforcement is turning to the provisions of the ‘problematic’ regulatory and legal framework.

The European Court of Human Rights also underlined the existence of a problem with the imprecise wording for the concept of ‘violation of the oath by a judge’. So, the Court’s Judgement in *Oleksandr Volkov v. Ukraine* noted that the provision of Article 32 of the Law of Ukraine *On the High Council of Justice* leaves the disciplinary body wide discretion in determining the meaning of this term.

**According to the ECHR, the presence of inaccuracies in the wording of this ground for dismissing a judge violates the principle of foreseeability of the law<sup>214</sup>.**

Taking into account these positions and comments, national courts in their decisions elaborate on the opinion about the violation of the principle of legal certainty in the norms that regulate the dismissal of a judge for the violation of the oath. For example, the Higher Administrative Court of Ukraine has repeatedly noted that the lack of a clear legislative definition of the concept of ‘violation of a judge’s oath’ can provoke controversial situations in practice.

---

213 Paragraph 50 (1) f the Joint opinion.

214 Paragraphs 174-178 of the ECHR’s Judgement in *Oleksandr Volkov v. Ukraine*.



*...the actions enshrined in paragraph 2 of Article 32 (2) of the Law on the High Council of Justice were set forth by the legislator using relatively defined and judgement-based concepts, due to which they can be applied in similar situations in an ambiguous or non-uniform way.*

*Resolution of the Higher Administrative Court of Ukraine in the case No. 800/267/16<sup>215</sup>*

A similar legal position is laid out in the Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15<sup>216</sup>.

Also, the HACU separately focused on the analysis of the content of the concepts 'objectivity', 'impartiality' and 'neutrality', which were not regulatorily settled in Ukrainian legislation. The court emphasised that due to the abstractness of these terms, their practical manifestation is difficult to verify in practice<sup>217</sup>. Consequently, the legislative gap became the reason for different assessments of the actions of the 'Maidan judges' in the court proceedings. For example, the HACU mostly ruled that the High Council of Justice had failed to prove the presence of partiality which would be incompatible with the rank of judge.

In addition, national courts have not been able to reach a consensus on how many violations a judge must have committed in order for his/her actions to fall under the category of 'violation of the oath'. In this matter, the HACU in some cases defended the position that one legal fact is enough to establish that violation<sup>218</sup>. On the other hand, the Administrative Court of Cassation as part of the Supreme Court insisted that a judge may be held accountable only where there is a systemic nature of violation of the requirements of the law in her/his actions<sup>219</sup>.

---

215 Resolution of the Higher Administrative Court of Ukraine dated 10 June 2016 in the case No. 800/267/16. URL: <https://opendatobot.ua/court/58633756-c9595121fe4c86bd31ecd53008a7f2b5>

216 Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15. URL: <https://reyestr.court.gov.ua/Review/55644919>

217 Resolution of the Higher Administrative Court of Ukraine dated 11 July 2016 in the case No. 800/261/16. URL: <https://opendatobot.ua/court/58984133-e0f67726ad344f988f4cac7dd9b3857b>

218 E.g., the Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15. URL: <https://reyestr.court.gov.ua/Review/55644919>

219 Judgement of the Administrative Court of Appeal as part of the Supreme Court dated 11 October 2018 in the case No. 800/25/17 (800/274/16). URL: <https://opendatobot.ua/court/77375556-0b93f070572f24abf6fc9836483abfc4>

The Supreme Court of Ukraine and the Grand Chamber of the Supreme Court took a completely different position regarding the assessment of the activities of the ‘Maidan judges’. Both appellate bodies in the cases of the ‘Maidan judges’ drew attention to the fact that arbitrary decisions by judges during the Revolution of Dignity indicate a failure to fulfil their professional duties, a violation of the principles of judiciary and international standards for the protection of human rights. Those actions led to the onset of negative consequences, which were manifested in the lowering of the authority of justice in society. This, in the opinion of the Grand Chamber of the Supreme Court, shows that the ‘Maidan judges’ do not properly comprehend the essence of the judicial profession and a judge’s oath<sup>220</sup>.

So, violations of the principles of legal certainty and the quality of the law became the cause of a wave of judicial challenges against the decisions of the High Council of Justice. It is indicative that the ECHR emphasised these problems back in 2013, that is, one year before the adoption of the Law *On Restoring Confidence in the Judiciary*. However, the Ukrainian authorities did not take onboard the recommendations to improve the legislation, which provoked another round of judicial challenges.

### *Lack of a clear statutory term for holding accountable due to the violation of the oath*

The legal problem was that the Law *On the High Council of Justice* did not contain a clear indication of the period during which the judge could be held accountable for violating the oath. Accordingly, the benchmark was the general period of bringing judges to disciplinary liability, which until 28 March 2015 was *one year* from the date of the misconduct<sup>221</sup>. On 28 March 2015, amendments to the Law *On the Judiciary and the Status of Judges* came into force, establishing a *three-year term* for holding a judge accountable.

---

220 Opinions of the Grand Chamber of the Supreme Court, outlined in its Resolutions dated 28 March 2018 in the case No. P/800/310/17, dated 28 March 2018 in the case No. P/800/405/17, dated 14 June 2018 in the case No. 11-63sap18, dated 30 August 2018 in the case No. 800/342/16 (800/514/15).

221 Law of Ukraine dated 12 February 2015 No. 192-VIII On Ensuring the Right to Fair Court amended the Law *On the Supreme Council of Justice*, which came into effect on 27 February 2015, and laid out the Law *On the Judiciary and the Status of Judges* with a new wording, which came into effect starting 28 March 2015.

## Hence, the question arose: what term of holding a judge accountable — one year or three years — is applicable to the judges for violating the oath?

This issue is relevant because in many cases, at the time of the judges' decisions regarding the protesters, one piece of legislation was in force (one year for holding accountable), and at the time of consideration of the case by the High Council of Justice – another (three years). In judicial practice, there are two approaches to addressing this problem.

According to the first one, the judge could be brought to disciplinary liability exactly within one year from the date of committing the misconduct. This position was endorsed by the HACU, which considered that the three-year statute of limitations is prospective and does not apply to events that preceded the entry into force of the new version of the Law<sup>222</sup>. The Higher Administrative Court of Ukraine explained its position by the inadmissibility of retroactive effect of the law in time (Article 58 of the Constitution of Ukraine)<sup>223</sup>. This interpretation was beneficial for many 'Maidan judges' because it confirmed that on the day of consideration of the disciplinary case, the term of holding accountable had expired.

However, the GCoSC construed this situation in a different way<sup>224</sup>. The Supreme Court noted that according to the provisions of Article 58 of the Constitution of Ukraine applying the three-year statute of limitations is correct, as it improves the judge's position. In justification of its standpoint, the Grand Chamber indicated that until 28 March 2015, the Law *On the High Council of Justice* did not contain any specific reference to another law that would establish the term of holding accountable (that is, the one-year term was essentially applied 'by default'). However, after that date, the Law *On the High Council of Justice* contained a clear reference to the norms of the Law *On the Judiciary and the Status of Judges*, which established a three-year statute of limitations. So, the establishment of a clear term (albeit three years) ensured compliance with the principle of legal certainty of the law, and therefore, in the opinion of the Grand Chamber of the Supreme Court, improved the position of judges.

---

222 E.g., the Resolution of the Higher Administrative Court of Ukraine dated 11 July 2016 in the case No. 800/261/16. URL: <https://opendatabot.ua/court/58984133-e0f67726ad344f988f4cac7dd9b3857b>

223 Resolution of the Higher Administrative Court of Ukraine dated 02 February 2016 in the case No. 800/451/15. URL: <https://reyestr.court.gov.ua/Review/55644919>

224 E.g., the Resolutions of the Grand Chamber of the Supreme Court dated 01 November 2018 in the case No. 800/493/15 (P/9901/311/18). URL: <https://opendatabot.ua/court/77764421-e7e7cac8ba8262772ff9c72c11d40bae>; dated 02 September 2021 in the case No. 800/23/17 (800/182/16). URL: <https://opendatabot.ua/court/99765543-6ac211ed08d013f85da90b07e1c8b4cc>

Yet the analysis of this situation gives grounds to conclude that it would have been much easier and more appropriate to amend the legislation and establish clear deadlines for holding judges accountable for violating the oath even before the implementation of this process.

## **Correcting inaccuracies at the very beginning of the process designing would have prevented multiple ambiguous interpretations of the Law.**

*Violation of the procedure for consideration of complaints against the decisions of the Disciplinary Chamber of the Supreme Council of Justice*

In accordance with the provisions of the Law *On Restoration of Confidence in the Judiciary in Ukraine*, where following the review into judges of higher specialised courts and the Supreme Court of Ukraine the Temporary Special Board found grounds for disciplinary liability, that opinion of the TSB was sent to the Supreme Council of Justice. In this event, further consideration of the case was carried out by the Disciplinary Chambers of the Supreme Council of Justice. Still, the final opinion of the SCJ's Disciplinary Chamber could be appealed by the judge who made the decision regarding Euromaidan activists in case of disagreement with it.

The peculiarity of this appeal is that the decision on the presence (or absence) of a disciplinary misconduct in the judge's actions was made by *one* of the SCJ's Disciplinary Chambers. However, this decision should be appealed to the *entire* Supreme Council of Justice. In addition, all members of the SCJ, except for those who actually made the decision, have the right to attend the meeting regarding the appeal thereof. On the one hand, this provision of Article 51 of the Law *On the High Council of Justice* is quite straightforward and completely understandable. On the other hand, practice shows that even in this case there were violations of a procedural nature, which led to the recognition of the SCJ's decision following the review of the disciplinary complaint as illegal.

In particular, it was this way in the case No. 800/271/17, the consideration of which reached the Grand Chamber of the Supreme Court<sup>225</sup>. This case

---

225 Resolution of the Grand Chamber of the Supreme Court dated 21 June 2018 in the case No. 800/ 271/17. URL: <https://opendatabot.ua/court/75042962-6b82ff8134c41d5ba914e28931c2d755>

concerned the fact that a person who participated in the process of making this decision was present at the meeting of the Supreme Council of Justice regarding the appeal of the decision of the SCJ's Disciplinary Chamber. That is, *this member of the SCJ directly violated the requirement of the Law, which forbids one person to make a decision on disciplinary proceedings and at the same time consider this decision as part of the appeal.* In this regard, the Grand Chamber of the Supreme Court emphasised that the decision of the SCJ was made by an unauthorised composition, and therefore it shall be repealed.

“

*...as per the content of Article 51 (8) of the Law of Ukraine On the Supreme Council of Justice, the SCJ members who passed the challenged decision of the Disciplinary Chamber may not participate in the review of the decision of the Disciplinary Chamber, because such participation certainly affects the objectivity and impartiality of the SCJ during the review of the complaint on the decision of its Disciplinary Chamber.  
Resolution of the Grand Chamber of the Supreme Court in the case No. 800/ 271/17<sup>226</sup>*

Ultimately, following the consideration of this case, the Grand Chamber of the Supreme Court made a decision in favour of one of the ‘Maidan judges’. This position of the court emphasises that the consequence of making a procedural error may be the negation of efforts to hold judges accountable for disciplinary offences.

---

226 Resolution of the Grand Chamber of the Supreme Court dated 21 June 2018 in the case No. 800/ 271/17. URL: <https://opendatabot.ua/court/75042962-6b82ff8134c41d5ba914e28931c2d755>

## 5. Response to the results of the challenging

The decisions of the first instance courts on the illegality of the dismissal of the 'Maidan judges' provoked the public's outcry. Naturally, the results of the trials did not meet the demands of society. That is why every such decision was subjected to furious criticism. The public was outraged and massively dissatisfied, because the 'notorious' judges not only remained unpunished but also managed to return back to the justice system. Accordingly, the public accused the servants of Themis, who overturned the decision of the HCJ (SCJ) to dismiss the 'Maidan judges', of unprofessionalism, lack of integrity and corruption.

Following the first stage of the judicial challenges in 2014–2017, the public was dissatisfied with the low percentage of cleansing the judicial system from the 'Maidan judges'. In society's view, this process failed. This is evidenced by numerous publications in the media and assessment of the situation by civil society organisations<sup>227</sup>. Therefore, the first decisions of the courts to repeal the dismissal of 'notorious' judges forced the public to take a critical view of the real possibility of the authorities to change the situation in the judiciary, renew the courts and restore confidence in the judiciary on the whole.

However, in response to the decisions of the first instance courts, which were adopted in favour of the 'Maidan judges', the High Council of Justice began to apply for their review. The efforts of the HCJ (SCJ) were not in vain. All in all, the Grand Chamber of the Supreme Court mostly sided with it. However, not all repealed decisions have been reviewed by the Grand Chamber, as of now. A significant number of cases are still pending.

---

227 E.g., 'Maidan Judges' Reference Book by Automaidan All-Ukrainian Association.  
URL: <https://prosud.info/maidans-bad-judges.pdf>

## 6. Conclusions

The judicial challenges revealed a number of systemic shortcomings that accompanied the process of cleansing the judicial system after the Revolution of Dignity. The Law *On Restoring Confidence in the Judiciary in Ukraine* launched the procedure of special reviews into the ‘Maidan judges’, who were ultimately supposed to be dismissed for making unjust decisions regarding the participants of the protests. However, the implementation of this cleansing procedure encountered a significant number of difficulties, the main reason of which was imperfect legal regulation both at the stage of designing the cleansing and long before that – when coming up with the legislative framework for the activities of the judicial branch of government.

The analysis of court practice shows that, traditionally for Ukrainian rulemaking, domestic legislation lacks clarity and legal certainty. In particular, at the design stage, the legislators did not take onboard the recommendations of international institutions and previous negative experience in this aspect. Accordingly, the legality of the procedure for the dismissal of the ‘Maidan judges’ for arbitrary decisions was sometimes challenged by the courts due to the presence of such factors as:

- 1) imprecise wording of the grounds for the review into a judge;
- 2) inconsistency of the Law regarding the powers of the High Council of Justice with the provisions of the Constitution;
- 3) the ambiguity of the provisions of the Law on the possibility of the judge’s responsibility for the decision made by her/him;
- 4) no clear legal definition of the criteria for dismissing a judge for the violation of the oath;
- 5) lack of a clear statutory term for holding accountable due to the violation of the oath.

The allowed gaps have provoked different approaches to the interpretation of the provisions of the Law. The courts also faced these difficulties in considering the lawsuits of the dismissed ‘Maidan judges’. The ambiguity in the positions of the courts once again underlined the large scale of the problems that arise as a result of the violation of the principles of legal certainty and the quality of the law.

Furthermore, shortcomings in law enforcement became an obstacle to the implementation of the procedure for cleansing the judiciary. For instance, holding accountable judges who made decisions regarding the participants of the Revolution of Dignity was sometimes accompanied by a procedural error – *the review of complaints against the decisions of the Disciplinary Chamber of the Supreme Council of Justice took place with the participation of the people who directly made those decisions*. All in all, this resulted in the repealed decision of the Supreme Council of Justice to dismiss the judge from his/her position.

It is quite sensible that all misunderstandings could have been avoided if the legislators at the stage of designing the cleansing procedure and the authorities responsible for conducting the reviews at the stage of enforcement had acted proactively.

**All possible regulatory inconsistencies should have been resolved as early as before the final adoption of the law on the floor of the Ukrainian Parliament, and not in the courtroom after the adoption of the act.**

Correcting the inaccuracies at the very beginning of the development would have prevented multiple lawsuits, which once again shook public confidence in the Ukrainian judiciary. Furthermore, the procedure to cleanse the judiciary could have been organised more perfectly *if the practice of making reviews had been accompanied by carefully calibrated efforts and decisions of competent authorities*. So, the exercise with this procedure underlined the large scale of the problems that traditionally arise at the levels of law making and law enforcement in bringing into life political and legislative decisions.

## CASE STUDY 4. Challenging of the attestation results of prosecutors at the General Prosecution Office of Ukraine in 2019

---

### 1. Reform design

#### 1.1 Essence and goal

The next stage of the reform of the public prosecution service was launched back in 2014 with the adoption of the new version of the Law *On the Public Prosecution Service*<sup>228</sup>. However, the adoption of this act did not ensure a full-fledged personnel reset in the public prosecution service, and therefore the goal of clearing the ranks of prosecutors from persons who do not meet the requirements of professionalism and integrity was not achieved. In addition, the Law *On the Public Prosecution Service* of 2014 did not provide for the introduction of measures that would have enabled to nullify the practice of corporate closure of access to the profession of a prosecutor, which was established at that time. Of its part, this became an obstacle to the renewal of staffing of the public prosecution service at all levels. Consequently, these negative trends had an impact on the performance of prosecutors' functions and powers, as the efficiency of the prosecution remained low<sup>229</sup>. Thus, the framework of the prosecution service of 2014 did not meet the needs of the society<sup>230</sup>.

Therefore, with the beginning of President Volodymyr Zelenskyi's term of office, a new wave of reforms in the justice system has started in Ukraine. One of the landmark events in a series of innovations was the process of reformatting the work of the public prosecution service launched in the first year of Zelenskyi's presidency. The reform dates back to 19 September 2019, when the Ukrainian Parliament adopted the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*<sup>231</sup> (hereinafter referred to as the '*Law*').

---

228 Law of Ukraine On the Public Prosecution Service dated 14 October 2014 No. 1697-VII.

URL: <https://zakon.rada.gov.ua/laws/show/1697-18#Text>

229 Prosecutor: manages? coordinates? supervises? investigates: Report on the results of the study 'The prosecutor's role at the pre-trial stage of the criminal process' / Yu. Bielousov, V. Venher, V. Mitko, A. Orlean, V. Sushchenko, V. Yavorska; edited by Yu.K. Bielousova: ST-Druk, 2017. Page 268. URL: [https://ecpl.com.ua/wp-content/uploads/2017/10/prokuror\\_ukr-1.pdf](https://ecpl.com.ua/wp-content/uploads/2017/10/prokuror_ukr-1.pdf)

230 According to an opinion poll conducted by the Razumkov Centre, as of February 2019, only 2.1% of the population fully trusted the public prosecution service, while 34.8% did not trust it at all. URL: <http://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/riven-doviry-dosuspilnykh-instytutiv-ta-elektoralni-oriientatsii-gromadian-ukrainy>

231 Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 19 September 2019 No. 113-IX.

URL: <https://zakon.rada.gov.ua/laws/show/113-20#Text>

The main declared goal of the amendments was to set *new standards for the prosecution service, increase its effectiveness in terms of supervision, and establish a body that would be respected by society and would be prestigious to work in due to opportunities for fair career growth and professional development*<sup>232</sup>. As a whole, the reform sought to create the preconditions for building a prosecution system based on the principles of independence, professionalism and accountability.

The Law provided for a number of changes to the organisation of the public prosecution service. The main reform innovations were as follows:

- ▶ The structure of the public prosecution service was changed: instead of the General Prosecution Office of Ukraine, the Attorney General's Office was to be established, instead of regional public prosecution offices – oblast ones, instead of local – district ones. In addition, the Law terminated the powers of military prosecution offices.
- ▶ The maximum number of prosecutors in the public prosecution service was reduced from *15,000* to *10,000* people. The Law contain a provision that from the date of its entry into force, all prosecutors were considered to have been personally notified in due order about possible future dismissal from office on the basis of the liquidation or reorganisation of the public prosecution office in which the prosecutor holds a position or for the event of a reduction in the number of prosecutors in the public prosecution office.
- ▶ The procedure for re-attestation of current officers of public prosecution offices was introduced. They could be transferred to the positions in the Attorney General's Office, oblast and district public prosecution offices only in case they successfully passed attestation. Still, the requirement to pass attestation does not apply to prosecutors of the Specialised Anti-Corruption Prosecutor's Office.
- ▶ Candidates from outside the prosecutorial system could now also participate in the selection procedure for positions in the prosecutorial bodies at all levels.
- ▶ Temporarily, until 1 September 2021, the powers of the Qualification and Disciplinary Commission of Prosecutors were suspended, and its functions were transferred to the newly established body, namely HR boards. A number of organisational powers regarding the selection procedure for vacant positions of prosecutors were assigned to the Attorney General.

---

232 Attorney General's Office. Goal of the public prosecution service reform. 2019.  
URL: <https://www.gp.gov.ua/ua/reform>

- ▶ The National Prosecutorial Academy of Ukraine was transformed into the Training Centre for Ukraine's Prosecutors.

An important aspect of this reform was the process of re-attestation of prosecutors. Although the purpose of the attestation is not separately defined in the Law, it can be established from the content of its provisions that the main purpose of this procedure is to identify the level of knowledge and skills of prosecutors in applying the law, to find out their actual ability to exercise the powers of a prosecutor and to establish whether prosecutors meet the requirements of professional competence and integrity.

As a result of the attestation, the prosecution system was supposed to be filled with new highly professional staff, whose work would restore public confidence in the justice system as a whole and the public prosecution service in particular.

## 1.2 Preparatory work

The draft Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*<sup>233</sup> was developed at the initiative of the President of Ukraine and was designated as urgent. In August 2019, the draft law was submitted to, and registered in, the Ukrainian Parliament. Following the parliamentary consideration, the adoption of this Law was supported in the second reading by 259 votes of MPs.

At the same time, the Main Legal Department (hereinafter referred to as the 'MLD'), assessing the draft law before its official adoption, expressed a number of comments<sup>234</sup> on the content of this act:

1. The provisions of the draft law were not fully consistent with the legislation in force at the time. In particular, this concerns the moment of entry into force of the Law. The Main Legal Department believes that the entry into force of the law and, accordingly, the attestation was planned to take place much earlier than required by other regulatory acts. According to the MLD, the entry into force of the draft Law should have been scheduled only for 1 January 2021 (however, the Law actually entered into force on 25 September 2019). Therefore, the proper amount of time was not allocated to prepare for the attestation.

---

233 Draft Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 29 August 2019 No. 1032. URL: [http://wl.cl.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=66266](http://wl.cl.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66266)

234 Comments of the Main Legal Department to the Draft Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 18 September 2019. URL: <http://wl.cl.rada.gov.ua/pls/zweb2/webproc34?id=8pf3511=66266&pf35401=500761>

2. The proposed attestation and dismissal procedure did not provide for the legislative guarantees of prosecutor independence prescribed by the Law *On the Public Prosecution Service*. In addition, the MLD noted that the provisions of the draft law on the procedure for warning prosecutors of impending dismissal were contrary to the Constitution of Ukraine<sup>235</sup>.
3. The draft law contained a number of discriminatory provisions (for example, regarding the absence of the need for passing attestation by certain individuals).
4. The Main Legal Department was quite critical of the possibility of including 'other phases' in the attestation procedure. Such a provision clearly indicated a violation of the principle of legal certainty of the law.
5. The MLD noted that the Attorney General's powers were too broad, including in terms of the attestation procedure.

**As a result, the draft Law On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies was found to require significant revision. However, a significant number of these shortcomings were still included in the final text of the Law.**

The final version of the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* was adopted by the Parliament on 19 September 2019, and the Head of the State signed the Law on 23 September.

However, it is important to note that the list of shortcomings in the legal regulation of the reform, which drew attention of the expert community at the design stage, did not end there. In fact, some gaps that even the competent institutions could not have foreseen at first will become apparent much later – at the stage of practical application. This especially concerns the shortcomings of bylaws that were not assessed by the Main Legal Department.

---

235 Constitution of Ukraine dated 28 June 1996 No. 254k/96-VR. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

### 1.3 Legal regulation

The basis for the attestation of prosecutors is defined by the relevant Law and bylaws adopted for its implementation. Accordingly, the system of legal regulation of attestation of prosecutors at the Attorney General's Office of Ukraine during the reform period of 2019-2020 is as follows:

- ▶ *The Law No. 113-IX On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 19 September 2019. This Law defines the legal and organisational framework for the reset of personnel of the public prosecution service through the attestation of current prosecutors, as well as the selection of candidates for prosecutors from outside the system (i.e., those who are not prosecutors at the time of attestation).
- ▶ *Order of the Attorney General of Ukraine No. 221 On Approval of the Prosecutors' Attestation Procedure* dated 3 October 2019<sup>236</sup> (hereinafter referred to as the 'Procedure No. 221'). This regulatory act was aimed at detailing and deepening the legal regulation of the attestation procedure. In particular, the Procedure regulated the subject matter and phases of the attestation, defined the powers of HR boards, and provided for the consequences of successful (or failed) attestation.
- ▶ *Order of the Attorney General of Ukraine No. 233 On Approval of the Procedure for the Work of HR Boards* dated 17 October 2019<sup>237</sup> (hereinafter referred to as the 'Order No. 233'). This Procedure defined the composition of HR boards, the scope and conditions for exercising their powers, and detailed the individual phases of passing attestation.

The legal regulation of the prosecutors' attestation procedure, as defined by the relevant Law and the above-mentioned bylaws, was not without its shortcomings. Accordingly, *this circumstance led to ambiguous interpretation of the provisions defining the powers of the HR boards and the Attorney General in the process of the attestation selection*. As a result, the imperfection of the regulatory framework gave rise to a number of judicial challenges of the legitimacy of these acts and the attestation procedure as a whole. The problems of legal regulation that provoked the judicial challenges of the reform will be discussed below.

---

236 Order of the Attorney General of Ukraine *On Approval of the Prosecutors' Attestation Procedure* dated 3 October 2019 No. 221. URL: <https://zakon.rada.gov.ua/laws/show/v0221900-19#Text>

237 Attorney General's Order *On Approval of the Procedure for the Work of HR Boards* dated 17 October 2019 No. 233. URL: <https://zakon.rada.gov.ua/laws/show/v0233900-19#Text>

## 2. Implementation of the reform

The Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* provided that with the establishment of the Attorney General's Office (which began operating on 2 January 2020<sup>238</sup>), officers of the General Prosecution Office of Ukraine would be dismissed or transferred to the Attorney General's Office based on the results of their attestation.

A particular nuance of this reform was that the process of re-attestation began with the Attorney General's Office of Ukraine. In other words, unlike previous attempts at reform, this time the Ukrainian authorities decided to organise the introduction of changes on a top-down basis. Accordingly, it was planned to test the new standards for selecting the best candidates at the highest body of the prosecution system, and then apply this experience to the process of attestation of lower-level public prosecution offices (oblast and local ones).

Prosecutors and investigators of the Attorney General's Office were attested in October–December 2019.

HR boards specially created by the order of the Attorney General were empowered to conduct the attestation. A total of 7 HR boards were involved in the process<sup>239</sup>: one of them conducted testing and the rest did interviews. The composition of the HR boards was formed for members selected by the public prosecution office and members delegated by international organisations, diplomatic missions, etc. to be represented in equal numbers – three persons from each party. Accordingly, one HR board consisted of six members in total.

*The attestation included several phases:*

### *1. Submitting an application for participation in the attestation procedure*

In order to participate in the selection process, prosecutors (or other candidates who were not prosecutors at the time of the attestation) had to submit an application form. This application included, *inter alia*, consent to participate in the attestation and possible dismissal in case of failure. However, even at this phase, not all prosecutors decided to participate in the selection.

---

238 Attorney General's Order *On the Day of the Commencement of Work by the Attorney General's Office* dated 23 December 2019 No. 351. URL: <https://www.gp.gov.ua/ua/posts/nakaz-generalnogo-prokurora-pro-den-pochatku-roboti-ofisu-generalnogo-prokurora>

239 Re-attestation of the Attorney General's Office: In one of the HR boards, one in three prosecutors did not pass the interview. URL: <https://www.slovoidilo.ua/2019/12/28/pogljad/polityka/peredestacziya-henprokuratury-odnij-komisij-spivbesidu-ne-projshov-kozhen-tretij-prokuror>

Thus, *at the time of attestation*, the total number of staff of public prosecution offices at all levels exceeded 11,100 prosecutors. Of them, 1,339 prosecutors worked in the Attorney General's Office<sup>240</sup>. However, only 1,083 prosecutors of the General Prosecution Office<sup>241</sup> (i.e., almost 81% of prosecutors of the previous staff composition) submitted an application form indicating their intention to pass attestation. The reasons for the non-participation of individual prosecutors in the attestation selection different – some unscrupulous prosecutors decided to 'drop out' on their own for fear of public exposure of their unprofessionalism and incompetence, while others deliberately failed to submit applications or submitted other forms of applications in protest, disagreeing with the conditions of the attestation proposed by the developers. The position of the second group of prosecutors was based on the fact that they considered the application form to be contrary to the law in terms of the grounds for dismissal. In addition, they opposed the possibility of making a decision on the success of their attestation based on the information obtained from anonymous sources without its confirmation<sup>242</sup>. These circumstances, among others, were used by prosecutors as arguments to prove that the attestation was unlawful. In the oblast public prosecution offices, the percentage of prosecutors who did not apply for transfer was only 2%, and it was 1% for local public prosecution offices. So, 218 prosecutors of the General Prosecution Office who refused to pass the attestation for transfer to the Attorney General's Office, as well as prosecutors who submitted applications that did not comply with the established form were dismissed<sup>243</sup>.

## II. Law knowledge testing

This phase of the attestation was in the form of anonymous computer-assisted testing. The purpose of the test was to identify the level of knowledge and skills in the application of the law, conformity to exercising the prosecutor's powers (that is, it is supposed to find out whether the prosecutor, based on the available knowledge of the law, can properly perform his/her official functions and powers).

---

240 A Historic Moment: The Attorney General's Office to Start Operating on 2 January 2020. URL: <https://yur-gazeta.com/golovna/istorichniy-moment-ofis-genprokurora-pochne-pracyuvati-2-sichnya-2020-r.html>

241 Results of the public prosecution service reform. Attorney General's Office. URL: <https://gp.gov.ua/ua/posts/rezultati-reformuvannya-prokuraturi>

242 The provision on the possibility of using such information was specified in paragraph 10 of Section IV of the *Prosecutors' Attestation Procedure* No. 221. In particular, the provision of this paragraph stated that 'the HR board may take into account information received from individuals and legal entities (including anonymously) during the interview and decision-making without additional official confirmation'.

243 Attestation of Prosecutors: Almost a Third Failed the Law Knowledge Test. URL: <https://www.pravda.com.ua/news/2019/10/24/7229952/>

The test schedules were published on the website of the Attorney General no later than five days before the exam date. The list of test questions was approved by the Attorney General and published on the official website of the General Prosecution Office of Ukraine (Attorney General's Office) no later than 7 calendar days before the day the candidates were to take the test.

The total duration of the exam was 100 minutes. During this time, prosecutors had to answer 100 questions, which were selected by an automated system from a general list for each of the selection participants. The maximum number of possible points that candidates could receive for the exam was 100. *In order for a prosecutor to be admitted to the next phase of the attestation, he/she had to score at least 70 points.* Accordingly, if a candidate scored less than that, he/she was not allowed to take the exam in the form of testing for general abilities and skills. In such a case, participation in the selection process was terminated, and the relevant HR board decided that the prosecutor had failed the attestation.

*Following the results of this phase, 288 people were dismissed from the General Prosecution Office: 193 people failed the test (scored less than the required number of points), and another 95 prosecutors did not show up for the attestation at all<sup>244</sup>.*

### *III. Testing for general abilities and skills*

Similarly to the previous stage, prosecutors who made it to the next round had to pass an exam in the form of anonymous computer-assisted testing. This time, the subject of the test was the intellectual (mental) abilities of the candidates, i.e., the ability of prosecutors to understand, analyse, systematise and produce verbal information.

Similarly to the law knowledge testing, the HR board prepared schedules for the exams, which were published on the official website of the General Prosecution Office of Ukraine (Attorney General's Office) no later than five calendar days before the test day.

The exam consisted of two blocks of 30 questions each (respectively, 60 questions in total). 8 minutes were allocated for the verbal intelligence block, 20 minutes – for the abstract-logical block.

Each prosecutor had his/her own unique list of questions, which was drawn up in the very course of testing.

---

244 288 Prosecutors of the General Prosecution Office of Ukraine Failed Re-attestation.  
URL: [https://lb.ua/news/2019/11/05/441458\\_pereattestatsiyu\\_proshli\\_288.html](https://lb.ua/news/2019/11/05/441458_pereattestatsiyu_proshli_288.html)

Prosecutors who did not pass this phase were not admitted to an interview. *In total, 26 prosecutors of the General Prosecution Office failed the test for general abilities and skills: 24 candidates failed the assignment, and 2 did not appear at this phase of the attestation*<sup>245</sup>.

#### *IV. Interview*

The purpose of the interview was to identify the prosecutor's compliance with the requirements of professional competence, professional ethics and integrity. To assess the level of practical skills and abilities, a written practical assignment was provided for at this phase, which prosecutors completed before the interview. The time limit for the practical assignment was **45** minutes.

The schedule of interviews was published on the official website of the General Prosecution Office of Ukraine (Attorney General's Office) no later than five calendar days before the interview.

To conduct this phase, the HR board was empowered to obtain any information from governmental authorities about the prosecutor necessary for attestation purposes. In addition, any individual or legal entity, local self-government authorities had the right to submit to the HR board information that could indicate that the prosecutor did not meet the criteria of competence, professional ethics and integrity.

*The interview was conducted verbally and consisted of the following phases:*

- 1) HR board members scrutinise an attestation file;
- 2) hold a consecutive discussion with the prosecutor regarding the attestation file (including in the form of questions and answers), as well as discuss the practical task performed by him or her.

Based on the results of the discussion, the HR board made a decision on the prosecutor's successful (or failed) attestation.

**At least four votes of the HR board members were required to make a decision on successful attestation.**

---

245 The General Prosecution Office Says How Many Prosecutors Failed the Next Phase of the Attestation. URL: <https://hromadske.ua/posts/u-gpu-povidomili-skilki-prokuroriv-ne-projshli-chergovij-etap-atestaciy>

According to the results of the interviews, *only 304 candidates out of 453 successfully passed this phase, and 159 prosecutors of the General Prosecution Office were dismissed*<sup>246</sup>.

### 3. Judicial challenging of the attestation of prosecutors at the General Prosecution Office of Ukraine

According to the Attorney General's Office<sup>247</sup>, *only 629 of the 1,083 prosecutors of the General Prosecution Office who had submitted applications for the attestation were eventually successful*. More than 700 prosecutors who did not apply for participation in the attestation or submitted an application in an incorrect form, did not pass the attestation phases, and did not meet the integrity criteria were dismissed from public prosecution offices.

Believing that the attestation procedure was conducted in violation of the law, some unattested prosecutors decided to challenge it in court. So, more than 400 former prosecutors<sup>248</sup> of the General Prosecution Office of Ukraine filed lawsuits with administrative courts.

#### 3.1 Reasons for challenging

It is noteworthy that the attestation procedure envisaged by the relevant Law, Procedures No. 221 and No. 233 was criticised from the very beginning, which indicated a mixed assessment of its legitimacy. For sure, prosecutors who failed to pass all stages of the attestation procedure drew special attention to the illegality and overall inefficiency of the attestation procedure.

The analysis of court practice gives grounds to conclude that the *typical arguments of prosecutors regarding the illegality of the organisation of attestation are as follows*:

*1) there is no actual ground for dismissal provided for in paragraph 9 of Article 51 (1) of the Law On the Public Prosecution Service*, since the General Prosecution Office of Ukraine has not been reorganised or liquidated;

---

246 The General Prosecution Office Completes Interviews with Candidates for Prosecutors and Investigators of the General Inspectorate. URL: <https://tsn.ua/politika/u-gpu-zavershili-spiivbesidiz-kandidatami-u-prokurori-ta-slidchi-genispekciyi-846995.html>

247 Results of the public prosecution service reform. Attorney General's Office. URL: <https://gp.gov.ua/ua/posts/rezultati-reformuvannya-prokuraturi>

248 Data collected based on the analysis of court decisions available in the Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/>

2) *the prosecutors insisted that the application for attestation, which they had to submit at the beginning of the attestation procedure, did not meet the requirements of Clause 15 of Section II Final and Transitional Provisions of the Law On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies;*

3) *the regulatory acts governing the attestation procedure do not contain clear criteria for assessing the attestation file;*

4) *the legislation does not contain clear criteria for defining the concept of 'prosecutor's integrity', and therefore the HR boards had no grounds to categorically state the opposite;*

5) *the claimants believe that the decisions of the HR boards were unfounded and did not contain evidence to support the conclusion on the failed attestation;*

6) *some HR boards did not take into account all attestation files and made decisions based only on the results of individual phases;*

7) *when assessing the candidate's compliance with the established criteria, the HR board re-examined the facts that had already been the basis for bringing the prosecutor to disciplinary liability in the past;*

8) *the HR boards could provide a different assessment of the prosecutor's integrity than the General Inspectorate during the secret integrity check. This violates the requirement that the same circumstances cannot be rechecked with different conclusions;*

9) *the collection of data on prosecutors for the attestation file is an unjustified interference with their right to respect for private life;*

10) *the HR board is not authorised to establish the correspondence of property to legitimate income; the only body that could legally conduct inspections is the National Agency for the Prevention of Corruption (hereinafter referred to as the 'NAPC');*

11) *the Attorney General's Office destroyed in advance all attestation files that could have shown the validity (or invalidity) of the decisions made by HR boards.*

Of course, some of these grounds for appeal were indeed confirmed in the course of the trial, but other arguments of the claimants were found to be groundless by the court. A detailed analysis of the court's reasons for assessing these circumstances will be given below.

## 3.2 Claims

The list of claims brought to court by a particular prosecutor could differ depending on the actual circumstances of the case. However, a summary analysis of court practice shows that a standard list of claims classically consists of four items:

- ▶ declare unlawful and cancel the decision of the HR board;
- ▶ declare unlawful the order of the Attorney General on dismissal with its simultaneous cancellation;
- ▶ reinstate the prosecutor in the position he or she held before the dismissal or in another equivalent position;
- ▶ recover from the Attorney General's Office the average salary for the period of forced absenteeism.

Of course, there were cases when prosecutors could specify a shorter list of requirements, but in such cases, it could jeopardise the success of case hearing in court. Some judges, applying a formalistic approach, decided cases solely in the framework of the claims. In this regard, there were situations when the courts concluded that there were no grounds for cancelling the dismissal order, as the claim did not contain a requirement to invalidate the decision of the HR board (which is the main ground for dismissal). At the same time, it should be noted that administrative courts, unlike other jurisdictions, are empowered to go beyond the scope of the claims if it is necessary for the effective protection of human rights<sup>249</sup>. However, in the cases studied, the courts did not always exercise these powers.

---

249 Resolution of the Grand Chamber of the Supreme Court dated 29 May 2018 in the case No. 800/341/17 (9991/944/12). URL: <https://reyestr.court.gov.ua/Review/74551611>;  
Resolution of the Grand Chamber of the Supreme Court dated 12 November 2019 in the case No. 9901/21/19. URL: <https://reyestr.court.gov.ua/Review/86656836>

## 4. Results of challenging

### 4.1 General characteristics of court decisions following the challenging

The analysis of court decisions based on the results of hearing by courts of three instances showed that at the first stages of the appeal, *the first instance courts mostly interpreted the provisions of the law in favour of unattested prosecutors*. Accordingly, these courts ruled that the former prosecutors should be reinstated in their positions.

It is quite logical that the Attorney General's Office appealed almost all of these decisions. However, *the appellate courts on the whole supported the trend of the first instance courts by ruling that the attestation was unlawful*. The only difference was that in the end, the number of decisions in favour of unattested prosecutors was somewhat lower than in the first instance, but their number still exceeded the number of decisions in favour of the Attorney General's Office.

For a long time, this position of the courts was relatively stable and indicated a clear failure of the public prosecution service reform. Yet everything changed when the Supreme Court resolutions entered into force. The court of cassation has significantly changed the vector of hearing disputes concerning attestation. Ultimately, *in most of the cases that were heard by the Supreme Court the attestation procedure was recognised as lawful and, accordingly, the legitimacy of the reform got confirmed*. The particular significance of these resolutions can be seen in the fact that the decisions of the cassation court became a guideline for lower courts in the process of resolving cases. Therefore, after their entry into force, the court practice in resolving this category of cases became more or less uniform. As a result, we have a situation in which the courts mostly side with the Attorney General's Office and make decisions confirming the legality of the reform. In total, as of February 2023, the courts made more than 200 decisions in favour of the Attorney General's Office and only about 140 in favour of unattested prosecutors<sup>250</sup>.

It is also important to note that judges mainly did not delay the hearing and resolution of disputes, waiting for cassation decisions, but actively took the initiative in this matter. Although, to be fair, there were cases when the courts of first instance suspended the hearing of a case waiting for the decision of the Constitutional Court of Ukraine (hereinafter referred to as the 'CCU'). Such an option occurred in 2020, when 50 members of the Ukrainian Parliament appealed to the Constitutional Court of Ukraine to invalidate certain provisions of the Law

---

250 The number of court decisions in favour of a particular party in a case was calculated based on the latest decision available in the proceedings in a certain case as of February 2023.

*On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*<sup>251</sup>. Subsequently, constitutional complaints were also filed by individual prosecutors<sup>252</sup> who had participated in the attestation procedure but failed it. Yet at the time of hearing the vast majority of cases, the CCU did not make decisions on these submissions and complaints. Therefore, lower courts sometimes ordered the proceedings to be suspended until the Constitutional Court issued a relevant decision<sup>253</sup>. However, as a rule, the majority of *judges considered it necessary to continue hearing of cases*<sup>254</sup> *without waiting for the CCU's decision*, as such actions actually delayed hearing and resolution of this category of disputes, which negatively affected the process of protecting violated rights.

The law enforcement practice shows that the position of the courts not to wait for the Constitutional Court's decision was quite reasonable and justified. For example, despite the fact that more than three years have passed since the first constitutional motion (initiated by MPs), the CCU has not yet made a final decision on it<sup>255</sup>. At the same time, there is some progress in the hearing of the constitutional complaint filed by Serhii Mykolaiovych Vasylenko. In particular, on 1 March 2023, the Constitutional Court of Ukraine made a decision *declaring unconstitutional Clause 6 of Section II Final and Transitional Provisions* of the Law of Ukraine No. 113-IX *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 19 September 2019, *which regulates the relations on warning prosecutors of possible future dismissal*<sup>256</sup>.

---

251 Constitutional submission No. 42/04-03, dated 4 March 2020, regarding the conformity of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*, dated 19 September 2019 No. 113-IX (as amended), with the Constitution of Ukraine. URL: [https://ccu.gov.ua/sites/default/files/3\\_116\\_2020.pdf](https://ccu.gov.ua/sites/default/files/3_116_2020.pdf).

252 E.g., the constitutional complaint by Serhii Mykolaiovych Vasylenko on the compliance of Clause 6 of Section II *Final and Transitional Provisions* of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* with the Constitution of Ukraine (constitutionality) (as regards guarantees of independence of the prosecutor). URL: [https://ccu.gov.ua/sites/default/files/18\\_9\\_2022.pdf](https://ccu.gov.ua/sites/default/files/18_9_2022.pdf).

253 E.g., the Judgement of the Kyiv City District Administrative Court, dated 15 July 2020, in case No. 640/25895/19 on suspending the proceedings in the case, which was upheld by the decision of the Sixth Administrative Court of Appeal dated 20 October 2020.

254 E.g., the Judgement of the Kharkiv City District Administrative Court dated 3 July 2020 in the case No. 520/12307/19. URL: <https://opendatabot.ua/court/90259293-5797ceefd4c24c577a5b55a56b6f9738>.

255 Constitutional Court of Ukraine. Constitutional submissions. URL: <https://ccu.gov.ua/novyna/konstytuciyini-podannya>.

256 The decision of the Constitutional Court of Ukraine in the case on the constitutional complaint by Serhii Mykolaiovych Vasylenko on the compliance of Clause 6 of Section II *Final and Transitional Provisions* of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* with the Constitution of Ukraine (constitutionality) (as regards guarantees of independence of the prosecutor) dated 1 March 2023, case No. 3-5 /2022(9/22). URL: <https://ccu.gov.ua/sites/default/files/docs/1-rii2023.pdf>.

Arguing this position, the Court drew attention to the following two points:

- 1) the provisions of the above Law on the procedure for organising the attestation lacked legal certainty. In particular, the regulatory wording 'possible future dismissal' could be interpreted ambiguously by the prosecutors undergoing the attestation, and therefore they were unable to clearly understand the meaning, foresee the legal consequences and plan their further actions.
- 2) the Ukrainian Parliament, when adopting the Law regulating the procedure for dismissal of prosecutors, went beyond its constitutional powers, since dismissal of a person is possible on the basis of an individual act of law, not a law.

This decision of the CCU is important for further hearing of cases on the attestation of prosecutors in court, as it changes the vectors of assessment of attestation legitimacy. At the same time, based on the context of the constitutional complaint, this decision is more relevant to cases of failure of individual prosecutors to submit an application for participation in the attestation procedure (and there are much fewer such cases compared to claims for recognising unlawful decisions of HR boards). So, it can be assumed that the adoption of this decision by the Constitutional Court will not have potential consequences for the recognition of the attestation procedure as unconstitutional as a whole.

In this context, it is important to note that the Constitutional Court made a similar decision a year and a half earlier in the case of attesting the personnel at the National Police of Ukraine. It is noteworthy that the CCU emphasised the same problematic aspects of organising the attestation procedure as in the case of prosecutors of the General Prosecution Office. This situation is evidence that past experience (especially negative) is not taken into account when designing new reforms. In fact, this leads to the situation when reforms in Ukraine 'fail' at the same points. Although, in fairness, it should be noted that at the time of designing the reform on the attestation of prosecutors, the CCU had not yet ruled on the Law on the attestation of police officers. This happened only the following year, i.e., when the first phase of the public prosecution service reform (in terms of prosecutors of the General Prosecution Office) had already been completed. However, even after the CCU ruled in 2021 on the unconstitutionality of the 'possible future dismissal' provisions and the lack of authority of the HCJ to dismiss officials on the basis of the law without adopting an individual act, lawmakers did not make amendments to the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*. However, these novelties would be important in the context of further attestation of prosecutors of

regional (oblast) and local (district) public prosecution offices.

Thus, according to the analysis of court practice, the court appeal, although it confirmed the correctness of the chosen vector of the public prosecution service reform, at the same time *revealed a number of serious problems of the rulemaking technique, which led to the possibility of different interpretations of the Law*. That is, the court appeal once again highlighted the fact that there is still a systemic problem in Ukraine with the violation of the principle of legal certainty in the process of designing reforms.

#### 4.2 Motivation of the courts in the process of assessing the results of the reform

In the course of the court hearing, the courts identified a number of problematic aspects of the regulatory framework of the attestation procedure. This concerns the provisions of the Law and Procedures No. 221 and No. 233, which, due to unclear wording, were interpreted differently by the claiming prosecutors, on the one hand, and by the HR boards and the General Prosecution Office of Ukraine (Attorney General's Office), on the other.

Based on the analysis of court practice, it was possible to establish that the *systemic problems that were made at the stage of designing the reform and caused the court appeal* are as follows:

- 1) no fact of the liquidation or reorganisation of the General Prosecution Office of Ukraine;
- 2) unclear regulation of the grounds for dismissal;
- 3) improper regulation of requirements for the validity of decisions made by HR boards;
- 4) no evaluation criteria for the prosecutor during the interview;
- 5) inconsistency of regulatory provisions on the powers of HR boards to check declarations.

Let us consider in more detail the positions of the courts in assessing the 'problematic' nature of each of these nuances of the organising the procedure for the attestation of prosecutors of the General Prosecution Office of Ukraine.

## *No fact of the liquidation or reorganisation of the General Prosecution Office of Ukraine*

The Law *On the Public Prosecution Service* stipulated that a prosecutor could be dismissed in case of *liquidation or reorganisation* of the public prosecution office where the prosecutor holds a position (paragraph 9 of Article 51 (1)). Accordingly, a practical question arose: *can the transformation of the General Prosecution Office of Ukraine into the Attorney General's Office be considered its liquidation (or reorganisation)?*

In their statements of claim, the prosecutors argued that no such legal procedure as liquidation or reorganisation had actually taken place, and therefore there was no basis for their dismissal.

When providing a legal assessment of this issue, the courts tend to agree with such arguments of the claimants, since the analysis of the provisions of the Order of the Prosecutor General of Ukraine No. 358 *On Certain Issues of Ensuring the Start of Operation of the Attorney General's Office*, dated 27 December 2019<sup>257</sup>, gives rise to the conclusion that there is only a *change in the name of the legal entity 'General Prosecution Office of Ukraine' to 'Attorney General's Office' without changing the identification code of the legal entity in the Unified State Register of Legal Entities, Private Entrepreneurs and Public Organisations.*

This position is unchanged for the courts of all three instances. Accordingly, the fact that there was no liquidation or reorganisation of the General Prosecution Office of Ukraine was confirmed at the level of judicial appeal without any doubt.

---

257 Order of the Attorney General of Ukraine On Certain Issues of Ensuring the Start of Operation of the Attorney General's Office No. 358 dated 27 December 2019.  
URL: [https://old.gp.gov.ua/ua/file\\_downloader.html?\\_m=fslib&t=fsfile&c=download&file\\_id=208138](https://old.gp.gov.ua/ua/file_downloader.html?_m=fslib&t=fsfile&c=download&file_id=208138).

“

[...] the court comes to the conclusion that only the renaming of one of the components of the public prosecution system took place, in particular, the General Prosecution Office of Ukraine – to the Attorney General’s Office, without a liquidation or reorganisation procedure.

*Judgement of the Kyiv City District Administrative Court in the case No. 640/257/20<sup>258</sup>*

So, the judges believe that there were actually no grounds for dismissal of prosecutors under paragraph 9 of Article 51 (1) of the Law *On the Public Prosecution Service*. Accordingly, the court appeal proved the irrelevance of the argument that the General Prosecution Office of Ukraine was liquidated or reorganised as a condition for issuing a dismissal order.

### *Unclear regulation of the grounds for dismissal*

This problematic aspect of the attestation directly follows from the previous one. The prosecutors believed that since liquidation or reorganisation as a phenomenon did not take place at all, the reference to paragraph 9 of Article 51 (1) of the Law *On the Public Prosecution Service* in the dismissal order was groundless.

At the same time, paragraph 19 of Section II *Final and Transitional Provisions* of the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* clearly states that prosecutors are dismissed from office *on the basis of paragraph 9 of Article 51 (1) of the Law of Ukraine On the Public Prosecution Service, provided that one of the following grounds materialises:*

- 1) the prosecutor of the General Prosecution Office of Ukraine, regional public prosecution office, local public prosecution office, military prosecution office fails to submit an application to the Attorney General about transfer to the Attorney General’s Office, oblast or district public

---

258 Judgement of the Kyiv City District Administrative Court dated 15 December 2020 in the case No. 640/257/20. URL: <https://reyestr.court.gov.ua/Review/93627607>.

prosecution office and about the intention to undergo attestation in connection therewith;

2) *a decision of the HR board on the failed attestation* by the prosecutor of the General Prosecution Office of Ukraine, regional and local public prosecution office or military prosecution office;

3) there are no vacant positions in the Attorney General's Office, oblast or district public prosecution offices, to which a prosecutor of the General Prosecution Office of Ukraine, regional, local public prosecution office or military prosecution office, who has successfully passed attestation, can be transferred;

4) the prosecutor of the General Prosecution Office of Ukraine, regional, local public prosecution office or military prosecution office, in the case of successful attestation, fails to give consent within three working days to transfer to the position offered to him/her in the Attorney General's Office, regional or district public prosecution office.

So, on the one hand, the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* detailed the provisions of the Law *On the Public Prosecution Service*, but on the other, it created problems in the process of interpretation, as it introduced an additional condition for the possibility of dismissal in case of liquidation or reorganisation.

Therefore, in practice, the courts have had to decide *whether, pursuant to paragraph 9 of Article 51 (1) of the Law On the Public Prosecution Service, the decision of the HR board on the failed attestation can be considered an independent ground for dismissal*, or whether the decision of the HR board must be taken together with the proof of liquidation or reorganisation of the public prosecution office?

The decisions of the lower courts have different views on this circumstance. So, some judges are inclined to believe that it is the proof of the absence of liquidation or reorganisation of the General Prosecution Office of Ukraine that is decisive for the dismissal order to be declared unlawful.

“

*[...] the challenged order of the Attorney General dated 17 April 2020 No. 137k does not meet the criterion of reasonableness, as it does not contain specific grounds for its adoption, since only the defendant's name was changed from the General Prosecution Office of Ukraine to the Attorney General's Office.*

*Judgement of the Kyiv City District Administrative Court in the case No. 640/257/20<sup>259</sup>*

At the same time, judges who uphold a different position insist that the decision of the HR board on the failed attestation is an independent ground for dismissal. Ultimately, the Supreme Court confirmed the correctness of this approach too. In particular, the Supreme Court in the resolution of 29 September 2021 in the case No. 240/7852/20<sup>260</sup> emphasises that a systematic analysis of the provisions of Clause 19 (1) of Law No. 113-IX gives reasons to conclude the *grounds for dismissing a prosecutor are the occurrence of one of the grounds* specified in Clauses 19 (1-4) of that Part, *including failed attestation; and that the Law does not require an additional ground for dismissal*. A similar legal position is contained in the Resolutions of the Supreme Court of 21 September 2021 in the cases No. 160/6204/20<sup>261</sup>, No. 200/5038/20-a<sup>262</sup> and of 24 September 2021 in the cases No. 160/6596/20<sup>263</sup>, No. 280/4314/20<sup>264</sup>.

---

259 Judgement of the Kyiv City District Administrative Court dated 15 December 2020 in the case No. 640/257/20. URL: <https://reyestr.court.gov.ua/Review/93627607>.

260 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 29 September 2021 in the case No. 240/7852/20. URL: <https://reyestr.court.gov.ua/Review/99977541>.

261 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 21 September 2021 in the case No. 160/6204/20. URL: <https://reyestr.court.gov.ua/Review/99796969>.

262 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 21 September 2021 in the case No. 200/5038/20-a. URL: <https://reyestr.court.gov.ua/Review/99796975>.

263 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 24 September 2021 in the case No. 160/6596/20. URL: <https://reyestr.court.gov.ua/Review/99861041>.

264 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 24 September 2021 in the case No. 280/4314/20. URL: <https://reyestr.court.gov.ua/Review/99861043>.

Thus, according to the legal position of the Supreme Court set out in the Resolution of 10 February 2022 in the case No. 640/1230/20<sup>265</sup> and the Resolution of 24 April 2019 in the case No. 815/1554/17<sup>266</sup>, the decision of the HR board on the failed attestation is the basis for the Attorney General's order to dismiss the relevant prosecutor on the basis of paragraph 9 of Article 51 (1) of the Law *On the Public Prosecution Service*.

### *Improper regulation of requirements for the validity of decisions made by HR boards*

In the process of recognising the attestation results as unsatisfactory, a significant number of prosecutors faced the fact that the decisions of the HR boards did not contain proper justification for such a position. In fact, this could indicate a certain degree of subjectivity in the HR board's final decision.

Hearing this issue in court, the Supreme Court in its Resolution of 11 November 2021 in the case No. 640/17212/20<sup>267</sup> stressed that when deciding on the attestation, the HR board must properly justify it. This provision is particularly relevant if the conclusion of the HR board is based on the insufficient level of competence of the prosecutor and doubts about his/her integrity or professional ethics.

However, the problem was that *neither Procedure No. 221 nor Procedure No. 233, which regulated the activities of HR boards in the attestation procedure, contained any provisions that would clearly define the requirements for the validity of the HR boards' decisions*. This gap in legal regulation led to an ambiguous interpretation of what actions the HR board had to take and what documents it had to use to confirm the failed attestation. Accordingly, all these problematic issues had to be clarified in court.

The courts established that the requirement for the justification of the decision involves not only justification but also *references to relevant documents, on the basis of which such a decision was made*. The motives for the HR board to take a certain decision should be understandable to the entity familiarising with them.

---

265 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 10 February 2022 in the case No. 640/1230/20. URL: <https://reyestr.court.gov.ua/Review/103132053>.

266 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 24 April 2019 in the case No. 815/1554/17. URL: <https://reyestr.court.gov.ua/Review/81479426>.

267 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 11 November 2021 in the case No. 640/17212/20. URL: <https://reyestr.court.gov.ua/Review/101036576>.



*If the prosecutor undergoing attestation does not meet the criteria of professional ethics and integrity, along with other information, justified reasons for the decision on the attestation failure must be reported. Based on this, it is recommended that the decision of the board on non-compliance of the prosecutor undergoing attestation with the criteria of integrity should not simply contain a substantiation, but that this substantiation should be supplemented with documentation that is checked and that contains information about and references to the prosecutor's violation of given standards of professional ethics and integrity.*

*Judgement of the Odesa City District Administrative Court in the case No. 420/6029/21<sup>268</sup>*

In contrast, the courts often faced cases of when the decisions of the HR boards *contained only doubts as regards the prosecutor's non-compliance with the proposed criteria* without sufficient reasoning<sup>269</sup>.

When reviewing cases in cassation, in this regard the Supreme Court once again emphasised the importance of complying with the requirement of a reasoned decision. Failure to provide reasons for decisions 'subjectivises' the act of the public body and prevents the court from establishing the actual grounds and reasons, stemming from which this body reached such conclusions, to provide a legal assessment to them and establish how legal, reasonable and proportionate the decision is. This position was set out by the Supreme Court in its Resolutions of 12 May 2022 in the case No. 140/13530/20<sup>270</sup>, of 10 April 2020 in the case No. 819/330/18<sup>271</sup> and of 10 January 2020 in the case No. 2040/6763/18<sup>272</sup>.

---

268 Judgement of the Odesa City District Administrative Court dated 16 August 2021 in the case No. 420/6029/21. URL: <https://reyestr.court.gov.ua/Review/99090642>.

269 E.g., the Judgement of the Kyiv City District Administrative Court dated 7 April 2021 in the case No. 640/1559/20. URL: <https://reyestr.court.gov.ua/Review/96078576>.

270 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 12 May 2022 in the case No. 140/13530/20. URL: <https://reyestr.court.gov.ua/Review/104282772>.

271 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 10 April 2020 in the case No. 819/330/18. URL: <https://reyestr.court.gov.ua/Review/88706639>.

272 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 10 January 2020 in the case No. 2040/6763/18. URL: <https://reyestr.court.gov.ua/Review/86828232>.

*Thus, the Supreme Court comes to the conclusion that the decision on the attestation failure must be sufficiently justified (in a manner which is understandable to an outside observer), i.e., it, among other things, states not only the general reasons and/or circumstances of its adoption, but also the substantiations with reference to relevant evidence that would create grounds for negative conclusions. Also, such a decision must meet the criteria of clarity, preciseness, accessibility and comprehensibility.*

*Resolution of the cassation instance court in the case No. 140/13530/20<sup>273</sup>*

Given that this problem is systemic at the level of law enforcement practice, the Supreme Court has drawn up a general list of criteria the compliance with which indicates that the decision of the HR boards is substantiated. Thus, in accordance with the provisions of the resolution dated 16 December 2021 in the case No. 640/26168/19<sup>274</sup>, *the decision may be considered substantiated where it:*

- ▶ specifies the circumstances that became the basis for the entity's exercise of the powers granted thereto by the law;
- ▶ has a reference to the evidence on the basis of which these circumstances were established;
- ▶ has an assessment of the reasons and arguments of the person, in respect of whom the appropriate procedure – attestation – is conducted;
- ▶ has a reference to the legal norms that govern the board as a subject of power.

---

273 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 12 May 2022 in the case No. 140/13530/20. URL: <https://reyestr.court.gov.ua/Review/104282772>.

274 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 16 December 2021 in the case No. 640/26168/19. URL: <https://reyestr.court.gov.ua/Review/101990311>.

## *No evaluation criteria for the prosecutor during the interview*

Similarly to the previous problematic aspect of the attestation, *Procedure No. 233 does not contain a regulatory definition of the criteria for assessing a prosecutor during an interview*. This shortcoming of the rulemaking technique became the basis for the discretion of the HR boards. Although, in fairness, it should be noted that the members of the HR boards were still provided with *recommendations* on how to conduct the interview, which contained certain evaluation criteria. However, such an organisation of the attestation procedure raises a number of concerns. First, unlike the provisions of Procedure No. 233, the recommendations are not mandatory, and therefore their compliance is actually optional. In this case, it was not easy to ensure uniformity of criteria for assessing the suitability of prosecutors for positions in the Attorney General's Office in practice. Second, not all members of the HR boards were familiar with the text of the recommendations. Accordingly, the members of the HR boards had full discretion in making their decisions.

**As a result, the members of HR boards independently determined for themselves what such legislative categories as ‘integrity’ and ‘professional competence’ mean.**

It is quite logical that the understanding of these concepts within the work of different boards could not completely coincide. In this regard, courts have been quite critical of the legitimacy of certain conclusions made by HR boards.

“*At that, there is no definition of the concept of ‘prosecutor’s integrity’ in the Ukrainian legislation, in view of which the court critically perceives the conclusion of the First HR Board as regards the non-compliance of the claimant with the requirements for integrity, since the latter is not based on legislative provisions.*

*Judgement of the Kyiv City District Administrative Court in the case No. 640/1598/20<sup>275</sup>*

---

275 Judgement of the Kyiv City District Administrative Court dated 31 August 2020 in the case No. 640/1598/20. URL: <https://reyestr.court.gov.ua/Review/91298034>

Of course, these inaccuracies in the meaning of the terminology used in the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* and Resolutions No. 221 and No. 233 could have been avoided if the drafters had agreed on and enshrined their common understanding at the stage of drafting at the regulatory level.

### *Inconsistency of regulatory provisions on the powers of HR boards to verify declarations*

The Prosecutors' Attestation Procedure No. 221 stipulates that in order to conduct an interview, the HR board has the right to receive from governmental authorities, inter alia, information on the prosecutor's compliance with the rules of professional ethics and integrity (paragraph 9 (3) of Chapter IV).

This information is determined based on the assessment of the following:

- a) consistency of the spending and property of the prosecutor and his/her family members, as well as relatives, with the declared income*, including copies of relevant declarations submitted by the prosecutor in accordance with the legislation in the field of corruption prevention;
- b) other data regarding the prosecutor's compliance with the requirements of legislation in the field of corruption prevention;*
- c) data on compliance of the prosecutor's behaviour with the requirements of professional ethics;*
- d) file on a secret check into the prosecutor's integrity.*

The results of the analysis of judicial practice show that quite often HR boards had doubts regarding the compliance of the spending and property of the prosecutor and his/her family members, as well as relatives, with the declared income, and therefore it became the basis for unsatisfactory conclusions about the attestations.

In the context of this provision, the question arose in practice as to whether HR boards were authorised to check the declarations of prosecutors of the General Prosecution Office during the attestation procedure. The answer to that is ambiguous in law enforcement practice.

For example, in 2021, the National Agency for the Prevention of Corruption published an Explanation<sup>276</sup> clarifying the delineation of competence between the NAPC and other entities (including HR boards) in terms of checking prosecutors' declarations. In this document, the National Agency emphasised that obtaining the NAPC's conclusion on the integrity of prosecutors during the attestation procedure is not mandatory. Commenting on this provision, the NAPC noted that if the NAPC's conclusion does not state that the prosecutor has violated the integrity requirements, such a *conclusion may be taken into account by the HR board (i.e., the board is not obliged to take this conclusion into account)*. And vice versa, if the NAPC's conclusion contains a violation of the requirements, the conclusion must be taken into account.

The NAPC explained this position by that the prosecutor attestation procedure (carried out by HR boards) and control, full verification of declarations (which belong to the exclusive powers of the National Agency) have different goals, subject, procedure and result.

*However, such NAPC's conclusions are contrary to the established case law.*

In accordance with the legal position of the Supreme Court, expressed in the resolutions of 11 April 2018 in the case No. 814/886/17<sup>277</sup> and 23 January 2019 in the case No. 820/1783/17<sup>278</sup>, the control and verification of declarations of persons authorised to perform state or local self-government functions, in particular, regarding the accuracy and completeness of the information provided by the declarant in the declaration, falls within the exclusive competence of the National Agency for the Prevention of Corruption.

In the case of the attestation of prosecutors of the Attorney General's Office of Ukraine, the courts did not deviate from the established case law. For instance, in its resolutions of 7 October 2020 in the case No. 826/6257/17<sup>279</sup> and 15 February 2022 in the case No. 360/3344/20<sup>280</sup>, the Supreme Court, despite

---

276 Explanation of the National Agency for the Prevention of Corruption *On the Delineation of the Competence of the National Agency and Other Entities in Terms of Checking Individuals' Declarations Submitted by Judges and Prosecutors* dated 1 October 2021. Paragraph 2.2. URL: [https://wiki.nazk.gov.ua/wp-content/uploads/2021/10/Rozyasnennya\\_monopoliya-NAZK\\_01.10.2021.pdf](https://wiki.nazk.gov.ua/wp-content/uploads/2021/10/Rozyasnennya_monopoliya-NAZK_01.10.2021.pdf).

277 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 11 April 2018 in the case No. 814/886/17. URL: <https://reyestr.court.gov.ua/Review/73355978>.

278 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 23 January 2019 in the case No. 820/1783/17. URL: <https://reyestr.court.gov.ua/Review/79382964>.

279 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 7 October 2020 in the case No. 826/6257/17. URL: <https://reyestr.court.gov.ua/Review/92051770>.

280 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 7 October 2020 in the case No. 826/6257/17. URL: <https://reyestr.court.gov.ua/Review/92051770>.

the regulatory ambiguity in defining the powers of the HR boards, confirmed the position that the NAPC has exclusive powers to check prosecutors' declarations and assess whether official income is consistent with expenses. So, the HR boards had no authority to check prosecutors' declarations.

Still, it should be borne in mind that although the inadequate regulation of the attestation procedure at the legislative level was the main problem that led to a number of lawsuits, there were also shortcomings in the implementation of the reform at the law enforcement level. In particular, this concerns the activities of HR boards and representatives of the top leadership of the public prosecution offices who issued dismissal orders.

The practice of implementing the reform shows that *a large number of lawsuits could have been avoided if the persons involved in the attestation procedure had acted proactively at the local level*. For example, this applies to decision-making by HR boards. Even though there is no regulatory guidance on the criteria for justifying the conclusion the failed attestation, the members of the HR boards should have been guided by the need to provide sufficient reasons for dismissing prosecutors. In addition, members of HR boards could have foreseen the implications of poorly drafted conclusions based on the experience of the reform of re-attestation of the National Police personnel<sup>281</sup>, which was carried out three years earlier.

A similar situation with mistakes made during the implementation of the public prosecution service reform is observed in the issuance of dismissal orders. In order to prevent court appeals on this ground, the leadership of the public prosecution offices should have clearly indicated which ground for dismissal – failed attestation or failed attestation along with the proven fact of liquidation or reorganisation of the General Prosecution Office – should be applied in a particular case. However, the failure to take this point into account was an additional reason for the dismissed prosecutors to go to court.

In summary, the court appeal emphasised that the gaps in the design of the reform, combined with the imperfect work of the authorised entities at the level of law enforcement practice, led to unsatisfactory results of the reform as a whole.

---

281 Ye. Krapyvin. Police Attestation: Results and Conclusions.

URL: <https://antidot.info/analytics/atestuvannya-politsiji-rezultaty-ta-vysnovky/>.

## 5. Response to the results of the challenging

A significant number of decisions of lower courts on the need to reinstate prosecutors in their positions created a *new collapse in the legal regulation of the attestation procedure*. It is quite clear that at the time the reform was designed, no one expected that there would be such a large number of court appeals and that the courts would rule against the General Prosecution Office of Ukraine (Attorney General's Office). Therefore, the legislation in force at that time did not address the issue of how prosecutors reinstated by court decision would return to their positions at the Attorney General's Office.

The fact is that the first version of the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* provided a possibility to transfer to the Attorney General's Office only to those prosecutors who had successfully passed the attestation. In other words, the Law did not mention prosecutors reinstated by a court decision. In fact, such prosecutors were left out of the legal regulation.

Therefore, *the state, reacting to the negative results of the appeal* (at least, this was the case at the very beginning of the review of the attestation decisions), *decided to correct this mistake and make appropriate amendments to the legislation*. At the initiative of MPs, in February 2021, a draft law<sup>282</sup> was submitted to the Parliament to amend Section II *Final and Transitional Provisions* of the relevant Law on the public prosecution service reform. This draft law proposed to expand the list of subjects to be attested. *From now on, even prosecutors reinstated by a court decision have the right to re-participate in the attestation procedure*. In June 2021, the Ukrainian Parliament adopted this Law<sup>283</sup>, and it came into force on 11 July 2021.

Relevant amendments were also made to the Prosecutors' Attestation Procedure No. 221. So now, the board sets a new time (date) for such prosecutors to take the exam or be interviewed. In this regard, the reinstated prosecutors have a chance to be reappointed. However, this possibility is guaranteed only if they are able to successfully pass the second stage of the attestation procedure. If the re-attested prosecutors have failed it, they are finally subject to dismissal.

---

282 Draft Law *On Making Amendments to Section II Final and Transitional Provisions of the Law of Ukraine On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* regarding Certain Aspects of Transitional Provisions dated 25 February 2021 No. 5157. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=71238](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71238).

283 *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* regarding Certain Aspects of Transitional Provisions: Law of Ukraine dated 15 June 2021 No. 1554-IX. URL: <https://zakon.rada.gov.ua/laws/show/1554-20>.

## 6. Conclusions

The attestation of prosecutors of the General Prosecution Office of Ukraine has become a landmark event and is one of the most significant reforms in the justice sector. The attempt to fill the system with new highly professional personnel whose work would restore public trust in the public prosecution service explains the acute need for, and urgency of, this aspect of the reform. At the same time, the considerable haste has led to a number of failures that have cast doubt on the success and effectiveness of the reform as a whole.

The judicial challenging further highlighted the poor quality of the regulatory framework for the attestation procedure, which experts had been pointing out even before the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* was officially adopted. Failure to take into account the recommendations and comments on the text of the draft law led to gaps and inaccuracies that later turned out to be apparent and became the basis for unattested prosecutors to go to court.

These shortcomings provoked different approaches to the interpretation of the provisions of the relevant law and the procedures that determined the specifics of the work of HR boards. Courts also faced these difficulties when hearing claims of unattested prosecutors.

Despite the fact that the Supreme Court ultimately rules in favour of the Attorney General's Office in most cases, judicial challenges at certain stages of the proceedings did raise questions about the legality of the procedure for attesting prosecutors of the General Prosecution Office. The analysis of court practice evidences that the nature of the attestation is primarily problematic due to the existence of errors made both at the level of lawmaking and law enforcement.

The first group of gaps that undermined the success of the reform relates to the inadequate preparation of regulatory acts that defined the conditions and organisational peculiarities of the attestation. Summarising the court decisions gives grounds to conclude that these factors are:

- 1) no fact of the liquidation or reorganisation of the General Prosecution Office of Ukraine;
- 2) unclear regulation of the grounds for dismissal;

- 3) improper regulation of requirements for the validity of decisions made by HR boards;
- 4) no evaluation criteria for the prosecutor during the interview;
- 5) inconsistency of regulatory provisions on the powers of HR boards to check declarations.

However, the regulatory mistakes made in the design of the reform were reinforced at the stage of practical implementation of the legislative requirements for restructuring the public prosecution service and conducting the attestation. So, the second group of gaps is the improper activities of the bodies authorised to establish the Attorney General's Office, conduct the attestation and make decisions on its results. Ultimately, as a result, despite the declared 'reorganisation' of the General Prosecution Office, only the name of the legal entity was actually changed, which does not entail the consequences for the dismissal of prosecutors prescribed by law. Furthermore, in practice, HR boards have repeatedly violated the principle of having a rationale and reasoning the decision. Such organisation of attestation at the local level proved that the experience of previous reforms in this area was not taken into account. Similarly, the improper execution of dismissal orders once again contributed to prosecutors' appeals to courts to invalidate attestation.

These shortcomings were made, among other things, because the reform developers ignored the experience of conducting similar attestation of personnel of the National Police. Focusing on the mistakes identified in this process could have pointed out in advance the potential risks of challenging the reform in court. However, the designers of the reform took that somewhat carelessly.

At the same time, it is a positive development that the results of the judicial review did affect certain aspects of reform regulation in terms of improving legislation. For instance, parliamentarians added a clarifying provision to the *Law On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* stating that from now on, prosecutors who have been reinstated in their positions by court decisions may re-participate in the attestation in order to be transferred to the newly created public prosecution system. This example clearly demonstrates the impact that the court decisions exert on the rulemaking process in Ukraine.

Therefore, the judicial challenging of the attestation results of the public prosecution offices once again highlighted the inadequate quality of drafting the regulatory acts on reforms in Ukraine, as well as the problems with

the practical implementation of reform legislation. The judicial practice should navigate reform designers in the future, as this example of not entirely successful reform design and implementation illustrates the consequences that arise from violations of the principle of legal certainty. Naturally, all the difficulties associated with judicial appeal could have been avoided if the rules on the conduct of the public prosecution service reform had been well defined in the legislation at the beginning of designing the reform, and the practice of organising the attestation had been accompanied by balanced actions and decisions of HR boards and public authorities. Therefore, to achieve this effect, it is important to consider international standards, previous practice of organising similar reforms in Ukraine and take into account recommendations made in the critical comments of expert institutions.

# CASE STUDY 5. Challenging of the ban on pro-Russian parties in Ukraine in 2022-2023

---

## 1. Design and organisation of the process of banning pro-Russian parties<sup>284</sup>

### 1.1 Essence and goal

For a long time, the Russian Federation has been pursuing an unfriendly and aggressive public policy towards Ukraine. Since 2014, the Russian Federation has been grossly violating international law, encroaching on Ukraine's sovereignty and territorial integrity.

In response to Russia's occupation of part of Ukrainian territories, in 2015, the Ukrainian Parliament recognised Russia as an aggressor state and adopted a resolution addressed to the UN, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly and national parliaments of other countries<sup>285</sup>.

Despite these developments, pro-Russian parties still managed to retain the electoral sympathies of some citizens. In this regard, the results of the 2019 parliamentary elections and the 2020 local elections are illustrative. For instance, following the parliamentary elections in Ukraine, five parties gained the right to participate in the distribution of parliamentary seats, with the pro-Russian political party Opposition Platform - For Life taking second place in the ranking, having received **37** seats<sup>286</sup>. In addition, pro-Russian political forces had massive support in the following year's local council elections. This time, more than

---

284 In the previous case studies, the reform legislation was judicially challenged, so the courts played a role therein only as an institution of appeal. The distinctive difference between this case and the previous ones is that here the reform was not only judicially challenged, but also courts participated in its implementation. The adoption of decisions to ban pro-Russian parties by a court of first instance in pursuance of the *Law On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties* is essentially the reform implementation process, which will be analysed in detail in Section 2 *Implementing a Ban on Pro-Russian Parties at the Law Enforcement Level*. An appellate review of these decisions is the challenging of the reform. Such feature of the case study is reflected in the specific structuring of the chapters.

285 Resolution of the Ukrainian Parliament *On the Appeal of the Ukrainian Parliament to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the National Parliaments of the World on the Recognition of the Russian Federation as an Aggressor State* No. 129-VIII dated 27 January 2015. URL: <https://zakon.rada.gov.ua/laws/show/129-19#Text>

286 Parliamentary elections in Ukraine on 21 July 2019. Analytical report. URL: <https://www.cvk.gov.ua/wp-content/uploads/2019/10/2019-NDU-ua-Analytical-report.pdf>.

3,700 people from these parties were elected as members of local councils<sup>287</sup>. Moreover, in some regions, these parties gained a significant advantage in numbers compared to other political forces. For example, in 91 local councils, the corresponding members of these councils accounted for more than 30%, and in 17 councils, they had a majority<sup>288</sup>. As for regional distribution, electoral sympathies for pro-Russian parties prevail in Donetsk, Luhansk and Zaporizhzhia oblasts<sup>289</sup>.

These trends towards significant support were enabled by using a huge financial resource and media platforms coordinated from Russia. So, the systemic destabilisation efforts of the Russian regime made it possible for the Russian Federation to continue to exert its influence in Ukraine. This, accordingly, created risks of the promotion of Russian interests in the Ukrainian political space, which are contrary to the national interests of the state, through the participation of these MPs in strategic decision-making for the country. Thereby, they could influence the defence capability of a certain region and the state as a whole, deal with issues related to property, disclose Ukrainian positions, etc. In addition, an important factor is that parliamentarians from these parties actually had access to classified information of any level of classification<sup>290</sup>. This in no way contributed to national security in Ukraine. Moreover, the presence of pro-Russian political forces had harmful effects in terms of the population's tolerance of Russian-oriented political ideology. And this helped to legitimise the Russian occupation regime in certain territories, because MPs from these parties, as elected representatives of the people, supporting certain political ideas, actually encouraged the population to support those authorities by their example.

Continuing its policy of aggression, on 24 February 2022, the Russian Federation carried out a full-scale invasion of Ukraine. In this regard, President of Ukraine Volodymyr Zelenskyi issued Decree No. 64/2022<sup>291</sup>, which introduced martial law. This act stipulated that *temporary restrictions on the rights and legitimate interests of individuals and legal entities may be imposed for the period of martial law*. So, in an effort to limit the destructive influence of pro-Russian political forces, the National Security and Defence Council of Ukraine adopted

---

287 MPs of pro-Russian parties should be held accountable. Results of the poll.

URL: [https://lb.ua/news/2023/01/25/543560\\_deputativ\\_prorosijskih\\_partiy-.html](https://lb.ua/news/2023/01/25/543560_deputativ_prorosijskih_partiy-.html).

288 The Servant of the People Said How Many Local Council Members from Pro-Russian Parties Could Be Deprived of Their Mandate. URL: <https://suspinne.media/410688-u-sluzi-narodu-skazali-skilkoh-deputativ-miscevih-rad-vid-prorosijskih-partij-mozut-pozbaviti-mandata/>.

289 'Mass execution' for Pro-Russian Forces in Local Councils. Will We See a 'Soft' Scenario?

URL: [https://lb.ua/news/2022/06/29/521594\\_masova\\_strata\\_prorosijskih.html](https://lb.ua/news/2022/06/29/521594_masova_strata_prorosijskih.html).

290 Kremlin Henchmen in Parliament and Access to Classified Information.

URL: <https://www.pravda.com.ua/columns/2022/05/20/7347396/>.

291 Decree of the President of Ukraine *On the Introduction of Martial Law in Ukraine* dated 24 February 2022 No. 64/2022. URL: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

a decision on 18 March 2022 to suspend the activities of some political parties<sup>292</sup>. The very next day, this decision was put into effect by a Decree of the President of Ukraine<sup>293</sup>.

In addition, realising the potential threat from political parties that were friendly to Putin's policies, the Ukrainian authorities initiated the adoption of a law that would facilitate the procedure for banning pro-Russian parties in Ukraine. As a result, in May 2022, the Parliament passed the Law *On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties*<sup>294</sup> (hereinafter referred to as the '*Law*').

**The main purpose of this law was to expand the legislative capacity of the state to respond to the illegal activities of political parties, especially under martial law.**

The adoption of this document was generally in line with public sentiment on the eve and in the first months of the war. For example, according to opinion polls, in the spring of 2022, almost **100%** of Ukrainians expressed a negative attitude towards Putin, and **86%** of respondents agreed with the state's policy of banning pro-Russian parties<sup>295</sup>.

---

292 Decision of the National Security and Defence Council of Ukraine *On Suspending the Activities of Certain Political Parties* dated 18 March 2022. URL: <https://zakon.rada.gov.ua/laws/show/n0005525-22#Text>

293 Decree of the President of Ukraine *On the Decision of the National Security and Defence Council of Ukraine dated 18 March 2022 On Suspending the Activities of Certain Political Parties* No. 153/2022 dated 19 March 2022. URL: <https://zakon.rada.gov.ua/laws/show/153/2022#Text>

294 Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties* dated 3 May 2022 No. 2243-IX. URL: <https://zakon.rada.gov.ua/laws/show/2243-20#Text>

295 Agents without Influence. What Awaits Pro-Russian Parties in Ukraine after the War. 2022. URL: <https://www.rbc.ua/ukr/news/agency-vliyaniya-zhdet-prorossiyskie-partii-1651575912.html>.

## 1.2 Preparatory work

Ukrainian MPs promptly responded to the full-scale invasion of Russia and draft law No. 7172 *On Making Amendments to Some Legislative Acts of Ukraine on Banning (Dissolution, Forced Liquidation) of Political Parties*<sup>296</sup>.

The legislators pointed out that in international practice, the banning of political parties is a justified mechanism for protecting state sovereignty if the activities of such parties pose a threat to the free and democratic constitutional order. Analysing the situation in Ukraine, the MPs stressed that as of the beginning of the full-scale invasion, the legal regulation of the ban on political parties was not effective enough. In particular, *the provisions of the laws did not take into account such a dangerous aspect of the activities of pro-Russian political forces as the spread of propaganda of the aggressor state*. In this regard, it was proposed that the list of grounds for banning parties should be supplemented with two more points:

- ▶ to prohibit the establishment and activities of political parties if their programmatic goals or actions are aimed at *promoting or propagandising the bodies of the aggressor state (occupying state)*, its officials, persons and organisations controlled by the aggressor state (occupying state);
- ▶ to prohibit the establishment and activities of political parties if their program goals or actions are aimed at *justifying, recognising the legitimacy of, or publicly denying, armed aggression against Ukraine*, the annexation of Ukraine's territory by the aggressor state (occupying state), violation of Ukraine's territorial integrity and sovereignty.

In addition, the draft law proposed to make it mandatory for the Ministry of Justice of Ukraine to take legal action to ban a political party if its activities contain signs of the violations.

However, this act contained a number of inconsistencies and unclear provisions, and it was criticised by the Main Scientific and Expert Department of the Parliamentary Staff<sup>297</sup>.

In order to remedy the identified shortcomings, in late March 2022, parliamentarians submitted an alternative draft law No. 7172-1 On Making

---

296 Draft Law *On Making Amendments to Some Legislative Acts of Ukraine on Banning (Dissolution, Forced Liquidation) of Political Parties* dated 17 March 2022 No. 7172. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39228>.

297 Opinion of the Main Scientific and Expert Department of the Parliamentary Staff on the Draft Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine on Banning (Dissolution, Forced Liquidation) of Political Parties* dated 21 March 2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1247239>.

Amendments to Some Legislative Acts of Ukraine on Banning Political Parties<sup>298</sup>. Compared to the draft law No. 7172, it contained a number of differences, including the following:

- ▶ it established that cases on banning political parties *will be heard as urgent within a reduced timeframe*;
- ▶ cases on banning political parties will be heard *by the administrative court of appeal in the appellate district, including the city of Kyiv, as a court of first instance*;
- ▶ the texts of all court decisions (rulings, judgements) in cases of banning political parties, as well as summonses and information about court hearings, will be published by means of announcements on the official websites of the Ministry of Justice of Ukraine and the Ukrainian Parliament;
- ▶ exemption from payment of court fees for filing claims and appeals in cases on banning political parties;
- ▶ electronic transmission of selected case files to the court of appeal.

This alternative draft law provided for amendments to the Law of Ukraine *On Political Parties in Ukraine*<sup>299</sup> and the Code of Administrative Procedure of Ukraine<sup>300</sup> (hereinafter referred to as the '*CAP of Ukraine*').

Although the proposed version of the draft law No. 7172-1 was not perfect and also required some improvements, it was recommended for adoption in the second reading.

**330** parliamentarians supported the passing of the Law *On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties*. On 14 May 2022, this act was signed by President of Ukraine Volodymyr Zelenskyi, and it came into force on 18 May.

---

298 Draft Law *On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties* dated 28 March 2022 No. 7172-1. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39307>.

299 Law of Ukraine *On Political Parties in Ukraine* dated 5 April 2001 No. 2365-III. URL: <https://zakon.rada.gov.ua/laws/show/2365-14#Text>

300 Code of Administrative Procedure of Ukraine dated 6 July 2005 No. 2747-IV. URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>

### 1.3 Legal regulation

The implementation of the ban on pro-Russian parties in Ukraine is regulated by a number of normative legal acts. The basis of legal regulation of this process is:

- ▶ *The Law of Ukraine No. 2243-IX On Making Amendments to Some Legislative Acts of Ukraine on Banning Political Parties* dated 3 May 2022. The provisions of this Law are aimed at legislating the procedure for banning and terminating the political parties whose functioning is of a collaborative nature, aimed at overthrowing the statehood in Ukraine and destroying the national identity of Ukrainians. The law provides for amendments to the current legislation of Ukraine to facilitate the procedure for banning pro-Russian political parties (in particular, under martial law).
- ▶ *The Constitution of Ukraine No. 254k/96-VR dated 28 June 1996*<sup>301</sup>, Article 64 of which serves as a legal basis for restricting the rights and freedoms of individuals and legal entities under martial law or in a state of emergency. Among other things, the article states that the activities of political parties may be restricted during this period.
- ▶ *Law of Ukraine On the Legal Regime of Martial Law No. 389-VIII* dated 12 May 2015<sup>302</sup>. Article 8 thereof provides for the possibility of raising the issue of banning political parties in the interests of national security under martial law introduced in Ukraine.
- ▶ *Law of Ukraine On Political Parties in Ukraine No. 2365-III* dated 5 April 2001. This Law defines the procedure for the functioning of political parties in Ukraine. It contains a list of measures that may be taken against political parties in case of their violation of the Constitution of Ukraine and other laws of Ukraine. In particular, Article 21 clearly defines the grounds and procedure for banning political parties.
- ▶ *The Code of Administrative Procedure of Ukraine No. 2747-IV* dated 6 July 2005. The Code defines the jurisdiction for court cases on the banning of political parties and regulates the procedure for initiating, reviewing and appealing in this category of cases.

---

301 Constitution of Ukraine dated 28 June 1996 No. 254k/96-VR.

URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

302 Law of Ukraine On the Legal Regime of Martial Law dated 12 May 2015 No. 389-VIII.

URL: <https://zakon.rada.gov.ua/laws/show/389-19#Text>

- ▶ *The Decision of the National Security and Defence Council of Ukraine* dated 18 March 2022 On Suspending the Activities of Certain Political Parties contains a list of 11 political parties that carry out anti-Ukrainian political and organisational activities, war propaganda, calls for a change in the constitutional order and pose a real threat of violation of the sovereignty and territorial integrity of the state. The decision requires the suspension of all activities of these political parties in Ukraine for the period of martial law. It is important to note that this document does not apply to all parties that were eventually banned. Thus, in addition to the 11 parties referred to in this decision, the courts banned the activities of 6 other political forces.
- ▶ *Decree of the President of Ukraine On the Decision of the National Security and Defence Council of Ukraine dated 18 March 2022 On Suspending the Activities of Certain Political Parties No. 153/2022* dated 19 March 2022. This decree enacted the aforementioned decision of the National Security and Defence Council.

This list of acts is not exhaustive, as the grounds for banning political parties had certain differences in practice. For example, this applies to the ban on parties that conducted illegal activities before the introduction of martial law.

## 2. Implementation of the ban on pro-Russian parties at the law enforcement level

### 2.1 Procedure for banning pro-Russian parties in court

The activities of a political party may be banned only by a court decision. The Law *On Political Parties in Ukraine* stipulates that the following cases of parties' unlawful activities may be grounds for initiating a ban:

- ▶ party's actions aimed at the elimination of Ukraine's independence, change of the constitutional order by force, violation of the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of state power, propaganda of war, violence, incitement to interethnic, racial, religious hatred, encroachment on human rights and freedoms, as well as public health;
- ▶ activities related to propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols;

- ▶ violation of the equality of citizens based on their race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics;
- ▶ dissemination of information containing justification, recognition of the legitimacy or denial of the Russian Federation's armed aggression against Ukraine.

In addition, this Law specifies that the establishment and operation of political parties is prohibited if their programmatic goals or actions are aimed, *inter alia*, at:

- ▶ propaganda of the Russian Nazi totalitarian regime, the armed aggression of the Russian Federation as a terrorist state against Ukraine and the symbols of the military invasion of Ukraine by the Russian Nazi totalitarian regime;
- ▶ justification, recognition of the legitimacy, denial of the armed aggression against Ukraine, including by presenting the armed aggression of the Russian Federation and/or the Republic of Belarus against Ukraine as an internal conflict, civil conflict, civil war, denial of the temporary occupation of part of the Ukrainian territory;
- ▶ glorification (i.e., praising or exaltation), justification of actions and/or inaction of persons who have committed or are committing armed aggression against Ukraine, representatives of the armed forces of the Russian Federation, illegal armed groups, gangs, mercenaries created and/or subordinated and/or controlled and/or financed by the Russian Federation, as well as representatives of the occupation administration of the Russian Federation, which consists of its public authorities and other bodies functionally responsible for the management of the temporarily occupied territories of Ukraine, and representatives of self-proclaimed Russia-controlled bodies that have usurped the exercise of power in the temporarily occupied territories of Ukraine, including by defining them as 'rebels', 'militias', 'polite people', etc.

Therefore, if at least one of these grounds is identified, the Ministry of Justice immediately files a claim with the administrative court to ban the party.

*The peculiarity of hearing this category of cases is that they have a specific jurisdiction.* It means that unlike other categories of cases, those of banning political parties are heard by the administrative court of appeal in the appellate district, which includes the city of Kyiv, as a first instance court. This was supposed to be the Sixth Administrative Court of Appeal. *However, under martial law, the legislator decided that, given the security situation, these cases should be*

*heard by the Eighth Administrative Court of Appeal in Lviv*<sup>303</sup>. The decisions of this court can be appealed with the Administrative Court of Cassation as part of the Supreme Court (hereinafter referred to as the 'SC'). So, in this category of cases, the SC acts as a court of appeal.

Another feature of the novelties in the field of banning pro-Russian parties is that the law stipulates much shorter time limits for filing appeals. In particular, it is possible to appeal a decision of a first instance court within 20 days and a ruling within 10 days<sup>304</sup>.

The Law also allocates only one month for the hearing of such cases in the first instance court (from the commencement of proceedings) and one month for review in appellate proceedings (from the commencement thereof).

These provisions once again emphasise the desire of the Ukrainian authorities to limit the negative influence of pro-Russian parties on Ukrainian society as quickly as possible. And in the context of martial law, such actions seem to have been fully justified.

An important role in implementing the ban on pro-Russian parties was also devoted to law enforcement agencies. In particular, *the Security Service of Ukraine was actively involved in identifying anti-Ukrainian activities of parties*. For example, the Department for the Protection of National Statehood at the Security Service of Ukraine documented the illegal activities of the leaders and members of some pro-Russian parties and sent letters containing this information to the Ministry of Justice. In total, the Security Service documented the facts of illegal activities in relation to 15 out of 17 parties, namely: Nashi, Derzhava, Volodymyr Saldo Bloc, Union of Left Forces, One Rus, Justice and Development, Socialists, Socialist Party of Ukraine, Opposition Platform – For Life, Left Opposition, Party of Sharii, Progressive Socialist Party of Ukraine, Opposition Bloc, Happy Ukraine and the Party of Regions.

Furthermore, *the Attorney General's Office reported on the actual unlawful actions by the parties, aimed at changing the constitutional order by force, violating the sovereignty and territorial integrity of Ukraine and propaganda of war*. To letters sent to the Ministry of Justice, the Attorney General's Office attached copies of pre-trial investigation files that indicated suspicion of party

---

303 Ban on Pro-Russian Parties: Security of the Country or Imitation of Vigorous Activity?

URL: <https://www.radiosvoboda.org/a/zaborona-rosiya-partiyi-viyina-okupatsiya/31909540.html>.

304 For comparison, the 'traditional' time limit for filing an appeal against a court judgement is 30 days, and against a court ruling – 15 days from the day of its announcement (Article 295 of the Code of Administrative Procedure of Ukraine).

members of committing crimes against the foundations of Ukraine's national security. In particular, those documents were attached to the court cases of 2022 against the Communist Party of Ukraine and the Happy Ukraine party<sup>305</sup>. It is noteworthy that criminal proceedings on suspicion of committing criminal offences by the leadership of these parties were opened in 2014 and 2018, respectively. The pre-trial investigation authorities deemed that there were features of the following crimes in the actions of the party members:

- ▶ actions aimed at the violent change or overthrow of the constitutional order or the seizure of state power (Article 109 of the Criminal Code of Ukraine (hereinafter referred to as the 'CC of Ukraine')<sup>306</sup>;
- ▶ encroachment on the territorial integrity and inviolability of Ukraine (Article 110 of the CC of Ukraine)<sup>307</sup>;
- ▶ creation, management of a criminal association or criminal organisation, as well as participation therein (Article 255 of the CC of Ukraine)<sup>308</sup>.

Accordingly, copies of the pre-trial investigation files in these criminal proceedings were attached as evidence in the hearing of administrative cases on the banning of these political parties.

## **All in all, as of March 2023, the Eighth Administrative Court of Appeal, as the court of first instance, heard 17 cases on the banning of pro-Russian parties in Ukraine.**

---

305 The letter regarding the Communist Party of Ukraine was sent in 2014, and the letter regarding the Happy Ukraine party was sent in 2018 (at that time, the party was called Successful Ukraine). During this period, the General Prosecution Office of Ukraine was still the highest authority in the public prosecution system.

306 Judgement of the Eighth Administrative Court of Appeal dated 5 July 2022 in the case No. 826/9751/14. URL: <https://reyestr.court.gov.ua/Review/105109793>.

307 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 18 October 2022 in the case No. 826/9174/18. URL: <https://reyestr.court.gov.ua/Review/106840684>.

308 Ibidem.

## 2.2 Claims

In most of the cases analysed, when filing a lawsuit with an administrative court, the Ministry of Justice initially *requested that three claims be satisfied*:

- ▶ to ban a political party;
- ▶ to appoint a commission for the termination of a political party, its units that have the status of a legal entity (liquidation commission);
- ▶ to transfer property, funds and other assets of the political party, its oblast, city, district organisations, primary branches and other units to the state.

However, as a rule, by the end of the trial, this list of claims was reduced to two items, namely, to ban a party and to transfer property, funds and other assets to the state. In other words, the Ministry of Justice filed a statement of withdrawal of the claim concerning appointment of a liquidation commission.

Where the Ministry of Justice did not withdraw that claim on its own, the courts simply dismissed the claim after the case had been heard. This position is explained by the Ministry failing to propose a list of candidates for the liquidation commission. Therefore, the court was actually deprived of the opportunity to appoint it.

On the whole, the Ministry justified the need to satisfy the claims by the urgent need to take measures to protect the territorial integrity and ensure national security of Ukraine. Based on the analysis of the claims, it was found that the Ministry of Justice traditionally emphasised the following points:

- 1) the actions of the parties' members are deemed to involve justifying the occupation actions of the Russian Federation and also denying the armed aggression of the Russian Federation against Ukraine, which is not tolerated under the Law *On Political Parties in Ukraine*;
- 2) the statements of representatives of these parties relay the official position of the aggressor country towards Ukraine and have harmful effects on the public consciousness in a way favourable to Russia;
- 3) the activities of pro-Russian parties are aimed at violating the sovereignty and territorial integrity of the state, undermining its security, propaganda of war, violence, encroachment on human rights and freedoms, and public health;
- 4) the leaders and members of certain parties are suspects or participants

in criminal proceedings opened on suspicion of committing crimes against the foundations of national security (high treason; encroachment on the territorial integrity and inviolability of Ukraine; actions aimed at violent change or overthrow of the constitutional order or seizure of state power), as well as suspected of creating a terrorist group or terrorist organisation;

5) personal sanctions have been imposed on individual party representatives by Ukraine and foreign countries for undermining democratic institutions and processes in Ukraine;

6) units of the same party are registered and operating using the prior name, which indicates a tendency to follow the political course of the president of the Russian Federation (this concerns the activities of the party One Rus, whose territorial representative offices were called Party of PUTIN's Policy);

7) there were cases when members of pro-Russian parties persuaded the population of the territories of Ukraine occupied by Russian troops to side with the enemy, called for recognition of the occupation authorities of the aggressor country and assist the armed forces of the Russian Federation;

8) members of these parties participated in the creation of a humanitarian catastrophe in the Ukrainian cities occupied by the Russian Federation;

9) the activities and names of certain parties do not comply with the provisions of the Law *On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols*<sup>309</sup>. Essentially, these parties used the name or prohibited symbols in the name, programme and goals of the party, contrary to the requirements of the law.

**All these facts, in the opinion of the Ministry of Justice, are indisputable evidence that pro-Russian parties promote a pro-Russian position and support the Russian-Ukrainian war.**

---

309 Law of Ukraine *On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols* dated 9 April 2015 No. 317-VIII. URL: <https://zakon.rada.gov.ua/laws/show/317-19#Text>

## 2.3 Results of case hearing in the court of first instance

The court judgements in this category of cases are characterised by unity and consistency of position on the urgent need to ban pro-Russian parties in Ukraine. All 17 claims filed by the Ministry of Justice were upheld by the Eighth Administrative Court of Appeal.

In assessing the sufficiency of the grounds for banning the parties, primarily the court of first instance referred to international standards in this area. In particular, the Eighth Administrative Court of Appeal made a reference to the provisions of the Guidelines on prohibition and dissolution of political parties and analogous measures, adopted by the Venice Commission on 10–11 December 1999<sup>310</sup>, according to which the prohibition or forced dissolution of political parties can be justified only *if these parties advocate violence or the overthrow of the democratic constitutional order, thereby undermining the rights and freedoms guaranteed by the constitution*.

In addition to this provision, the Explanatory Memorandum to the Guidelines on prohibition and dissolution of political parties and analogous measures emphasises that prohibition or dissolution of political parties may be envisaged only if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms (paragraph 10). Moreover, the general situation in the country is an important factor in that assessment (paragraph 16)<sup>311</sup>.

An analysis of the actual circumstances of the cases allowed the judges to conclude that there was a real threat to national security. In particular, in its judgements, the Eighth Administrative Court of Appeal drew attention to the existence of the following *typical grounds that necessitated the prohibition of pro-Russian parties in Ukraine*:

- 1) whose charters and programmes contained anti-Ukrainian positions and contradicted the norms of Ukrainian legislation;
- 2) whose activities are associated with using symbols of the communist totalitarian regime.

Let us therefore analyse the court's rationale for assessing each of these grounds in greater detail.

---

310 Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December 1999), paragraphs 3–5. URL: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(2000)001-e).

311 European Democratic Achievements in Electoral Law: Materials of the Venice Commission. Publication 3, as amended / edited by Yu. Kliuchkovskiy. 2 parts. Part 2. K Logos, 2016. P. 294–295. URL: <https://www.venice.coe.int/files/CDL-elec-opinions-UKR.pdf>.

## *Activities of the parties whose charters and programmes contained anti-Ukrainian positions and contradicted the norms of Ukrainian legislation*

The analysis of court practice shows that the functioning of the prohibited pro-Russian parties was characterised by varying degrees of anti-Ukrainian sentiment. In this regard, such parties can be divided into two groups. The first category of parties committed only practical anti-Ukrainian actions, while their charters on the whole complied with the national legislation. The second group was more ‘aggressive’, as anti-Ukrainian positions can be seen not only in the actions of their leadership and members but even at the level of statutory documents.

In particular, when hearing cases involving the first category of political parties, the Eighth Administrative Court of Appeal noted that their statutory documents contained provisions stating that party membership was incompatible with actions and statements aimed at eliminating Ukraine’s independence, changing the constitutional order by force, violating the sovereignty and territorial integrity of Ukraine, undermining the security of the state, illegal seizure of state power, propaganda of a war of violence, incitement to interethnic, racial or religious hatred, encroachment on human rights, freedoms and public health, with immoral acts and actions that harm the party’s authority. For example, similar requirements are contained in the charters of the following political parties: Nashi, Derzhava, Socialists, Opposition Platform – For Life and Left Opposition.

Still, contrary to the requirements of the charters, these *parties did not take any measures to influence the leaders and members who violated the norms of the law.*

“

*[This] indicates that the behaviour and statements of the Party Chairperson, which contradicted the Party Charter, did not cause condemnation or refutation by the party leadership or its members, but rather showed tacit agreement with such actions and statements of PERSON\_1.*

*Judgement of the Eighth Administrative Court of Appeal in the case No. P/857/9/22<sup>312</sup>*

---

312 Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/9/22. URL: <https://reyestr.court.gov.ua/Review/104818399>.

So, in those cases, the court concluded that the party, including its leaders and members, justified the Russian invasion and occupation of the territory of Ukraine, advocated the imposition of the ‘developed putinism’ model on Ukrainians and carried out activities prohibited by the Law *On Political Parties in Ukraine*, as such actions were clearly aimed at harming the state security, sovereignty and territorial integrity of Ukraine. This position was expressed by the Eighth Administrative Court of Appeal in its judgements dated 14 June 2022 in the case No. P/857/4/22<sup>313</sup>, 20 June 2022 in the case No. P/857/8/22<sup>314</sup> and 16 June 2022 in the case No. P/857/6/22<sup>315</sup>.

As for the second category of parties, their programmes and charters were recognised by the court as containing anti-Ukrainian positions and not complying with the Constitution and laws of Ukraine. In particular, such comments were made in relation to the programmatic documents of the Opposition Bloc, Volodymyr Saldo Bloc, Party of Sharii, the Party of Regions and the Communist Party of Ukraine. For example, the courts noted that, despite the ongoing armed aggression of the Russian Federation against Ukraine, the political programmes of these parties state that the priority areas of work are to repeal the ‘discriminatory’ law on language, grant Russian the status of a second national language, repeal the law on decommunization, block Ukraine’s accession to NATO and the EU; adopt by referendum and enshrine in the Ukrainian Constitution the status of Ukraine as a non-aligned, neutral state, etc<sup>316</sup>.

Regarding the intentions of pro-Russian parties to grant Russian the status of an official language, the Eighth Administrative Court of Appeal noted that *this directly contradicted Article 10 of the Constitution of Ukraine and the Judgement of the Constitutional Court of Ukraine* (hereinafter referred to as the ‘CCU’) dated 14 December 1999 in the case No. 1-6/99<sup>317</sup>. These acts clearly state that Ukrainian is the state (official) language in Ukraine.

---

313 Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/4/22. URL: <https://reyestr.court.gov.ua/Review/104818413>.

314 Judgement of the Eighth Administrative Court of Appeal dated 20 June 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/104951849>.

315 Judgement of the Eighth Administrative Court of Appeal dated 16 June 2022 in the case No. P/857/6/22. URL: <https://reyestr.court.gov.ua/Review/104837758>.

316 E.g., the Judgement of the Eighth Administrative Court of Appeal dated 8 June 2022 in the case No. P/857/12/22. URL: <https://reyestr.court.gov.ua/Review/104694066>; Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/2/22. URL: <https://reyestr.court.gov.ua/Review/104837691>.

317 Judgement of the Constitutional Court of Ukraine in the case on the constitutional motion by 51 Ukrainian MPs on the official construal of the provisions of Article 10 of the Ukrainian Constitution regarding the use of the state language by governmental authorities, local self-government bodies and its use in the educational process in educational institutions of Ukraine (case on the use of the Ukrainian language) dated 14 December 1999 in the case No. 1-6/99. URL: <https://zakon.rada.gov.ua/laws/show/v010p710-99#Text>

With regard to the intention to repeal discriminatory laws (in particular, on decommunization), the court of first instance stressed that this *contradicted the Law On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols*. In support of this opinion, the Eighth Administrative Court of Appeal referred to the CCU's Judgement dated 16 July 2019 in the case No. 1-24/2018 (1919/17)<sup>318</sup>. Therein, the Constitutional Court noted that 'propaganda of the communist regime and the Nazi regime, the public use of their symbols is an attempt to justify totalitarianism and the denial of constitutional principles and democratic values, the protection of which is the duty of all governmental authorities'<sup>319</sup>. So, the Justices concluded that decommunization was constitutional for these reasons.

Finally, in providing a legal assessment of the parties' aspirations to secure Ukraine's status as a non-aligned and neutral state, the court again emphasised that this position *contradicted the Constitution of Ukraine*. For instance, the Preamble of the Basic Law provides that 'caring for the strengthening of civil harmony on Ukrainian soil and confirming the European identity of the Ukrainian people and the *irreversibility of Ukraine's European and Euro-Atlantic course*, the Ukrainian Parliament on behalf of the Ukrainian people – citizens of Ukraine of all nationalities – adopts this Constitution – the Basic Law of Ukraine'. The authority of the Ukrainian Parliament comprises, *inter alia*, determining the principles of domestic and foreign policy, implementing the strategic course of the state for Ukraine's full membership in the European Union and the North Atlantic Treaty Organization (paragraph 5 of Article 85 (1)). The President of Ukraine is the guarantor of the implementation of the state's strategic course for Ukraine's full membership in the European Union and the North Atlantic Treaty Organization (Article 102 (3)). The Cabinet of Ministers of Ukraine ensures the implementation of the state's strategic course towards Ukraine's full membership in the European Union and the North Atlantic Treaty Organization (Article 116 (1-1)). Therefore, the Eighth Administrative Court of Appeal concluded that the Constitution directly and clearly defined Ukraine's European integration course. Accordingly, the intentions of pro-Russian parties are contrary to this public policy. The court expressed these positions in its Judgements dated 14 June 2022 in the case No. P/857/2/22<sup>320</sup> and dated

---

318 Judgement of the Constitutional Court of Ukraine in the case on the constitutional motion by 46 Ukrainian MPs on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols* dated 16 July 2019 in the case No. 1-24/2018 (1919/17). URL: <https://zakon.rada.gov.ua/laws/show/v009p710-19#Text>

319 Ibidem. Paragraph 15 of the rationale part of the Judgement.

320 Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/2/22. URL: <https://reyestr.court.gov.ua/Review/104837691>.

8 June 2022 in the case No. P/857/12/22<sup>321</sup>.

Also, based on the case law of the European Court of Human Rights<sup>322</sup> (hereinafter referred to as the ‘ECHR’), the Eighth Administrative Court of Appeal expressed the position that the determination of the essential content of the functioning of political parties should be approached comprehensively, and therefore the *programme is not the only guideline for establishing the true intentions and goals of political forces*. Therefore, citing the ECHR’s Judgement in *Refah Partisi (the Welfare Party) and Others v. Turkey*<sup>323</sup>, the court noted:

“ [...] programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions; the content of the programme must be compared with the actions of the party’s leaders and members and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of a political party, provided that as a whole they disclose its aims and intentions.

*Judgement of the Eighth Administrative Court of Appeal in the case No. P/857/9/22*<sup>324</sup>

The same position is expressed in the court’s Judgements dated 14 June 2022 in the case No. P/857/4/22<sup>325</sup> and dated 13 June 2022 in the case No. P/857/3/22<sup>326</sup>.

---

321 Judgement of the Eighth Administrative Court of Appeal dated 08 June 2022 in the case No. P/857/12/22. URL: <https://reyestr.court.gov.ua/Review/104694066>.

322 E.g., the Judgement of the ECHR in *Herri Batasuna and Batasuna v. Spain* of 30 June 2009 (applications nos. 25803/04 and 25817/04), § 80. URL: <https://hudoc.echr.coe.int/eng/?i=001-93475>.

323 Judgement of the ECHR in *Refah Partisi (the Welfare Party) and Others v. Turkey* of 13 February 2003 (applications Nos. 41340/98, 41342/98, 41343/98 and 41344/98), § 101. URL: <https://hudoc.echr.coe.int/eng/?i=001-60936>.

324 Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/9/22. URL: <https://reyestr.court.gov.ua/Review/104818399>.

325 Judgement of the Eighth Administrative Court of Appeal dated 14 June 2022 in the case No. P/857/4/22. URL: <https://reyestr.court.gov.ua/Review/104818413>.

326 Judgement of the Eighth Administrative Court of Appeal dated 13 June 2022 in the case No. P/857/3/22. URL: <https://reyestr.court.gov.ua/Review/104818314>.

## *Activities of the parties associated with using symbols of the communist totalitarian regime*

The existence of this problem was directly highlighted in a court judgement regarding the activities of the Workers' Party of Ukraine (Marxist-Leninist one). This party continued to exist until 2022, despite the fact that in 2015 the Ukrainian Parliament adopted a law<sup>327</sup> *legislating the ban on the propaganda and use of symbols of the communist and national socialist (Nazi) totalitarian regimes in Ukraine*. In addition, this ban was introduced in accordance with the requirements of a number of international legal acts, including resolutions of the Parliamentary Assembly of the Council of Europe, the OSCE Parliamentary Assembly, the European Parliament, the Joint Statement of the UN General Assembly and the European Parliament Declaration<sup>328</sup>.

Furthermore, a direct ban on the use of this symbol in the name, program and goals of political parties was enshrined in the provisions of the Law *On Political Parties in Ukraine* (Articles 5 and 9).

However, the Workers' Party of Ukraine (Marxist-Leninist one) has not brought its name in line with the law.

The use of communist symbols was also recorded in the activities of representatives of the Socialist Party of Ukraine and in the name of the party and the activities of the Communist Party of Ukraine. These grounds served as additional arguments in favour of the Ministry of Justice's claim to ban the activities of these parties.

So, the Eighth Administrative Court of Appeal found a clear violation by these parties of the legislation regulating the requirements for the establishment and operation of political parties in Ukraine.

---

327 Law of Ukraine *On Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibition of Propaganda of Their Symbols*.

328 E.g., these are resolutions of the Parliamentary Assembly of the Council of Europe No. 1096 (1996) of 27 June 1996 on measures to dismantle the heritage of former communist totalitarian systems, No. 1481 (2006) of 26 January 2006 on the need for international condemnation of crimes of totalitarian communist regimes, No. 1495 (2006) of 12 April 2006 on combating the resurrection of Nazi ideology, No. 1652 (2009) of 29 January 2009 on the attitude to memorials exposed to different historical interpretations in Council of Europe member states, OSCE Parliamentary Assembly resolution SC (09) 3 R of 29 June-3 July 2009 not to glorify totalitarian regimes, to open historical and political archives, to continue research into and raise public awareness of the totalitarian legacy, Declaration of the European Parliament of 23 August 2008 on the proclamation of 23 August as European Day of Remembrance for Victims of Stalinism and Nazism, European Parliament resolution of 23 October 2008 on the commemoration of the *Holodomor*, the Ukraine artificial famine (1932-1933), European Parliament resolution of 2 April 2009 on European conscience and totalitarianism, the Joint Statement issued at the 58th Plenary Session of the UN General Assembly on the 70th Anniversary of the *Holodomor* – the Great Famine of 1932-1933 in Ukraine.

In view of these circumstances, the Eighth Administrative Court of Appeal, as a court of first instance, concluded that *in the context of direct military aggression by the Russian Federation, the activities of pro-Russian parties pose real threats to the territorial integrity and national security of Ukraine* through demonstration of collaboration, violence, dissemination of information about justification and denial of the armed aggression of the Russian Federation against Ukraine<sup>329</sup>. Based on these considerations, in all 17 cases, the court ruled that the activities of pro-Russian parties should be banned.

### 3. Appealing against the ban on pro-Russian parties

The judgements of the first instance court were negatively perceived by representatives of some parties. In particular, as of March 2023, out of the 17 political parties whose activities were found to be subject to a ban, eight parties decided to file appeals. These parties include the Union of Left Forces, Socialists, Socialist Party of Ukraine, Opposition Platform – For Life, Party of Sharii, Progressive Socialist Party of Ukraine, Happy Ukraine and the Communist Party of Ukraine.

However, the Supreme Court represented by a panel of judges of the Administrative Court of Cassation rendered final decisions in only six cases. In two cases, appellate proceedings on the appeals of political parties were closed. This concerns the Socialist Party of Ukraine and the Communist Party of Ukraine.

So, in the case of the Socialist Party of Ukraine, the Supreme Court ruled to close the appeal proceedings<sup>330</sup> because the appeal was filed by M.I. Sadovyi, whose rights and obligations were not addressed in the decision of the first instance court.

As for the Communist Party of Ukraine, at first, the appeal of P.M. Symonenko was suspended due to its shortcomings<sup>331</sup>. And then the panel of judges decided to close the proceedings<sup>332</sup>, as the complainant failed to eliminate the shortcomings of the appeal or provide any documents within the allotted 10-day period.

---

329 E.g., the Judgements of the Eighth Administrative Court of Appeal of 16 June 2022 in the case No. [P/857/1/22](#), of 8 June 2022 in the case No. [P/857/12/22](#), of 5 July 2022 in the case No. 826/9751/14, of 21 February 2023 in the case No. [P/857/1/23](#).

330 Judgement of the Administrative Court of Cassation as part of the Supreme Court of 18 October 2022 in the case No. P/857/10/22. URL: <https://reyestr.court.gov.ua/Review/106867936>.

331 Judgement of the Administrative Court of Cassation as part of the Supreme Court of 20 October 2022 in the case No. 826/9751/14. URL: <https://reyestr.court.gov.ua/Review/106868109>.

332 Judgement of the Administrative Court of Cassation as part of the Supreme Court of 28 November 2022 in the case No. 826/9751/14. URL: <https://reyestr.court.gov.ua/Review/107571334>.

**In all other six cases, the Supreme Court fully upheld the judgement of the Eighth Administrative Court of Appeal and ruled that the prohibition of political parties was lawful and justified in the context of the armed aggression by the Russian Federation.**

When examining the possibility of applying the enforcement measure in question, the Supreme Court referred to the provisions of the OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation (second edition), adopted by the Venice Commission at its 125th online plenary meeting on 11–12 December 2020<sup>333</sup>. This act emphasises that ‘the prohibition of the establishment of a political party or the dissolution of a political party are extreme sanctions and shall be applied only in exceptional cases under clearly defined conditions. ... The state needs to prove the existence of a “pressing social need” and of “relevant and sufficient” reasons’. This position is expressed in the Supreme Court’s Resolution dated 29 September 2022 in the case No. P/857/7/22<sup>334</sup>.

Still, the Supreme Court, giving an assessment of the judgements of the first instance court, noted the existence of additional reasons that confirm the urgent need to ban these parties. So, in fact, two more items were added to the list of conditions that undoubtedly indicate the need to apply this measure:

- 1) the ideological affinity of the policy of pro-Russian parties in Ukraine with the policy of the Russian aggressor;
- 2) threat to the security of the state with information warfare being underway.

Let us consider in more detail the Supreme Court’s rationale for each of these conditions.

---

333 Guidelines on Political Party Regulation were approved by the Council for Democratic Elections at its 69th online meeting (7 October 2020) and adopted by the Venice Commission at its 125th online Plenary Session (11–12 December 2020). URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)032-e).

334 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 29 September 2022 in the case No. P/857/7/22. URL: <https://reyestr.court.gov.ua/Review/106621200>.

*Ideological affinity of the policy of pro-Russian parties in Ukraine with the policy of the Russian aggressor*

The panel of judges of the Supreme Court notes that the statements of party members have a Ukrainian-phobic tone, the method of presenting information has signs of manipulation and seeks to discredit and undermine the authority of public authorities, spreading mistrust and distrust of state power in Ukraine. Therefore, the rhetoric of these parties contains attempts to impose the inferiority and inability of the Ukrainian state to exist and is aimed at inciting enmity and division within society<sup>335</sup>.

The Supreme Court drew a parallel between the statements of pro-Russian parties in Ukraine and the rhetoric of the Russian media, which consistently imposed and shaped the narrative of a 'failed state' of Ukraine. In addition, a similar position is expressed by the political and military leadership of Russia, which openly and publicly declares the need to 'denazify' Ukraine<sup>336</sup>. The existence of this circumstance was emphasised by the Supreme Court in its Resolutions of 15 September 2022 in the case No. P/857/8/22<sup>337</sup>, of 29 September 2022 in the case No. P/857/7/22<sup>338</sup> and of 27 September 2022 in the case No. P/857/5/22<sup>339</sup>.

---

335 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 15 September 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/106339460>.

336 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 6 September 2022 in the case No. P/857/1/22. URL: <https://reyestr.court.gov.ua/Review/106164240>.

337 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 15 September 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/106339460>.

338 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 29 September 2022 in the case No. P/857/7/22. URL: <https://reyestr.court.gov.ua/Review/106621200>.

339 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 27 September 2022 in the case No. P/857/5/22. URL: <https://reyestr.court.gov.ua/Review/106571123>.

“

*[...] the actions and speeches made by INFORMATION\_62 Political Party and its leaders, as well as members generally give a clear picture of the authoritarian model of society associated with the 'Russian world' that they promote, which is incompatible with the concept of a 'democratic society'.*

*Resolution of the Supreme Court in the case No. P/857/8/22<sup>340</sup>*

In view of this fact, the court concluded that the prohibition of such parties under martial law was intended to prevent efforts to split Ukrainian society and encourage cooperation with the enemy.

### *Threat to the security of the state with information warfare being underway*

According to the Information Security Strategy, approved by the Decree of the President of Ukraine No. 685/2021 dated 28 December 2021<sup>341</sup>, Ukraine's information security is an integral part of Ukraine's national security, which requires countering disinformation and information operations, primarily of the aggressor state.

In its resolutions, the Supreme Court has also repeatedly emphasised that Russia's armed aggression against Ukraine is accompanied by information warfare. Such actions by the Russian Federation are aimed at influencing the political situation in Ukraine and the morale and psychological state of Ukrainians and reducing their resistance to the enemy.

Dissemination of false, distorted information that discredits public authorities is one of the ways of such warfare.

---

340 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 15 September 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/106339460>.

341 Decree of the President of Ukraine *On the Decision of the National Security and Defence Council of Ukraine dated 15 October 2021 On the Information Security Strategy* No. 685/2021 dated 28 December 2021. URL: <https://zakon.rada.gov.ua/laws/show/685/2021#Text>

“

*A political party that is registered in Ukraine and established as required by law for the purpose of shaping and expressing the political will of citizens, participating in elections and other political events (in Ukraine), but which in reality promotes and propagates anti-Ukrainian (pro-Russian) ideas and thus assists the occupiers in implementing their intentions, poses a real threat to national security, the constitutional order of Ukraine, its sovereignty and territorial integrity.*

*Resolution of the Supreme Court in the case No. P/857/7/22<sup>342</sup>*

In this context, the SC emphasised that pro-Russian rhetoric as an element of information warfare should be recognised as a sufficient basis for prohibiting the parties, regardless of which of their members expresses anti-Ukrainian positions. Therefore, relying on the case law of the European Court of Human Rights<sup>343</sup>, the Supreme Court once again emphasised that ‘the charter and program of a political party alone cannot be considered the sole criterion for determining its goals and intentions. The content of the program should be compared with the actions of the party’s leaders and members and the position they advocate’<sup>344</sup>.

The panel of judges additionally points out that the statements of the party’s leaders and those nominated as candidates in the elections can be attributed to the party as a whole without question.

---

342 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 29 September 2022 in the case No. P/857/7/22. URL: <https://reyestr.court.gov.ua/Review/106621200>.

343 E.g., the Judgement of the ECHR in the case of *Herri Batasuna and Batasuna v. Spain* of 30 June 2009 (applications Nos. 25803/04 and 25817/04). URL: <https://hudoc.echr.coe.int/eng/?i=001-93475>.

344 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 15 September 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/106339460>.

“

*The public activity of party members, especially those who hold managerial or leading positions in the party or are its generally recognised ideological leaders, [...] ‘shrinks’ their private space, which is natural, but also imposes additional responsibility [on these party members] for their actions, and especially for their ideas and calls made in the public sphere.*

*Resolution of the Supreme Court in the case No. P/857/1/22<sup>345</sup>*

This is explained by the fact that a party leader remains a party leader regardless of the resource he or she uses to spread personal views among the population and at what time of day he or she speaks. Therefore, the statements by the ideological leader of a party or an official party leader regarding the events in the country *reflect not only personal opinions (subjective, judgement-based statements) of such persons but also the position of the party as a whole*<sup>346</sup>. The SC explains this position by that a party is not a ‘fiction’ but a community of like-minded people, supporters of a certain national programme, whose actions and public statements give an understanding of what the activities of the political party they have formed are and what real goals it pursues<sup>347</sup>.

Moreover, substantiating the potential and real risks of pro-Russian rhetoric, the Supreme Court has emphasised in a number of cases that ‘the aggressive rejection of the Ukrainian state, the denial [...] of everything Ukrainian, which until recently was voiced and propagated in the media space, including in Ukraine, eventually escalated into a full-scale war against Ukraine, which continues to this day’. The Supreme Court made such conclusions in its Resolutions of 23 September 2022 in the case No. P/857/3/22<sup>348</sup>,

---

345 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 6 September 2022 in the case No. P/857/1/22. URL: <https://reyestr.court.gov.ua/Review/106164240>.

346 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 6 September 2022 in the case No. P/857/1/22. URL: <https://reyestr.court.gov.ua/Review/106164240>.

347 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 27 September 2022 in the case No. P/857/5/22. URL: <https://reyestr.court.gov.ua/Review/106571123>.

348 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 23 September 2022 in the case No. P/857/3/22. URL: <https://reyestr.court.gov.ua/Review/106516058>.

of 15 September 2022 in the case No. P/857/8/22<sup>349</sup> and of 6 September 2022 in the case No. P/857/1/22<sup>350</sup>. In addition, Russia's information warfare is focused exclusively on shaping public opinion about the inevitable defeat of Ukraine and the need for reconciliation with the Russian Federation on terms favourable to it, up to the complete loss of Ukraine's sovereignty and independence<sup>351</sup>.

So, the very ability of pro-Russian parties as a political entity to influence political processes and participate in them, spreading pro-Russian hostile propaganda per se, poses a real threat to Ukraine's national security, independence and territorial integrity<sup>352</sup>. Therefore, in the context of information and psychological operations as part of the hybrid war by the aggressor state, the ban on the party is entirely legal and proportionate.

Ultimately, assessing the legality of the prohibition of parties under martial law, the Supreme Court expressed its legal position as follows:

“[...] at a time when the Armed Forces of Ukraine, fulfilling their constitutional duty, are defending the territorial integrity and inviolability of Ukraine and its sovereignty from the Russian occupiers, democratic institutions must also show their 'belligerence', but in the legal field. Protecting Ukraine's state sovereignty and territorial integrity as well as the democratic constitutional order from the influence of political parties that implement the ideological and political narratives of the aggressor is such an urgent social need to protect a democratic society and protect human rights and freedoms.

*Resolution of the Supreme Court in the case No. P/857/1/22<sup>353</sup>*

---

349 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 15 September 2022 in the case No. P/857/8/22. URL: <https://reyestr.court.gov.ua/Review/106339460>.

350 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 6 September 2022 in the case No. P/857/1/22. URL: <https://reyestr.court.gov.ua/Review/106164240>.

351 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 27 September 2022 in the case No. P/857/5/22. URL: <https://reyestr.court.gov.ua/Review/106571123>.

352 A similar position is expressed in the Resolutions of the Supreme Court of 6 September 2022 in case No. [P/857/1/22](#), of 15 September 2022 in case No. [P/857/8/22](#) and of 29 September 2022 in case No. [P/857/7/22](#).

353 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 6 September 2022 in the case No. P/857/1/22. URL: <https://reyestr.court.gov.ua/Review/106164240>.

It is also important to note that in this Judgement, the Supreme Court actively appeals to political aspects when substantiating the need to prohibit pro-Russian parties. On the one hand, taking into account the political context of Russia's unprovoked armed aggression against Ukraine at the time of the judgement in the case is quite logical. In particular, this is due to the existence of a real threat to the territorial integrity and sovereignty of the state. On the other hand, this style of judicial reasoning is not typical for classical case hearing. However, given the extraordinary conditions of the country's functioning under martial law, the emphasis on political aspects is justified on the whole.

The analysis of the case law shows that in this category of cases, the Supreme Court, when reasoning and interpreting the conditions for the application of the Law banning pro-Russian parties, uses wordings that are markers of the political (e.g., regarding the 'belligerence' of democratic institutions, in interpreting the essence of political parties, applying a comprehensive approach to determining the intentions and goals of parties, the conditions of public activity, the role and degree of responsibility of heads of parties and party leaders, etc.). Such positions of the Supreme Court are a clear manifestation of judicial influence, which reflects the active role of the judiciary in determining the boundaries and grounds for the functioning of political and legal institutions.

Resolutions of the Supreme Court in this category of cases are final and no longer subject to appeal. Accordingly, the courts fully supported the reform to ban pro-Russian parties in Ukraine. This proved its absolute importance and necessity in the context of Russia's full-scale invasion.

#### 4. Problems identified in the process of hearing cases

Although on the whole the judgement to ban pro-Russian parties in Ukraine were unanimous, appellate review revealed several controversial issues inherent in this process. In particular, this was the case when the Supreme Court heard two cases concerning the Socialists and the Progressive Socialist Party of Ukraine.

The first remark concerned the fact *that the court of first instance, i.e., the Eighth Administrative Court of Appeal, had violated the procedure for hearing and adjudicating in the case*. So, the Supreme Court noted that the evidence confirming the anti-Ukrainian position of the Socialists party was submitted to the court after the introductory and operative parts were pronounced but before drawing up the full text of the judgement. This gave the Supreme Court Justices grounds to conclude that the court of first instance had not

examined such evidence when making the challenged judgement and that it was not reflected in the text of the judgement<sup>354</sup>. Therefore, in this case, the Eighth Administrative Court of Appeal violated the requirements of the procedural law during the trial.

The second problematic point was that, in the opinion of the Supreme Court Justices, *the judgements of the court of first instance were sometimes based on assumptions and were not supported by proper evidence*. Such remarks were made in the course of the appellate review of the cases concerning the Socialists and the Progressive Socialist Party of Ukraine. In substantiating this opinion, the court noted that copies of the letters of the Security Service of Ukraine containing a list of facts indicating the anti-Ukrainian activities of the parties contained vague constructions and wordings (e.g., ‘there is a possibility’). Therefore, such documents do not constitute written evidence, since they do not directly confirm the data presented therein, but only contain references to relevant information in open sources<sup>355</sup>. However, this position is not followed in all decisions of the Supreme Court. In the other four cases (concerning the Union of Left Forces, Opposition Platform – For Life, Happy Ukraine parties and Party of Sharii), the SC did not specifically emphasise this point.

Another manifestation of this problem is that publications on the Internet, which could not fully prove the facts of illegal activities, often played the role of evidence in the cases. In assessing this evidence base, the SC emphasised that the circumstances indicating the ‘pro-Russian’ activities of the Socialists political party were not recognised as common knowledge in court. Therefore, they cannot be referred to as indisputable confirmation of individual cases of anti-Ukrainian activities. So, the Supreme Court has repeatedly stated in the text of the resolution that *‘the risks should be confirmed by specific, relevant and admissible evidence’*<sup>356</sup>. That is why in this case, the court rejected this evidence, but decided to ban the parties based on other available evidence in the case.

So, all in all, this procedural shortcoming did not prevent the courts from recognising parties as promoting pro-Russian positions, which pose a real danger to the independence and territorial integrity of Ukraine.

---

354 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 23 September 2022 in the case No. P/857/3/22. URL: <https://reyestr.court.gov.ua/Review/106516058>.

355 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 27 September 2022 in the case No. P/857/5/22. URL: <https://reyestr.court.gov.ua/Review/106571123>.

356 Resolution of the Administrative Court of Cassation as part of the Supreme Court of 23 September 2022 in the case No. P/857/3/22. URL: <https://reyestr.court.gov.ua/Review/106516058>.

## 5. Response to the judicial ban on pro-Russian parties

The resolutions of the Supreme Court fully confirmed the public policy of banning the activities of pro-Russian parties in Ukraine is correct. Therefore, parliamentarians decided not to stop there. In the follow-up of this reform, a year after the full-scale invasion by the Russian Federation, MPs registered in the Ukrainian Parliament the draft law *On Making Amendments to Certain Laws of Ukraine (As Regards the Restriction of Participation by Persons Associated with Prohibited Political Parties in Public Administration)* No. 9081 dated 6 March 2023<sup>357</sup>.

**The purpose of this draft law is to prohibit representatives of pro-Russian parties, which have been banned by a court decision, from running for election to councils of all levels and the Ukrainian Parliament.**

It is envisaged that such ban should be in force for 10 years from the date of termination or cancellation of martial law in Ukraine. If the draft law is adopted, relevant amendments will be made to the Electoral Code of Ukraine<sup>358</sup> and the Law *On the Central Election Commission*<sup>359</sup>.

Still, an alternative draft law No. 9081-1<sup>360</sup> was also submitted to the Ukrainian Parliament. The authors of this act propose a more rigorous approach to prohibiting pro-Russian parties in Ukraine. In particular, the authors of the legislative initiative believe that the ban should apply not only to parties which were judicially banned after 24 February 2022. The sanction should also apply to those parties that operated as of 19 February 2014, when the temporary occupation of some territories of Ukraine by the Russian Federation actually began. This draft law has not yet been considered by the Ukrainian Parliament.

---

357 Draft Law *On Making Amendments to Certain Laws of Ukraine (As Regards the Restriction of Participation of Persons Associated with Prohibited Political Parties in Public Administration)* No. 9081 dated 6 March 2023. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41482>.

358 Electoral Code of Ukraine dated 19 December 2019 No. 396-IX.  
URL: <https://zakon.rada.gov.ua/laws/show/396-20#Text>

359 Law of Ukraine *On the Central Election Commission* dated 30 June 2004 No. 1932-IV.  
URL: <https://zakon.rada.gov.ua/laws/show/1932-15#Text>.

360 Draft Law *On Making Amendments to Certain Legislative Acts of Ukraine on Restricting the Participation of Persons Associated with Political Parties Banned in Accordance with the Law No. 9081-1* dated 7 March 2023 in the State Administration. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41499>.

Compared to other draft laws, these two acts are clearer and more progressive, as they are based on final court decisions that have been rendered and banned pro-Russian parties. The drafts submitted earlier did not have that to take into account.

For example, a similar government draft law No. 7476<sup>361</sup> on banning parties (yet with no focus on a court ban) was registered in the Parliament in the summer of 2022. The difference of this act is also that it seeks to regulate the consequences of banning pro-Russian parties only for members of local councils. However, its consideration in the Parliament has certain difficulties. Even after 150 MPs appealed to the Speaker of the Ukrainian Parliament to urgently consider the draft law supported by the parliamentary committee, its first reading had not yet taken place as of August 2023 (i.e., more than a year after its registration).

Furthermore, some other draft laws are still pending consideration by Parliament to regulate the issue of cleansing government from pro-Russian political forces. This list includes draft laws No. 7318<sup>362</sup>, No. 7318-1<sup>363</sup>, No. 8089<sup>364</sup> and No. 8345<sup>365</sup> and draft resolution No. 7694<sup>366</sup>. However, some draft laws were not approved by the Parliament and got rejected. These are draft laws No. 7476-1, No. 7476-2 and No. 7476-3.

In general, the public authorities are taking a responsible approach to limiting further political influence of pro-Russian parties. This is evidenced by a large number of legislative initiatives. However, the provisions of a significant number of these draft laws cause reservations. First, any attempts to statutorily limit the passive right to vote enshrined in Art. 38, 76 and 103 of the Constitution is clearly unconstitutional. Second, any legal responsibility of a person should be individual and not collective in nature. This imperative requirement was once again embodied at the highest – constitutional – level (Article 61 of the Basic Law).

---

361 Draft Law *On Making Amendments to Certain Laws of Ukraine on the Consequences of a Court Decision to Ban a Political Party for the Status of Members of Local Councils* dated 20 June 2022 No. 7476. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39839>.

362 Draft Law *On Making Amendments to Certain Legislative Acts of Ukraine on Cleansing the Government from Founders and Members of Anti-Ukrainian Political Parties* dated 26 April 2022 No. 7318. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39484>.

363 Draft Law *On Making Amendments to Certain Legislative Acts of Ukraine on Cleansing the Government from Pro-Russian Political Parties* dated 6 May 2022 No. 7318-1. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39542>.

364 Draft Law *On Making Amendments to Certain Legislative Acts of Ukraine on Establishing Legal Consequences for the Status of a Member of Parliament of Ukraine, Members of Local Councils in Connection with the Court Decision to Ban a Political Party* dated 29 September 2022 No. 8089. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40556>.

365 Draft Law *On Making Amendments to Certain Legislative Acts of Ukraine on Ensuring State Sovereignty under Martial Law* dated 10 January 2023 No. 8345. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/41129>.

366 Draft Resolution *on the Early Termination of the Parliamentary Powers of Some MPs of Ukraine* dated 24 August 2022 No. 7694. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40277>.

Finally, the provisions of the Constitution stipulate that no one can be restricted in their rights for belonging to political parties (Part 4, Article 36). Therefore, the very fact of an individual's involvement in the parties whose members profess pro-Russian positions, without proving the guilt of each specific individual, will be regarded as a significant violation of constitutional prescriptions. In view of these considerations, the above-mentioned draft laws, as well as others similar to them in terms of idea, cannot be supported in a legal constitutional state. Still, it is necessary to develop additional procedural norms that would make it possible to effectively bring to legal responsibility (including deprivation of electoral rights) collaborators and accomplices of the aggressor.

## **Still, civil society also actively supports the idea of depriving MPs from pro-Russian parties of their representative mandates.**

This is confirmed by the results of a sociological survey conducted by Ilko Kucheriv Democratic Initiatives Charitable Foundation in cooperation with Razumkov Centre sociological service in late December 2022<sup>367</sup>. So, the data obtained showed that:

**14%** of Ukrainians support early termination of powers of politicians from pro-Russian parties;

**10,5%** support early termination of powers and a ban on running for office again;

**11%** support lustration and a ban on holding public offices;

**17%** of Ukrainians demand that law enforcement officers investigate the activities of each individual and check for facts of treason;

**39%** of respondents supported all of the above.

It is noteworthy that only **3%** of respondents agreed with the idea of allowing members of prohibited parties to work up until the next elections.

So, there is full support in society for the state's political course to remove pro-Russian politicians and their parties from any influence on decision-making.

---

<sup>367</sup> Ukrainians support early termination of powers members of pro-Russian parties – CHESNO Movement. 2023. URL: <https://www.chesno.org/post/5448/>.

## Still, members of the public were still critical of some aspects of the judicial consideration of cases on banning pro-Russian parties.

For example, civic activists and journalists expressed concerns that the trials were not transparent. Most court hearings were held behind closed doors. Representatives of the judiciary reasoned with the need to comply with COVID-19 restrictions. However, the civil society sector sees other reasons for this. Representatives of civil society organisations suggest that this was due to fears of disclosing facts that would be embarrassing to someone if they became public. Another assumption was that a possible reason for not allowing the public to enter the courtroom was due to a weak evidence base. Experts mention that such organisation of trials may receive critical feedback from the institutions of the European Union<sup>368</sup>.

In addition, the expert community has expressed an opinion that in addition to the ban on pro-Russian parties, *an arrangement should be developed to ban the activities of pro-Russian civil society organisations*. What is particularly dangerous in this situation is that some of these civil society organisations receive direct funding from Russia<sup>369</sup>. So, in wartime, these entities may continue to conduct propaganda and information work in favour of the aggressor country.

## 6. Conclusions

The process of banning pro-Russian parties in Ukraine proved that in the context of Russia's armed aggression, the judicial system played an important role in countering the destructive influence of the enemy. The Parliament's prompt response to new challenges enabled expanding the grounds and simplifying the procedure for initiating a ban on political parties in court in the first months of the full-scale invasion.

This case study is a vivid example of the combination of political and legal contexts of decision-making by courts. Although the classical procedure for hearing cases does not provide for appeals to political aspects and obliges

---

368 Ban on Pro-Russian Parties: Security of the Country or Imitation of Vigorous Activity? 2022. URL: <https://www.radiosvoboda.org/a/zaborona-rosiya-partiyi-viy-na-okupatsiya/31909540.html>.

369 'Ukraine should put a full stop to the ban on pro-Russian parties and public organisations,' said the Head of the Committee of Voters of Ukraine. 2022. URL: <https://rpr.org.ua/news/ukraina-maie-postavyty-zhyrnu-krapku-v-zaboroni-prorosyiskyykh-partiy-ta-hromadskyykh-ob-iednan-holova-kvu/>.

the court to make decisions solely within the legal norm, the political subtext still plays a special role in this category of cases. Pro-Russian parties existed in Ukraine's political system long before the full-scale invasion, but it was with the open armed aggression that the issue of limiting the influence of these parties on the country's political life became a major concern. The significant role of representatives of these political forces in the work of institutions responsible for strategic decision-making has resulted in an urgent need to prohibit the pro-Russian parties in wartime. And the courts actively perceived and relayed this context to decision-making.

Putting this ban into practice, the Eighth Administrative Court of Appeal and the Supreme Court unanimously condemned the anti-Ukrainian activities of pro-Russian political forces and their leaders. All in all, the Judgements of the Eighth Administrative Court of Appeal as the court of first instance banned 17 political parties, including the Opposition Bloc, Socialists, Justice and Development, Nashi, Derzhava, Volodymyr Saldo Bloc, Socialist Party of Ukraine, Left Opposition, Party of Sharii, Union of Left Forces, Opposition Platform – For Life, Progressive Socialist Party of Ukraine, One Rus, Happy Ukraine, Workers' Party of Ukraine (Marxist-Leninist one), Communist Party of Ukraine and the Party of Regions. The danger posed by the pro-Russian orientation of the six of these parties was confirmed by the Supreme Court in its appellate review within this category of cases.

It is important to note that the list of pro-Russian parties subject to court bans was not static. From the initial 11 parties that were originally identified by the National Security and Defence Council of Ukraine as a threat to national security, the list was later expanded significantly, as initiated by the Ministry of Justice, and, in the end, included 17 political parties. This fact once again speaks to the presence of political elements in prohibiting parties, as the activities of each political force were assessed exclusively in the context of the armed aggression by the Russian Federation.

In general, the courts ruled that the urgent need to prohibit these parties in Ukraine is related to the presence of the following grounds:

- 1) activities of the parties whose charters and programmes contained anti-Ukrainian positions and contradicted the norms of Ukrainian legislation;
- 2) activities of the parties are associated with the use of symbols of the communist totalitarian regime;
- 3) there is ideological affinity of the policy of pro-Russian parties in Ukraine with the policy of the Russian aggressor;

4) activities of these parties pose a real threat to the security of the state in the context of the information warfare.

Furthermore, an important aspect for this case study is that the courts were actively involved in interpreting the conditions and grounds for the functioning of political parties as a political and legal framework. In particular, this was evident in the way the courts approached the issue of defining the essence of a political party, the role of its heads and leaders as expressors of the leading ideas and goals of the parties, how they characterised the impact of public statements of party members on the degree of responsibility of the party as a whole and determined the degree of 'belligerence' of democratic institutions. In fact, by incorporating such positions into the text of the resolutions, the Supreme Court, as the highest court in the judicial system responsible for the unity and consistency of judicial practice, developed new provisions of the judicial doctrine on the grounds for banning political parties. This doctrine is heavily based on the political context. Such an active role of courts in interpreting the conditions of applying legal norms is a classic manifestation of judicial influence, as it defines additional doctrinal limits and grounds for the functioning of political and legal institutions.

On the whole, the judicial challenging proved that in the context of the direct military aggression by the Russian Federation, the ban on future activities of pro-Russian parties is a completely legitimate and proportionate measure. This is explained by the degree of threat posed by the representatives of these parties in terms of their influence on the general socio-political opinion of Ukrainians.

However, the trials did have shortcomings. In particular, the Supreme Court found that the court of first instance sometimes violated the procedure for hearing and adjudicating in the case, and based its judgements on circumstances that were not supported by proper evidence. In addition, the courts did not always provide the public with the opportunity to attend the hearings.

Yet, on the whole, court decisions in this category of cases showed that the state had chosen the right vector for reforming social relations. This process primarily succeeded due to its proper rulemaking design, which meets the challenges of our time. Further, the unity of the courts' positions on party bans was ensured not only by the legal framework at the law enforcement level, but also by taking into account the political context when adjudicating. The comprehensive consideration of these factors contributed to the relatively quick and well-organised prohibition of pro-Russian parties. Thus, this successful example can serve as a benchmark for the design of similar reforms/processes in the future.

# Influence of judgements of the Constitutional Court of Ukraine on designing reforms

---

## 1. Judgement of the Constitutional Court of Ukraine as a manifestation of judicial activism in the Ukrainian context

As mentioned above, general jurisdiction courts in the countries of the continental legal system, including Ukraine, do not enjoy a wide range of authorities that would allow them to directly influence policy of the state<sup>370</sup>. In this regard, it can be said that the function of judicial activism is attributable in quite an abridged form. However, this does not mean at all that the active role of court in implementation of reforms is limited to the field of the activity of those courts only.

The phenomenon of judicial activism in Ukrainian realities manifests in a fuller way in the operation of the Constitutional Court of Ukraine (CCU), which is authorised to construe the norms of the Basic Law and repeal the effect of the norms of legislation, primarily laws, that do not comply with the Constitution of Ukraine.

The forms of practical embodiment of judicial activism in the CCU's operation were described in a dissenting opinion by Justice V.V. Lemak in the case on the conformity to the Constitution of Ukraine (constitutionality) of the provisions of paragraph 10 (17) of the Resolution of the Cabinet of Ministers of Ukraine *On the Establishment of Quarantine and Introduction of Enhanced Anti-Epidemic Measures in an Area with a Significant Spread of the Acute Respiratory Disease COVID-19 Caused by the SARS-CoV-2 Coronavirus* dated 22 July 2020 No. 641 (as amended)<sup>371</sup>.

---

370 Please see more details in other sections.

371 Dissenting opinion of Justice of the Constitutional Court of Ukraine V.V. Lemak regarding the Ruling on the closure of the constitutional proceedings in the case based on the constitutional motion by 48 Ukrainian MPs regarding the conformity to the Constitution of Ukraine (constitutionality) of the provisions of paragraph 10 (17) of the Cabinet of Ministers of Ukraine's Resolution *On the Establishment of Quarantine and Introduction of Enhanced Anti-Epidemic Measures in an Area with a Significant Spread of the Acute Respiratory Disease COVID-19 Caused by the SARS-CoV-2 Coronavirus* dated 22 July 2020 No. 641 (as amended), handed down on 25 May 2021 No. 2-up/2021, section IV 'Judicial self-restraint' or judicial activism.

URL: <https://zakon.rada.gov.ua/laws/show/nb02d710-21#Text>.

So, according to this document, usually judicial activism in Ukraine manifests itself in the following forms:

- 1) adjudicating the case directly on the basis of the Constitutional Court's revealed understanding of the principles of the Constitution of Ukraine;
- 2) the evolutionary development of the Constitution of Ukraine in the light of today, including the introduction of 'new human rights'<sup>372</sup>;
- 3) imposition of a new positive obligation on the state, which would entail significant financial losses;
- 4) deviation from previous legal positions of the Constitutional Court of Ukraine;
- 5) handing down a decision in the absence of clear legal standards of judicial consideration, that is, contrary to the classical meaning of the political question doctrine<sup>373</sup>.

## 2. Role of the CCU in assessing the constitutionality of reforms

Unlike the Parliament, which acts as a 'positive lawmaker' in developing reforms, the Constitutional Court of Ukraine often performs the function of a 'negative lawmaker'<sup>374</sup>. This can be explained by that the designers of reforms do not always work well on the development of normative legal acts, and therefore their legislative developments may raise doubts about constitutionality. So, to review

---

372 The catalogue of human rights (that is, their list and categorisation) has a dynamic nature, and therefore, with the development of social relations, the 'number' of human rights is constantly growing. Accordingly, this leads to the emergence of 'new rights' that were not initially provided for by lawmakers in the texts of the Constitution and other normative legal acts. Thus, the Constitutional Court of Ukraine is authorised to construe legislative norms in a somewhat expanded manner for this construing to cover the latest trends in distinguishing 'new' constitutional rights and freedoms of a person and a citizen.

373 The political question doctrine is that courts, in view of their apolitical nature, should not adjudicate cases in which political issues are raised. This is explained by the prerogative to resolve such issues belonging to the political branches of power, which are legislative and executive. However, the phenomenon of judicial activism in the CCU's operation proves that exceptions to this rule are sometimes permitted.

374 'Positive lawmaking' involves the development of normative legal acts or the introduction of changes thereto, which do not have the effect of repealing the legal act. That is, as a result of such activity, the norm either enters into force or continues to operate, but in a slightly modified form.

'Negative lawmaking', on the contrary, consists in the rendering of a decision by the court, which entails the annulment of the validity of a normative legal act. Within the framework of the legal system of Ukraine, the Constitutional Court of Ukraine is vested with such authorities, which actually repeals the effect of statutory provisions by recognising them unconstitutional.

whether the normative provision of the reform meets the requirements of the Basic Law, interested actors can use three tools, i.e., a constitutional motion, a constitutional appeal and a constitutional complaint. Within the case studies under scrutiny, public authorities and private individuals prioritise two forms of filing with the CCU, namely, a constitutional motion and a constitutional complaint. These tools are especially actively used by persons who have felt the 'negative' aftermaths of the reforms (for example, they have been dismissed from their offices or their activities have been banned).

The analysis of the content of the disputed laws gives grounds to conclude that the reasons for appeals to the CCU are quite often related precisely to the imperfect work of the Ukrainian Parliament at the stage of legislative norm design. For example, typical reasons for challenging the constitutionality of reform design arise from the following:

*1. Inconsistency of the provisions of a law with the previous opinions and judgements of the Constitutional Court of Ukraine*<sup>375</sup>

This circumstance is often emphasised by the Main Scientific and Expert Department (MSED) and the Main Legal Department (MLD) of the Parliamentary Staff in providing opinions on draft laws. For example, in the case of cleansing the judicial system of 'Maidan judges', the MLD noted<sup>376</sup> that certain provisions of the Law *On Restoration of Confidence in the Judiciary in Ukraine* do not correspond to the principle of the rule of law, which contradicts the provisions of several judgements of the Constitutional Court of Ukraine (among others, these are the Judgements of 23 December 1997 No. 7-zp, of 22 September 2005 No. 5, of 29 June 2010 No. 17, of 11 October 2011 No. 10).

A similar situation was in place for the draft law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies*. In this case, the MLD also emphasised that the draft norms are not consistent with the provisions of the principle of legal certainty, according to which 'legal norms must be precise, clear and unambiguous, since nothing else can ensure their uniform application or excludes unlimited interpretation in law enforcement practice. The Constitutional Court of Ukraine drew attention to this in the corresponding judgements (Judgements of 22 September 2005

---

375 The influence of the constitutional judiciary on the legislative activity of the Ukrainian Parliament. Parliament Magazine. 2016. No. 4. URL: <https://parlament.org.ua/wp-content/uploads/2017/03/Parlament-4-4.pdf>.

376 Comments by the Main Legal Department dated 8 April 2014. URL: <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=6pf3511=50133&pf35401=297224>.

No. 5-rp/2005, of 29 June 2010 No. 17-rp/2010, of 22 December 2010 No. 23-rp/2010, of 11 October 2011 No. 10-rp/2011, etc.)<sup>377</sup>.

However, in many cases, MPs ignore these comments, and so the final versions of the laws still include norms that contradict the provisions of the Constitution. Therefore, it is not surprising that such normative and legal backing of reforms is recognised by the CCU as not meeting the requirements of the Basic Law. The corresponding norms of the laws become invalid from the date when a judgement is rendered by the CCU.

Consequently, the judgement of the Constitutional Court of Ukraine on the unconstitutionality of the laws that formed the basis of the reforms jeopardises the results of such reforms as a whole. Moreover, recognising the reforms as unconstitutional is related to a larger problem, as it calls into question the competence and efficiency of the work of MPs who designed the novelties.

## *2. Violation of the constitutional procedure for consideration and adoption of a draft law*

This ground is also quite dangerous for the legitimacy of the reform. As a rule, violation of the procedure for consideration, adoption and entry into force of a law defined by the Constitution entails recognition of the unconstitutionality of the law as a whole. Still, parliamentarians still allow such violations in their activities.

This was the case, for example, with regard to challenging the dismissal of ‘Maidan judges’. After the adoption of the Law *On Restoring Confidence in the Judiciary in Ukraine*, 76 MPs filed a constitutional motion with the CCU and asked to declare this Law unconstitutional as a whole due to failure to follow requirements of the constitutional procedure in the process of its adoption. However, the Constitutional Court refused to open constitutional proceedings in this case because, according to the Court, the authors of the motion did not provide necessary evidence to confirm that MPs violated the voting procedure<sup>378</sup>. Still, this example is quite indicative in terms of the potential consequences of non-compliance with the requirements for consideration and adoption of the draft law.

---

377 Comments by the Main Legal Department dated 18 September 2019. URL: <http://w1.cl.rada.gov.ua/pls/zweb2/webproc34?id=8pf3511=662668pf35401=500761>.

378 Ruling of the Constitutional Court of Ukraine dated 6 July 2017 No. 12-u/2017 on the refusal to open constitutional proceedings in the case based on the constitutional motion by 76 Ukrainian MPs regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Restoring Confidence in the Judiciary in Ukraine*. URL: <https://zakon.rada.gov.ua/laws/show/v012u710-17#Text>.

### 3. Results of challenging the constitutionality of reforms in the case studies under scrutiny

The implementation of almost every reform/procedures under scrutiny was accompanied by the challenging of their constitutionality. In particular, it was so in four out of the five case studies. As of April 2023, constitutional motions and constitutional complaints were not submitted only in relation to the Law *On Amendments to Some Legislative Acts of Ukraine As Regards the Banning of Political Parties*. However, this can be explained by the fact that this category of cases has been considered relatively recently – only since June 2022. So, interested actors whose activities are related to banned pro-Russian parties can be expected to file with the Constitutional Court in the near future.

As for the attempts to declare the provisions of the laws that accompanied the reforms/procedures of Ukraine's government cleansing unconstitutional, the situation is as follows: *there were at least four such endeavours in the case of lustration*. The first constitutional motion was filed by the Supreme Court of Ukraine<sup>379</sup> back in 2014 – a month after the adoption of the relevant Law *On Government Cleansing*. During 2015, the CCU received three more constitutional motions – one from 47 MPs<sup>380</sup> and two from the Supreme Court of Ukraine<sup>381</sup>. The authors of these documents mainly emphasise that the lustration procedure prescribed by the Law violates the right of citizens to equal access

---

379 Resolution of the Supreme Court of Ukraine *On Applying to the Constitutional Court of Ukraine with a Constitutional Motion regarding the Conformity to the Constitution of Ukraine (Constitutionality) of Part 1 (6), Part 2 (2), Part 2 (13), Part 3 of Article 3 of the Law of Ukraine On Government Cleansing dated 16 October 2014 No. 1682-VII and Appealing to the President of Ukraine, the Speaker of the Ukrainian Parliament and the Prime Minister of Ukraine As Regards Bringing the Law of Ukraine On Government Cleansing dated 17 November 2014 No. 8 into Line with International Standards in the Field of Justice and Human Freedoms, the Constitution of Ukraine, provisions of the current legislation of Ukraine*. URL: <https://ccu.gov.ua/sites/default/files/46.pdf>.

380 Constitutional motion by 47 Ukrainian MPs dated 20 January 2015 regarding the conformity of the Constitution of Ukraine (constitutionality) of the provisions of Article 1 (3 and 6), Article 3 (1, 2, 3, 4 and 8), Paragraph 5 of Article 5 (5), Clause 2 of the Final and Transitional Provisions of the Law of Ukraine *On Government Cleansing*. URL: <https://ccu.gov.ua/sites/default/files/45.pdf>.

381 Resolution of the Supreme Court of Ukraine *On Applying to the Constitutional Court of Ukraine with a Constitutional Motion regarding the Conformity to the Provisions of Article 22 (3), Article 38 (1), Article 58, Article (61), Article 62 (1), Article 64 (1) of the Constitution of Ukraine (Constitutionality) of Article 22 (3), Part 1 (7, 8 and 9), Part 2 (4) of Article 3, Clause 2 of the Section Final and Transitional Provisions of the Law of Ukraine On Government Cleansing dated 16 March 2015 No. 3* URL: <https://ccu.gov.ua/sites/default/files/44.pdf>; Resolution of the Supreme Court of Ukraine *On Applying to the Constitutional Court of Ukraine with a Constitutional Motion regarding the Conformity to the Provisions of Article 38, Article 61 (2), Article 62 (1) of the Constitution of Ukraine (constitutionality) of Article 4 (3) of the Law of Ukraine On Government Cleansing dated 25 December 2015 No. 25*. URL: <https://ccu.gov.ua/sites/default/files/43.pdf>.

to the civil service and the constitutional principles of the presumption of innocence and the individual character of legal responsibility.

However, in spite of more than eight years since the first filing with the Constitutional Court and more than three years since the publication of the ECHR's Judgement in *Polyakh and others v. Ukraine*, *final judgements on the constitutional motions have not yet been handed down*<sup>382</sup>. But even with no official position of the CCU, currently the lustration procedure is definitely recognised as illegal at the level of judgements by general jurisdiction courts. This trend has already become an established practice.

The reform of the police through personnel re-attestation was challenged in the Constitutional Court too. In particular, the constitutionality of Clause 8 of Chapter XI *Final and Transitional Provisions* of the Law of Ukraine *On the National Police* (regarding the procedure for giving notice of upcoming dismissal) was challenged by Bohdan Vyacheslavovych Bivalkevych by filing a constitutional complaint<sup>383</sup> with the CCU in 2020. In contrast to the lustration case, this time the Constitutional Court considered the complaint relatively quickly and in 2021 rendered a decision that recognised *some aspects of the National Police attestation as unconstitutional*<sup>384</sup>. Still, the Judgement does not recognise the entire attestation as violating the provisions of the Constitution. The above concerns only *a violation of the principle of legal certainty regarding the procedure for giving notice of dismissal*.

So, the CCU drew attention to the fact that the wordings 'possible' and 'future' dismissal are not specific, and thus it is not clear what meaning the legislator incorporated in these concepts. Therefore, the Court found that the principle of the rule of law (Article 8 of the Constitution) was violated, because the procedure for dismissal and transfer to the National Police was unclear, and police officers could not foresee their actions based on the provisions of the Law due to its inconsistent content. The CCU also emphasised that the Ukrainian Parliament

---

382 Constitutional Court of Ukraine. Constitutional submissions.

URL: <https://ccu.gov.ua/novyna/konstytuciyini-podannya>.

383 B.V. Bivalkevych's constitutional complaint of 02 June 2020 No. 18/221 (20) regarding the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Clause 8 of Section XI *Final and Transitional Provisions* of the Law of Ukraine *On the National Police* dated 2 July 2015 No. 580-VIII. URL: [https://ccu.gov.ua/sites/default/files/18\\_2212020.pdf](https://ccu.gov.ua/sites/default/files/18_2212020.pdf).

384 Judgement of the Constitutional Court of Ukraine dated 21 July 2021 No. 4-r(II)/2021 in the case of B.V. Bivalkevych's constitutional complaint regarding the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Clause 8 of Section XI *Final and Transitional Provisions* of the Law of Ukraine *On the National Police*. URL: [https://ccu.gov.ua/sites/default/files/docs/4\\_p2\\_2021.pdf](https://ccu.gov.ua/sites/default/files/docs/4_p2_2021.pdf).

had exceeded its constitutional authorities, as it may not dismiss people from their offices by issuing a law. Dismissal can take place only on the basis of an individual act.

This Judgement should become a reference point for the further designing of reforms that have the consequence of terminating the labour relations of government employees.

Still, practice proves that the Ukrainian Parliament has repeatedly resorted to violating this rule. For example, the Parliament made a similar mistake during the re-attestation of the prosecutors of the General Prosecution Office. In this case, the same situation occurred – the norms of the Law on attestation were unclear and contained the same provisions regarding the role of the Parliament in the process of dismissal. The only nuance is that at the time of designing this reform, the CCU had not yet rendered a decision on the attestation of the police. So, the Ukrainian Parliament had nothing to be navigated by.

**As a whole, the prosecution re-attestation reform was accompanied by the largest number of appeals to the Constitutional Court among the five case studies under scrutiny.**

So, in 2020, a constitutional motion by 50 Ukrainian MPs was filed with the CCU. Therein, the parliamentarians defend the position that the adoption of the Law which regulated the attestation procedure ‘caused the narrowing of the content and scope of existing rights of citizens, introduced the dualism of the legal foundations of the organisation and activity of the Ukrainian prosecution service, the status of prosecutors’<sup>385</sup>. In addition, multiple prosecutors who failed the attestation remained dissatisfied with the reform of the General Prosecution Office. So this caused a real ‘boom’ of appeals to the CCU: in the period from the beginning of 2020 to July 2023, the Court *received approximately 40 (!) constitutional complaints*. This fact indicates clear problems with the design of the reform, as doubts about the constitutionality concerned many provisions of the core Law. However, the CCU still refused to open constitutional proceedings regarding most of them. A new wave in the submission of constitutional

---

385 Constitutional motion by 50 Ukrainian MPs dated 4 March 2020 regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 19 September 2019 No. 113-IX (as amended). URL: [https://ccu.gov.ua/sites/default/files/3\\_116\\_2020.pdf](https://ccu.gov.ua/sites/default/files/3_116_2020.pdf).

complaints began in early 2023 – after the Constitutional Court satisfied the complaint<sup>386</sup> of Serhii Mykolaiovych Vasylenko.

**Similar to the Judgement on the police attestation, this time the CCU also found some provisions of the Law On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies to be unconstitutional<sup>387</sup>.**

In particular, that conclusion referred to Clause 6 of Chapter II *Final and Transitional Provisions*, which governs the relationship on giving notice of a possible future dismissal from office to prosecutors. In justifying this position, the Court again noted that the wording ‘possible future dismissal’ can be ambiguously interpreted by the prosecutors, so they did not have the opportunity to clearly foresee the legal consequences and plan their further actions. And, as stated above, the Ukrainian Parliament exceeded its constitutional authorities, since it may not dismiss an employee only by passing a law. Dismissal shall be valid in the case of issuing an individual act of law.

At the same time, this case concerned only the failure to submit a statement of intent to participate in the attestation procedure. Therefore, the attestation as a whole was not recognized as illegal. *But the presence of two identical conclusions of the CCU regarding the shortcomings in the design of the reforms indicates an urgent need for MPs to familiarise themselves with these judgements.* MPs should study these problematic points in detail in order not to turn them into systemic ones when designing reforms in the future.

However, the CCU still has not handed down a decision regarding other constitutional complaints. So, as of April 2023, there are still six complaints pending before the Court (from 23 September 2022 No. 18/191, from

---

386 S.M. Vasylenko’s constitutional complaint dated 12 January 2022 No. 18/9 on the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Clause 6, Clause 7 (1), Clause 19 (1) of Section II *Final and Transitional Provisions* of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* dated 19 September 2019 No. 113-IX. URL: [https://ccu.gov.ua/sites/default/files/18\\_9\\_2022.pdf](https://ccu.gov.ua/sites/default/files/18_9_2022.pdf).

387 Judgment of the Constitutional Court of Ukraine dated 1 March 2023 No. 1-r(II)/2023 in the case of S.M. Vasylenko’s constitutional complaint on the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Clause 6 of Section II *Final and Transitional Provisions* of the Law of Ukraine *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecutorial Bodies* (regarding guarantees of independence of the prosecutor). URL: <https://ccu.gov.ua/sites/default/files/docs/1-rii2023.pdf>.

24 November 2022 No. 18/226, from 17 February 2023 No. 18/56, from 06 March 2023 No. 18/79, from 13 March 2023 No. 18/99 and 29 March 2023 No. 18/122) and the above-mentioned constitutional motion. What the decisions will be in these cases remains to be seen. Still, a large number of legal challenges should attract the attention of authorities, because this is a wake-up call for reform developers.

Ultimately, the case of ‘Maidan judges’ was not left out of the attention of the Constitutional Court either. Three years after the adoption of the corresponding Law *On Restoration of Confidence in the Judiciary in Ukraine*, its constitutionality was questioned by Ukrainian MPs. So, in 2017, the relevant constitutional motion was filed with the court of constitutional jurisdiction<sup>388</sup>. However, the CCU did not assess the provisions of the Law but refused to open constitutional proceedings in view of the constitutional motion itself failing to meet the requirements of the Constitution.

Still, the list of actors who were dissatisfied with the provisions of the Law did not end there. In particular, the unconstitutionality of the procedure for conducting review to, and cleansing of, judicial authorities was emphasised by those judges who were subject to dismissal. So, in order to stay in office, some judges decided to file constitutional motions with the CCU. On the whole, the Court received two such acts – by Liudmila Fedorivna Voinarenko (from 03 December 2018 No. 18/6519 (18)<sup>389</sup>) and Liudmila Viktorivna Bartaschuk (from 13 May 2019 No. 18/3120 (19)<sup>390</sup>). These individuals emphasised that the Law *On Restoring Confidence in the Judiciary in Ukraine* was adopted outside the procedure established by the Constitution, and also contains political motives for holding judges accountable. However, similarly with the constitutional motions by MPs, the CCU did not hand down a decision on these constitutional complaints but refused to open constitutional

---

388 Constitutional motion by 76 Ukrainian MPs regarding the compliance to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Restoring Confidence in the Judiciary in Ukraine*.  
URL: <http://ccu.gov.ua:8080/doccatalog/document?id=290767>.

389 L.F. Voinarenko’s constitutional motion dated 03 December 2018 No. 18/6519 (18) regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Restoration of Confidence in the Judiciary in Ukraine* dated 8 April 2014 No. 1188–VII.  
URL: [https://ccu.gov.ua/sites/default/files/18\\_651918.doc](https://ccu.gov.ua/sites/default/files/18_651918.doc).

390 L.V. Bartaschuk’s constitutional motion dated 13 May 2019 No. 18/3120 (19) regarding the conformity to the Constitution of Ukraine (constitutionality) of the provisions of Part 2 (4) of Article 2, Article 3 of the Law of Ukraine *On Restoring Confidence in Judiciary in Ukraine* dated 8 April 2014 No. 1188–VII.

URL: [https://ccu.gov.ua/sites/default/files/18\\_312019.doc](https://ccu.gov.ua/sites/default/files/18_312019.doc).

proceedings<sup>391</sup>. So, in the end, all the provisions of the Law remain valid, and the special review procedure for the ‘Maidan judges’ is considered to be compliant with the Constitution.

So, the significant number of constitutional motions, constitutional complaints and constitutional appeals regarding the procedure or results of reforms indicates that the process of reforming social relations is far from being perfect. Unfortunately, this situation is typical for Ukraine. In this regard, *MPs should pay closer attention to the judgements and conclusions of the Constitutional Court regarding the quality of the development of normative legal acts*. This point especially concerns the cases of designing large-scale reforms that consequently interfere with human rights.

Failure to accommodate the requirements of the Constitution leads to the fact that the reform loses its legitimacy, and the authorities responsible for its development lose public trust and the status of experts in this field. Therefore, in order to avoid mistakes in the future, Ukrainian MPs should take into account two points in their activities:

- ▶ *first of all*, MPs themselves should get acquainted with the provisions of the Constitution and laws of Ukraine regarding the order of preparation, development and review of the draft law, as well as the adoption and entry into force of the law;
- ▶ *secondly*, MPs should take onboard the comments and recommendations of the Main Scientific and Expert Department and the Main Legal Department of the Parliamentary Staff regarding the quality of law drafting. Quite often, the opinions of the MSED and the MLD refer to non-compliance with the requirements established in preceding judgements of the Constitutional Court of Ukraine.

---

391 Ruling of the Constitutional Court of Ukraine dated 19 December 2018 No. 386-1(I)/2018 on the refusal to open constitutional proceedings in the case based on L.F. Voinarenko’s constitutional motion regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Restoring Confidence in Judiciary in Ukraine* dated 8 April 2014 No. 1188-VII. URL: [https://ccu.gov.ua/sites/default/files/docs/386\\_11\\_2018.pdf](https://ccu.gov.ua/sites/default/files/docs/386_11_2018.pdf); Ruling of the Constitutional Court of Ukraine dated 4 June 2019 No. 156-1(I)/2019 on the refusal to open constitutional proceedings in the case based on L.V. Bartaschuk’s constitutional motion regarding the conformity to the Constitution of Ukraine (constitutionality) of the Law of Ukraine *On Restoring Confidence in the Judiciary in Ukraine*. URL: [https://ccu.gov.ua/sites/default/files/docs/156\\_11\\_2019\\_.pdf](https://ccu.gov.ua/sites/default/files/docs/156_11_2019_.pdf).

# Conclusions

---

Implementation of reforms is always a long and complex process, and its success depends on many factors. Unfortunately, the experience of organising reforms in Ukraine is not always of a positive nature, as often the results of introducing changes are not satisfactory to either the authorities or the public. Courts, which act as arbitrators in these disputes, put a period to the disputable question about the effectiveness of a given reform.

*In Ukraine, just like in other countries of the continental legal system, the role of courts in influencing public policy is much smaller than that in the countries of the Anglo-American legal system* (e.g., the USA, the UK, Canada, etc.). In particular, the decisions of the Ukrainian general jurisdiction courts cannot *directly* repeal statutory provisions on reforms. Corresponding authorities are vested in the Constitutional Court of Ukraine only. In this regard, the classic judicial activism, which is inherent in the Anglo-American legal system, can't be referred to in the Ukrainian context.

**Still, such influence is still exercised, but more indirectly — through the mass repealing of decisions made in the course of reforms implementation at the level of individual challenges and through the development of judicial practice of consideration of those cases at the level of the resolutions of the Supreme Court ('quasi-precedents').**

In fact, due to such activity, an indirect but very tangible effect of court decisions is manifested, which significantly affects the final assessment of the results of the reforms. Therefore, taking into account these specifics that exist in the Ukrainian realities and are different from identical processes in the countries of the Anglo-American legal system, the active role of courts is more appropriately characterised as the very judicial influence on reforms.

*The concept of judicial influence is broader than the concept of judicial activism in the Ukrainian version of its manifestation.* In particular, judicial influence concerns the activities of both general jurisdiction courts (courts of lower instances and the Supreme Court) and the Constitutional Court of Ukraine, while judicial activism mainly concerns *certain aspects* of the activity

of the Constitutional Court of Ukraine and the Supreme Court.

An important difference is that decisions of lower courts are extremely rarely of an 'activist' nature.

In general, the phenomenon of judicial influence is characterised by the following forms of manifestation:

- ▶ *The influence of court decisions on the lawmaking process*, among other things, through direct (judgements of the Constitutional Court of Ukraine) and indirect (decisions of general jurisdiction courts) instructions on the need to improve the current legislation by identifying gaps in normative legal acts that regulate the implementation of reforms.
- ▶ *Actual assessment of the (in)effectiveness of reforms/procedures*. If the decisions of power bodies were massively repealed in court, then the reform/procedure is considered a failure, and therefore, this indicates the unsatisfactory performance of the authorities responsible for designing the reforms/procedures and their implementation in the practical realm. If the courts leave the decisions of power bodies in force, then this serves as a confirmation that the public policy run by the authorities is correct.
- ▶ *Court practice expands the interpretation of legal norms or conditions of their application*. In that case, on the basis of taking into account the political and legal aspect of the application of normative legal acts, judicial interpretation may go beyond the content of the normative legal acts, which was originally incorporated in them by legislators.

Therefore, judicial influence on reforms/procedures, which is made by courts in considering cases, enables analysing, on a systemic basis, the quality of preparation of normative and legal backing of the reforms/procedures at the stage of their design and assessing how appropriate the organisation of the implementation of these novelties at the stage of law enforcement is.

The conducted scrutiny of five case studies of the implementation of reforms/procedures in the public legal sector gives grounds for drawing the following conclusions regarding the backbone points that traditionally accompany the process of reforming social relations in Ukraine.

*1. The subject of legal appeals quite often are reforms/procedures, the result of which is the dismissal of representatives of government authorities from their offices.* These socio-political processes attract the greatest attention of the public because the idea of reform/procedure developers is that public institutions should be cleansed of incompetent and unscrupulous officials this way. That is why the society specially longs for the reforms/procedures

of this sort. A clear evidence to that effect was government the cleansing (lustration) in 2014, the attestation of the personnel of the National Police bodies in 2015-2016, the attestation of the prosecutors of the General Prosecutor of Ukraine in 2019, and the dismissal of the 'Maidan judges'.

The dismissal of persons holding offices in public authorities is accompanied by significant discussions and disputes between the dismissed officials and the bodies that made the decision on such dismissal. Such opposition is quite understandable, because the consequences of the government cleansing reforms/procedures directly determine the future fate of these ex-representatives of the authorities. In addition, the controversy of this process is often supplemented by the inadequate quality of the design of reforms/procedures and their implementation in practice. So this creates grounds for a large number of lawsuits to be filed with administrative courts.

2. When considering cases, the courts approach the assessment of the situation differently. In particular, *lower (first instance and appellate) courts tend to be more cautious about repealing the results of reforms/procedures*. Such caution is explained by the fact that mostly disputes arising from each reform/procedure are a new category of cases, and thus there is still no established practice of their consideration. Accordingly, lower court judges are 'pioneers' in these cases and great responsibility is placed on them, because in the case of an incorrectly rendered decision, it will be overturned by a higher instance court. Since overturning is a negative indicator of judicial performance, *as a rule, lower courts tend to try to render 'more conservative' judgements that follow the 'letter of the law'* and prevent possible further overturning. Therefore, *if judges perceive the inconsistency of legislation norms, they tend to recognise the reform/procedure as illegal*.

However, such tactics do not always yield success. After all, in contrast to first and appellate instance courts, *the Justices of the Supreme Court have a more innovative view on construing social relations and the legal norms regulating them*. In this regard, resolutions of the Supreme Court *are more geared towards the general goal of carrying out the reform/procedure, and therefore correspond to the spirit of the law*. Accordingly, a typical situation is when the Supreme Court renders decisions that are diametrically opposed to the positions of lower courts. Such trends are particularly evident in the cases concerning the attestation of General Prosecution Office and the dismissal of the 'Maidan judges'.

3. Judgements of the European Court of Human Rights have a significant impact on the process of judicial review into reforms/procedures too. This influence is manifested in the two key ways:

- ▶ in the event that the judicial review of the reform/procedure was carried out by all possible instances of Ukrainian courts and the case about the reform/procedure reached the ECHR, which made a final decision on it. In this case, *the impact of the ECHR on the reform/procedure is direct*, as its decisions must be enforced. In addition, when considering similar cases regarding this reform/procedure, Ukrainian courts must definitely be guided by this practice. *The ECHR's Judgement in Polyakh and others v. Ukraine in 2019 had these very consequences for the lustration, as it recognised that the government cleansing had a number of significant shortcomings*. Accordingly, all subsequent decisions of national courts in lustration cases fully reproduced this position of the European Court of Human Rights and recognised lustration as a failure;
- ▶ *the impact of the ECHR's judgements on the process of reforms/procedures assessment can also be indirect*. This is manifested in the fact that, in order to justify their position regarding the legality of the reform/procedure as proposed by its developers, *national courts can refer to legal standards set forth in other decisions of the European Court of Human Rights*. For example, it was so in the cases of the 'Maidan judges' (Ukrainian judges appealed to the ECHR's Judgement in *Olexandr Volkov v. Ukraine* regarding the shortcomings in the wording of the concept of 'violation of the oath by a judge') and the ban on pro-Russian parties (the Supreme Court cited the Judgement in *Refah Partisi (the Welfare Party) and Others v. Turkey* and *Herri Batasuna and Batasuna v. Spain* regarding the establishment of the true intentions and goals of political parties).

4. On the whole, if the final impact of court decisions on the course of reforms in Ukraine were to be assessed, it could be stated that *it is far from always resulting in the cancellation of the results of government cleansing reforms or procedures*. For example, the result of the analysis of the five case studies under scrutiny is indicative.

- ▶ *judicial practice has shown major shortcomings in legal regulation and organisation, which led to the failure of reforms/procedures in only two cases*, i.e., regarding lustration and attestation of police officers;
- ▶ *in the other two cases, the courts only found a significant number of problems with the legal regulation of the reforms/procedures and shortcomings at the level of law enforcement, but on the whole ruled that*

*the reform/procedure was legal.* Such cases concerned the dismissal of the 'Maidan judges' and the attestation of the prosecutors of the General Prosecution Office of Ukraine;

- ▶ finally, *the case regarding the ban on pro-Russian parties demonstrated that the courts fully supported the proper nature of conducting the procedure,* as all court decisions therein sided with the Ministry of Justice of Ukraine. The courts unanimously ruled that there is a threat to national security from the activities of these parties, so they should be banned.

5. Still, consideration of the political context plays not the least role in the process of judicial influence on reforms/procedures. As a general rule, consideration and decision-making in court should take place in accordance with the principle of apoliticality. That is, the court must resolve disputes fairly, with no political influence. However, *with the armed aggression of the Russian Federation against Ukraine, taking into account the political context in the assessment of the activities of pro-Russian parties was of great significance.* The courts quite reasonably focused on the large negative aftermaths from the possible access by representatives of pro-Russian political forces to strategic decision-making for the state or local community due to the inclination to cooperate with the enemy, etc. This style of judicial construing of the conditions of application of the Law banning pro-Russian parties is fully consistent with international standards (including the practice of the ECHR). Therefore, *in the context of armed confrontation, when making a decision, the court must also take into account both the general and political contexts.*

6. *A particularly active role in the process of consideration of reform/procedural cases is attributed to the Supreme Court as the highest court in the judicial system.* This is explained by the fact that the SC is responsible for shaping and ensuring that judicial practice is uniform. Accordingly, lower courts should take this practice into account in future decisions. In addition, the resolutions of the Supreme Court are one of the sources of law. In this aspect, construing opinions that the Court expresses in the texts of judicial decisions are important. For example, in the case of banning pro-Russian political parties, the Supreme Court developed new provisions of the judicial doctrine on the procedure for determining the essence of a political party, the role of their managers and leaders as exponents of the leading ideas and goals of parties' activity, on the influence of party members' public statements on the degree of responsibility of the party as a whole and determined the degree 'belligerence' of democratic institutions. *Such a role of the Court in the interpretation of the conditions of application of legal norms is one of the manifestations of classic judicial influence,* since it actually determined additional limits and grounds for the functioning of political and legal institutions.

7. Furthermore, judicial influence is also manifested in the way courts, during consideration of reform/procedure cases, identify problematic points that accompany their design and the process of implementation in practice. This way, the judicial authorities determine the degree of quality of the development of normative and legal backing for the reforms/procedures and the effectiveness of the implementation of the provisions of the legislation in practice on a national and local scale. Accordingly, the analysis of the studied cases gave grounds to conclude that *all the committed shortcomings encountered in the process of reforming social relations can be conventionally divided into two levels* depending on the stage at which they are committed: *1) shortcomings at the level of rulemaking; and 2) shortcomings at the level of law enforcement.*

8. For the successful implementation of reforms, their proper normative and legal backing is important. However, it is precisely at this stage that the largest number of gaps and inconsistencies are committed, and in the future, they first become the basis for challenging the legality of the reforms in court and then, for declaring them illegal as a whole. A summary analysis of court cases indicates that *the backbone problems that arise at the level of rulemaking of reforms/procedures* are the following:

*1) normative legal acts that regulate the implementation of reforms/procedures sometimes contain provisions that contradict or are not fully consistent with the norms of the Constitution of Ukraine.*

In particular, shortcomings of this type accompanied lustration, where the provisions of the Law *On Government Cleansing* directly contradicted the requirements of the Basic Law on the principle of individualisation of legal responsibility (Article 61) and on the principle of equal access to the civil service and that in local self-government bodies (Article 38).

Similarly, the courts stated that during the design of the procedure for the dismissal of the 'Maidan judges', the parliamentarians spelled out the provisions of the Law *On Restoration of Confidence in the Judiciary in Ukraine* quite vaguely, which called into question the constitutionality of the authorities of the High Council of Justice.

The issue of inconsistency with the provisions of the Constitution was particularly acute in the cases of attestation of the National Police personnel and that of officers of the General Prosecution Office. In particular, in these cases, the Constitutional Court of Ukraine rendered a judgement declaring some provisions of the Laws *On the National Police and On Amendments to Certain Legislative Acts of Ukraine Regarding Priority Measures for the Reform of Police Bodies* unconstitutional. These shortcomings concerned the legislative regulation of

the notice of a possible future dismissal and the issue of whether the Ukrainian Parliament has the authority to issue such dismissal on the ground of the adoption of the law.

The presence of this type of shortcomings, among other things, is connected with the fact that *at the stage of drafting laws, MPs do not pay attention to critical comments expressed in the opinions of the MSED and the MLD. Further, there is no proper response to experts' opinions and guidance for improving the text of bills authored by representatives of civil society organisations.* Therefore, the necessary changes and additions are not made to the draft laws at the stage of their development, although this option of improving normative and legal backing is the fastest and brings about the least negative impact on social relations. *However, due to the lack of timely response to existing shortcomings, all these gaps later make themselves felt at the stage of law enforcement.* And, accordingly, they become the subject of challenges in courts.

*2) laws and normative legal acts are not fully consistent with international standards in a specific area of reforms/procedures.* In particular, this concerns that during their design developers of reforms do not comply with recommendations expressed by the Venice Commission regarding certain provisions of the laws of Ukraine, legal positions contained in the judgements of the ECHR and international legal acts of a universal or regional nature.

This mistake is characteristic of almost every case study under scrutiny. For example, in lustration cases, the courts stated that the provisions of the Law *On Government Cleansing* contain discriminatory provisions that violate the requirements regarding the principle of equality, set forth in the Universal Declaration of Human Rights and the European Social Charter. Likewise, the Venice Commission expressed some reservations about this procedure in its opinions on the Law *On Government Cleansing*.

Similarly, in the case of 'Maidan judges', the court challenging revealed that during the development of this procedure, the Venice Commission's comments regarding the provisions of the Law *On the High Council of Justice* were not taken onboard. Thus, as early as three years before the drafting of the law on the cleansing of the judiciary from 'Maidan judges', the Venice Commission emphasised the inconsistency of the wording of the concept of 'violation of the oath by a judge' with the principle of legal certainty. The ECHR also expressed comments of the same nature regarding the shortcomings of Ukrainian legislation. However, by the time the law on 'Maidan judges' was developed, these recommendations of international institutions had not taken onboard, and as a result, the dismissal of 'Maidan judges' was challenged in court.

*3) the normative and legal regulation of reforms/procedures sometimes contains internal inconsistencies in the texts of specific laws and by-laws adopted in pursuance of them.*

The presence of such gaps indicates that the process of developing acts was not sufficiently coordinated, because in fact, the final version of laws or by-laws included norms that were not completely consistent with each other in terms of content. Such shortcomings were vividly manifested in the cases of lustration, police attestation and attestation of prosecutors of the General Prosecution Office.

For example, in the case of lustration, the principles of this procedure, spelled out at the beginning of the Law *On Government Cleansing*, were drastically different from how the process of government cleansing was spelled out in the main body of the law. That is, the principles contained a requirement for strict adherence to the rule of law and legality, the presumption of innocence, individual responsibility and the guarantee of the right to defence. But in fact, all these provisions were completely negated by the subsequent, detailed mechanism for the implementation of this procedure.

The same way, internal inconsistencies in legislation accompanied the reforms on the attestation of police officers and prosecutors of the General Prosecution Office. For example, the provisions of the Final and Transitional Provisions of the Law *On the National Police* did not fully correspond to the norms of the main body of this act. As a result, this essentially led to the establishment of an additional ground for attestation.

A similar shortcoming was contained in the Laws *On the Prosecution Service* and *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecution Bodies*. This is due to the fact that the *Final and Transitional Provisions* of the Law *On Making Amendments to Some Legislative Acts of Ukraine As Regards Priority Measures to Reform Prosecution Bodies* contained an expanded interpretation of the grounds for dismissing prosecutors from office. In this regard, in practice there was confusion as to which wording of grounds for dismissal is correct.

*4) Separate stages of reforms/procedures are spelled out at the level of laws and by-laws superficially and not clearly enough.* Ultimately, as a result of that, entities authorised to carry out certain stages of reforms/procedures could not always accurately predict what they should do in a given situation. In addition, the existence of such legislative gaps created grounds for abuse.

These problems rose to be especially acute in the cases related to the attestation of personnel of the National Police and prosecutors of the General Prosecution Office. In both of them, the shortcomings of the texts of normative legal

acts were that they regulated the interview stage in a very weak way. This is manifested particularly in the fact that the reforms design developers did not provide an exhaustive list of criteria for conducting interviews and assessing candidates, did not establish requirements for the technical recording of this stage of attestation or proper substantiation of the conclusions of the boards. In the end, these factors indicated a violation of the principle of legal certainty in the process of designing legislative texts on reform matters.

*5) Reformistic legislation sometimes contains vague terminology*, and this complicates determining the real intention of the developers, which they put into a given wording.

For example, it was this way with the concept of ‘violation of a judge’s oath’ in the case of ‘Maidan judges’. This term in the Law *On the High Council of Justice* is defined too abstractly, so in practice it is quite difficult to prove that such a violation actually took place. This is due to the fact that the content of this offense is revealed through such formulations as ‘objectivity’, ‘impartiality’, ‘independence’ and ‘integrity’, which have a very wide range of interpretation of their meaning. The existence of this problem is emphasised also by *international institutions, which recommend that Ukraine more clearly define these concepts in legislation*.

In the same way, problems with vaguely defined terminology arose in the case of the attestation of prosecutors of the General Prosecution Office. In this case, the shortcoming of legislative wording concerned the determination of the essence of the process that took place with the General Prosecution Office of Ukraine as a result of the establishment of the Attorney General’s Office. Although the civil legislation clearly defines the concept of ‘liquidation’ or ‘reorganization’, in the context of the studied case, it was quite difficult to establish what actually happened to the prosecutorial bodies. In spite of the Law *On the Prosecution Service* operating with the concepts of ‘reorganisation’ and ‘liquidation’ as grounds for the dismissal of prosecutors, the court challenging revealed that in fact a mere renaming of the legal entity had taken place. Therefore, *the real procedure of attestation of prosecutors did not correspond to the terminological provisions established in the core legislation*.

As a whole, the inadequate quality of the development of normative legal acts sometimes results in the fact that *even courts are in no position to unambiguously interpret the provisions of legislation that is intended to regulate a given reform or procedure*. Consequently, courts of different instances interpret the same provisions of the law in different ways, and therefore ultimately reach radically opposite conclusions about the legality or, conversely, the illegality of reforms/procedures. This problem was most clearly

manifested in the case of the dismissal of 'Maidan judges', because the courts of different instances could not reach a common opinion on a unified approach to understanding legislation. Such an indicator is unsatisfactory for the drafters of the law, as it indicates the *extremely disputable nature of the formulated legal norms*.

9. Often, the process of implementing reforms is also accompanied by a number of procedural shortcomings. These law enforcement mistakes are committed both at the national level of reform implementation and locally. The negative consequences thereof are manifested in the fact that even in spite of proper regulatory and legal regulation, the *mistakes made may become the reason for recognising the results of the reform as illegal*. When mistakes do not have a significant impact on the final result of the reform, they, in the best case scenario, just negatively affect the reputation of the institutions responsible for their implementation. The analysis of court decisions on the challenges of reforms following potential violation of the order of implementation gives reasons to single out the following *backbone shortcomings that arise at the level of law enforcement*:

#### *1) Violation of the deadlines for implementation of reforms/procedures.*

In particular, such a violation sometimes accompanied the lustration procedure. Courts established that lustration reviews into some officials were not carried out within the time limit set by the law. Therefore, as a consequence, it became the reason that the conclusions about being unfit for the position held were not drawn in relation to these officials. Therefore, there was no legal basis for applying the ban on holding positions in government bodies.

Also, the violation of time limits accompanied the case of police attestation. This reform was completed much later than the legally established deadline for its implementation. So, in accordance with the Concept: 100 Days of Quality of the National Police of Ukraine, re-attestation should have been completed by 7 February 2016, i.e., within three months from the day the National Police started working. Yet in reality this process got much protracted, as the attestation of police officers essentially ended only in October 2016.

#### *2) Unfounded nature of judgements of authorised bodies following the results of reforms/procedures.*

This mistake is the most typical and widespread one, because it applies to all cases considered within the scope of the study, with no exception. Such a situation, in fact, is a direct continuation of the shortcomings

committed at the level of rulemaking, in particular, problems with unclear regulation of individual stages of reforms/procedures. *So, no clear criteria for decision-making at the level of normative legal acts creates grounds for 'freedom of action' of authorised bodies.*

A summary analysis of typical mistakes made on this basis indicates that *the unfounded nature of decisions (opinions) of authorised bodies is accompanied by the existence of the following factors:*

- ▶ *no rationale for the decision (opinion) that has been made;*
- ▶ *the circumstances referred to by the authorities have not been proven;*
- ▶ *the circumstances of the case have not been investigated in full;*
- ▶ *inconsistency of the circumstances, which the authorised body considers as established, with the actual evidence in the case;*
- ▶ *failure to take into account all available evidence as a whole.*

With that, the practical side of carrying out reforms/procedures often takes the form of voluntarism, because it leads to an arbitrary interpretation of unclear provisions of the legislation. As a result, situations emerge where decision-making is based solely on the subjective perception by those responsible for the implementation of reforms/procedures in practice.

This problem is so massive that the Higher Administrative Court of Ukraine paid special attention to it at one time. Thus, the HACU's Plenum devoted a separate part to this matter in one of the resolutions, setting out its legal positions and generalisations on this topic.

*3) Bodies of power, involved in the implementation of reforms/procedures, often act contrary to the specific requirements of the law.* This situation can occur due to two reasons:

- ▶ *members of the attestation boards/HR boards/review boards were not well-acquainted with their authorities and the order of reforms/procedures.* So, in this case, no direct intention is deemed for these bodies to violate statutory requirements. Rather, such a situation is due to an inappropriate attitude towards the functions and authorities they fulfil. For example, lustration reviews could be conducted into officials who were not subject to the prohibitions at all. Or sometimes there were cases when certificates and opinions

following the inspections were not drawn up at all, contrary to the requirements of the Law *On Government Cleansing*;

- ▶ *members of the authorised bodies involved in the implementation of the reform/procedure could intentionally violate the procedure established by law for its implementation.* An example of such a procedural error is the case of the dismissal of ‘Maidan judges’. In particular, a person who participated in the process of rendering the decision was present at the meeting of the Supreme Council of Justice regarding the appeal of that decision of the SCJ’s Disciplinary Chamber. That is, this member of the SCJ directly violated the requirement of the law, which forbids one and the same person to make a decision on disciplinary proceedings and at the same time consider this decision on appeal. However, an official of this level is quite expected to have been thoroughly familiar with the range of his authorities and the procedure for considering disciplinary complaints.

*4) Dismissal orders do not always correctly indicate the legal ground for making that decision.* The corresponding situation, among other things, accompanied the reform with the attestation of the prosecutors of the General Prosecution Office of Ukraine. In this case, the head of a prosecutorial body did not prescribe in the dismissal order a specific provision of the law that provided legal grounds for that dismissal. So, non-compliance with this formal requirement often became the basis for prosecutors who failed to pass the attestation to file lawsuits.

*So, these two conditions combined, i.e., the shortcomings of the rulemaking technique and the imperfect law enforcement practice, become the basis for challenging the legality of acts on reforms and the procedures for their implementation in court.*

*10.* A significant drawback of the Ukrainian reforms practice is that reformers do not learn from *previous mistakes*. In fact, despite the wave of criticism and a large number of lawsuits, the designers of the reforms do not draw proper conclusions about the need to adjust this process in the future. This trend is typical for many reforms in Ukraine. It is especially telling when the reforms carried out at different times are very similar in essence and organisation, but the authorities completely carry over the shortcomings of one reform to another.

This is exactly what happened with the reforms related to the attestation of police officers in 2015-2016 and that of prosecutors of the General Prosecution Office in 2019. These case studies trace a number of similar mistakes, which, despite the comments of experts and court proceedings, were not corrected

after three years. It is important to note that even the appeals to the Constitutional Court of Ukraine in both cases referred to the same provisions in the legislation on reforms, namely: regarding the notice of a possible future dismissal in the norms of relevant laws and regarding the possibility of dismissal of employees on the basis of the provisions of the law only, rather than on the basis of an individual law enforcement act. *In the end, with a difference of almost two years, the CCU rendered identical judgements on these reforms.* However, it is absolutely clear that in the second case, appeals could have been avoided if the developers of the reform on the attestation of prosecutors had turned to the results and consequences of the police reform when drafting normative legal acts. *Such disregard for previous experience is the cause of repeated mistakes in the future.*

A separate aspect of this problem is that *lawmakers do not make changes and additions to the problematic legislation for a long time.* However, silencing the problem does not contribute to its solution at all, and, on the contrary, does even more harm. This happens because these same flaws 'fire' again after a certain period, but their consequences can be more extensive. In particular, it is this way in the case of the dismissal of 'Maidan judges'. Back in 2010, the Venice Commission recommended that Ukraine more clearly define the concept of 'violation of the oath by a judge' in the legislation. However, when the Law was drafted in 2014, this gap still remained unaddressed. In this regard, there is a situation where poorly prepared legislation 'reminded' itself later. *Such a trend to ignore shortcomings only leads to a higher number of 'problematic' pieces of legislation and cases of its inefficient application.* In the end, this becomes the cause of negative consequences not only in individual cases, but also on a national scale, when these shortcomings are embedded in the basis of the reforms.

*11.* The response of society and public institutions to the results of judicial influence on reforms is represented by several vectors, depending on decisions rendered by the courts.

The position of *public bodies* can be illustrated by three areas of their activity:

*1.* Public bodies tried under any conditions to defend the legality of reforms/procedures and therefore, *as a must, filed appeals and cassation appeals* against court decisions, if they were not in favour of the reform/procedure.

*2.* Still, *as defendants* in cases *representatives of the authorities in some cases availed themselves not to show up in court at all* (this situation was typical for the case study of the attestation of police officers).

3. Seeing the complete failure of reforms/procedures or the shortcomings of their individual stages, public institutions sometimes initiate *introducing changes and additions to legislation*, however, this response is not dominant.

As a whole, *representatives of the public always support the necessity and importance of reforms*. Yet their final assessment of the results of judicial influence is closely related to whether the court in a particular case sided with the developers of the reforms, or, on the contrary, it recognised the reform as a failure. So, in the case when the officials manage to return to their positions following judicial decisions, the society *strongly criticises the judicial challenging of the reform*. However, if the courts recognised the reform as successful and unscrupulous or unprofessional officials were dismissed, then civic activists fully support the state's activities in this area.

12. Still and nevertheless, in some cases, *problematic moments of the legislation, revealed during the judicial influence, are taken into account by legislators, and in the future, they initiate the introduction of the necessary changes and additions to the current legislation*. These are quite indicative shifts, as they reflect a direct positive effect of the courts' influence on the reforms. Naturally, *such actions of authorities are an example of reactive (rather than proactive) response to problems*, but they indicate that there are still certain shifts in improving the process of implementing reforms. An example of correcting the shortcomings of the reforms following court decisions, albeit post facto, is the case of the attestation of prosecutors of the General Prosecution Office. At the same time, it should be noted that such initiatives do not always lead to updating the current legislation on the reform agenda, as they may remain under consideration in the Ukrainian Parliament for a long time. That is the current situation with lustration and finalisation of the provisions of the Law *On Government Cleansing*.

13. The cost of unsuccessful design and mistakes during the implementation of reforms in practice is quite high. In particular, *courts award officials large sums of compensation in the event that the reform was deemed a failure and the official was reinstated*. The European Court of Human Rights awards particularly significant amounts of financial compensation to 'victims'. This situation was in place in the case of lustration. In addition, compensation for forced absenteeism is also awarded by Ukrainian courts (for example, it was so in the cases of reforms on the attestation of the personnel of the National Police and that of prosecutors of the General Prosecution Office). Naturally, such compensations are a significant blow to the state budget of the country. However, this is a proportional retribution for an improper approach to the development and implementation of reforms.

14. On the whole, the court challenging of the reforms resulted in a considerable number of officials who managed to be reinstated in their positions following court decisions.

- ▶ For instance, in the case of government cleansing, following court decisions, *information on 466 officials was removed from the Register of Listed Persons.*
- ▶ In the end, the challenging of the reform on the attestation of personnel of the National Police bodies, *decisions to dismiss 3,931 police officers were found to be illegal.*
- ▶ In the period from 2014 to 2023, *as a matter of final decision courts recognised as illegal and cancelled the decisions* of the High Council of Justice (Supreme Council of Justice) to submit a motion for dismissal from office *in respect of six judges.*
- ▶ In the end, the judicial review of the reform, *about 140 decisions were rendered in favour of the prosecutors of the General Prosecution Office who failed to successfully pass the attestation.*
- ▶ In addition, as part of the implementation of the reform on banning pro-Russian parties, *courts banned the activities of 17 parties.*

15. The large number of lawsuits could have been avoided if the legislators at the stage of reforms/procedures design and the bodies responsible for their implementation at the enforcement stage had acted proactively. *All possible regulatory inconsistencies should have been resolved as early as before the final adoption of the law on the floor of the Ukrainian Parliament, and not in the courtroom after the adoption of the act.* Judicial influence on the course of implementation of reforms/procedures once again highlighted the scale of problems that traditionally arise in lawmaking and at the law-enforcement level when developing and implementing political and legal decisions.

# Recommendations

---

Based on the analysis of court cases, it was possible to single out the key problems that traditionally accompany the reform process in Ukraine. Thus, for the purpose of avoiding them, recommendations were developed to be taken into account by reformers in order to prevent the negative impact of these factors in the future. These recommendations can be taken onboard in improving the current procedures for reforming social relations and also be used in designing reforms in the future.

The level of rulemaking is of paramount importance for the success of reforms, since it is at this stage that the foundation is laid down, which will be the basis for the entire process of implementing changes. *Therefore, in order to avoid the shortcomings that typically arise at this stage, the following factors should be taken into account in designing reforms:*

- ▶ In developing normative legal acts, designers should *take into account international standards in the field of a given reform* (including the opinions of the Venice Commission on relevant laws, resolutions of the Parliamentary Assembly of the Council of Europe, resolutions of the OSCE Parliamentary Assembly, declarations and resolutions of the European Parliament, practice of the European Court of Human Rights, international declarations and conventions of a universal and regional nature, etc.). This will help to align Ukrainian legislation on reforms with advanced European and global practices, as well as contribute to accelerating the pace of European integration processes.
- ▶ Developers of reforms should *take into account comments and recommendations voiced by the expert community*. These can be both expert institutions under public authorities (for example, the Main Scientific and Expert Department or the Main Legal Department of the Parliamentary Staff) and independent experts representing the civil society sector. Taking onboard this aspect will contribute to the most rapid correction of a number of shortcomings at the early stages of the preparation of bills or draft by-laws and will become a safeguard against mistakes at the next stages of the implementation of reforms.
- ▶ At the design stage, *opinions on the quality of developed normative legal acts contained in the judgements of the Constitutional Court of Ukraine* should be taken into account. This especially concerns the cases when

these judgements are rendered regarding essentially similar reforms. Such an approach will help to avoid further recognition of the normative legal acts on reform matters as unconstitutional on the same grounds that were already the subject of consideration by the CCU.

- ▶ *The developed texts of laws and by-laws on reform matters should not contradict the provisions of the current Ukrainian legislation* (including the Constitution of Ukraine, the provisions of other laws or by-laws). The normative and legal backing of reforms should be consistent and constitute a single system of legal regulation. For this purpose, it is necessary to carry out review of draft normative legal acts in order to identify inconsistencies with national law. Taking onboard this aspect will help to prevent internal inconsistencies of normative provisions (including such as unjustified introduction of new grounds for attestation, introduction of additional conditions for the dismissal of civil servants, which were not provided for in acts of higher legal force, etc.).
- ▶ *Legislative terms and definitions used in reform acts should be as clear and understandable as possible.* When designing reforms, wording that has a wide range of interpretation should be avoided. This aspect contributes to the observance of the principle of the rule of law, including such its component as legal certainty and quality of the law, and prevents disputes arising on the basis of an ambiguous definition of the content of individual provisions of the legislation. After all, unclear concepts can lead to the possibility of using reforms as a ‘political weapon’.
- ▶ *Designing new reforms should be based on the experience of previous ones,* and an explanation is that this allows fully tracing the positive and negative aspects that accompany their implementation. The analysis of this experience should be the basis for the development and adoption of political and legal decisions in the future.
- ▶ *The shortcomings that were committed during the implementation of previous reforms should be promptly corrected.* Such problems should not be ignored by the authorities, since inadequate response only feeds to the further existence of systemic problems in national legislation, which are in fact transferred from one reform to another.
- ▶ *At the level of legislation, the procedure for implementing individual stages of reforms should be clearly and exhaustively regulated.* This especially concerns the stage of conducting interviews as part of rebooting the staff of authorities. The purpose of taking this measure is to avoid excessive discretion of power bodies. This is one of the guarantees of


preventing 'voluntarism' by the controlling bodies.

- ▶ *The legislation should clearly delineate the scope of competence of bodies authorised to implement individual stages of reforms.*  
The authorities of one body should not duplicate or replace the scope of competence of other specialised institutions. Taking this onboard will help to avoid disputes on the scope of competence in implementing reforms.
- ▶ *Normative legal acts should clearly prescribe criteria, on the basis of which authorised bodies make decisions* following the implementation of the reform. This is especially true of reforms on rebooting the staff of authorities. Development of these criteria should be accompanied by consultations with specialised institutions. This approach will ensure that the process of organisation and implementation of reforms is transparent.
- ▶ *Statutory provisions should define the procedure and requirements for substantiating the decisions of authorised bodies regarding the dismissal* of officials following reviews. The detailed regulation of this process will be a safeguard against excessive discretion on the part of the controlling bodies and will ensure that adopted opinions on dismissal are reasoned.
- ▶ An important trend of democratisation of the reform process is *the involvement of the civil society sector's representatives* in their implementation. Participation of the public in the activities of collegial bodies ensures control by the public. That is why statutory provisions on reforms should provide representatives of the public with the appropriate scope of controlling authority.
- ▶ In the case of reforms that result in the dismissal of officials from their offices, *legislation should provide for the need to individually notify such persons about the consequences in the event of their failure as part of a review.* That way, proactive measures are taken to prevent some elements of the reform from being recognised as illegal due to violation of requirements for the foreseeability of the law.

Many mistakes related to the shortcomings of the rulemaking technique further manifest at the stage of practical implementation of reforms. *Thus, at the level of law enforcement, in order to ensure the proper organisation of reforms, authorities should adhere to the following conditions:*

- ▶ *Opinions following reviews should be fully substantiated.* This means that each opinion of the controlling body should be rooted in the following requirements: a) there should be an indication of the reasons for making the decision (opinion); b) the existence of the circumstances referred to by the board should be proven; c) all the circumstances of the case should be fully itemised; d) the circumstances of the case, which the board considers established, should correspond to the actual evidence in the case; e) all available evidence should be considered as a whole;
- ▶ *All stages of implementation of the reform should be properly recorded.* This especially concerns the stage of interviews in the reforms to renew the staff of public authorities. In this case, it is possible to provide an appropriate evidence base, which, on the one hand, will testify to compliance with all requirements by the authorised bodies in the course of the reform, and on the other, will become additional evidence in substantiating the adoption of a given decision following reviews. *Destruction of the evidence base immediately after the completion of the interviews can never be done.* Even when that procedure can be effected, it can so only after the completion of all stages of appeals at the national and international levels;
- ▶ The heads of units that issue dismissal orders *should clearly indicate in the documentation which of the grounds for dismissal was applied in each specific case.* Where the legal norm provides several options, either one of the grounds should be indicated, if the others are not relevant in a specific case, or several, when all of them existed and became the reason to adopt the corresponding decision.
- ▶ *Participation of the public and its influence on the reform process should be real, rather than fictitious.* Only in this case it is possible to refer to the existence of a framework for control by the public. Representatives from the public should be selected by independent institutions to provide for maximum transparency and legitimacy of the reform process. However, arrangements should be developed to ensure that these representatives will not be subject to any political pressure and will not be under the control of interested actors.

- ▶ *In practice, a real possibility should be ensured for challenging the results of reforms out of court.* This means that institutions should be established and operationalised, and a person whose interests are affected by the reform should be in a position to file with them in case of disagreement with the results of that reform. For example, they can be appropriate boards of appeal under the body responsible for implementing the reform. That approach would have averted a significant amount of litigation and have relieved national courts.
- ▶ *Dismissal from offices as part of implementation of reforms related to renewing the staff of authorities should not be of a punitive nature.* This is because reforms are not inherently the same as holding legally accountable. The goal of such reforms is to fill public authorities with new, highly professional and competent personnel, and not to settle scores with representatives of the former system.



**So, the success of reforms depends on the comprehensive accommodation of the above factors. In general, these recommendations are of a summary nature, and therefore can be applicable to a large number of reforms in the public legal sector (especially so in the part of recommendations for correcting shortcomings in rulemaking).**

# ANNEX

## Court decisions by general jurisdiction courts, analysed within the framework of the study

Challenging of the lustration procedure in 2014						
No.	Number of the court case	Form of the court decision	Date of adoption	Court instance	Name of the court	Web-reference to the court decision
1.	815/3268/15	Resolution	06 July 2015	First instance	Odesa District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/46522425">https://reyestr.court.gov.ua/Review/46522425</a>
2.	815/3268/15	Resolution	08 September 2015	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://opendatabot.ua/court/51892584-f42c380f5c54eb3cfa3f50da7ba2703d">https://opendatabot.ua/court/51892584-f42c380f5c54eb3cfa3f50da7ba2703d</a>
3.	815/3268/15	Resolution	31 January 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/71979644">https://reyestr.court.gov.ua/Review/71979644</a>
4.	820/4398/15	Resolution	08 July 2015	First instance	Kharkiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/46522851">https://reyestr.court.gov.ua/Review/46522851</a>
5.	820/4398/15	Ruling	02 September 2015	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/49654884">https://reyestr.court.gov.ua/Review/49654884</a>
6.	820/4398/15	Resolution	14 February 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/72290090">https://reyestr.court.gov.ua/Review/72290090</a>

## Challenging of the lustration procedure in 2014

7.	812/1441/16	Resolution	09 December 2016	First instance	Luhansk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/63481664">https://reyestr.court.gov.ua/Review/63481664</a>
8.	812/1441/16	Ruling	12 April 2017	Appellate instance	Donetsk Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/65967003">https://reyestr.court.gov.ua/Review/65967003</a>
9.	812/1441/16	Resolution	16 August 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/83692111">https://reyestr.court.gov.ua/Review/83692111</a>
10.	826/25204/15	Resolution	28 December 2015	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/83692111">https://reyestr.court.gov.ua/Review/83692111</a>
11.	826/25204/15	Ruling	02 March 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/83692111">https://reyestr.court.gov.ua/Review/83692111</a>
12.	826/25204/15	Resolution	12 December 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/86333355">https://reyestr.court.gov.ua/Review/86333355</a>
13.	817/3431/14	Resolution	04 December 2014	First instance	Rivne District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/41800231">https://reyestr.court.gov.ua/Review/41800231</a>
14.	817/3431/14	Ruling	02 February 2015	Appellate instance	Zhytomyr Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/42522891">https://reyestr.court.gov.ua/Review/42522891</a>
15.	817/3431/14	Resolution	03 June 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/89627492">https://reyestr.court.gov.ua/Review/89627492</a>

16.	820/6160/15	Resolution	29 February 2016	First instance	Kharkiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/56311103">https://reyestr.court.gov.ua/Review/56311103</a>
17.	820/6160/15	Ruling	07 April 2016	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/57136601">https://reyestr.court.gov.ua/Review/57136601</a>
18.	820/6160/15	Resolution	02 October 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/84676536">https://reyestr.court.gov.ua/Review/84676536</a>
19.	826/13735/15	Resolution	25 December 2015	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/54676828">https://reyestr.court.gov.ua/Review/54676828</a>
20.	826/13735/15	Ruling	10 March 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/56336875">https://reyestr.court.gov.ua/Review/56336875</a>
21.	826/13735/15	Resolution	29 November 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/86000212">https://reyestr.court.gov.ua/Review/86000212</a>
22.	826/20537/14	Judgement	28 April 2021	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/96650697">https://reyestr.court.gov.ua/Review/96650697</a>
23.	826/20537/14	Resolution	13 September 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/99625839">https://reyestr.court.gov.ua/Review/99625839</a>
24.	826/20537/14	Resolution	10 November 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/107251383">https://reyestr.court.gov.ua/Review/107251383</a>

25.	808/2109/15	Judgement	15 June 2020	First instance	Zaporizhzhia District Administrative Court	<a href="https://opendatobot.ua/court/89846845-9458fa0149e32cc2b73e53e46656fa54">https://opendatobot.ua/court/89846845-9458fa0149e32cc2b73e53e46656fa54</a>
26..	808/2109/15	Resolution	22 October 2020	Appellate instance	Third Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/92596372">https://reyestr.court.gov.ua/Review/92596372</a>
27.	808/2109/15	Resolution	30 March 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/95917761">https://reyestr.court.gov.ua/Review/95917761</a>
28.	805/4893/15-a	Resolution	21 December 2015	First instance	Donetsk District Administrative Court	<a href="https://reyestr.court.gov.ua/review/54675752">https://reyestr.court.gov.ua/review/54675752</a>
29.	805/4893/15-a	Ruling	23 March 2016	Appellate instance	Donetsk Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/review/56617633">https://reyestr.court.gov.ua/review/56617633</a>
30.	805/4893/15-a	Resolution	30 July 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/review/90674423">https://reyestr.court.gov.ua/review/90674423</a>
31.	803/806/15-a	Judgement	21 December 2020	First instance	Volyn District Administrative Court	<a href="https://reyestr.court.gov.ua/review/93922894">https://reyestr.court.gov.ua/review/93922894</a>
32.	803/806/15-a	Resolution	20 January 2021	Appellate instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/94264048">https://reyestr.court.gov.ua/Review/94264048</a>
33.	803/806/15-a	Resolution	14 April 2021	Appellate instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96539274">https://reyestr.court.gov.ua/Review/96539274</a>

34	803/806/15-a	Resolution	26 October 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106963256">https://reyestr.court.gov.ua/Review/106963256</a>
35.	826/17789/14	Judgement	02 February 2021	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/94663624">https://reyestr.court.gov.ua/Review/94663624</a>
36.	826/17789/14	Ruling	02 June 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/97391720">https://reyestr.court.gov.ua/Review/97391720</a>
37.	826/17789/14	Resolution	29 November 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/107599078">https://reyestr.court.gov.ua/Review/107599078</a>
38.	826/16237/14	Resolution	09 December 2014	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/43961600">https://reyestr.court.gov.ua/Review/43961600</a>
39.	826/16237/14	Ruling	10 March 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/56426336">https://reyestr.court.gov.ua/Review/56426336</a>
40.	826/16237/14	Resolution	12 December 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/86305978">https://reyestr.court.gov.ua/Review/86305978</a>
41.	826/1137/16	Judgement	16 April 2018	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/86305978">https://reyestr.court.gov.ua/Review/86305978</a>
42.	826/1137/16	Resolution	13 September 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/73482070">https://reyestr.court.gov.ua/Review/73482070</a>
43.	826/1137/16	Resolution	17 June 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/75428809">https://reyestr.court.gov.ua/Review/75428809</a>

44.	812/403/17	Resolution	22 May 2017	First instance	Luhansk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/66645706">https://reyestr.court.gov.ua/Review/66645706</a>
45.	812/403/17	Resolution	11 July 2017	Appellate instance	Donetsk Administrative Court of Appeal	<a href="https://opendatabot.ua/court/67682848-4fa2bc976f66b5ca7d682e76d5e06b72">https://opendatabot.ua/court/67682848-4fa2bc976f66b5ca7d682e76d5e06b72</a>
46.	812/403/17	Resolution	19 August 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/91050600">https://reyestr.court.gov.ua/Review/91050600</a>
47.	826/680/16	Resolution	30 August 2016	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/61527542">https://reyestr.court.gov.ua/Review/61527542</a>
48.	826/680/16	Resolution	03 November 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/62542037">https://reyestr.court.gov.ua/Review/62542037</a>
49.	826/680/16	Resolution	06 August 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/90804473">https://reyestr.court.gov.ua/Review/90804473</a>
50.	823/739/16	Resolution	11 August 2016	First instance	Cherkasy District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/59661154">https://reyestr.court.gov.ua/Review/59661154</a>
51.	823/739/16	Ruling	28 September 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/61744287">https://reyestr.court.gov.ua/Review/61744287</a>
52.	823/739/16	Resolution	26 February 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/87839095">https://reyestr.court.gov.ua/Review/87839095</a>
53.	823/739/16	Resolution	22 July 2020	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/90543251">https://reyestr.court.gov.ua/Review/90543251</a>
54.	823/739/16	Resolution	29 April 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/96655434">https://reyestr.court.gov.ua/Review/96655434</a>

55.	812/211/15	Resolution	19 June 2015	First instance	Sumy District Administrative Court	<a href="https://revestr.court.gov.ua/Review/45454070">https://revestr.court.gov.ua/Review/45454070</a>
56.	812/211/15	Resolution	05 August 2015	Appellate instance	Donetsk Administrative Court of Appeal	<a href="https://revestr.court.gov.ua/Review/48163603">https://revestr.court.gov.ua/Review/48163603</a>
57.	812/211/15	Resolution	21 November 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://revestr.court.gov.ua/Review/85804385">https://revestr.court.gov.ua/Review/85804385</a>
58.	818/516/15	Resolution	10 April 2015	First instance	Poltava District Administrative Court	<a href="https://revestr.court.gov.ua/Review/44094810">https://revestr.court.gov.ua/Review/44094810</a>
59.	818/516/15	Ruling	09 July 2015	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://revestr.court.gov.ua/Review/71979375">https://revestr.court.gov.ua/Review/71979375</a>
60.	816/3714/15	Resolution	29 September 2015	First instance	Luhansk District Administrative Court	<a href="https://revestr.court.gov.ua/Review/51987261">https://revestr.court.gov.ua/Review/51987261</a>
61.	816/3714/15	Ruling	21 December 2015	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://revestr.court.gov.ua/Review/54968342">https://revestr.court.gov.ua/Review/54968342</a>
62.	816/3714/15	Resolution	23 November 2016	Cassation instance	Higher Administrative Court of Ukraine	<a href="https://revestr.court.gov.ua/Review/63021964">https://revestr.court.gov.ua/Review/63021964</a>
63.	820/3734/15	Resolution	02 July 2015	First instance	Kharkiv District Administrative Court	<a href="https://revestr.court.gov.ua/Review/46281690">https://revestr.court.gov.ua/Review/46281690</a>
64.	820/3734/15	Resolution	31 August 2015	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://opendata.bot.ua/court/51892945-26d6733f69b286ca29e9591e0c163396">https://opendata.bot.ua/court/51892945-26d6733f69b286ca29e9591e0c163396</a>

65.	820/3734/15	Resolution	26 October 2016	Cassation instance	Higher Administrative Court of Ukraine	<a href="https://revestr.court.gov.ua/Review/62367118">https://revestr.court.gov.ua/Review/62367118</a>
66.	824/28/17-a	Resolution	07 November 2017	Appellate instance	Vinnytsia Administrative Court of Appeal	<a href="https://revestr.court.gov.ua/Review/70213572">https://revestr.court.gov.ua/Review/70213572</a>
67.	824/28/17-a	Resolution	27 February 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://revestr.court.gov.ua/Review/87868642">https://revestr.court.gov.ua/Review/87868642</a>

## Challenging of the results of the attestation of the personnel of the National Police of Ukraine in 2015-2016

No.	Number of the court case	Form of the court decision	Date of adoption	Court instance	Name of the court	Web-reference to the court decision
1.	810/809/16	Resolution	21 April 2016	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/57753842">https://reyestr.court.gov.ua/Review/57753842</a>
2.	810/809/16	Ruling	07 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58812388">https://reyestr.court.gov.ua/Review/58812388</a>
3.	810/809/16	Resolution	16 May 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/74078220">https://reyestr.court.gov.ua/Review/74078220</a>
4.	825/556/16	Resolution	27 April 2016	First instance	Chernihiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/57536756">https://reyestr.court.gov.ua/Review/57536756</a>
5.	825/556/16	Resolution	05 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58861675">https://reyestr.court.gov.ua/Review/58861675</a>
6.	810/581/16	Resolution	20 April 2016	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/57611706">https://reyestr.court.gov.ua/Review/57611706</a>
7.	810/581/16	Ruling	07 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58812362">https://reyestr.court.gov.ua/Review/58812362</a>
8.	810/581/16	Resolution	21 March 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/72965592">https://reyestr.court.gov.ua/Review/72965592</a>
9.		Resolution	30 November 2016	Appellate instance	Vynnytsia Administrative Court of Appeal	<a href="https://opendatabot.ua/court/63188948-1e711a9800f1235bb2036f58a1364dd7">https://opendatabot.ua/court/63188948-1e711a9800f1235bb2036f58a1364dd7</a>

10.	822/440/16	Resolution	20 October 2016	First instance	Khmelnytsky District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/62174304">https://reyestr.court.gov.ua/Review/62174304</a>
11.	822/440/16	Resolution	31 May 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/74408373">https://reyestr.court.gov.ua/Review/74408373</a>
12.	826/3141/16	Resolution	06 October 2016	First instance	Kyiv City District Administrative Court	<a href="https://opendata.bot.ua/court/62117160-88830e3757ee512a9d6950efd6e770f2">https://opendata.bot.ua/court/62117160-88830e3757ee512a9d6950efd6e770f2</a>
13.	826/3141/16	Ruling	06 March 2017	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/65285223">https://reyestr.court.gov.ua/Review/65285223</a>
14.	809/1790/16	Resolution	07 November 2017	First instance	Ivano-Frankivsk District Administrative Court	<a href="https://opendata.bot.ua/court/70184914-0de3a01adcf2calc96d638c4ed89bdb9">https://opendata.bot.ua/court/70184914-0de3a01adcf2calc96d638c4ed89bdb9</a>
15.	809/1790/16	Resolution	24 April 2018	Appellate instance	Lviv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/73603980">https://reyestr.court.gov.ua/Review/73603980</a>
16.	819/1261/16	Resolution	30 November 2016	First instance	Ternopil District Administrative Court	<a href="https://opendata.bot.ua/court/63152591-1665834e3d4112cfe87f97bd824773ba">https://opendata.bot.ua/court/63152591-1665834e3d4112cfe87f97bd824773ba</a>
17.	819/1261/16	Ruling	14 February 2017	Appellate instance	Lviv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/64802498">https://reyestr.court.gov.ua/Review/64802498</a>
18.	819/1261/16	Resolution	29 November 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/78231303">https://reyestr.court.gov.ua/Review/78231303</a>
19.	815/1386/16	Resolution	25 April 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://opendata.bot.ua/court/81431048-b5c577981324115e5890686a966a2c09">https://opendata.bot.ua/court/81431048-b5c577981324115e5890686a966a2c09</a>
20.	815/1386/16	Ruling	13 December 2016	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/63503850">https://reyestr.court.gov.ua/Review/63503850</a>

21.	815/1386/16	Resolution	18 October 2016	First instance	Odesa District Administrative Court	<a href="https://opendata.bot.ua/court/62218551-c76a50418b9aff5922fb21a1875d834f">https://opendata.bot.ua/court/62218551-c76a50418b9aff5922fb21a1875d834f</a>
22.	822/228/16	Ruling	18 May 2016	Appellate instance	Vynnytsia Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/57869192">https://reyestr.court.gov.ua/Review/57869192</a>
23.	822/262/16	Ruling	17 May 2016	Appellate instance	Vynnytsia Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/57895572">https://reyestr.court.gov.ua/Review/57895572</a>
24.	826/27744/15	Resolution	28 September 2016	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/61680370">https://reyestr.court.gov.ua/Review/61680370</a>
25.	826/27744/15	Ruling	05 December 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/73700538">https://reyestr.court.gov.ua/Review/73700538</a>
26.	826/27744/15	Resolution	25 April 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/73700538">https://reyestr.court.gov.ua/Review/73700538</a>
27.	П/811/119/16	Ruling	16 June 2016	Appellate instance	Dnipropetrovsk Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58430004">https://reyestr.court.gov.ua/Review/58430004</a>
28.	810/780/16	Ruling	21 June 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58579374">https://reyestr.court.gov.ua/Review/58579374</a>
29.	815/1119/16	Resolution	22 June 2016	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58504808">https://reyestr.court.gov.ua/Review/58504808</a>
30.	815/1119/16	Resolution	30 May 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/74407375">https://reyestr.court.gov.ua/Review/74407375</a>
31.	820/1870/16	Resolution	05 July 2016	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58897096">https://reyestr.court.gov.ua/Review/58897096</a>

32.	810/637/16	Ruling	06 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58812276">https://reyestr.court.gov.ua/Review/58812276</a>
33.	826/2008/16	Ruling	26 May 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58040914">https://reyestr.court.gov.ua/Review/58040914</a>
34.	826/2010/16	Resolution	24 July 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/83244201">https://reyestr.court.gov.ua/Review/83244201</a>
35.	826/2008/16	Ruling	19 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/59163551">https://reyestr.court.gov.ua/Review/59163551</a>
36.	826/2008/16	Resolution	28 April 2016	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/57492639">https://reyestr.court.gov.ua/Review/57492639</a>
37.	804/6340/16	Resolution	24 September 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/91752691">https://reyestr.court.gov.ua/Review/91752691</a>
38.	804/6340/16	Resolution	21 February 2017	Appellate instance	Dnipropetrovsk Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/64951644">https://reyestr.court.gov.ua/Review/64951644</a>
39.	804/6340/16	Resolution	22 December 2016	First instance	Dnipropetrovsk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/64393065">https://reyestr.court.gov.ua/Review/64393065</a>
40.	810/936/16	Ruling	23 June 2016	Cassation instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/58493363">https://reyestr.court.gov.ua/Review/58493363</a>
41.	826/3477/16	Ruling	12 April 2017	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/66046133">https://reyestr.court.gov.ua/Review/66046133</a>
42.	810/586/16	Ruling	12 July 2016	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/59017189">https://reyestr.court.gov.ua/Review/59017189</a>

43.	821/274/16	Ruling	13 July 2016	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/59017414">https://reyestr.court.gov.ua/Review/59017414</a>
44.	826/2010/16	Ruling	03 March 2017	Cassation instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/65163140">https://reyestr.court.gov.ua/Review/65163140</a>
45.	803/555/16	Resolution	23 January 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/79410777">https://reyestr.court.gov.ua/Review/79410777</a>
46.	803/555/16	Ruling	13 October 2016	Appellate instance	Lviv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/62017951">https://reyestr.court.gov.ua/Review/62017951</a>
47.	803/555/16	Resolution	22 June 2016	First instance	Volyn District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/58673521">https://reyestr.court.gov.ua/Review/58673521</a>
48.	824/184/16-a	Resolution	06 October 2016	First instance	Chernivtsi District Administrative Court	<a href="https://opendata.bot.ua/court/69422086-6d3e47fce7ecb11bbad0a42677691d9d">https://opendata.bot.ua/court/69422086-6d3e47fce7ecb11bbad0a42677691d9d</a>
49.	815/7160/16	Resolution	21 April 2017	First instance	Odesa District Administrative Court	<a href="https://opendata.bot.ua/court/66153765-b0857efc25a7b55972f308c1cfc7ed38">https://opendata.bot.ua/court/66153765-b0857efc25a7b55972f308c1cfc7ed38</a>
50.	817/744/16	Resolution	04 October 2016	Appellate instance	Zhytomyr Administrative Court of Appeal	<a href="https://opendata.bot.ua/court/61860689-7b3041f949beeddef7fc98e247dea4e9">https://opendata.bot.ua/court/61860689-7b3041f949beeddef7fc98e247dea4e9</a>
51.	817/744/16	Resolution	20 June 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/82498936">https://reyestr.court.gov.ua/Review/82498936</a>

## Challenging of the dismissal of 'Maidan judges'

No.	Number of the court case	Form of the court decision	Date of adoption	Court instance	Name of the court	Web-reference to the court decision
1.	800/261/16	Resolution	11 July 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/58984133">https://reyestr.court.gov.ua/Review/58984133</a>
2.	800/261/16	Resolution	22 November 2016	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/63839764">https://reyestr.court.gov.ua/Review/63839764</a>
3.	800/26/17 (800/261/16)	Judgement	10 April 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/73468398">https://reyestr.court.gov.ua/Review/73468398</a>
4.	800/26/17 (800/261/16)	Resolution	06 December 2018	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/78977570">https://reyestr.court.gov.ua/Review/78977570</a>
5.	800/22/17 (800/267/16)	Resolution	15 May 2017	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/66674990">https://reyestr.court.gov.ua/Review/66674990</a>
6.	800/22/17 (800/267/16)	Resolution	25 October 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/77506938">https://reyestr.court.gov.ua/Review/77506938</a>
7.	800/22/17 (800/267/16)	Resolution	04 February 2021	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/96150434">https://reyestr.court.gov.ua/Review/96150434</a>
8.	800/451/15	Resolution	02 February 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/55644919">https://reyestr.court.gov.ua/Review/55644919</a>
9.	800/451/15	Resolution	22 November 2016	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/63880290">https://reyestr.court.gov.ua/Review/63880290</a>
10.	800/24/17 (800/451/15)	Judgement	16 April 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/73565262">https://reyestr.court.gov.ua/Review/73565262</a>

11.	800/24/17 (800/451/15)	Resolution	18 October 2018	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/78112045">https://reyestr.court.gov.ua/Review/78112045</a>
12.	800/42/16	Resolution	07 July 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/58954999#">https://reyestr.court.gov.ua/Review/58954999#</a>
13.	800/42/16	Resolution	28 February 2017	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/66203433">https://reyestr.court.gov.ua/Review/66203433</a>
14.	800/511/15	Resolution	08 November 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/63132437">https://reyestr.court.gov.ua/Review/63132437</a>
15.	800/511/15	Resolution	09 September 2021	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99482388">https://reyestr.court.gov.ua/Review/99482388</a>
16.	800/493/15	Resolution	25 July 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/59317221">https://reyestr.court.gov.ua/Review/59317221</a>
17.	800/493/15	Resolution	30 May 2017	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/67407849">https://reyestr.court.gov.ua/Review/67407849</a>
18.	800/493/15	Resolution	01 November 2018	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/77764421">https://reyestr.court.gov.ua/Review/77764421</a>
19.	800/23/17 (800/182/16)	Resolution	20 May 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/77764421">https://reyestr.court.gov.ua/Review/77764421</a>
20.	800/23/17 (800/182/16)	Judgement	07 October 2020	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/92173147">https://reyestr.court.gov.ua/Review/92173147</a>
21.	800/23/17 (800/182/16)	Resolution	02 September 2021	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99765543">https://reyestr.court.gov.ua/Review/99765543</a>

23.	800/274/16	Resolution	22 November 2016	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/63920903">https://reyestr.court.gov.ua/Review/63920903</a>
24.	800/25/17 (800/274/16)	Judgement	11 October 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/77375556">https://reyestr.court.gov.ua/Review/77375556</a>
25.	800/25/17 (800/274/16)	Resolution	14 March 2019	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/80854696">https://reyestr.court.gov.ua/Review/80854696</a>
26.	800/98/16	Resolution	07 April 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/57311397">https://reyestr.court.gov.ua/Review/57311397</a>
27.	800/623/16 (800/98/16)	Judgement	01 November 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/77661834">https://reyestr.court.gov.ua/Review/77661834</a>
28.	800/623/16 (800/98/16)	Resolution	12 December 2019	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/87179353">https://reyestr.court.gov.ua/Review/87179353</a>
29.	800/13/16	Resolution	14 March 2016	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/56645864">https://reyestr.court.gov.ua/Review/56645864</a>
30.	800/13/16	Resolution	26 April 2016	Appellate instance	Supreme Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/57677811">https://reyestr.court.gov.ua/Review/57677811</a>
31.	800/331/16 (800/13/16)	Resolution	13 July 2017	First instance	Higher Administrative Court of Ukraine	<a href="https://reyestr.court.gov.ua/Review/68076619">https://reyestr.court.gov.ua/Review/68076619</a>
32.	800/331/16 (800/13/16)	Resolution	19 February 2019	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/80111978">https://reyestr.court.gov.ua/Review/80111978</a>
33.	800/331/16 (800/13/16)	Resolution	15 April 2021	First instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/96669464">https://reyestr.court.gov.ua/Review/96669464</a>

34.	800/17/17 (800/268/16)	Judgement	14 May 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/74135661">https://reyestr.court.gov.ua/Review/74135661</a>
35.	800/17/17 (800/268/16)	Resolution	07 February 2019	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/80224648">https://reyestr.court.gov.ua/Review/80224648</a>
36.	800/445/16 (800/500/15)	Judgement	18 June 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/74785245">https://reyestr.court.gov.ua/Review/74785245</a>
37.	800/445/16 (800/500/15)	Resolution	18 October 2018	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/77611558">https://reyestr.court.gov.ua/Review/77611558</a>
38.	800/342/16 (800/514/15)	Judgement	03 April 2018	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/73335230">https://reyestr.court.gov.ua/Review/73335230</a>
39.	800/342/16 (800/514/15)	Resolution	30 August 2018	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/76945473">https://reyestr.court.gov.ua/Review/76945473</a>
40.	800/271/17	Judgement	16 October 2019	First instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/85058494">https://reyestr.court.gov.ua/Review/85058494</a>
41.	800/271/17	Resolution	28 January 2021	Appellate instance	Grand Chamber of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/94666776">https://reyestr.court.gov.ua/Review/94666776</a>

## Challenging of the results of the attestation of prosecutors of the General Prosecution Office of Ukraine in 2019

No.	Number of the court case	Form of the court decision	Date of adoption	Court instance	Name of the court	Web-reference to the court decision
1.	640/25663/19	Judgement	14 December 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/93746770">https://reyestr.court.gov.ua/Review/93746770</a>
2.	640/25663/19	Ruling	07 April 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96178571">https://reyestr.court.gov.ua/Review/96178571</a>
3.	640/25663/19	Resolution	15 July 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/98367798">https://reyestr.court.gov.ua/Review/98367798</a>
4.	640/25663/19	Resolution	06 September 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/99586018">https://reyestr.court.gov.ua/Review/99586018</a>
5.	640/25663/19	Resolution	02 June 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/104593384">https://reyestr.court.gov.ua/Review/104593384</a>
6.	640/25895/19	Ruling	15 July 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/90417414">https://reyestr.court.gov.ua/Review/90417414</a>
7.	640/25895/19	Resolution	20 October 2020	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/92457226">https://reyestr.court.gov.ua/Review/92457226</a>
8.	520/12307/19	Ruling	03 July 2020	First instance	Kharkiv District Administrative Court	<a href="https://openda.tabot.ua/court/90259293-5797ceefd4c24c577a5b55a56b6f9738">https://openda.tabot.ua/court/90259293-5797ceefd4c24c577a5b55a56b6f9738</a>
9.	640/257/20	Judgement	15 December 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/93627607">https://reyestr.court.gov.ua/Review/93627607</a>
10.	640/257/20	Resolution	13 April 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96419002">https://reyestr.court.gov.ua/Review/96419002</a>

11.	640/257/20	Resolution	28 April 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/104112721">https://reyestr.court.gov.ua/Review/104112721</a>
12.	240/7852/20	Resolution	29 September 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99977541">https://reyestr.court.gov.ua/Review/99977541</a>
13.	240/7852/20	Resolution	23 March 2021	Appellate instance	Seventh Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/95778793">https://reyestr.court.gov.ua/Review/95778793</a>
14.	240/7852/20	Ruling	18 November 2020	First instance	Zhytomyr District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/92919734">https://reyestr.court.gov.ua/Review/92919734</a>
15.	160/6204/20	Resolution	21 September 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99796969">https://reyestr.court.gov.ua/Review/99796969</a>
16.	160/6204/20	Resolution	13 April 2021	Appellate instance	Third Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96495508">https://reyestr.court.gov.ua/Review/96495508</a>
17.	160/6204/20	Judgement	15 December 2020	First instance	Дніпропетровський окружний адміністративний суд	<a href="https://reyestr.court.gov.ua/Review/93534772">https://reyestr.court.gov.ua/Review/93534772</a>
18.	200/5038/20-a	Resolution	21 September 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99796975">https://reyestr.court.gov.ua/Review/99796975</a>
19.	200/5038/20-a	Resolution	24 November 2020	Appellate instance	First Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/93077619">https://reyestr.court.gov.ua/Review/93077619</a>
20.	200/5038/20-a	Judgement	26 August 2020	First instance	Donetsk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/91221826">https://reyestr.court.gov.ua/Review/91221826</a>
21.	160/6596/20	Resolution	24 September 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99861041">https://reyestr.court.gov.ua/Review/99861041</a>
22.	160/6596/20	Resolution	01 April 2021	Appellate instance	Third Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96047341">https://reyestr.court.gov.ua/Review/96047341</a>

23.	160/6596/20	Judgement	19 November 2020	First instance	Dnipropetrovsk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/93143912">https://reyestr.court.gov.ua/Review/93143912</a>
24.	280/4314/20	Resolution	24 September 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/99861043">https://reyestr.court.gov.ua/Review/99861043</a>
25.	280/4314/20	Resolution	18 May 2021	Appellate instance	Third Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96972415">https://reyestr.court.gov.ua/Review/96972415</a>
26.	280/4314/20	Judgement	24 November 2020	First instance	Zaporizhzhia District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/93702936">https://reyestr.court.gov.ua/Review/93702936</a>
27.	640/1230/20	Resolution	10 February 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/103132053">https://reyestr.court.gov.ua/Review/103132053</a>
28.	640/1230/20	Resolution	29 July 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/98640856">https://reyestr.court.gov.ua/Review/98640856</a>
29.	640/1230/20	Judgement	20 April 2021	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/96506502">https://reyestr.court.gov.ua/Review/96506502</a>
30.	815/1554/17	Resolution	24 April 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/81479426">https://reyestr.court.gov.ua/Review/81479426</a>
31.	815/1554/17	Resolution	25 October 2017	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/69865210">https://reyestr.court.gov.ua/Review/69865210</a>
32.	815/1554/17	Resolution	14 June 2017	First instance	Odesa District Administrative Court	<a href="https://opendata.bot.ua/court/67123009-f4f1d3b2d153dbe74adfcfefd4aeb0d5">https://opendata.bot.ua/court/67123009-f4f1d3b2d153dbe74adfcfefd4aeb0d5</a>
33.	640/17212/20	Resolution	11 November 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/101036576">https://reyestr.court.gov.ua/Review/101036576</a>

34.	640/17212/20	Resolution	24 May 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/97277454">https://reyestr.court.gov.ua/Review/97277454</a>
35.	640/17212/20	Judgement	02 February 2021	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/94663578">https://reyestr.court.gov.ua/Review/94663578</a>
36.	420/6029/21	Judgement	16 August 2021	First instance	Odesa District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/99090642">https://reyestr.court.gov.ua/Review/99090642</a>
37.	420/6029/21	Resolution	02 November 2021	Appellate instance	Fifth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/101077343">https://reyestr.court.gov.ua/Review/101077343</a>
38.	420/6029/21	Resolution	06 October 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106787938">https://reyestr.court.gov.ua/Review/106787938</a>
39.	640/1559/20	Judgement	07 April 2021	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/96078576">https://reyestr.court.gov.ua/Review/96078576</a>
40.	640/1559/20	Resolution	02 August 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/98986756">https://reyestr.court.gov.ua/Review/98986756</a>
41.	640/1559/20	Resolution	08 November 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/107251386">https://reyestr.court.gov.ua/Review/107251386</a>
42.	140/13530/20	Resolution	12 May 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/104282772">https://reyestr.court.gov.ua/Review/104282772</a>
43.	140/13530/20	Resolution	06 April 2021	Appellate instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96111886">https://reyestr.court.gov.ua/Review/96111886</a>

44.	140/13530/20	Judgement	17 December 2020	First instance	Volyn District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/93845467">https://reyestr.court.gov.ua/Review/93845467</a>
45.	819/330/18	Resolution	10 April 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/88706639">https://reyestr.court.gov.ua/Review/88706639</a>
46.	819/330/18	Resolution	25 September 2018	Appellate instance	Lviv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/76693526">https://reyestr.court.gov.ua/Review/76693526</a>
47.	819/330/18	Judgement	31 May 2018	First instance	Ternopil District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/74572397">https://reyestr.court.gov.ua/Review/74572397</a>
48.	2040/6763/18	Resolution	10 January 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/86828232">https://reyestr.court.gov.ua/Review/86828232</a>
49.	2040/6763/18	Resolution	06 February 2019	Appellate instance	Second Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/79756834">https://reyestr.court.gov.ua/Review/79756834</a>
50.	2040/6763/18	Judgement	09 November 2018	First instance	Kharkiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/77957640">https://reyestr.court.gov.ua/Review/77957640</a>
51.	640/26168/19	Resolution	16 December 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/101990311">https://reyestr.court.gov.ua/Review/101990311</a>
52.	640/26168/19	Resolution	20 January 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/94425821">https://reyestr.court.gov.ua/Review/94425821</a>
53.	640/26168/19	Judgement	31 August 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/91249657">https://reyestr.court.gov.ua/Review/91249657</a>

54.	640/1598/20	Judgement	31 August 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/91298034">https://reyestr.court.gov.ua/Review/91298034</a>
55.	640/1598/20	Resolution	26 November 2020	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/93147308">https://reyestr.court.gov.ua/Review/93147308</a>
56.	640/1598/20	Resolution	18 November 2021	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/101297514">https://reyestr.court.gov.ua/Review/101297514</a>
57.	814/886/17	Resolution	11 April 2018	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/73355978">https://reyestr.court.gov.ua/Review/73355978</a>
58.	814/886/17	Resolution	29 November 2017	Appellate instance	Odesa Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/70674620">https://reyestr.court.gov.ua/Review/70674620</a>
59.	814/886/17	Resolution	26 September 2017	First instance	Mykolaiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/69274584">https://reyestr.court.gov.ua/Review/69274584</a>
60.	820/1783/17	Resolution	23 January 2019	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/79382964">https://reyestr.court.gov.ua/Review/79382964</a>
61.	820/1783/17	Resolution	03 October 2017	Appellate instance	Kharkiv Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/69392649">https://reyestr.court.gov.ua/Review/69392649</a>
62.	820/1783/17	Resolution	13 July 2017	First instance	Kharkiv District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/67780468">https://reyestr.court.gov.ua/Review/67780468</a>
63.	826/6257/17	Resolution	07 October 2020	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/92051770">https://reyestr.court.gov.ua/Review/92051770</a>
64.	826/6257/17	Resolution	12 July 2018	Appellate instance	Kyiv City Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/75325251">https://reyestr.court.gov.ua/Review/75325251</a>

65.	826/6257/17	Ruling	19 July 2018	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/75423547">https://reyestr.court.gov.ua/Review/75423547</a>
66.	826/6257/17	Judgement	20 April 2018	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/73691093">https://reyestr.court.gov.ua/Review/73691093</a>
67.	360/3344/20	Resolution	15 February 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/103371642">https://reyestr.court.gov.ua/Review/103371642</a>
68.	360/3344/20	Resolution	24 May 2021	Appellate instance	First Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/97111825">https://reyestr.court.gov.ua/Review/97111825</a>
69.	360/3344/20	Judgement	29 December 2020	First instance	Luhansk District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/94040677">https://reyestr.court.gov.ua/Review/94040677</a>
70.	640/17400/20	Judgement	18 November 2020	First instance	Kyiv City District Administrative Court	<a href="https://reyestr.court.gov.ua/Review/92987385">https://reyestr.court.gov.ua/Review/92987385</a>
71.	640/17400/20	Resolution	27 April 2021	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/96588774">https://reyestr.court.gov.ua/Review/96588774</a>
72.	640/17400/20	Resolution	14 February 2022	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/103282291">https://reyestr.court.gov.ua/Review/103282291</a>
73.	640/17400/20	Resolution	01 June 2022	Appellate instance	Sixth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104655154">https://reyestr.court.gov.ua/Review/104655154</a>
74.	640/17400/20	Resolution	01 March 2023	Cassation instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/109286377">https://reyestr.court.gov.ua/Review/109286377</a>

## Challenging of the ban on pro-Russian parties in Ukraine in 2022-2023

No.	Number of the court case	Form of the court decision	Date of adoption	Court instance	Name of the court	Web-reference to the court decision
1.	П/857/1/22	Judgement	16 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104932084">https://reyestr.court.gov.ua/Review/104932084</a>
2.	П/857/1/22	Resolution	06 September 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106164240">https://reyestr.court.gov.ua/Review/106164240</a>
3.	П/857/2/22	Judgement	14 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104837691">https://reyestr.court.gov.ua/Review/104837691</a>
4.	П/857/3/22	Judgement	13 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104818314">https://reyestr.court.gov.ua/Review/104818314</a>
5.	П/857/3/22	Resolution	23 September 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106516058">https://reyestr.court.gov.ua/Review/106516058</a>
6.	П/857/4/22	Judgement	14 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104818413">https://reyestr.court.gov.ua/Review/104818413</a>
7.	П/857/5/22	Judgement	23 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104999568">https://reyestr.court.gov.ua/Review/104999568</a>
8.	П/857/5/22	Resolution	27 September 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106571123">https://reyestr.court.gov.ua/Review/106571123</a>
9.	П/857/6/22	Judgement	27 September 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104837758">https://reyestr.court.gov.ua/Review/104837758</a>
10.	П/857/7/22	Judgement	17 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104856332">https://reyestr.court.gov.ua/Review/104856332</a>

11.	П/857/7/22	Resolution	29 September 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106621200">https://reyestr.court.gov.ua/Review/106621200</a>
12.	П/857/8/22	Judgement	20 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104951849">https://reyestr.court.gov.ua/Review/104951849</a>
13.	П/857/8/22	Resolution	15 September 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106339460">https://reyestr.court.gov.ua/Review/106339460</a>
14.	П/857/9/22	Judgement	14 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104818399">https://reyestr.court.gov.ua/Review/104818399</a>
15.	П/857/10/22	Judgement	15 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104837669">https://reyestr.court.gov.ua/Review/104837669</a>
16.	П/857/10/22	Ruling	18 October 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106867936">https://reyestr.court.gov.ua/Review/106867936</a>
17.	П/857/11/22	Judgement	13 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104818441">https://reyestr.court.gov.ua/Review/104818441</a>
18.	П/857/12/22	Judgement	08 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104694066">https://reyestr.court.gov.ua/Review/104694066</a>
19.	640/9489/19	Judgement	12 July 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/105358692">https://reyestr.court.gov.ua/Review/105358692</a>
20.	640/24270/21	Judgement	24 June 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/104951864">https://reyestr.court.gov.ua/Review/104951864</a>
21.	826/9174/18	Judgement	05 July 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/105203127">https://reyestr.court.gov.ua/Review/105203127</a>

22.	826/9174/18	Resolution	18 October 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106840684">https://reyestr.court.gov.ua/Review/106840684</a>
23.	826/9751/14	Judgement	05 July 2022	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/105109793">https://reyestr.court.gov.ua/Review/105109793</a>
24.	826/9751/14	Ruling	20 October 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/106868109">https://reyestr.court.gov.ua/Review/106868109</a>
25.	826/9751/14	Ruling	28 November 2022	Appellate instance	Administrative Court of Cassation as part of the Supreme Court	<a href="https://reyestr.court.gov.ua/Review/107571334">https://reyestr.court.gov.ua/Review/107571334</a>
26.	П/857/1/23	Judgement	21 February 2023	First instance	Eighth Administrative Court of Appeal	<a href="https://reyestr.court.gov.ua/Review/109286127">https://reyestr.court.gov.ua/Review/109286127</a>