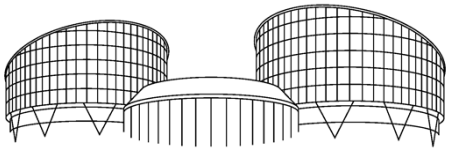

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF POLYAKH AND OTHERS v. UKRAINE

(Applications nos. 58812/15 and 4 others – see appended list)

JUDGMENT

This version was rectified on 12 November 2019
under Rule 81 of the Rules of Court.

STRASBOURG

17 October 2019

FINAL

24/02/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Polyakh and Others v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Lətif Hüseynov, *judges*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 24 September 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in five applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Ukrainian nationals whose names and dates of birth are listed in the Appendix, on the various dates listed in the Appendix.

2. The applicants were represented by lawyers whose names are listed in the Appendix. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. The applicants alleged, in particular, that the application to them of restrictive measures under the Government Cleansing (Lustration) Act had breached their rights under Article 8 of the Convention. The first three applicants also complained that the domestic courts' prolonged failure to examine their claims concerning their dismissal under the Act had breached their right to a fair trial within a reasonable time under Article 6 of the Convention. The second applicant also complained that he had had no effective remedy in respect of his complaints.

4. On 30 May 2017 notice of the first three applications was given to the Government.

5. On 14 November 2018 notice of the above complaints under Article 8 of the Convention in the fourth and fifth applications was given to the Government and the remainder of those two applications was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information concerning the events in Ukraine in 2010–2014

6. On 7 February 2010 Viktor Yanukovych was elected President of Ukraine. The Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE) made a generally positive assessment of the electoral process (see paragraph 110 below).

7. On 25 February 2010 President Yanukovych took office.

8. On 30 September 2010 the Constitutional Court adopted a judgment by which it declared unconstitutional constitutional amendments of 2004 which had considerably reduced presidential powers and which had remained in effect from 2005 until the decision of the Constitutional Court was adopted. The European Commission for Democracy through Law (Venice Commission) criticised the decision and its consequences for the constitutional order of Ukraine (see paragraph 106 below). In practice, that decision resulted in an increase in the constitutional powers of the president by comparison with what they had been when the presidential elections had been held.

9. A number of international observers expressed alarm at what they perceived as a campaign of selective prosecution of political opponents of President Yanukovych which had started in November 2010, when the new Prosecutor General had been appointed. These materials are summarised in the Court's judgments in *Lutsenko v. Ukraine* (no. 6492/11, §§ 46 and 47, 3 July 2012), and *Tymoshenko v. Ukraine* (no. 49872/11, §§ 187 and 188, 30 April 2013), as well as in paragraphs 112 and 113 below).

10. In 2012 the Commissioner for Human Rights of the Council of Europe expressed serious concern over allegations of political pressure on the Ukrainian judiciary (see the relevant report in *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 80, ECHR 2013).

11. International observers, notably the OSCE, were of the opinion that the 2012 parliamentary elections in Ukraine had failed to meet international standards, owing in particular to interference by the administration in the electoral process, and had constituted a step backwards compared with the national elections held in 2010 (see paragraphs 111 and 112 below).

12. President Yanukovych's rule came to an end as a result of protests known as "EuroMaidan", which took place from November 2013 to 22 February 2014. The events which took place during those protests are the subject of several other applications before the Court.

13. The EuroMaidan events are summarised in the following terms in a report by the International Advisory Panel (IAP), a body constituted by the Secretary General of the Council of Europe to assess the effectiveness of the investigations carried out by the Ukrainian authorities into events during the EuroMaidan demonstrations between November 2013 and February 2014 and the events in Odessa in May 2014:

> "1. In late November 2013, following the decision of the Ukrainian authorities not to sign the long-awaited EU-Ukraine Association Agreement, pro-European and anti-government demonstrations took place in Kyiv. The Ukrainian authorities' ensuing attempts to disperse those demonstrations led to an increase in the number of protesters, the scope of their activity and their geographical spread. Between November 2013 and February 2014 a number of clashes took place, resulting in more than 100 protest-related deaths and more than 1,000 injuries (civilians and law enforcement officers) and some missing persons. The conflict between the Ukrainian authorities and EuroMaidan protesters ended in late February 2014 when several high-ranking individuals (including President Yanukovych) fled or resigned and there was a change in the government of Ukraine." (Report of the International Advisory Panel on its Review of the Investigations into the Events in Odessa of 2 May 2014)

14. By Law no. 742-VII of 21 February 2014 Parliament declared that the 2004 version of the Constitution had been restored.

15. On 22 February 2014, by Resolution no. 757-VII, Parliament declared that Mr Yanukovych had unconstitutionally ceased to exercise his presidential functions and duties. It called an extraordinary presidential election, which took place on 25 May 2014.

B. The applicants' employment history in the relevant period

16. The applicants are career civil servants who, prior to their dismissal under the Government Cleansing (Lustration) Act of 2014 ("GCA"), occupied certain positions in the civil service.

17. The first applicant started his career as an investigator and then became a district prosecutor in the Chernigiv Region, before working at the Chernigiv regional prosecutor's office. On an unspecified date in or before 2005 he was transferred to the Prosecutor General's Office ("PGO"). He then served as:

(i) deputy head of the documentation department at the PGO from 21 January 2012 to 16 July 2014 and

(ii) head of the documentation department at the PGO from 16 July 2014 to 23 October 2014.

18. The second applicant served in the following positions:

(i) deputy head of the tax police, head of the investigations section of the tax police of the Mykolaiv Region from 3 February 2009 to 8 May 2013,

(ii) head of the financial investigations department of the Directorate of the Ministry of Revenues and Duties in the region from 8 May 2013 to 29 July 2013, and

(iii) first deputy head of the financial investigations department of the Directorate of the Ministry of Revenues and Duties in the region from 29 July 2013 to 29 October 2014.

19. The changes in the titles of the second applicant's positions in 2013 and 2014 appear to have been related to the overall reorganisation of the State Tax Service, which prior to 2012 used to be an independent agency. In that year it was merged with the State Customs Service to form the Ministry of Revenues and Duties. There may have been similar changes in the title of the position occupied by the fourth applicant in the same period (see below).

20. The third applicant served as deputy prosecutor of the Chernigiv Region from 19 December 2002 to 23 October 2014.

21. The fourth applicant served as head of the Yaremche tax authority from 26 April 2006 to 25 March 2015.

22. The fourth applicant was reprimanded by the State Tax Service on 27 July 2006 and 11 September 2008 for "not taking measures for the proper organisation of work and effective control", which had led to a failure to meet tax collection targets in the first six months of 2006 and 2008 respectively.

23. The fifth applicant in 1990-1991 occupied the position of the second secretary of a district department of the Communist Party of the Ukrainian Soviet Socialist Republic (Ukrainian SSR).

From 16 March 2010 to 21 July 2015 he served as deputy head of the agriculture department of the Oleksandrivka District State Administration.

C. The applicants' dismissal under the GCA

24. On 16 October 2014 the GCA came into force. It provided for the dismissal of individuals, like the applicants, who: (i) had occupied certain positions in the civil service in the period from 25 February 2010 to 22 February 2014 ("the one-year rule") or in the Communist Party of the Ukrainian SSR prior to 1991 or (ii) failed to file lustration statements (declarations) as required by the GCA, and banned them from the civil service and certain other jobs for ten years (see paragraphs 73, 74, 75 (iii) and 77 below).

25. Pursuant to the GCA, the applicants' names were published in the Lustration Register, a publicly accessible online database maintained by the Ministry of Justice (see paragraph 78 below).[1]

26. Relevant specific circumstances related to the applicants' dismissal are set out below.

1. Available at https://lustration.minjust.gov.ua/register

1. The first three applicants

27. In October 2014, based on their employment history (see paragraphs 18 to 20 above), the first three applicants were dismissed under the GCA.

2. The fourth applicant

28. On 1 March 2014 the Cabinet of Ministers decided to dissolve the Ministry of Revenues and Duties and to again create a separate Tax Service and Customs Service.

29. On 16 January 2015 the applicant was warned that he would be made redundant owing to the dissolution of the Ministry (see paragraph 28 above).

30. On 24 February 2015 the State Tax Service ordered the launch of the declaration and screening procedure required by the GCA (see paragraph 77 below) in respect of the heads and deputy heads of regional offices of the Ministry (still in the process of dissolution). According to the screening schedule, the screening in the Ivano-Frankivsk region started on 12 March 2015. Under the GCA, the screened officials had to file a statement declaring whether they believed the GCA applied to them within ten days, by 22 March 2015.

31. On 7 March 2015 the applicant received a letter from his employer informing him of the obligation to file a GCA statement.

32. The applicant was on sick leave while the screening procedure was underway. According to him, he was in hospital from 10 to 25 March 2015.

33. On 25 March 2015 the applicant was dismissed by his superior. The relevant order referred to the GCA in general but not to any of its specific provisions.

34. On 26 March 2015 the applicant filed his GCA statement. It apparently contained a declaration to the effect that the GCA did not apply to him.

3. The fifth applicant

35. On 17 July 2015, within the framework of the screening mandated by the GCA, the applicant filed a statement declaring that in 1990 to 1991 he had occupied the position of second secretary of the district department of the Communist Party of the Ukrainian SSR. On 21 July 2015 he was dismissed under the GCA on those grounds (see paragraph 75 (iii) below).

D. Proceedings before domestic administrative courts

1. The first applicant

36. On 13 November 2014 the first applicant lodged a claim against the PGO with the Kyiv Circuit Administrative Court, seeking his reinstatement. He argued, in particular, that his dismissal under the GCA had been contrary to the constitutional provisions prohibiting retroactive legislation and declaring that liability had to be individual (see paragraph 71 (vii) and (viii) below). It also contradicted the principles of lustration endorsed by the Parliamentary Assembly of the Council of Europe in Resolution 1096 of 27 June 1996 on measures to dismantle the heritage of former communist totalitarian systems and its related Guidelines ("PACE Resolution" and "PACE Guidelines" respectively, see paragraphs 104 and 105 below).

The applicant also argued that the GCA did not meet the "quality of law" requirements of the Convention and was contrary to Articles 6, 8, and 14 and Article 1 of Protocol No. 12. He relied on the Court's judgments concerning post-Communist lustration: *Sidabras and Džiautas v. Lithuania* (nos. 55480/00 and 59330/00, ECHR 2004-VIII); *Turek v. Slovakia* (no. 57986/00, ECHR 2006-II (extracts)); *Matyjek v. Poland* (no. 38184/03, 24 April 2007); *Bobek v. Poland* (no. 68761/01, 17 July 2007); and *Luboch v. Poland* (no. 37469/05, 15 January 2008). Lastly, the applicant argued that he had not contributed to the "usurpation of power" by the former President Viktor Yanukovych (the term used in the GCA, see paragraph 72 below) or violated human rights. He also objected to his name being listed in the GCA Register.

37. On 17 November 2014 the Kyiv Administrative Court opened proceedings in the applicant's case.

38. On 20 January 2015 the court held a hearing at which it solicited the parties' opinions as to the possibility of asking the Supreme Court to consider referring the issue of the constitutionality of the GCA to the Constitutional Court and suspending the proceedings until the Supreme Court examined the issue. Neither the applicant nor the defendant objected. At the close of the hearing the court referred the matter to the Supreme Court and suspended the proceedings.

39. On 5 January 2015 the first applicant complained to the Ministry of Justice, challenging the application of the GCA to him. On 11 February 2015 the Ministry responded that the law applied unreservedly to all the categories of officials listed in it, and that the relevant checks required by the Act were to be conducted by the officials who had the authority to dismiss the official concerned.

40. The first applicant wrote to the Constitutional Court on several occasions to enquire about the proceedings concerning the GCA. He was informed that they were pending.

2. The second applicant

41. On 28 November 2014 the second applicant lodged an appeal against his dismissal with the Kyiv Circuit Administrative Court, seeking reinstatement and lost wages.

42. On 19 December 2014 the court, at the second applicant's request, decided to ask the Supreme Court to consider submitting the issue of the constitutionality of the GCA to the Constitutional Court and suspend the proceedings in the case until the Supreme Court examined the issue.

3. The third applicant

43. On 24 October 2014 the third applicant lodged a claim against the PGO with the Chernigiv Circuit Administrative Court, seeking his reinstatement and lost wages. He argued, in particular, that his dismissal under the GCA had been contrary to the constitutional provisions prohibiting retroactive legislation and declaring that liability had to be individual (see paragraph 71 (vii) and (viii) below). He had not contributed to the "usurpation of power" by the former President Viktor Yanukovych or violated human rights.

44. On 18 December 2014 the third applicant requested that the proceedings in his case be suspended until the Constitutional Court resolved the Supreme Court's constitutional review application (see paragraph 60 below).

45. On the same day the court granted that request.

46. On 20 February 2015 an internal investigation conducted by the PGO concluded that the staff of the Chernigiv regional prosecutor's office had been involved in the "unjustified persecution of individuals for legitimate protest activity". This had been facilitated by a "lack of effective control" by the former leaders of the prosecution service in the region, including the third applicant.

47. On 15 December 2015 the third applicant, citing a delay in the examination of the matter by the Constitutional Court, requested that the proceedings be resumed.

48. On 24 December 2015 the Administrative Court rejected the third applicant's request on the grounds that the proceedings before the Constitutional Court were pending and that therefore the circumstances which had led the court to suspend the proceedings had not ceased to exist (see paragraph 89 below for the relevant legislative provision).

4. The fourth applicant

49. The fourth applicant lodged a claim with the administrative courts seeking reinstatement. He argued that:

(i) his dismissal had been contrary to domestic law because he had been dismissed while on sick leave (Article 40 § 3 of the Labour Code

provides that an employer cannot terminate an employment contract when the employee is on leave, including sick leave of up to four months);

(ii) he had in fact filed the necessary statement after coming back from sick leave;

(iii) the GCA was contrary to the PACE Resolution and PACE Guidelines (see paragraphs 104 and 105 below) and the Court's judgment in *Ādamsons v. Latvia* (no. 3669/03, § 116, 24 June 2008), as it established a system of collective rather than individual responsibility and was overbroad in that respect;

(iv) the GCA was contrary to the constitutional provisions guaranteeing the principles of individual liability and the presumption of innocence (see paragraph 71 below).

50. On 12 May 2015 the Ivano-Frankivsk Circuit Administrative Court rejected the fourth applicant's claim. It held that, due to the position he had occupied, he had been required to file a GCA declaration. Despite his being on sick leave, he had been informed of that duty. The GCA was *lex specialis* in relation to the Labour Code invoked by the fourth applicant and did not contain any restrictions on dismissal during a period of sick leave. As to the fourth applicant's references to the Constitution, there had been no decision taken by the Constitutional Court declaring the GCA unconstitutional.

51. In appeals lodged subsequently the fourth applicant repeated essentially the same arguments. He also added that, even though the GCA had not been declared unconstitutional, it had to be applied in line with the constitutional principles of individual liability and the presumption of innocence.

52. In September 2015 and on 24 January 2018 respectively the Lviv Administrative Court of Appeal and the Supreme Court upheld the first-instance court's judgment, largely endorsing its reasoning.

5. The fifth applicant

53. The fifth applicant lodged a claim with the administrative courts seeking reinstatement. He argued, *inter alia*, that the GCA's application to him had been contrary to the principles endorsed in the PACE Resolution, particularly in terms of the need for individual, rather than collective, guilt to be taken into account, the presumption of innocence and procedural safeguards, and to the constitutional principles guaranteeing equality, individual legal liability, the right to work and the right of equal access to the civil service (see paragraphs 71 and 104 below). He also argued that his dismissal had been contrary to the Labour Code, because he had been on leave at the time.

54. On 7 February 2018 the Donetsk Circuit Administrative Court dismissed the claim. It reasoned that, since he had not contested that the GCA provision on former Communist Party officials applied to him and since there had been no decision taken by the Constitutional Court declaring

the provisions of the GCA unconstitutional, there were no grounds to hold the dismissal unlawful. The court also rejected the fifth applicant's argument that his dismissal was unlawful because he had been on leave at the time.

55. The fifth applicant appealed. In addition to his previous arguments, he also referred to the interim opinion of the Venice Commission on the GCA (see § 32 in paragraph 107 below), which stated that party affiliation, political and ideological reasons should not be used as grounds for lustration measures, and its final opinion on the GCA (see §§ 69 and 70 in paragraph 108 below) expressing doubts as to whether lustration of individuals associated with the Communist regime was justified given the passage of time since the fall of that regime. He also argued that his dismissal had contradicted a provision of the PACE Guidelines, which provided that no person would be "subject to lustration solely for association with, or activities for, any organisation that was legal at the time of such association or activities" (see item "i" in paragraph 105 below) and pointed to the Venice Commission's interim opinion on the GCA (see §§ 63 and 64 in paragraph 107 below), which stated that the GCA contradicted that principle.

56. According to the fifth applicant, the Court's judgment in *Ādamsons* (cited above) established the principle that an applicant's personal conduct had to be taken into account in order for the lustration measure to comply with the Convention. This had not been done in his case. Relying on the Court's decision in *Matyjek* (cited above), he argued that the GCA measures amounted to criminal prosecution within the meaning of the Convention but his actions had been "criminalised" with retroactive effect, which contradicted notably the constitutional principle of the non-retroactivity of laws. Moreover, he had not enjoyed the requisite "criminal"-level procedural rights in the lustration procedure.

57. In a final decision delivered on 25 April 2018 the Donetsk Administrative Court of Appeal upheld the first-instance court's judgment, endorsing its reasoning. It also pointed out that there had been no judgment issued by the Court finding a violation in respect of the GCA measures, and that references to ECHR case-law in respect of other countries were not directly relevant as the factual circumstances in those cases were different. The Venice Commission's opinions were not binding.

58. The courts noted that since at the material time there had been no decision taken by the Constitutional Court finding the GCA unconstitutional, its provisions were in force and had been lawfully applied to the applicant.

59. On 30 May 2018 a three-judge panel of the Supreme Court declared the fifth applicant's appeal on points of law inadmissible, as an appeal could not be lodged in cases concerning dismissals from the civil service, unless

the cases were of particular interest, which the fifth applicant's case was not.

E. Proceedings before the Constitutional Court

60. On 17 November 2014 the Supreme Court lodged an application for a constitutional review of the provisions of the GCA concerning members of the High Council of Justice, High Judicial Qualifications Commission, top officials of the State Judicial Administration, judges who had taken part in the proceedings against "EuroMaidan" protesters, and individuals designated as "political prisoners" (sections 3(1)(6), 3(2)(2) and (13) and 3(3) of the GCA, see paragraphs 73 and 75 (i) and (ii) below). The Supreme Court argued that the provisions in question were contrary to certain provisions of the Constitution, notably those guaranteeing the rule of law, individual liability and the independence of judges (see paragraph 71 below).

61. On 20 January 2015 forty-seven members of parliament lodged an application for a constitutional review of the provisions of the GCA providing for dismissal and a ban on accessing the civil service based on the fact that an individual had occupied certain positions at a certain point in time, except where such bans were imposed following a judicial decision establishing individual wrongdoing (section 1(3) and (6) and section 3(1) to (4) and (8) of the Act).

They argued that the relevant provisions were contrary, in particular, to the constitutional principles of the rule of law, including legal certainty and legality, equality, the right of access to the civil service, the right to work, the right to respect for human dignity, the presumption of innocence, individual liability, the non-retroactivity of laws (see paragraph 71 below).

The gist of their argument was that the Act essentially held the official subject to it liable for certain actions which were not illegal when they were committed, on the basis of a collective rather than individual assessment of their guilt, without due process.

In support of those arguments the MPs referred, *inter alia*, to:

(i) the principles of lustration endorsed by the PACE Resolution (see paragraph 104 below);

(ii) the Court's case-law, notably *Matyjek* and *Ādamsons* (both cited above); and

(iii) the interim opinion of the Venice Commission on the GCA (see paragraph 107 below).

62. The Supreme Court and the MPs asked the Constitutional Court to consider their applications urgently and examine them within a month, as required by the Constitutional Court Act (see paragraph 80 below).

63. On 16 March 2015 the Supreme Court lodged another application for a constitutional review of the provisions of the GCA providing for dismissal

and application of a ten-year ban on access to the civil service in respect of law enforcement and local State administration officials who had occupied positions in the one-year period or the "EuroMaidan" period (section 1(3), section 3(1)(7) to (9) and section 3(2)(4) of the GCA, see paragraphs 73 and 74 below).

The Supreme Court asked the Constitutional Court to examine whether the provisions in question complied with the constitutional principles guaranteeing, in particular, the right of access to the civil service, the non-retroactivity of laws, individual liability and the presumption of innocence.

The Supreme Court stated that it was submitting this question to the Constitutional Court at the initiative of the lower courts, including the Kyiv Circuit Administrative Court and the High Administrative Court, in 133 cases.

64. The panels of the Constitutional Court issued rulings opening constitutional review proceedings in respect of the above applications on 12 February, 18 and 31 March 2015 respectively and joined them on 1 April 2015.

65. On 25 December 2015 the Supreme Court lodged a third application asking the Constitutional Court to review whether the provision of the GCA providing for dismissal and a ten-year ban on officials who failed to file a declaration as required by the Act complied with the constitutional principles guaranteeing the right of access to the civil service, individual liability and the presumption of innocence.

66. On 10 February 2016 a Constitutional Court panel opened proceedings in respect of the Supreme Court's third application.

67. On 22 March 2016 the Constitutional Court held a public hearing in the case. At the close of the hearing the court began deliberations.[2]

68. On 6 July 2017 the Constitutional Court joined all cases into a single set of proceedings.

69. According to the information provided by the Government, the Constitutional Court, in plenary formation, deliberated on the case *in camera* on 6 April, 2 and 10 June, 5 July, 27 October 2016, 31 January, 21 April, 6 July and 6 September 2017, 31 January and 28 November 2018 and 14 May 2019.[3]

70. The proceedings before the Constitutional Court are currently pending.

---

2. Information published by the Constitutional Court's press unit, available at http://www.ccu.gov.ua/novyna/konstytuciynyy-sud-ukrayiny-zavershyv-usne-sluhannya-spravy-shchodo-konstytuciynosti-okremyh

3. http://www.ccu.gov.ua/publikaciya/poryadok-dennyy-zasidan-konstytuciynogo-sudu-ukrayiny-na-14-16-travnya-2019-r

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution

71. The Constitution of Ukraine of 1996 establishes the following:

(i) the rule of law, including the superiority of the Constitution over ordinary legislation (Article 8);

(ii) the non-diminution of rights, according to which "the content and scope of existing rights and freedoms shall not be diminished when new laws are enacted or existing laws are amended" (Article 22);

(iii) equality regardless of race, skin colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language or other characteristics (Article 24);

(iv) the right of everyone to respect for his or her dignity (Article 28);

(v) the right of equal access of citizens to the civil service (Article 38);

(vi) the right to work, "including the possibility to earn one's living from employment that he or she freely chooses or to which he or she freely agrees, and protection from unlawful dismissal" (Article 43);

(vii) the non-retroactivity of laws, except in cases where they mitigate or annul the liability of a person (Article 58);

(viii) individual (rather than collective) liability, worded as follows: "the legal liability of a person is of an individual nature" (Article 61). The same provision also provides for the non bis in idem principle: "No one shall bear the same type of legal liability twice for the same offence.";

(ix) the presumption of innocence, in the sense that "a person is presumed innocent of committing a crime and shall not be subjected to criminal punishment until his or her guilt is proved through legal procedure and established by a court verdict of guilty" (Article 62);

(x) restrictions on constitutional rights can only be introduced in the cases specified in the Constitution (Article 64);

(xi) the independence of judges, who can be removed only on the grounds explicitly defined in the Constitution, such as expiry of term of office, inability to carry out functions for health reasons, and so forth (Article 126);

(xii) the incompatibility of judicial office with certain activities, defined in Article 127 of the Constitution, which provides that: "professional judges shall not belong to political parties and trade unions, take part in any political activity, hold a representative mandate, occupy any other paid positions, perform other remunerated work except scholarly, teaching and creative activity."

B. Government Cleansing (Lustration) Act of 2014 ("GCA")

1. Definitions and principles

72. Section 1 of the GCA defines the Act's objectives and principles as follows:

> "1. Government cleansing (lustration) is a ban imposed by this Act or a court judgment on particular individuals taking certain positions (serving) in central and local government authorities (except for elective positions).
>
> 2. Government cleansing (lustration) aims at keeping away from public governance persons who made decisions, took action or inaction (and/or contributed to their taking) facilitating the usurpation of power by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of national security and defence or violate human rights and freedoms. It is based on the following principles:
>
> the rule of law and lawfulness;
>
> openness, transparency and public accessibility;
>
> the presumption of innocence;
>
> individual liability; and
>
> the guarantee of the right to defence."

2. Categories of individuals subject to restrictive measures: the one-year rule and the "EuroMaidan" period rule

73. The Act provides for the dismissal of certain categories of individuals from their positions in the civil service. These include individuals who (a) for at least a year in the period from 25 February 2010 to 22 February 2014 ("the one-year period") or (b) for any period of time from 21 November 2013 to 22 February 2014 (the "EuroMaidan period") occupied the following positions:

(i) heads and deputy heads of central departments or of regional offices of certain law enforcement agencies: the prosecution service, Security Service, External Intelligence Service, Ministry of the Interior (police) and government agencies in charge of tax, the tax police and customs;

(ii) heads and deputy heads of regional State administrations, heads of district-level State administrations;

(iii) members of the High Council of Justice, the High Judicial Qualifications Commission, the head and deputy heads of the State Judicial Administration;

(iv) the President, Prime Minister, members of the government and heads of central executive agencies;

(v) the secretary and deputy secretary of the National Security Council, presidential administration and the government secretariat;

(vi) chiefs of staff of the armed forces and their deputies;

(vii) members of the independent regulatory commissions for natural monopolies, telecommunications, securities and financial services; and

(viii) directors of certain State-owned companies in the defence sector and those providing administrative services on behalf of government agencies (*підприємств оборонно-промислового комплексу, а також державних підприємств, що належать до сфери управління суб'єкта надання адміністративних послуг*) (sections 1(3), 3(1) and (2) of the GCA).

3. Ten-year and five-year bans

74. A person dismissed from any of the above-mentioned positions for the above-mentioned reasons would then be banned for ten years from the Act coming into force, that is, until 16 October 2024, from occupying positions in the civil service or local government (*посадових та службових осіб органів державної влади, органів місцевого самоврядування*) and directors of State-owned companies working in the defence sector or those providing administrative services on behalf of government agencies (section 2 and section 1(3) of the GCA) ("ten-year ban").

75. The Act also provides for the dismissal and exclusion from public positions of certain other categories of officials. For some categories, the grounds for application of the Act need to be established by a judicial decision, based on the official's individual actions rather than on him or her occupying certain positions. For those categories, the ban is for five years, to be counted from the moment the relevant judicial decision becomes final ("five-year ban"):

(i) law enforcement officers, prosecutors and judges who took part in the proceedings against "EuroMaidan" protesters if those protesters were later amnestied by the Laws of 29 January and 21 February 2014 (section 3(2)(9) to (13) and section 1(3)) – ten-year ban;

(ii) law enforcement officers, prosecutors and judges who took part in the proceedings against forty-two individuals specifically designated by name as "political prisoners" and amnestied by the Law of 27 February 2014 (section 3(3) and section 1(4)) – five-year ban;

(iii) former senior officials of the Communist Party of the Soviet Union or its branch for the Ukrainian Soviet Socialist Republic ("Ukrainian SSR") at district secretary level and up; former senior officials of the Communist Youth Movement (*комсомол*) for the Ukrainian SSR at central committee secretary level and up; employees or secret agents of the KGB, military intelligence of the Soviet Union (GRU) and graduates of KGB training facilities (except for those employed by them in technical occupations) (section 3(4)) – ten-year ban;

(iv) any State or local government officials who, having occupied his or her position from 25 February 2010 to 22 February 2014, contributed to the

usurpation of power by President Yanukovych, undermined national security, defence or territorial integrity, causing a breach of human rights and freedoms, if that has been established by a final judicial decision (section 3(5)) – five-year ban;

(v) any State or local government officials who, in the EuroMaidan period, by their decisions, interfered with the right to freedom of assembly or caused damage to life, health or property, if that has been established by a final judicial decision (section 3(6)) – five-year ban;

(vi) any State or local government officials who has: (a) cooperated with foreign intelligence services; (b) undermined national security, defence or the territorial integrity of Ukraine; (c) publicly called for a violation of Ukraine's territorial integrity and sovereignty; (d) incited ethnic hatred; or (e) caused a violation of human rights or fundamental freedoms established by a judgment of the European Court of Human Rights (section 3(7)) – five-year ban;

(vii) individuals whose property declarations have been found untruthful or whose assets acquired in the period when they occupied positions in public service have been found to exceed their lawful income (section 3(8)) – ten-year ban.

76. A ten-year and five-year ban can be applied to the same person if the circumstances so warrant (section 1(6) of the GCA).

4. Procedure

77. The GCA requires all State and local government officials to lodge with their superiors, within the time frame approved by the relevant government entities, a statement (declaration) declaring whether any of the restrictions in the GCA apply to them and providing consent to the statement being checked (sections 4(1) and 2(1)(1) to (10)). Once screening is started in respect of a given government entity, all officials working there must file a declaration within ten days. Failure to file a declaration or filing a declaration stating that the GCA applies is grounds for dismissal (section 4(3)). If the official files a declaration stating that the GCA does not apply to him or her, the relevant authority then conducts a check and draws up a report. If it is found, as a result of the check, that the GCA does apply to the official, his or her superior either dismisses him or her or refers the matter to the body competent to do so with an application for dismissal (section 5(14)).

78. The names of the officials and the positions from which they have been dismissed, as well as the period for which restrictions have been imposed on them, are listed in the Lustration Register, a publicly accessible online database maintained by the Ministry of Justice (section 7).

C. Restoration of Trust in the Judiciary Act of 2014

79. The Restoration of Trust in the Judiciary Act was enacted on 8 April 2014 and came into force on 11 April 2014. Its Final and Transitional Provisions provided, *inter alia*, that from the date of the Act's entry into force, the powers of the members of the High Council of Justice, the High Judicial Qualifications Commission, the presidents of all courts from the High Courts down to the local courts and chamber presidents in the High Courts and courts of appeal would come to an end. The Act provided that new elections would be held for the above-mentioned positions.

D. Constitutional Court Acts of 1996 and 2017

80. Section 57[4] of the Constitutional Court Act of 1996 required the Constitutional Court to examine constitutional review applications within three months or, if the court considered an application urgent, within a month. This period was to be counted from the adoption of the ruling opening proceedings in the case.

81. Section 75 of the Constitutional Court Act of 13 July 2017, which came into force on 3 August 2017, provides that constitutional proceedings must be completed within six months of the ruling opening such proceedings.

E. Code of Administrative Justice

1. The 2005 Code and its 2017 restatement

82. The Code of Administrative Justice was adopted in 2005 and was entirely revised by the Law of 3 October 2017, with effect from 15 December 2017. Most of the provisions relevant for the present case are similar. However, the updated 2017 version introduced changes in the numbering of the provisions and reformulated a number of them. At the time the administrative courts suspended the proceedings in the applicants' cases, the 2005 version of the Code (with amendments) was in effect. In the following paragraphs the provisions of the 2005 version are described first, with reference to the analogous provisions in the updated 2017 version (referred to as "2005 Code" and "2017 Code" respectively).

2. The role of the Constitution and ECHR case-law in administrative proceedings

83. Section 17 of the Execution of Judgments of the European Court of Human Rights Act of 2006 provides that the courts, when deciding cases,

[4] Rectified on 12 November 2019: the text was "Section 56".

are to apply the Convention and Protocols and the Court's case-law as a source of law.

84. Section 19 of the International Treaties Act of 2004 provides that international treaties are deemed part of domestic law and prevail over conflicting provisions of domestic legislation.

85. Article 8 §§ 1 and 2 of the 2005 Code provided that the courts were guided (*керується*) by the principle of the rule of law and had to apply that principle taking into account ECHR case-law. Article 8 § 3 provided that plaintiffs could invoke the Constitution directly. Article 6 of the 2017 Code contains similar provisions.

86. Article 9 § 4 of the 2005 Code provided that, in the event of a contradiction between a legislative act and the Constitution, the court was to apply the latter and, in the event of a contraction between a legislative act which was higher in the hierarchy of norms and one which was lower in the hierarchy, the court was to apply the former. The 2017 Code contains a similar provision in Article 7 § 3.

87. Article 9 § 5 of the 2005 Code provided that, if a court had doubts as to the constitutionality of a law, it should request the Supreme Court (*звертається до Верховного Суду для вирішення питання*) to submit a constitutional review application to the Constitutional Court.

88. On the same point Article 7 § 4 of the 2017 Code provides that if a court concludes that a law is unconstitutional, it cannot apply (*не застосовує*) the law in question and must directly apply the Constitution. In such situations, after rendering a judgment in the case, the court must request the Supreme Court to lodge a constitutional review application with the Constitutional Court.

3. Suspension of proceedings

89. Article 156 § 1 (3) of the 2005 Code provided that a court should suspend (*зупиняє*) proceedings in a case if it was not possible to examine the case until resolution of another case being examined in constitutional, administrative, civil, commercial or criminal proceedings. The proceedings were suspended until the judicial decision in the other case became final. Article 156 § 4 provided that an appeal could be lodged against a ruling suspending proceedings. Proceedings could be resumed (*поновлюється*) on application of the parties or of the court's own motion if the circumstances which had led to the suspension ceased to exist (Article 156 § 5).

90. The 2017 Code contains somewhat similar provisions concerning the suspension and resumption of proceedings (Articles 236 § 1 (3) and 237 respectively).

4. Time-limit for appeals

91. Article 186 § 3 provides that rulings of first-instance courts may be appealed against within five days of their pronouncement.

F. Domestic case-law

1. The Supreme Court's decision of 18 September 2018

92. This was a decision of the Administrative Court of Cassation of 18 September 2018 in the case of *I.S. v. the High Council of Justice* (case no. 800/186/17).

The plaintiff, Mr I.S., was a Supreme Court judge. He was also chairman of the High Judicial Qualifications Commission from September 2010 to 11 April 2014, when his tenure in that position was terminated on the coming into force of the Restoration of Trust in the Judiciary Act (see paragraph 79 above).

Based on his former membership in the High Judicial Qualifications Commission, in April 2017 the High Council of Justice (HCJ) dismissed the plaintiff from his position as a Supreme Court judge under the GCA's one-year rule and "EuroMaidan" period rule. The applicant appealed to the High Administrative Court, sitting as a first-instance court. He argued that the HCJ's decision was contrary to the constitutional provisions containing an exhaustive list of cases where judges could be dismissed and an exhaustive list of activities incompatible with judicial office. He also argued that his dismissal under the Restoration of Trust in the Judiciary Act and then under the GCA had breached the constitutional provision barring the imposition of the same type of legal liability twice (see paragraph 71 above).

Under the 2016 Judicial Organisation Act, the High Administrative Court was abolished and its functions transferred to the Administrative Court of Cassation, which forms part of the Supreme Court. The Administrative Court of Cassation was established in early 2018.

The Administrative Court of Cassation allowed the plaintiff's claim and quashed the HCJ's decision. It found that, after the proceedings for his dismissal under the GCA had been initiated, the plaintiff had informed the HCJ that he wished to resign from his position voluntarily. However, the HCJ had failed to allow his resignation and had instead proceeded to dismiss him under the GCA, under less favourable conditions. This had been disproportionate, since the goal of the GCA was to remove certain categories of civil servants from their positions, not to punish them, and that goal could have been achieved by allowing the plaintiff to resign.

At the same time, the Court of Cassation rejected the plaintiff's arguments based on the constitutional provisions concerning non-retroactivity and imposition of the same type of liability twice. It held that

lustration measures did not constitute a form of legal, in particular criminal, liability. They pursued the aim of restoring trust in the State institutions rather than holding the officials in question responsible.

2. Case-law presented by the Government

93. The Government presented several examples of domestic case-law (summarised in paragraphs 94 to 100 below) in their observations in the present case. They provided additional case-law references (set out in paragraphs 101 and 102 below) presenting further developments in the domestic case-law in their observations in the group of cases of *Bogutskyy and Others v. Ukraine* (no. 22699/16 and 4 others), which also concerned the process of lustration in Ukraine. Notice of those applications was given on 14 March 2018. The lawyer representing the second to fifth applicants in the instant case also represented the majority of the applicants in that other group of cases.

(a) The Kyiv Administrative Court of Appeal's judgment of 22 June 2017 in case no. 826/1003/17, concerning the dismissal of an official under the GCA provision affecting former Communist Party officials and KGB agents (section 3 (4) of the GCA, see paragraph 75 (iii) above)

94. The court quashed the Kyiv Circuit Administrative Court's ruling of 17 June 2017 suspending the proceedings in the case until the Constitutional Court's ruling on the constitutionality of the GCA and remitted the case for examination on the merits. The Court of Appeal stressed that the GCA was applicable to the case and remained in force at that time. The Constitution provided that laws declared unconstitutional ceased to have effect from the date of the Constitutional Court's decision. The Court of Appeal concluded that any decision of the Constitutional Court in the case concerning the constitutionality of the GCA would not have an impact on the plaintiff's case.

(b) The Kyiv Circuit Administrative Court's judgment of 20 January 2017 in case no. 826/3328/16, concerning the dismissal of a deputy district prosecutor under the GCA provision applicable to officials who occupied targeted positions in the EuroMaidan period (see paragraph 74 above)

95. The Administrative Court allowed the plaintiff's claim and quashed the prosecution office's decision applying the GCA to him. It found that at the time the impugned decision had been taken the plaintiff had been mobilised into the Armed Forces and was participating in combat operations in the Donetsk and Luhansk Regions and was thus protected by the provision of the Labour Code prohibiting the dismissal of active servicemen. It further held that the impugned decision had been taken in defiance of an interim measures order issued by a local court in the Donetsk

Region preventing the plaintiff's dismissal while he was in the Armed Forces.

On 18 April 2017 the Kyiv Administrative Court of Appeal upheld the Circuit Administrative Court's judgment.

(c) The Lviv Administrative Court's judgment of 21 February 2017 and 26 April 2017 in case no. 813/1030/15, concerning the dismissal of a police officer

96. The plaintiff, a traffic police officer, was dismissed under the GCA for allegedly having drawn up an administrative offence report against a participant in the EuroMaidan events (see paragraph 75 (i) above).

On 10 August 2015 the proceedings in the case were suspended pending the decision of the Constitutional Court on the constitutionality of the GCA. However, on 30 December 2016 the plaintiff requested a resumption of the proceedings, arguing that the delay in the examination of the case was in breach of the right to a hearing within a reasonable time.

On 21 February 2017 the court decided to resume examination of the case and 26 April 2017 delivered its decision on the merits. It held the dismissal unlawful since the check required under the GCA had not been conducted and there was no proof that the person in respect of whom the plaintiff had drawn up an administrative arrest report had been a EuroMaidan protester.

(d) The Supreme Court's decision of 18 October 2016 in case no. П/800/63/16 concerning a judge of the High Commercial Court

97. The judge challenged the decision of the High Council of Justice which proposed to Parliament that he be dismissed under the GCA because he had occupied a position in the High Council of Justice or the Qualification Commission of Judges in the one-year period. The Supreme Court quashed the decision of the High Administrative Court suspending the proceedings until the decision of the Constitutional Court. The Supreme Court reasoned that the judge had argued mainly that the GCA did not apply to him on its own terms and that the grounds of his claim were, therefore, individual and his case could proceed independently of the proceedings before the Constitutional Court.

(e) The High Administrative Court's ("the HAC") decision of 12 April 2016 in case no. 826/24337/15, which concerned a claim by a former head of a customs office for reinstatement

98. The Kyiv Circuit Administrative Court, in a decision upheld by the Kyiv Administrative Court of Appeal on 18 February 2016,[5] suspended the proceedings pending the outcome of the proceedings before the

[5] Rectified on 12 November 2019: the text was "18 February 2015".

Constitutional Court. The HAC allowed the plaintiff's appeal and quashed those decisions. The court noted that the plaintiff had been dismissed with reference to the GCA as a whole, while the Constitutional Court was considering only the constitutionality of certain provisions of the GCA. Therefore, the lower court's conclusion that its examination of the case could not proceed had been premature.

(f) The Odessa Circuit Administrative Court's decision of 20 February 2017 in case no. 815/1745/15, which concerned the dismissal of a tax official

99. By this decision the court resumed, at the plaintiff's request, the proceedings in the case, which it had suspended on 29 April 2015. It stated that the three-month time-limit for examination of the case by the Constitutional Court had been exceeded. This had led to a breach of the plaintiff's right to have his case examined by the administrative courts, guaranteed by Article 6 § 1 of the Convention.

The court stated that, under the Constitutional Court Act, the Constitutional Court had the power to declare laws unconstitutional only *ex nunc*. Until then, the GCA remained in effect and the case had to be resolved on the basis of the legislation as it stood. At the same time, in the event that the Constitutional Court eventually declared the Law unconstitutional, the parties would be entitled to request a reopening on the basis of newly established circumstances.

(g) The Cherkasy Circuit Administrative Court's ruling of 6 July 2016 in case no. 823/739/16

100. The case concerned the reinstatement of a former official of the agriculture department in the regional State administration. The court rejected the plaintiff's application to have the proceedings suspended until the matter of the constitutionality of the GCA was examined by the Constitutional Court. The court noted that while the plaintiff had been dismissed under the GCA, there was no indication which provision had been applied to him. Given that the parties had the right to request a reopening in the event of a Constitutional Court ruling holding the relevant provisions of the GCA unconstitutional, such a ruling was not indispensable for resolving the case before the administrative courts.

(h) The Odessa Administrative Court of Appeal's decision of 18 April 2018 in case no. 815/2163/15

101. The plaintiff had served as deputy prosecutor of the Kyiv Pechersk District from May 2012 to July 2014 and then from November 2013 to 22 February 2014. In March 2015 he had been dismissed from his position as prosecutor of the Odessa Primorsky District based on the EuroMaidan period rule of the GCA. On 14 December 2015 the Odessa Circuit Administrative Court rejected his claim for reinstatement.

The Court of Appeal quashed that decision, held the plaintiff's dismissal unlawful and reinstated him on the grounds that dismissal based merely on the fact of having occupied a certain position was in breach of the constitutional principle of the presumption of innocence and Article 6 § 2 of the Convention, as the plaintiff had *de facto* been found guilty of a criminal offence without a court's judgment convicting him. The GCA retroactively introduced new grounds for disciplinary liability and dismissal from positions in the civil service, which was contrary to the constitutional principles of the non-retroactivity of laws and the non-restriction of rights. There was no proof of any act by the plaintiff to show that he had contributed to the negative activities defined in section 1(2) of the GCA. The court also concluded that his dismissal had been disproportionate and had breached the constitutional principle of equal access to the civil service, which represented in national law the right to respect for private life under Article 8 of the Convention.

(i) The Kyiv Circuit Administrative Court's decision of 31 May 2018 in case no. 826/6555/15

102. The case concerned the dismissal of a former deputy head of the Mykolaiv customs office. The court held her dismissal under the GCA unlawful and ordered her reinstatement. From February 2011 to July 2014 she had served as deputy head of the Crimea customs office. The court held that those positions were not covered by the GCA's one-year rule.

3. Case-law presented by the applicants

103. The first applicant submitted the following examples of domestic case-law concerning officials dismissed under the GCA. In particular he referred to the following decisions:

(i) the decisions of the Volyn and Kirovogradsky Circuit Administrative Courts (decisions of 23 June 2017 in case no. 803/173/16 and of 27 April 2017 in case no. П/811/1275/15 respectively) and of the Odessa Administrative Court of Appeal (decision of 26 September 2017 in case no. 815/2163/15) by which the courts refused to resume proceedings after suspension;

(ii) the decisions of the HAC of 26 May 2016 in cases nos. K/800/39325/15 and K/800/1649/16. The cases concerned claims of two dismissed officials against the State Tax Service and the prosecutor's office respectively. The HAC suspended proceedings concerning a review on points of law of the lower courts' decisions in the case pending examination of the constitutionality of the GCA by the Constitutional Court;

(iii) the HAC's decisions of 12 July 2017 in case no. K/800/5726/16 and of 12 September 2017 in case no. K/800/2125/17 by which the HAC suspended proceedings in similar circumstances.

III. RELEVANT INTERNATIONAL MATERIAL

A. Resolution of the Parliamentary Assembly of the Council of Europe on measures to dismantle the heritage of former communist totalitarian systems

104. On 27 June 1996 the Parliamentary Assembly of the Council of Europe adopted Resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems ("the PACE Resolution"). The relevant part of that Resolution reads as follows:

> "1. The heritage of former communist totalitarian systems is not an easy one to handle. On an institutional level this heritage includes (over)centralisation, the militarisation of civilian institutions, bureaucratisation, monopolisation, and over-regulation; on the level of society, it reaches from collectivism and conformism to blind obedience and other totalitarian thought patterns. To re-establish a civilised, liberal state under the rule of law on this basis is difficult - this is why the old structures and thought patterns have to be dismantled and overcome ...
>
> 4. Thus a democratic state based on the rule of law must, in dismantling the heritage of former communist totalitarian systems, apply the procedural means of such a state. It cannot apply any other means, since it would then be no better than the totalitarian regime which is to be dismantled. A democratic state based on the rule of law has sufficient means at its disposal to ensure that the cause of justice is served and the guilty are punished - it cannot, and should not, however, cater to the desire for revenge instead of justice. It must instead respect human rights and fundamental freedoms, such as the right to due process and the right to be heard, and it must apply them even to those people who, when they were in power, did not apply them themselves. A state based on the rule of law can also defend itself against a resurgence of the communist totalitarian threat, since it has ample means at its disposal which do not conflict with human rights and the rule of law, and are based upon the use of both criminal justice and administrative measures ...
>
> 7. The Assembly also recommends that criminal acts committed by individuals during the communist totalitarian regime be prosecuted and punished under the standard criminal code. If the criminal code provides for a statute of limitations for some crimes, this can be extended, since it is only a procedural, not a substantive matter. Passing and applying retroactive criminal laws is, however, not permitted. On the other hand, the trial and punishment of any person for any act or omission which at the time when it was committed did not constitute a criminal offence according to national law, but which was considered criminal according to the general principles of law recognised by civilised nations, is permitted ...
>
> ...
>
> 11. Concerning the treatment of persons who did not commit any crimes that can be prosecuted in accordance with paragraph 7, but who nevertheless held high positions in the former totalitarian communist regimes and supported them, the Assembly notes that some states have found it necessary to introduce administrative measures, such as lustration or de-communisation laws. The aim of these measures is to exclude persons from exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in the past and have no interest or motivation to make the transition to them now.

12. The Assembly stresses that, in general, these measures can be compatible with a democratic state under the rule of law if several criteria are met. 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 process be allowed. The aim of lustration is not to punish people presumed guilty - this is the task of prosecutors using criminal law - but to protect the newly emerged democracy.

13. The Assembly thus suggests that it be ensured that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law, and focus on threats to fundamental human rights and the democratisation process. Please see the 'Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law' as a reference text."

B. Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law (PACE Guidelines)

105. The PACE Guidelines, endorsed by the Resolution cited in the preceding paragraph, read as follows:

"To be compatible with a state based on the rule of law, lustration laws must fulfil certain requirements. Above all, the focus of lustration should be on threats to fundamental human rights and the democratisation process; revenge may never be a goal of such laws, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty — this is the task of prosecutors using criminal law — but to protect the newly-emerged democracy.

a. Lustration should be administered by a specifically created independent commission of distinguished citizens nominated by the head of state and approved by parliament;

b. Lustration may only be used to eliminate or significantly reduce the threat posed by the lustration subject to the creation of a viable free democracy by the subject's use of a particular position to engage in human rights violations or to block the democratisation process;

c. Lustration may not be used for punishment, retribution or revenge; punishment may be imposed only for past criminal activity on the basis of the regular Criminal Code and in accordance with all the procedures and safeguards of a criminal prosecution;

d. Lustration should be limited to positions in which there is good reason to believe that the subject would pose a significant danger to human rights or democracy, that is to say appointed state offices involving significant responsibility for making or executing governmental policies and practices relating to internal security, or appointed state offices where human rights abuses may be ordered and/or perpetrated, such as law enforcement, security and intelligence services, the judiciary and the prosecutor's office;

...

g. Disqualification for office based on lustration should not be longer than five years, since the capacity for positive change in an individual's attitude and habits should not be underestimated; lustration measures should preferably end no later than 31 December 1999, because the new democratic system should be consolidated by that time in all former communist totalitarian countries;

h. Persons who ordered, perpetrated, or significantly aided in perpetrating serious human rights violations may be barred from office; where an organisation has perpetrated serious human rights violations, a member, employee or agent shall be considered to have taken part in these violations if he was a senior official of the organisation, unless he can show that he did not participate in planning, directing or executing such policies, practices, or acts;

i. No person shall be subject to lustration solely for association with, or activities for, any organisation that was legal at the time of such association or activities (except as set out above in sub-paragraph h), or for personal opinions or beliefs;

...

k. Lustration of 'conscious collaborators' is permissible only with respect to individuals who actually participated with governmental offices (such as the intelligence services) in serious human rights violations that actually harmed others and who knew or should have known that their behaviour would cause harm;

...

m. In no case may a person be lustrated without his being furnished with full due process protection, including but not limited to the right to counsel (assigned if the subject cannot afford to pay), to confront and challenge the evidence used against him, to have access to all available inculpatory and exculpatory evidence, to present his own evidence, to have an open hearing if he requests it, and the right to appeal to an independent judicial tribunal."

C. Venice Commission

1. Opinion concerning constitutional developments in Ukraine in 2010

106. At its 85th Plenary Session (17-18 December 2010) the Venice Commission adopted its opinion on the constitutional situation in Ukraine. It reads, in so far as relevant:

"9. The 1996 Constitution has established a presidential-parliamentary type of institutional regime ...

12. In practice however, the 1996 Constitution resulted in a concentration of powers in the hands of the President and in a constant legislative-executive confrontation ...

15. The 1996 Constitution was amended in December 2004 by the Law on amendments to the Constitution No. 2222. The constitutional changes provided a strong impetus for transforming the Ukrainian political system from a presidential-parliamentary system to a more parliamentary one.

...

22. In February 2010, Mr Yanukovich won the presidential elections in the country. However, the formation of the new Government faced some difficulties due to the fact

that the majority coalition (consisting of President Yanukovych's Party of Regions, Mr Lytvyn's eponymous bloc and the Communist Party) fell seven votes short of a required majority of 226 members. In early March, the Ukrainian *Verkhovna Rada* amended the Law on the Rules of Procedure of Parliament with respect to the provisions for the formation of a ruling coalition. The new provisions now stipulate that a parliamentary majority is established on the basis of the number of individual MPs that support such a coalition. These changes to the Rules of Procedure allowed a new governing coalition to be established.

...

25. Thereafter, in July 2010, 252 deputies of Ukraine applied to the Constitutional Court with a request to recognise as non-conforming to the Constitution [of the 2004 constitutional amendments].

26. On 30 September 2010, the CCU (hereinafter, "the 30 September Judgment") issued a Decision declaring Law No. 2222 unconstitutional "due to a violation of the constitutional procedure of its consideration and adoption". The main argument is that the *Verkhovna Rada* has overstepped its competences fixed in Article 159 of the Constitution, as it cannot amend the Constitution without a Constitutional Court opinion.

27. The 30th September Judgment of the Constitutional Court is based exclusively [that the 2004 amendments had not been validated by the Constitutional Court]. The Court does not examine whether the amendments could have been declared [unconstitutional on the substance at the time they had to be reviewed by the court].

28. Based on the Constitutional Court reasoning in the 30 September Judgment, it seems that it is the 1996 version of the Constitution that is in force in Ukraine since 1 October 2010.

...

34. The Commission also noted, with some surprise, that the 30 September Judgment does not refer to the Decision of February 2008 [by which the Constitutional Court had previously refused to review the constitutionality of the constitutional amendments in question].

35. It also considers highly unusual that far-reaching constitutional amendments, including the change of the political system of the country - from a parliamentary system to a parliamentary-presidential one - are declared unconstitutional by a decision of the Constitutional Court after a period of 6 years. The Commission notes however, that neither the Constitution of Ukraine nor the Law on the Constitutional Court provide for a time-limit for contesting the constitutionality of a law before the CCU.

36. As Constitutional Courts are bound by the Constitution and do not stand above it, such decisions raise important questions of democratic legitimacy and the rule of law.

37. It is clear that a change of the political system of a country based on a ruling of a constitutional court does not enjoy the legitimacy which only the regular constitutional procedure for constitutional amendment, and preceding open and inclusive public debate can bring ..."

2. Interim opinion on the GCA

107. At its 101st Plenary Session (12-13 December 2014) the Venice Commission adopted its interim opinion on the GCA. It reads, in so far as relevant:

> "32. Party affiliation, political and ideological reasons should not be used as grounds for lustration measures, as stigmatization and discrimination of political opponents do not represent acceptable means of political struggle in a state governed by the rule of law.
>
> ...
>
> 63. Finally, as is also stated in Article 1.2 of the Lustration law, "lustration needs to be based on the principle of individual (not collective) liability".
>
> 64. The Lustration law does not comply with these requirements. With the exception of the persons mentioned in Articles 3.5, 3.6 and 3.7, the establishment of individual guilt by an independent organ is not required. The ban on access to public functions, applied to these other persons, is based on the mere fact of having held a certain position, with an ensuing presumption of guilt. While this approach might be acceptable with respect to the holders of high positions during the communist period and holders of some of the crucial government offices during Mr. Yanukovych´s reign (senior offices), in all other cases guilt should be proved on the basis of individual conduct. If the mere fact of belonging to a party, an organisation or an administrative body of the old regime is a ground for banning from public office, then such ban amounts to a form of collective and discriminatory punishment which is incompatible with human rights standards. Lustration then risks becoming a political instrument to oppress opponents.
>
> ...
>
> 76. There is an overlap between the Lustration Law and the Law on the Restoration of the Trust in the Judiciary as concerns the Maidan events. The Ukrainian authorities have explained that the inclusion of judges in the new law was justified on two grounds: first, the previous law has proved ineffective (the number of cases processed by the special commission is negligible); second, the previous law does not enable to ban the lustrated judge from public service. The Venice Commission finds that if the previous law is deemed to be ineffective, it should be repealed and replaced by new, more effective provisions which however duly respect the constitutional rules on the independence of judges. The current overlap creates problems of legal certainty and of co-ordination: if a judge has already been the object of a procedure under the Law on the Restoration of Trust in the Judiciary, he or she should be immune from the application of the Lustration law pursuant to the principle of *ne bis in idem*. If no procedure has been carried out yet, it is unclear which procedure prevails. The lustration of judges should be regulated in one law only.
>
> ...
>
> 98. Under Article 7 of the Lustration law, information about individuals subject to lustration is entered in the Uniform Register of persons who are subject to the Lustration law. This register is created and maintained by the Ministry of Justice. In addition, this information regarding bans under Article 1.4 is also published on the website of the Ministry of Justice, where information including the individual's personal data and progress in the screening are made freely available.

99. This provision is problematic. The Venice Commission has previously stated that "publication prior to the court's decision is problematic in respect of Article 8 ECHR. The adverse effects of such publication on the person's reputation may hardly be removed by a later rectification, and the affected person has no means to defend himself against such adverse effects. The latter may only appear to be a proportionate measure necessary in a democratic society when the collaboration is finally verified, not before. Publication should therefore only occur after the court's decision".

100. The Lustration law fails to guarantee that publication is only allowed after a final court judgment; as such, it raises evident problems of compatibility with Article 8 ECHR. For this reason, the relevant provisions should be amended.

...

104. The Commission has reached the following main conclusions:

a) Applying lustration measures to the period of the Soviet communist rule so many years after the end of that regime and the enactment of a democratic constitution in Ukraine requires cogent reasons justifying the specific threat for democracy which former communists pose nowadays; the Commission finds it difficult to justify such late lustration.

b) Applying lustration measures in respect of the recent period during which Mr Yanukovych was President of Ukraine would ultimately amount to questioning the actual functioning of the constitutional and legal framework of Ukraine as a democratic state governed by the rule of law.

c) The Lustration law presents several serious shortcomings and would require reconsideration at least in respect of the following:

- Lustration must concern only positions which may genuinely pose a significant danger to human rights or democracy; the list of positions to be lustrated should be reconsidered.

- Guilt must be proven in each individual case, and cannot be presumed on the basis of the mere belonging to a category of public offices; the criteria for lustration should be reconsidered;

- Responsibility for carrying out the lustration process should be removed from the Ministry of Justice and should be entrusted to a specifically created independent commission, with the active involvement of the civil society.

- The lustration procedure should respect the guarantees of a fair trial (right to counsel, equality of arms, right to be heard in person); court proceedings should suspend the administrative decision on lustration until the final judgment; the Lustration law should specifically provide for these guarantees.

- The lustration of judges should be regulated in one piece of legislation and not in overlapping ones, and should only be carried out with full respect of the constitutional provisions guaranteeing their independence, and only the High Council of Justice should be responsible for any dismissal of a judge.

- Information on the persons subject to lustration measures should only be made public after a final judgment by a court.

105. The Ukrainian authorities have agreed that the Lustration law requires improvement in order to meet the applicable international standards and have sought the assistance of the Venice Commission. The Commission welcomes the

commitment of the Ukrainian authorities and is ready to provide its support for the amendment of the Lustration law."

3. Final opinion on the GCA

108. At its 103rd Plenary Session (19-20 June 2015) the Venice Commission adopted its final opinion on the GCA. It reads, in so far as relevant:

"6. In April 2015, the Venice Commission received from the Ukrainian authorities a set of draft amendments to the Law on Government Cleansing that had been submitted to the Parliament... These amendments are under consideration and have not been formally approved yet. This final opinion nevertheless takes them into account when assessing the Law...

...

A. Aims of the Law on Government Cleansing

23. The Law on Government Cleansing differs from lustration laws adopted in other countries of Central and Eastern Europe in that it is broader in scope. It pursues ***two different aims.*** The first is that of protecting the society from individuals who, due to their past behaviour, could pose a threat to the newly established democratic regime. The second is to cleanse the public administration from individuals who have engaged in large-scale corruption. The term lustration in its traditional meaning only covers the first process.

24. The Venice Commission accepts that the two aims pursued by the Law on Government Cleansing are both legitimate.

25. A newly democratic state might have good reasons to remove from the public life, on a temporary basis, individuals who occupied high-level positions under the previous, non-democratic regime or who engaged in serious human rights violations. Doing so limits the risk that the new regime be overturned or tarnished from the beginning by non-democratic practices. It strengthens public trust in the new government and enables the society to have a new, fresh start. At the same time, it is important to keep in mind that lustration is not, and is not meant to be, a form of criminal proceedings. It must never be used as a substitute for a criminal sanction, when such a sanction would be warranted, or as a measure of revenge and retaliation.

26. Anti-corruption measures also play an important role in building up a democratic society. In addition to undermining the national economy, corruption might constitute a security threat. It also has a negative impact on the trust in the public institutions and on social cohesion within the society. In Ukraine, corruption has for some time been a widespread problem with a tendency to grow. In the 2014 Transparency International Corruption Perceptions Index, Ukraine was ranked 142th of 175 countries.

The fight against corruption is a long-term process. Corruption, once ingrained in the social life, can hardly be eradicated through a one-time measure.

27. The Law on Government Cleansing addresses the two challenges that the young Ukrainian democracy faces – non-democratic elites formerly loyal to President Yanukovych and corrupted officials – at the same time. In doing so, it goes beyond the process of lustration as this has been traditionally defined. During the meetings with the Ukrainian authorities, the Venice Commission delegation has repeatedly expressed the view that trying to deal with the two challenges in the same piece of

legislation, and while using identical means, is not optimal. Lustration on the one hand and anti-corruption measures on the other hand, though both legitimate, are not identical in nature. They are also not subject to the same international legal standards and require different means to fight them.

28. The Venice Commission understands that in the specific Ukrainian context, institutionalized corruption was in fact closely linked to, and made part of non-democratic practices exhibited by the regime of the president Yanukovych. This regime, rather than serving any specific ideology, was established to allow the ruling elites to extend their personal wealth. Widespread corruption together with systematic misuse of power was among the means to achieve this goal.

...

30. The Law on Government Cleansing bans certain categories of individuals from occupying certain public offices. The Venice Commission stresses that in line with the concept of the "democracy capable of defending itself", the state has the right to exclude from the access to public positions those individuals who might pose a threat to the democratic system and/or have shown themselves unworthy of serving the society. At the same time, as the European Court of Human Rights noted in the *Ždanoka* case, *"every time a State intends to rely on the principle of "a democracy capable of defending itself" in order to justify interference with individual rights, it must carefully evaluate the scope and consequences of the measure under consideration, to ensure that the /.../ balance is achieved"* [citing *Ždanoka v. Latvia* [GC], no. 58278/00, § 100, ECHR 2006-IV]. The legal regulation imposing limits on the access to public positions thus has to be clear and non-arbitrary in nature and has to respect the principle of proportionality.

B. Personal Scope of the Application of the Law

1. The Positions Subject to Government Cleansing

31. The positions subject to government cleansing are listed in Article 2 of the Law. These positions cannot be occupied by individuals falling under Article 3 of the Law. Current holders of these positions have already been screened, or will be screened in the nearest time, according to the schedule approved by the Cabinet of Ministers of Ukraine. If they admit, or it is found, that they belong to any of the categories under Article 3, they have to be immediately dismissed. Candidates for these positions will be screened and, if they fall under one of the categories falling under Article 3, will be denied appointment.

32. The 1996 *Guidelines on Lustration* stipulate that:

- Lustration should be limited to positions in which there is good reason to believe that the subject would pose a significant danger to human rights or democracy;
- Lustration shall not apply to elective offices; and
- Lustration shall not apply to positions in private or semi-private organisations.

33. The list under Article 2 of the Law contains a rather extensive number of positions in all the spheres of the public administration (government, prosecution, courts, military forces, police services etc.). The Prime Minister Arseniy Yacenyuk estimates that altogether, the Law should apply to about one million people. The Ukrainian authorities, however, with a view to proving that the impact of lustration measures (in the first meaning of this term) on the civil service will not be as extensive as feared, have provided the Venice Commission with statistical estimates on the percentage of civil servants that are likely to be lustrated on the basis of having

occupied specific positions in the Prosecutor's Office (337 to 1348 out of 20367 total amount of posts), in the Ministry of the Interior (372 to 1488 out of 210,000 total amount of posts) and in the State fiscal services (335 to 1340 out of 58,826 total posts). As it stated in its Interim Opinion, the Venice Commission warns that an overbroad personal scope of application of the Law would be very problematic. Not only would it risk violating individual fundamental rights: it would also affect the functioning of the whole Ukrainian civil service and social peace, giving rise to serious antagonisms and stimulating the rancour of those working under the former regime being disqualified from public functions in a disproportionate manner. A large scale lustration process would result in enormous bureaucratic burdens and might lead to an atmosphere of general fear and distrust.

...

50. ***Article 3(1)-(2)*** disqualifies certain individuals on the basis of the position that they held during the period of presidency by Viktor Yanukovych in 2010-2014 (1) or during the Maidan events at the turn of 2013-2014 (2). The disqualification based solely on the position is not *a priori* contrary to international standards, provided that it is reserved for the high positions within organizations responsible for serious human rights violations and for serious cases of mismanagement. The Venice Commission is not completely persuaded that all the positions listed in Article 3(1)-(2) meet this condition. It notes however that the Ukrainian authorities are better placed to assess which public institutions played a prominent role, engaging in non-democratic processes, in the two relevant periods.

51. The time frame set in Article 3(1) – holding an office *"for at least a year cumulatively between February 25, 2010 and February 22, 2014"* – would require some justification. Given that Article 3(1) mostly relates to high-level posts within the state administration, it is not clear, why a minimum period of holding such posts is needed and why this minimum period has been set to one year.

...

68. As the Venice Commission noted in its Interim Opinion, the Law on Government Cleansing *"seeks to deal with two different periods of undemocratic rule in the country: the Soviet communist regime and the 'power usurpation by the President of Ukraine Viktor Yanukovych'"* (para. 25).

69. With respect to the ***first period,*** the Venice Commission stressed that *"cogent reasons to justify lustration with regard to persons involved in the Communist regime need to be given"* (para. 37). Even after extensive exchange of views with the Ukrainian authorities, the doubts as to the presence of these *cogent reasons* still persist.

70. The Venice Commission once again recalls that *"the measures of lustration are, by their nature, temporary and the objective necessity for the restriction of individual rights resulting from this procedure decreases over time"* [*Ādamsons v. Latvia*, no. 3669/03, § 116, 24 June 2008]. Whereas the totalitarian non-democratic nature of the pre-1991 regime in the Soviet Union is not open to question, the need to use lustration measures with respect to the representatives of this regime, almost 25 years after its fall, seem controversial. It might well be that some of the representatives of the communist regime still constitute a threat to the democratic regime in Ukraine. Yet, this should not be presumed based simply on the position they held prior to 1991. Their behaviour and activities in the period posterior to that date should be taken into account as well.

71. With respect to the ***second period,*** that of the *"power usurpation by the President of Ukraine Viktor Yanukovych"* (Article 1(2) of the Law), the Venice Commission repeats that *"applying lustration measures in respect of acts committed after the end of the totalitarian regime may only be justified in the light of exceptional historic and political conditions"* [citing CDL-AD(2012)028, *op. cit.,* para. 77]. It is primarily for the Ukrainian authorities to assess whether such exceptional conditions have existed in the country during and after the fall of the Yanukovych regime. However, this assessment and the measures taken by Ukraine must respect human rights and the European standards on the rule of law and democracy, and will be ultimately monitored by the European institutions.

...

IV. Conclusions

107. The Law on Government Cleansing differs from lustration laws adopted in other countries of Central and Eastern Europe in that it is broader in scope. It pursues two different aims. The first is that of protecting the society from individuals who, due to their past behaviour, could pose a threat to the newly established democratic regime. The second is to cleanse the public administration from individuals who have engaged in large-scale corruption. The term lustration in its traditional meaning only covers the first process

108. In its Interim Opinion, adopted in December 2014, the Venice Commission stressed that, in order to respect human rights, the rule of law and democracy, lustration must strike a fair balance between defending the democratic society on the one hand and protecting individual rights on the other hand. It also drew attention to some of the shortcomings of the 2014 Law on Government Cleansing, relating to the personal scope of application of the Law (the need to limit lustration to the most important positions within the state etc.), the time element (two period of exclusion etc.), the administration of lustration (decentralized procedure, absence of an independent body etc.) and the procedural guarantees (individualised liability, protection of personal data of individuals subject to lustration, availability of the judicial review etc.).

109. The Ukrainian authorities have agreed that the Law requires improvement in order to meet the applicable international standards and have sought further assistance of the Venice Commission. In February-May 2015, extensive exchange of views took place between the Ukrainian authorities and the Venice Commission. The dialogue has been constructive and has helped clarify some of the points of contention.

110. In April 2015, the Venice Commission received from the Ukrainian authorities a set of draft amendments to the Law on Government Cleansing and to other related laws, notably to electoral laws, which are currently under consideration in the Parliament. The Venice Commission welcomes some of the improvements proposed in the draft, such as the creation of the Central Executive Body for Lustration or the changes in the Uniform Register. Yet, the Law – even if amended – still shows certain shortcomings.

111. The Venice Commission would particularly like to draw attention to the following main points:

...

d) It is for the Ukrainian authorities to consider whether all the positions listed [as subject to the one-year period rule and the EuroMaidan period rule] played a prominent role in the misuse of power by the regime of V. Yanukovych in 2010-2014

or during the Maidan events at the turn of 2013-2014. When doing so, they should take into account the concrete situation in Ukraine, while at the same time respecting that *"where an organisation has perpetrated serious human rights violations, a member, employee or agent shall be considered to have taken part in these violations if he was a senior official of the organisation"* (para. h) of the Guidelines).

...

f) Lustration should be administered in a centralised way. If the decentralised procedure is maintained, the competences of the Executive Body should be strengthened (or clarified). Most importantly, the Executive Body should serve as an organ of administrative review open to complaints by individuals subject to lustration. The administrative review must not serve as a substitute to judicial review, which shall be made operative as soon as possible.

112. Lustration must never replace structural reforms aimed at strengthening the rule of law and combatting corruption, but may complement them as an extraordinary measure of a democracy defending itself, to the extent that it respects European human rights and European rule of law standards."

109. The draft amendments to the GCA referred to in the final opinion of the Venice Commission (§§ 6 and 110, in paragraph 108 above) have never been adopted.

D. OSCE reports on the 2010 and 2012 elections

110. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed the presidential election in Ukraine held on 17 January and 7 February 2010. The relevant conclusions, presented in the Executive Summary of the OSCE/ODIHR Election Observation Mission Final Report, read as follows:

"The presidential election met most OSCE commitments and other international standards for democratic elections and consolidated progress achieved since 2004. The process was transparent and offered voters a genuine choice between candidates representing diverse political views. However, unsubstantiated allegations of large-scale electoral fraud negatively affected the election atmosphere and voter confidence in the process."

111. The Statement of Preliminary Findings and Conclusions issued by the OSCE/ODIHR, the Parliamentary Assemblies of the OSCE, Council of Europe and NATO and the European Parliament on 29 October 2012 concluded that while voters had had a choice between distinct parties and election day had been calm and peaceful overall, certain aspects of the pre-election period had constituted a step backwards compared with previous national elections. In particular, the elections had been characterised by the lack of a level playing field, caused primarily by the abuse of administrative resources, lack of transparency of campaign and party financing, and lack of balanced media coverage. While the voting and counting processes on election day had been assessed positively overall, the tabulation of results had been negatively assessed in nearly half of the electoral districts

observed. Post election day, the integrity of the results in some districts appeared to have been compromised by instances of manipulation of the results and other irregularities, which had not been remedied by the Central Election Commission or the courts.

E. European Parliament

112. On 13 December 2012 the European Parliament adopted a resolution on the situation in Ukraine, which reads, in so far as relevant, as follows:

"*The European Parliament*,

1. Expresses regret at the fact that, according to the OSCE, PACE, NATO Parliamentary Assembly and European Parliament observers, the electoral campaign, electoral process and post-electoral process failed to meet major international standards and constitute a step backwards compared with the national elections in 2010;

2. Notes, in particular, that certain aspects of the pre-election period (the arrest of opposition political leaders, the lack of a level playing field, caused primarily by the misuse of administrative resources, cases of harassment and intimidation of candidates and electoral staff, a lack of transparency in campaign and party financing, and a lack of balanced media coverage) and the irregularities and delays in the vote count and tabulation process constituted a step backwards compared with recent national elections;

3. Stresses that the fact that two leaders of the opposition, Yulia Tymoshenko and Yuri Lutsenko, and others were held in jail during the elections adversely affected the electoral process;

...

5. Is concerned about the misuse of administrative resources and the system of campaign financing, which fell short of international standards as set by the Council of Europe's Group of States Against Corruption (GRECO); calls on the new government to continue strengthening the provisions of the law on party financing in order to provide for more transparency of funding and spending, the full disclosure of sources and amounts of campaign expenditure and the sanctions for violation of campaign funding provisions in particular."

F. The Country Reports on Human Rights Practices by the United States Department of State

113. The Country Reports on Human Rights Practices of the US Department of State for 2011-2013, noted with respect to Ukraine:

2011

"The most serious human rights development during the year was the politically motivated detention, trial, and conviction of former prime minister Yulia Tymoshenko, along with selective prosecutions of other senior members of her government. The second most salient human rights problem was the government's

measures to limit freedom of peaceful assembly. Under political pressure courts denied permits for the vast majority of protests that were critical of the government. For those protests that were approved an overwhelming police presence discouraged participation; actions by protesters were limited and tracked by the authorities. The third major problem was increased government pressure on independent media outlets, which led to conflicts between the media owners and journalists and to self-censorship."

2012

"The most serious human rights problem during the year remained the politically motivated imprisonment of former prime minister Yulia Tymoshenko and former interior minister Yuriy Lutsenko. A second major problem was the failure of the October 28 parliamentary elections to meet international standards of fairness and transparency. The third major human rights problem was increased government interference with and pressure on media outlets, including government tolerance of increased levels of violence toward journalists."

2013

"The most serious human rights problem during the year was increased government interference with, and pressure on, media outlets, including government tolerance of increased levels of violence toward journalists. The second major human rights problem was intensified pressure on civil society, nongovernmental organizations (NGOs), and civic activists. The third major problem was the practice of politically motivated prosecutions and detentions, including the continued imprisonment of former prime minister Yuliya Tymoshenko."

G. Office of the United Nations High Commissioner for Human Rights

114. In its publication *Rule-of-Law Tools for Post-conflict States. Vetting: An Operational Framework* (HR/PUB/06/5, 2006) the Office of the UN High Commissioner for Human Rights set out an operational framework for vetting and institutional reform to be used by United Nations field staff in advising on approaches to addressing the challenges of institutional and personnel reform in post-conflict States through the creation of vetting processes that exclude from public institutions persons who lack integrity. The relevant parts of the publication (on pages 4 and 5) read:

"Vetting is an important aspect of personnel reform in countries in transition. Vetting can be defined as assessing integrity to determine suitability for public employment. Integrity refers to an employee's adherence to international standards of human rights and professional conduct, including a person's financial propriety. Public employees who are personally responsible for gross violations of human rights or serious crimes under international law revealed a basic lack of integrity and breached the trust of the citizens they were meant to serve. The citizens, in particular the victims of abuses, are unlikely to trust and rely on a public institution that retains or hires individuals with serious integrity deficits, which would fundamentally impair the institution's capacity to deliver its mandate. Vetting

processes aim at excluding from public service persons with serious integrity deficits in order to (re-)establish civic trust and (re-)legitimize public institutions.

Integrity is measured by a person's conduct. Vetting processes should, therefore, be based on assessments of individual conduct. Purges and other large-scale removals on the sole basis of group or party affiliation tend to cast the net too wide and to remove public employees of integrity who bear no individual responsibility for past abuses. At the same time, group removals may also be too narrow and overlook individuals who committed abuses but were not members of the group. Such broadly construed collective processes violate basic due process standards, are unlikely to achieve the intended reform goals, may remove employees whose expertise is needed in the post-conflict or post-authoritarian period, and may create a pool of discontented employees that might undermine the transition."

THE LAW

I. JOINDER OF THE APPLICATIONS

115. Having regard to the similar subject matter of the remaining applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. OBJECTIONS AS TO THE ADMISSIBILITY OF THE FIRST THREE APPLICATIONS AS A WHOLE

A. The parties' submissions

1. The Government

116. The Government submitted general objections as to the admissibility of the first three applications as a whole, without distinguishing between the different complaints. They argued, in the alternative, that the applicants had either failed to exhaust the available domestic remedies or, if the Court was to find that there had been no effective domestic remedy, that the applicants had submitted their applications outside of the six-month period.

(a) Non-exhaustion of domestic remedies

(i) Administrative courts

117. The Government submitted that the appeals to the administrative courts had been an effective remedy for the purposes of the applicants' complaints. The proceedings before the Constitutional Court had been no bar to the administrative courts proceeding with the applicants' cases and resolving them on the merits. In this connection, they cited a number of decisions in which the domestic courts had ruled that proceedings in cases which had arisen under the GCA (see paragraphs 94 to 100 above) had to proceed regardless of the proceedings before the Constitutional Court.

118. Moreover, the applicants themselves by their actions or inaction had created the situation in their cases:

(i) none of the applicants had appealed against the rulings suspending the proceedings;

(ii) the second and third applicants themselves had initiated the suspension of the proceedings in their cases (see paragraphs 42 and 44 above);

(iii) the applicants had not asked for the proceedings to be resumed;

119. Therefore, the situation the applicants had found themselves in had been as a result of their own choice, rather than a flaw in the system of domestic remedies. The State could not be held responsible for this state of affairs. The Government stressed that the existence of mere doubts as to the prospects of success of a remedy which was not obviously futile was not a valid reason for failing to use one.

(ii) Constitutional Court

120. Even if the appeals to the ordinary courts were found not to be an effective remedy in the applicants' cases, the proceedings before the Constitutional Court had constituted such a remedy in the particular circumstances of the case. Even remedies normally considered "exceptional" or "extraordinary" could in some instances be assimilated to ordinary appeal proceedings (citing *Bochan v. Ukraine* (no. 2) [GC], no. 22251/08, §§ 47-49, ECHR 2015). The applicants had structured their claims before the administrative courts as an attack on the constitutionality of the GCA. Similar arguments concerning the alleged unconstitutionality of that Act had been raised by various individuals before the Constitutional Court.

121. The length of the proceedings before the Constitutional Court did not render this remedy ineffective since such proceedings had special features and could not be construed in the same way as for an ordinary court. Citing *Süssmann v. Germany* (no 20024/92, 16 September 1996), the Government stressed that "its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms."

(iii) The Ministry of Justice

122. The Government also submitted that an appeal to the Ministry of Justice, which had powers in administering the GCA, would have provided the applicants with another avenue of redress.

(b) Compliance with the six-month rule

123. The Government further submitted in the alternative that, if the above remedies were found to be ineffective by the Court, then the dates the applicants had been dismissed from their positions had to be taken as the dates from which the six-month time-limit was to be counted. Accordingly, their complaints concerning their dismissal had been lodged out of time.

2. The applicants

(a) The first applicant

124. The applicant submitted that he had not challenged the decision to suspend the proceedings in his case because he had believed that the suspension would be for the period set out in section 57 of the Constitutional Court Act of 1996 (see paragraph 80 above), namely three months. When it had turned out that the Constitutional Court had failed to respect that time-limit, it had been too late to appeal against the suspension ruling since the time-limit for appeal had been five days (see paragraph 91 above) and it had, by that time, long since expired.

125. Article 156 § 5 of the Code of Administrative Justice only permitted the resumption of proceedings if the circumstances which had led to the suspension ceased to exist (see paragraph 89 above) and, since the matter had still been pending before the Constitutional Court, there had been no grounds for resumption of the proceedings.

126. He referred to decisions in which various courts had rejected requests to resume proceedings in similar cases. Moreover, the HAC had kept suspending proceedings pending the examination of the case by the Constitutional Court (see paragraph 103 above).

127. According to the applicant, the Government cited domestic case-law concerning the suspension of proceedings selectively, using recent examples, rather than examples from the period when the proceedings in the applicant's case had been suspended.

128. In any event, the applicant considered that the alleged violation had stemmed from a continuing situation and that therefore his complaints could not be rejected as outside of the six-month period.

129. He stressed that, contrary to the Government's submissions, he had complained to the Ministry of Justice, but to no avail (see paragraph 39 above).

(b) The second and third applicants

130. When applying to the Constitutional Court for a review (see paragraph 63 above), the Supreme Court had obviously believed that the resolution of the matter by the Constitutional Court was indispensable for the examination of the case, and had referred explicitly to numerous decisions of the lower courts suspending proceedings in cases concerning

application of the GCA. These, and not the examples selectively cited by the Government, reflected the real practice of the domestic courts.

131. Under domestic law (Article 9 § 5 of the 2005 Code of Administrative Justice, see paragraph 87 above), it was the courts' duty to suspend the examination of cases where they believed that the applicable legislation was unconstitutional.

132. For a remedy to be effective for the purposes of the Convention, its exercise had to be not hindered unjustifiably by the acts or omissions of the authorities of the respondent State (citing *Vintman v. Ukraine*, no. 28403/05, § 110, 23 October 2014).

133. Given that the law provided for a three-month period for the examination of constitutional review cases, the applicants could have reasonably expected that the examination of their cases by the domestic courts and, within that framework, the examination of the constitutionality of the GCA by the Constitutional Court, would be effective remedies in their situation. They could not have expected the Constitutional Court to delay the examination of their cases to such an extent and that the remedy they had used would prove ineffective in practice. Therefore, the date of the applicants' dismissal could not be taken as the start date for the calculation of the six-month period, as suggested by the Government.

134. Lastly, the second and third applicants submitted that an appeal to the Ministry of Justice could not be considered an effective remedy since the Ministry was not authorised by law to set aside dismissal decisions.

B. The Court's assessment

135. The Court notes at the outset that an appeal to the Ministry of Justice, which entered the applicants' names into the Lustration Register (see paragraph 78 above), cannot, taken in itself, be considered an effective domestic remedy to be used, if only for the reason that the Ministry does not meet the requisite standards of independence (see *De Souza Ribero v. France* [GC], no. 22689/07, § 79, ECHR 2012, with further references).

136. The remainder of the Government's non-exhaustion objection can be summarised as follows:

(i) firstly, either the appeals to the administrative courts or the appeals to the administrative courts in combination with the proceedings before the Constitutional Court did constitute an effective remedy in respect of the applicants' complaints concerning their dismissal from the civil service under the GCA; and

(ii) secondly, the applicants themselves were responsible for those remedies not working within a reasonable period of time, because they, through their own actions or inaction, caused their cases to become or remain suspended at the domestic level (see paragraph 118 above).

137. The Court considers that the Government's argument, in particular its second limb, is closely linked to the merits of the applicants' complaint under Article 6 § 1 concerning the length of proceedings. Since the Government raised their non-exhaustion objection in respect of these applications as a whole, rather than in respect of any particular complaint, the Court finds it most appropriate to examine it, and the closely related objection as to failure to comply with the six-month time-limit, at the admissibility stage.

138. The Court has previously observed that, in the Ukrainian legal system as it stood when the present applications were lodged, there was no right of individual petition to the Constitutional Court and it was, therefore, for the domestic courts to look into the issue of the compatibility of legal acts with the Constitution and, in case of doubt, to request that constitutional proceedings be initiated (see *Pronina v. Ukraine*, no. 63566/00, § 24, 18 July 2006). In this context the Court reiterates that, even if a single remedy does not by itself entirely satisfy the requirements of an "effective remedy" under the Convention, the aggregate of remedies provided for under domestic law may do so (see *De Souza Ribeiro*, cited above, § 79).

139. It is true that the Court has held that the possibility of lodging a complaint with the Ombudsman, who in turn may challenge the law before the Constitutional Court, was not an effective remedy to be used because it was not directly accessible to the applicant, who had to rely on the exercise of the Ombudsman's discretion (see *Tănase v. Moldova* [GC], no. 7/08, § 122, ECHR 2010). However, depending on the circumstances of a case, where the applicant has recourse to such remedies and the authorities exercise their discretion to open proceedings on the matter raised by the applicant, the applicant may be considered to have complied with the rule of exhaustion of domestic remedies (see *Egmez v. Cyprus*, no. 30873/96, §§ 66-73, ECHR 2000-XII).

140. In the present case, the applicants lodged appeals with the administrative courts. It is not in dispute between the parties that that remedy was, in principle, effective in respect of the applicants' grievances concerning their dismissal from the civil service under the GCA. Within the framework of those proceedings the ordinary courts had the right to refer the question of constitutionality to the Constitutional Court, which they did. That referral procedure was used by the courts within the framework of ordinary proceedings before the administrative courts. There is no doubt that the latter proceedings did, in principle, constitute an effective remedy in respect of the applicants' complaints concerning their dismissal.

141. The Court therefore agrees with the Government's argument that, in the circumstances of the present case, the appeals to the administrative courts, in combination with the proceedings before the Constitutional Court initiated on the initiative of those courts, did constitute, in principle, an

effective domestic remedy in respect of the applicants' grievances concerning their dismissal from the civil service under the GCA.

142. This is true even though the remedy had no suspensive effect (see, *mutatis mutandis*, *De Souza Ribeiro*, cited above, and *Anchev v. Bulgaria*, (dec.) nos. 38334/08 and 68242/16, § 111, 5 December 2017, and contrast *Solska and Rybicka v. Poland*, nos. 30491/17 and 31083/17, §§ 67-69, 20 September 2018).

143. The applicant in fact had recourse to the administrative courts and there was no final decision in those proceedings. The six-month period runs from the final decision in the process of exhaustion of domestic remedies (see *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001). Therefore, the applications cannot be declared inadmissible because they were not lodged within six months of the applicants' dismissal, as the Government asked the Court to do. Accordingly, the Government's objection in this respect must be rejected.

144. At the same time, if the Court were to consider the appeals to the administrative courts a remedy effective in practice, the fact that there is no final domestic decision in those proceedings could mean that the applicants' complaints regarding their dismissal from the civil service were premature (see, for example, *Ahmet Tunç and Others v. Turkey* (dec.), nos. 4133/16 and 31542/16, § 109, 29 January 2019). The applicants submitted, however, that the remedy had proved ineffective in practice because of unreasonable delays.

145. The Court has held that an effective remedy must operate without excessive delay (see, for example, *McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010, and *Story and Others v. Malta*, nos. 56854/13 and 2 others, § 80, 29 October 2015) and that, where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 260, ECHR 2014 (extracts).

146. The question which needs to be answered, therefore, is whether the proceedings in the first three applicants' cases were unreasonably delayed and, if so, whether the applicants through their actions and/or inaction or the State were responsible for that state of affairs. As the Court has stated above, however, those questions are closely linked to the merits of the applicants' complaint under Article 6 § 1 concerning access to court and the length of proceedings and joins them to the merits. A related question, which the Court will address in paragraphs 215 and 216 below, is whether the applicants, at any point in the course of the proceedings, were or ought to have been aware that the remedy in question revealed itself to be

ineffective in practice due to delay so as to trigger the running of the six-month period.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF THE FIRST THREE APPLICANTS

147. The first three applicants complained that the ongoing failure to examine their claims at the domestic level had breached their rights under Article 6 of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

A. Admissibility

1. The parties' submissions

(a) The Government

148. The Government submitted that Article 6 applied under its civil head only. Comparing the measure imposed on the applicants to *Oleksandr Volkov v. Ukraine* (no. 21722/11, ECHR 2013), the Government considered that the criminal head of Article 6 did not apply.

(b) The first applicant

149. The first applicant considered that Article 6 was applicable under its civil limb.

(c) The second and third applicants

150. The second and third applicants considered that Article 6 was applicable under its criminal limb. They referred in this connection to *Matyjek v. Poland* ((dec.), no. 38184/03, ECHR 2006-VII) and other cases concerning lustration in Poland. They distinguished the *Oleksandr Volkov* case cited by the Government, as in that case the applicant had been subjected to a "classic disciplinary sanction", whereas they had been subjected to a particular sanction under the GCA. The applicants stressed the similarity between the measure imposed on them under that Act, namely a ban on occupying positions in the civil service for ten years, and the criminal punishment of "deprivation of the right to occupy certain positions or engage in certain activities" (*позбавлення права обіймати певні посади або займатися певною діяльністю*) which, under Article 55 of the Criminal Code, could be imposed for up to five years following conviction of certain crimes.

2. The Court's assessment

151. The Government did not dispute that Article 6 was applicable under its "civil" limb. Indeed, domestic law does not exclude access to challenge the dismissal from the posts which the applicants held. This is sufficient to conclude that Article 6 of the Convention is applicable under its civil limb (see *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, § 120, 21 January 2016, and, for the relevant principles, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II, and *Baka v. Hungary* [GC], no. 20261/12, §§ 116-18, ECHR 2016).

152. The Court now needs to determine whether, as the second and third applicants argued, Article 6 is also applicable under its "criminal" head.

153. In the majority of cases concerning lustration, the Court has found Article 6 to be applicable under its civil head only (see *Rainys and Gasparavičius v. Lithuania* (dec.), nos. 70665/01 and 74345/01, ECHR 2004; *Ivanovski*, §§ 120 and 121, and *Anchev*, §§ 129 and 130, both cited above). However, in *Matyjek* (cited above) the Court held that Article 6 was applicable under its criminal head to lustration proceedings under Polish law.

154. The Court reiterates that in determining whether proceedings can be considered "criminal", it has regard to three criteria: the legal classification of the offence in question in national law, the very nature of the offence, and the nature and degree of severity of the penalty (see *Engel and Others v. the Netherlands*, 8 June 1976, § 82, Series A no. 22). The

second and third criteria are alternative and not necessarily cumulative. It is enough that the offence in question is by its nature to be regarded as criminal or that the offence renders the person liable to a penalty which by its nature and degree of severity belongs in the general criminal sphere. The relative lack of seriousness of the penalty cannot divest an offence of its inherently criminal character. This does not exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge (see *Jussila v. Finland* [GC], no. 73053/01, § 31, ECHR 2006-XIV, more recently restated in *Blokhin v. Russia* [GC], no. 47152/06, § 179, ECHR 2016).

155. In *Matyjek* (cited above, §§ 49-58), in holding that the Polish lustration proceedings could be considered "criminal", the Court had regard to the fact that the Polish Code of Criminal Procedure was applicable to the proceedings, that the nature of the act for which the applicant had been subjected to lustration, making a false declaration, was akin to the criminal offence of perjury, and that the sanction imposed on him, inability to occupy a range of public posts for ten years, was severe.

156. In the present case, the applicants' conduct for which the measures under the GCA were applied to them was not classified as "criminal" in domestic law (see, in particular, the Supreme Court's decision set out in paragraph 92 above) and was not akin to any form of criminal conduct: it consisted in remaining in their positions while President Yanukovych was in power.

157. As to the third factor, the nature and severity of the penalty, the Court notes that in *Sidabras and Džiautas v. Lithuania* ((dec.), nos. 55480/00 and 59330/00, 1 July 2003) the applicants were likewise dismissed from the civil service and suffered restrictions on employment in the civil service and taking certain jobs in the private sector for ten years after enactment of the relevant Lithuanian law. The penalty imposed on the applicants in that case was arguably more severe than the one imposed on the applicants in the instant case, who are only subject to restrictions on employment in the public sector. Even in *Sidabras and Džiautas*, however, the seriousness of the sanction alone was not sufficient to bring the proceedings into the "criminal" sphere.

158. The Court notes the Supreme Court's assessment that the purpose of lustration measures was not to punish the officials in question but to restore trust in the State institutions (see paragraph 92 above). The applicants raised the question of whether there had been sufficient justification for the application of measures of such seriousness to them. However, the Court considers that this is not sufficient to engage the "criminal limb" of Article 6. Those are matters to be examined within the context of the applicants' complaints under Article 8 of the Convention (see paragraphs 270 to 324 below).

159. In short, the Court considers that the nature and severity of the GCA measures were not such as to render them "criminal" for Convention purposes. Accordingly, Article 6 is not applicable under its criminal limb.

160. However, as the Court found in paragraph 151 above, Article 6 § 1 is applicable under its civil limb. Accordingly, the Court notes that this part of the first three applications is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The first applicant

161. The reason for the violation of the applicant's rights of access to court and to a hearing within reasonable time had been the delay in the Constitutional Court's examination of the constitutionality of the GCA. It had delayed its examination of the case for much longer than the three-month period provided for in the 1996 Constitutional Court Act.

162. Moreover, in the meantime a widespread reorganisation of various State entities had been underway which would have made it difficult to reinstate lustrated individuals to their old positions even if the courts had ruled in their favour. Therefore, the delay had risked rendering any eventual court decision in the applicant's favour illusory.

163. The applicant alleged that the judges examining lustration cases were being intimidated by partisans of the GCA among members of parliament and of the executive. The applicant referred in this connection to a letter dated 22 January 2015 from the judges of the Kharkiv Administrative Court of Appeal to the Prosecutor General describing instances of intimidation by Mr Y.S., an MP. According to the judges, on 19 December 2014 the MP had made certain derogatory and threatening statements in a television show on the First National channel concerning Judge S. of the Kharkiv Circuit Administrative Court, who was examining the case of a lustrated prosecutor.

164. According to the applicant, the Constitutional Court's handling of the case was unreasonably lengthy and was not motivated by the complexity of the case, as the Government were arguing. For the applicant, the delay could instead be explained by the pressure on the court. He alleged that the Prosecutor General had stated that "the abolition of lustration would be the beginning of the end of this composition of judges". Constitutional Court judges had stated publicly that they were suffering pressure in connection with the case.

165. The applicant pointed out that, contrary to the Government's submissions, he had appealed to the Ministry of Justice, but to no avail.

(b) The second and third applicants

166. The applicants stressed that it had been the administrative courts' duty under domestic law to refer the matter to the Constitutional Court, through the Supreme Court, to verify the constitutionality of the GCA. The Constitutional Court should have examined the matter within the time-limit set out in section 56 of the Constitutional Court Act of 1996 (see paragraph 80 above) but had failed to do so. As a result, the applicants' cases had not been examined. This had breached their rights of access to court and their right to trial within a reasonable time.

(c) The Government

167. The Government submitted that the applicants had themselves created the situation which they had found themselves in, since they had either themselves asked for the proceedings to be suspended or had acquiesced in that decision and failed to take steps to resume the proceedings. In any event, the proceedings in their cases would be resumed in the event that the Constitutional Court found the GCA unconstitutional.

168. The Government referred, moreover, to the Court's decisions in *Sen v. Ukraine* (no. 31740/08, 5 October 2010) and *Fransov S.A.S. v. Ukraine* (no. 36453/02, 15 October 2013), in which the Court did not consider periods of suspension of cases pending the examination of a related case in separate proceedings to be periods of unjustified delay imputable to the State.

169. Accordingly, the Government submitted that the applicants' complaints in respect of access to court and trial within a reasonable time were ill-founded.

2. The Court's assessment

170. The Court notes that the applicants framed their complaints by invoking both their right of access to court and their right to a fair trial within reasonable time (see paragraphs 161 and 166 above). In doing so, however, they relied on the same facts and the main thrust of their complaints related to the unreasonable delay in their cases. The Court considers that the situation falls to be examined from the perspective of compliance with the "reasonable time" requirement.

171. The Court reiterates that it is for the Contracting States to organise their judicial systems in such a way that their courts are able to guarantee the right of everyone to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 142, 29 November 2016). The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case,

the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (ibid., § 143).

172. The Court will proceed to examine the length of proceedings in the first three applicants' cases, which is the matter at the heart of their complaint, in the light of those criteria.

(a) Length of the proceedings so far

173. The proceedings have so far lasted for more than four and a half years (see paragraphs 36, 41 and 43 above) at one level of jurisdiction, considering also the referral proceedings pending before the Constitutional Court.

174. Their length is not short in absolute terms and may raise an issue of compliance with Article 6 § 1 (compare *Guincho v. Portugal*, 10 July 1984, §§ 29-41, Series A no. 81; *Trebovc v. Slovenia*, no. 42863/02, §§ 15-17, 1 June 2006; *Svetlana Orlova v. Russia*, no. 4487/04, §§ 41, 50-52, 30 July 2009; and *Mošať v. Slovakia*, no. 27452/05, §§ 24 and 25, 21 September 2010).

(b) Complexity of the case

175. The Court considers that the legal matters involved in the resolution of the applicants' cases were complex, raising as they did novel and difficult issues of constitutional and Convention law. It is therefore understandable that the Constitutional Court needed to resolve those questions before the ordinary court could proceed with the cases.

(c) The applicants' conduct

176. The Government pointed out that (see paragraphs 118 and 146 above):

(i) the second and third applicants had themselves requested the suspension of proceedings in their cases;

(ii) none of the applicants had appealed against the decisions to suspend the proceedings in their cases; and

(iii) the first and second applicants had failed to request a resumption of the proceedings.

177. The Court observes that the applicants' claims lodged with the domestic courts were based, for the most part, on the arguments related to the question of the constitutionality of the GCA (see paragraphs 36 and 43 above). Under domestic law, as worded at the relevant time, in such circumstances the applicants could (see paragraphs 83 to 87 above):

(i) either ask the domestic administrative courts to interpret the GCA in a way that would be compatible with the applicants' understanding of the Constitution and/or disapply the provisions they considered unconstitutional; or

(ii) ask the courts to apply to the Supreme Court and, through it, to the Constitutional Court, to assess the constitutionality of the GCA.

178. However, the domestic courts considered that the resolution of the applicants' cases was dependent on the Constitutional Court's ruling. The Plenary formation of the Supreme Court endorsed that position by holding that resolution of cases raising the issue of the constitutionality of the GCA required a ruling from the Constitutional Court (see paragraph 63 above). Thus the domestic courts, including the Supreme Court, endorsed the second above-mentioned approach over the first.

179. It would be unreasonable, in the presence of such a well-defined position of the Supreme Court, to have expected the applicants to disagree and urge the ordinary courts to proceed with the cases anyway, expecting them to take a stand on the constitutionality of the GCA regardless of proceedings initiated by the Supreme Court before the Constitutional Court precisely on that point.

180. In view of this position of the Supreme Court, the Court considers that any appeal against the decisions to suspend the proceedings could not be seen as having a prospect of success. Moreover, the decision to suspend the proceedings awaiting the Constitutional Court's decision was consistent with the applicants' argument to the effect that the GCA was unconstitutional.

181. Furthermore, pressing for an examination of their cases in the absence of a Constitutional Court decision risked undermining the applicants' own position: the applicants would then be at risk of having the domestic courts resolve their cases on the assumption that the GCA, since it had not been declared unconstitutional, remained applicable. The Government themselves, in support of their position, cited a decision of the domestic courts which had done just that (see, for example, paragraph 94 above).

182. Moreover, the examination of cases by the Constitutional Court was subject to rather strict time-limits (see paragraph 80 above). The applicants could not have been expected to know that those time-limits would be exceeded, especially given that the Supreme Court asked the Constitutional Court to examine the issue as a matter of urgency. Moreover, when the third applicant asked for a reopening of the proceedings when those time-limits had expired, his request was rejected (see paragraphs 47 and 48 above). The case-law cited by the first applicant also shows that many other courts rejected requests for the reopening of proceedings on account of delays (see paragraph 103 above).

183. Most of the court decisions cited by the Government in support of their arguments were delivered in unique circumstances entirely distinct from the applicants' cases, most notably because the plaintiffs' key argument was that the GCA did not apply to them on its own terms (for

example, because of the plaintiffs' military service or factual errors in applying the GCA to them, see paragraphs 95, 96 and 97 above).

184. Only one decision cited by the Government concerned a situation comparable to that of the applicants: the proceedings were suspended pending proceedings before the Constitutional Court but then resumed because those constitutional proceedings were delayed (see paragraph 99 above). However, that was an isolated decision of a first-instance administrative court different from the courts which examined the applicants' cases. There is no indication that this approach was endorsed by the superior courts. As stated above, it also contradicts the position taken by the domestic court in the third applicant's case.

185. Under such circumstances, the applicants cannot be reproached for their failure to oppose the decision to refer the question of constitutionality to the Supreme Court (for eventual referral to the Constitutional Court), and the first and second applicants cannot be reproached for their failure to request resumption of the proceedings.

(d) The conduct of the authorities

186. The Court notes that, where proceedings before the Constitutional Court are embedded in ordinary proceedings, for example where the domestic courts refer a question of the constitutionality of a relevant provision to it, the proceedings before it may be relevant, to a greater or lesser extent, in an assessment of the compliance of the underlying proceedings with Article 6 of the Convention (see *Roshka v. Russia* (dec.), no. 63343/00, 6 November 2003, with further references).

187. This is the case here and the proceedings before the Constitutional Court, which formed a major part of the length of the proceedings in the applicants' cases, must be taken into account in the assessment of the reasonableness of their length.

188. The Court has held that the length of proceedings before the Constitutional Court has to be assessed taking into account the particularity of its role. Its role as guardian of the constitution makes it particularly necessary for it to sometimes take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (see, for example, *Süssmann*, cited above, § 56). This specificity must also be taken into account in assessing the effectiveness of an appeal to the Constitutional Court as a remedy and the length of proceedings before it. For instance, the Court found that proceedings more than three years long did not render an constitutional appeal ineffective (see *Elçi v. Turkey* (dec.), no. 63129/15, § 55, 29 January 2019).

189. However, the Court considers that the specificity of the Constitutional Court's role and status cannot sufficiently explain the delay in the proceedings before it in the present case.

190. Firstly, the Supreme Court asked the Constitutional Court to examine the case as a matter of urgency (see paragraph 62 above). The Government have not argued that the Constitutional Court had to rule on more urgent cases of major importance (contrast *Süssmann*, cited above, § 60) or that, in examining the case, it faced any major challenges (see, *mutatis mutandis*, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 156, 20 March 2018, in the context of the "speediness" requirement of Article 5 § 4).

191. Nor has the Court been informed of any developments in the case before the Constitutional Court after 6 July 2017, beyond the court holding deliberations. Even before that date, there is no indication that any procedural steps were taken in the case after 22 March 2016, when the court held the hearing in the case and began deliberations (see paragraphs 68 and 69 above and contrast, for example, *Ahmet Tunç and Others*, cited above, § 123).

192. It is also relevant, though not in itself decisive, that the time-limits for examination of the cases by the Constitutional Court set forth in domestic law have been considerably exceeded (see paragraphs 80 and 81 above) without a convincing explanation.

(e) What was at stake for the applicants

193. The Court has held that employment disputes, by their nature, call for an expeditious decision, in view of what is at stake for the person concerned, who, through dismissal, loses his means of subsistence (see *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII). The Court sees no reason to hold otherwise in the present case.

(f) Overall assessment and conclusion

194. The Court concludes that, in the particular circumstances of the present case, the length of the proceedings in the applicants' cases cannot be considered "reasonable".

195. The Court therefore dismisses the Government's objection with regard to the exhaustion of domestic remedies.

196. There has, accordingly, been a violation of Article 6 § 1 of the Convention in respect of the first three applicants.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

197. The applicants complained of a violation of their right to respect for their private life. They relied on Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

(a) The Government

198. The Government did not contest that the measures applied to the applicants had constituted an interference with their rights guaranteed by Article 8.

199. As far as the fourth and fifth applicants were concerned, the Government submitted, as they did in respect of the first three applications as a whole (see paragraph 123 above) that the applicants' appeals to the administrative courts had been structured as attacks on the constitutionality of the GCA. The fact that those courts, having no constitutional jurisdiction, could not be seen as an effective forum for such complaints had to have been obvious to the applicants from the outset. They had had no direct access to the Constitutional Court at the time. Having no effective domestic remedy, they had had to apply to the Court within six months of their dismissal.

(b) The first applicant

200. The applicant considered that there had been an interference with his Article 8 rights; he had been removed from his position, barred from occupying public positions for ten years and had had his name published on the mere grounds that he had occupied his position in the period defined by the GCA. Moreover, even though in theory he had had a right to appeal to the courts, this right had in fact had turned out to be illusory as the legal question central to his case had been blocked at Constitutional Court level. This had put him in a state of uncertainty concerning his private and professional life. The appearance of his name in the Lustration Register had harmed his reputation and he had had no way of removing his name from it before his case had been examined by the courts.

(c) The second to fifth applicants

201. The second to fifth applicants stated that their dismissal had had an influence on a wide circle of their relationships, including those of a professional nature. Their job losses had also had important consequences for their material well-being and that of their family members. The reasons for their dismissal, namely that they had contributed to a "usurpation of power" by President Viktor Yanukovych and had undermined national

security, defence and human rights, had had an impact on their professional reputation.

(d) The fourth and fifth applicants

202. The fourth and fifth applicants also submitted, in response to the Government's objection as to their alleged failure to comply with the six-month time-limit (see paragraph 199 above), that the six-month time-limit had to be counted from the date of the final domestic judicial decisions in their cases.

2. The Court's assessment

(a) Applicability of Article 8

203. The Court notes at the outset that it is not disputed between the parties that there has been an interference with the applicants' rights under Article 8 on account of application to them of the measures under the GCA.

204. In a number of cases the Court has found that lustration measures engaged the applicants' right to respect for their private life, as they affected their reputation and/or professional prospects (see *Turek v. Slovakia*, no. 57986/00, § 110, ECHR 2006-II (extracts); *Sõro v. Estonia*, no. 22588/08, § 56, 3 September 2015, *Karajanov v. the former Yugoslav Republic of Macedonia*, no. 2229/15, §§ 70 and 71, 6 April 2017, *Ivanovski*, §§ 176-77; and *Anchev*, § 92; both cited above, and, in the context of Article 14 taken in conjunction with Article 8, *Sidabras and Džiautas*, cited above, §§ 49 and 50, and *Naidin v. Romania*, no. 38162/07, §§ 29-36, 21 October 2014).

205. The Court has held that there are some typical aspects of private life which may be affected by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's "inner circle", (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach) (see *Denisov v. Ukraine* ([GC], no. 76639/11, § 115, 25 September 2018).

206. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very

serious and affect his or her private life to a very significant degree (ibid., § 116).

207. In assessing the applicability of Article 8 in the present case, the Court notes that that provision cannot be applicable under the reason-based approach: the GCA was applied to the applicants because of the positions they had occupied in the civil service while Mr Yanukovych had been in power or, as far as the fifth applicant was concerned, the position he had occupied in the Communist Party of the Ukrainian SSR, and had no connection to their private life.

208. As far as the consequence-based approach is concerned, the Court notes that the GCA affected the applicants in three ways:

(i) they were dismissed from the civil service;

(ii) they were banned from occupying positions in the civil service for ten years, and

(iii) the applicants' names were entered into the publicly accessible online Lustration Register.

209. The Court considers that the combination of those measures had very serious consequences for the applicants' capacity to establish and develop relationships with others and their social and professional reputation and affected them to a very significant degree. They were not merely suspended, demoted or transferred to positions of lesser responsibility, but dismissed and excluded from the civil service altogether, losing all their remuneration with immediate effect (contrast, in the latter connection, *J.B. and Others v. Hungary* (dec.), no. 45434/12 and 2 others, §§ 132-33, 27 November 2018). They were excluded from any employment in the civil service, the sphere where, as career civil servants, they had worked for many years.

210. The applicants were subjected to measures under the GCA was made public knowledge with immediate effect even before their appeals had been examined (see, in this respect, §§ 98-100 of the interim opinion of the Venice Commission on this point, in paragraph 107 above). While the GCA did not require any showing of individual culpability, its proclaimed aim was to "cleanse" the civil service of individuals associated with the "usurpation of power", the undermining of national security and defence, and violations of human rights (see paragraph 72 above). Under such circumstances, the application of measures under the GCA was very likely to be associated with social and professional stigma, as the applicants alleged (see paragraph 200 above). It was not argued that, in practice, the law did not have such an impact (contrast *Anchev*, cited above, § 106).

211. The Court concludes that Article 8 of the Convention is applicable.

(b) The first three applicants: exhaustion of domestic remedies and compliance with the six-month time-limit

212. The Court now needs to address the Government's objection as to the exhaustion of domestic remedies in the cases of the first three applicants (see paragraphs 117 to 121 above).

213. The Court notes its finding above to the effect that the appeals to the administrative courts, in combination with the proceedings before the Constitutional Court initiated by those courts, were, in principle, an effective domestic remedy in respect of the applicants' grievances concerning their dismissal from the civil service under the GCA (see paragraph 141 above). However, as the Court has stated in paragraph 145 above, an effective remedy must operate without excessive delay.

214. The Court considers that, in the light of its findings above under Article 6 § 1 of the Convention (see paragraphs 178 to 196 above), in practice those proceedings proved not to be an effective remedy in respect of the applicants' grievances under Article 8.

215. At the same time, throughout the relevant period the Constitutional Court remained seized of the case and did not remain inactive, examining the case at regular intervals (see paragraphs 67 to 69 above), which was likely to lead the applicants, and the public at large, to believe that that court's decision might be forthcoming at any moment. Moreover, the Court's single-judge formations previously rejected as premature a number of applications in which the applicants complained of their dismissal under the GCA while the proceedings in their domestic cases remained suspended before administrative courts, awaiting the Constitutional Court's decision on the GCA's constitutionality, for relatively short periods of time.

216. Therefore, given the particular circumstances of the present case, it cannot be said that the applicants were or ought to have been aware that the remedy in question was ineffective, so as to trigger the running of the six-month period (see *Mocanu*, cited above, § 260), at any point prior to the delivery of the present judgment.

(c) The fourth and fifth applicants: compliance with the six-month time-limit

217. The Court observes that the applicants' claims were, indeed, for the most part, based on the arguments relating to the constitutionality of the GCA (see paragraphs 49 and 53 above). However, contrary to what the Government have suggested (see paragraph 199 above), an application to the Constitutional Court was not the only remedy.

218. Under domestic law, the domestic administrative courts could interpret the GCA in a way that would be compatible with the applicants' understanding of the Constitution. The Supreme Court's decision in the case of the former chairman of the High Judicial Qualifications Commission gives an example of such an approach (see paragraph 92 above). Moreover, the same arguments relating to the constitutionality of the GCA provisions

could be relied on to argue that they were incompatible with the Convention as interpreted in the Court's case-law (see paragraph 83 above).

219. Therefore, as the Court already held in respect of the first three applicants (see paragraph 143 above) the appeals to the ordinary courts did constitute, in principle, an effective remedy to be exhausted. The applicants lodged their applications within six months of the final domestic decisions in that process (see the Appendix and paragraphs 52 and 57 above).

220. Therefore, the fourth and fifth applicants' complaints cannot be declared inadmissible for failure to comply with the six-month rule. Accordingly, the Court rejects the Government's objection in that respect.

(d) Otherwise as to admissibility

221. The Court notes that this part of the applications is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The first applicant

222. The first applicant submitted that the interference with his Article 8 rights had had a basis in the GCA. However, it had not pursued a legitimate aim and had been disproportionate to any legitimate aim pursued in that the lustration procedure had not been individualised (see paragraph 200 above).

223. The first applicant pointed out that many individuals associated with the process of lustration had come to prominence and acquired wealth in the period of dominance of the corrupt post-Communist elites deplored by the Government. He named, in this connection, the Minister of Justice and the Prime Minister in office at the time the GCA had been adopted. He pointed out that the President of Ukraine who had signed the GCA into law had himself been a minister in March to December 2012, at the time President Yanukovych had been in office.

224. The first applicant stressed that he had risen through the ranks in the prosecutor's office, from investigator up to the PGO, based on merit. He had had nothing to do with the cases concerning Ms Tymoshenko and Mr Lutsenko referred to by the Government (see paragraph 235 below).

225. He pointed to the criticism of the GCA expressed in the Venice Commission's interim opinion (see paragraph 107 above), notably concerning the overbroad personal scope of the Act, defectiveness of the lustration procedure and the lack of sufficient procedural guarantees for the Act's targets, most notably concerning insufficient individualisation of

responsibility, insufficient protection of personal data and failure to recognise the suspensive effect of judicial review.

226. He further submitted that the GCA contradicted the PACE Resolution and the PACE Guidelines, which required that lustration laws and similar administrative measures comply with the requirements of a State based on the rule of law, particularly to the effect that guilt had to be proven in each individual case and that lustration laws needed to be applied in an individual and not collective fashion. Contrary to those documents, the GCA presumed the guilt of certain categories of civil servants and subjected them to collective sanctions.

227. The applicant also alleged that the GCA had been adopted in an atmosphere of violent intimidation by its proponents. He alleged, in particular, that in September and October 2014 they had engaged in a campaign of attacks against various civil servants and politicians, seeking to force them to resign.

(b) The second to fifth applicants

228. The second to fifth applicants stressed that they had not taken any part in the "usurpation of power" by President Viktor Yanukovych (the terminology used in the GCA) or the suppression of dissent and related events referred to by the Government (see paragraphs 231 to 237 below). Moreover, they had never been accused of participating in them.

229. The applicants reiterated their submissions made in the context of arguing that Article 6 was applicable under its criminal limb (see paragraph 150 above). They pointed out that in such cases as *Matyjek v. Poland* (no. 38184/03, 24 April 2007), *Bobek v. Poland* (no. 68761/01, 17 July 2007) and *Luboch v. Poland* (no. 37469/05, 15 January 2008) the Court had considered lustration measures in terms of criminal punishment.

230. However, they had been banned from occupying certain positions even though they had not been found guilty of any crime. This was contrary to the constitutional principle guaranteeing the presumption of innocence (see paragraph 71 above) and the PACE Guidelines, which stated that no person would be "subject to lustration solely for association with, or activities for, any organisation that was legal at the time of such association or activities [except for senior officials in organisations which have perpetrated serious human rights violations, unless they can show that they did not participate in the planning, directing or executing of any such policies, practices or acts]... or for personal opinions or beliefs" (see points "h" and "i" of the PACE Guidelines in paragraph 105 above).

(c) The Government

(i) Background information concerning lustration legislation

231. The Government outlined the history of Ukraine's transition from totalitarian rule under the Communist Party of the USSR to independence and democracy. They stated that in the 1990s the former communist elite had remained in power, leading to a concentration of economic resources in the hands of former managers of State-owned companies and the creation of an "oligarchic" economic and political system.

232. The attempt of the "then ruling class ... to impose Mr Yanukovych as president" had led to the Orange Revolution of 2004 to 2005. As a result, pro-Western forces had come to power but their failure to carry out the necessary reforms and "to distance themselves from the oligarchs and apparatchiks of the past" had led to Mr Yanukovych being elected President in 2010 through free elections.

233. Having come to office, he had started consolidating power. In particular, he had appointed four new judges to the Constitutional Court and had thus formed a majority favourable to him. One of the judges had been the former president of the town court in Mr Yanukovych's hometown, who had previously shown no interest in constitutional law.

234. As a result, five months into Mr Yanukovych's presidency the Constitutional Court had adopted a decision which had had the effect of increasing the President's powers. The Government regarded this decision as a *de facto coup d'état*. They pointed out that the decision had been criticised by the Venice Commission (see paragraphs 8 and 106 above) and commentators who, at the time, had pointed out that the decision would lead to political destabilisation.

235. Mr Yanukovych's years in office had been characterised by the neglect of the values of a constitutional democratic State. The former communist elite had staffed the central and local government authorities with loyal and politically dependent officials who had used their posts to enrich themselves. "Yanukovych's regime" had had total control over all branches of government, including the prosecutor's office, as illustrated by the prosecutions of the former Prime Minister, Ms Tymoshenko, and the Minister of the Interior, Mr Lutsenko. The international community had seen those cases as politically motivated. The Court had found violations of Article 18 in their cases (see *Lutsenko v. Ukraine*, no. 6492/11, 3 July 2012, and *Tymoshenko v. Ukraine*, no. 49872/11, 30 April 2013). In *Oleksandr Volkov* (cited above) the Court had found that there had been political control over the appointment and dismissal of judges.

236. Mr Yanukovych's circle had taken control of major companies. Mass media had been under pressure. Tax administration had been a particularly corrupt institution, with many of its leaders at the time having since been prosecuted.

237. Mr Yanukovych's rule had come to an end as a result of the EuroMaidan protests, which he had unsuccessfully tried to suppress through the use of force the Government considered excessive.

238. As the result of Mr Yanukovych's activities and his escape to Russia, the Russian authorities had been able to annex Crimea and instigate an armed insurgency in the Donetsk and Luhansk Regions through the so-called "Donetsk People's Republic" and "Luhansk People's Republic".

239. In the course of the democratic presidential and parliamentary elections held in 2014 there had been considerable public demand for lustration of those associated with the establishment of Mr Yanukovych's regime and the treatment of peaceful protesters who had taken part in the EuroMaidan protests.

240. The GCA had been enacted in order to restore trust in the State authorities after those developments.

241. The Government summarised the arguments for the adoption of the GCA which were laid out in the explanatory note to the draft law which, in the end, was enacted as the GCA:

> "In the course of transition from authoritarian to democratic government, society faced many challenges in terms of ensuring an effective transformation of the public administration system. The goal of those changes was to build a pluralist democracy [based on such values as rule of law and respect for human rights].
>
> A constitutional democratic State is entitled to require from public servants a dedication to such fundamental values as respect for human dignity, the rule of law, democracy, human rights, sovereignty and territorial integrity, which form part of the constitutional tradition of Ukraine and have to be protected. Constitutional democracy is only possible if those values are effectively protected by public servants.
>
> The conduct of authorities in recent years led to a loss of citizens' confidence in the public authorities. In recent years officials had been guided not by the law but by the unlawful instructions of the State's highest official.
>
> The organs of government at central and local level completely undermined themselves because they became indissociably linked to the violation of citizens' rights, corruption and disregard for the Constitution and the law.
>
> Introducing the procedure of government cleansing would allow citizens' trust in the government to be restored and the level of corruption to be reduced to a minimum."

(ii) Compliance with Article 8

(α) Concerning all applicants

242. The Government submitted that the interference with the applicants' rights had been "in accordance with the law", namely the relevant provisions of the GCA.

243. The measures under the GCA were needed to "consolidate society" and overcome the negative effects of the authoritarian regime of the former President Viktor Yanukovych and his government and in order to protect

young democracy. As such, they pursued the legitimate aims of protecting health or morals, the rights and freedoms of other inhabitants of Ukraine, as well as national security.

244. The States had a broad margin of appreciation in choosing how to deal with the legacy of undemocratic regimes (citing *Anchev*, cited above, § 102).

245. That a cleansing of the kind operated by the GCA was "necessary in a democratic society" as a way of establishing democratic institutions and preserving the democracy and sovereignty of the State was demonstrated by the practice of other States. The procedure responded to civil society's demand for a reform of the State administration.

246. The Government stressed that a democratic State was entitled to require civil servants to be loyal to the constitutional principles on which it was founded (citing *Vogt v. Germany*, 26 September 1995, § 59, Series A no. 323) and to regulate the terms of employment of its civil servants. They also stressed that the Court, in its case-law, had recognised the legitimacy of the concept of a "democracy capable of defending itself" (citing, in this connection, *Sidabras and Džiautas,* § 52, *Vogt*, § 59, and *Naidin*, § 50, all cited above).

247. The legitimacy of lustration had been affirmed in *Ždanoka v. Latvia* ([GC], no. 58278/00, § 118, ECHR 2006-IV), where the Court had held that the restrictions examined in that case had "pursued aims compatible with the principle of the rule of law and the general objectives of the Convention, namely the protection of the State's independence, democratic order and national security." Civil servants, especially those who occupied high-level positions, wielded State's sovereign power. The State therefore had a legitimate interest in requiring of these servants a special bond of trust and loyalty (citing *Pellegrin v. France* [GC], no. 28541/95, § 65, ECHR 1999-VIII).

248. The Government further referred to the final opinion of the Venice Commission on the GCA (see paragraph 108 above). The Commission had recognised that Ukraine had the right to exclude from access to public positions individuals who might pose a threat to the democratic system and/or have shown themselves unworthy of serving society (see § 30 of the opinion).

249. The Venice Commission also considered that disqualification based solely on the position occupied was not "*a priori* contrary to international standards, provided that it [was] reserved for high positions within organi[s]ations responsible for serious human rights violations and for serious cases of mismanagement" (see § 50 of the opinion).

250. The GCA's goal was to protect and affirm democratic values, the rule of law and human rights in Ukraine, restore trust in the State authorities and create conditions for the construction of a new system of State administration in accordance with European standards.

251. The measures affecting the applicants had been sufficiently individualised and it had to be considered that they had been taken in the state of emergency caused by ongoing war and foreign aggression.

252. Lustration was an urgent demand of society and a necessary condition for the transition to a qualitatively new level of public administration. It affected a limited number of individuals who had been closely connected with the previous anti-democratic regime in order to restore trust in the public institutions.

253. The right of access to the civil service was not absolute. There could be incompatibilities and the Ukrainian law had long imposed certain requirements on candidates for public positions. For instance, the President could not serve for more than two consecutive terms. Such restrictions made excessive concentration of power impossible. The GCA pursued the same aim. It provided for the removal from the civil service for ten years of those who had occupied certain high-ranking positions in the State apparatus in 2010 to 2014. This was an exceptional time-limited instrument for the defence of democracy.

254. Taking into account the socio-political situation in Ukraine in 2014, the lustration process was a necessary and the only possible measure to restore trust in the authorities by removing from positions individuals whose activities could delay or make it impossible to establish a democratic regime in Ukraine.

255. The Government pointed out that in the course of the parliamentary debate over the draft law it had been amended: the range of individuals affected by the lustration process had been reduced and elected positions had been excluded from the scope of the law.

(β) Concerning the third applicant

256. The Government stressed that the third applicant had been subject to disciplinary sanctions, demonstrating that his integrity and professional performance had been “far from exemplary” (see paragraph 46 above).

(χ) Concerning the fourth and fifth applicants

257. The Government compared the process of lustration in Ukraine with the situation in *Naidin* (cited above), where the Court had found no violation of Article 8 taken in conjunction with Article 14 on account of the restrictions imposed on the applicant’s employment in the civil service, but not in the private sector. Because civil servants, and especially those occupying posts entailing a high degree of responsibility, such as the post in which the applicant in that case had wished to resume employment, wielded a portion of the State’s sovereign power, the ban imposed on the applicant had not been disproportionate to the legitimate objective pursued by the State of ensuring the loyalty of those responsible for protecting the public

interest. The Government compared that situation to the situation in the present case since there were, likewise, no restrictions on the applicants' employment in the private sector.

258. The Government also sought to distinguish *Ādamsons* (no. 3669/03, 24 June 2008), where the applicant had been disqualified from standing for election on account of his previous service in the Frontier Guard of the USSR, which had been under the authority of the KGB. In that case the Court had found that the criteria for applying restrictions had been overbroad and extended for an unreasonable period of time.

259. The Government likewise distinguished the *Ivanovski* case, which had concerned the dismissal of a president of the Constitutional Court who had been banned from any employment in the public service and academia and whose private-sector job prospects had been restricted and who had faced stigmatisation as a former informer.

260. The Government pointed out that, contrary to *Sõro* (cited above), the applicants' submissions contained no evidence that their dismissal as part of the lustration process had affected their emotional and psychological integrity, reputation or ability to develop relations with others.

261. The fourth applicant had been dismissed from his position for failure to submit a lustration declaration, even though he had known of that obligation in advance. Moreover, he had received reprimands during his employment in the civil service (see paragraph 22 above), showing that his integrity in the performance of his professional duties had been "far from exemplary".

2. The Court's assessment

(a) The Court's approach

262. The Court has examined a large number of cases dealing with the process of lustration following transition from totalitarian Communist rule to democracy, which, depending on the country, consisted in public exposure, partial disenfranchisement and restrictions on public and some sensitive public sector employment for individuals associated with the former totalitarian regimes, in particular secret collaborators with their security services (see the case-law cited in paragraph 204 above).

263. However, as the Venice Commission pointed out (see §§ 68-71 of its final report, in paragraph 108 above), the GCA deals with two distinct periods, the period of totalitarian Communist rule and the period when President Yanukovych was in power. The first four applicants' cases concern the latter period.

264. Therefore, while the principles developed by the Court in cases concerning post-Communist lustration may be applied in the present case, as far as it concerns the first four applicants, the specificity of their situation must be taken into account.

(b) Whether there was an interference with the applicants' right to respect for their private life

265. In view of the considerations above (see paragraphs 208 to 211) regarding the applicability of Article 8 of the Convention, the Court considers that there has been an interference with the applicants' right to respect for their private life.

266. Such interference is only compatible with Article 8 if it was "in accordance with the law" and "necessary in a democratic society" to attain one or more of the aims set out in its second paragraph.

(c) Was the interference "in accordance with the law"?

267. The measures applied to the applicants had their basis in domestic law, the GCA. The Act was published, so there is no reason to doubt its accessibility. It was also sufficiently foreseeable, as far as the applicants are concerned. The GCA contained a list of the positions whose holders would be subject to restrictive measures under the Act (see paragraphs 73 to 75 above and compare *Anchev*, cited above, § 96).

268. The applicants' inability to predict that such legislation would be enacted when taking up the posts which triggered the application of restrictive measures to them does not call into doubt the interference's lawfulness in Convention terms. Non-retrospectivity is only prohibited as such under Article 7 § 1 of the Convention with respect to criminal offences and penalties (ibid., § 97), whereas the measures provided for under the GCA are not of that nature (see paragraphs 151 to 158 above).

269. That said, the fact that the conduct the applicants engaged in was legal at the relevant time is a factor which can be taken into account in assessing the necessity of the interference.

(d) Did the interference pursue a legitimate aim?

270. In cases concerning post-Communist lustration in other Central and Eastern European States the Court has held that lustration measures pursue the legitimate aims of the protection of national security and public safety, the prevention of disorder, and the protection of the rights and freedoms of others (see *Sidabras and Džiautas*, § 55, *Naidin*, § 51, and *Anchev*, § 100, all cited above).

271. The Court notes that, according to the Venice Commission's assessment, the GCA pursued two legitimate aims: (i) protecting the society from individuals who, due to their past behaviour, could pose a threat to the newly established democratic regime and (ii) to cleanse the public administration of individuals who had engaged in large-scale corruption (see §§ 23 and 24 of the Commission's interim opinion, in paragraph 108 above).

272. The Court sees no reason to doubt that in the relevant period the Ukrainian civil service did indeed face considerable challenges which justified the need for measures of reform to address the two goals identified by the Venice Commission (see also paragraphs 285 and 286 below). In that sense, the proclaimed goals of the GCA could be seen as broadly matching the aims recognised by the Court as legitimate in its case-law in respect of post-Communist lustration in other Central and Eastern European States (see paragraph 270 above).

273. The Court's role, however, is different from that exercised by the Venice Commission (see, *mutatis mutandis*, *Muršić v. Croatia* [GC], no. 7334/13, §§ 111 and 112, 20 October 2016, in relation to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) in that the Court must ascertain whether the measures applied to the applicants, in the specific circumstances of their cases, and not taken *in abstracto*, pursued a legitimate aim and were "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

274. In the Court's view, its previous findings in the post-Communist lustration cases (see paragraph 270 above) have only limited relevance in the present case, in particular as far as the first four applicants are concerned, since the measures provided for under the GCA are much broader in scope and were applied to the applicants in a context different from that which prevailed in the other Central and Eastern European countries when they implemented their lustration programmes.

275. Notably, in the above-cited cases the Court dealt with former (alleged) collaborators of the secret services of the totalitarian regime. In the present case, however, the applicants occupied posts in institutions of a State based, at least as a matter of principle, on democratic constitutional foundations – although they served during President Yanukovych's government, which was widely criticised for authoritarian tendencies and was perceived to be involved in large-scale systemic corruption. Moreover, their dismissal appears to have been based on a collective liability of individuals employed by State institutions during President Yanukovych's time in power, regardless of the specific functions they performed and their link to the antidemocratic tendencies and developments which occurred during that period. Therefore, the alleged threat posed by the wide range of persons subject to the GCA measures to the functioning of the democratic institutions cannot be equated to that posed in the cases of collaboration with totalitarian security services.

276. It is a well-established principle, in the Court's case-law (see *Ādamsons*, cited above, § 116) as well as in other Council of Europe documents concerning lustration (see, for example, the PACE Resolution, §§ 4 and 12 and PACE Guidelines, point "c", in paragraphs 104 and 105 above) that lustration may not be used for punishment, retribution or

revenge. The same is true of the impugned measures provided by the GCA (see also in this regard the Commission's final opinion, § 25, in paragraph 108 above).

277. According to the Supreme Court and the Government's submissions, the goal of the GCA was to restore trust in the public institutions and protect democratic governance (see paragraphs 92, 245, 246 and 252 above). However, those aims could conceivably have been achieved by less intrusive means such as, where possible, following an individual assessment, removing the applicants from their positions of authority and transferring them, where possible, to less sensitive positions. The far-reaching nature of the measures applied to the applicants (see paragraph 208 above), combined with the highly charged language used in section 1 of the GCA concerning the Act's aims (see paragraph 72 above) raise the possibility that some of those measures may have been motivated, at least in part, by vindictiveness towards those associated with the previous governments.

278. If that were to be shown to be the case, then, far from pursuing the aim of protecting democratic governance, the GCA measures could be seen as undermining that very governance through politicisation of the civil service, a problem the law was supposedly designed to combat (see the Government's submissions in paragraph 235 above).

279. In addition, it should not be overlooked that the GCA measures were applied to the applicants and that information about this was published immediately. In *Karajanov* (cited above, §§ 75-77) the Court held that publication of a decision of the North Macedonia's Lustration Commission declaring that the applicant had collaborated with the State security services in the 1960s had pursued no legitimate aim within the meaning of Article 8 § 2 because (i) the applicant had neither held public office nor been a candidate for public office at the time, and (ii) the decision had been published before the applicant's appeal against it had been examined by the courts.

280. The latter also occurred in the applicants' cases, and the Venice Commission expressed serious doubts about the compatibility of that aspect of the lustration procedure under the GCA with the Convention (see the Commission's interim opinion, §§ 98-100, in paragraph 107 above).

281. Moreover, the Venice Commission also warned of the consequences of an overbroad personal scope of application of the GCA for individual rights, highlighting generally that such a broad approach could be unjustified in view of the legitimate aim that the lustration measures sought to pursue, namely the protection of democratic governance and not revenge (see the Commission's final opinion, § 33, see paragraph 108 above).

282. In view of the above considerations the Court has doubts as to whether the interference in question pursued a legitimate aim. Given, however, that a more salient issue arises in respect of proportionality of the

interference (see, *mutatis mutandis*, *Chumak v. Ukraine*, no. 44529/09, § 48, 6 March 2018) the Court will proceed to examine the question of "necessity in a democratic society" on the presumption that the measures applied to the applicants pursued the legitimate aims referred to in paragraph 270 above.

(e) Was the interference "necessary in a democratic society"?

283. The Court reiterates that interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons cited for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 90, ECHR 2001-I).

(i) The first three applicants

284. The measures under the GCA were applied to the applicants on account of their perceived association with the rule of the former President Viktor Yanukovych.

285. It is not in dispute between the parties that the period of Mr Yanukovych's rule in Ukraine was characterised by a number of negative developments concerning respect for democracy, the rule of law and human rights, and that his government was perceived undemocratic and engaged in large-scale systemic corruption (see, in particular, paragraphs 233 to 237 above). A number of international observers also made comments pointing to such problems (see information and documents summarised in paragraphs 8 to 13, 106 and 111 to 113 above). That period culminated in the dramatic EuroMaidan events which led to the fall of Mr Yanukovych's government.

286. The Court, therefore, considers that, in such circumstances, measures of change and reform in the civil service, including measures against civil servants personally associated with the above-mentioned negative developments, were, in principle, justified.

287. The question which remains to be answered is whether, in applying restrictive measures to the applicants regardless of the specific functions they performed and based merely on the fact that they occupied certain relatively high-ranking positions during Mr Yanukovych's rule, the respondent State overstepped its margin of appreciation.

288. The Court has held, in the context of post-Communist lustration, that Contracting States which have emerged from undemocratic regimes have a broad margin of appreciation in choosing how to deal with the legacy of those regimes (see *Anchev*, cited above, § 102, with further references).

289. Given the circumstances set out in paragraph 285 above, the Court considers that the authorities in the present case should be afforded a similar margin of appreciation.

290. The Court notes, however, that, even in the context of cases involving transition from totalitarian rule to democracy and involving (alleged) collaborators of totalitarian security services, it has never been confronted with restrictive measures of such broad scope applied to civil servants merely for remaining in their posts under a government considered subsequently to be undemocratic.

291. Even in those cases the Court found violations of various provisions of the Convention where lustration measures had been applied on account of mere tangential association with them, without sufficient individualisation (see *Ādamsons*, § 116, and *Sõro*, §§ 60-64, both cited above).

292. Such individualisation, although generally deemed to be required (in the Court's case law, for example, see *Zickus v. Lithuania*, no. 26652/02, § 33, 7 April 2009; *Ādamsons*, § 125; *Soro*, §§ 60-61; *Turek*, § 115, all cited above, or more generally see the PACE Resolution, § 12, Venice Commission's interim opinion on the GCA, § 104 (c), and the publication of the Office of the UN High Commissioner for Human Rights on the operational framework for vetting in post-conflict States, in paragraphs 104, 107 and 114 above respectively), is not always indispensable at the level of each particular individual's case and may be done at the legislative level. However, cogent reasons have to be provided for the choice of such an approach (see *Anchev*, cited above, §§ 109-11). The quality of parliamentary and judicial review of the legislative scheme is a particularly important factor in that respect (see, *mutatis mutandis*, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 113-16, ECHR 2013 (extracts).

293. Other factors to be taken into account in assessing the compatibility of a legislative scheme involving the imposition of restrictive measures in the absence of an individualised assessment of an individual's conduct is the severity of the measure involved (see *Anchev*, cited above, § 111) and whether the legislative scheme is sufficiently narrowly tailored to address the pressing social need it seeks to address in a proportionate manner (see, for example, in the context of Article 3 of Protocol No. 1, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 22-28, 116-36, ECHR 2006-IV. However, for a restrictive measure to comply with Article 3 of Protocol No. 1, a lesser degree of individualisation could be sufficient, in contrast to situations concerning an alleged breach of Articles 8 to 11 of the Convention (ibid., § 115)).

294. Turning to the circumstances of the present case, the Court observes that application of the measures under the GCA to the applicants did not involve any individual assessment of their conduct. In fact, it was

never alleged that the applicants had themselves committed any specific acts undermining democratic governance, the rule of law, national security, defence or human rights. They were dismissed by operation of law merely for having occupied certain relatively high-ranking positions in the civil service while Mr Yanukovych was President of Ukraine. The subsequent allegations of misconduct on the part of the third applicant do not change that fact (see paragraph 305 below).

295. It remains for the Court to determine whether this legislative scheme, as applied to the applicants, met the above criteria developed in the Court's case-law.

296. As the Court has observed above (see paragraphs 208 to 211), the measures applied to the applicants were very restrictive and broad in scope. Therefore, very convincing reasons were required to show that they could be applied in the absence of any individual assessment of their personal conduct, by mere inference that their remaining in office in the period when Mr Yanukovych occupied the post of President sufficiently demonstrated that they lacked loyalty to the democratic principles of State organisation or that they engaged in corruption.

297. The Government did not point to any discussion of such reasons in the course of the parliamentary debates over the GCA. Quite on the contrary, section 1 of the Act lists "the presumption of innocence" and "individual liability" among the principles which are supposed to guide the cleansing process. For the Court, this indicates a certain lack of coherence between the Act's proclaimed aims and the rules it actually promulgated (see paragraph 72 above). The Constitutional Court has so far not completed its review of the constitutionality of the GCA and, therefore, the Court cannot benefit from its views on this point (contrast, for example, *Animal Defenders International*, §§ 13-33 and 113-16, and *Anchev*, § 110, both cited above).

298. Furthermore, the Court is not convinced that the legislative scheme was sufficiently narrowly tailored to address the "pressing social need" that the GCA ought to have been pursuing. In this connection, it is notable that the legislative scheme was significantly more broad and generalised than those adopted, for example, by Poland (see *Matyjek*, cited above, §§ 27-29) or Latvia (see *Ždanoka*, cited above, §§ 57 and 126), which were limited in application to those who played an active role in the activities of the former authorities which were contrary to democracy.

299. For instance, as the second and third applicants' cases illustrate, GCA measures could be applied even to a civil servant who had been appointed to his post a long time prior to Mr Yanukovych becoming President based merely on the fact that he failed to resign from his post within a year of Mr Yanukovych's taking office.

300. In other words, the element triggering the application of the restrictive measures under the GCA is Mr Yanukovych's taking office (see

paragraph 7 above) rather than any development undermining the democratic constitutional regime which may have occurred during his rule and with which the official concerned may have been associated. The Court considers that career civil servants cannot be subjected to restrictive measures of such severity merely for remaining in their positions in the civil service following the election of a new head of State.

301. There is no cogent explanation for the temporal frame set by the GCA as the main criterion for application of the restrictive measures under the Act (see, in this respect, § 51 of the Venice Commission's opinion in paragraph 108 above). The Government themselves appeared to argue that the GCA was a response to the negative results of the activities of all post-Communist elites (see paragraph 231 above). However, the period from 1991 to 2010 is excluded from the scope of the Act.

302. Likewise, there is no explanation for the one-year period as the key criterion for application of the GCA (see § 51 of the Venice Commission's opinion in paragraph 108 above). The Court also notes the first applicant's argument that the then President of Ukraine who had signed the GCA into law had himself served for nine months as a minister in President Yanukovych's government (see paragraph 223 above). The Government stressed, as one of the key goals of the GCA, the need to restore public trust in the State authorities through the visible renewal of their personnel (see paragraphs 252 and 254 above). It is difficult to see how, under such circumstances, that goal of perceived renewal could be achieved by "cleansing" officials of much lesser importance.

303. The Government cited, as a key element of proof of the anti-democratic nature of Mr Yanukovych's rule, the Constitutional Court's 2010 decision, which had the effect of increasing Mr Yanukovych's powers, as compared to those he had held when he was elected and which was criticised by the Venice Commission (see paragraphs 8, 106 and 234 above). However, the GCA attaches no importance to that decision or, for that matter, any other specific negative development in the period of Mr Yanukovych's rule, taking instead as the triggering element his taking office. In any event, no connection was shown between the applicants and any such specific negative developments.

304. Likewise, the Government alleged that, under Mr Yanukovych's rule, there had been a pattern of placement in the civil service of corrupt individuals based merely on personal loyalty and in disregard of democratic procedures and values (see paragraph 235 above). However, it was never shown that there had been any irregularity in the applicants' appointment or retention in office. Everything indicates that their career evolved in an ordinary fashion prior to President Yanukovych taking office and during his presidency. There is no indication that they were "placed" in the civil service and that their careers evolved in any unusually positive way under his rule.

305. As regards the Government's reference to the alleged politically motivated persecution of Mr Yanukovych's political opponents or EuroMaidan protesters (see paragraph 235 above), it has not been shown that any of the applicants were involved in any of those alleged abuses. A finding in that respect appears to have been made in respect of the third applicant, but this was reached internally, not subject to any independent review and was couched in very vague terms, providing little detail about the applicant's personal role in the events. In any event, that finding was made after the third applicant's dismissal and, therefore, was not determinative of the decision to apply the GCA to him (see paragraph 46 above).

306. The Court must also address the Government's argument to the effect that the measures provided by the GCA could not be individualised to any greater extent given the state of emergency created by hostilities in the Donetsk and Luhansk Regions (see paragraph 251 above). The Court notes, however, that Ukraine's declaration under Article 15 of the Convention, which Ukraine transmitted to the Secretary General of the Council of Europe on 5 June 2015, does not refer to the GCA as one of the measures covered by the derogation (see *Khlebik v. Ukraine*, no. 2945/16, § 22, 25 July 2017).

307. The Court is aware of the context of the events referred to by the Government and invoked in the derogation declaration and is prepared to take that context into account (ibid., § 71). But the supposedly urgent nature of the measures applied under the GCA is belied by the fact that they were applied to the applicants not on a provisional or temporary basis, but for ten years. Even assuming that certain personnel changes were a matter of urgency, there is no indication that the situation would have remained so unstable throughout the relevant period that it prevented a detailed review of each individual official's role and, based on such review, the phasing out of initial urgent measures at a later stage.

308. Lastly, the applicants were removed from the civil service and information about this was made publicly available before they could obtain a review of such measures. Even the *ex post facto* remedy available to the applicants operated with excessive delay and, as a result, the proceedings have so far lasted for almost half of the total ten-year period of their exclusion from the civil service and certain other public sector employment.

(ii) The fourth applicant

309. The Court notes that, as with the third applicant, despite the Government's reference to the reprimands the fourth applicant received in 2006 and 2008 (see paragraphs 22 and 261 above), there was no connection between those reprimands and the application of the GCA to him.

310. The fourth applicant was dismissed and subjected to restrictive measures under the GCA because he had filed his lustration declaration four days late (see paragraphs 30 and 34 above).

311. It is unclear whether, had the applicant filed his declaration within the time-limit, he would have been subject to the GCA measures anyway. It appears that this would have been the case, since he had occupied his position in the Tax Service from 2010 to 2014 (see paragraphs 73 (i) and 74 above). The Government's observations which extended to all applicants (see paragraphs 243 to 254 above) indicate that they considered that the fourth applicant, like the first three, was an official associated with the government of President Yanukovych and that the GCA therefore applied to him on that account. In other words, even if he had filed the declaration within the time-limit, the outcome for him would likely have been the same.

312. Therefore, if the applicant's dismissal and application of the other GCA measures to him was to be seen as based on his association with the rule of President Viktor Yanukovych, then the considerations set out above concerning the first three applicants also apply to the fourth applicant.

313. If the applicant was subject to the measures under the GCA merely for filing the declaration four days late, even though the GCA measures otherwise did not apply to him, the Court is unable to perceive how measures of such seriousness could be seen as proportionate to the trivial nature of the applicant's omission. Neither the domestic courts nor the Government explained this in any way. The applicant's situation was particular in that he was ill at the time the time-limit for filing expired. No argument has been made that his delay and filing of the declaration the day after having left the hospital caused any problem in the context of the overall screening process.

314. The essence of the declaration in question was the official's statement to the effect that the GCA restrictive measures applied or did not apply to him (see paragraph 77 above). However, in the present case there was never any suggestion that there were any unknown facts in the fourth applicant's career which the declaration could reveal. It is undisputed that the only possible grounds for application of the GCA to the applicant was the fact that he had occupied his position in the Tax Service in 2010 to 2014, a fact which was well known to his employer to whom the declaration was submitted, the Tax Service itself. In that sense the obligation to file a declaration in the present case was different to the situations where such an obligation was aimed at revealing certain potentially hidden facts, such as secret collaboration with the security services of former totalitarian regimes (as was the case, for example, with the Polish lustration system, examined in many judgments including *Matyjek*, *Bobek* and *Luboch*, all cited above).

315. Therefore, the Court is unable to perceive how imposition of such a serious restrictive measure for a minor delay in filing such a technical statement could be seen as "necessary in a democratic society".

(iii) The fifth applicant

316. The Court has long held that the timing of adoption and implementation of post-Communist lustration measures is a key consideration in assessing their proportionality. This has always been the position of all Council of Europe institutions expressing an opinion on the matter.

317. In *Ādamsons* (cited above, §§ 116 and 129), the Court stressed, as one of the key principles of its case-law in respect of lustration, that the measures of lustration are, by their nature, temporary, and that the objective necessity for the restriction of individual rights resulting from this procedure decreases over time. In that case the Court found a violation of Article 3 of Protocol No. 1 on account of the application of lustration legislation to the applicant after a ten-year career in independent Latvia.

318. In *Ivanovski* (cited above, § 185), the Court already found the fact that lustration legislation had been enacted sixteen years after transition to democracy was a relevant factor in finding that the lustration measures applied to the applicant as a collaborator of the former secret police had been disproportionate. Likewise, in *Sidabras and Džiautas* (cited above, § 60), the fact that lustration measures had been applied nine and thirteen years after the applicants' departure from the KGB was a factor in finding a violation of Article 14 of the Convention taken in conjunction with Article 8.

319. Even in *Ždanoka,* where the Court found no violation of Article 3 of Protocol No. 1, and which was decided thirteen years ago, the Court already held that the Latvian parliament had to keep the statutory restriction on former Communist Party members under constant review, "with a view to bringing [them] to an early end" (cited above, § 135).

320. In the present case the lustration measures were enacted and applied more than twenty-three years after Ukraine's transition from totalitarian Communist rule to democracy. What is more, they were not targeted at an alleged KGB agent but a former official in the Communist Party of the Ukrainian SSR in the absence of any indication that his activities in that party were associated with any human rights abuses or specific anti-democratic activities. The above considerations, therefore, apply also and *a fortiori* in the present case. Implementation of restrictive measures of such seriousness to people who occupied positions in the Communist Party of the former USSR and of the Ukrainian SSR, in the absence of any suggestion of specific wrongdoing on their part, after such a long lapse of time requires a very strong justification.

321. The Court finds that the Ukrainian authorities have failed to give cogent reasons to justify lustration with regard to persons who merely occupied certain positions in the Communist Party prior to 1991 (see also, in this respect, § 69 of the Venice Commission's final opinion, in

paragraph 108 above). The Government's observations and the domestic decisions were virtually silent on that point.

322. The Court considers that the disproportionate nature of the lustration measure is particularly pronounced in the fifth applicant's case. No serious argument has been made that the applicant, a local official working in agriculture, could conceivably pose a threat to the newly established democratic regime. The domestic authorities demonstrated total disregard for his rights.

(iv) Conclusion

323. In summary, it has not been shown that the interference in respect of any of the applicants was necessary in a democratic society.

324. There has, accordingly, been a violation of Article 8 of the Convention in respect of all applicants.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE SECOND APPLICANT

325. The second applicant complained that he had not had an effective domestic remedy in respect of his complaints under Articles 6 and 8 of the Convention. Article 13 of the Convention reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

326. The Government contested that argument.

327. The Court notes that this complaint is closely linked to the complaints examined under Articles 6 and 8 and must likewise be declared admissible.

328. However, given the grounds on which it has found violations of Articles 6 and 8, the Court considers that no separate issue arises under Article 13. Consequently, the Court holds that it is not necessary to examine this complaint separately.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

329. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

330. The first applicant claimed 7,000 euros (EUR) and the other applicants claimed EUR 15,000 each in respect of non-pecuniary damage.

331. The second and third applicants also claimed EUR 16,835.43 and EUR 43,362.24 in respect of pecuniary damage, representing lost wages.

332. The Government contested those claims.

333. The Court notes that the second and third applicants' claims for lost wages are pending at the domestic level. It is the Court's understanding that the applicants have a legitimate expectation of recovering the lost wages and any associated amounts due to them under domestic law. There is no reason to doubt that, following the Court's judgment, the domestic courts would be able to resume the examination of those cases and make appropriate awards for the lost wages. The Court, on this understanding, rejects the applicants' claims in respect of pecuniary damage.

334. At the same time the Court stresses that, should the applicants' substantiated and reasonable claims for lost wages be rejected without due justification at the domestic level or should their examination be so delayed as to render further proceedings futile, it would be open to the applicants, if appropriate, to lodge new applications in that respect.

335. The Court, ruling on an equitable basis, awards the applicants EUR 5,000 each in respect of non-pecuniary damage.

2. Costs and expenses

336. The first applicant also claimed EUR 1,500, the second and third applicants EUR 900 each and the fourth and fifth applicants EUR 850 each for the costs and expenses incurred before the Court.

337. The Government contested those claims.

338. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 to the first applicant and EUR 300 to the second to fifth applicants each for the proceedings before the Court.

3. Default interest

339. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Joins* to the merits and dismisses the Government's objection in respect of exhaustion of domestic remedies by the first three applicants;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the first three applicants;

5. *Holds* that there has been a violation of Article 8 of the Convention in respect of all applicants;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) to the first applicant and EUR 300 (three hundred euros) to the second to fifth applicants each, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

APPENDIX

No.	Application no.	Lodged on	Applicant's name year of birth place of residence	Name of lawyer and place of practice
1.	58812/15	21/11/2015	**Vyacheslav Borisovich POLYAKH** 1970 Kyiv	Denis Vyacheslavovich RABOMIZO Kyiv
2.	53217/16	25/08/2016	**Dmytro Viktorovych BASALAYEV** 1976 Mykolayiv	Gennadiy Mykolayovych AVRAMENKO Chernigiv
3.	59099/16	03/10/2016	**Oleksandr Oleksiyovych YAS** 1954 Chernigiv	same
4.	23231/18	11/05/2018	**Roman Oleksiyovych YAKUBOVSKYY** 1977 Yaremche, Ivano-Frankivsk Region	same
5.	47749/18	03/10/2018	**Sergiy Ivanovych BONDARENKO** 1957 Oleksandrivka, Donetsk Region	same