

Dismissal of Supreme Court judge under Ukraine's Government Cleansing Act led to violation of his rights

In today's Chamber judgment¹ in the case of [Samsin v. Ukraine](#) (application no. 38977/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the dismissal of a Supreme Court judge, Igor Samsin, under the Government Cleansing (Lustration) Act (GCA) brought in to address negative developments within the civil service in the period when former President Viktor Yanukovich was in power. The law was applied systematically to specific categories of civil servant who had been in post between 2010 and 2014. Mr Samsin was banned from employment in the civil service until the end of 2024, and his name was put in a publicly accessible Lustration Register. In addition, as his resignation application was not considered, he was deprived of the benefits associated with judicial retirement despite being close to retirement age.

The Court found in particular that the measures envisaged by the GCA and imposed on the applicant had not been necessary in a democratic society.

Principal facts

The applicant, Igor Leonovych Samsin, is a Ukrainian national who was born in 1957 and lives in Kyiv (Ukraine).

Mr Samsin was first appointed as a judge in 1987 and in 1995 he was appointed to the Supreme Court. In 2003 that appointment was confirmed for an indefinite period (until retirement).

The Government Cleansing (Lustration) Act (GCA) came into force on 16 October 2014. Its stated purpose was to address negative developments in terms of respect for democracy, the rule of law and human rights within the civil service when Viktor Yanukovich was president of Ukraine. It provided for the dismissal of certain categories from their positions in the civil service – notably members of the High Council of Justice and the High Judicial Qualifications Commission who had occupied their positions for at least a year in the period from 25 February 2010 to 22 February 2014 or for any period of time from 21 November 2013 to 22 February 2014. Those persons were to be banned from occupying positions in the civil service or local government for ten years.

The GCA required all State and local government officials to lodge, within the time frame approved by the relevant government entities, a statement declaring whether any of the restrictions in the GCA applied to them. Failure to file a declaration or stating that the GCA applied would lead to dismissal and imposition of other restrictive measures under the Act.

The President of the Supreme Court determined that the court's judges had to submit the declarations required by the GCA by 11 November 2014. On 11 December 2014 the Acting President

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

of the Supreme Court informed the Ministry of Justice that Mr Samsin had failed to submit that declaration. In September 2015 the Ministry applied to the High Council of Justice (HCJ) for Mr Samsin to be dismissed from his judicial post on the grounds that he had not submitted his declaration, and because the GCA applied to him as he had been Chair of the High Judicial Qualifications Commission from 2010-2014.

In July 2016 Mr Samsin attempted to resign from the Supreme Court by submitting an application for resignation to the HCJ. The HCJ decided to postpone its examination of his resignation until it had examined the Ministry's applications for his dismissal. In the proceedings before the HCJ Mr Samsin argued that he had not submitted a lustration declaration since whatever he wrote in the declaration would lead to his dismissal. He also pointed out that, in any event, he had already been removed from the High Judicial Qualifications Commission in 2014 under the Restoration of Trust in the Judiciary Act; which provided that the powers of the members of the High Judicial Qualifications Commission be terminated and that new elections be held for those posts. At the same time, he submitted that the GCA was contrary to the principles of post-Communist lustration set out in Council of Europe documents, in particular as it provided for measures against civil servants without any evaluation of their individual role and conduct. He emphasised that he had not engaged in any blameworthy conduct.

On 25 April 2017 the HCJ dismissed him from his position of Supreme Court judge. He was also banned from employment in the civil service until the end of 2024, and his name was put in a publicly accessible Lustration Register. As a consequence, the HCJ did not consider his resignation application because he had already been dismissed from judicial office. This deprived him of the benefits associated with judicial retirement.

Mr Samsin appealed against the decision. On 18 September 2018 the Administrative Court of Cassation (ACC) quashed the HCJ's decision, finding that it had been disproportionate. The GCA's goal 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 applicant to resign.

The Ministry and the HCJ appealed. On 31 January 2019 the Grand Chamber of the Supreme Court, considering that the proportionality principle had not been breached, quashed the ACC's ruling and upheld the HCJ's decision.

Mr Samsin lodged a complaint with the Constitutional Court, alleging that the GCA provisions were unconstitutional. As of late May 2021, those proceedings were still pending.

Complaints, procedure and composition of the Court

The applicant complained that his dismissal from the position of Supreme Court judge and the measures applied to him under the Government Cleansing (Lustration) Act had breached his rights under Article 8 (right to respect for private and family life) of the Convention.

Moreover, he complained, under Article 14 (prohibition of discrimination) taken in conjunction with Article 8 of the Convention, that he had been discriminated against *vis-à-vis* persons who had not occupied high-ranking positions during the presidency of Mr Yanukovich and *vis-à-vis* another judge who had been in a similar situation to the applicant but had been allowed to resign.

In addition, he argued that the HCJ had unlawfully postponed the examination of his resignation application since the Judiciary and the Status of Judges Act 2010 in force at that time provided that resignation applications had to be examined within a month of receipt.

The application was lodged with the European Court of Human Rights on 18 July 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra O’Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Ganna Yudkivska (Ukraine),
Stéphanie Mourou-Vikström (Monaco),
Jovan Ilievski (North Macedonia),
Lado Chanturia (Georgia),
Ivana Jelić (Montenegro),

and also Martina Keller, *Deputy Section Registrar*.

Decision of the Court

Article 8

The Court had already held in its judgment [Polyakh and Others v. Ukraine](#) (nos. 58812/15 and 4 others) of 2019 that application of measures under the Government Cleansing Act constituted an interference with the right to respect for private life, on account of the impact the combination of dismissal and other restrictive measures under the Act had on the applicants. The same considerations were applicable in Mr Samsin’s case. Indeed, he had suffered considerable prejudice in terms of retirement payments to which he was entitled.

In *Polyakh and Others* the Court found a violation of Article 8, holding that the application of measures under the GCA had not been based on an individualised assessment of their conduct, in the absence of a sufficient explanation for this approach.

Referring to those findings, in Mr Samsin’s case the Court rejected the Government’s argument that an individualised assessment of Mr Samsin’s role and conduct had not been possible because he had failed to submit a lustration declaration. His membership of the Commission in 2010-2014 was a matter of public record.

It also rejected their argument that his failure to submit a declaration demonstrated a disregard for the law and was incompatible with his being a Supreme Court judge. The goal of removing those who could possibly have been associated with the negative developments during the previous president’s mandate had already been achieved through the implementation of the Restoration of Trust in the Judiciary Act and Mr Samsin had asked to be allowed to resign from his post on the Supreme Court. The Court found that, in the absence of any evidence or known acts of misconduct on Mr Samsin’s part, the goals pursued would not have been hindered by accepting his resignation.

The imposition on the applicant of the GCA measures had not been necessary in a democratic society. There had therefore been a violation of Article 8 of the Convention.

Article 14 taken in conjunction with Article 8

The Court did not consider it necessary to examine the applicant’s complaints under these articles.

Just satisfaction (Article 41)

The Court held that the question of pecuniary damage resulting from the violation found was not ready for decision and accordingly reserved that question, inviting the Government and the applicant to submit their written observations. The Court held that Ukraine was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.