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RESOLUTION  
ON THE LAW ON LUSTRATION IN UKRAINE

At its meeting in Gdansk on 15 May 2015 the European Association of Judges considered with concern the legislation in Ukraine concerning lustration and its application to judges in Ukraine.

The EAJ notes the views expressed by Venice Commission in its interim report and in particularly its main conclusion at para 104:

- 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 Yanukovich 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.*

The EAJ notes and endorses those conclusions in particular as they apply to the judiciary. The independence of judiciary requires that particular caution and restraint be applied when any question of lustration of judges is proposed.

In emphasis of the above, the EAJ stresses that treating the holding of judicial office during a given period as in itself a ground for lustration is objectionable; the increasing lapse of time since that period ended also increases the strength of that objection.

The EAJ is further concerned that the transitional provisions of law on the Judiciary and the Status of Judges (art 6) are being used as a means of disguised lustration. Any procedure for evaluation of judicial

performance should not be used as a means of lustration. In particular, the EAJ considers the provision in that law (art 85) for subjecting all judges in the Ukraine to a system of tests and examinations is incompatible with any accepted European or international recognized procedure of evaluation.

Gdansk, May 16<sup>th</sup>, 2015