

2015-05-28

Fråga-svar

Ukraina. Amnesti och lustration.

Fråga

- Har det utfärdats någon amnesti för personer som anklagats för samröre med separatister?
- Hur fungerar lustrationsprocessen?

Svar

Amnestier

I samtal med Lifos berättar Scott E. Brown, förtroendeadvokat för Sveriges ambassad i Kiev och Vladimir Lukovich, advokat (november 2014):

Det finns inga gällande amnestier. Det florerar mycket uppgifter i media om att terrorister har gripits av militären men många av dessa fall är rent påhitt och det är svårt att bekräfta några uppgifter. De fall som är kända och har prövats i domstol handlar i första hand om personer som anklagas för att ha lämnat över hemlig information till separatister, dvs. mer liknande spionerianklagelser än terrorism.

Redan i april fanns planer för en amnestilag, samlat i ett åtgärdsprogram vid namnet Geneva Statement. Syftet var att minska spänningar mellan grupperingarna i konflikten samt öka säkerheten för alla. UN Office of the High Commissioner for Human Rights (OHCHR) (juni 2014) skriver:

Amnesty should be granted to the protestors who left seized buildings and surrendered weapons, with the exception of those found guilty of capital crimes (s. 5)

I september instiftades en amnestilag. Tidningen The Telegraph (2014) skriver:

MPs approved a separate bill guaranteeing an amnesty for "participants of events in the Donetsk and Lugansk regions", which appeared to mean fighters on both sides of the conflict.

I november rapporterade flera källor att lagen upphävts. Human Rights Watch (2015) har sammanfattat händelseutvecklingen i en årsrapport:

Following a September cease-fire agreement between the Kiev government and pro-Russian rebels, parliament passed a law granting three years of semi-autonomy to rebel-controlled areas and amnesty to rebels who have not committed grave abuses. In November, after insurgents organized elections in the Donetsk and Luhansk regions, which Kiev deemed illegal, President Petro Poroshenko requested that parliament repeal the law.

I Minsk II-avtalet från februari 2015 ingår att Ukraina ska formulera en ny amnestilag för händelser i Donetsk och Luhansk.

Regional Treaties, Agreements, Declarations and Related (2015):

Ensure pardon and amnesty by enacting the law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Luhansk regions of Ukraine.

I det ukrainska lagförslaget gjordes sedan ett undantag för personerna som varit inblandade i nedskjutningen av passagerarplanet MH-17 i juli 2014. Jamestown Foundation (februari 2015):

... the non-promulgated Ukrainian law (see above) specifically excludes the MH-17's downing from the amnesty or pardon of crimes. But Article 5 of the new Minsk agreement does not provide for any exceptions.

Ingen information har hittats om hur arbetet med lagstiftningen fortlöper, men i en artikel av nyhetsbyrån Unian framgår det att den ännu inte implementerats. Unian (april 2015):

The Russian-backed militants in the Donbas won't continue the process of exchanging prisoners until Ukraine adopts an amnesty law, Ukrainian negotiator and second Ukrainian President Leonid Kuchma told journalists after the first meeting of the Constitutional Commission on Monday, according to an UNIAN correspondent.

Lustration

Scott E. Brown och Vladimir Lukovich (november 2014):

Lifos fråga: Hur är Kievs strategi när det gäller offentliga funktionärer i Donetsk och Luhansk (de delar som återtagits från separatister)? Inleds rättsprocesser?

Svar: Ja det finns flera fall där åtal har väckts. Regimen har en inställning att hela Janukovichs administration per definition var

kriminell. Man försöker bygga rättsprocesser utifrån den utgångspunkten. I de fall då brott inte kan konstateras så använder man sig av den lustrationslagstiftning som nyligen antagits för att helt enkelt avskeda folk. I vilken utsträckning lustration kommer att ske och på vilken nivå är oklart.

OHCHR (november 2014):

A law 'On the Purification of Government' aimed at subjecting officials who performed State or local self-government functions to a screening procedure entered into force on 16 October.

It is to be applied to people who implemented or contributed to measures aimed at "usurpation of power" by former President Yanukovich, undermining national security or violating human rights and freedoms. (s. 33)

OHCHR (augusti 2014)

The lustration⁵³ or vetting of corrupt officials and those associated with the previous administration was one of the central demands of the Maidan activists and remains an important focus of civil society. Local communities have been playing a key role in this process by demanding better governance by local and regional officials, including accountability.

It proposes to dismiss virtually all state officials occupying leading posts in previous years, thus entailing wholesale dismissal within certain departments.

⁵³ The term "lustration" literally means "cleansing" but is taken to mean "investigation and dismissal" of corrupt officials and those associated with previous regimes. (s. 23)

Lagstiftningen har i efterhand kritiserats för att vara godtyckligt applicerad. Freedom House (januari 2015):

However, critics later warned that the measure, which was initially approved without a publicly available text, was being applied in an arbitrary manner, meaning some individuals could be targeted unfairly while more culpable figures avoid scrutiny because they have political connections or other influence. Others pointed out that there was no independent body to monitor the lustration process. By year's end, the law was being challenged in the courts.

Även en officiell utvärdering visade på lagens brister och i januari 2015 reformerades lagen.

OHCHR (februari 2015):

Assessment of the law by the Venice Commission revealed several shortcomings, including: an overly broad timeframe for its

application; collective guilt by virtue of belonging to a category of public officials; and a lack of fair trial guarantees. (s. 22)

On 31 January, amendments to the lustration law came into force enabling the selective exemption of high ranking military and security officers from the lustration procedure due to the ongoing conflict. At least one case resulted in the reinstatement of a general previously dismissed under the lustration law. The amendment may be abused and carries the risk of exemptions being obtained through corruption or other illicit means. (s. 22)

Nyhetsbyrån Interfax-Ukraine rapporterar att lustrationsprocessen fortgår under tiden den nya lagen utvärderas. Interfax-Ukraine (februari 2015):

Ukraine has explained to Venice Commission experts that, while the lustration legislation undergoes review and amendments for two months, a relatively small number of top-ranking officials will be subjected to vetting, he said.

The amendments, in particular, grant independent status to the public lustration commission working now, Petrenko said. The legislation would also introduce an individual amnesty institution, on which Venice Commission experts have insisted, he said.

[Ukrainian Justice Minister Pavlo] Petrenko said he was sure that the third and fourth phases of lustration will go according to plan.

Antalet offentliganställda som påverkats av lustrationslagen varierar i olika källor, men i alla omnämnda fall handlar det om avsked snarare än åtal. Johnson's Russia List (november 2014):

Opening the government meeting on Wednesday, Yatsenyuk also said that some 500 officials had been fired based on the results of the second stage of lustration.

“Some forty top public officials were fired from the Cabinet of Ministers during the first stage. We have now fired some 500 people in the second stage of lustration,” he said.

The new government will continue lustration, he said.

En senare siffra visar på 395 avsked till följd av lustrationsprocessen. OHCHR (februari 2015):

By 12 February 2015, 395 high-ranking State officials had been dismissed, including heads and deputies of ministries, government agencies and State bodies at central, regional and local levels. More than 200 decisions have been appealed in court. Eight decisions were confirmed, while three were overturned, leading to reinstatements. The remaining cases are on hold pending a Constitutional Court ruling on the constitutionality of the law. (s. 22)

Zik.ua (november 2014):

In total, about one million officials are to be screened by the law.

Officials are to be screened for their unaccountable wealth or loyalty during the Miadan revolution.

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

Elektroniska källor

Freedom House, *Freedom in the World 2015 - Ukraine*, 2015-01-28, <http://www.refworld.org/docid/54d0d7ad6.html> (hämtad 2015-05-28)

Human Rights Watch, *World Report 2015 - Ukraine*, 2015-01-29, <http://www.refworld.org/docid/54cf837515.html> (hämtad 2015-05-26)

Interfax-Ukraine, *Lustration in Ukraine to be continued - justice minister*, 2015-02-04, <http://en.interfax.com.ua/news/general/248643.html> (hämtad 2015-05-28)

Jamestown Foundation, *Minsk Two Armistice Rewards Russia's Aggression, Mortgages Ukraine's Future (Part Two)*, 2015-02-19, https://www.ecoi.net/local_link/296962/419267_en.html (hämtad 2015-05-26)

Johnson's Russia List, *Interfax: Some 540 Ukrainian officials fired in two stages of lustration – Yatsenyuk*, 2014-11-26, <http://russialist.org/interfax-some-540-ukrainian-officials-fired-in-two-stages-of-lustration-yatsenyuk/> (hämtad 2014-12-01)

Regional Treaties, Agreements, Declarations and Related, *Package of Measures for the Implementation of the Minsk Agreements*, 2015-02-12, <http://www.refworld.org/docid/553609e44.html> (hämtad 2015-05-26)

The Telegraph, *Ukraine separatists granted self-rule and amnesty as Kiev agrees EU pact*, 2014-09-16,

<http://www.telegraph.co.uk/news/worldnews/europe/ukraine/11099126/Ukraine-separatists-granted-self-rule-and-amnesty-as-Kiev-agrees-EU-pact.html>
(hämtad 2014-12-01)

UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the human rights situation in Ukraine*, 2015-02-15,
<http://www.refworld.org/docid/55115a7d4.html> (hämtad 2015-05-28)

UN Office of the High Commissioner for Human Rights (OHCHR),
Report on the human rights situation in Ukraine,
2014-11-15, <http://www.refworld.org/docid/546ef1a94.html> (hämtad 2014-12-01)

UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the human rights situation in Ukraine*, 2014-08-17,
https://www.ecoi.net/file_upload/1226_1409730618_ukrainereport28august2014.pdf (hämtad 2014-12-01)

UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the human rights situation in Ukraine*, 2014-06-15,
<http://www.refworld.org/docid/53a7f1ea4.html> (hämtad 2014-12-01)

Unian, *Kuchma: Militants won't exchange prisoners until amnesty law in place*, 2015-04-06, <http://www.unian.info/society/1064190-kuchma-militants-wont-exchange-prisoners-until-amnesty-law-in-place.html>
(hämtad 2015-05-26)

Zik.ua, *Lustration of officials picks up in Western Ukraine*, 2014-11-02,
http://zik.ua/en/news/2014/11/02/lustration_of_officials_picks_up_in_western_ukraine_537038 (hämtad 2014-12-01)

Muntliga källor

Samtal med Scott E. Brown, förtroendeadvokat för Sveriges ambassad i Kiev och Vladimir Lukovich, advokat, 2014-11-20