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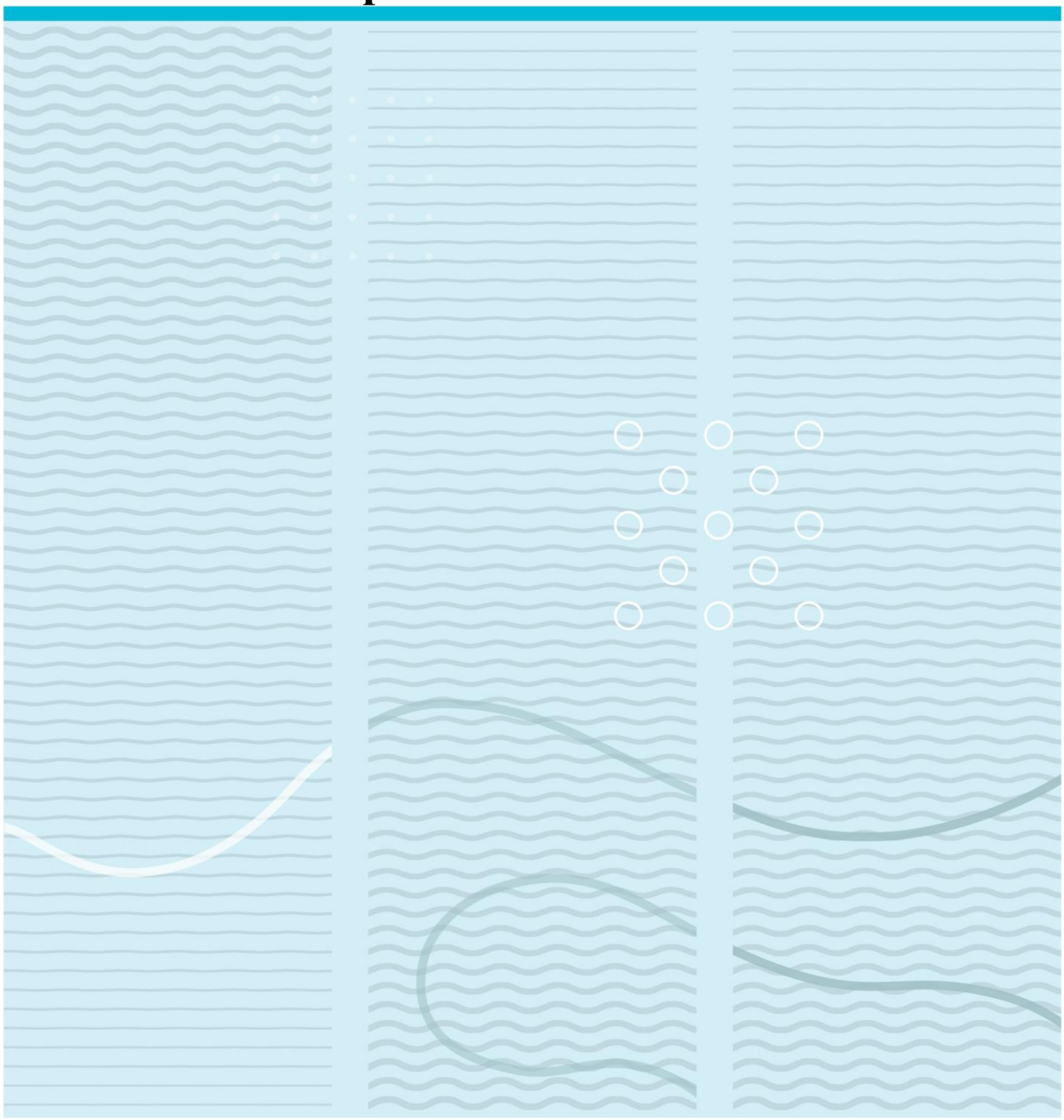
A Critical Discourse Analysis of the role of the lustration law on the process of democratization in Ukraine after the power shift in 2014



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This thesis is worth 45 study points

Abstract

The 2013 – 2014 Ukrainian revolution, which started as a non-violent demonstration for European integration, rapidly developed into a riot against corrupt government officials, human rights violations and power usurpation, which resulted in mass killings and full-scale war in the Eastern part of the country, which has escalated into prolonged conflict. One of the claims of the Euromaidan supporters was for the protection and cleansing from state institutions of corrupt high-ranking officials from the previous regimes through the 'special, transitional public employment laws' (David, 2015) referred to as lustration laws.

The objective of this study is to conduct a critical discourse analysis of the lustration policies implemented in post-Euromaidan Ukraine in 2014 through the prism of transitional justice (TJ) literature and in light of the experiences of other CEE countries. A further objective is to explore the impact of the Ukrainian lustration law on the process of democratization in the country. Fairclough's three-dimensional model is applied to one legal document in the form of the Ukrainian Law 'On Government Cleansing' and two non-legal documents in the form of newspaper articles in order to see what discourses prevail in the texts in the context of democratization and what social effects they might have.

Keywords: Lustration, transitional justice, human rights, corruption, Euromaidan, discourse analysis

Contents

1 Introduction

1.1 Background information

The matter of the Ukraine crisis and the attempts of the Ukrainian government to frame events in Ukraine from 21 November 2013 – onwards as 'crimes against humanity and war crimes', coupled with the transitional justice (TJ) mechanisms applied in post-Euromaidan Ukraine, has had a growing influence on the political debate among the EU member states and great powers in face of U.S. and Russia.

Ex-president Yanukovych's refusal to sign the Association Agreement (AA) with the European Union (EU) on 21 November 2013 contributed to the violent protests known as the Euromaidan or the Revolution of Dignity. The protests were in response to widespread corruption, nepotism, and a tendency towards authoritarianism, which was associated with the Yanukovych regime and the Soviet era. The declared goal of the thousands of Ukrainians protesting was to orient themselves toward the European democratic practices, a high standard of living and quality of life and to become a member state. Yanukovych's refusal to sign the AA, however, was perceived as a step that moved Ukraine closer to Russia's sphere of influence.

The demonstration began peacefully but tensions between protesters and police escalated, and the protests spread to other Ukrainian cities, causing multiple deaths and injuries. During the revolution, thousands of statues of Vladimir Lenin, the founder of Soviet communism, were destroyed, marking the revival of the process of decommunization.

The power shift in state government in Kiev on 22 February 2014, resulted in protests in the Crimean Peninsula against the new political regime, following the successful accession of the peninsula to Russia. The United Nations General Assembly (UNGA) condemned the act as an "illegal annexation"[1] (UNGA, 2014). In parallel, both a negative attitude toward a new pro-

[1] The term 'annexation' is used here to mean the occupation of a territory as a result of a unilateral declaration as though there was no question about its right to that territory it was my own

European government in Kiev led by Turchynov[2] from parts of Eastern Ukraine, and the willingness of people from Donetsk and Luhansk regions to hold a referendum on federalization[3] evoked negative reactions in the Parliament of Ukraine - Verkhovna Rada (hereinafter Rada), so Ukrainian armed forces fighting on behalf of the government were sent to the regions in South-East Ukraine. As a result, within a short time, separatists[4] in Donetsk and Lugansk took over government buildings in the regions and established the 'Lugansk People's Republic', and the 'Donetsk People's Republic' (Sakwa, 2015, p. 150). For its part, the Ukrainian provisional government led by Turchynov launched a large scale anti-terrorist operation in Eastern Ukraine, which has resulted in significant loss of life on both sides.

Ukraine's internal armed conflict is now, in 2018, entering its fifth year, and there is little evidence of it ending; from the mid-April 2014 up to 15 May 2017, over ten thousand people, including two thousand and seven hundred seventy-seven civilians, have been killed, and over twenty-three thousand injured (UN News, 13 June 2017) and more than half millions of people have been internally displaced as of end-2016 (UNHCR, 2018). A day does not go by without grave human rights violations, including freedom of expression and media, the right to free movement, torture and other forms of ill-treatment in the territories controlled by armed groups (Human Rights Watch, n.d.).

The Law 'On Government Cleansing', commonly referred to as the Lustration Act, was one among numerous reforms adopted by the reconstituted Parliament[5] in Kiev in order to ensure transition to democratic values, the rule of law and human rights in Ukraine (Rada, 2014, p. 2). The Law states that the cleansing process aims at "keeping away from public governance those persons

[2] The Ukrainian Parliament appointed its speaker Oleksandr Turchynov as interim president following the dismissal of President Yanukovych on 22 February 2014.

[3] 'Referendum on federalization' is used here as a referendum on the status of Donetsk and Luhansk regions. Federalization was one of the key demands made by separatists in Donetsk and Luhansk at the start of the conflict, as it would give largely Russian speaking regions in Eastern Ukraine a great degree of autonomy from the central government.

[4] The term 'separatists' is used here as a particular group of people who believes that it should be independent and have its own government.

[5] Presidential elections were held in Ukraine on 25 May 2014, resulting in Poroshenko being elected President of Ukraine.

who made decisions, took actions or inaction (and/or contributed to their taking) facilitating power usurpation by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of the national security and defense or violate human rights and freedoms" (Rada, 2014, p. 2).

Lustration, which can be broadly defined as a form of vetting, is one of the instruments used in the field of transitional justice (TJ) and is designed to address past wrongdoings. Transitional Justice, defined as "the conception of justice associated with the periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel, 2003), may contribute to the reconstruction of democracy and the rule of law following violence, and to a deepening respect for human rights in conflict and post-conflict societies.

The collapse of the Soviet Union has led to a number of countries in Central and Eastern Europe (CEE) implementing lustration policies in order to prevent persons associated with past abusive regimes from holding public office. At that time Ukraine was not among these countries and had not made any steps to combat the totalitarian past. It took Ukraine 23 years to pass the Lustration Law following the Euromaidan protests.

The aim of this study is to explore the impact of the Ukrainian Law 'On Government Cleansing' on the process of democratization in the country. Using the theoretical framework of TJ to examine lustration policies in CEE countries, this study contributes to the development of the literature on TJ, which has expanded far beyond its original scope as a policy used to redress legacies of human rights violations in post-conflict countries and is now possibly applicable to situations in which there is ongoing conflict, bringing to these the tools of justice and peacebuilding.

Moreover, this study provides a theoretical contribution to the field of human rights by applying two different theoretical approaches simultaneously: both the theory of transitional justice and the theory behind CDA. These are used to make sense of the complex relationship between international practices and standards and the domestic scope in which these are refined and applied.

1.2 Research questions and purpose

After the dissolution of the Soviet Union in 1991, Ukraine has struggled to build a distinct post-Soviet identity. But, despite its best efforts to create a new identity, Ukraine still associates itself with its communist past; that is, the country has perpetuated two different historical discourses in its collective memory (ICTJ, 2016).

On the one hand, both the patriotic-oriented citizens of Ukraine and the new Europe-oriented government have focused on addressing the legacies of both the ex-Communist and Yanukovych undemocratic regimes and corruption, introduce democratic reforms that would restructure domestic governance and generate public trust and protect and affirm "democratic values, the rule of law and human rights in Ukraine" (Rada, 2014, p. 2). The signing of the AA agreement between Ukraine and the EU on June 27, 2014, has resulted in the adoption of several new reforms, programmes and laws, in which the importance of national standard-setting in accordance with European guidelines, the elimination of Soviet standards, and the efforts to reduce corruption in the country through the development of new anti-corruption legislation, are the main challenges for Ukraine in the coming years. One such law was the Law 'On Government Cleansing', also called the Lustration Law, which was adopted in October 2014 by Parliament in order to remove ex-Soviet officials and Yanukovych appointees found guilty of corruption and other violations of human rights from their high-ranking positions (ibid).

The opposing discourse, on the other hand, is that of the Russian-speaking population of Ukraine, and individuals in the rebel-held territories of Ukraine, who were dissatisfied with the new Europe-oriented government in Kiev led by Poroshenko and refused to accept the new policy, which they considered to be unlawful. These negative sentiments have been further aggravated by the annexation of Crimea. People living in south-east Ukraine, who associate themselves strongly with Russia and identity as ethnic Russians, had expressed their wish to become an Autonomous Republic in order to protect their minority rights to preserve the use of their language, culture and religion (Thinn and Iversen, 2015). According to 53-year-old resident of Donetsk (cited in Færseth, 2014, p. 147-149), "We in Donetsk, Luhansk and Kharkov regions - are not a part of their history,

we are not Ukraine. Donbass was founded by people from all over the former Soviet Union, in the same way as the United States. Thus, we are mixture of everything… This is one of the reasons why we do not see ourselves as a part of Ukraine and want to be independent". He further explains that these regional disparities were apparent during the second World War: the eastern part of Ukraine, together with the communists, fought the war against Hitler. However, the western Ukrainians fought against communists, and therefore, on behalf of Hitler. The new pro-European regime in Kiev led by Poroshenko was therefore considered to be playing the role of the nationalist party by Eastern Ukrainians, who wanted to prevent history from repeating itself (ibid). Based on this perspective, two identity-building historical narratives have been perpetuated in the country: the nationalist or Europe-oriented discourse on the one hand, and the pro-Russian narrative on the other. These two competing approaches to memorialization have escalated into 'memory wars' in Ukraine, which could lead to the violations of human rights in the sense that the opposing sentiments could lead to civil war or genocide against one of the groups.

In this study, I aim to address the following questions: What does transitional justice mean for Ukraine? Which model of TJ (either retributive or reconciliatory) will the Parliament of Ukraine choose in order to fulfil its promises to promote an inclusive, pluralist, democratic society-driven national dialogue to foster acceptance and reconciliation of opposing historical viewpoints? Should the lustration law in the current political context in Ukraine be perceived as a mechanism of TJ or as a contribution to the division between Ukrainians along regional and linguistic lines? If the Ukrainian lustration policies are implemented to the fullest extent of the law, would they contribute to the process of democratization in the country without violating fundamental human rights and freedoms?

I decided to limit the scope of the research be developing one main question and one sub-question to help explore the main question and to produce new insights about the subject.

1. What impact does the Law 'On Government Cleansing' (Lustration Law) of 2014 have on the process of democratization of Ukraine in the context of transitional justice?

1.1 What discourses are being used/created by the Lustration law in the context of democratization, and how are they being used?

To answer the above questions, this thesis draws heavily on theories and approaches in the field of transitional justice (TJ). According to Kymlicka (Kymlicka, 2009, p. 1), TJ can be helpful in cases where the source of conflict and violence in the country is a lack of a sense of unity and where TJ could help to replace this with a strengthened sense of shared identity.

The relevance of this study to the field of human rights is to contribute to the debate by considering whether the implementation of TJ policies in general, and lustration in particular, have contributed to democratization, peace and reconciliation processes in Ukraine. My use of Critical Discourse Analysis (CDA), both as theory and method, allows the study to be based on investigation and exploration, and opens up alternative readings and critical self-reflection during the research process, which, according to Wodak (cited in Kendall, 2007) "must accompany the research process continuously" in order to provide more effective and impartial analysis. CDA serves as an analytical tool for the study of multiculturalism and human rights. CDA makes it possible to conduct a detailed analysis through the critical examination of political decisions, legal regulations and the agendas of political actors that take human rights as a point of reference, in order to understand the actual meaning behind the words and actions.

1.3 Significance of the study

One of the primary objectives of the state is to ensure national security, and to assure its citizens access to justice and human rights. States have a legal duty to respect and implement both international humanitarian law and international human rights law during an armed conflict. What is important is that the responsibility for ensuring the protection of human rights in the situations of both international and internal armed conflict, is no longer regarded as a purely internal matter of the states involved. Wars and armed conflicts are a reality in the modern world, one that threatens the capacity to fully realize human rights and fundamental freedoms. Internal armed conflicts, as in Ukraine, often involve high numbers of civilian causalities and intense human

suffering. These conflicts are more protracted and harder to bring an end to than international. The internal crisis in Ukraine is characterized by the absence of law and order, the persistence of violence and turmoil in the country that has had a direct impact on basic human rights, including the security and well-being of the population.

In order to put an end to systematic human rights violations and to move Ukraine closer to European aspirations, the new Ukrainian government started the lustration campaign in 2014, following the Euromaidan protests. While the implementation of the Lustration Law is seen as a major step towards "fundamental changes within the judiciary" (David, 2014, p. 4) by people who have experienced decades of corruption, impunity and bureaucracy, the Russian-speaking population and the inhabitants of the rebel-held territories interpret lustration as an act of unfair exclusion based on political revenge. As David notes (David, 2014, p. 4), "Lustration laws build a bridge between the past and future". On the one hand, the new state holders may be loyal to the previous regime once the power-struggle is over. On the other hand, lustration laws ensure a number of personnel changes, as well as the formation of a state apparatus, which will be loyal to the emerging democratic reforms.

Overall, lustration policy aims to condemn human rights violations, identify past mistakes and punish those responsible for the abuses, as well as to contribute to the process of democratization and respect for human rights. Unfortunately, the process of lustration can be used as a means to eliminate political rivals. Moreover, lustration can be carried out in ways that involve gross violations of human rights and international standards that eventually lead to a situation that is counter to democratization. The aim of this study is therefore to detect the fine line between the implementation of the lustration policies and an ensuing movement towards democratization on the one hand, or the violation of fundamental human rights and basic principles of democracy under the guise of lustration on the other.

1.4 Limitations

Even though this study was rigorously designed and achieved its aims, there was an inevitable limitation. The topic of transitional justice in general, and lustration in particular is inadequately covered in the academic literature, and little previous research has been carried out into the aforementioned issues with regard to Ukraine. Few researchers have studied such aspects as lustration and democratic reform in Ukraine and therefore, it has not been possible to draw on previous research. However, I filled this gap in the research with relevant practical and academic literature on the issues of transitional justice, lustration and democratization using the examples of other countries in Central Europe. Thus, this study lays the groundwork for more comprehensive research in the future.

1.5 Organization of the study

This study is divided into 6 chapters. Chapter 1 contains a short introduction to the main focus of the research, and the purpose of the work. It also examines the strengths and limitations of the study. Chapters 2 and 3 provide an overview of the literature and previous research carried out in the field of transitional justice in general, and lustration in particular, both in Ukraine and in other countries in Central and Eastern Europe. They demonstrate my understanding of key concepts and refer to the literature relevant to this study. Chapter 4 is the 'methodology chapter' and describes why and how the Critical Discourse Analysis (CDA) approach and framework was selected as a method for addressing the research question of this study. It provides a detailed overview of CDA, from a theoretical and then from a practical perspective which serves to provide a clear and precise description of how I have operationalized the research: the tools used for the analysis, the identification of the discourses, data collection methods, sampling and methodological challenges. Chapter 5 provides a detailed analysis of the legal document - the Ukrainian Law 'On Government Cleansing' of 2014 – and of the two non-legal documents, in the form of newspaper articles, namely 'Lustration is a discussion we have to continue' and 'Two understandings of Lustration'. I analysed these documents using a discourse analytical model developed by Fairclough (2003) in order to identify the discourses that figure in the documents in the context of lustration and its

role in the process of democratization in Ukraine. Chapter 6 is a discussion of the research findings related to the research questions that guided the study; it is a concluding chapter that summarizes and analyses what I have done and why I have done it and includes final thoughts and considerations.

2 An overview of Transitional Justice

The literature on transitional justice is vast and covers several academic fields including law, political science, history, and sociology. The development of this area of study has been highlighted by several non-governmental organizations that have published papers devoted exclusively to the topic. A great deal of research over the last few decades has been published about different elements of transitional justice. These elements have influenced the process of transition from past authoritarian regimes to democracy. In this section, I will give an overview of relevant transitional justice (TJ) concepts, TJ models and their crucial characteristics as a way to understand the impact of Ukraine's Lustration Law of 2014 on the process of democratization in the country. Understanding different aspects of transitional justice shall help me to assess the impact of transitional justice on the development of peace and democracy in Ukraine, thus enabling me to answer to my main question.

2.1 The notion of Transitional Justice

In a period of crisis, war or authoritarian rule, the norms that apply, in addition to the norms of human rights, are the international laws of armed conflict. In a time of re-construction when a war or a crime are over, the notion of transitional justice comes to the fore. It is important to note that no generally agreed principles during a time of re-construction were available until the 1980s, a period known as 'the Argentinian period of democratic transition'. At that time, after seven years of military dictatorship marked by torture, violent repression, and thousands of disappearances, the country returned to democratic rule. From that moment, academics and scholars realized the need for the development of principles and policies to address a legacy of recent human rights

violations and other forms of abuses and contribute to democratic political transitions in many countries around the world in the last years (Hayner, 2011, p. 7).

To start with, the term 'transitional justice' does not have a single definition. Kritz first coined the term in 1995 with the publication of the thee-part volume *'Transitional justice: How Emerging Democracies Reckon with Former Regimes'* (Kritz, 1995), in which Kritz reviews a number of post-conflict countries that had become democracies and were facing the challenge of dealing with past crimes, using various mechanisms to do this (Kritz, 1995).

The Secretary-General of the United Nations defines 'transitional justice in post-conflict countries' as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (UN, 2004).

In the same way, Elster has stressed that transitional justice "is made up of the process of trials, purges, and reparations that take place after the transition from one political regime to another" (Elster, 2004, p. 1). The goals of transitional justice are linked to the ambition of achieving transition, both in terms of justice for past abuses and with regard to establishing a new political order, at the same time as preventing further deterioration and human rights violations. In contrast, Teitel, who has been credited with first exploring this area, applies the term to "a shift in political orders … a bounded period, spanning two regimes" (Teitel, 2003, p. 69). She defines transitional justice as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel, 2003, p.69).

Furthermore, Teitel (2003) divides the development of transitional justice into three historical phases, which are as follows: *post-war phase, post-cold war phase and a steady-state transitional justice phase.* The first phase reflects the triumph of transitional justice and is associated with interstate cooperation, war crimes trials and sanctions. The *'Post-cold war' phase* marks a move

from post-war transitional justice to alternative strategies, as many repressive regimes are replaced with democratic or semi- democratic governments; this phase of transitional justice tends to rely more upon diverse rule of law understandings, where the main purpose is to construct an alternative narrative to the one of abuse. The aim is to advance legitimacy and to focus on a new institutional mechanism – the Truth Commission. This instrument is connected to the idea that transitional justice can serve as a tool to consolidate democratic transitions, expose the truth about gross human rights violations and prosecute perpetrators as well as compensate victims. Reconciliation and forgiveness are associated with the second, post-cold war phase. Post-cold war transitions are associated with a period of accelerated democratization and political fragmentation (Teitel, 2003, p. 71) alongside nation building. In this phase, transitional justice can be a vehicle for weakening inherited identity divisions, and for building new national identities; in this way, if all citizens come to share a sense of identification, countries can become peaceful democracies (Kymlicka, 2009, p. 1). Finally, *a 'steady state' phase* of transitional justice is associated with the process of globalization, political instability and violence. This phase is characterized by an expansion of international humanitarian law (IHL) and the law here has become increasingly politicized. According to Teitel, the existence of the International Criminal Court (ICC) illustrates this steady-state transitional justice, entrenching the "Nuremberg model" through "the creation of a permanent international tribunal appointed to prosecute war crimes, genocide, and crimes against humanity as a routine matter under international law (Teitel, 2003, p. 90)

Transitional justice allows for a distinction to be made between this and other forms of justice during non-transitional times, 'ordinary justice', which would not be able to provide an adequate response as it does not have a political and legal agenda. Truth commissions, war crimes trials, repatriation of refugees, and lustration cannot be viewed as requiring ordinary measures but rather requiring extraordinary measures justified by the particular circumstances. In post-conflict situations, far more is needed than efforts by states to restore law and order. A number of instruments can be employed by states and the international community to address the important issue of either reconciliation or/and retribution by placing victims and their interests at the heart of the justice system.

2.2 Key concepts related to Transitional Justice

The transitional justice approach aims at constructing a theoretical framework that could help to articulate ways affected countries deal with the past. However, there is no single method applicable to all transitional societies. The choice of mechanism for handling human rights violations (whether they be truth commissions, trials, amnesties or reparations) depends on what one is seeking to achieve. Thus, transitional justice must respond to the needs, desires, and political realities of the victimized society, while at the same time recognizing the international community's rights and its responsibility to intervene; this can be highly controversial and complex. In this section, I will briefly explain the concepts of truth, reparation, reconciliation, human rights, justice and democracy, providing a comprehensive explanation of the transitional justice framework.

2.2.1 Human Rights

Human rights have various dimensions and can be considered as a philosophical concept, a system of values, or a system of legal norms enshrined in international treaties and national constitutions.

Human Rights as an international regime: The concept of 'human rights' is not new. The literature on 'human rights' is vast and includes several academic approaches developed by leading philosophers and theorists with contrasting points of view about when the starting point of the human rights movement was and what its philosophical nature is. Aristotle and Plato, for example, state that the purpose of human rights is to achieve justice and that the concept can be applied not just to individuals but rather to society itself.

The modern understanding of 'human rights' stems from the 'natural law theory'; along with the positive law (state-adopted law), there is a "higher", natural law that says that we all have certain inalienable rights that cannot be surrendered, sold or transferred to someone else. This understanding places the individual and his or her interests at the centre of the ideology of human rights. Human rights are therefore placed above human duties as human rights are neutral, whereas duties are conventional, meaning, they are grounded in agreements in society (Alston

and Goodman, 2013, p. 90-102). When a government ignores laws, the ideology of human rights serves as moral justification for regime change. The first objective of human rights is therefore to protect against tyranny by imposing restrictions on state power. In addition, it is important to protect rights such as the freedom of speech, freedom of assembly, freedom of thought, freedom to practice any religion or no religion, freedom of association, and so on against power abuse and exploitation. Since the second World War, several sources of international law, such as treaties, conventions and customary laws, have been were developed, creating a robust global regime which encompasses the International Bill of Human Rights, the Universal Declaration of Human rights (1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) (with its two Optional Protocols and the Human Rights Committee that monitors implementation of the Covenant by its State parties), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966). Unfortunately, human rights are not always respected. States therefore have a legal duty to protect and promote human rights and freedoms, which means instituting policies aimed at human rights protection and prohibiting any discrimination whilst guaranteeing to all persons effective and equal protection (Alston, Goodman, 2013, p. 90-93).

There are numerous international conventions, courts and reports relevant to international human rights law and the protection of human rights in general. However, human rights abuses are still common, as can be seen in, for example, instances of genocide and ethnic cleansing, the killing of journalists, the U.S.-led coalition bombing of Iraq in 1998, Yugoslavia in 1999, and Syria in 2018 without UN Security Council sanctions, NATO's secret prisons in Eastern Europe, and the torture and inhuman treatment inflicted on prisoners in Guantanamo. The list of daily violations of human rights is vast, and the study of transitional justice mechanism is therefore of great relevance.

In this sense, Ukraine is not an exception. As mentioned in Chapter 1, Ukraine went through a series of nation-wide uprisings in 2013- 2014, demanding closer integration with Europe, calling for justice against widespread government corruption, abuses of power, and violations of human rights. Peaceful protests turned into riots: clashes between police and protestors, with demonstrators destroying property and hurling rocks at the police resulting in hundreds of people

(both protesters, policemen, and journalists) being injured (Færseth, 2014, p. 31-33). The former presidential regime was collapsed as a result of the revolution and was replaced by a new Ukrainian government, which was oriented towards Europe.

Human Rights as a system of values: Human rights can be perceived as a system of values regardless of their historical origin and philosophical justification. The values of many people, of course, coincide with those offered by international conventions and national constitutions; people tend to appreciate their lives and liberties and believe, for example, that torture is completely unacceptable. However, the system of basic values differs from one country to another, and from one culture to another, even though it may change over time and due to external factors. What is more, the system of values differs even among people belonging to the same community. Political philosophers such as Rawls, Raz and Kymlicka offer various theories on moral and cultural diversity. For example, Rawls (cited in Parekh, 2006, p. 81), recognizes that plurality is "inescapable and desirable"; he realizes that all people have different interpretations of a good life. Thus, values are distinctive in different cultures and societies (Parekh, 2006, p. 81-90).

Human rights are recognised and acted upon by countries that are outside the Western-European tradition. Various attempts have been made to re-think the more traditional views on human rights from philosophical, political and cultural perspectives. For example, the Asian system of values prioritizes order and discipline over freedom. Consequently, civil and political rights are less valued in Asian countries than in the West (Bell, 2000, p. 82-87).

The concept of human rights is very broad and can be viewed from many different perspectives. Because legal, social, economic and geographic conditions differ from country to country, not all rights and legal standards can be applied everywhere and at the same time. Moreover, for each state, there is a particular set of principles, and legal and moral laws. These are usually cast in the Constitution. However, the sustainable life of the political system of the state does not exclude tensions and conflicts. The principles of the rule of law, the norms of human rights, accountability criteria and public transparency should therefore stimulate states to overcome any practical difficulties by means of their implementation.

With the creation of the United Nations in 1945, the term 'human rights' was finally universally accepted. This was an era of total transformation, with the emergence of new values, a collective security system, the emergence of non-governmental organizations (NGOs), and national liberation movements. With the development and spread of human rights, discussions concerning transitional justice and ways of dealing with past repressive regimes have drawn much attention. Differences in opinion have arisen regarding the question of how to deal with the past during transition periods. The 'peace' versus 'justice' debate is therefore a central issue in the analysis of transitional justice and will be further discussed in this study.

2.2.2 Truth

'Truth' is another important term in the context of transitional justice. The concept of 'truth' can be traced back to the era of ancient Greek philosophy. According to an ancient Greek myth, a daughter of Zeus and Themis, the Greek goddess of justice, Dike, watched the deeds of man, and approached the throne of Zeus with lamentations whenever a judge violated justice (Encyclopedia Mythica, 1997). Two points are important here: first, the understanding that justice without truth was not possible; and second, the high value of truth. Prior to the dawn of civilization itself, mankind realized a direct connection between justice and truth. Hence, a well-known formula of justice is: "to tell the truth, the whole truth, and nothing but the truth".

In this study 'truth' is considered in the context of transitional justice. Truth telling about human rights violations in the past has been usually carried out in the processes of historical or moral entities known as Truth Commissions, which have been considered to be crucial components of transition. Hayner defines a 'truth commission' as "the most prominent government initiative to respond to past abuses, and the starting point from which other measures for accountability, reparations, and reforms may be developed" (Hayner, 2011, p. 20). In general terms, the aim of truth commissions is to examine violence, to reveal past wrongdoings and to create a historical account by collecting evidence of crimes. However, the meaning of 'truth' may vary from one context to another, from one country to another, and some commissions found themselves restricted to looking at only a portion of the abuses that took place, thus risking the exclusion of a significant portion of truth. Hayner refers to the truth commissions in Argentina, Sri Lanka and

Uruguay, for example, which were directed to only look into disappearances and thus missed, because of this limited mandate, the majority of human rights violations that had taken place during the military regime, including torture, executions, illegal detentions and political kidnappings (Hayner, 2011, p. 75- 77).

2.2.3 Justice

Rawls defines 'justice' as "the primary political virtue that applies to the basic structure of society" (Rawls, 1971), where the basic structure refers to the political institutions of any society that is regarded as a political community. Rawls prioritizes individual rights and freedoms rather than the good of the overall political community. In the theoretical framework of transitional justice, the concept of 'justice' is complex and controversial. Some people feel that punishment should be strict in order to deter people from committing crimes, while other people feel that strict punishment is not effective, and that people should be rehabilitated. Academics and scholars have therefore divided the concept of justice into three main categories, which can also be described as 'theories of punishment': *restorative, deterrent*, and *retributive justice*. The latter will be discussed briefly below but in more detail in section 2.3

Retributive justice holds that perpetrators should pay for their crimes and must be punished. The idea is to bring perpetrators to account and impose deserved sanctions. Rawls defines retribution here as "the view that punishment is justified on the grounds that wrongdoing merits punishment" (Rawls, 1971, p.11). Others would argue that retributive justice is also necessary in order for states to fulfil their obligations under certain treaties (Hayner, 2011, p. 165). For example, Article 1 of the UN Genocide Convention requires "The Contracting Parties … to prevent and to punish" genocide (UN, 1948). Furthermore, Article 17 of the ICC Rome Statute holds that the ICC would investigate the case only if a state is unwilling or unable to carry out investigation of the prosecution. Nevertheless, governments are granted "a good deal of discretion by international courts" in implementing this obligation, which is "in essence a matter of domestic law and policy" (Hayner, 2011, p. 165).

Deterrent justice also holds that punishment is necessary. However, in contrast to retributive justice, which looks back to crimes already committed, deterrent justice is more forward-looking. The aim of deterrent justice is to discourage convicted, current or potential criminals from continuing or initiating offenses.

Restorative justice, in contrast to retributive and deterrent justice, holds that punishment alone is insufficient in promoting justice. Punishment should be conducted in a way that enables victims and perpetrators to rebuild relationships both among individuals and throughout the entire community. The main principles of restorative justice rest on the victims' rights to have crimes acknowledged and addressed, and the perpetrators' right to be reintegrated into the community. To help to rebuild relationships, restorative justice employs various strategies, such as hearings that are designed to be participated in by both victims and perpetrators, with the perpetrators acknowledging their wrongdoings and providing compensation or other reparation to victims. The aim of restorative justice is to help victims heal, to raise perpetrators' awareness of the harm they caused and of their duty not to repeat such harm, to prevent future harm and to rebuild the self-worth of both victims and perpetrators. It is important to emphasize that justice mechanisms may include a combination of retributive, deterrent, and restorative justice. For example, traditional Criminal Trials used in the U.S. may punish perpetrators in ways that are consistent with retribution and deterrent ideals (Clark and Kaufman, 2008).

2.2.4 Reparations

According to Greiff, reparations "represent a form of reparative justice" (Greiff cited in Camins, 2016, p.126 - 146). Reparation for victims of human rights violations is an important instrument for establishing accountability and achieving justice and for some victims is the "most tangible manifestation of the efforts of the state to remedy the harms they have suffered" (ibid). Hayner (2011, p. 165) defines the notion of 'reparations' as "responding to the specific harms and damages suffered": this may include "individual and collective reparations, symbolic with material benefits, financial payments with clear statements of recognition and apology" (Hayner, 2011, p. 163-166). Material reparations may, for example, consist of a financial compensation paid to the victims, whether in the form of a lump sum or through the granting of a pension. They may also

consist of the restitution of a property or employment from which they were fired as a means of arbitrary punishment. They may consist of medical rehabilitation from the consequences of repressive measures. Symbolic reparations may consist of the construction of commemorative monuments, ceremonies or statements intended to honor the victims. Hayner (2011, p. 166) argues that a combination of practices works best for victims.

Reparations have had a significant impact on the development of literature in this field, especially with the adoption of the UN's 2005 *'Basic principles and guidelines on the rights to a remedy and reparation for victims'*. This document indicates that the UN has been actively working on addressing issues of reparations since 1989, defining its principles and parameters.

2.2.5 Reconciliation

In conflict or post-conflict contexts, 'reconciliation' has been defined as "developing a mutual conciliatory accommodation between enemies or formerly antagonistic groups" (Kriesberg, 2007, p. 2). Bloomfield defines 'reconciliation' as "a process which includes the search for truth, justice, forgiveness, and healing" (Bloomfield, 2003, p. 12). The Oxford English Dictionary provides a more general definition of the term: "to restore friendly relations between" (English Oxford Living Dictionary, n.d.). The aim of reconciliation is to prevent further violence and rights abuses in the future and to reestablish friendly relationships in a society. The role of truth commissions tasked with revealing past wrongdoings is crucial in the process of reconciliation as the primary aim of a truth commission is to prevent further rights abuses and violence. The recommendations of most commissions are thus often targeted at judicial, military and political structural reforms in order to prevent a repetition of past human rights abuses and, therefore, advancing reconciliation. Hayner (2011, p. 183) makes a distinction between national and individual reconciliation. She states that the goal of a truth commission is to "advance reconciliation on a national or political level" (Hayner, 2011, p. 183) through speaking openly on silenced or conflictive events to avoid bitterness and latent conflict between groups of people in the community over past lies. Individual reconciliation, in contrast, is deeply personal process, which does not guarantee that telling the truth will lead to a victim's reconciliation with the perpetrators (Hayner, 2011, p. 183).

2.2.6 Democratization

The concept of transition and its mechanisms are considered to be a component of democratization and peacebuilding processes. Of course, the tendency to look at transition through the lens of the process of democratization is clear, and is reinforced in Huntington's book, *'The Third Wave: Democratization in the Late Twentieth Century'* (1991), in which he introduces the term "a wave of democracy". By this term, he means "a group of transitions from non-democratic to democratic regimes that occur within a specified period and that significantly outnumber transitions in the opposite direction during that period" (Huntington, 1991, p. 15). This wave usually also includes liberalization or partial democratization in those political systems that do not become fully democratic. The American political scientist concluded that there were three waves of democratization in modern history, each of which affected a relatively small number of countries, and during each of which, some regime transitions occurred in a non-democratic direction. In addition, each of the first two waves of democratization were followed by democratic breakdown in which some but not all the countries moved back to non-democratic rule. Huntington specified concrete dates for the three waves of democratization, as follows:

- The first, long wave of democratization: 1828 – 1926

- First reverse wave: 1922 – 1942

- Second, short wave of democratization: 1943 – 1962

- Second reverse wave: 1958 – 1975

- Third wave of democratization: 1974 until now.

Huntington's beliefs continue to have a major influence on contemporary political science. Fukuyama (2014) agrees with Huntington's understanding of the concept "political transition" which he defines as undergoing a growth in human society. Fukuyama further argues that for political development to take place in any society, three essential elements must be present: the evolution of the state (strong and effective government), the state's subordination to the rule of

law, and the government's accountability to all citizens (Fukuyama, 2014, p. 37). Fukuyama further states that good political order occurs only when all three elements are in place, operating in a proper balance. A combination of only one or two of the elements provides people with a false sense of security. Fukuyama (2014) has a positive response to the political building of China, which developed a powerful state early on because of a tragedy, a ruthless war. Nevertheless, the newly emerged state was too strong as it suppressed any incipient civil society that took root in the country as well as any ideas of accountability; what was lacking was the rule of law and democratic accountability. In this way, political development, according to Fukuyama, may, but will not always, lead to democracy, as it may also lead to other types of political regime (Fukuyama, 2014, p. 354-370).

Several researchers have criticized the optimistic interpretation of transition made by Huntington. There is no agreement regarding the definition of the term "democracy" among political scientists. Democratization, then, might be most readily understood as a transition from a non-democratic, authoritarian political regime to a full democracy. Nonetheless, the process of democratization does not always lead to the development of democracy. Therefore, some researchers suggest using the concept of "democratic transition", which does not necessarily imply a transition towards democracy but assumes that democracy is a process with uncertain results. Similarly, O'Donnell and Schmitter introduce a broader meaning to the concept of "transition". They define it as "the interval between one political regime and another" (O'Donnell and Schmitter, 1986, p. 6), and consequently, not necessarily equivalent to democratization. Further, believing that a democratic structure is the final stage in political development, and that an authoritarian one is an initial stage, O'Donnell and Schmitter argue that political transitions start because of a split between moderates and conservatives within an authoritarian regime itself (ibid). However, at democratic, positive result is possible only when two sides enter into an agreement that contributes to the transition from an authoritarian to a democratic system. Although, agreement is not a necessary condition for successful democratic transition, it increases the chances of it happening.

Rustow defines democratic transition as "a slow evolutionary process, in which there is a deliberate decision on the part of political leaders to accept the existence of diversity in unity and, to that end, to institutionalize some crucial aspects of democratic process" (Rustow, 1970, p. 355). For Rustow (1970, p. 350 – 361), democracy must be preceded by national feeling of unity. He presents a model of democracy based on three stages:

- The preparatory phase – characterized by a serious conflict that splits people into two opposing factions;

- The decision-making phase – characterized by the choice of alternatives; the conclusion of a peace treaty by means of democratic institutions; and

- The habituation phase – characterized by the political procedures, institutions, and so on - people become accustomed to this pattern and come to value democracy itself.

Rustow sees the essence of a real democracy as being about the process of resolving disputes between parties. He further states that "Totalitarian rulers must enforce unanimity on fundamentals and on procedures before they can get down to other business. By contrast, democracy is that form of government that derives its just powers from the dissent of up to one half of the governed" (Rustow, 1970, p. 363).

Schmitter, on the other hand, proposes the following definition of democracy: "Modern political democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives" (Schmitter and Karl 1991, p. 76).

Comparing democracy and autocracy, Sartori defines democracy as "a political system characterized by the absence of any personal power, and more particularly a system that hinges on the principle that no one can proclaim himself a ruler, that no one can hold power irrevocably in his own name" (Sartori, 1962, p. 120). In a democracy, the exercise of political power is limited and can only be granted by others, while in an autocracy, power is concentrated, uncontrolled and unlimited.

Following the perspective of Huntington, it is possible to distinguish the following 'waves of democratization' in Ukraine:

1) The first, long wave of democratization (from 1991 – 2010): In December 1991, because of the dissolution of the totalitarian Soviet Union, Ukraine became an independent country with substantive social and political transformations moving it in a democratic direction.
2) The first reverse phase (from 2010- 2014): A period of a remarkable rise in autocratic rule under ex-President Yanukovich, characterized by centralized power, high levels of corruption and dissatisfaction on the part of the general population raised in the years 2010 -2014.
3) The second, short wave of democratization (from 2014 - until now): The Euromaidan movement is a logical continuation of the political and social changes that started in Ukraine in 1991, characterized by hopes for change in the country, dreams about European integration and the possibility of improved standards of living, basic civil rights such as freedom of speech, security and the right to make one's own choices.

2.3 Models of Transitional Justice

As mentioned previously, with the development and spread of the concept of human rights, the discussion of transitional justice and of ways of dealing with past repressive regimes has attracted much attention. Difference in opinions have arisen regarding the question of how to deal with the past during transition periods. Some scholars advocate the use of judicial mechanisms (such as retributive justice, for example) as the most effective way to deal with past human rights violations. Some others suggest the use of non-judicial mechanisms (reconciliatory justice, for example) as the best way of achieving peace, justice and reconciliation. Thus, in countries experiencing a radical transition from repression to democracy or from armed conflict to peace, the key issue that emerges while establishing democracy and the rule of law is how to address the issue of people who have committed abuses. A number of questions arise, including: whether the aim is to remember or to forget; whether the perpetrators of massive human rights violations

committed under old regimes should be punished or given amnesty for the sake of peace and reconciliation; And whether transitional regimes should obtain peace at the price of justice or vice-versa. As noted above, the debate revolves around the approaches of prosecution or forgiveness during transition, or a combination of the two. This has recently been understood as a dilemma between justice and peace (Hayner, 2011, p. 3).

With regard to this dilemma, Nowak, a Polish philosopher, has developed three basic models of transitional justice – *'a retribution model', 'a historical clarification model' and 'a thick line model';* these are all based on transitional justice instruments such as truth seeking and amnesties, criminal trials and administrative sanctions, which concentrate on human rights violations and their perpetrators and which are implemented during democratic change (Krotoszynski, 2017). The models presented do not consider reparations for victims and thus refer only to retributive justice.

The retribution model takes into account the actions and positions held by public officials in the previous regime. Individuals whose connections with the past regime are condemned in the new democratic order are subject to sanctions. These may include criminal punishments imposed by either domestic or international courts, tribunals or penalties, including purges and vetting, enforced through administrative means. Punishment could be imposed on state personnel from the previous state apparatus, officers and security forces. According to Orentlicher criteria used to select defendants should "reflect appropriate distinctions based upon degrees of culpability and therefore, should be focused on those most responsible for designing and implementing a past system of rights violations or on the most notorious crimes" (Orentlicher, 1991, p. 2602-2603). Imposed sanctions, in turn, can be divided into two groups: administrative (for example, the loss of the right to hold certain public offices) and criminal (prison sentences), the use of which may differ in scope. Examples of the retribution model include the vetting and criminal tribunals in the East German communist regime (Krotoszynski, 2017, p. 12).

The historical clarification model is characterized by a government's unwillingness to implement legal sanctions other than the disclosure of the links of the individual to previous human rights violations. Alternatively, truth-seeking instruments are implemented, which can be divided into

collective and individual clarification. The former includes mechanisms such as truth commissions and memorialization initiatives such as the creation of museums and public apologies by the government. The goal here is to create a general overview of the character of the past political regime. The individual clarification instruments include vetting procedures and the opening of archives, such as with lustration and the declassification of former secret police files. An example of this is lustration in Poland (Krotoszynski, 2014). Post-communist countries, however, can serve as a negative example of this type of model because access to the archives of the former secret police was and still is strictly restricted. Moreover, as Teitel states, "opening the old state files would not automatically bring about an open society" (Teitel, cited in Krotoszynski 2014).

In a thick line model, the government refrains from using either sanctions or instruments of historical clarification. Thus, human rights violators are not punished. An example could be the 'amnesia model' of post-communist Russia, where the new democratic government refrained both from prosecuting past violations as well as from any public discussion of their legacy (Krotoszynski, 2014).

In line with this model, in 1991, Ukraine chose the path of collective amnesia, in which past abuses were not prosecuted but rather a consensus between elites was reached. Thousands of secret files detailing some of the most shameful acts and crimes committed by the Soviet authorities and the Soviet security agencies in general, and KGB agents in particular in the territory of Ukrainian SSR, were systematically destroyed to prevent them falling into the hands of post-independence governments, thus preventing process of historical justice. The anti-governmental movement (November 2013 – February 2014) in Ukraine was a result of the policies of the previous president. People who were tired of empty promises struggled for the promotion of human rights, and freedom of speech, seeking long-term solutions for Ukraine in the context of a centralized government and high levels of corruption. Within three months, Poroshenko was able to convince the Ukrainians that he was the best candidate to lead the country out of the post-Euromaidan crisis. Poroshenko made a pro-European choice involving closer ties with the West and chose lustration as a tool of transition towards democracy, a 'unified' Ukraine, economic transparency, and social justice. The retribution model developed by Nowak therefore most accurately

characterizes the method used to deal with past abuses in Ukraine. Lustration has been used as one of the instruments of so-called 'administrative sanctions'. The idea behind these is to purge from the state apparatus those who served in past repressive regimes.

3 The process of transition in Ukraine

3.1 Transitional justice in Central and Eastern Europe (CEE)

After World War II, several states in Europe, including Albania, Bulgaria, Hungary, East Germany, Poland, Romania, and Czechoslovakia found themselves under the influence of the Soviet Union, while the Baltic States such as Latvia, Estonia, and Lithuania joined the Union. This resulted in the rapid Sovietization of the countries accompanied by policies of assimilation, Russian acculturation, and a radical reorganization of the political, social and economic institutions according to the Soviet model.

The time of the fall of the communist regimes almost coincided in the countries of Central and Eastern Europe (CEE). The main wave of power shifting took place in 1989, when several pro-Soviet communist regimes were displaced within a few months. The process started with Poland, where, in 1989, representatives of the communist regime on the one hand, and of 'Solidarity'- the non-governmental opposition trade union on the other, sat down at the round table for the first time to hold talks. These talks led to semi-free elections and came to symbolize the peaceful transition of power in Poland (Szczerbiak, 2002, p. 553-572).

The Western democratic system and the rule of law served as a benchmark for conducting reforms in CEE countries after the fall of communist regimes. Independence and self-determination were not the only goals of the countries from the former socialist camp. Most now-independent successor states applied for EU-membership in the mid-1990s. The belief that joining the EU would help post-communist countries consolidate their democracies has now been widely accepted (Azarov, 2015, p. 471). The transition from a totalitarian communist system, where individual rights and freedoms were systematically suppressed by the state, to democracy assumed the development of the new institutional structures, including the establishment of legal mechanisms

to restrict and control power, as well as a fundamental change in the relationship between state and society.

Since then, a significant amount of scholarly attention has been paid to both the origin and the impact of post-communist transitional justice measures, and issues around memory politics in CEE countries. In this way, scholars of transitional justice in general and of post-communist transition in particular have begun a comparison study of cases and instruments implemented in politically similar countries in Central and Eastern Europe.

The Ukrainian crisis made it possible for scholars to compare Ukraine and its transitions with other CEE countries. According to David, the situation in Ukraine is fundamentally different from many other countries in Central and Eastern Europe. None of these countries has experienced open military conflict on its territory and none of them has experienced "a breach of its territorial integrity" (David, 2015, p .8). Furthermore, while CEE countries were undergoing transitions to democracy that fostered justice and peace, Ukraine is a state with an ongoing military conflict and is in the process of state consolidation (David, 2014, p. 7). What is important to mention here is that traditionally, TJ instruments were developed to be applied in post-conflict transitions and to be put in place once violence has ended. However, this is not the only scenario and TJ scholarships have recently expressed support for "emancipating TJ from its narrow post-conflict application" (Zabyelina, 2017, p. 67). According to Loyle and Binningsbø, the use of transitional justice during conflict is a systematic and very common policy across numerous actor groups. Thus, in 2017, their studies showed that over 60 % of armed conflicts in the period from 1946 to 2011 used the processes of transitional justice during conflict. Furthermore, they state that the use of transitional justice following armed conflict or during conflict refers to "a judicial or quasi-judicial process initiated during an armed conflict that attempts to address wrongdoings that have taken or are taking place as part of that conflict" (Binningsbø and Loyle, 2012, p. 731–40). This encompasses a range of institutional forms such as truth commissions, human rights trials, reparations and other strategies pursued by governments and rebel groups. Ukraine's internal conflict enters its fifth year, now in 2018, with no end in sight. From this perspective, the use of transitional justice and its mechanisms are applicable to Ukraine since the country is currently at war "with powerful

enemies inside and outside the country" (David, 2015: p. 8). In the same way, Hansen argues that transitional justice may "apply to contexts where abuses are ongoing due to the continued existence of violent conflict" (Hansen, 2016, p. 2). In this regard, transitional justice has experienced major shifts in its focus has and lost its original connection to post-conflict situations, thus making peacebuilding processes more long lasting. From another standpoint, "the prospects of being held to account for violations leave potential spoilers with little choice than to undermine peace processes" (Engstrom, 2011, p. 8). In light of this, exclusive lustration policies may hinder social reconciliation and contribute to even greater historical hostility and division. In this respect, Kymlicka argues (Kymlicka, 2009) that, in cases where the source of conflict and violence are aspects of people's divisive identities, the processes of transitional justice might help to reshape identities and to replace them with a sense of co-ownership, a sense of shared identity related to common membership in the national political community. As an example, Kymlicka refers to Hutu and Tutsi ethnic identities as monolithic and significantly antagonistic, and hence having the potential of being mobilized for acts of genocide. The mechanisms of transitional justice have helped to depoliticize these divisive identities and replace them with a sense of a shared inclusive national identity as Rwandan. This aspect of transitional justice is often called the "nation-building" dimension and can be achieved only if the national identity is an inclusive one and there is no sense of oppression and no sense that the state is viewed as alien (Kymlicka, 2009, p. 1-2).

One of the effects of the recent events in Ukraine seems to be a dramatic change in Ukrainian national identity. In the early weeks of the Euromaidan revolution, nationalistic slogans such as "Who is not jumping is sovok" ('sovok' is a negative slang word for people with a Soviet mentality) or "Kill the Russians" appeared on public walls and shared spaces. The nationalist-minded opposition groups started a systematic indoctrination and manipulation of society with claims of violence against and suppression of Russian-speakers in Ukraine. The violation of human rights based on ethnicity has existed in Ukraine for the last five years. Nationalist sentiments have been on the rise in Ukraine, and nationalist parties took advantage of the domestic crisis to strengthen their positions. In this way, the ultra-nationalist Ukrainian radical party, the 'Right Sector', was constituted during the protests of December 2013. The party is known for its hostile and anti-Russian sentiments and attributable to the ideology of Ukrainian nationalist thought. Hence the

motto of the party is: 'Glory to Ukraine! Glory to the heroes!' which can be seen as an appeal to patriotism (Sakwa, 2015, p. 86). Tryzub and UNA-UNSO are among other extreme nationalist organizations that have disseminated nationalist and discriminating propaganda with the purpose of creating the Great Ukraine (Færseth, 2014).

3.2 Background to the crisis: The political and historical context

In 2013-2014, Ukraine underwent a series of nation-wide mass demonstrations. In the initial phase, protests started against the government's decision not to sign the Association Agreement (AA) with the European Union (EU), the free-trade agreement that would make political ties between two parties stronger and would contribute to Ukraine's economic integration. Ukraine faced a hard choice between the Eurasian Economic Union (EAEU) on the one hand, and the EU on the other. "The common neighborhood has become a zone of contestation" (Jackson and Sørensen, 2016, p. 209). The Ukraine's integration dilemma has much in common with the security dilemma, which, according to Wendt, is "a social structure composed of intersubjective understandings in which states are so distrustful that they make worst-case assumptions about each other's intentions, and, as a result, define their interests in self-help terms" (Sakwa, 2015, p. 44). Ukrainian society was therefore divided into two classes: the euro-optimists and the euro-skeptics. On November 21, 2013, ex-President Yanukovich refused to sign a free-trade agreement with the EU. Within days, peaceful protests accompanied by several civil demonstrations in Kiev turned into a series of violent clashes between street protesters and the police. The motivation of the protesters had evolved from being pro-European to being anti-governmental, calling for justice with regard to the violations of human rights, power abuses and widespread corruption. Protesters demanded a cessation in prosecutions against anyone arrested for their participation in the protests, which signaled a return to the 2004 version of the Constitution and the resignation of Yanukovich. A confrontation which lasted for a few months ended in the final downfall of the Yanukovich government, when Poroshenko took on the position of President on June 7, 2014, this making the pro-European choice for Ukraine, accompanied by anti-Russian sentiments, undoubted. The Euromaidan movement provoked nationalistic sentiments and contributed to the process of decommunization, which started with a spontaneous demolition of monuments to

Vladimir Lenin throughout the country. A series of laws condemning the Soviet communist regime were adopted in May 2015.

Eventually, the war in Eastern Ukraine, the annexation of Crimea and nationalistic sentiments throughout the country intensified contradictory discourses: these included discourses expressing citizens' support for welfare state principles in times of crisis on the one hand and the importance of the process of purification of the government and its institution from external influences on the other. One of the reasons for the growing public interest in lustration policies was the anti-terrorist operation in Donbass, marked by significant losses among the Ukrainian military. For this reason, lustration advocates and supporters sometimes call it as "a law written in the blood of our soldiers" (Soboliev, cited in Piasecka, 2014).

3.3 Ukrainian lustration

Research on transitional justice, includes research concerned with how governments respond to human rights atrocities directed against a population. The question concerns whether governments and people want to remember or to forget. Even though the field of transitional justice has a broad spectrum of choices available to respond to past human rights abuses, the objective of this study is to discuss the aspect of lustration for human rights violations from a transitional justice perspective.

Lustration is one of the key mechanisms of transitional justice, and is, more specifically, a component of retributive justice. Some researchers consider lustration to be one of the most reliable mechanisms in the protection against totalitarian revenge. Others perceive it as extremely negative, seeing it as a call for mass cleansing and terror. Numerous debates and experiences from around the world (a number of post-Soviet countries in Eastern Europe have applied lustration at different times and in different ways) have resulted in a growing area of academic research and discussion on lustration.

Generally, lustration can be defined as "a policy put in place by post-conflict or post-authoritarian governments to remove from public institutions personnel who have been implicated in activities

that call into questions their integrity and professionalism, such as human rights violations or abuses, violations of international humanitarian law, or related crimes, as a way to build confidence in the public sector" (US Department of State, 16/05/2016).

Kritz defines lustration as "special, transitional public employment laws that are typically approved in the aftermath of undemocratic regimes and civil wars" (Kritz, 1995). He further conceptualizes lustration laws as non-criminal sanctions, "a critical piece of transitional justice programs … more important for the democratic reform element and arguably for the peacebuilding element", aimed at purging from the public sector those who served an undemocratic regime (Kritz, cited in Horne, 2017). In this way, Kritz highlights the effectiveness of lustration law in fulfilling the objective of preventing further violations of human rights through democratic personnel reform and, in turn, building effective and fair public institutions.

Teitel (2000) focuses on the restoration of democracy and the rule of law through legal mechanisms. One of these mechanisms is lustration, defined as a form of politicized administrative justice (ibid). By this, Teitel means a process of identification and removal of those individuals who are responsible for human rights abuses, mainly those working in the judiciary, police, and army. She further argues that autocratic regimes come to an end only when 60 of its military personnel are new (Teitel, 2000, p. 173- 175).

For instance, David (2014) has conceptualized lustration as personnel systems which provide for the automatic exclusion of officials associated with the old regime from the state apparatus of the new regime. Nevertheless, the dismissal of compromised state personnel from the state apparatus is not the only policy designed to deal with personnel reform in transitional countries, according to David. He refers to the low transformative value of dismissals, calling this type of policy one-dimensional. In contrast, David refers to other counties in Central Europe that have used alternative policy models based on the inclusion of former personnel (David, 2011, p. 17-18). In this way, David suggests using the concept of lustration in ways that have a broader scope than in many common definitions.

These assumptions are grounded in the beliefs of Stan. Stan refers to two different approaches of lustration policy, namely employment exclusion and forgiveness rather than punishment and dismissal but with potential employment ramifications (Stan, 2009, p. 84). Additionally, Stan provides a more specifically regional and, historical understanding of the concept; she defines lustration as "the banning of communist officials and secret police officers and informers from post-communist politics and positions of influence in society" (Stan, 2009, p. 11). She argues that "the national specificity of the communist past led to a particular type of transition which, in turn, led to a specific post-communist political constellation that facilitated or prevented transitional justice (Stan, 2009, p. 269). She further draws attention to the fact that transitional justice measures were much more radical in countries where communist domination was achieved through repression and ideological rigor, as in the Czech Republic, Eastern Europe, Latvia, Estonia, Lithuania and the former Soviet Union. At the same time, transitional justice measures were conservative in countries where the regime allowed a level of reforms, such as Poland and especially Hungary. On the other hand, argues Stan, the extent of the implementation of transitional justice measures is low in those countries where organized anti-communist opposition was weak. This is due both to the repressive communist state policy against any emerging counter-elite (as in the case of Romania) and to the lack of prior, pre-communist experience of political pluralism (as in the cases of, for example, Romania, the Caucasus, and Central Asia) (Stan, 2009, p. 262 -269).

David defines Ukrainian lustration as "a regionally specific form of employment vetting widely used in the post-communist transitions in Central European Countries (CEE)" (David, 2018). The aim of Ukrainian lustration is to tackle the legacy of the communist past, and human rights abuses during the Maidan protests, to abolish regime corruption and to build an effective democratic regime. Accordingly, Ukraine's 2014 lustration measures addressed the atrocities committed in both the distant and the recent past. David (David, 2018, p.135 – 154) draws attention to the great support offered by Ukrainian society for the lustration measures in Ukraine. In this way, he points to that Ukraine presenting an example of public activism and a demand for accountability.

In the same way as Nowak (cited in Krotoszynski, 2014) developed three models of transitional justice, scholars have proposed a number of lustration models, which David has limited to three, namely *exclusive, inclusive and reconciliatory* (David, 2014, p. 6-7). An exclusive model of lustration prevents individuals associated with the past authoritarian regime from holding a public office. David describes this model of lustration as "speedier, less costly …, also more effective in increasing trust in the government". On the negative side, he refers to the possibility that this model "risks establishing the new bureaucracy at the expense of social reconciliation" (David, 2011). Several post-communist countries such as Latvia, Estonia, Lithuania and Ukraine, since 2014, can serve as examples of this type of lustration. Inclusive lustration, on the other hand, allows public officials to stay in office in exchange for compliance and service to the new regime. It is a mild type of lustration often leading to forgiveness and low public trust. Hungary's lustration law of 1994, came about in exchange for the revelations of compromised public officials, is a good example of this model. The final model, the reconciliatory one, is based on the acceptance of crimes by public officials of the past regime via a process of forgiveness. According to David, the reconciliatory model is the most effective in terms of creating public trust and social reconciliation. The lustration law of Poland, in 1997, is an example of this model of lustration.

Lustration is a controversial measure. David, for instance, notes that "lustration laws build bridges between the past and the future. On the one hand, they are forward-looking, since they aspire to pursue personnel reform and the establishment of a state apparatus that is loyal to the emerging democratic order. On the other hand, the laws are backward-looking since they are typically driven by the fact that holders of administrative positions may be loyal to the previous regime" (David, 2015, p. 5). From this perspective, lustration policies would not necessarily lead to democratic transitions, effectively establish democracy, integrate cultural rights and the rule of law or enhance the prospects for sustainable peace.

3.4 The Law 'On Government Cleansing': revenge or a democratic transition?

"This Law establishes legal and organizational principles of cleansing the government (lustration) to protect and affirm democratic values, the rule of law and human rights in Ukraine" (Law 'On Government Cleansing').

Soon after the change in power in the country in 2014, the Ukrainian Parliament, for the first time in the post-soviet period, adopted measures that led to the dismissal of high-ranking government officials responsible for abuses under Yanukovich's administration and during the Soviet rule from the state apparatus. The lustration law, namely the Law of Ukraine No. 4359 'On Government Cleansing' (Lustration Law), was adopted and approved by the Ukrainian Parliament, in October 2014. According to this law, the aim of the lustration process is to "*keep away from public governance those persons who made decisions, took actions or inaction and /or contributed to their taking, facilitating power usurpation by the President of Ukraine Viktor Yanukovich and seeking to undermine the foundations of the national security and defense or violate human rights and freedoms*" (Article 1.2 of the law 'On Government Cleansing'). Ukraine joined a number of former post-communist CEE countries such as Germany, the Czech Republic, Bulgaria, Hungary, Poland, Romania, Slovakia, Lithuania, Latvia, and Estonia that had used lustration in an earlier period. However, Ukraine implemented the most rigid model of lustration, an 'exclusive' one that had been implemented in the earlier period in East Germany and Czech Republic and that assumed the dismissal of the 'objects' of lustration. Drafters of lustration at Verkhovna Rada often referred to the experiences of those post-communist countries and their success with regard to regime transitions in the lustration measures. At the same time, the Ukrainian reforms must be seen within the context of 'late lustration' policies. The former communists retained as much political power as possible in many CEE countries even after the fall of the Soviet Union. For example, in Poland former communist 'apparatchiks' (individuals who help people in positions of political responsibility) held almost a quarter of senior public posts in the mid-1990s and thus, benefited from privatization. Sixty three percent of Romanian leaders held high-ranking positions after lustration (Horne 2009). Combining lustration with anti-corruption measures, the supporters of

'late lustration' tried to address the incompleteness and injustices in democratic reforms, to overcome public frustration caused by the influence of the former nomenclature, and to solve the problems of inefficient governance, social inequality and corruption (Horne, 2009, p. 344-376).

Nevertheless, the situation in Ukraine is significantly different from other CEE countries. First and foremost, the Ukrainian lustration law was approved much later than in neighbouring European countries. Additionally, in the case of Ukraine it would be more correct to talk about the "second transition" as in the period from November 21, 2013 till February 22, 2014, the Ukraine underwent another regime change. The adopted lustration measures therefore refer both to the Soviet period and to the period coinciding with Yanukovich's rule. Similarly to other CEE countries, the Ukrainian lustration therefore incorporates the decommunization component. Another distinctive feature is that Ukraine initiated and carried out reforms whilst in a state of civil war. One of its regions was annexed by Russia, and the eastern parts of Donbas were taken by pro-Russian militants supported by Russian armed forces. This situation has led to the conflicting discourses. On the one hand, war assumes that huge numbers of citizens will rally to support the government in times of crisis. On the other hand, the importance of "cleaning" the state institutions, including the army and security forces, from external influences became apparent especially at the time of military confrontation in Ukraine.

One of the results of the mass protests in Kiev, and in other cities in Ukraine, that led to the shift in power in 2014 as a result of the former Ukrainian President Yanukovich's exile from the country, was the adoption of Lustration Law in 2014. On February 26, 2014 the Maidan people's Union proposed the creation of a Public Lustration Committee. It was headed by Egor Sobolev, a social activist, former journalist and one of the Maidan organizers. A total of six draft lustration acts were composed, which were officially registered with the Verkhovna Rada before the beginning of April 2014. In mid-April, the speaker of the Verkhovna Rada – Aleksander Turchinov - asked the Committee to work out a final compromise bill acceptable to all groups (Piasecka, 2014). On October 16, 2014, because of a compromise between several parties including the Fatherland Party, Freedom Party, and the UDAR, the 'Lustration Law' came into force.

What is important to note is that after the lustration law was signed, there was an upsurge in its popularity among Ukrainian radicals. Thus, a period known as "trash lustration"[6] started in the country: Ukrainian radicals, along with angry protesters, attacked Ukrainian lawmakers, members of Parliament and other officials of the previous regime and threw them into rubbish bins.

As previously mentioned, the Ukrainian lustration law affected two periods, specifically the period under Soviet totalitarian rule (1917-1991), and the period of authoritarian rule under ex-president Yanukovich (2010-2014). Individuals falling into one of these categories have been banned from occupying public office for ten or five years (see Table 1). Moreover, the Lustration Law pursued two goals. The first was to protect society from officials who had held powerful and high-ranking positions under the undemocratic regime, and in this way incorporate democratic practices in the running of the country. The second was to clean the country of state officials from the former state apparatus who had been involved in corruption (Rada, 2014). The case of Ukraine thereby shows that lustration processes are able to deal not only with the politics of the past (for example, by targeting communist leaders) but also with the politics of the present, focusing on those who abused public office by involvement in corruption, in an attempt to build democratic governance.

Table 1: Categories of public officials covered by the Law 'On Government Cleansing'

The period of exclusion of 10 years applies to the following categories	The period of exclusion of 5 years applies to the following categories
- Individuals who occupied high-ranking positions in the state apparatus for at least a year between February 25, 2010 and February 22, 2014 (Article 3.1).	- Judges, prosecutors, police officers and other law enforcement agents who were actively involved in the prosecution of anti-Yanukovich activities and of Euromaidan demonstrators (Article 3.3).
- Individuals who occupied certain positions, mostly within the police,	- Officials and officers of central and local government authorities who occupied a

[6] The term 'trash lustration' is used here as acts of 'peoples' lustration'; about a dozen of Ukrainian officials from the previous regime who had been accused of the abuse of power and corruption were thrown into refuse bins in 2014, following the implementation of the law 'On Government Cleansing'.

judicial, military or media sectors between November 21, 2013 and February 22, 2014 (Article 3.2).	corresponding position between February 25, 2010 and February 22, 2014 and who, by their decision, action or inaction – which are proven by a court judgment against them that has taken effect – contributed to power usurpation by the President of Ukraine Viktor Yanukovych and sought to undermine fundamentals of the national security, defence or territorial integrity of Ukraine, which caused violation of human rights and freedoms (Article 3.5).
- Individuals who occupied certain positions, mostly within the police, judicial, military or media sectors between November 21, 2013 and February 22, 2014 (Article 3.2). Individuals who occupied high-ranking positions in the Communist Party or Komsomol or worked as covert agents or employees of KGB in that period during the Soviet period (Article 3.4).	- Officials and officers of central and local government authorities, whose decisions, actions or inactions sought to prevent the exercise of the constitutional rights to peaceful assemblies, and hold rallies, demonstrations, marches or served to harm human life, health or property between November 21, 2013 and February 22, 2014 (Article 3.6).
- Individuals who enriched themselves in violation of the 'Law on the Principles of Preventing and Combating Corruption' (Article 3.8).	- Officials and officers of central and local government authorities, including judges, officers in the police, the public prosecutor's offices and other law enforcement agencies if a court judgment against them, which has taken effect, established that they had cooperated as

	secret informers with special services of other countries to provide regular information; taken decisions, actions, failed to take actions and/or facilitated such actions, decisions or inaction to undermine the national security, defence or territorial integrity of Ukraine; called publicly for the breach of Ukraine's territorial integrity and sovereignty; incited ethnic hostility; taken unlawful decisions, actions or inaction that violated human rights and fundamental freedoms where violations were proven by judgments of the European Court of Human Rights (Article 3.7).

What is important to mention is that the lustration law does not apply to elected positions and thus, it cannot affect Poroshenko and Poroshenko-led political elites. In addition, Article 1.7 exempts from screening those "who have been recognized as participants of military activities during the counterterrorism operation in the East of Ukraine" (Rada, 2014).

4 Methodology: Critical Discourse Analysis

In order to analyse the discourses related to Transitional Justice and Lustration in Ukraine, and how they are being used and created in the context of democratization, I have chosen the theoretical and methodological approach of Norman Fairclough's (2003) Critical Discourse Analysis (CDA). This chapter is divided into two sections: in the first, I introduce the philosophical assumptions and key theoretical concepts of CDA that guide the research process and underpin the choice of methodology in this study; in the second part of the chapter, I describe the methodological and practical tools I apply in this study. The main objective of this chapter will be

to work out a framework of CDA and to apply the theoretical framework to the research analysis of the existing literature. For the analysis I use the primary source of data, which consists of one legal document (in English) in the form of a political text – 'Law on Government Cleansing ("Lustration Law") of Ukraine' (October 16, 2014) -, and the secondary source of data, which consists of two non-legal documents (in English) in the form of newspaper articles, namely 'Lustration is a discussion we have to continue' (Yarema, 2014), and 'Two understandings of Lustration' (Rodiuk 2014).

4.1 Critical Discourse Studies

4.1.1 Introduction

This study is written from legal, political, and social science perspectives, which is apparent in the choice of topic, and the theory and method applied. Critical Discourse Analysis is often applied to the analysis of political discourses. However, I suggest that CDA may serve as an analytical tool for the study of multiculturalism and human rights through the critical examination of language of political decisions, legal regulations, and the agendas of political actors that take human rights as a point of reference. The use of CDA in this study may help me to identify the problematic discourses that hinder or limit people's understanding of human rights, as it strives to explore how opaque relationships may be a factor in securing power and hegemony. The use of CDA in this study draws attention to power imbalances, social inequities, non-democratic practices, and other injustices in the hope of spurring people to corrective actions (Fairclough, 2013). The use of CDA, both as a theory and as a method, presumes that all social phenomena can be analyzed.

In general, CDA is concerned with how power is exercised through language. The CDA approach is very relevant to the study of discourses related to transitional justice and lustration. In particular, CDA is a useful tool in analyzing the relation between power and meaning and in examining processes by which social constructions lead to taken-for-granted features of everyday activity. The critical aspect of CDA presupposes interpretivism, which focuses upon the details of a situation, the reality behind these details, and the subjective meanings motivating actions. Interpretivism in turn, is closely linked to a social constructivism perspective that holds that truth

and meaning do not exist in some external world, but rather are constructed by the subject's interactions with the world. Thus, multiple, contradictory accounts of the world can exist. Social construction "denaturalizes what is taken for granted, asks questions about the origins of what is now accepted as a fact of life, and considers the alternative pathways that might have produced and can produce alternative worlds" (Baylis, Smith & Owens, 2011, p.159). Thus, the purpose of research is investigation and CDA is used to hunt down and challenge taken-for-granted realities or truths, open up alternative readings and encourage critical self-reflection, which, according to Wodak, "must accompany the research process continuously" in order to achieve more effective and impartial analysis (Wodak, cited in Kendall, 2007).

Recent years have seen an increasing interest in discourse analysis as a qualitative method in the social sciences. This is due to a growth in interest related to the role of language, ideas, and behaviors and how these are connected to assumptions about reality, that is, to our beliefs about what is true about the world, what exists and how things work in the world. This study uses a qualitative research approach to text analysis, which allows the researcher to enquire into specific events and organizations, and to understand the meaning behind human thought and behaviour thus, - providing a more detailed picture. This approach is particularly appropriate if the intention is to understand a social world through an examination of the interpretations of that world by its participants (Bryman, 2016, p. 380-412). It is also appropriate when investigating phenomena about little is known but after the examination of which there is a desire to understand it more thoroughly (Johannessen, 2011, p.32).

4.1.2 The critical element of Critical Discourse Analysis (CDA)

There does not exist a universally recognized definition of 'discourse'. Instead, there are many different approaches to discourse analysis. Teun Van Dijk defines discourse as a form of language use, public speeches, or more generally spoken language use, and also texts (Van Dijk, 1997, p. 1-2). The theoretical approach developed by Van Dijk distinguishes three main dimensions of the concept, namely language use, the communication of beliefs, and interaction in social situations. The study of discourse as an independent branch of scientific knowledge appeared in the 1960s in France and is derived from different scientific disciplines such as linguistics, psychology, and the

social sciences. The task of discourse studies is to provide integrated descriptions of the three basic dimensions of discourse: how language use influences beliefs and interaction, or, vice versa, how beliefs influence the use of language and interaction (Van Dijk, 1997, p. 2).

For Foucault, 'discourse' is not just the language of an individual communication: - Foucault would regard that as simply a "sample", not the discourse. His understanding of 'discourse' is that it is "the larger systems of thought within a particular historical location that make certain things "thinkable" and "sayable" and regulating who can say them (Foucault, cited in Pilarska 2017). Such a perspective reveals how people in institutions and people in positions of power use discourse to maintain power.

In this study I focus on a critical approach to the study of discourse called Critical Discourse Analysis (CDA). The understanding of what a critical element in the context of CDA is varies within specific approaches and schools.

What is important to mention when discussing the critical element of CDA is that CDA is an interdisciplinary approach to the study of discourse that understands language as a form of social practice. It is not based upon a single theory or method that is consistent and uniform but is rather based on a set of different theoretical and methodological frameworks from the social sciences and humanities. Scholars working in the tradition of CDA generally assume that social practice and linguistic practice constitute one another; they focus on investigating how societal power relations are established and reinforced through language use. Language is defined then as a form of social control over society, and as an efficient tool with which to influence mass consciousness.

What distinguishes CDA from other kinds of analysis is that it is problem-oriented: this means that it focuses on complex social phenomena such as racism, sexism and other forms of social inequality (Wodak and Meyer, 2009). Moreover, CDA intervenes on the side of dominated and oppressed groups and against dominating groups, thus showing strong support for the oppressed; CDA, openly declares the emancipatory interests that motivate it (Fairclough and Wodak, 1997, p. 258-259). According to Wodak and Fairclough, CDA deals with real and long-term effects of social interaction encoded into linguistic form.

The concept of 'critical' should not be taken literally but rather understood as an opposition to the status quo. According to Wodak (cited in Kendall, 2007), this means "not taking things for granted, opening up complexity, being self-reflective in the research process and making ideological positions manifested in the respective text transparent". Moreover, CDA aims to make more visible the opaque aspects of discourse (Fairclough and Wodak, 1997, p. 258). As Wodak states, the goal of CDA is to analyze "transparent structural relationships of dominance, discrimination, power and control as manifested in language" (Wodak, 2009, p. 10).

To Fairclough, CDA is concerned with the analysis of relationships between concrete language use and the wider social structures. Fairclough (2013, p. 4 - 11) defines CDA as an interdisciplinary approach to a study of discourse that uses language as a form of social practice. All social practice is linked to specific historical contexts and are the means by which existing social relations are reproduced or contested and different interests are served. Fairclough assumes that any case of language is a communicative event. According to Fairclough, the objective of CDA is to uncover the ideological assumptions hidden in the words of written texts or speech in order to resist and overcome the exercise of various forms of power - or to gain an appreciation of one's own exercise of power over others – outside of awareness (Fairclough, 2003).

In a similar vein, Van Dijk defines CDA as a type of discourse analytical research that "focuses on group relations of power, dominance and inequality and the ways these are reproduced or resisted by social group members through text and talk" (Van Dijk, 1995, p. 18). In other words, CDA is a field concerned with studying and critically analyzing social inequalities as they are developed, expressed and legitimized by language use. Van Dijk further points out that the critical element of CDA characterizes a critical stance or position of studying text or talk rather than a school or a field. (Van Dijk, 1995).

CDA serves as both a set of theories and a method. According to Jorgensen and Phillips (2002: p.89), CDA "provides theories and methods for the empirical study of the relations between discourse and social and cultural developments in different social domains". They further state that CDA is 'critical' in the sense that it aims to reveal the role of discursive practice in the maintenance of the social structure (Phillips and Jorgensen, 2002).

The theory behind CDA is quite broad and consists of several approaches. However, there are some key principles of CDA, which are shared by all the approaches. These are as follows:

- CDA is not politically neutral but rather politically committed to social change. It contains a critical element. (Van Dijk, 1995).
- CDA is an interdisciplinary approach that specifically focuses on the relations between discourse and society, that is, that social and political issues are constructed and reflected in discourse (Fairclough and Wodak, 1997).
- Much work in CDA concerns underlying ideologies that play a role in the reproduction of, or resistance to, dominance and inequality (Van Dijk, 1995: p. 18). Ideologies are produced and reflected in the use of discourse (Fairclough and Wodak, 1997).
- CDA is issue-oriented. As such, it is able to effectively study relevant social problems (Van Dijk, 1995, p. 17).
- CDA explores opaque social relationship, power and dominance inequalities (as well as the ways in which these are reproduced and resisted by members of social groups) through the analysis of written and spoken texts. Power relations are negotiated and performed through discourse (Fairclough and Wodak, 1997).

4.2 Fairclough's Critical Discourse Analysis

As mentioned above, CDA does not have a unitary theoretical and methodological framework as it is encompassing a range of approaches instead of one school. In this study, the focus is on-Fairclough's approach to CDA and his well-developed three-dimensional model, which brings all important elements together.

CDA developed under the powerful influence of the ideological and political movements of the 1960s. Dominance and power relations are therefore of particular interest in CDA. Accordingly, CDA is a relevant tool in the analysis of political discourses, and is used to examine how the language in, for example, political texts and speech acts, affects politics, highlighting the rhetoric within these and any form of speech used to manipulate and shape a different political reality. It intends to disclose how the language politicians use might affect and influence public opinion.

Fairclough's three-dimensional model of analysis, with its focus on relations between discourse and other social elements of life, is therefore a suitable framework with which to conduct my research. The area of law is an ideal field for the use of CDA. However, the field of law is not widely targeted by researchers working in the CDA field. Van Dijk, for example, applies CDA in the context of political debates and personal political statements, calling them "a specific genre of political discourse" (Van Dijk, 2005, p. 67). In this study, CDA will be used to study a legal text, namely 'Law of Ukraine on the Purification of Government' (October 16, 2014), and two non-legal documents in the form of newspaper articles, namely the 'Lustration is a discussion we have to continue' (Yarema, 2014), and 'Two Understandings of Lustration' (Roudik, 2014).

To begin with, I would like to explain the key concepts that form the basis of Fairclough's 'philosophy of CDA'. The concepts include: *ideology, discourse, and hegemony.*

By *ideology*, Fairclough means common-sense assumptions which people are not generally informed about and have no perception of because they are embedded in the conventions they follow when speaking. Conventions authorize existing social relations and differences through "the recurrence of ordinary, familiar ways of behaving which take these relations and power differences for granted". In this way, ideologies are closely linked to power and language, because using language is one of the most common forms of social expression. (Fairclough, 2001, p. 2) Thus, Fairclough seeks to criticize and change existing power relations through the disclosure of hidden ideological assumptions, which generate differences in power. He aims to establish correct understanding and to create conditions that will be more conductive to human flourishing.

Another key concept of Fairclough's is *hegemony*. According to Fairclough (2013), the concept of hegemony provides a means for analysing how discursive practice is involved in more extensive social practice. Hegemony is the concept used to describe the process of constant struggle for, and the winning and maintaining of a certain level of agreement in order to allow the ruling class to continue in place, often through construction or fracturing of alliances and through the integration of confronting demands. The concept integrates politics, economics, and ideology (Fairclough, 2013, p. 61 - 67).

Discourse is a central concept in Fairclough's CDA. Fairclough conceptualizes discourse across three dimensions - three levels of analysis- a piece of text, the main aspect of the analysis, being at the core. The central point here is to describe the text, or a narrative presented in a sequence of spoken or written words. The focus of the analyst should not merely be to understand and describe the text, but also to identify what is being excluded or hidden. The second tier Fairclough identifies as a level of discursive practice, is one concerned with how the texts or narratives are interpreted and received and what social effects they have. The third tier concerns the social practice of which the text is a part, this having various orientations including social, historical, cultural, political, and so on. (Fairclough, 2003, p. 58-61). This tier comes at the explanation stage, where the focus is on explaining which practices - social, political, historical, and so on, across texts and narratives - can lead to social change. Fairclough brings together all these elements in the framework: each is essential for CDA, and, together, constitute the CDA analytical model.

4.2.1 The three-dimensional framework of Critical Discourse Analysis

Fairclough's analytical approach assumes that language creates change and can be used to change behaviour. Language thus becomes a power tool. In this section, I will discuss the principles of the model, and its use in the analysis of change. Fairclough's three-dimensional model (Figure 1) is often used as a framework for analysis in Critical Discourse studies. In seeing discourse as a social practice, Fairclough demonstrate that CDA is not only concerned with analysing texts but rather with analysing the relationships between texts, processes and their social conditions. The model thus consists of three interdependent dimensions that can be summarized as follows: 1) *Text* – this can be speech, writing, images or the three forms of communication together. Analysis takes place at 'word level'; 2) *Discursive practice* – this involves the production of texts or the constitution of texts. In this dimension, analysis takes place at the 'text level'; and 3*) Social practice* – this concerns standards of society or the organizations and affect social structures. Analysis takes place at the 'norm level'.

Figure 1 Fairclough's three-dimensional model (Fairclough, cited in Jorgensen and Philips, 2002, p. 68).

Text Analysis (Description)

The first dimension is the text. Discourse is a set of words and characters that are used when we speak or write. By using specific words, attitudes to the subject are demonstrated. For example, in the three examples, 'My doctor was a young professional', or 'My doctor was a young man', or 'My doctor was a young gentleman' - the choice of the words 'professional', 'man' or 'gentleman' expresses an attitude towards the doctor. Attitude is expressed in the choice of words. Whether a soldier is a defender, or a murderer depends on the view of the person describing the action that has taken place.

Discourse is also language as an aspect of community, which means that the words we chosen lead to a feeling of belonging in the community. For example, a person who has returned to their country of origin for one group may be a 'repatriate', for another an 'immigrant' and for a third, a 'traveller'. Discourse analysis is partly about text analysis, based on the understanding that any

text contains interpretations. Textual analysis is seen as traditional linguistic analysis of, for example, speech, writing, visualization or their combination, and involves analysis of vocabulary, semantics, the grammar of sentences, and sound analysis (Philips and Jorgensen, 2002, p. 60 - 96).

Discourse Practice (Interpretation)

CDA understands that language can be 'an agent of change'. The words that are chosen and the way in which sentences are composed are of great importance. The way a subject is discussed can change people's view of that subject. Text is almost always subject to interpretation: language is not neutral but rather a means of representation. It often contains values, attitudes, and assessments. Analysis of discursive practice focuses on "how authors of texts draw on already existing genres and discourses to create a text …", and on "how the receiver of texts applies available genres and discourses in the consumption and interpretation of the texts" (Philips and Jorgensen, 2002, p. 69). In Fairclough's three-dimensional model, discursive practice is the bridge between the text and the wider context of socio-cultural practice. Public and cultural contradictions are seen in the text. In conducting discursive analysis, one may ask how the text has been produced and how it is received (Philips and Jorgensen, 2002, p. 61). Discursive practices are dynamic in nature; they vary depending on social, economic and cultural factors.

Social Analysis (Explanation)

In social analysis the focus is on the context, or on the situation that surrounds the overall institutional context, or even on the general perspective of the society and culture within which the text was produced and consumed. To understand the situation, it is important to study all levels of the context (Philips and Jorgensen, 2002). According to Fairclough, the dimension of socio-cultural practice can be divided into three contexts: situational, institutional and societal (Fairclough, 2003). Language creates beliefs, social relationships, practices, expresses attitudes and is associated with power. Language is communication, a social event, which is closely linked to the society in which people are located. In this way, society could be an institution with its own traditions and rules.

4.3 Analysis framework

Fairclough's conception of discourse identifies three tiers of analysis: Firstly, I would like to perform a detailed textual analysis. Secondly, context analysis will be undertaken in order to identify the 'main themes', that is, to underline what has been important during the different periods of time. The final step of the research design is oriented towards the understanding of the key historical developments that have taken place. The focus will therefore be on events that affected and contributed to the adoption of law No. 4359 of 16 October 2014 on government cleansing (lustration law).

In this section I will demonstrate how I will use Fairclough's analytical model in this study and describe the tools and methods applied in the analysis of texts.

The main stages in Fairclough's analysis include:

- CDA usually starts with the text itself. It is therefore important first to identify the main topic of the text.
- The next step is to find out what the author's purpose is, that is, their reason for writing the text, and to understand what the author's position is, that is, the author's opinion about the subject.
- A further step is concerned with the linguistic selections made in the text, looking at the choice of words, the structure of sentences, semantics, and, their juxta positioning and sequencing within the text.
- Next comes identification of the discourses within the text.
- Finally, the text should be positioned within a context.

In this study, I will be looking to answer the following methodological questions, as indicated by Fairclough in his book, 'Language and Power' (2001): The values expressed by the words; any use of the metaphor; the connections between simple phrases; the relations of power that help to create the discourse; the positioning of the discourse in relation to the fight for power; the contribution the text makes, if any, to perpetuating or changing existing power relations. Thus,

power relations can be studied by asking, for example, which discourses are dominant in a text and which are silenced, and how this happens.

4.3.1 Analytical tools

In this chapter I present the central tools used to ensure rigorous and accurate textual analysis of one legal document and two newspaper articles presented in Chapter 5. Altogether Fairclough proposes twelve analytical tools, expressed in the form of questions (Fairclough, 2003, p. 191-194). It is important to use analytical tools appropriate to specific research questions to avoid analysis becoming obscure and losing focus. Therefore, based on the analytical relevance to the texts, only five of these tools were selected for this study.

Discourses

Text is the representation of 'discourse', which Fairclough defines as "a particular way of representing some part of the (physical, social, psychological) world" (Fairclough, 2003, p. 17). He further presents two ways of looking at discourse. It can be seen as representing some particular aspect of the world and it can be seen as representing the world from a particular viewpoint. Fairclough suggests that in textual analysis one can look for 'the main themes' that are being represented or identify the particular perspective or angle or point of view from which they are represented (Fairclough, 2003, p. 129). Themes are open to different perspectives, representations, and discourses. The main themes can characterize a larger subject: for example, Fairclough refers to the theme 'economic processes and change', which are represented in terms of the 'neo-classical, market-liberalization discourse of the Washington consensus' (Fairclough, 2003, p. 129).

Additionally, different discourses may contain vocabularies that are partly different but are likely to substantially overlap. This mean that different discourses may use the same words but use them differently and give a contrary meaning to these words. Focusing on semantic relations is therefore one way to uncover this relational difference; this can be done by, for example, looking at the co-occurrence of the words in the text - repeatedly used words and the words that either precedes

the word immediately or are positioned some words away (Fairclough, 2003, p. 130-131) – and questioning whether does the word is preceded by a word with positive or negative overtones?

Genres

In this study I focus on the genre of legal acts displayed in the lustration law that regulates the social sphere. Fairclough argues that the concept of 'genre' can be problematic in so far as it defined on different levels of abstraction. He further states that both *argument*, *narrative*, *description and conversation* are genres 'on a high level of abstraction', so called 'pre-genres', that is, "categories which transcend particular networks of social practices, and there are for instance many different types of narrative genres, which are more specifically situated in terms of social practice". (Fairclough, 2003, p. 81-82).

In general, politics refers to the process of making important organizational decisions, including the identification of different alternatives and choosing among them in contexts of conflict of interests, disagreement, values, power inequalities and risk. This process is argumentative in nature and includes the provision of practical arguments and the process of a careful weighing of the arguments.

The version of CDA developed by Fairclough and Fairclough (2012) incorporates an account of practical argumentation, which it defines as "arguments about what should be done" to show how particular reasons for action provided by particular discourses tend to be accepted as reasonable in providing support for particular actions. The conclusion of a practical argument is a normative or prescriptive statement, saying that an agent ought to perform an action, or that the action in question is recommended. The model for how to analyse arguments and evaluate practical reasoning in arguments is used in this study in order to identify how actors represents the world and why it is argued that way.

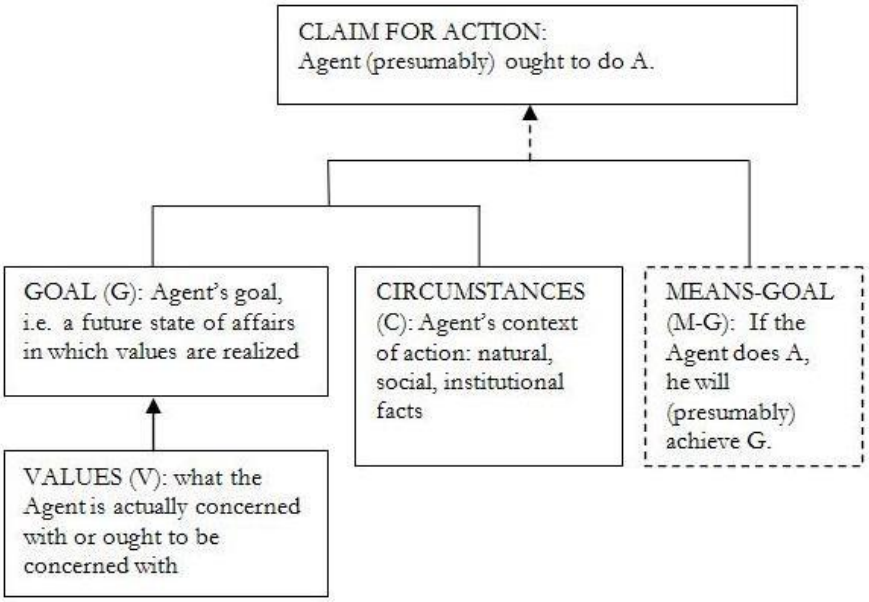

Figure 2 Fairclough and Fairclough (2012) suggest the following structure of practical reasoning:

Legitimation

In general terms, 'legitimation' is defined in terms of explanation of concepts, argumentation, justification and giving or having reasons for what and why the particular action was carried out (Fairclough, 2003). Legitimation is another way of giving judicial force to the law, that is, a way of giving a document legal status. The terms 'legitimacy' and 'legitimation' are used as sociological rather than linguistic concepts and lack clear definitions in the works of CDA experts. Thus, from a CDA standpoint, legitimation can be considered as "a discursively created sense of acceptance in specific discourses or orders of discourse" (Vaara and Tienari, 2006, p. 793): an analysis of discourse through narratives or explanation can help to uncover the strategies of legitimation of a particular action. Fairclough therefore states that legitimation is the most effective method of making things accepted and widely known through language, or more precisely, discourses (Fairclough, 2003, p. 219).

Van Leeuwen (in Fairclough, 2003, p. 98) distinguishes between four legitimation strategies:

- Authorization: legitimation by reference to the authority;

- Rationalization: legitimation by reference to the utility of institutionalized action;
- Moral evaluation: refers to specific values;
- Mythopoesis: occurs when telling a story provides evidence of appropriate, tolerable behaviour.

Finally, legitimation can serve both as a good and bad thing, that is, it can be used as a way to legitimize, or not, procedures that could destroy the democratic foundations of the State and might lead to the destabilization of the democratization processes. Procedural values and the quality of the decisions made therefore matter.

Assumptions and presuppositions

Traditionally, assumptions and presuppositions are two words that relate to each other and merge into one concept. An assumption is something that is taken for granted without any evidence. For example, when one person makes a promise to another person it is not necessary to say out loud that the words he uttered are the verbal guarantee that he has the intention to perform an action. It is enough to say 'I promise to do this' because the listener accepts these words as true, or as certain to happen even without proof. Assumption therefore refers to something mutually known or assumed by the speaker and listener for the statement to be considered appropriate in the context. Fairclough's CDA model embeds three different types of assumptions (Fairclough, 2003, p. 3; 55):

- Existential assumptions: assumptions about what exists.
- Propositional assumptions: assumptions about what is or can be or will be the case.
- Value assumptions: assumptions about what is good or desirable. An example here can be a word 'help' that presupposes a desire to improve the situation: 'help develop flexibility'. Value is based on the 'desirable/undesirable' criteria. Because people have different values, there are different ideas regarding what is good and desired (ibid).

Uncovering assumptions in the legal texts would therefore be useful to this study as a way of uncovering what the authors identify with, and what values they are committed to.

Modality

Modality clarifies the degree of personification and the speaker's involvement in his statement: that is, it measures the level of commitment the authors make to different statements, offers and needs (Philips and Jorgensen, 2002, p. 83). During a conversation, speakers can express their thoughts with different degrees of conviction. For example, the statement 'cool', 'it is a little chilly', or 'it's pretty cold out' show different ways people express their attitudes to the world around them.

Fairclough distinguishes between two types of modality, 'epistemic modality', and 'deontic modality, which can be associated with the four major speech functions: statements, questions, demands, and offers. The first two speech functions are associated with knowledge exchange while the latter two are associated with activity exchange. Figure 3 presents the different types of modality, knowledge exchange and speech functions developed by Fairclough.

Table 2 Exchange types, speech functions and types of modality developed by Fairclough (2003, p. 167-168).

Epistemic modality (knowledge exchange)	Deontic modality (activity exchange)
Statement: 'author's commitment to truth'	*Demand:* 'author's commitment to obligation'
Assert: The door is open	Prescribe: Open the door!
Modalize: The door may be open	Modalize: You should open the door!
Deny: The door is not open	Proscribe: Don't open the door!

Questions: author elicits other's commitment to truth Non-modalized positive: Is the door open? Modalized: Could the door be open? Non-modalized negative: Isn't the door open?	*Offer:* author's commitment to act Undertaking: I will open the door Modalized: I may open the door Refusal: I won't open the door

In the text, modality can be identified through the modality markers, called 'the archetypical markers of modality', 'modal verbs' (that is, - can, may, will, would, should, must, might, could) (Fairclough, 2003, p. 168). Fairclough emphasizes that modality is an important dimension of discourse when it comes to expressing social relationships. For example, modality can reveal inequalities in relationship where someone, X, has power over another, Y, (ibid).

The researcher should address the following factors when analysing the text: What the authors commit themselves to in the terms of truth (epistemic modalities), and/or in terms of obligation and necessity (deontic modalities); the extent to which modalities are categorical (assertion, denial), and/or modalized (with explicit markers of modality) (Fairclough, 2003, p. 191-194).

4.4 Sampling

Sampling concerns who or what participates in a study. A purposive sampling technique is adopted in this study, meaning that the researcher relied on her own judgment when selecting documents that were considered to be relevant to the research questions (Bryman, 2016, p. 418). There may be several different criteria for selecting a sample that would depend on the goal of the research.

Totalitarianism and corruption are the challenges that exist in modern states such as Ukraine. In October 2014, President Poroshenko signed the Law 'On Government Cleansing', which aimed "to protect and affirm democratic values, the rule of law and human rights in Ukraine" (Law 'On Government Cleansing, 2014) through the fight against corruption, an employment ban applied to individuals who occupied high positions in the Yanukovych government for at least one year, and decommunization. Analysing the Law 'On Government Cleansing' could reveal something about how the Ukrainian government defines the problem and how it interprets what corruption, decommunization and the process of democratization are in the context of lustration. Similarly, the interpretation of the problem itself might reveal how the government seeks to solve it. The Law 'On Government Cleansing' can therefore be seen as a national strategy, and an official expression of the problem. The fight against corruption remains one of the priorities of the Ukrainian lustration law. Corruption, in turn, is one of the indicators of serious human rights violations taking place in the country. It leads to a situation in which people run their own affairs at the expense of their fellow human beings in the event of physiological, moral and financial damage. It is especially important to prevent corruption in periods of political transition, as the corruption at these times could result in the violation of a number of human rights, in strengthening mistrust of the new authorities, and of halting the process of democratization in the country.

My choice of this particular lustration law is based on the fact that there are only two lustration laws available and adopted in Ukraine. The central focus of this study is on the Law 'On Government Cleansing of October 2014'. I have decided to exclude the other lustration law from my research, because the document analysis of the Law 'On Government Cleansing' is already very time-consuming process. The selected news articles are placed in two categories – one represents a general feeling of optimism regarding the prospects of the legal document, and the other displays a sceptical attitude towards lustration. This sample allows the researcher to examine similarities and differences among the analysed texts. In this study, the focus is on the unified official position of the Ukrainian government, represented by the law on lustration, and on the two contrasting newspaper articles, which reflect the perceptions of lustration of the Ukrainian people.

4.5 Data collection

Wodak and Meyer (2009, p. 27) state that "there is no CDA way of gathering data" thus making text analysis within the CDA framework more difficult to conduct. This does not necessarily mean that data can be collected and analysed in a random sampling. Data collection therefore depends on the purpose of the analysis and the type of discourse that is the focus of the analysis.

A distinctive feature is that data gathering in CDA is not a specific stage that must be undertaken before the analysis starts but rather an ongoing process as there is no distinction between data collection and analysis in CDA as a qualitative method (Wodak and Meyer, 2009, p. 27): *"After the first collection exercise, it is a matter of carrying out the first analyses, finding indicators for particular concepts, expanding concepts into categories and, on the basis of these results, collecting further data"* (Wodak and Meyer, 2009, p. 27-28).

The study will focus on the short time period, from 2013 to the present day; this makes the analysis more concentrated and thus allows the research questions to be addressed with sufficient accuracy.

4.6 Methodological challenges

When choosing between different research methods, the researcher begins by defining what he or she wants to learn, then choosing those methods that best match the research questions. To start with, CDA is a new and unfamiliar method to me: I had no prior knowledge of CDA and had no idea how to apply this method in my study, but that did not stop me deciding on this particular approach. My choice resulted from comprehensive reading of different works over a long period of time.

Another methodological concern is that of scientific objectivity. The main argument here is that CDA researchers sample a text selectively and analyse its linguistic features selectively in order to confirm their own political values, focusing on a specific desired result. Billig points to the fundamental methodological problem in CDA: "We investigate language and yet at the same time

we must use language in order to make our investigations" (Billig, 2008, p. 783-800). The question is, 'How can we be sure that our own language does not bear the imprint of ideological propositions that we attempt to find in the language of others?' As Kress states, "all signs are equally subject to critical reading, for no sign is innocent" (Kress, 1993, p. 174). Van Dijk (in Wodak and Meyer, 2001, p. 95) openly admits that "CDA is biased – and proud of it". This, according to some scientists, discredits CDA as a scientific method thus, depriving CDA of the possibility of being objective.

The official version of the lustration law of October 2014 is in the Ukrainian language. However, in this study, I used the English version. There are several reasons for doing this. Firstly, English is not my native language. Translating a document from one language to another will affect the analysis itself in the way that my use of words may differ from their use in the original version and this would thus affect the understanding and interpretation of meaning of the text and, in turn, its quality. To achieve more credible and precise answers from the analysis, I will therefore use the English translation of the Law on Government Cleansing provided by the Ukrainian authorities in this study. Moreover, assuming that language is central in CDA approach, I consider my decision appropriate and fully justified. Even though the English version of the document is not an original one and has been subject to translation, which might mean that some of the original meanings could be lost, it is important to note that the document used in this research is a professional translation of the Original. In addition, I made a comparison between the Ukrainian and English versions of the document to ensure that no words had been changed, no parts have been added or missed and that the translation was accurate.

4.7 Ethical considerations

Despite the fact that this study concerns the ongoing conflict in Ukraine involving human rights violations, the thesis is based on texts written as public "naturally occurring material" (Jørgensen and Phillips, 2002); the government of Ukraine, and advisory body in the form of Venice Commission promote equal access to the information and documents available electronically via

Internet even though the study concerns the ongoing conflict in Ukraine involving human rights violations.

The study does not involve personal contact with individuals, and so, the project does not involve any personal information. The focus will therefore not be on interrogation of individuals, but rather on the analysis of various discursive strategies used by the government.

It is important to note, that it is my responsibility as a researcher not to steal ideas or to plagiarize the work of other researchers. The sensitive issue of plagiarism is therefore taken seriously throughout the process of this study.

5 A Critical Discourse Analysis of the Law 'On Government Cleansing'

Having presented and explained the core elements of CDA, in this chapter, I will integrate these elements with the theoretical overviews from Chapters 2, 3 and 4. As mentioned in Chapter 1, the objective of this study is to investigate the impact of - the 2014 Ukrainian lustration law on the process of democratization of Ukraine in the context of transitional justice; this entails looking into the discourses used in the legal text in the context of democratization.

The analysis in this study is based on Fairclough's model for CDA and will therefore be divided into three sections: textual analysis or discourse analysis (description), discursive practice (interpretation), and social practice (explanation). As mentioned in chapter 4, there is no single, specific criterion used when conducting a CDA research project. However, textual analysis is the central focus in Fairclough's CDA approach and this will therefore form the bulk of my analysis. I have chosen to deal with three documents separately in section 5.1. The document adopted by the Parliament is the most important text of this study and will therefore be analysed in more detail. The linguistic aspects of the text that will be analysed include grammatical features, vocabulary, syntax, and coherence; the analysis will also focus on interdiscursivity, looking at the texts in terms of "the different discourses, genres, and styles they draw upon and articulate together" (Fairclough, 2003, p. 3).

Section 5.2 concerns the analysis of discursive practice, that is, the practice through which the texts are produced and consumed (Jorgensen and Philips, 2002, p. 68). Analysis of discursive practice focuses on how texts are interpreted and received and what social effects they have. My analytical focus here is on how authors of texts draws on already existing discourses to produce a text, and how the addressees apply discourses in their consumption and interpretation of the texts. This part of the analysis will be conducted to identify main discourses. I have chosen to terminate the separation of the analysis of the documents and introduce the discourses as a single unit because a few shows up in all.

The following section in this chapter, section 5.3, provides an explanation of how the different practices in the text – social, political, and historical might indicate social change. The analytical focus here is therefore on the broader socio-cultural practices within which the text was produced.

A detailed investigation of the research questions is provided in following sections.

5.1 Textual Analysis

Based on the analytical framework of CDA, and using the tools defined in chapter 4.3, I conduct a textual analysis of the Law on Government Cleansing ("Lustration Law") adopted by the Verkhovna Rada – the Ukrainian Parliament (henceforth, Rada) on September 16, 2014. I demonstrate that the lustration policies seen as fundamental in ensuring progress, rather than regression, in Ukraine's democratization process. Lustration law is one of the main tools designed to promote democratization, human rights, and the rule of law. A number of European governments have issued similar lustration policies prior to the Ukrainian one; this positions the document in a discursive practice that is a part of a constructed political norm and an accepted element in the discourse of democratization.

5.1.1 Law 'On Government Cleansing' No. 4359 (Lustration Law)

The law 'On government Cleansing' No. 4359 – VII serves as the primary source of data. The law was adopted by Rada on 16 September 2014 and signed by President Petro Poroshenko on October 9, 2014, following the September 2014 Minsk truce (Minsk I) between Ukraine, the

Russian Federation, and representatives of the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR). The law was published in the Ukrainian official newspaper - Holos Ukrayiny on 15 October 2014 and entered into force on 16 October 2014. The law covers a period of 4 years, from 2010, after ex-President Yanukovich came into power to 2014, following his resignation. The tone of the law can be defined as legal and factual, with sections devoted to 'the description of the law', 'provisions of law', 'lustration criteria', 'list of positions subject to lustration', and 'screening procedures'. The law contains 12 pages of legal text (Rada, 2014).

"To protect and affirm democratic values, the rule of law and human rights in Ukraine" is one of the key stated objectives of the Ukrainian government (Rada, 2014, p. 2). The document was written by the Ukrainian Parliament. The process of production of the document proved to be very complex, with a great deal of careful and detailed preparation and consultations among experts, members of civil society, lawyers, and members of state institutions involved in the conduct of the lustration process and in its revisions (David, 2015, p. 4). This makes the document a valuable source for understanding the basic ideas that shape the Ukrainian government's policy.

Lustration law is an important piece of domestic legislation in that its stated objective is to "keep away from public governance those persons who made decisions, took actions or inaction (and/or contributed to their taking) facilitating power usurpation by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of the national security and defence or violate human rights and freedoms" (ibid, Article 1.2). Additionally, lustration law is represented as a conductor of social change- changes within the judiciary, democratization, and the establishment of a reliable state apparatus for the protection of national security, public safety and the rights of others.

Lustration is the first law of its type in the history of Ukraine and provided a legal framework for dealing with the past, which is in line with European standards. The history behind the Lustration Act began on 26 February 2014, when the interim government headed by Yatsenyuk, proclaimed the idea of establishing a Civic Lustration Committee (CLC) in cooperation with the U.S. Agency for International Development (USAID Fair) and several political parties mandated to work on the drafting of the Lustration Law to defend Ukraine's democracy. This resulted in several drafts of the

bill being submitted by a coalition government consisting of three political parties Svoboda, Batkivschyna, and UDAR -which aimed to purify public institutions in order to achieve the rule of law, safeguard the fundamental rights and democratic liberties of the citizens, strengthen the capacity of State institutions, and further stabilise the political situation (Zabyelina, 2017, p. 62). The progress and outcome of the public deliberations were presented in September 2014. In the legal document officially named - the Law on Government Cleansing ("Lustration Law"), the proposals made by the experts were established. The Law was signed by President Poroshenko on October 9, 2014. The publication of the Lustration Law was on October 15, 2014, and it entered into force on October 16, 2014.

5.1.1.1 Tools

In this section, I present the findings from the textual analysis of the Law on Government Cleansing ("Lustration Law" No. 4359) of 2014. This segment of the analysis represents the inner part of Fairclough's model –the text - which is both a product of the process of production, and a resource in the process of interpretation (Fairclough, 2001, p. 20).

As mentioned in chapter 5, the analysis of the textual dimension focuses not only on grammar, metaphors, and wording but also on the genres, discourses and styles upon which the text draws and how they work together in the text (Fairclough, 2003, p. 218). Jorgensen and Phillips (2002) stress the importance of modality as a main tool within this dimension. Modality refers to the degree to which the speaker commits to a statement. Jorgensen distinguishes between two types of modality, one being truth, that is, the author's total commitment to the statement and the being hedging, that is, the author's graded commitment to his or her statement, using words or phrases such as 'a little', 'a bit'. I will also use other tools such as argumentation, legitimation, and assumptions, as I found them relevant.

Argumentation

By looking at the text, it might be possible to detect an argument constructed by practical reasoning, proposing what should be done, what actions might be recommended or what actions might be performed. I have extracted an argument from the Article 1 of the Law:

"The Law establishes legal and organizational principles of cleansing the government (lustration) to protect and affirm democratic values, the rule of law and human rights in Ukraine (Rada, 2014, p.2). Lustration is a ban imposed by the Law or a court judgment on particular individuals to take certain positions (serve) (except for elective positions) in central and local government authorities (ibid, Article 1.1). Lustration shall be performed to keep away from public governance those persons who made decisions, took actions or inaction (and/or contributed to their taking) facilitating power usurpation by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of the national security and defence or violate human rights and freedoms (ibid, Article 1.2).

The persons specified in Article 3.1, 3.2, 3.4, and 3.8 shall not be allowed to occupy positions being cleansed for ten years after this Law takes effect (ibid, Article 1.3). The persons specified in Articles 3.3, 3.5, 3.7 of this Law may not occupy positions being cleansed for five years after a corresponding court judgment takes effect (ibid, Article 1.4).

Then I have applied the model for argumentation developed by Fairclough and Fairclough (2012), which deconstructs the argument:

Claim for action: To ban certain categories of individuals from occupying certain positions (offices) in central and local government specified in Article 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 3.8.

Means-goals: Keeping away from public governance particular individuals specified in Articles 3.1, 3.2, 3.3, 3.4, 3.5, 3.7 and 3.8 would help achieve the goal, of protecting and affirming democratic values, the rule of law and human rights in Ukraine.

Circumstances: Persons who made decisions, took actions or inaction facilitating power usurpation by the President of Ukraine Viktor Yanukovych are seen as having undermined the foundations of national security and defence and to have violated human rights and freedoms.

Goal: To protect and affirm democratic values, the rule of law and human rights in Ukraine.

Values: democratic values, the rule of law and human rights.

The word 'threat' is the term that claim for action and possible changes in this text, that is, serves as a threat to the Ukrainian democratic system, its society, national economy, security, and territorial integrity.

In the text, Parliament is concerned with action that is based on democratic and moral values: *"Lustration is to be based on the following principles: the rule of law and lawfulness; openness; transparency and public accountability; presumption of innocence; individual liability; and guarantees of the rights to defence"* (Rada, 2014, p. 2).

In this way, the Parliament makes a division between "us" and "them", positioning itself before the outside world as the young Ukrainian democracy based on democratic, liberal practices. In this way, the Parliament indicates a change in the government's national policy, condemning the work of the previous regime and pointing to the need for action to strengthen the push for peace in Ukraine, and to the need to develop and apply a series of stabilization measures. In this manner, the Parliament therefore legitimizes the Law on Government Cleansing, stressing the need for further focused work and referring to the threat situation within the country using modal expression such as "The ban specified in Article 1.4 *shall be imposed* on officials and officers of central and local government authorities who … contributed to power usurpation by the president of Ukraine Viktor Yanukovych and seeking to undermine fundamentals of the national security, defence or territorial integrity of Ukraine which caused the violation of human rights and freedoms" (Rada, 2014, p.6); "called publicly for the breach of Ukraine's territorial integrity and sovereignty" (ibid, Article 7.3); and "incited ethnic hostility" (ibid, Article 7.4).

Legitimation

In this section, the focus will be on the legitimation strategies, that is, on how the Parliament establishes legitimacy throughout the text to provide support for the Law 'On Government Cleansing' in its fight against anti-democratic practices and the corruption of the past regime, and towards establishing the new democratic government based on the rule of law, democratic values and human rights in Ukraine.

The legitimation of the Law and its positive effects can be seen in the following ways:

Firstly, the Parliament calls for the protection of society from individuals who, due to their past behaviour, could pose a threat to the newly established democratic regime, so that only qualified politicians who respect democratic values can continue in their jobs. The importance of this is justified by the need to "*protect and affirm democratic values, the rule of law and human rights in Ukraine*" (Rada, 2014, p.2). Legitimation can be found in Article 1.2 of the Law:

"*Cleansing of the government shall be performed to keep away from public governance those persons who made decisions, took actions or inaction facilitating power usurpation by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of the national security and defence or violate human rights and freedoms*" (ibid).

Crimes perpetrated by the previous regime therefore should be properly prosecuted. This is demonstrated by the order that any perpetrators "*shall not be allowed to occupy positions being cleansed for ten years after this Law takes effect* (Rada, 2014, p. 2), and "*may not occupy positions being cleansed for five years after a corresponding court judgment takes effect*" (ibid). In this case, the Parliament refers both to the persons who occupied high-level positions under the previous, non-democratic regime under Yanukovych or who engaged in serious human rights violations and to the persons who worked in senior positions of the Communist Party of the Soviet Union, or employees or cover agents of the KGB of the Ukrainian SSR.

Thus, as an example, Article 3.3 states that "*The ban specified in Article 1.4 (lustration for five years) of this Law shall be imposed on judges*" (Rada, 2014, p. 6); the Parliament legitimizes this decision by pointing to the crimes committed by the judges "*… who approved or upheld guilty verdicts in regard to the persons subject to full personal amnesty according to the law of Ukraine No. 792 – VII - …*" (ibid).

Secondly, by applying anti-corruption measures, the Parliament aimed to cleanse the public administration of individuals who had engaged in large-scale corruption that might undermine the national economy and constitute a security threat. This is justified by the need to screen "*the reliability of information about possession of property and a match between the cost of property,*

indicated in the transparency returns on the property, income, expenses and financial obligations" (Rada, 2014, p. 8).

The Law was therefore perceived as necessary in a newly democratic state in the interests of the national security and economic well-being of the country, since the former Communist Party officials and individuals who worked under Yanukovich's regime may not have been sufficiently trustworthy to carry out democratic reforms. What is more, the process of democratization could not be pursued until the State removed from public life persons who were engaged in serious human rights violations or occupied high-ranking positions under the previous non-democratic and corrupt regime.

Authorization

Authorization is legitimation by reference to the "authority of the tradition, custom, law, and of persons in whom some kind of institutional authority is vested" (Fairclough, 2003, p. 98). This type of legitimation has been used in the current text in reference to the kind of authority, the amount of power the person/agency has, and the actions for which he/it is responsible. An example of this can be found in Article 5.1 of the Law:

"The Ministry of Justice of Ukraine is an agency authorized to ensure the screening provided for by this Law." (Rada, 2014, p. 7);

Also, another example can be found in Article 5.4 of the Law:

"*Responsibility for organization of the screening shall lie with the head of a respective agency authorized to dismiss a person being screened";*

"Responsibility for organization of the screening of professional judges shall lie with the president of a court where the judge works";

"Responsibility for organization of the screening of members of the High Council of Justice, High Qualification Commission of Judges of Ukraine, Central Election Commission and National

Television and Radio Broadcasting Council of Ukraine lies with the head of an agency where the person works" (ibid, p. 8).

Thus, the authority to organize and ensure the screening is shown by recognizing that liability rests with more than one organization.

Rationalization

Generally, rationalization can be defined as "legitimation by reference to the utility of specific actions based on knowledge claims that are accepted in a given context as relevant" (Vaara, 2006, p. 793). Fairclough states that rationalization is the "clearest and most explicit form of legitimation" (Fairclough, 2003, p. 99), and that it overlaps with moral evaluation. Fairclough further states that rationality assumes certain agreed ends and legitimizes procedures or actions in terms of their usefulness in fulfilling these ends (ibid). What I have found interesting in this text regarding rationalization is that the claims in this case are focused on naming significant dates and specific actions. For example, Articles 5.1, 5.3, 5.8 and 5.9 of the Law started in a similar, factual, tone.

Article 5.1 and, - Articles 5.3, 5.8 and 5.9 of the Law provide examples of rationalization:

"The Ministry of Justice of Ukraine shall, within one month following the effective date of this Law, establish an advisory public council for lustration which shall comprise representatives of mass media and general public to ensure civil control over the government cleansing" (Rada, 2014, p. 7).

"The Ministry of Justice of Ukraine shall, not later than on the tenth day of approval by the cabinet of Ministers of Ukraine of a list of agencies, post on its official website information about the postal address, e-mail, and telephone number of every agency responsible for screening and the advisory public council for lustration under the Ministry of Justice of Ukraine" (ibid, p. 8).

"Screening shall start on the day when respective requests, documents attached thereto, and reports are sent to the Ministry of Justice of Ukraine. Information about start of the screening of a person and copies of his/her statement and transparency return shall be published within three

days of receipt of the statement on the official website of an agency authorized to dismiss a person being screened" (ibid, p. 9).

Mythopoesis

Fairclough defines 'mythopoesis' as "legitimation conveyed through narrative" (Fairclough, 2003, p. 98). Van Leeuwen (Fairclough, 2003, p. 99), however, states that 'mythopoesis' is "not a narrative in a strict sense but it is rather the building up of a picture of the 'new age". He further notes that mythopoesis, along with narratives, assumes that there is first a need to put an end to past non-democratic practices and implement appropriate policies to make certain good things happen, and to ensure that certain bad things will happen if such policies are not implemented.

What I have found to be interesting regarding mythopoesis in my analysis is how the text opens with a narrative about how the new Ukrainian state can be built by removing from public life individuals who occupied high-level positions under the previous, non-democratic regime and who engaged in serious human rights violations. The discourse constructs a role for lustration, which is to contribute to the realization of this mission, whose work and functions are to eliminate abusive and corrupt officials through due procedures.

Lustration therefore represents a kind of national program of emancipation that should bring an end to the era of non-democratic practices and enable Ukraine society to have a new, fresh start; the constituted role of lustration is to advance the program of liberation. The Law 'On Government Cleansing' produces a narrative where the cleansing of 'foreign bodies' must be carried out before democratization can happen and any meaningful progress can be made in Ukraine.

Assumptions

An assumption in a text is a certain aspect of that text (for example, a statement) that is presumed to be true, or at least plausible, by the writer and the recipient of the text and for which there is no need for proof or supporting empirical data. It is clear from the Lustration Act that there are assumptions about the rule of law and lawfulness, the openness and transparency of the Ukraine, and a common Ukrainian value that is closely linked to democratic values and human rights.

The Ukrainian Parliament's definition of lustration is referred in Article 1.1 of the law – 'Main principles of cleansing the government': *"Cleansing the government (lustration) is a ban imposed by the Law or a court judgment on particular individuals to take certain positions (serve) (hereinafter positions or offices) (except for elective positions) in central and local government authorities"* (Rada, 2014, p. 2). The Law states that the cleansing process aims at "*keeping away from public governance those persons who made decisions, took actions or inaction (and/or contributed for their taking) facilitating power usurpation by the President of Ukraine Viktor Yanukovych and seeking to undermine the foundations of the national security and defense or violate human rights and freedoms*" (Rada, 2014, p.2).

Based on this definition, it can be assumed that lustration is seen as a radical measure adopted with the aim of increasing the accountability of and trust in the government. It is noteworthy that all provisions of the Law are generally seen as constructive and legitimate.

The law further assumes that the reasons for the cleansing process largely reflect the non-democratic practices in Ukraine such as violations of human rights and freedoms, the usurpation of power, actions undermining national security and also the socio-economic issues such as the widespread problem of corruption and that the implementation and screening procedures for laws depend to a large extent on the government itself, namely on the Ministry of Justice of Ukraine.

The text also promotes the value assumption that the cleansing process is a tool which separates the past decade from the present, thus, improving people's trust and confidence in the State, - and the legal system. The Lustration Act is therefore seen as inherently good, while the past regime is seen as inherently bad unless it is controlled by the former.

Modality

Modality clarifies the degree of the author's commitment to the statements. Throughout the text, authors express their thoughts with different degrees of conviction and using different speech functions. By conducting a detailed investigation of the rigorous and binding character of this particular text, the modal expressions throughout can be generally classified as 'demands',

focusing on what 'must be done', through the use of words such as 'shall', 'shall not be', 'may'. For example, statements such as "Cleansing shall be performed", "Persons shall not be allowed to", or "May not occupy positions" indicate a high degree of modality (Rada, 2014, p. 2).

Additionally, these demands place responsibility for screening procedures to a large extent on the Ministry of Justice of Ukraine "… to ensure the screening provided for by this Law" (Rada, 2014, p. 7), and to a lesser extent on the heads of respective agencies - "Responsibility for organization of the screening" (ibid: Article 5.4)-, on the president of a court where a judge works - "Responsibility for organization of the screening of professional judges" (ibid)-, and on society- "to ensure civil control over the government cleansing (lustration)" (ibid). The Parliament itself, on the other hand, shall exercise parliamentary control over compliance with this Law" (ibid: Article 8.1).

5.1.2 'Two understandings of Lustration'

The article 'Ukraine: Two understandings of Lustration' was published on the U.S. national research library's official website. The article was written on 27 October 2014 by the director of legal research at the Law Library of Congress, Peter Roudik. The article is written in English and will serve as the secondary source of data.

The text does not belong to a specific genre in a traditional sense. No arguments of what should be done and what actions might be performed are in fact offered by the text. It might however be described as an *explanatory narrative genre* since the text provides the reader with information to increase comprehension of a concept and to better understand a process.

The tone of the article can be defined as serious with sections devoted to different literary elements the author is trying to explain and to paragraphs devoted to the description of some provisions of the law.

The article allows me to explore the first wave of Ukrainian lustration and to see how the supporters justify non-democratic measures of lustration in Ukraine.

Lustration as 'the fight against the country's bureaucrats'

In the article 'Two understandings of Lustration', the term 'lustration' appears in the context of Ukrainian state consolidation. The adoption of lustration law and its provisions are supported and presented as a basis for a future Ukrainian state gained by "purging government institutions of officials associated with the old regime" and thus, "keeping Ukraine on the rule of law path". This is apparent in this statement: "For about ten years, Ukrainian pro-democracy forces unsuccessfully attempted to initiate lustration" (Roudik, 2014).

The article makes it clear, however, that there are two different views on lustration. This position is pretty clear from the title of the article - 'Two Understandings'. Despite this, the context of the article is to a large extent based on a positive attitude towards lustration and relatively little is said about negative perceptions of lustration policies. The negative perception of the Law 'On Government cleansing' is displayed in this sentence: "... the law was seen by some as imposing extrajudicial control over rulings, thus further limiting judicial independence" (ibid).

By viewing lustration positively, it is promoted as a value at the same level as the rule of law, democratic values and human rights, all of which, together, constitute the very essence of liberal democracy. This is evident in the statement "The purpose of this law is to restore public trust in the government authorities and create conditions that allow the building of a new system of power in line with European standards" (Roudik, 2014).

Furthermore, the article pays a great deal of attention to the first wave of lustration in the form of 'trashcan lustration', initiated by the opposition and supported by 'angry citizens' who threw the previous generation of Ukrainian politicians into a dumpster.

In terms of *legitimation*, this 'engagement', 'empowerment' and the use of illegal measures is justified primarily in terms of 'angry citizens'. This is evident in the statement "... the actions of the people involved are due to frustration at the slow pace of reforms in the country and dissatisfaction with the country's bureaucrats" (Roudik, 2014).

5.1.3 'Lustration is a discussion we have to continue'

Another article 'Lustration is a discussion we have to continue' was written by the Vitaliy Yarema, a general prosecutor of Ukraine. It was published on 14 October 2014 in the Ukraine's oldest English language newspaper called 'the Kyiv Post' – kyivpost.com. The article is written in English and will serve as a secondary source of data. The article is short and concise. The tone of the article however can be stated as relating to increasing public awareness.

Lustration as a test for the new Ukrainian authorities

In the article 'Lustration is a discussion we have to continue', 'lustration' is seen as a test of the new Ukrainian statehood in the sense of having an "ability to act, both from a law-making, and a law-enforcing point of view" (Yarema, 2014). In the article, lustration law is presented as a necessary condition for restoring the rule of law in Ukraine. This is apparent in the statement: "The new Ukraine cannot happen if we fail to restore law enforcement. Lawlessness, under any brand, and even under the very best of slogans, only breeds anarchy" (ibid).

In terms of *legitimation,* the author establishes the legitimacy of lustration in cleansing the state apparatus "from bad blood and corrupt officials and former KGB" but with adjustments to include "the principles of responsibility and presumption of innocence" in the law. He further *legitimizes* 'trash lustration' in the statement "I agree that from the emotional point of view, one sometimes feels the great desire to use such means of physical influence rather than modern law. The silent reaction of law enforcement breeds more desire to continue", but at the same time *assuming* that violent actions arise wherever "government agencies fail to function effectively" (Yarema, 2014).

With regard to the *genre*, it might be asserted that the text is to a great extent *argumentative* in nature, demonstrating the writer's position on Ukrainian lustration: "… the law has no restriction" (ibid).

It can be seen from the article's content that the writer recognises the necessity of lustration but at the same time he expresses concern about the balance and objectivity of the law in its current form. This is apparent in the following statements: "… according to the lustration law, even those

workers who helped Maidan during the hardest times, should be fired. Some officials are taking part in the anti-terrorist operation as a part of a volunteer battalion, they risk their lives every day, but they have to be lustrated too. Moreover, even those taking child care leave have to be lustrated because the law has no restrictions" (Yarema, 2014).

The purpose of this argument is to change both the reader's and, primarily, government's thinking on lustration and to convince them to accept the writer's argument and explanation of the problem with lustration in its current form. The writer therefore provides reasoned and logical evidence that negotiations about the rules to use for lustration must go forward both at the public and activist level. This is clear in the following statements:

"Our country should go down the road of the rule of law. If we are ruled by our emotions, not law, we will be no better than the previous government" (ibid).

"I think the main principle behind the lustration strategy should be that of personal responsibility and presumption of innocence. We should find personal touch to every person, as per European practice" (ibid).

Claim for action: the country should choose to follow the rule of law

Means-goals: the country should not make decisions based on emotional grounds; help the country to follow the rule of law and find personal touch to every person as per European practice.

Circumstances: Actions and laws enacted on the basis of emotions will be no better than those of the previous government and they will not allow us to find personal touch to every person.

Goal: follow the rule of law and find personal touch to every person

Values: the rule of law, personal responsibility, presumption of innocence

By conducting a detailed investigation of the article's text, two types of *modality* were identified. The first type characterized as an *epistemic modality* in the form of statements. For example, the author expresses a positive attitude towards lustration in the statement: "Ukraine needs a law on

lustration, which matches the principles of individual responsibility and presumption of innocence", which indicates a high degree of modality.

Another type of modality is characterized as *deontic modality*. This type appears in the text in the form of a demand, focused on what the Ukrainian government 'should do': "The state should act in order to make sure that lustration does not turn into repression"; "…the main principle behind the lustration strategy should be that of personal responsibility and presumption of innocence"; "Our country should go down the rule of law" (Yarema, 2014).

5.2 Discursive practice

As mentioned above, the discursive practice is practice that entails the processes through which the texts are produced (created) and consumed (received and interpreted) (Jorgensen and Philips, 2002, p.81). The CDA approach assumes that the texts are both constitutive and constituted through various discourses; - this means, that texts both reproduce and thus help to consolidate discourses and at the same time are shaped by the discourse, which determines what it is possible to say or not. Based on the ideas discussed in section 5.1, I have delimited 2 discourses, namely the discourse of 'good development', and the discourse of 'prevention'.

In this section of the analysis, I explore the discourses that were found in the Law 'On Government Cleansing' and in the two articles, namely 'Ukraine: Two understandings of Lustration", and 'Lustration is a discussion we have to continue'. I will explain and analyse how they understand and talk about lustration, based on my interpretation. Discourse is a way of representing some part of the (physical, social, psychological) world (Fairclough, 2003, p.17). Representations refers to ways of describing reality through language to assign meaning to the social practices, values, beliefs, and ideas shared among the members of the group. I will integrate in the discussion the selection of ideas promoted by the Ukrainian government, the general prosecutor of Ukraine and the director of legal research at the Law Library of Congress, as identified in 5.1. Through the analysis of the discursive practice, I examine how these ideas draw on already existing discourses and genres concerning a social phenomenon in order to create a text and consider how the receivers understand and interpret the text (Philips and Jorgensen, 2002, p. 110-111). The

discourses figuring in the analysed documents therefore say something about how the Parliament, a legal research specialist, and high-ranking officials of Ukraine affected by the lustration, perceive the discourse of lustration.

5.2.1 The discourse of 'good development'

The first discourse identified in the texts I term as the 'good development' discourse, which reflects a number of other discourses such as *value, threat, and European discourses*. The documents analysed express more generalized ideals derived from general transitional justice discourses about a successful transition, through pursuing personnel reforms and the foundation of a state apparatus, - which is trustworthy in the emerging democratic practices and encompasses such qualities as fairness, effectiveness, productivity and integrity. The discourse produces a narrative where Ukraine can be restored b state consolidation and the establishment of a reliable state apparatus and without recurrence of non-democratic practices.

Following this perspective, the discourse of 'good development' has an international, European scope, in which the protection and spread democratic values, the rule of law and human rights are the main goals; in this way, the discourse also reflects values such as 'democracy', 'freedoms', and 'transparency'. The Lustration Law portrays Ukrainian society - as being politically and democratically loyal. Most significantly, this is expressed through a focus on the principles on which the cleansing process is to be based: the rule of law and lawfulness, openness, transparency and public accessibility, presumption of innocence, individual liability, and the guarantees of the rights to defence (Rada, 2014, p. 2).

These are the central arguments of *the value discourse*:

- "To protect and affirm democratic values, the rule of law and human rights in Ukraine" (Rada, 2014, p.2)
- The principles on which the cleansing process is to be based are the rule of law and lawfulness, openness, transparency and public accessibility, presumption of innocence, individual liability and guarantees of the rights to defence (ibid).

The discourse of value also has some links to *the discourse of threat* in indicating how the Ukrainian values mentioned above shall be protected from threat, which is manifested in actions intended to undermine Ukraine's national security and violate human rights and freedoms.

The Parliament is considered be the engine of reform. The Ministry of Justice, for its part, is responsible for ensuring the screening of the Law and contributing to its successful implementation. However, the discourse of 'good development' provides a restricted role for representatives of the general public for lustration. Thus, the responsibility of the advisory public council is to ensure civil control over government cleansing and to prevent the development of tyrannical tendencies. This has been expressed by the Parliament in Article 5.1 of the Law.

The discourse of good development figures to a larger extent in the Law itself. Many of the same values appear in the two other texts but to a lesser degree and in another sense. Thus, while the Parliament associates Ukrainian society with the democratic principles already inscribed in the new state, the two other texts assume the Ukraine *should seek to build the true democracy* in the country, based on values such as transparency, the rule of law, public accessibility and taking into account the value of every person. For example:

- "Ukraine *needs* a law on lustration, which matches the principles of individual responsibility and presumption of innocence" (Yarema, 2014).
- "We *should* find personal touch to every person, as per European practice" (ibid).
- "Our country *should* go down the road of the rule of law. If we are ruled by our emotions, not law, we will be no better than the previous government" (ibid).

In this way, the discourse of 'good development' is also closely linked *to the discourse of European and international standards and values*; - that is, the discourse is largely concerned with how the Lustration Law has been developed from examples set by other CEE countries and in accordance with European and international legal standards to restore public trust in government. This suggests a movement towards coming into line with the European legal order and following the European model of public life. Lustration has been implemented for very different purposes in different national contexts. The implementation of the lustration laws however, has been traditionally examined in the light of its conformity to Europe and, European and international

legal human rights standards, the most important sources of which being the European Convention on Human Rights and its Protocols. There is a clear connection between Europe and Ukraine, which immediately after the regime change started to seek increasingly close bonds with Europe, going beyond cooperation, to gradual economic integration and a deepening of political cooperation. Ukraine's identification with European countries and its strong desire to follow the example of Europe and to adhere to human rights and legal principles might therefore be perceived as natural in the discourse.

All the texts are oriented towards the European sphere. There are several expressions in the texts that create the European discourse in this study, as demonstrated in the following:

- "It`s quite easy to operate with such terms as "nation", "state", but it`s more difficult to think and act, taking into account the value of every person. Isn't this what Europe has been fighting for throughout its history, *the very Europe we strive for*? (Yarema, 2014).
- "The purpose of this law is to "restore public trust in government authorities and create conditions that allow the building of a new system of power *in line with European standards*" (Rodiuk, 2014).

On the other hand, all the texts (except the text of the Law), address issues of hate in the form of 'trash lustration' that runs counter to the democratic values and principles that are demanded of the Parliament in their domestic political practices. Considering the discourse of 'good development' within the context of 'trash lustration' can offer useful insights. A positive explanation of trash lustration is that it is concerned with a strong desire for further reforms with a view to promoting the democratic practices in the country that are seen as an essential step to enabling a community to move forward (Rodiuk, 2014). What is problematical is that the use of physical violence falls far short of European democratic practices and thus, the thin line between modern law and literally 'trashing measures' becomes blurred (Yarema, 2014).

5.2.2 The discourse of 'conflict prevention'

The discourse I call 'conflict resolution' consists of several specialized discourses including the *discourse of prevention, the discourse of threat, and the discourse of lawlessness*.

The discourse of prevention focuses on the prevention of non-democratic practices and assumes the end of such practices before any meaningful development can happen in Ukraine. All texts perceive non-democratic practices such as corruption and the violation of human rights and freedoms as a crime. All crimes, in turn, are subject to punishment.

Following this perspective, *the discourse of 'threat'* appears in the texts before the appearance of the prevention discourse forms the core of the texts. The discourse of threat has a broad scope, focusing firstly on the kind of threat and secondly, who poses the threat.

The discourse is historically oriented; that is, it seeks to deal with two different periods of undemocratic rule in the country and all texts are concerned with who may pose a threat. Firstly, the discourse presents an image of threat based on the non-democratic practices exhibited by the regime of the president Yanukovych, which allowed high-ranking officials to increase their personal wealth. The threat arises, therefore, from the previous corrupt regime, which constitutes a security threat and undermines the national economy of the country thus having a negative impact on trust in public institutions and on social cohesion. The type of threat is therefore found in high-ranking corrupt officials and non-democratic elites loyal to president Yanukovych - "the country's bureaucrats" (Rodiuk, 2014), as well as persons who are "seeking to undermine the foundations of the national security and defence or violate human rights and freedoms" (Rada, 2014, p.2).

Secondly, the discourse of threat refers to persons involved in the Soviet communist regime who still constitute a threat to the democratic regime in Ukraine: the aim of the Law is one of "cleaning the state apparatus from bad blood and corrupt officials and former KGB" (Yarema, 2014).

In this way, cleansing exclusively targets individuals who held particular positions during the period of the Communist regime and the presidency of Yanukovych, thus covering a large number of

individuals and positions without specifying the concrete and serious human rights violations that were committed, as required by 1966 guidelines on lustration.

The two articles make it clear that a threat should not be seen as a private matter concerning a particular individual but is rather a societal issue that challenges society. The article 'Two understandings of lustration' thus refers to the experiences of neighbouring countries with the totalitarian non-democratic pre-1991 regime in the Soviet Union. This is evident in the sentence: "In neighbouring Poland, Hungary, Czech Republic, Romania, Georgia, and three Baltic states laws banning former Soviet apparatchiks and KGB agents from working in government institutions were seen as bringing new people interested in pushing democratic reforms into government". (Rodiuk, 2014).

The article 'Lustration is a discussion we have to continue' is oriented towards the European practices. This is evident in the following sentence: "It`s quite easy to operate with such terms as "nation", "state", but it`s more difficult to think and act, taking into account the value of every person. Isn't this what Europe has been fighting for throughout its history, the very Europe we strive for?" (Yarema, 2014).

The discourse of prevention appears in all the documents but has multiple perspectives, most particularly positive perceptions of prevention and negative perceptions of prevention. The former appears largely in the Law itself, which refer to lustration as a means by which Ukraine would deal with a legacy of human rights abuses through reforms that include mass disqualification of those associated with abuses and corruption under the previous non-democratic regimes, thereby preventing the recurrence of non-democratic practices in the country, strengthening public trust in the new government, and enabling society to make a new start. In this way, lustration is justified by the law.

The discourse of positive prevention is concerned with the issues of responsibility. The Law designates the Ministry of Justice of Ukraine as "an agency authorised to ensure the screening provided by this Law" (Rada, 2014). Further, it specifies that "the Ministry shall, within one month following the effective date of the Law establish an advisory public council for lustration which

shall comprise the government cleansing" (ibid). The Law does not, however, specify either the concrete steps the council should take to ensure control or the council's competencies.

Moreover, Article 5.4 of the Law states that "responsibility for organization of the screening of persons occupying one of the positions listed in Article 2 shall lie with the head of a respective agency authorized to dismiss a person being screened" (ibid), whereas responsibility for carrying out lustration is entrusted to the Ministry of Justice of Ukraine. Following this perspective, the lustration is a decentralized process with individuals screened within their own agency or office, which is contrary to the 1996 guidelines on lustration which state that "lustration should be administered by a specifically created independent commission of distinguished citizens nominated by the head of state and approved by parliament" (Venice Commission, 2015, p. 16).

As mentioned above, there is another, negative perception of prevention discourse that is only apparent in the articles, especially in the article 'Lustration is a discussion we have to continue'. I have identified this discourse both as a struggle at 'lynch law level', that is 'trash lustration', and as an unjust prosecution of a broad range of lustration criteria. This discourse could be also defined as *the discourse of lawlessness*, that is, of unjust and inadequate practices that manifest violence in words and deeds. This is evident in the article 'Lustration is a discussion we have to continue', which provides a list of possible warning signs to look out for. It expresses the view that the Parliament proposes a large-scale lustration process using prevention criteria that are too broad and have no restrictions. It therefore puts in doubt the objectivity and balance of the decisions made by the Parliament with regard to the cleansing procedures and stresses that, in line with European practices, the Parliament should consider "the value of every person" and "should find personal touch to every person" (Yarema, 2014). It further stresses that prevention through the use of physical force, which is not sanctioned legally and politically, is the result of the ineffective work of government agencies, that is, slow pace and broad scope of reforms in the country.

The article 'Two Understandings of lustration', in contrast, justifies physical force against the older generation of Ukrainian politicians on the grounds that such measures are the result of "frustration at the slow pace of reforms in the country and dissatisfaction with the country's bureaucrats"

(Rodiuk, 2014). At the same time, however, the article expresses hope for a peaceful solution to the conflict "within the legal and political framework" (ibid).

The prevention discourse can be seen as a type of transitional justice discourse that considers the overall political system and its dynamic development, including through the transition process, from violent conflict to establishment of democratic state policy, seeking, as it proceeds, to prevent the reoccurrence of gross violations and abuses of human rights. Theory of TJ attempts to address wrongdoings that have or are taking place as part of the conflict. Further, it states that through political work and judicial and non-judicial measures, including institutional reforms, society can become more inclusive and open.

5.3 Analysis of social practice

Discourse as a social practice represents the final dimension of Fairclough's model and is concerned with the ideological effects and hegemonic processes in which discourse participates. Analysis of this dimension relies on the wider context or practice the text is a part of. As mentioned in chapter 5.2, discourse is both constitutive and constituted, that is, it both forms and is formed by the wider social practice. The role of discourse in social practice cannot be taken for granted but rather established through analysis of dialectical relationships between discourse as a moment in social life and other elements of social practice.

The questions presented in chapter 1.1 were: What impact does the Lustration Law of 2014 have on the process of democratization in Ukraine in the context of transitional justice? - And what discourses are being used/created in the context of democratization and how are they being used? My focus as a researcher in this part of the analysis, therefore, will be on looking at the broader societal context and historical developments of which the discourse is a part, and considering what is being said and what the possible social consequences are of portraying the lustration in this way.

The discourses situate the process of Ukrainian lustration law in a broader historical and comparative context. The intention with the Law on Government Cleansing is to create a contrast with the policies of the past regime in matters of transitional justice, to rewrite its totalitarian past

and maintain the 'rule of law' approach in Ukraine. The foremost priority of the Ukrainian Parliament is to adopt radical measures in the form of the lustration law with the aim of changing public perceptions of politicians and of increasing the accountability of, and trust in, the government. One of the main arguments in favour of the law is that it would serve as an instrument to re-establish legality and the democratic exercise of power, in the face of responsible government, human security and political stability. The supporters of the lustration law require prosecutors, under the auspices of the Ministry of Justice in Ukraine, to pay heed to violations of economic, social, civil and political rights committed during former regimes. In the view of these proponents of the law, lustration is a collective responsibility, which all members of society should be prepared to support. The crisis is presented as a battle everybody must fight, and, in order to achieve a transition as soon as possible, every means, whether physical or legal, is justified. In terms of theoretical approach, according to David (2014), Ukrainian lustration, and the steps taken so far to achieve the goals, can be classified as exclusive lustration.

Opponents, or more accurately, sceptics of lustration, in contrast, interpret it as an act of dismissal-driven personnel reforms that have been indiscriminately used by the Parliament, without providing recourse to reconciliation, that are not likely to help the new Ukrainian government to fully achieve the goals mentioned above. Furthermore, these sceptics encourage the government to bring Ukraine closer to its European neighbours and to contribute to the fulfilment of Ukraine's European aspirations determined not only by geopolitical but also cultural affiliations to European democratic space; in this way, they aspire to implementing lustration in clear correspondence with European standards, practices and values that would be accessible to all.

Emphasis is placed on the importance of values, that is, what must be regarded as Ukrainian values, what values Ukraine should strive for, and who cannot be associated with these values. The Ukrainian Parliament's discourse focuses specifically on those who should not be associated with democratic values, identifying people who contributed to abuses and power usurpation and to the lack of public trust in the credibility and legitimacy of the government and who, therefore, cannot hold positions of power or authority in the new democratic system. The other discourses

are interpreted as highly influenced by European values and experience, and their discourses on prevention in the form of lustration and democratic practices.

5.3.1 Historical context: Late lustration in Ukraine

Discourse situates the process of Ukrainian lustration in a broader perspective. Lustration in Ukraine has been implemented for various purposes. One of these purposes was the purification of the state institutions from the communist past, and a return to liberal democratic ideals. Various forms of lustration were employed in other CEE countries in the 1990s, immediately after the fall of the Soviet Union. These were early lustration programmes applied as a part of broader decommunization campaigns aimed at consolidating political stability through building democratic system of government, and the promotion and protection of human rights and democratic values.

This was not the case in the Ukrainian context. Looking at the historical context, the newly emerged Ukrainian government appeared to be what David calls 'backward-looking' (David, 2015, p. 5), that is, loyal to the previous non-democratic Communist regime. Ukraine was not among those countries who pursued personnel reforms and established a state apparatus based on principles of integrity, cohesion and coherence, accountability and responsibility that would be loyal to the emerging democratic order. No personnel reforms were held, allowing former communist officials to enjoy the benefits of public office. In light of the transitional justice perspective, Ukraine followed the path of 'a thick line model'; that is, the government refrained from using any measures aimed at prosecuting past violations and at historical clarification. According to David, "Inherited personnel may not only be objectively lacking in competence and integrity, they may be subjectively perceived to lack loyalty, impartiality, and trustworthiness in particular. This negatively affects the daily operation of the state, such as effective law enforcement, the reliable collection of taxes, and the making of non-prejudicial administrative decisions" (David, 2015, p. 5).

In the years to follow, the process of personnel reforms in Europe continued but since the mid-2000s the target was not only former communist officials but also those responsible for human rights abuses and involved in corruption who were still enjoying impunity. Lustration got its second

wind and was used as a means to put an end to corruption and fraud. This new form of lustration at that time was used by countries such as Romania and Poland (Zabyelina, 2017, p. 68), which has just become a member of the European Union and hence assume conformity to European democratic standards.

As Horne states, EU membership was the main rationale behind adopting lustration, based on the progressive realization of the rights to structural justice as a critical element of the democratic system of governance opposed to the ideological fight against the previous, abusive Communist regime (Horne, 2009). The reason for that is that European democracies are vulnerable to the undemocratic behaviour of both individuals, society, and government but honour human rights and measures adopted to strengthen democracy and its ability to defend itself from the enemy within by peaceful and democratic means.

The discourses show that Ukrainian lustration law is influenced by history and experiences in CEE countries. Like many European countries, lustration in Ukraine also incorporates the aspect of decommunization. The regime-change in 2014 and the new Europe-oriented government gives Ukraine hope of achieving its European aspirations in the form of democratic governance and justice. There is evidence in the law itself, which states that lustration should be based on the principles of transparency, openness, the rule of law and lawfulness (Rada, 2014, p. 2).

However, Ukraine's lustration differs significantly from the lustration experiences of CEE countries in that its implementation coincided with the escalation of internal armed conflict in the country. As David (David, 2014) states, this makes Ukraine very different from other European countries, which did not experience open military conflict and a breach of territorial integrity at a time of state consolidation and the implementation of lustration legislation. According to Zabyelina, this makes the lustration problematic in the sense that it can "undermine the attempt of the central government to unite the country, and to reduce the potential of the laws to be politically manipulated in the rebel-controlled areas" (Zabyelina, 2017, p. 67). She further notes that the new Ukrainian government might face credibility questions from populations in the eastern and southern parts of Ukraine due to the anti-Russian sentiments by political parties in Ukraine in general, and president Poroshenko in particular. Hence, the lustration policies may entail even

greater animosity between a Europe-oriented and pro-Western government on one side, and pro-Russian populations on the other side and -this could lead to the policies being seen as “revenge politics” (ibid).

Moreover, the absence of lustration legislation in 1991, means Ukraine is now finding itself at a critical stage in its development. Legislation measures implemented in the country are too broad in scope of application. Thus, lustration law is left to address several challenges at the same time; the law deals with the non-democratic practices of the past regime, with addressing high levels of corruption, and with the former Communist officials at the same time and in the same piece of legislation.

A critical question can be asked here: Does the lustration as an administrative tool of transitional justice involve measures designed to eliminate corruption and to stop violations of social and economic rights?

The Venice Commission emphasizes that, in “doing so, it goes beyond the process of lustration as this has been traditionally defined” (Venice Commission, 2015, p. 7). It further notes that different means are required to eradicate corruption and implement lustration and that they “are not subject to the same international legal standards” thus, suggesting that the young Ukrainian state relocate the anti-corruption section in “another piece of legislation” such as, for example, the Law on the Principles of Preventing and Combating Corruption (ibid). Additionally, the Commission argues that lustration “must never replace reforms aimed at strengthening the rule of law and combatting corruption” (ibid, p. 20). It also emphasizes that the inclusion of anti-corruption measure in the lustration law may lead to further human rights violations: “automatic disqualification from access to public positions for a period of 10 years of all individuals whose verification shows some irregularities, regardless of the nature and extent of these irregularities, is a radical measure. It is questionable whether it could meet the principle of proportionality included among the principles of the cleansing process” (ibid, p. 11).

David also emphasizes that "widespread dismissals may significantly affect the performance of the state apparatus as a whole. The loyalty of people is not fixed by an action taken or affiliation held in the past" (David 2015, p. 12).

5.3.2 Transitional justice: lustration as defensive democracy

As I mentioned in section 5.2.1, the discourse 'of good development' is very strongly oriented towards values, and more particularly towards modern European democratic and liberal values, which are seen as a good basis for creating a secure, stable and just environment in the country and for paving the way to integrating a European perspective. The government's discourse is at the same time concerned with the protection of "democratic values, the rule of law and human rights in Ukraine" (Rada, 2014, p. 2). When fundamental values are presented as being at risk, this may lead to defence and thus to limitations being placed on other rights and freedoms. The government's objective to protect the foundations of democracy and to deal with the legacies of non-democratic regimes is based on the concept of 'defensive democracy' or what Loewenstein has defined as 'democracy capable of defending itself' (David, 2015, p. 6). The concept is at the heart of the European Court of Human Rights (ECHR) and was applied in several lustration cases.

Several critical questions need to be addressed: One question is whether the concept of a 'democracy capable of defending itself' can be applied to Ukraine; and the other is concerned with whether it is possible for a lustration law applies in a situation of ongoing conflict to foster peace, justice and democratic development.

At the heart of the questions is the continued debates within the broader transitional justice approach explained in chapters 2 and 3 over the possibility of integrating the original tools and goals of transitional justice with those of a complex process of peacebuilding.

As previously mentioned, transitional justice has traditionally been used in countries where the conflict has already been settled, and both the government and society were open and keen to implement modernization reforms in the public administration system. As I mentioned in chapter 3, TJ scholars have recently taken the stand that TJ instruments can be used not only in their

original form and meaning but in a more flexible and inclusive ways thus making peacebuilding processes more effective and long-lasting. However, in spite of that, TJ scholars argue that the positive outcomes from transitions strongly depend on the choice of TJ tools and the effectiveness of their practical application, and whether the government is able to achieve the rule of law, democratic values and human rights in the country undergoing transition (Zabyelina, 2017, p. 66-67).

It is clear that Ukrainian lustration includes only the exclusive measures of TJ, which could lead to counter-productive results.

Ukrainian lustration, on the one hand, has been implemented to prevent any efforts and actions that might disrupt the process of democracy, the country's stability and its territorial integrity. This intention can certainly be noted as a positive development and in line with the concept of a 'democracy capable of defending itself'. There is continued debate within the framework of transitional justice over whether the exclusion of individuals who occupied high-ranking positions under the previous non-democratic regime and who might pose a threat to the newly democratic government is deemed to be one of the most effective measures for establishing trust in the government and in public institutions. David (David, 2015) emphasizes that dismissals essentially involve a great deal of understanding on the part of those who cherish and support lustration. Following this perspective and based on the discourse, it appears from the analysis that the dismissal of personnel under lustration law indicates their legal identification as 'a group unsuitable for democracy' (David, 2015, p. 13). This position is clear from the title of the Law. David hold the view that such a provision may lead to discrimination of the dismissed and further alienation of that group from the Ukrainian state (David, 2014, p. 7).

On the other hand, the law in its current form may create some difficulties for the state, which is currently at war and in the process of state consolidation, and thus, the Law's positive effect on the process of democratization could also be called into question. This is primarily linked to the wide scope of the lustration law, which includes the lack of widespread dismissals and the willingness to attack multiple opponents simultaneously and lacks some substantive provisions.

The Venice Commission emphasizes that the protection of the newly democratic regime by attacking several enemies simultaneously "can be hardly achieved through the same means" (Venice Commission, 2015, p. 20). The Venice Commission proposes either the removal of sections on anti-corruption from the Law 'On Government Cleansing', or that a new revised paragraph should be added to allow for individualisation. Moreover, the Commission proposes that ordinary judges be excluded from Article 2(4) and subject to the regime of the Law on the restoration of trust in the judiciary of Ukraine. Furthermore, the question is raised as to whether the principle of proportionality (Article 1.2 of the Law) could be met if widespread dismissals were made. According to the Commission, "a large-scale lustration process would result in enormous bureaucratic burdens and might lead to an atmosphere of general fear and distrust" (Venice Commission, 2015, p. 8).

David, also believes that an overbroad personal scope of application of the Law will have a significant impact on the performance of the state apparatus as a whole (David, 2015, p. 12). He further states that "unwarranted dismissals may increase the number of those who are hostile to democracy" (ibid). The issue of the positive effects of lustration on the process of democratization in Ukraine is therefore very much in question.

The concept of a 'democracy capable of defending itself' is applicable to Ukraine since the country, which is currently at war, has the right to exclude individuals who might pose a threat to the democratic system, and who have shown themselves unworthy of serving the society, from access to high-ranking public positions. At the same time, the Ukrainian lustration law needs to take into account all the above-mentioned facts and to revise the law in a way that would correspond to all European legal standards and would help to build a state apparatus that will maintain and protect democratic values, the rule of law and human rights in Ukraine.

6 Conclusion

How the role of lustration in the process of democratization is considered is inevitably bound to the transitional justice approach because it aims at constructing a theoretical framework that could help to articulate the ways in which affected countries deal with the past. This study placed

the process of Ukrainian lustration in the broader context of transitional justice. Based on an examination of the literature on transitional justice and lustration processes in CEE countries, and a critical and in-depth analysis of the legal document forming the Law 'On Government Cleansing' and two non-legal documents in the form of newspaper articles, I have examined both the defining features of Ukrainian lustration and its impact on the process of the democratization of Ukraine.

The aim of this study was to identify how the Ukrainian Law 'On Government cleansing' has affected the process of democratization in the country in the context of transitional justice, and to investigate the discourses in the documents analysed. I have disclosed two prime discourses: the discourse of 'good development' and the discourse 'of conflict prevention'. The discourses influenced by European practices produce a narrative where Ukraine can be restored - by strengthening the system of government and the establishment of a reliable state apparatus through the prevention of the non-democratic practices of past regimes such as corruption and the violation of human rights - and meaningful development can begin in Ukraine.

Lustration in Ukraine refers to the personnel reforms that aim to build the population's confidence in its authorities and raise the credibility of rule of law and the accountability of the government. One of the main arguments expressed by the Parliament for the adoption of the Lustration Law is that it can serve as an instrument to "protect and affirm democratic values, the rule of law and human rights in Ukraine" (Rada, 2014, p.2). Generally, a decentralized, democratic form of governance assumes inclusiveness (OSCE, n.d.). The Ukrainian proposals concerning personnel reform are based on essentially exclusive principles; that is, they propose that unsuitable persons should be subject to dismissal and not allowed to participate in the newly democratic state. The Ukrainian lustration policies may therefore limit the scope of support for social reconciliation initiatives and peacebuilding: dismissals help to establish and strengthen public trust in the new regime, allowing the building of a fair and stable society based on principles of trust, respect, responsibility, openness, equality and justice. At the same time, it is important to recognize that exclusive lustration may pose a threat to individual fundamental rights and freedoms and often violate due process rights such as the right to privacy and political rights (David, 2014, p. 8). Exclusive lustration is socially divisive in the sense that it pushes a particular social group and

individuals to the periphery of society thus, forcing them to feel excluded from the support and protection of the state. Moreover, the broad scope of application of exclusive lustration hampers the ability of the state to be fully operational unless appropriate replacements are available. This, in turn, would affect the functioning of the Ukrainian civil service and of social peace, risking the development and strengthening of the bureaucracy as a system of the Ukrainian government and strengthening the atmosphere of fear and public mistrust in the new government.

What is also important is that the Ukrainian lustration that has been implemented during the ongoing armed conflict pursues two different aims. As already mentioned, the first goal is to protect the society from individuals who pose a threat to the new Ukrainian government, while the second goal is to fight widespread corruption in the country. While the two aims are legitimate, it remains unclear how the strong desire of people to fight corruption in the country expressed during the Maidan protests can be achieved by the new government headed by the oligarch president Poroshenko who, in compliance with the 1996 Guidelines on Lustration is exempt from lustration screening (Venice Commission, 2015, p. 8). A detailed study of the new Ukrainian government will show that a high percentage of policy makers in the country belong to the oligarchic class. President Poroshenko, for example, is one of the Ukraine's wealthiest people according to the Forbes lists; his personal wealth in 2018 being estimated at 858 million dollars (Forbes Ukraine, 2018). Where corruption is present and prospers, there can be no true democracy. Corruption is testimony to the absence of democracy. Corruption reflects the opposite of democratic ideals: it is evidence of injustices, dictatorship, tyranny, and kleptocracy in society. The lustration law would therefore only bring temporary relief, preventing effect rather than achieving long-lasting peace based on the rule of law, democratic values, respect for human rights and sustainable and equitable development.

This could lead to the conclusion that the Ukrainian lustration law in its current form may result in Ukraine being in a state of constant conflict and may contribute to a long period of instability based on political revenge accompanied by the violation of fundamental human rights and freedoms. Ukraine therefore needs an updated version of the lustration law, with a clear scope and criteria for application that could be applied to individuals posing a significant threat to democracy and

human rights while at the same time respecting the principle of proportionality, balancing and carefully evaluating the range and effects of the implemented measures.

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