



ЕТИЧНА РАДА

01601, м. Київ, вул. Липська, 18/5,
тел.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua

ETHICS COUNCIL

01601, Kyiv, Lypska St., 18/5,
tel.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua

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Kyiv

DECISION

No. 19

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Yevheniia Serhiivna Demenkova
with the professional ethics and integrity criteria
for filling in the position of the member of the High Council of Justice***

The Ethics Council consisting of Chair of the Ethics Council Lev Kyshakevych, Deputy Chair of the Ethics Council Sir Anthony Hooper, members of the Ethics Council: Robert Cordy, Volodymyr Siverin, Lavly Perling, Yurii Triasun, remotely by videoconference, having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Yevheniia Serhiivna Demenkova with the criteria of professional ethics and integrity, according to the Law of Ukraine “On the High Council of Justice”, the Rules of Procedure of the Ethics Council adopted by the Ethics Council’s Decisions No. 1 of 01.12.2021 and No. 4 of 09.12.2021, as amended by the Ethics Council’s Decision No. 4 of 26.04.2022, Methodology for assessing compliance of the candidate for the position of a member of the High Council of Justice and sitting members of the High Council of Justice with the criterion of professional ethics and integrity adopted by the Ethics Council’s Decision No. 5 of 09.12.2021 (“the Methodology”),

has established:

According to part 14 Article 9¹ of the Law of Ukraine “On the High Council of Justice” the Ethics Council selects candidates for the positions of the member of the High Council of Justice in two stages:

1) selection of candidates pursuant to results of consideration of documents submitted by candidates, results of the special check and respective information from open sources, and formation of the list of candidates admitted to the interview;

2) conduct of interviews with selected candidates and determination of the list of candidates recommended to bodies which elect (appoint) members of the High Council of Justice.

The Ethics Council received copies of documents submitted by Yevheniia Serhiivna Demenkova for participation in the competition for the position of the member of the High Council of Justice nominated by the President of Ukraine and admitted her to the interview with Decision No. 3 of 20.01.2023.

Yevheniia Serhiivna Demenkova is an attorney-at-law who practices law individually.

Having studied documents provided by Yevheniia Serhiivna Demenkova for participating in the competition, her written explanations and documents provided upon the Ethics Council’s request, information obtained from open sources and from civil society organizations, information received from the National Agency for Corruption Prevention (“the NACP”) and the National Anti-Corruption Bureau of Ukraine (“the NABU”), having conducted the interview with him/her, the Ethics Council has reached the following conclusions.

1. Regarding the provision of incomplete and inaccurate information in the Declaration

1.1. In the course of the assessment of the candidate, it was found that in Section 2.1 “Information on the Subject of Declaration” of the Declaration of a candidate for the position of a person authorized to perform the functions of the state or local government (hereinafter - the Declaration) for 2021 Yevheniia Serhiivna Demenkova had indicated Apartment No. 77 at Drahomanova Street, 9 in Kyiv as her place of actual residence. Whereas, in response to a request from the Ethics Council regarding her place of residence in the said period, the candidate stated that throughout 2021 she had been living in Bakhmut, Donetsk region.

During the interview, Yevheniia Serhiivna Demenkova explained that she had indeed mistakenly specified Kyiv as her place of actual residence in the Declaration, as she believed that she was supposed to provide such information when submitting the Declaration (as of 15.08.2022).

However, the NACP Order No. 449/21 of 23.07.2021 “On Approval of the Form of Declaration of a Person Authorized to Perform the Functions of the State or Local Government and the Procedure for Completing and Submitting the Declaration of a Person Authorized to Perform the Functions of the State or Local Government”, registered with the Ministry of Justice of Ukraine on 29.07.2021 under No. 987/36609, effective at the time of submission of the Declaration by Yevheniia Serhiivna Demenkova, approved the Procedure for Completing and Submitting the Declaration of a Person Authorized to Perform the Functions of the State or Local Government and the Form of Declaration of a Person Authorized to Perform the Functions of the State or Local Government

In accordance with cl. 3 of Section II of the said Procedure, the subject of the declaration shall confirm familiarization with this Procedure by checking the appropriate box before filling out the declaration.

According to cl. 1 of Section III of the same Procedure, in the declaration, the subject of the declaration shall indicate, in particular, information about himself/herself (including the place of actual residence).

Therefore, the candidate, with a university degree in law and having worked in the field of law since 1998, was certainly aware of the rules for filling out the declaration and had to exercise due care and diligence when filling it out.

1.2. In the course of the assessment of Yevheniia Serhiivna Demenkova the Ethics Council found out that the candidate's husband, Dmytro Viktorovych Demenkov, is a joint tenant of apartment No. 77 at Drahomanova Street, 9 in Kyiv. However, no information on her husband's ownership of the said apartment is available in the Declaration of Yevheniia Serhiivna Demenkova.

In her written explanation and during the interview, the candidate explained that she and her family had started living in apartment No. 77 at Drahomanova Street, 9 in April of 2022 and that until the Ethics Council requested the documents, she had not known that the apartment was jointly owned by her mother-in-law and her two sons (one of whom is the candidate's husband).

In accordance with cl. 2 of Article 46(1) of the Law of Ukraine “On Prevention of Corruption,” as in force at the time of filling out the declaration, the declaration shall contain, in particular, information on real estate privately owned by the subject of declaration and members of his/her family on, including joint ownership, or property they rent or use based on another right of use, irrespective of the form of the transaction, by which such a right was acquired. In violation of the said requirements, Yevheniia Serhiivna Demenkova has failed to provide such information.

1.3. As follows from the information specified in the Declaration of Yevheniia Serhiivna Demenkova, she owns a 2013 Honda CR-V and a 2015 Ford Transit Custom, and her husband owns a 2007 Jaguar X-type. However, the

candidate has not specified the value of the said cars in the field “Value as of the Date of Acquisition or in accordance with the latest Monetary Evaluation”.

In her explanation provided to the Ethics Council, the candidate explained that it was the first time she was filling out the declaration and that she was guided by the Clarification of the NACP posted on its official website, in particular, by cl. 40 of Section IV “General Provisions on Reporting Information on Objects of Declaration”. According to the said clause, as a general rule, information on the value of the respective property shall be indicated as of the date of acquisition of ownership, possession or use or in accordance with the latest monetary valuation of the property in the currency of Ukraine. The law does not require the subject of the declaration to have the property evaluated in order to fill out the declaration. When determining the value of the object of declaration, the subject of the declaration must be guided by the relevant title documents on the basis whereof he or she or his or her family members have acquired the right to this object. Given that at the time of filling out the Declaration for 2021, she did not have any documents that would determine the value of the vehicles, she considered it the only correct decision to select the field “Not applicable”.

The Ethics Council assesses the above explanation of Yevheniia Serhiivna Demenkova critically, in view of the following.

In accordance with cl. 3 of Article 46(1) of the Law, the declaration shall contain information about valuable movable property the value of which exceeds 100 subsistence minimums for able-bodied persons, established as of January, 1 of the reporting year and title to which is held privately by the subject of declaration or members of his/her family, including joint ownership, or is in his/her possession or use regardless of the form of the transaction by which such title was acquired. Such data shall include, in particular, information on the type of property, characteristics of the property, the date title to the property was acquired, the date it was rented or otherwise used, and the value of the property on the date when it came into ownership, possession or use. The Law does not

provide for any exceptions to this rule, and the explanations of Yevheniia Serhiivna Demenkova, in the opinion of the Ethics Council, are based on a misunderstanding of this provision of the Law and the Clarification of the NACP.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption legislation, including with respect to timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

According to cl. 1.3.4 of the Methodology, diligence shall mean industrious, thorough, and responsible fulfillment of one's duties, which is a sign of the person's professional integrity.

Therefore, having evaluated the explanation of Yevheniia Serhiivna Demenkova, and having studied and analyzed the documents, the Ethics Council believes that there is a reasonable doubt about the candidate's compliance with the requirements of financial control (cl. 1.3.7.6 of the Methodology) and such an indicator for the criterion of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology).

2. Regarding the sources of origin of funds for the purchase of the property

2.1. In the course of the assessment of the candidate, it was found that since 14.08.2020, Yevheniia Serhiivna Demenkova has owned five non-residential premises of 108.4 sq.m, 50.8 sq.m, 15.8 sq.m, 41.3 sq.m, 15.1 sq.m respectively and since 20.01.2021 she owned a land plot of 152 sq.m in Bakhmut, Donetsk region.

In her explanation provided to the Ethics Council, the candidate pointed out that the office located at Horbatov Street, 39 in Bakhmut, Donetsk region, is

privately owned by her on the basis of the Certificates of Acceptance and Transfer of Asset from PE “Law Firm “Demenkova and Partners” to Yevheniia Serhiivna Demenkova as a resumption of her asset contribution to the authorized capital in line with the reduction of the authorized capital of the company pursuant to Decision No. 1/07-2020 of 27.07.2020.

The non-residential premise of 50.4 sq.m., located at Nezalezhnosti Street, 55 Bakhmut, is privately owned by the candidate on the basis of a Certificate of Acceptance and Transfer of Asset from the PE “Law Firm “Demenkova and Partners” to Yevheniia Serhiivna Demenkova as a resumption of her asset contribution to the authorized capital in line with the reduction of the authorized capital of the enterprise pursuant to Decision No. 1/07-2020 dated 27.07.2020. She also stated that the previous owner of the said premise was PE “Law Firm “Demenkova and Partners” and that the premises had been purchased in 2008 under a loan.

The non-residential commercial premise of 108.4 sq.m., located at 39-A Gorki Street, Bakhmut, is owned by the candidate on the basis of a Certificate of Acceptance and Transfer of Asset from PE “Law Firm “Demenkova and Partners” to Yevheniia Serhiivna Demenkova as a resumption of her asset contribution to the authorized capital in line with the reduction of the authorized capital of the enterprise pursuant to Decision No. 1/07-2020 dated 27.07.2020. She also stated that the previous owner of the said premise was PE “Law Firm “Demenkova and Partners” and that the premise had been purchased in 2006 at the expense of the legal entity.

Regarding the land plot of 0,0152 hectares located at Gorky Street, 39-A Bakhmut, the candidate explained that this is the land plot located under the above non-residential commercial premise and that it is privately owned by her on the basis of the Certificate of Acceptance and Transfer of Asset from PE “Law Firm “Demenkova and Partners” to Yevheniia Serhiivna Demenkova as a resumption of her asset contribution to the authorized capital in line with the reduction of the

authorized capital of the company pursuant to Decision No. 1/07-2020 of 27.07.2020. The previous owner of the said premises was PE “Law Firm “Demenkova and Partners” and the premise had been purchased in 2020 from the Bakhmut City Council at the expense of the legal entity.

When analyzing the candidate's explanation in this respect, the Ethics Council notes that the candidate did not provide any documents to support her arguments (original copies or certificates of acceptance and transfer, decisions of the legal entity to reduce the share of the authorized capital, the founder's decision to determine the amount of the authorized capital, financial and tax reporting documents, etc.). Therefore, the candidate did not provide any evidence of the income of either Yevheniia Serhiivna Demenkova or the PE “Law Firm “Demenkova and Partners”, of which she is the founder and the sole owner, as well as the legality of their sources. Yevheniia Serhiivna Demenkova failed to explain whether it was these or other documents that were lost as a result of the military invasion of the Russian Federation. Nor did the candidate explain what measures she had taken to obtain the necessary information from other sources, given that at the time of the assessment, most state Registers and Databases in Ukraine were already functioning, which would allow Yevheniia Serhiivna Demenkova to request and receive at least minimal information on the issues of asset and/or financial nature raised by the Ethics Council.

2.2. In the course of the assessment of the candidate, the Ethics Council also found that Yevheniia Serhiivna Demenkova owns a 2013 Honda CR-V and a 2015 Ford Transit Custom.

In the explanation provided to the Ethics Council regarding the value and sources of funds for the purchase of the said cars, the candidate stated that she had purchased the Honda CR-V on 03.07.2013 for approximately USD 40 000, which was equivalent to UAH 320 000. The ownership of the 2015 Ford Transit Custom

car arose on 24.12.2019. The candidate explained that its market value amounted to USD 10 700, which was equivalent to UAH 249 310.

As for the sources of funds for the purchase of the said cars, Yevheniia Serhiivna Demenkova explained that they had been generated as a result of her and her husband's business activities, use of a loan product and sale of a 2008 KIA CARNIVAL in 2013.

The Ethics Council finds such explanation of Yevheniia Serhiivna Demenkova unconvincing, since, according to the State Register of Individual Taxpayers, the candidate's income in the period from 1998 to 2012 totaled UAH 395 776. Moreover, the candidate's explanation of the value of the 2008 KIA CARNIVAL sold in 2013 (for about USD 25 000) was not confirmed in the course of the assessment.

According to cl. 1.3.2 of the Methodology, honesty shall mean the presence of high moral qualities, truthfulness in professional activities and everyday life.

According to cl. 1.3.7 of the Methodology, the sources of origin of the candidate's property are legal, the candidate's level of life or that of his family members corresponds to their declared and legal incomes, and the candidate's lifestyle corresponds to his status in case there are no reasonable doubts to the contrary.

Given the above circumstances, having assessed the explanation of Yevheniia Serhiivna Demenkova, and having studied and analyzed the documents, the Ethics Council believes that there is reasonable doubt about the candidate's compliance with such an indicator for the criterion of professional ethics and integrity as honesty (cl. 1.3.2 of the Methodology) and the legality of the sources of origin of the candidate's property (cl. 1.3.7 of the Methodology).

The Ethics Council points out that until April of 2022, Yevheniia Serhiivna Demenkova had lived in Bakhmut, which is in the zone of active hostilities as a result of the russian aggression and she had to leave. Therefore, due to objective

circumstances, she was unable to provide the Council with the necessary documents.

Yet, Yevheniia Serhiivna Demenkova should have realized that she, as a candidate, was bound in the course of the assessment to provide all the necessary information about the property owned by her and her family members and the sources of funds for its acquisition.

The lack of such information, despite the objective reasons for the impossibility of obtaining it, gives rise to reasonable doubts about the candidate's compliance with the criteria of integrity.

In view of the abovementioned reasonable doubts, considered both cumulatively and separately, being governed by Rules 2.3, 3.1, 3.2, 3.16.2 of the Ethics Council's Rules of Procedure, Methodology, Article 91 of the Law of Ukraine "On the High Council of Justice", Final and Transitional Provisions of the Law of Ukraine "On Introducing Amendments into Some Legislative Bills of Ukraine Regarding the Procedure of Election (Appointment) to Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice", the Ethics Council

has decided:

to recognize candidate for the position of the member of the High Council of Justice Yevheniia Serhiivna Demenkova as non-compliant with the professional ethics and integrity criteria for filling in the position of the member of the High Council of Justice.

Chair

(signed)

Lev Kyshakevych