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ETHICS COUNCIL

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DECISION

No. 21

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Illia Mykolaiovych Kravchenko
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 Illia Mykolaiovych Kravchenko 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 Illia Mykolaiovych Kravchenko 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 him to the interview with Decision No. 3 of 20.01.2023.

Having studied documents provided by Illia Mykolaiovych Kravchenko for participating in the competition, his 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. With respect to the circumstances of bringing the candidate to criminal responsibility under Article 368(2) of the Criminal Code of Ukraine

With Decree No. 82/2007 of the President of Ukraine of 6 February 2007 Illia Mykolaiovych Kravchenko was appointed to the position of the judge of

Bilozerka District Court of Kherson region for the period of five years. The term of authorities as a judge Illia Mykolaiovych Kravchenko expired on February 6, 2012.

With decision No. 364/bo-15 of the High Qualification Commission of Judges of Ukraine of August 31, 2015 Illia Mykolaiovych Kravchenko was recommended for appointment to the position of Bilozerka District Court of Kherson region indefinitely.

With decision No. 4212/0/15-17 of the High Council of Justice of December 21, 2017 it was denied in submitting a recommendation to the President of Ukraine on the appointment of Illia Mykolaiovych Kravchenko to the position of the judge of Bilozerka District Court of Kherson region.

The decision of the High Council of Justice shows that the Council studied circumstances established by courts under the criminal case initiated by the prosecutor's office of Mykolaiv region on August 31, 2011, with signs of Illia Mykolaiovych Kravchenko committing a criminal offense set out by Article 368(2) of the Criminal Code of Ukraine in the version that was valid as of the moment of initiation of the criminal case. The High Council of Justice came to the conclusion that the given facts raise reasonable doubts about the compliance of I.M. Kravchenko with the criteria of professional ethics and integrity and are circumstances that can negatively affect public trust in the judiciary. The Ethics Council has also studied these circumstances.

The verdict of the court of appeal of Mykolaiv region adopting the verdict of March 3, 2010 recognized Illia Mykolaiovych Kravchenko as guilty of committing a crime set out by Article 368(2) of the Criminal Code of Ukraine.

With the ruling of the Supreme Court of Ukraine of June 10, 2010 the verdict of the court of appeal of Mykolaiv region of March 3, 2010 adopted with respect to Illia Mykolaiovych Kravchenko was quashed and the case was sent for a new investigation.

Subsequently, the courts of different instances returned the criminal case concerning Illia Mykolaiovych Kravchenko for additional investigation several times due to the identification of shortcomings committed during the pre-trial investigation.

The ruling of the senior investigator of the unit of the prosecutor's office of Kherson region of December 24, 2013 closed the criminal proceeding under the fact of judge of Bilozerka District Court Illia Mykolaiovych Kravchenko receiving unlawful benefit for appointing minimal punishment to V. S. Diadiura under Article 125(2) of the Criminal Code of Ukraine due to the absence of the corpus delicti set out under Article 368(4) of the Criminal Code of Ukraine in actions of Illia Mykolaiovych Kravchenko.

At the same time, the Ethics Council is hereby drawing attention to the fact that this ruling of the investigator was motivated by the inability to take procedural actions aimed at eliminating contradictions in the pre-trial investigation as the investigators took all exhaustive measures during the pre-trial investigation in order to establish location of claimant V. S. Diadiura which did not provide results, which is why it was impossible to question him and carry out investigative actions with his participation in the criminal proceeding.

Moreover, while taking the decision on closure of the criminal proceeding, the investigator also referred to the fact that when sending the case back for additional investigation, courts pointed out, in particular, that actions, of committing which Illia Mykolaiovych Kravchenko was accused, were subject to the Law of Ukraine "On Principles of Prevention and Fight Against Corruption" and Article 172-2(2) of the Code of Ukraine on Administrative Offences.

According to cl. 3.1 and 3.2 of the Bangalore Principles of Judicial Conduct of May 19, 2006, the judge demonstrates behavior that is impeccable even from the perspective of an outside observer. The way of acting and the behavior of a judge must maintain public confidence in the integrity and incorruptibility of judicial bodies.

According to cl. 1.3.6 of the Methodology, compliance with ethical norms and demonstration of impeccable behavior in professional activities and personal life shall mean persistent compliance of the person with professional ethical and generally acknowledged moral norms both in professional activities and beyond them, which forms trust of the society in such person.

According to cl. 1.3.6.2 of the Methodology, the candidate fails to comply with the indicator of impeccable behavior in professional activities in case he has committed any actions that makes him unworthy of being a member of the High Council of Justice undermines authority of the judiciary or raises reasonable doubts that such candidate will comply with ethical standards.

Even though the candidate is subject to the presumption of innocence, the circumstances established during the criminal case against the candidate by the courts and the decision of the High Council of Justice, the reasons on the basis of which the criminal proceedings against I.M. Kravchenko were closed and the candidate's answers during the interview cause reasonable doubts about the immaculate nature of the candidate's behaviour as well as his unwavering adherence to ethical rules of conduct during professional activity, which forms public trust in such a person.

2. With respect to failure to declare the right to use movable property objects

According to information from the Unified Register of Powers of Attorneys, it has been established that during 2009-2021 the following powers of attorneys on disposal of vehicles were issued to Illia Mykolaiovych Kravchenko:

– on 6 February 2009 L. I. Naidonova issued a power of attorney on the right to dispose of 2000 vehicle BMW528, license plates: BT8788AC (registration number of the power of attorney: 26350137);

– on 9 February 2007 V. O. Ivanishenko issued a power of attorney on the right to dispose of 2006 vehicle VOLVO S 80, license plates: BT2454AC, (registration number of the power of attorney: 20241349);

– on 21 November 2011 V. M. Prodan issued a power of attorney on the right to dispose of vehicle with serial number 5FNYP48809B406249, license plates: AO2009AT (registration number of the power of attorney: 36914496);

– on 24 March 2016 S. O. Siroshtan issued a power of attorney on the right to dispose of vehicle with serial number JMZGG12F541209092, license plates: BT4417AM (registration number of the power of attorney: 43666570);

– on 24 March 2016 O. H. Liakh issued a power of attorney on the right to dispose of vehicle with serial number JTHBG262082016514, license plates: AK8283CM (registration number of the power of attorney: 43666630);

– on 11 June 2018 and 29 June 2019 O. V. Biriuk issued powers of attorney on the right to dispose of 2011 vehicle FORD KUGA TITANIUM, license plates: BT3350AT, (registration numbers of the powers of attorney: 47287971 and 49087398).

In his written explanations in response to the Ethics Council's questions the candidate confirmed the execution of the above-mentioned powers of attorney. He explained that pursuant to the then-current legislation a respective legal ground was required to use a vehicle, which is why close friends exchanged powers of attorney to be able to use vehicles from time to time.

With respect to the powers of attorney issued by O. V. Biriuk on the right to dispose of 2011 vehicle FORD KUGA TITANIUM, with license plates BT3350AT, the candidate clarified that this vehicle was used for commercial purposes at his wife's enterprise based on the rent agreement, was at the balance sheet of the enterprise, these powers of attorney were issued to have a possibility to go abroad on a business trip.

The Ethics Council considers the candidate's explanations about his failure to declare the right to use vehicles as unconvincing.

Starting from January 1, 2012 the candidate was obliged to submit a declaration on property, income, expenses, and financial liabilities for the previous year.

Hence, according to Article 12(1) of the Law of Ukraine “On Principles of Prevention and Fight Against Corruption” (in the version of August 12, 2012) persons specified in cl. 1, para. “a” of cl. 2 of Article 4(1) of this Law shall submit declarations on property, income, expenses, and financial liabilities for the previous year at their place of work (service) on an annual basis by April 1 using the form attached to the Law. The person submitting the declaration shall specify information about vehicles in his ownership, rent, or under any other right of use and his expenses on their purchase (use) in section IV “Information about Vehicles”. He shall also provide the same information with respect to his family members.

According to para. 3 of Article 46(1) of the Law of Ukraine “On Preventing Corruption” (in the version as of January 1, 2015), the person submitting the declaration shall specify valuable movable property, value of which exceeds 50 minimum salaries established as of January 1 of the reporting year, which belongs to the person submitting the declaration or his family members under the right of private ownership, including shared ownership, or in their possession or use regardless of the form of the transaction which has resulted in the acquisition of such right.

Subsequently, starting from March 18, 2016 the person submitting the declaration had to declare the above-mentioned valuable movable property, value of which exceeded 100 minimum salaries established as of January 1 of the reporting year.

Illia Mykolaiovych Kravchenko violated these requirements of the law and did not specify such information in his declarations for 2012 – 2018.

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.

Thus, the Ethics Council considers that Illia Mykolaiovych Kravchenko was not diligent while filling in his declarations for 2012-2018 and did not specify there all required information.

Considering this, the EC believes that there are reasonable doubts on the candidate's compliance with such criteria of professional ethics and integrity such as diligence (cl. 1.3.4 of the Methodology), and also the candidate's compliance with the requirements of financial control, which are stipulated in the anticorruption legislation, in particular with regard to the provision of full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

3. With respect to the purchase of three apartments in Kherson by the candidate and his wife

In his asset declarations for 2015-2021 the candidate specified that he and his wife had three apartments with areas of 44.3, 56.5, and 38.3 sq.m. with the total value of UAH 149 000 under the right of ownership since October 30, 2015.

In response to the Ethics Council's question the candidate informed that this value of the apartments was explained with the fact that they were located in old buildings, required complete reconstruction and that such value corresponded to average market prices for the real estate in Kherson.

Moreover, as the candidate explained, the source of origin of funds used to purchase these apartments included his and his wife's income received by him at the position of the judge and by his wife from entrepreneurial activities, which was reflected in the declaration for 2015.

The Ethics Council considers such explanations to be unconvincing.

The sale and purchase agreement of October 30, 2015 provided by Illia Mykolaiovych Kravchenko to the Ethics Council concerning the purchase of apartment No. 17 with a total area of 56.5 sq.m. located on Komsomolska Street, 23 in Kherson shows that building A Komsomolska Street, 23 in Kherson was included into the list of urban planning and architecture moments of national significance “Residential Building” under the protection number No.1621 pursuant to Resolution No. 466 of the Cabinet of Ministers of Ukraine of August 12, 1992.

According to cl. 7 of this agreement, the sold apartment was in the completely habitable condition for the use of the accommodation as intended.

Hence, explanations of Illia Mykolaiovych Kravchenko about inhabitability of the purchased real estate object contradict information from this agreement.

Besides, Illia Mykolaiovych Kravchenko has not provided evidence to confirm value of the other two apartments.

Due to this the Ethics Council has reasonable doubts about accuracy of the information provided by the candidate regarding the value of the apartments purchased by him and his wife.

In accordance with the cl. 1.3.4.1 of the Methodology, the candidate does not comply with the indicator of honesty, in particular, if there are reasonable doubts that such candidate in his current or past position acted in line with requirements of the legislation, professional ethics rules, and other ethical norms concerning honesty.

In view of the above, the Ethics Council thinks that there are reasonable doubts about the candidate’s compliance with such indicator of the professional ethics and integrity criterion as honesty (cl. 1.3.2 of the Methodology), as well as about the candidate’s compliance with requirements of financial control that are stipulated by the anti-corruption legislation, in particular, with respect to the

provision of complete and accurate information in his assets declarations (cl. 1.2.7.6 of the Methodology).

4. With respect to the purchase of 2015 vehicle Volkswagen Passat by the candidate

On October 28, 2020 the candidate purchased 2015 vehicle Volkswagen Passat for UAH 109 207.

In his explanations, Illia Mykolaiovych Kravchenko stated that he bought this vehicle at an auction in the USA and paid UAH 109 207 for it. He explained that at that time the vehicle cost that particular amount as it was not suitable for use.

However, the candidate has not provided any documents to confirm that the vehicle was not working and required repairs as of the moment of its purchase.

According to information from the State Register of Individual Taxpayers, the candidate's salary for 2020 amounted to UAH 236 688, while that of his wife amounted to 45 411. At the same time, in his declaration for 2020 Illia Mykolaiovych Kravchenko declared savings in the amount of USD 5 000 that, as he explained, were accumulated by him and his wife from their income.

After the purchase of the vehicle and foreign currency in the amount of USD 5 000, the candidate and his wife had about UAH 39 892 for a year.

Thus, the family consisting of two adults and two minor children had about UAH 3 324 per month at its disposal.

During the interview the candidate informed that in 2020 his family's expenses amounted to about UAH 6 000 – 7 000 per month.

In view of this, the Ethics Council believes that there are reasonable doubts about Illia Mykolaiovych Kravchenko's honesty (cl. 1.3.2 of the Methodology) in terms of justification of the amount of his expenses in 2020 and, consequently, legality of sources of origin of the candidate's property, namely, 2015 vehicle

Volkswagen Passat and monetary assets declared as of the end of 2020 (cl. 1.3.7 of the Methodology).

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 9-1 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 the candidate for the position of the member of the High Council of Justice Illia Mykolaiovych Kravchenko 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