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ETHICS COUNCIL

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Kyiv

DECISION

No. 23

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Oleksandr Abramovych Melnikov
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 Oleksandr Abramovych Melnikov 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 Oleksandr Abramovych Melnikov 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.

Oleksandr Abramovych Melnikov has engaged in individual attorney’s activities since 1993 till now.

Having studied documents provided by Oleksandr Abramovych Melnikov 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, the Ethics Council has reached the following conclusions.

1. With respect to failure to declare his wife's ownership for a vehicle and land plot

According to information from the Unified State Register of the Ministry of Internal Affairs on possession of vehicles by individuals or legal entities, the candidate's wife has owned 2010 vehicle Ford Kuga since 15.09.2010. Besides, she has owned a land plot with the total area of 148,1 sq. m. in Luhansk since 19.06.2012.

At the same time, the Ethics Council has revealed that the candidate did not specify information about his wife's ownership of 2010 vehicle Ford Kuga in section 6 "Valuable Movable Property – Vehicles" and the afore mentioned land plot in Luhansk in section "Real Estate Objects" in his asset declaration for 2021.

According to para. 2 of Article 46(1) of the Law of Ukraine "On Preventing Corruption", the declaration shall specify information about real estate objects belonging to the person submitting the declaration and his/her family members under the right of private ownership, including joint ownership, or which they rent or have under any other right of use regardless of the form the transaction conclusion which resulted in acquisition of such right.

According to para. 3 of Article 46(1) of this Law, the declaration shall specify vehicles belonging to the person submitting the declaration or his/her family members under the right of ownership or in their possession or use as of the last day of the reporting period or during at least half of all days during the reporting period.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with the financial control requirements, in particular, provide complete and accurate information in asset declarations.

According to cl. 1.3.4.1 of the Methodology, the candidate does not comply with the indicator of diligence, 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 diligence.

Given that contrary to requirements of the aforementioned Law Oleksandr Abramovych Melnikov did not specify information about his wife's ownership of 2010 vehicle Ford Kuga in section 6 "Valuable Movable Property – Vehicles" and the afore mentioned land plot in Luhansk in section "Real Estate Objects" in his asset declaration for 2021, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the professional ethics and integrity criteria as diligence (cl. 1.3.4 of the Methodology) and compliance with requirements of financial control concerning provision of complete and accurate information in asset declarations (cl. 1.3.7.6 of the Methodology).

2. With respect to the value of real estate property of the candidate and his wife

According to information given in Oleksandr Abramovych Melnikov's declaration for 2021, on 23.01.2017 the candidate's wife acquired the right of ownership for an apartment with the total area of 92,3 sq. m. in Kyiv. According to the sale and purchase agreement, the price of this apartment amounted to UAH 149 000, which is equivalent to USD 5 432 according to the official currency exchange rate of the National Bank of Ukraine at that time, as of the date of its purchase.

Thus, one square meter of this apartment cost UAH 1 614 or USD 58,8.

In his written explanations and during the interview the candidate explained that the purchase apartment was not habitable and required significant expenses on construction and repair works. Oleksandr Abramovych Melnikov stated that these factors influenced its price.

The Ethics Council considers such explanations of the candidate to be unconvincing as according to the information from the open sources the

approximate market price of the real estate object with the area from 90 to 100 sq. m. in a neighborhood where the aforementioned apartment is located varied from USD 150 000 or from USD 89 000 for an apartment with the smaller area without repairs in 2021. According to topical ads at specialized real estate sale websites, the price of one square meter of the residential area in building where this apartment is located amounts to USD 1 300 in 2023. Besides, according to information from the State Property Fund, the market price of a real estate object with the similar area and location amounts to about UAH 3 923 692, which is much higher than the value specified by the candidate in his declaration.

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 anti-corruption 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 of the Methodology, one of the indicators of the professional ethics and integrity criterion is honesty, i.e. presence of high moral qualities, truthfulness in professional activities and in everyday life (cl. 1.3.2 of the Methodology).

In view of the above, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators as honesty (cl. 1.3.2 of the Methodology) and compliance with requirements of financial control concerning the provision of complete and accurate information in asset declarations (cl. 1.3.7.6 of the Methodology).

3. With respect to failure to declare membership in the National Bar Association of Ukraine

According to information from the Unified Register of Attorneys of Ukraine, on 15.10.1993 with decision No. 32 of Luhansk Regional Bar Qualification and Disciplinary Commission Oleksandr Abramovych Melnikov received an attorney's certificate.

According to Article 45(6) of the Law of Ukraine "On the Bar and Attorney Activities", all persons who have attorney's certificates shall become members of the National Bar Association of Ukraine since the moment of its state registration.

According to para. 12 of Article 46(1) of the Law of Ukraine "On Preventing Corruption" as of 14.10.2014, No. 1700-VII, it is set out that the declaration of the person authorized to fulfill functions of the state or local self-governance shall specify information about membership of the person submitting the declaration in managerial, revision, or supervisory bodies of civil society associations, charity organizations, self-governance or self-regulating professional associations, membership in such associations (organizations), along with indication of the name of respective associations (organizations) and their code from the Unified State Register of Legal Entities and Individual Entrepreneurs.

According to cl. 186 and cl. 189 of the NACP's explanations concerning application of separate provisions of the Law of Ukraine "On Preventing Corruption" regarding financial control measures (submission of the declaration, notification about significant changes in the financial situation, notification about opening of currency accounts) No. 11 as of 29.12.2021, the declaration shall specify information that the persons submitting the declaration is a member of the National Bar Association of Ukraine even if the right to engage in attorney's activities has been suspended.

At the same time, even though Oleksandr Abramovych Melnikov has the right to perform attorney's activities and has been the member of the National Bar Association of Ukraine since the moment of its state registration, in his asset declaration for 2021 the candidate did not provide information about his

membership in the National Bar Association of Ukraine contrary to requirements of the afore mentioned Law.

According to cl. 1.3 of the Methodology, indicators of the professional ethics and integrity criterion include diligence (industrious, thorough, and responsible fulfillment of one's duties, which is a sign of the person's professional integrity – cl. 1.3.4 of the Methodology) and honesty (presence of high moral qualities, truthfulness in professional activities and in everyday life – cl. 1.3.2 of the Methodology).

Thus, since the candidate did not use all opportunities to provide accurate and complete information in his declarations and did not declare his membership in the National Bar Association of Ukraine in his asset declaration for 2021, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the professional ethics and integrity criterion as diligence (cl. 1.3.4 of the Methodology) and compliance with requirements of financial control (cl. 1.3.7.6. of the Methodology).

4. With respect to the failure to provide changes in the information about the location where the attorney's activities are performed to the Unified Register of Attorneys of Ukraine

Since 2014 the candidate has lived and worked as an attorney in Kyiv. At the same time, according to information from the Unified Register of Attorneys of Ukraine, the address of the workplace of attorney Oleksandr Abramovych Melnikov is Luhansk.

According to cl. 3.3 of the Regulation on the management of the Unified Register of Attorneys of Ukraine, the address of the attorney's workplace is location of the organizational form of attorney's activities selected by the attorney or address of actual performance of the attorney's activities if it is different from the location of the organizational form of attorney's activities selected by the

attorney, pursuant to the attorney's application. In case there are several addresses of the attorney's workplaces only one address of the workplace shall be entered to the Unified Register of Attorneys of Ukraine pursuant to the attorney's application.

According to cl. 3.4 of the aforementioned regulation, within three days of changing information that has been or shall be entered to the Unified Register of Attorneys of Ukraine an attorney shall notify in writing about such changes the regional bar council at the address of his workplace, except for instances when such changes are entered based on the decision of the bar qualification and disciplinary commission. In case of violating this term, the regional bar council may appeal to the regional bar qualification and disciplinary commission on bringing the attorney to disciplinary responsibility.

According to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicatory of diligence, in particular, in case when there are reasonable doubts that such candidate in the present or any past professional capacity has acted in line with requirements of the legislation, professional ethical rules, other ethical norms regarding diligence.

Given that contrary to requirements of the aforementioned Regulation Oleksandr Abramovych Melnikov has been negligent in adherence to requirements of performing the attorney's activities and has failed to notify the bar council about a change in the address of the actual performance of the attorney's activities, the Ethics Council has reasonable doubts about the candidate's compliance with such indicator of the professional ethics and integrity criterion as diligence (cl. 1.3.4 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 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 Oleksandr Abramovych Melnikov 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