



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

DISSENTING OPINION

of the Chairman of the Ethics Council Lev Kyshakevych and members of the Ethics Council Volodymyr Siverin and Yuriy Triasun on Decision No. 24 as of 16 March 2023 on compliance of Lesia Anatoliivna Musyka, a candidate for the position of a member of the High Council of Justice, with the professional ethics and integrity criteria

On 16 March 2023, the Ethics Council adopted Decision No. 24 to confirm compliance of Lesia Anatoliivna Muzika, a candidate for the position of a member of the High Council of Justice, with the professional ethics and integrity criteria to take the position.

Pursuant to cl. 2.3.6 of the Rules of Procedure of the Ethics Council approved by Ethics Council Decisions No. 1 as of 1 December 2021 and No. 4 as of 9 December 2021 as amended by Ethics Council Decision No. 4 as of 26 April 2022 (the Rules of Procedure), we hereby exercise our right to express our dissenting opinion on a decision adopted by a majority of votes of the Ethics Council members proposed by international and foreign organisations (cl. 2.3.3 of the Rules of Procedure).

1. Defending thesis amid of a potential conflict, violation of academic integrity requirements

Assessing the candidate L. A. Muzyka, the Ethics Council found that she defended her PhD in Law thesis (specialist's field 12.00.03: civil law and civil proceedings; family law; private international law) before the Specialised Academic Council of Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine on 11 May 2021. Anatoliy A. Muzyka, the candidate's father, was a member of the Specialised Academic Council.

Assessing L. A. Muzyka's compliance with the professional ethics and integrity criteria, the Ethics Council concluded that the father's membership in the Specialised Academic Council where she defended her PhD in Law thesis was not a gross violation, nor did it cast doubt on the candidate's integrity.

In fact, the Ethics Council made the conclusion relying only on the candidate's explanations given during her interview, as well as on the response provided by Koretsky Institute of State and Law upon L. A. Muzyka's inquiry. In its response, the Institute confirms that A. A. Muzyka was not present at the meeting where L. A. Myzyka defended her thesis, nor did he take part in deliberations and voting.

However, assessing L. A. Muzyka, the Ethics Council did not take into account a number of principles and provisions of anti-corruption and education laws in terms of academic integrity.

The fact that L. A. Muzyka defended her PhD in Law thesis before the Specialised Academic Council of which her father is a member raises reasonable doubts about her compliance with the academic integrity (defence amid a potential conflict), as her father had a private interest in his daughter's defence of PhD in Law thesis and could influence the objectivity and impartiality of decisions made by the Specialised Academic Council.

The academic community has its system of moral norms, imperatives, and prohibitions that regulate R&D and academic careers, i.e. the scholar's code of ethics. The scholar's code of ethics is based on the understanding that proper practices in science promotes trust inside the academic community as well as public trust in scholars, which is vital for the development of science. Scholars need to be confident in, and rely on, their peers' research results. In its turn, the public needs to be confident in the honesty of scholars and able to rely on the results of their researches. Anticipating the social and other consequences of research and taking moral responsibility for these consequences lie at the heart of the scholar's ethos. A scholar should understand that the public evaluates the effectiveness of science and his/her own morality.

Pursuant to cl. 4.2.2 of the Regulations on the Specialised Academic Council approved by Order No. 1059 issued by the Ministry of Education and Science, Youth and Sports of Ukraine on 14 September 2011 (the Regulations as in effect at the date of the defence of the thesis by L. A. Muzyka), relatives of the chairpersons of the councils and the heads of higher education/academic institutions where the councils are established shall submit their thesis to the councils of other higher education/academic institutions.

Pursuant to Article 42 of the Law of Ukraine “On Higher Education”, academic integrity means a set of ethical principles and other rules that must be followed by participants in the educational process during learning, teaching and carrying out R&D **to secure trust in the results of research and development.**

Therefore, L. A. Muzyka should have applied to another higher education (academic) institution to defend her thesis in order to secure trust in the results of her R&D and observation of the rules that should be followed by participants in the educational process in the course of R&D, because she knew that her father was a member of the Specialised Academic Council and understood that an outside observer could have doubts about her professional ethics and the conflict

of interests. Such conduct of hers would have obeyed the letter and spirit of the law.

After all, the defence of thesis before the Specialised Academic Council, of which her father is a member, can undermine confidence in the R&D results, as well as in the very procedures for awarding academic degrees and ranks in Ukraine.

Therefore, we believe that reasonable doubts are in place about L. A. Muzyka's compliance with the diligence criterion (cl. 1.3.4. and 1.3.4.1 of the Methodology), as the candidate, acting in her past professional capacity, failed to act in line with requirements of the laws, professional ethical rules (academic integrity requirements), and other ethical norms regarding honesty, impartiality, and diligence.

Moreover, the Ethics Council did not properly assess the candidate's ability to adhere strictly to professional ethics and generally acknowledged moral rules of conduct in professional life that builds public trust in her. The Ethics Council should have concluded that there were reasonable doubts about the candidate's compliance with such professional ethics and integrity criterion as the observance of ethical standards and impeccable conduct in professional and personal life, since L. A. Muzyka acted contrary to professional ethical and generally acknowledged moral rules of conduct while defending results of her scientific endeavors. She did not take any measures to prevent or resolve a potential conflict of interest caused by her family ties with a member of the Specialised Academic Council (cl. 1.3.6. of the Methodology).

2. Regarding the candidate's actual place of residence

The Ethics Council found that L. A. Muzyka indicated in her documents submitted for participation in the selection of members of the High Council of Justice, in particular, in her applications and autobiography, that her actual place

of residence was Kyiv, Ukraine. This is not true, since her actual place of residence was France at the time of completing these documents.

L. A. Muzyka left Ukraine for France in early March 2022, where she actually lived and was interviewed by the Ethics Council via video conference. This means she had to indicate her actual place of residence in France while completing these documents.

Therefore, these circumstances raise reasonable doubts about L. A. Muzyka's compliance with such criterion of professional ethics and integrity as honesty, which means the presence of high moral qualities, and truthfulness in professional activities and in everyday life (cl. 1.3.2 of the Methodology).

Taken as a whole, the circumstances raise reasonable doubts about the candidate's compliance with the professional ethics and integrity criteria, in particular, with such indicators as diligence, which means 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); honesty, which means the presence of high moral qualities, truthfulness in professional activities and in everyday life (cl. 1.3.2. of the Methodology), professional ethical rules (academic integrity requirements), and other ethical norms regarding independence, honesty, impartiality, and diligence (cl. 1.3.4.1 of the Methodology).

Moreover, the Ethics Council did not properly assess the candidate's ability to adhere strictly to professional ethics and generally acknowledged moral rules of conduct in professional life that builds public trust in her. The Ethics Council should have concluded that there were reasonable doubts about the candidate's compliance with such professional ethics and integrity criterion as the observance of ethical standards and impeccable conduct in professional life, since L. A. Muzyka acted contrary to professional ethical and generally acknowledged moral rules of conduct while defending results of her scientific endeavours. She did not take any measures to prevent or resolve the conflict of interest caused by

her family ties with a member of the Specialised Academic Council (cl. 1.3.6. of the Methodology).

Therefore, having relied on cl. 2.3, 2.3.6, 3.1, 3.15.1, and 3.2 of the Rules of Procedure of the Ethics Council, the Methodology for assessing compliance of a candidate for the position of a member of the High Council of Justice and sitting members of the High Council of Justice with the criteria of professional ethics and integrity, Article 9¹ of the Law of Ukraine “On the High Council of Justice”, final and transitional provisions of the Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Selection (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice”, we believe that Lesia Anatoliivna Muzyka, a candidate for the position of a member of the High Council of Justice, is not compliant with the professional ethics and integrity criteria.

Lev Kyshakevych *(signature)*

Volodymyr Siverin *(signature)*

Yuriy Triasun *(signature)*