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ETHICS COUNCIL

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Kyiv

DECISION

No. 8

*On non-compliance of candidate
for the position of a member of the High Council of Justice
Andrii Serhiyovych Radionov
with criteria of professional ethics and integrity
for filling in the position of a 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 Andrii Serhiyovych Radionov 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 Andrii Serhiyovych Radionov for the participation in the competition for the position of a member of the High Council of Justice from the All-Ukrainian Conference of Prosecutors, and admitted him to the interview by decision No. 46 as of 16.11.2022.

Andrii Serhiyovych Radionov holds the position of the prosecutor of the Department of procedural management and support of public prosecution of the Department of procedural management and representation in the field of childhood protection of the Department of protection of children's interests and violence combat in the Office of the Prosecutor General from May 2020 to the present.

Having studied documents provided by Radionov A. S. 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. Regarding unethical behavior during the establishment by the Ethics Council of the candidate's compliance with the criteria of professional ethics and integrity

On 21.07.2022 Radionov A. S. submitted to the Secretariat of the High Council of Justice a statement of intention to be elected a member of the High Council of Justice by the All-Ukrainian Conference of Prosecutors and other documents necessary for participation in the competitive selection. With this, the candidate has expressed his own intention to pass the competitive selection, which includes the verification of the candidate by the Ethics Council for compliance with the criteria of professional ethics and integrity.

The Ethics Council determines such compliance, in particular, based on the information requested by the members of the Ethics Council, as well as based on the results of interviews with candidates. According to cl. 5, Part 20 of Art. 9¹ of the Law of Ukraine "On the High Council of Justice", the body or person who received the request of the Ethics Council is obliged to provide the necessary explanations, information and/or relevant documents (their copies) within ten calendar days from the

day of its receipt. In addition, in accordance with cl. 3.5.3 of the Rules of Procedure, in the evaluation process, the Ethics Council may take into account the candidate's refusal to provide answers to requests and requested materials.

At the same time, in his written responses to the requests of the Ethics Council and during the interview, Radionov A. S. demonstrated his reluctance to provide comprehensive explanations to questions, and also allowed derogatory remarks towards the Ethics Council and its members. In particular, the Ethics Council provides a list of quotes from the candidate's written answers and interview:

1. "Preventively, first of all, in order to avoid ongoing abuses in the requests and activities of the Ethics Council, I note that during the evaluation it is reliably known at the moment that the vetting... was carried out not only by NACP but also by NABU (the legal grounds of the latter's vetting are not only dubious, but also directly contradict the requirements of the law and are diametrically opposed to the basic principles of the Ethics Council). Although the latter, in its turn, also has full access to all existing registers and analytics in Ukraine, having similar experience in conducting the attestation of prosecutors in 2019, they should have provided comprehensive answers."
2. "The consistent bias in the questions as a whole, combined with the unjustified redundancy and intrusion into the privacy of unrelated individuals, once again proves their conjuncture."
3. "From the questions of the Ethics Council, obvious bias can be traced in combination with the manipulation of terms and the legislative base. In particular, even in the text of the question, the Ethics Council refers to the term "Real estate object" and apparently ignores the semantics of the legal norm, when the candidate provides information about the "Registration address", which is not correlating in any way."
4. "In order to avoid misunderstandings when giving an answer, it is advisable, first of all, to find out the reasons for the Ethics Council's reference to the Decision of the Constitutional Court of Ukraine No. 1-пп/99 dated 09.02.1999 in the case of the constitutional appeal of the National Bank of Ukraine regarding the official interpretation of the provisions of Part 1 Art. 58 of the Constitution of Ukraine (the case on the retroactive effect of laws and other legal acts), which are irrelevant and temporally incompatible with the actual circumstances of the request and, secondly, the reasons for the formulation of knowingly biased questions of an institution called to be a role model for objectivity?"
5. "This is called with the word "honesty". Have you heard about this?"
6. "...You would understand if you would read the law..."

The Ethics Council considers the above quotes not only as a refusal to provide explanations, but also as behavior that contradicts with the ethical and generally accepted moral rules of conduct.

According to Part 2 of Art. 21 of the Code of professional ethics and conduct of prosecutors, the prosecutor should not allow actions, statements and behavior that could damage his/her reputation and the authority of the prosecutor's office, or to cause the negative public resonance.

According to cl. 1.3 of the Methodology, one of the indicators of the criterion of professional ethics and integrity is the observance of ethical norms and the demonstration of impeccable behavior in professional activities and personal life. According to cl. 1.3.6 of the Methodology, the candidate must meet the criterion of compliance with ethical norms and the demonstration of impeccable behavior in professional activity and personal life and strictly adhere to professional ethical and generally recognized moral rules of conduct, both during professional activity and outside of it, which forms public trust in such a person.

In connection with the fact that the candidate, although voluntarily agreed to the check, but despite this showed disdain and avoided giving full and specific answers to the questions, the Ethics Council has reasonable doubts about the candidate's compliance with the indicator of impeccable behavior in professional activity and personal life (cl. 1.3.6 of the Methodology).

2. Regarding non-declaration of the right to use immovable property

From 2014 to 2020 Radionov A. S. worked at the General Prosecutor's Office in the city of Kyiv. According to the candidate's property declarations for 2015-2017, the address of his actual place of residence is the city of Kyiv. The candidate noted this information in Section 2.1. "Information about the subject of declaration" of declarations for 2015-2017. In addition, in the same Section, the candidate indicated the place of actual residence in the city of Kyiv and explained that he lives at the indicated address in accordance with a personal agreement with the persons who live in the premises at this address, without concluding civil law contracts.

At the same time, the candidate did not indicate information about his ownership or use of real estate in which he could live in the city of Kyiv in Section 3 "Real Estate Objects" of the property declarations for 2015-2017.

In his written responses to the request of the Ethics Council Radionov A. S. explained that when specifying another address of residence, which does not coincide with the address of registration, there was no need to fill in other sections regarding such real estate and to specify the owner and grounds for using such an object of immovable property.

According to cl. 2, Part 1, Art. 46 of the Law of Ukraine "On the Prevention of Corruption" dated 14.10.2014: "in the declaration, information about the real estate objects, which are leased or under other right of use, regardless of the form of the legal act, as a result of which such a right is acquired, is entered in the declaration". In

accordance with the Clarifications regarding the application of certain provisions of the Law of Ukraine "On the Prevention of Corruption" in relation to financial control measures, approved by the Decision of the National Agency for the Prevention of Corruption dated August 11, 2016 No. 3, which were in effect at the time the candidate filled out the declarations for 2015-2017: "If in the reporting period the subject of the declaration acquired (or leased) real estate, the corresponding object must be displayed in the section "Real Estate Objects " (if it remains in the possession, use or ownership of the subject of declaration as of the last day of the reporting period)».

In none of the property declarations Radionov A. S. did not declare property rights to the real estate object where his place of residence is registered. When asked by the Ethics Council why he did not declare property rights to the registered place of residence, the candidate explained that the address of the registered place of residence is the address of the departmental dormitory. Not even one day, including neither at the beginning nor at the end of the reporting period, during the entire registration period, the candidate did not live in it, did not receive an order to move into the premises and did not conclude a contract for its use, and therefore grounds for displaying information about the right of use such a real estate object in section 3 "Real estate objects" of the declaration, according to A. S. Radionov do not exist.

In addition, the candidate noted that, according to Part 3 of Art. 1 of the Law of Ukraine "On the provision of public (electronic public) services regarding the declaration and registration of the place of residence in Ukraine", the declaration (registration) of a person's place of residence is not a basis for acquiring the right to own, use or dispose of housing (including is not a basis for occupancy or recognition of a person's right to residence and/or the right to use housing), about residence in which such a person reported.

The Ethics Council notes that indeed Part 3 of Art. 1 of this Law expressly states that the registration of a person's place of residence is not a basis for such a person acquiring the right to own, use or dispose of housing (including it is not a basis for occupancy or recognition of a person's right to residence and/or the right to use housing), about residence in which the person reported. Along with this, the Ethics Council draws attention to the fact that the Law of Ukraine "On the provision of public (electronic public) services regarding the declaration and registration of residence in Ukraine" was adopted on November 5, 2021, and the legal norms regarding registration of residence entered into force on December 1, 2021. In this regard, the relevant provisions were to be applied to the rules for filling out property declarations starting from 2021. Until December 1, 2021, the legal regulation of residence registration was established by the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine." On August 5, 2012, amendments to this Law entered into force, which stipulated, in particular, that for registration a person submits documents confirming the right to live in housing, the address of which is indicated during

registration (cl. 5, para 3, Article 6). This legal norm remained valid until it was changed by the adoption of the Law of Ukraine "On the provision of public (electronic public) services regarding the declaration and registration of the place of residence in Ukraine." Thus, from 05.08.2012 to 01.12.2021, the regulations were in force, according to which the registration of the place of residence took place on the basis of documents confirming the right to live in the corresponding residential premises. Therefore, during the registration process, the person had to confirm that he/she already had the right to live in the corresponding real estate object. The Ethics Council believes that living in a residential building is impossible without using the housing, so the right to live is actually equal to the right to use it.

The same position was followed by NACP in Explanations as of February 13, 2020 No. 1 "Regarding the application of certain provisions of the Law of Ukraine "On Prevention of Corruption" regarding financial control measures." Cl. 56 of these Explanations states that in connection with the registration of the place of residence, the subject of the declaration and his/her family members have the right to use the real estate object. Thus, information about real estate objects, which are the registered place of residence of the subject of the declaration or members of his/her family, must be indicated in section 3 "Real estate objects" of the declaration, even if the person does not actually live there. An identical conclusion is contained in cl. 73 of the Explanations of the NACP as of 03.02.2021 No. 1 "Regarding the application of certain provisions of the Law of Ukraine "On the Prevention of Corruption" regarding financial control measures (submission of declarations and notifications of significant changes in property status)". Taking into account the requirements of the Law of Ukraine "On Freedom of Movement and Free Choice of Residence in Ukraine" regarding registration of residence, which were in effect from 05.08.2012 to 01.12.2021, as well as the Explanation of NACP as of 13.02.2020 No. 1 and as of 03.02. 2021 No. 1, the candidate had an obligation to declare the right to use the real estate object, which was his registered place of residence in 2014-2020, but he did not do so.

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 the provision of full and accurate information in assets declarations.

According to cl. 1.3.4.1 of the Methodology, the candidate does not comply with the diligence indicator, in particular, in the case of reasonable doubts that such candidate, while in office, acted in accordance with the requirements of the legislation, professional ethical rules and other ethical norms regarding diligence.

Given that the candidate did not specify information about the right of ownership or right of use for real estate objects in which the candidate could live in Kyiv and did not specify the right to use a real estate object which was his registered place of residence in 2014-2020, 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 the financial control requirements regarding provision of accurate and complete information in his asset declarations (cl. 1.3.7.6 of the Methodology).

3. Regarding the use of vehicles

On 04.03.2020 A.S. Radionov addressed the National Police with a statement about taking into possession of a 2013 Nissan X-trail vehicle. At the same time, there is no information about the specified car in the candidate's declarations.

In his answers to the written questions of the Ethics Council Radionov A. S. noted that he used about ten vehicles for a short period of time, including a 2013 Nissan X-trail.

The candidate reported that none of these vehicles fell under the requirements of anti-corruption legislation regarding declaration due to the short period of use. He explained that in the absence of requirements on the obligation of a notarized power of attorney for such use, he did not have any information about these vehicles.

In response to questions from the Ethics Council regarding the owners of such cars, the period and reasons for using them, Radionov A. S. reported that all the cars he used were temporarily provided to him for a period of up to two weeks. The candidate did not keep documents and does not have information about the owners of the mentioned vehicles.

At the interview Radionov A. S. explained that the service station that provided him with the abovementioned vehicles was a service station owned by acquaintances of the candidate. These vehicles, according to Radionov A. S., were given by the service station to him free of charge as a replacement of his own car while it was on the reparation.

The Ethics Council considers such explanations of the candidate to be unconvincing, as the candidate was unable to provide the name and address of the mentioned service station, explain the reasons and terms of using the cars, and to provide the supporting documents.

According to cl. 1.3 of the Methodology, one of the indicators of the criterion of professional ethics and integrity is honesty. According to cl. 1.3.2 of the Methodology, the candidate must meet the indicator of the criterion of honesty which is the presence of high moral qualities, truthfulness in professional activity and everyday life.

In view of the abovementioned, the Ethics Council has reasonable doubts about the candidates' compliance with the criteria of professional ethics and integrity, in particular with the such indicator as honesty (cl. 1.3.2 of the Methodology).

4. Regarding the artificial deterioration of living conditions

According to information from the Unified Register of Powers of Attorney, on June 8, 2007, the candidate's mother, Radionova A. V., issued a power of attorney in the name of the candidate for the right to sell an apartment in the city of Kyiv (the power of attorney was valid until June 8, 2010). The candidate explained that the mentioned power of attorney in his name was issued by his mother in order for the candidate to prepare documents for the sale of the apartment.

At the interview Radionov A. S. explained that in 2005 he received a warrant for the right to move into an apartment in the city of Kyiv as a prosecutor who is on the housing queue as someone who needs to improve living conditions. As the candidate noted, his mother moved into the indicated apartment and registered in it. Later, as a result of privatization, she became the owner of the specified apartment, and in 2007 she sold it.

As informed by Radionov A. S. in written responses to the request of the Ethics Council, he currently lives in the city of Kyiv in an apartment that he rents. The candidate's registered place of residence is the address of the departmental dormitory in the city of Kyiv. Thus, although the candidate exercised his right to free privatization of residential space back in 2005, he is currently again entitled to receive a residential space as a citizen who needs to improve living conditions.

According to para 2 of Article 21 of the Code of Professional Ethics and Conduct of Prosecutors, the prosecutor should not allow actions, statements and behavior that could damage his/her reputation and the authority of the prosecutor's office, cause negative public resonance.

According to cl. 1.3 of the Methodology, one of the indicators of the criterion of professional ethics and integrity is the observance of ethical norms and the demonstration of impeccable behavior in professional activities and personal life. According to cl. 1.3.6 of the Methodology, the candidate must meet the criterion compliance with ethical norms and demonstration of impeccable behavior in professional activities and personal life which is the 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.

The Ethics Council considers the fact of the candidate's mother selling an apartment suitable for living in it, which the candidate received free of charge as a person in need of improved living conditions, as an artificial deterioration of living conditions with the aim of acquiring a further opportunity for the candidate to re-obtain housing at the expense of the state.

Considering the abovementioned, the Ethics Council has reasonable doubts about the candidate's compliance with such an indicator of the criteria of professional

ethics and integrity as the compliance with ethics norms and impeccable behavior in professional activities and personal life (cl. 1.3 of the Methodology).

Thus, the Ethics Council has reasonable doubts about the candidate's compliance with such criteria of professional ethics and integrity as conscientiousness, compliance with financial control requirements, compliance with impeccable behavior in professional activities and personal life, and honesty.

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 the candidate for the position of the member of the High Council of Justice Andrii Serhiyovych Radionov 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