



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. 21

***On non-compliance of candidate
for the position of the member of
the High Council of Justice Yaromenok R.O.
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 (remotely by videoconference), Deputy Chair of the Ethics Council Sir Anthony Hooper (remotely by videoconference), members of the Ethics Council: Yurii Triasun (remotely by videoconference), Volodymyr Siverin (remotely by videoconference), Robert Cordy (remotely by videoconference), Lavly Perling (remotely by videoconference), having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Yaromenok Roman Oleksandrovych 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 Decision No. 4 as of 9 December 2021 as amended pursuant to Decisions of the Ethics Council No. 1 as of 1 December 2021 and

No. 4 of 26 April 2022, Methodology for assessing compliance of the candidate to 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 Decision of the Ethics Council No. 5 as of 9 December 2021 (hereinafter referred to as the Methodology),

has established:

Pursuant to Article 9¹(14) of the Law of Ukraine “On the High Council of Justice”, the Ethics Council shall carry out selection of candidates for the position 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 Yaromenok R.O. for participation in the competition for the position of a member of the High Council of Justice from the Verkhovna Rada of Ukraine.

Candidate Yaromenok R. O. was admitted to the interview for the position of the member of the High Council of Justice pursuant to the decision of the Ethics Council as of 21 December 2021.

Having studied the documents provided by Yaromenok R. O. upon the Ethics Council’s request, his written explanations, information obtained from open sources and civil society organizations, information received from the National Agency on Corruption Prevention (hereinafter referred to as the NACP), National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the NABU), having interviewed him, the Ethics Council has established the following.

When assessing the candidate, the Ethics Council established a number of circumstances that raise reasonable doubts about the candidate's compliance with the criteria of professional ethics and integrity.

In accordance with Paragraph 1.3. of the Methodology indicators for the criteria of professional ethics and integrity are independence, honesty, impartiality, incorruptibility, diligence, compliance with ethics norms and immaculate behaviour in professional activities and personal life, as well as the absence of doubts about the legality of the sources of origin of property, conformity of the candidate's level of life or that of his family members with declared incomes, conformity of the candidate's lifestyle to his status.

According to Paragraph 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. According to Paragraph 1.3.4.1, a candidate does not meet the indicators of diligence, in particular, if there are reasonable doubts that such a candidate, while in his current or any previous position, acted in accordance with the requirements of the law, the rules of professional ethics, other ethical standards regarding independence, honesty, impartiality, diligence.

Thus, from the materials available to the Ethics Council, it became known that Yaromenok R. O. was twice brought to disciplinary responsibility during his work in the prosecutor's office.

At the request of the Ethics Council to provide copies of orders to apply disciplinary penalties to the former employee of the regional prosecutor's office Yaromenok R. O., the Poltava regional prosecutor's office sent copies of orders of the prosecutor of the Poltava region dated 10.04.2009 № 79к "On bringing to disciplinary responsibility employees of the prosecutor's office of the city of Kremenchuk" and dated 20.07.2011 № 332к "On bringing to disciplinary responsibility".

From the attached copies of the orders, it can be seen that during his work in the prosecutor's office, Yaremenok R.O. was repeatedly brought to disciplinary responsibility:

- On April 10, 2009, Yaromenok R. O., deputy prosecutor of the Hlobynskyi District of the Poltava region, was reprimanded for improper performance of official duties;

- On July 20, 2011 for improper performance of official duties and industry orders of the Prosecutor General of Ukraine, significant shortcomings and miscalculations in the organization of work in priority areas of prosecutor's activity, weakening of control and demands on the activities of subordinate employees, to the prosecutor of the Semenivskyi District of the Poltava region Yaromenok R. O. was reprimanded.

Thus, in particular, from a copy of the order of the prosecutor's office of the Poltava region № 79-к of April 10, 2009, it can be seen that Yaromenok R. O. was brought to disciplinary responsibility for the actual loss of criminal cases received from the Investigative Department of the SBU of Ukraine in the Poltava region to the prosecutor's office of the city of Kremenchuk and were transferred to the production of Yaromenok R. O. for study and processing in 2004.

From a copy of the Order of the prosecutor's office of the Poltava region of July 20, 2011, it can be seen that Yaromenok R. O., being already in the position of prosecutor of the Semenivskyi District of the Poltava region, who was responsible for the state of organization of work in the prosecutor's office of the district, did not provide proper management of the staff of the prosecutor's office, did not direct its activities to the effective performance of the functions and tasks of the prosecutor's office, committed violations in the main areas of prosecutor's investigative activities. In particular, the district prosecutor's office under the leadership of Yaromenok R. O. did not ensure a proper and timely response to violations in the field of taxation, child protection, countering domestic violence, environmental protection, forest fund

protection, etc.

So, the Ethics Council has reasonable doubts that Yaromenok R. O., while in his previous position, acted in accordance with the requirements of the legislation and the rules of professional ethics, which may indicate his inconsistency with Paragraphs 1.3.4., 1.3.4.1 of the Methodology and the lack diligence – diligent, thorough and responsible performance of his duties, as well as the lack of integrity in the professional activities of the person.

Thus, the legal basis for regulating relations in the field of professional ethics and behavior of prosecutors is Constitution Of Ukraine, Laws of Ukraine "About the prosecutor's office", "On prevention of corruption" and other legislation concerning the activities of the prosecuting authorities, the orders of the Prosecutor General and the Code of professional ethics and behavior of prosecutors. The regulatory framework in this area is also international legal documents, including Convention for the protection of human rights and fundamental freedoms and the decisions of the European Court of Human rights, the UN guidelines on the role of prosecutors adopted at the Eighth UN Congress in 1990, the Standards of professional responsibility and statements of the main duties and rights of prosecutors adopted by the International Association of Prosecutors in 1999, the European instructions on the ethics and conduct of prosecutors (Budapest principles) adopted by the Conference of Prosecutors General of the Council of Europe member states in 2005, and others.

From a systematic analysis of international acts concerning the activities of prosecutors, it follows that respect for ethics rules is the main duty that prosecutors should follow in the course of their activities. The conduct of prosecutors, as well as judges and other civil servants, cannot be left to their own discretion, regardless of whether it concerns working or free time. This is especially important when evaluating the activities of prosecutors and in disciplinary proceedings against them.

Also, having analyzed international and national legislation concerning the activities of prosecutors, the Ethics Council notes that the prosecutor must constantly

take care of his competence, professional honor and dignity. By their integrity, fidelity to principles, competence, impartiality and conscientious performance of official duties, contribute to increasing the authority of the prosecutor's office and strengthening citizens' confidence in it. In case of dissemination of false information that degrades his honor, dignity and business reputation, if necessary, takes measures to refute such information, including in court.

As Yaromenok R. O. explained at the request of the Ethics Council, more than ten years have passed since he was brought to disciplinary responsibility, therefore, he has not been considered to have a disciplinary penalty since 2012. In addition, he noted that the legislation in force at that time did not provide for effective protection of employees of the prosecutor's office from the arbitrary use of disciplinary penalties. He believes that bringing to disciplinary responsibility was the result of harassment by the governance of the regional prosecutor's office. During the interview with the Ethics Council, Yaromenok R. O. stated that he had not appealed the decision to bring him to disciplinary responsibility because of his low chances of success and because he had fears that appeals against the decisions could lead to his dismissal.

The Ethics Council considers that Yaromenok R. O. in his professional activity did not comply with the provisions of the current legislation, which obliged him to exercise his official powers in good faith, competently, on time and responsibly constantly improve his general education and professional level, show a responsible attitude to the performance of his official duties, professionally navigate the current legislation, and so on. Violations of official discipline are unacceptable and entail liability provided for by law. Respect for the rule of law determines high ethical standards in the behavior of prosecutors, judges, and civil servants, both during and outside the performance of official duties, which allows creating public confidence in justice. Therefore, they must always maintain personal integrity and act in accordance with the law, fairly, impartially and objectively, respecting and respecting fundamental rights and freedoms.

Thus, the Ethics Council considers that Yaromenok R. O. does not meet such criteria of professional ethics and integrity as diligence (Paragraphs 1.3.4., 1.3.4.1. of the Methodology), since the candidate, while in his previous position, did not act in accordance with the requirements of the legislation and the rules of professional ethics.

Thus, being governed by Rules 2.3, 3.2, 3.3 of the Ethics Council's Rules of Procedure, Methodology for assessing compliance of a candidate to the position of the member of the High Council of Justice and members of the High Council of Justice with the criterion 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 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 Yaromenok Roman Oleksandrovysh 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