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ETHICS COUNCIL

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Kyiv

DECISION

No. 53

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Yuriy Ilarionovych Matsiuk
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 Yuriy Ilarionovych Matsiuk 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 Yuriy Ilarionovych Matsiuk for participation in the competition for the position of the member of the High Council of Justice by the Congress of Judges of Ukraine and admitted him to the interview with Decision No. 6 of 21.12.2021.

With Decree No. 358/2004 of the President of Ukraine of 23.03.2004 Yuriy Ilarionovych Matsiuk was transferred to the position of the judge of Slavuta City-District Court of Khmelnytskyi region. With Decision No. 1724/0/1518 of the High Council of Justice of 21.06.2018 Yuriy Ilarionovych Matsiuk was dismissed from the position of Slavuta City-District Court of Khmelnytskyi region due to submission of an application on retirement.

Having studied documents provided by Yuriy Ilarionovych Matsiuk 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 the violation of incompatibility requirements

While the Candidate held the judicial office as a judge of Slavuta City-District Court of Khmelnytskyi region, he served in the military unit as carpenter and received remuneration in the amount of UAH 10,162.94.

Pursuant to Article 54(2) of the Law of Ukraine “On the Judiciary and Status of Judges”, a judge may not hold any other paid positions, perform other paid work (except for teaching, academic, and creative activities). Para. 1 of Article 25(1) of the Law of Ukraine “On Prevention of Corruption” sets out that it is prohibited for persons specified in para. 1 of Article 3(1) of this Law to engage in other paid (except for teaching, academic, and creative activities) activities, medical practice, coaching and referee sport practice or entrepreneurial activities. Article 16 of the Code of Judicial Ethics sets, that the judge can not hold any other paid positions, or perform other paid work except for teaching, academic, and creative activities. The Judge should give priority to the administration of justice over all other types of activities.

In its ruling as of 18 September 2018 under case No. 686/2630/18 the Court of Appeal of Khmelnytskyi region recognized the candidate as guilty of committing an administrative offence set out by Article 172⁴(1) of the Code of Ukraine on Administrative Offences “Violation of Restrictions Regarding Compatibility and Combining with Other Types of Activities”, which is a corruption-related administrative offence. The court pointed out that contrary to requirements stipulated by Article 54(2) of the Law of Ukraine “On the Judiciary and Status of Judges” and para. 1 of Article 25(1) of the Law of Ukraine “On Prevention of Corruption”, while being a judge of Slavuta City-District Court, fulfilling duties of the Head of Slavuta City-District Court, the candidate engaged in other paid activities, in particular, he worked in the military unit and received remuneration in the amount of UAH 10,162.94.

In his written and oral answers to the Ethics Council’s questions the candidate categorically denied his guilt for committing the administrative offence set out by Article 172⁴(1) of the Code of Ukraine on Administrative Offences. At the same time, the candidate agreed that he worked as a carpenter in a military unit and received remuneration for his work.

The Ethics Council notes that the very fact of serving in the military or being employed in a military unit as a judge is not a violation of the rules of judicial ethics. However, while being a judge, the candidate worked as a carpenter and received remuneration in the military unit, which is confirmed by the mentioned decision of the Court of Appeal of Khmelnytskyi region.

Thus, while working as a carpenter in a military unit and having received remuneration, the candidate as a judge violated requirements on incompatibility in Article 54(2) of the Law of Ukraine “On the Judiciary and Status of Judges”, para. 1 of Article 25(1) of the Law of Ukraine “On Prevention of Corruption”, and Article 16 of the Code of Judicial Ethics.

According to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the criteria of diligence, in particular, in case 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, and other ethical norms regarding diligence.

Cl. 1.3.6.1 of the Methodology stipulates that a candidate fails to comply with the indicator of compliance with ethical norms in case there are reasonable doubts that such candidate in the present or any past professional capacity has acted in line with the rules of professional ethics and other ethical norms.

Thus, the Ethics Council has reasonable doubts about his compliance with such criteria of the professional ethics and integrity as diligence (cl. 1.3.4.1 of the Methodology), and compliance with ethical norms (cl. 1.3.6.1 of the Methodology).

2. With respect to adoption of court decisions outside of the court premises

During the interview the candidate confirmed that he served in the military during the period from 22 August 2017 to 24 October 2017. The candidate also confirmed that he served in the military in Luhansk region on the territory of the antiterrorist operation, which is located approximately 1,000 km from the town of Slavuta where the candidate was working. According to the Unified State Register

of Court Decisions, during the period from 3 to 6 October and on 17 and 18 October 2017, the candidate adopted 58 court decisions in 42 cases.

The judgment of Khmelnytskyi City-District Court of Khmelnytskyi region as of 08.08.2018 under case No. 686/2630/18 established that according to timesheets Yu. I. Matsiuk was at his workplace during the period from 03.10.2017 to 06.10.2017, and during the period from 09.10.2017 to 29.10.2017 he was on annual leave.

To the Ethics Council's request the candidate stated that he considered about 19 cases while serving in the military and emphasized that he resolved these cases when he had days off at the military service, received a permit from the commander of the military trip to travel to Slavuta and returned from the antiterrorist operation zone to Slavuta City-District Court. At the same time, the candidate did not provide the Ethics Council with confirmation that he received a permit from the commander of the military unit to travel to Slavuta, Khmelnytskyi region.

The Ethics Council draws attention to the fact that considering cases and making decisions outside of the workplace is a significant violation of professional ethics and integrity.

Taking into consideration the distance between Luhansk region and Slavuta city, Khmelnytskyi region, absence of evidence regarding existence of the permit from the commander of the military unit to travel to Slavuta, absence of any other evidence regarding the candidate's stay in Slavuta city in the days when he decided on these cases, the Ethics Council has reasonable doubts about honesty of the candidate.

According to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicator of honesty, in particular, in case 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, and other ethical norms regarding honesty.

Since the candidate adopted court decisions while serving in the military unit and while being on annual leave from the court, the Ethics Council has reasonable

doubts about his compliance with the professional ethics and integrity criteria, in particular with the such indicator as honesty (cl. 1.3.4.1 of the Methodology).

3. With respect to failure to declare the right to use vehicle Skoda Fabia

In his asset declarations for 2015 – 2020 the candidate specified that since 29.05.2008 he had the right to use vehicle Skoda Fabia manufactured in 2008 (hereinafter referred to as the vehicle). The candidate's son-in-law is the owner of this car. At the same time, the candidate did not declare the right to use this car in his asset declaration for 2014.

In his written explanations the candidate confirmed that his son-in-law issued power of attorney on the right to use the car. During the interview he stated that he did not declare the right to use the car in his asset declaration for 2014 as he did not actually use this car in 2014.

At the same time, the candidate had the right to use the car since the moment the power of attorney was issued to him and during the entire period for which it was issued. Therefore, the candidate should have declared the right to use the car regardless of actual use.

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

According to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicator of diligence, in particular, in case 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, and other ethical norms regarding diligence.

Since the candidate did not declare the right to use the car in his asset declaration for 2014, the Ethics Council has reasonable doubts about his compliance with the criteria of professional ethics and integrity criteria, in particular with the indicator of diligence (cl. 1.3.4.1 of the Methodology), and with the requirements of

financial control, in particular, regarding the full and accurate information in asset declarations (cl. 1.3.7.6. 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 Yuriy Ilarionovych Matsiuk 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