



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

1 November 2022

Kyiv

DECISION

No. 56

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Liudmyla Mykolayivna Neroda
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 Liudmyla Mykolayivna Neroda 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 of Liudmyla Mykolayivna Neroda for participation in the competition for the position of the member of the High Council of Justice as nominated by the Congress of Judges of Ukraine and admitted her to the interview with its Decision No. 6 of 21.12.2021.

With Decree No. 1429/2005 of 07.10.2005 Liudmyla Mykolayivna Neroda was appointed to the position of the judge of Oleksandriia City-District Court of Kirovohrad region, which she has held till now.

Having studied documents provided by Liudmyla Mykolayivna Neroda for participating in the competition, her written explanations and documents provided by her 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 her, the Ethics Council has reached the following conclusions.

In her corrected declaration of the person authorized to fulfill functions of the state or local self-governance (hereinafter - electronica asset declaration) for 2015 and electronic asset declaration for 2016, the candidate specified that on 04.10.2013 she acquired the right to use an apartment with the area of 43.6 sq. m. in Oleksandriia which is owned by M. O. Mohylna.

According to information from the Unified State Register of Court Decisions, on 06.12.2013 the candidate adopted a ruling under case No. 398/10116/13-ts, with which she denied to municipal enterprise “Zhytlohoosp” in issuing a court order on collection of the arrears in payment for housing maintenance from M. O. Mohylna.

In response to the Ethics Council’s question why the candidate adopted a court decision under the case which concerned the owner of the apartment in which the candidate used to live, she replied that as of the moment of adopting the ruling she did not know M. O. Mohylna and that she made a mistake in the declarations as she started living in the apartment not on 04.10.2013, but rather in July of 2014 once she had sold her own apartment. During the interview in response to the question why she made this mistake in two declarations, including the corrected declaration for 2015, the candidate explained due to the huge workload, that this was a minor mistake to which she paid attention for the first time when she received questions from the Ethics Council.

While evaluating the candidate’s answer that she lived in M. O. Mohylna’s apartment since July of 2014, the Ethics Council takes into account the fact that on 07.07.2014 the candidate sold the apartment with the area of 45.8 sq. m. in Oleksandriia which belonged to her under the right of ownership. The fact of the apartment sale on 07.07.2014 corresponds to the candidate’s answer and confirms that she had a place of residence in Oleksandriia before July of 2014.

Under such circumstances the Ethics Council accepts the candidate’s answer that she made a mistake concerning the date of acquiring the right to use the

apartment in Oleksandriia in her corrected electronic asset declaration for 2015 and electronic asset declaration for 2016. The mistake made there shows the lack of diligence of the candidate.

In her paper asset declarations for 2014 and 2015, the candidate did not specify any real estate object that she had under the right of ownership or use.

In her written and oral answers, the candidate pointed out that since July 2014 and during the entire 2015 she lived in an apartment with the area of 43.6 sq. m. in Oleksandriia which M. O. Mohylna owned. In response to the Ethics Council's question why she did not indicate the right to use this apartment, the candidate responded that she specified this apartment as her place of residence in Section I "General Information" of the declaration.

In response to a clarifying question why she did not indicate information about the apartment in cl. A "Property owned, rented, or under any other right of use of the person submitting the declaration, and expenses of the person submitting the declaration on purchase of such property or its use" of Section III "Information about Real Estate Property", the candidate answered that she did not have an intention to hide information about the apartment as she already specified it in another section and that it did not matter in which section this information was indicated.

The Ethics Council is hereby drawing attention to the fact that while filling in Section III of the paper asset declaration the person submitting the declaration had to indicate not only the location of the real estate object, but also its area and amount of expenses on rent or other right of use. Accordingly, Section III shall provide more information about the real estate object which is necessary for a more complete declaration of the person's financial situation. Such information is not specified in Section I, which is why the indication of the place of residence in that section may not be considered equal to declaring of property rights for the same real estate object in Section III. Due to this, failing to specify information

about the apartment in Section III, the candidate provided incomplete information about this real estate object.

In response to further requests of the Ethics Council, the candidate agreed that she should have specified information about this apartment in Section III of her asset declarations, yet she has not done that.

Thus, the candidate admitted that she should have declared the right to use the apartment in Oleksandriia in which she lived since July of 2014 and during entire 2015 in her paper asset declarations for 2014 and 2015.

On 07.07.2014, the candidate sold the apartment with the area of 45.8 sq. m. in Oleksandriia for UAH 136,000. According to the conditions of the sale and purchase agreement which she provided to the Ethics Council, she received these funds in full before finalisation of the agreement. At the same time, the candidate's paper asset declaration for 2014 did not contain any information about her receipt of revenues from the sale of the apartment.

In response to the Ethics Council's question why the candidate did not indicate revenues from the sale of the apartment in her declaration, she answered that the apartment was bought on mortgage, it was not paid off, which is why the bank received all funds from its sale. In connection with this, she declared these funds in Section VI "Information about financial liabilities" and thinks that she did everything correctly.

The Ethics Council is hereby drawing attention to the fact that the paper asset declaration contains clause 16 "revenues from the sale of movable and immovable property" in Section II "Information about income". Persons submitting the declaration were obliged to specify in that clause the amount of revenues they received, including the ones from the sale of real estate objects. As the candidate sold the apartment on 07.07.2014, she should have specified revenues from the apartment sale in that clause, but she did not do that. Indication of information about financial liabilities in Section VI does not exclude an obligation to declare revenues from the apartment sale in Section II.

In Section VI of her asset declaration for 2014, the candidate specified financial liabilities in the amount of UAH 120,539 as repayment of the lump sum of the loan (credit) and UAH 10,584 as repayment of interests under the loan (credit). Thus, the candidate declared financial liabilities in the amount of UAH 131,123 as the overall amount under the credit lump sum and interests. The amount of declared financial liabilities is smaller than the price of the apartment sale given in the agreement by UAH 4,877.

Thus, the candidate should have declared revenues from the sale of the apartment with an area of 45.8 sq. m. in Oleksandriia in Section II of her paper asset declaration for 2014, yet she did not do that. Revenue that the candidate declared as financial liabilities in Section VI is smaller than the one she received according to the apartment sale and purchase agreement.

During the interview the candidate said that in 2014 her registered place of residence was in the village of Holovkivka of Oleksandriia district of Kirovohrad region. She specified the same place of residence in her electronic asset declaration for 2016. In her electronic asset declarations for 2015, 2017–2020 the candidate indicated that her registered place of residence was in the village of Petrove of Petrove district of Kirovohrad region.

The candidate did not declare property rights for real estate objects where her place of residence was registered in any of her asset declarations. In response to the Ethics Council's question why she did not declare property rights for the registered places of residence, the candidate answered that registration does not grant to a person right of ownership or right of use, while pursuant to the decision of the Constitutional Court of Ukraine and other legislation registration of the place of residence is needed only for the formation of lists of electors during elections. The very fact of registration does not grant to a person the right to use residence or live there as a written permission or other documents are required for that.

The Ethics Council agrees that pursuant to Article 3 of the Law of Ukraine “On Provision of Public (Electronic Public) Services Regarding Declaring and Registration of the Place of Residence in Ukraine”, the goal of the person’s place of registration is, in particular, to create conditions for the implementation of the person’s voting rights. Article 1(3) of this Law directly specifies that registration of the person’s place of residence is not a ground for such person acquiring the right to own, use, or dispose of residence (including not being a ground for moving in or recognizing the person’s right to live in and/or use the residence), with respect to the residence in which the person has notified.

At the same time, the Ethics Council is hereby drawing attention to the fact that the Law of Ukraine “On Provision of Public (Electronic Public) Services Regarding Declaring and Registration of the Place of Residence in Ukraine” was adopted on 05.11.2021, while legal provisions concerning registration of the place of residence came into effect on 01.12.2021. In connection with this, respective provisions were applicable to the rules of filling in asset declarations since 2021.

Before 01.12.2021 the legal regulation of registration of the place of residence was stipulated by the Law of Ukraine “On Freedom of Movement and Free Choice of the Place of Residence in Ukraine”. Amendments to this Law came into effect on 05.08.2012, which set out, in particular, that for registration a person shall submit documents which confirm the right to live in a housing, address of which is given during registration (para. 5 of Article 6(3)). This legal provision remained valid before it was removed due to adoption of the Law of Ukraine “On Provision of Public (Electronic Public) Services Regarding Declaring and Registration of the Place of Residence in Ukraine”.

Thus, during the period from 05.08.2012 to 01.12.2021 there was valid legal regulation, according to which registration of the place of residence took place based on documents that confirmed the right to live in this housing. Accordingly, in the process of registration the person had to confirm that this person had the

right to live in a respective real estate object. For purposes of declaring the right to live in the housing was identical to the right to use this housing.

The same position is expressed by the NACP in its Explanations No. 1 of 13.02.2020 “On Applying Separate Provisions of the Law of Ukraine “On Prevention of Corruption” Regarding Financial Control Measures”. Clause 56 of these Explanations sets out that the person submitting the declaration and his/her family members acquire the right to use a real estate object in connection with registration of the place of residence. Thus, it is necessary to specify information about real estate objects which are the registered place of residence of the person submitting the declaration or his/her family members in Section 3 “Real estate objects” of the declaration even if the person does not actually live there.

The identical conclusion is given in clause 73 of the NACP’s Explanations No. 1 of 03.02.2021 “On Applying Separate Provisions of the Law of Ukraine “On Prevention of Corruption” Regarding Financial Control Measures (Submission of Declarations and Notifications About Significant Changes in the Financial Situation)”.

Taking into consideration requirements of the Law of Ukraine “On Freedom of Movement and Free Choice of the Place of Residence in Ukraine” with respect to registration of the place of residence which were valid from 05.08.2012 to 01.12.2021, as well as the NACP’s Explanations No. 1 of 13.02.2020 and No. 1 of 03.02.2021, the candidate had an obligation to declare the right to use real estate objects which were her registered place of residence during 2014–2020, yet she did not do that.

According to para. 2 of Article 16(1) of the Law of Ukraine “On Principles of Preventing and Fighting Against Corruption” it is prohibited for persons set out in para. 1-3 of Article 4(1) of this Law (in particular, judges) to provide untimely, inaccurate, or incomplete information which shall be provided pursuant

to the law. Para. 2 of Article 60(1) of the Law of Ukraine “On Prevention of Corruption” contains the same provision.

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

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

Cl. 1.4 of the Methodology sets out that while determining compliance with the criterion of professional ethics and integrity, the Ethics Council takes into consideration significance of any violation of ethics and integrity.

Taking into consideration a number of instances when the candidate provided inaccurate or incomplete information while filling in her asset declarations, the Ethics Council considers violation of declaring rules to be significant.

Thus, due to a number of cases of inaccurate and incomplete information while filling in the asset declarations, the Ethics Council has reasonable doubts about the candidate’s compliance with the criteria of ethics and integrity, in particular with the indicator of diligence and the indicator of compliance with the requirements of financial control.

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 Liudmyla Mykolayivna Neroda 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