



## ЕТИЧНА РАДА

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## ETHICS COUNCIL

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**1 November 2022**

**Kyiv**

### DECISION

**No. 57**

***On non-compliance of candidate  
for the position of the member of the High Council of Justice  
Iryna Serhiivna Shapovalova  
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 Iryna Serhiivna Shapovalova, 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 the documents submitted by I.S. Shapovalova 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 her to the interview with the decision No. 6 of 21.12.2021.

Since 15 June 2012 till the present time Iryna Serhiyivna Shapovalova has worked as a judge of Pavlohrad City-District Court of Dnipropetrovsk region.

Having studied documents provided by Iryna Serhiyivna Shapovalova for participating in the competition, her 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 her, the Ethics Council has reached the following conclusions.

1. Regarding the value of immovable property of the candidate’s family members

While assessing the candidate, the Ethics Council established circumstances that raised reasonable doubts about the candidate's compliance with the criteria of professional ethics and integrity.

Pursuant to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicators of independence, honesty, impartiality, diligence, in particular, in case

when there are reasonable doubts that such candidate in the present or any past professional capacity has acted in line with requirements of the legislation and professional ethical rules.

Pursuant to cl. 1.3.2 of the Methodology honesty shall mean presence of high moral qualities, truthfulness in professional activities and in everyday life.

The Ethics Council established that in her 2016 annual declaration, I.S. Shapovalova declared receipt by her daughter, O.I. Shapovalova, a gift in non-pecuniary form from I.M. Shcherbyna, namely an apartment with a total area of 50 m<sup>2</sup> in Slobozhanske urban-type settlement, Dnipro District, Dnipropetrovsk region, on 8 December 2016. The declared value of the apartment was UAH 50,397 at the date of the gift deed.

In her written explanations provided to the Ethics Council, I.S. Shapovalova noted that her daughter owns this apartment under a gift deed concluded between I.M. Shcherbyna and herself as the legal representative of her minor daughter on 8 December 2016. At the same time, the candidate claimed that the value of the apartment she had indicated in the declaration was the value indicated in a property appraisal report.

I.S. Shapovalova gave similar explanations during her interview and confirmed that the price of the apartment was UAH 50,397 at the date of the gift deed.

Assessing the candidate, the Ethics Council established that the average price of such an apartment in Slobozhanske urban-type settlement, Dnipro District, Dnipropetrovsk region, was US\$20,000 in 2016, i.e. about UAH 560,000, according to the website posting real estate sales ads: (<https://dom.ria.com/uk/realty-prodajakvartira-dnepropetrovsk-yubileynoe-ul-frunze-28-10972097.html>.)

The Ethics Council believes that the candidate's explanations about the declared value of the apartment, which was ten times lower than the average market value, are unconvincing, and therefore there are reasonable doubts about the candidate's compliance to the criteria of honesty (cl. 1.3.4.2 of the Methodology) and compliance to applicable requirements of financial control provisions on full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

## 2. Regarding incompleteness of information provided by the Candidate during assessment

Assessing the candidate, the Ethics Council established that I.S. Shapovalova's father, S.B. Manziuk, acquired ownership of a 2007 Mercedes-Benz 320 on 8 December 2017. In written questions to the candidate, the Ethics Council asked to provide a copy of the car purchase agreement and indicate its value and the source of origin of the money S.B. Manziuk used to buy the vehicle.

In her written explanations dated 16 February 2022, I.S. Shapovalova informed that she could not provide documents confirming the father's purchase of the vehicle, referring to Articles 4 and 5 of the Law of Ukraine “On the Protection of Personal Data” as the justification: she was not entitled to provide the requested information to the Ethics Council without her father's permission.

During the interview I.S. Shapovalova indicated that she did not ask her father to provide documents confirming his ownership of the Mercedes-Benz 320 car. In her written explanations dated 31 January 2022, the candidate noted also that all issues related to the acquisition of property by her, and her family members were already the subject of examination by the High Qualifications Commission of Judges of Ukraine during her qualifications evaluation in 2017-2018, which found that I.S. Shapovalova complied with the requirements of a judge's office.

The Ethics Council emphasizes that any opinion or assessment of a national or international body relating to the candidate's professional ethics and integrity is not surely definitive and mandatory for the Ethics Council as established by cl. 1.5 of the Methodology.

Pursuant to cl. 3.5.3 of the Rules of Procedure, candidates are required to cooperate with the Council. In the process of assessment, the Council may take into account denial of a candidate and sitting member to provide answers to Council's requests and requested materials, or failure to provide answers or materials within time limit specified by the Council.

Having assessed I.S. Shapovalova's written explanations and those she gave during the interview; the Ethics Council believes that the candidate had no desire to cooperate with the Council to overturn reasonable doubts of her compliance to the criteria of professional ethics and integrity. Therefore, the Ethics Council has reasonable doubts about the candidate's compliance to such indicator for the criteria of professional ethics and integrity as honesty (cl. 1.3.2 of the Methodology).

### 3. Regarding preparing court decisions in russian language.

The Ethics Council established that I.S. Shapovalova as a judge of Pavlohrad City District Court of Dnipropetrovsk region passed a sentence in case No. 185/60/14-k dated 25 December 2015. Later the sentence was entered into the Unified State Register of Court Decisions in Ukrainian and russian.

In her written explanations dated 25 January 2022, I.S. Shapovalova noted that she had drafted the sentence in this case in Ukrainian language and translated it into russian language, since in this proceeding the court engaged an interpreter/translator, because the accused person did not speak Ukrainian. Justifying her decision to register the sentence in two languages in the Unified State Register of Court Decisions, the candidate referred to Article 2 of the Law of Ukraine "On Access to Court Decisions". According to the provision, the court shall enter into the Unified State Register of Court Decisions all court decisions and dissenting opinions of judges drafted in writing.

When interviewed, I.S. Shapovalova explained that she had drafted and pronounced the sentence in Ukrainian, as the case was considered according to the provisions of the 2012 Criminal Procedure Code of Ukraine (hereinafter referred to as the 2012 Criminal Procedure Code). The candidate mentioned that she had translated the sentence into russian herself together with the translator, signed it with her own digital signature of the judge, and registered it in the Unified State Register of Court Decisions. When interviewed, I.S. Shapovalova insisted that her actions had not contradicted the criminal procedural laws, therefore she considered them lawful.

The Ethics Council believes that such explanations of the candidate cannot be justified, since Article 68 of the Criminal Procedure Code of Ukraine requires that, if there is a need for the translation during the criminal proceedings the court shall engage a relevant translator who must do a complete and correct translation, certify the correctness of the translation with his/her signature, and be held to account for a knowingly incorrect translation or for refusing to perform his/her duties without valid reasons as established by law.

Under the circumstances, I.S. Shapovalova did not have the right to participate in the translation of the sentence she passed on 25 December 2015 and to register this sentence in russian language in the Unified State Register of Court Decisions, after signing it with her own electronic digital signature, since only the translator is responsible for the complete and correct translation of the procedural documents.

In view of the above, the Ethics Council believes that there are reasonable doubts about the candidate's I.S. Shapovalova compliance with such indicator of the criteria of professional ethics and integrity as diligence (cl. 1.3.4.1 of the Methodology).

Assessing the candidate, the Ethics Council established that I.S. Shapovalova decided on preventive measures in case No. 185/11856/14-k on 5 December 2014 and in case No. 185/11856/14-k on 12 December 2014 in russian language and entered them into the Unified State Register of Court Decisions.

In her written explanations dated 25 January 2022, the candidate noted that the cases had been considered according to the provisions of the 1960 Criminal Procedure Code of Ukraine (hereinafter referred to as the 1960 Criminal Procedure Code).

Justifying her decision to pass the decisions in russian, the candidate explained that courts had alternative language options during judicial proceedings and could use both Ukrainian and the language of the majority of the local population who lived within the jurisdiction of the respective court as established by the Law of Ukraine "On the Judiciary in Ukraine", the Law of Ukraine "On the Judiciary and the Status of Judges", and the criminal procedure laws then in effect. Also, the candidate mentioned that these cases were forwarded to the of Pavlohrad City

District Court from the city of Donetsk where most of the population spoke in russian language. Therefore, she thought that the proceedings in these cases was supposed to be conducted in russian language, and the decisions were supposed to be made in the same language.

When interviewed, the candidate confirmed her written explanations and insisted that the 1960 Criminal Procedure Code did not prohibit for the court to pass decisions in russian language.

The Ethics Council finds the explanation of I.S. Shapovalova to be unreasonable and failing to meet the requirements of the law. Pursuant to Article 10 of the Constitution of Ukraine, Article 19 of the 1960 Criminal Procedure Code of Ukraine, and Article 14.5 of the Law of Ukraine “On the Principles of State Language Policy” as of 6 September 2014, which were in effect as of the date of the court decisions in cases No. 185/11856/14-k dated 5 December 2014 and No. 185/11856/14-k dated 12 December 2014, the judge had to make the decisions in the official language.

The Ethics Council finds unconvincing the candidate's explanations that the Constitutional Court of Ukraine ruled in its Decision No. 2-r/2018 on 28 February 2018, that the Law of Ukraine No. 5029-VI “On the Principles of State Language Policy” dated 3 July 2012 was unconstitutional and thus her actions to pass the decisions in russian language were lawful. This is because I.S. Shapovalova passed her decisions in russian in 2014 when this Law was in force and required court documents to be prepared in the official language. Also, this Law provisioned that documents shall be served to the persons participating in a case (an accused in a criminal case) in the official language, or in a translation into their native language or another language they speak according to procedures established by the procedural law.

The Ethics Council also finds unreasonable the candidate's explanations that proceedings in the cases were conducted in russian language, because the cases were forwarded from the city of Donetsk where the majority of population was russian-speaking due to the change of jurisdiction.

Since I.S. Shapovalova is a judge of the Pavlohrad City District Court of Dnipropetrovsk region, she was allowed to decide to administer justice in a language other than the official language, taking account the language of the majority of the population of the region where she administers justice.

In her written explanations dated 16 February 2022, the candidate noted that her high professional competences and knowledge of the rules of criminal proceedings could not be questioned. However, these circumstances give grounds to believe that there are reasonable doubts about the candidate's compliance with such indicator of the criterion of professional ethics and integrity as diligence (cl. 1.3.4.1 of the Methodology).

#### 4. Regarding changes to the dates of the ruled decisions by correcting typo.

Assessing the candidate, the Ethics Council established that I.S. Shapovalova passed twelve decisions in civil cases on 23 May 2019 as a judge of Pavlohrad City District Court of Dnipropetrovsk region.

In her explanations, the candidate confirmed that she was on secondment on 23 May 2019.

On 31 January 2022, Judge Shapovalova amended these decisions by adopting rulings on correction of a typo, where she indicated 24 May 2019 as the date of adoption of these decisions.

When asked by the Ethics Council how the judge could remember when precisely she had made the decisions after such a long period of time, the candidate explained that she assumed that 24 May 2019 was her first working day after the secondment.

The Ethics Council stresses that the mere fact that a judge passed a decision while on secondment, in particular, while studying National School of Judges of Ukraine, provided that she was physically at the workplace, she did not administer justice while studying, and in absence of other circumstance is not a reason for reasonable doubt about the candidate's compliance with the criteria of professional ethics and integrity in the absence of other circumstances.



However, in this case, the candidate I.S. Shapovalova amended the decisions adopted by her only during the assessment by the Ethics Council, almost three years later, by correcting the typo and setting the date of their adoption at her own discretion, assuming it was the day when she was not on secondment.

Considering these actions and decisions of the judge, the Ethics Council has doubts about their compliance with the principle of legal certainty.

In view of the above, the Ethics Council believes that there are reasonable doubts about the candidate's compliance with such indicator of the criteria of professional ethics and integrity as diligence (cl. 1.3.4.1 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 9<sup>1</sup> 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 I.S. Shapovalova 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**