



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. 61

***On non-compliance of candidate for the
position of the member of the High Council of Justice
Stanislav Oleksandrovykh Yurchenko
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 Stanislav Oleksandrovykh Yurchenko 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 9-1 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.

Stanislav Oleksandrovykh Yurchenko was elected for the position of a judge of Svativskyi District Court of Luhans’ka Oblast’ by the Decree of Verkovna Rada of Ukraine No. 731-IV of 17.04.2003.

The Ethics Council received copies of documents submitted by Stanislav Oleksandrovykh Yurchenko 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. 33 of 21.07.2022.

Stanislav Oleksandrovykh Yurchenko was appointed to the position of the judge of Svatove District Court of Luhansk region with Resolution No. 731IV of the Verkhovna Rada of Ukraine of 17.04.2003.

Having studied documents provided by Stanislav Oleksandrovykh Yurchenko 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 of inaccurate and incomplete information in property declarations

Pursuant to results of analysis of the candidate's property declarations, the Ethics Council has identified a range of instances when the candidate provided incomplete or inaccurate information. Hence, in his corrected declaration for 2015, the candidate:

- did not declare information on the fact that his wife was the owner of corporate rights and ultimate beneficiary owner of agricultural farming enterprise "Agrodar". In his subsequent declarations, the candidate specified that she was the ultimate beneficiary owner, yet he did not declare his wife's corporate rights regarding this legal entity. In response to the Ethics Council questions, candidate admitted that failure to declare this information in the declaration for 2015 and further years was a mistake;

- specified that since 06.11.2010 his wife had owned vehicle Lexus RX350 manufactured in 2010. In the declaration for this year and subsequent years, the candidate indicated that he did not know the value of this vehicle or that his wife did not provide this information to him. At first, the candidate explained it with the fact that the re-estimate of the vehicle was not carried out, and then that his wife did not provide him with documents based on which he could establish value of this vehicle as of the purchase date;

- declared his wife's right to use vehicle Mitsubishi L200 manufactured in 2011, specifying 03.04.2012 as the date of this acquisition of the right and the value of the vehicle as unknown. With respect to the question why this right of use was not specified in his previous declarations, the candidate explained that his wife started using this vehicle only in 2015. He added that in the declaration he mistakenly indicated the date on which its owner, agricultural farming enterprise "Agrodar", acquired the right of ownership for this vehicle. Failure to specify the value was explained with the fact that his wife refused to provide such information to him while he did not have access to documents of the enterprise regarding this vehicle;

- did not indicate the value of a range of real estate objects belonging to his wife under the right of ownership or use, in particular, 4 land plots with the areas

of 416 sq. m., 881 sq. m., 12,517 sq. m., and 91,457 sq. m. and 2 stores with the areas of 188.7 sq. m. and 43.8 sq. m. Stanislav Oleksandrovych Yurchenko explained it with the fact that his wife did not provide him with the title documents on these real estate objects;

- declared real estate objects belonging to his wife under the right of ownership or use acquired during the period of 2005-2009: 2 stores with the areas of 188.7 sq. m. and 43.8 sq. m., 2 silos with the areas of 796.9 sq. m. and 809.7 sq. m., a land plot with the area of 91,457 sq. m. However, the candidate did not declare this property in his previous declarations. He explained it with the fact that he declared it in a year when his wife provided him with information needed for declaring them.

In the declaration for 2017, the candidate specified that on 31.12.2016 his wife acquired the right of ownership for vehicle HAZ SAZ 3507 manufactured in 1991. At the same time, the candidate did not mention this property in his declaration for 2016. Besides, with its decision of 20.06.2017 in case No. 426/10072/17 Svatove District Court of Luhansk region supported the claim of the candidate's wife against Kuzmivka Village Council of Svatove district of Luhansk region and recognized her right of ownership for this vehicle. Text of the decision shows that the candidate's wife purchased this vehicle from Collective Agricultural Enterprise "Myrna Dolyna" back on 09.07.2006, which is confirmed with expenditure invoice No. 18 of the same date. The candidate explained that the date of acquisition of the right of ownership was indicated by mistake and that such date should have been the date on which the court decision came into effect. The candidate explained failure to declare this vehicle in his previous declarations with the fact that as of the purchase date it required capital repairs and was registered as a vehicle only once it became operational.

In his declaration for 2020, the candidate declared a range of real estate objects belonging to his wife under the right of ownership or use acquired during the period of 2006 – 2019: 4 land plots with the areas of 32,000 sq. m., 1,488 sq. m., 596 sq. m., and 1,644 sq. m., calf and pig barn with the area of 875.5 sq. m., as well as feed-

processing building (the area was not specified). At the same time, the candidate did not declare these real estate objects in his previous declarations. He explained it with the fact that documents regarding these objects had not been ready by 2020 and that he declared them once they were ready and these real estate objects underwent state registration. He did not specify the value of these objects as his wife did not provide him with copies of title documents for these objects.

Pursuant to cl. 1.3 of the Methodology, one of the indicators of the professional ethics and integrity criterion is diligence, i.e. diligent, thorough, and responsible fulfillment of one's duties, which is a sign of the person's professional integrity (cl. 1.3.4 of the Methodology).

One of the obligations of the candidate as a judge is submission of a Declaration of the person authorized to fulfil functions of the state or local self-governance (pursuant to Article 45(1) of the Law of Ukraine "On Prevention of Corruption"). At the same time, pursuant to cl. 1.3.7.6 of the Methodology, a candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption legislation, including with respect to provision of full and accurate information in assets declarations.

Besides, pursuant to cl. 4.7 of the Bangalore Principles of Judicial Conduct of 19.05.2006, adopted by Resolution of the United Nations Economic and Social Council of 27.07.2006 No. 2006/23 ("the Bangalore Principles"), a judge shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

These circumstances show that in a range of instance over many years the candidate provided incomplete and inaccurate information in his property declarations. Besides, the candidate's explanations show that he did not make reasonable efforts to get information about real estate objects belonging to his wife under the right of ownership or use which was needed for declaring. The Ethics Council considers such violations as significant and as the ones causing reasonable doubts about the candidate's compliance with such indicator as diligence (cl. 1.3.4 of the Methodology) and to the requirements of the financial control, in particular

with regards to the full and accurate information in assets declaration (cl. 1.3.7.6 of the Methodology).

2. With respect to publications involving the candidate in newspaper “Svativski Vidomosti” (Svatove News)

The candidate as the Head of the court published article titled “Who is throwing up roadblocks for justice in Svatove” in newspaper “Svativski Vidomosti” (Svatove News) of 02.12.2015, No. 49/526. In this article, the candidate described circumstances of a criminal proceeding concerning the head of local water utility company upon charges relating to commitment of a profit-oriented crime and expressed a statement about his guilt. Before that, the candidate considered a motion on application of a preventive measure regarding this person and selected one in the form of bail pursuant to results of its consideration. In this article, the candidate also claimed that the local police chief is guilty of concealing a crime as he did not take measures to hold persons who allegedly offered unlawful benefit to police officers liable.

In his written explanations and during the interview, the candidate admitted the fact that such publication violates rules of judicial ethics. He explained his actions with the fact that in 2015 he did not have enough experience of communicating with journalists and his civil society position prevailed in the text of the publication.

Besides, newspaper “Svativski Vidomosti” (Svatove News) No. 21/603 of 24.05.2017 contained an interview with the candidate as the President of the court titled “People can no longer get rich thanks to land squatting”. In this interview, the candidate expressed criticism targeting an inspector of State Service of Ukraine for Geodesy, Cartography and Cadastre, accusing the latter of unlawfully using land plots with the agricultural target use. Previously, in 2015, the same inspector carried out an unplanned check of agricultural farming enterprise “Agrodar” (the director of which is the candidate’s wife) with respect to lawfulness of the use of a land plot by

the latter. Pursuant to results of such check, the enterprise was brought to administrative liability for unauthorized use of the land plot.

In his written explanations and during the interview, the candidate pointed out that the journalist took interview and recorded it using a voice recorder. Later, she decoded the recording on her own, drafted the article, and sent it for publication without his preliminary approval.

Pursuant to cl. 1.3 of the Methodology, one of the indicators of the professional ethics and integrity criterion is compliance with ethical norms and impeccable behavior in professional activities and personal life, i.e. persistent compliance of the person with professional ethics and generally acknowledged moral norms both in professional activities and beyond them, which forms trust of the society in such person (cl. 1.3.6 of the Methodology).

At the same time, according to Clause 4.6 of the Bangalore Principles, a judge, like any other citizen, is entitled to freedom of expression, but in exercising such right a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. Besides, in Para 86 of its judgment under case “Kudeshkina v. Russian Federation” of 26.02.2009, application No. 29492/05, the European Court of Human Rights pointed out that public officials serving in the judiciary should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question.

The Ethics Council is of the opinion that public negative evaluation of the afore mentioned persons expressed by the candidate (as the Head of the court) and his unambiguous statements that they committed criminal or administrative offences violate rules of judicial ethics. By expressing such statements, the candidate displayed bias as a representative of the judiciary and did not display sufficient reserve while exercising his right to freedom of expression.

The similar position was expressed by the Third Disciplinary Chamber of the High Council of Justice in its decision No. 2609/3dp/15-18 of 15.08.2018, with which it brought the candidate to disciplinary liability for these actions. Pursuant to

results of review of this decision, with its decision No. 3436/0/15-18 of 08.11.2018, the High Council of Justice confirmed that the candidate had committed a disciplinary offence, changing only the type of a disciplinary sanction applied to the candidate.

In view of this, the Ethics Council considers such violations as significant and as the ones causing reasonable doubts about the candidate's compliance with such indicator as compliance with ethical norms and impeccable conduct in professional activities and personal life (cl. 1.3.4 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 Stanislav Oleksandrovykh Yurchenko 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