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ETHICS COUNCIL

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Kyiv

DECISION

№ 62

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Hennadii Yevhenovych Bershov
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 Hennadii Yevhenovych Bershov 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 Hennadii Yevhenovych Bershov 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 him to the interview with Decision No. 33 of 21.07.2022.

H. Ye. Bershov was elected to the position of judge of the Kharkiv Administrative Court of Appeal pursuant to Resolution No. 4242-VI of the Verkhovna Rada of Ukraine of 22 November 2011. According to decision of the High Council of Justice No. 4012/0/15-18 of 26 December 2018, he was transferred to the position of judge of the Second Administrative Court of Appeal, which he holds until now.

Having studied documents provided by H. Ye. Bershov 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.

During evaluation of the candidate, the Ethics Council has established circumstances giving rise to reasonable doubts about the candidate's compliance with the criteria of professional ethics and integrity.

1. With respect to legality of sources of origin of property and correspondence of the level of life with declared income.

Candidate H. Ye. Bershov, together with his wife I. O. Bershova and son S. H. Bershov lives in the village of Vysokyi of Kharkiv district of Kharkiv region.

The Ethics Council has established that in 2013 the candidate's wife acquired ownership rights to the following objects of movable and immovable property:

1. Vehicle Volkswagen Tiguan, with a value of UAH 374,780 (date of acquisition of the right – 19 February 2013);
2. Apartment in Kharkiv, with a value of UAH 320,000 (date of acquisition of the right – 21 February 2013);
3. Apartment in the urban-type settlement of Gurzuf (AR Crimea) with a value of UAH 149,000 (date of acquisition of the right – 23 October 2013).

In his written answers upon the Ethics Council's request, the candidate also indicated that in July of 2013 the candidate's wife granted his mother, V. S. Bershova, a loan in the amount of UAH 500,000.00 for the purchase of the vehicle. The candidate's mother returned these funds to her daughter-in-law in November of the same year. The candidate did not provide a copy of the written loan agreement.

Not including the costs for providing the loan to the candidate's mother, the candidate's wife spent UAH 806,478.00 in 2013 (UAH 374,78.00 for vehicle Volkswagen Tiguan; UAH 320,000.00 for an apartment in Kharkiv, and UAH 149,000.00 for an apartment in the urban-type settlement of Gurzuf).

Upon request of the Ethics Council with respect to legality of sources of origin of his wife's funds used for the purchase of the aforementioned property, H. Ye. Bershov indicated that the vehicle Volkswagen Tiguan and two apartments

were purchased with the funds that his wife received from her entrepreneurial activities.

The candidate also indicated that in 2012 he and his wife additionally received UAH 144,000.00 from the sale of the vehicle Volkswagen Polo, and in January of 2013 the candidate's wife received a loan in the amount of UAH 500,000.00 from her acquaintance N. M. Holovina, which she returned in November of the same year. The candidate did not indicate other sources of origin of funds used for the purchase of property.

The Ethics Council finds H. Ye. Bershov's explanations unconvincing. Hence, according to the certificate from the State Register of Individuals – Taxpayers, during the period from 1998 to 2013 the candidate's wife's income from the entrepreneurial activities amounted to UAH 297,920. According to the same certificate, the candidate's income for this period amounted to UAH 1,037,016.00. Therefore, together with the funds received from the sale of the vehicle Volkswagen Polo, the total income of the candidate and his wife for the period from 1998 to 2013 amounted to UAH 1,622,936.00.

Pursuant to cl. 1.3. of the Methodology, one of the indicators of the criterion of professional ethics and integrity is the absence of doubts regarding 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.

The Ethics Council has reasonable doubts that the official income of H. Ye. Bershov and his family members correspond to their level of life. Hence, with official income for the period from 1998 to 2013 in the amount of UAH 1,622,936.00, the candidate's wife spent UAH 806,478.00 in 2013 for the purchase of movable and immovable property. Besides, during the specified period, H. Ye. Bershov and members of his family incurred expenses for living and maintenance of movable and immovable property.

In view of the above, the Ethics Council has reasonable doubts about legality of sources of origin of the property, correspondence of the level of life of the

candidate or his family members to the declared income, correspondence of the candidate's lifestyle to his status (cl. 1.3.7 of the Methodology).

2. With respect to the value of real estate of the family member.

According to the data indicated by H. Ye. Bershov in his asset declaration for 2015, on 23 October 2013 the candidate's wife acquired right of ownership for the apartment in the urban-type settlement of Gurzuf of the Autonomous Republic of Crimea with the total area of 52.8 sq.m. According to the purchase and sale agreement of the mentioned apartment, its value as of the date of acquisition amounted to UAH 149,000, which is equivalent to USD 18,641 based on the official exchange rate of the National Bank of Ukraine as of that time.

Thus, the value of one square meter of the specified apartment amounted to UAH 2,821 or USD 353.

During the interview, the candidate explained that the apartment purchased by his wife is located in an old building far from the center of urban-type settlement of Gurzuf and required significant expenses for repairs. H. Ye. Bershov indicated that the mentioned factors affected its value.

The Ethics Council considers such explanations of the candidate to be unconvincing, since, according to the archived advertisements at specialized websites for the sale of real estate¹ of February and March of 2014, the lowest price per 1 square meter in the urban-type settlement of Gurzuf amounted to about USD 1,000.00, which is significantly more than the amount the candidate indicated in his declaration.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption

¹ See archived advertisements for the sale of real estate in Gurzuf:

<https://web.archive.org/web/20140321000355/http://dom.ria.com/ru/%D0%9A%D0%B0%D1%82%D0%B0%D0%BB%D0%BE%D0%B3/%D0%9F%D1%80%D0%BE%D0%B4%D0%B0%D0%B6%D0%B0/%D0%9A%D0%B2%D0%B0%D1%80%D1%82%D0%B8%D1%80%D1%8B/%D0%9E%D0%B1%D0%BB%D0%B0%D1%81%D1%82%D1%8C/%D0%A0%D0%B5%D1%81%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0%20%D0%9A%D1%80%D1%8B%D0%BC/%D0%93%D0%BE%D1%80%D0%BE%D0%B4/%D0%93%D1%83%D1%80%D0%B7%D1%83%D1%84/>

legislation, including with respect to timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

According to cl. 1.3 of the Methodology, one of the indicators for the criterion of professional ethics and integrity is honesty, i.e. presence of high moral qualities, truthfulness in professional activities and in everyday life (cl. 1.3.2 of the Methodology).

In view of the above, the Ethics Council has reasonable doubts about the candidate's compliance with the indicator of honesty (cl. 1.3.2 of the Methodology) as well as his compliance with financial control requirements with respect to the provision of full and accurate information in assert declarations (cl. 1.3.7.6 of the Methodology).

3. With respect to the powers of attorney of the Candidate's wife to dispose of real estate in the territory of the russian federation.

H. Ye. Bershov stated that he and his family members do not have any movable or immovable objects owned or used in the territory of the russian federation in his written answers upon the request of the Ethics Council. At the same time, according to his written answers, his wife's grandmother, K. D. Kharytonova, who died in 2007, owned a land plot in Volodymyr region of the russian federation.

During the interview H. Ye. Bershov indicated that his wife's mother, T. S. Hudkova, did not become the heir within the six-month period established by the legislation of the russian federation and did not acquire the right of ownership for the property in Volodymyr region. T. S. Hudkova died in 2013.

However, according to the candidate's explanations, relatives of H. Ye. Bershov's wife informed her that she could probably be the heir to the deceased grandmother's property and advised to get in touch with real estate specialist – M. S. Dmytriienko.

The Ethics Council has established that, according to data from the Unified Register of Powers of Attorney, the candidate's wife, in 14 years after her grandmother's death, issued powers of attorney in the name of M. S. Dmytriienko on 4 March 2021 and 15 June 2021 on the right to represent her interests at the enterprises, institutions, and organizations of the Russian Federation on the issue of maintenance, disposal, and exploitation of any immovable property belonging to her on the territory of the Russian Federation; preparation of the necessary documents for the purchase and sale of any immovable property belonging to the candidate's wife at a price and on terms known to her and registration of the right of ownership for this property in the territory of the Russian Federation. As it may be seen from the texts of powers of attorney, M. S. Dmytriienko resides and is registered as a private entrepreneur in Sevastopol, annexed by the Russian Federation.

Answering the Ethics Council's question regarding further use of the above powers of attorney, H. Ye. Bershov noted that after the grandmother's death, his wife had specific questions regarding the inheritance of the property previously belonging to the grandmother – a plot of land located in Volodymyr region of the Russian Federation. Therefore, according to the candidate, the wife issued two powers of attorney in the name of M. S. Dmytriienko precisely for further disposal of the aforementioned land plot in Volodymyr region. At the same time, as the candidate explained during the interview, such powers of attorney were not subsequently implemented.

The Ethics Council finds H. Ye. Bershov's explanation regarding the use of powers of attorney aimed at disposing of the real estate in Volodymyr region unconvincing.

According to the asset declarations of H. Ye. Bershov, his wife owns an apartment with the total area of 52.8 sq.m. in the urban-type settlement of Gurzuf, Autonomous Republic of Crimea. Taking into account the fact that in 2014 the AR of Crimea was annexed by the Russian Federation, as informed by H. Ye. Bershov, he and his wife currently do not use the indicated apartment.

In view of the aforementioned circumstances, the Ethics Council believes that the purpose of the candidate's wife issuing powers of attorney to citizen M. S. Dmytriienko, who lives and conducts entrepreneurial activities as a realtor in Sevastopol, remains exactly in disposal of the property located in the urban-type settlement of Gurzuf, Autonomous Republic of Crimea. However, during the interview, the candidate categorically denied this fact, due to which, the Ethics Council believes that there are reasonable doubts regarding the candidate's compliance with such indicator of the criterion of professional ethics and integrity as honesty (cl. 1.3.2 of the Methodology).

4. With respect to the non-declaration of information about the right to use the mother's car in asset declarations.

According to his declaration for 2016 and extract from the Unified State Register of Vehicles, from 10 July 2013 to 2 July 2020 H. Ye Bershov had the right to use vehicle Toyota Land Cruiser 3.0, manufactured in 2013, which belonged to his mother under the right of ownership. As the candidate explained in his written answers, his mother does not have a driver's license, and therefore, if necessary, he or his stepbrother drove this car.

Moreover, in his declaration for 2015, the candidate indicated information about the right to use another vehicle – Toyota Camry, manufactured in 2015, which belonged to O. M. Shevchenko under the right of ownership. In his written explanations, H. Ye. Bershov informed that O. M. Shevchenko was his friend.

At the same time, in his declarations for 2013–2015, the candidate did not indicate information about the right to use vehicle Toyota Land Cruiser 3.0.

In his written answers upon the Ethics Council's request, the candidate explained that he did not use this vehicle regularly, mostly during long-distance travels. H. Ye. Bershov also pointed out that in the note to the declaration there were no clarifications regarding information on vehicles in the part of other right of use by the person submitting the declaration.

Therefore, the candidate believes that during the period of 2013–2015, the anti-corruption legislation did not regulate the procedure for declaring the right to use a vehicle (regularity, term, duration, conditions). With respect to this, H. Ye. Bershov did not consider it necessary to declare the right to use the specified vehicle.

The candidate explained that he also used the aforementioned vehicle Toyota Camry on an irregular basis. At the same time, in his declaration H. Ye. Bershov indicated the right to use this vehicle in order to avoid doubts about his integrity.

The Ethics Council finds the candidate's explanation regarding failure to declare the right to use the vehicle Toyota Land Cruiser unconvincing.

Pursuant to Article 1(1) of the Law of Ukraine “On Prevention of Corruption”, the candidate is the subject of declaration. According to the first part of Article 12 of the Law of Ukraine dated April 7, 2011 “On the Principles of Preventing and Counteracting Corruption” (in the edition of Law of Ukraine No. 224-VII of 14 May 2013), the subjects of declaration were obliged, on an annual basis, before April 1, at the place of work (service), to file a declaration on property, income, expenses and financial liabilities for the previous year in the form attached to this Law. In section 4 “Information on real estate” of the Declaration on property, income, expenses and financial liabilities for a certain year, the subject of declaration was obliged to indicate information on vehicles owned, leased or used under another right by the declarant, as well as the declarant's expenses for their purchase (use).

Moreover, pursuant to Article 45(1) of the Law of Ukraine “On Prevention of Corruption” of 14 October 2014, subjects of declaration are required, on an annual basis, before April 1, through the official website of the National Agency, to file a declaration of a person authorized to perform the functions of government or local self-government for the previous year in the form, as determined by the National Agency. Pursuant to para. 3 of Article 46 (1) of the Law of Ukraine “On Prevention of Corruption”, subject of declaration in the a declaration of a person authorized to perform the functions of government or local self-government is obliged to indicate valuable movable property the value of which exceeds 50 subsistence incomes,

established as of January 1 of the reporting year and title to which is held privately by the declarant or members of his/her family, including joint ownership, or is in his/her possession or use regardless of the form of the transaction by which such title was acquired. At the same time, subpara. b of para. 3 of Article 46 (1) of the aforementioned Law envisions that information on vehicles and other self-propelled machines and mechanisms shall be reported regardless of their value;

In violation of the indicated requirements, H. Ye. Bershov did not show this information in his declarations for 2013–2015.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption legislation, including with respect to timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

In view of the above, the Ethics Council has reasonable doubts about the candidate's compliance with the requirements of financial control with respect to full and accurate information in asset declarations (cl. 1.3.7.6 of the Methodology).

5. With respect to failure to indicate information about the value of the vehicle in asset declarations.

In his declarations for 2016–2020, H. Ye. Bershov marked as “unknown” in the column “value as of the date of acquisition, into ownership or use, or pursuant to the last monetary valuation” in paragraph regarding the right to use vehicle Toyota Land Cruiser 3.0, manufactured in 2013, owned by his mother.

According to his written answers upon the Ethics Council's request, the candidate's mother purchased the mentioned vehicle at the car dealership Toyota Center Kharkiv “Autoart” for USD 69,200.00, which is equivalent to UAH 553,847.00, according to the official exchange rate of the National Bank of Ukraine as of 10 July 2013.

The Ethics Council draws attention to the fact that determining the value of the vehicle did not cause any difficulties for the candidate when answering the questions of the Ethics Council. In view of this, the candidate could also have found this information when filling out declarations in 2016–2020. Thus, the Ethics Council has doubts that H. Ye. Bershov, at the time of filling out the declarations, took all the necessary measures to find out the value of the aforementioned vehicle.

According to Article 18 of the Code of Judicial Ethics, a judge shall be aware of his/her financial interests and take reasonable steps to be aware of the financial interests of his/her family members.

Pursuant to para. 3 of Article 46(1) of the Law of Ukraine “On Prevention of Corruption”, the declaration shall include information on valuable movable property the value of which exceeds 100 subsistence incomes for able-bodied persons, established as of January 1 of the reporting year and title to which is held privately by the declarant or members of his/her family, including joint ownership, or is in his/her possession or use regardless of the form of the transaction by which such title was acquired. Such information includes: data on the type of property, characteristics of the property, the date of its acquisition, into ownership or use, the value of the property as of the date of its acquisition, into ownership or use.

Therefore, the Ethics Council believes that H. Ye. Bershov lacked diligence when filling out his declarations for 2016–2020 and did not reflect all the necessary information.

In view of the above, the Ethics Council has reasonable doubts about the candidate’s compliance with such indicator of the criterion of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with financial control requirements with respect to 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 Hennadii Yevhenovych Bershov 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