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ETHICS COUNCIL

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Kyiv

DECISION

No. 66

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Mykhailo Volodymyrovych Sydorenko
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 Mykhailo Volodymyrovych Sydorenko 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 Mykhailo Volodymyrovych Sydorenko 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 its Decision No. 33 of 21.07.2022.

Since 12.11.2015 Mykhailo Volodymyrovych Sydorenko has been a retired judge of Odesa Commercial Court of Appeal.

Having studied documents provided by Mykhailo Volodymyrovych Sydorenko 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 failure to declare the right to use vehicle Mercedes-Benz ML 350

In his corrected declaration of the candidate for the position of the person authorized to fulfill functions of the state or local self-governance (hereinafter - electronic declaration) for 2017, the candidate specified that since 26.10.2012 he and his wife had the right to use vehicle Mercedes-Benz ML 350 manufactured in 2012 which was owned by the candidate's father-in-law. The candidate did not indicate information about the right to use this vehicle in his declarations on property, income, expenses, and financial liabilities ("paper declaration") for 2012–2015.

The candidate confirmed that he and his wife had the right to use this vehicle since 26.10.2012 as they were specified in the vehicle registration certificate. However, according to the candidate he learned about his right to use the vehicle only in 2017 when he was driving this vehicle upon a request of his father-in-law. The candidate reported that he was driving this vehicle not systematically – from two to five times. During one of the trips on 19.01.2017 he got into a traffic accident after which he was recognized as guilty of committing an offence set out by Article 124 of the Code of Ukraine on Administrative Offences with the decision of Prymorskyi District Court of Odesa of 20.02.2017 under case No. 522/1712/17.

In response to the Ethics Council questions, the candidate replied that he did not actually use the vehicle in 2012–2015, then, in his opinion, he was not obliged to declare it. In response to the question why the candidate decided to declare the right to use it in his electronic declaration for 2017, he answered that he deemed it as necessary to do that with regard to the traffic accident.

The Ethics Council is hereby drawing attention to the fact that Section IV "Information about Vehicles" of paper declarations contains clause A "Vehicles owned, rented, or under other right of use by the person submitting the declaration and expenses of the person submitting the declaration on their purchase (use)"

and clause B “Vehicles owned, rented, or under other right of use of family members of the person submitting the declaration”. These clauses shall specify all vehicles which the person submitting the declaration and his/her family members have under the right of ownership or use regardless of their actual use.

The Ethics Council critically perceives the candidate’s statement that he learned about his right to use the vehicle only in 2017. Since the candidate was a judge in 2012–2015, he should have learned about a ground for the emergence of such right and specify information about the vehicle in his declarations in order to provide accurate and complete information in the declaration, but he did not do that.

Accordingly, since the candidate confirmed that he and his wife had the right to use vehicle Mercedes-Benz ML 350 manufactured in 2012 since 26.10.2012, he was obliged to declare the right to use this vehicle in his paper asset declarations for 2012–2015.

Form and rules of filling in the paper declaration were stipulated by the Law of Ukraine “On Principles of Preventing and Fighting Against Corruption”. According to para. 2 of Article 16(1) of this Law, it is prohibited for persons specified in para. 1–3 of Article 4(1) (namely, judges) to provide untimely, inaccurate, or incomplete information which shall be provided pursuant to the law.

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.

Cl. 4.7 of the Bangalore Principles of Judicial Conduct sets out that a judge shall inform himself or herself about the judge’s personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge’s family.

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.

Thus, since the candidate did not declare his right to use vehicle Mercedes-Benz ML 350 manufactured in 2012 in his paper declarations for 2012–2015, the Ethics Council has reasonable doubts about the candidate's compliance with such indicator of the professional ethics and integrity criteria as diligence.

2. With respect to sources of origin of funds used to purchase vehicle Mercedes-Benz ML 350

According to information from the Unified State Register of Vehicles, on 26.10.2012 the candidate's father-in-law acquired the right of ownership for vehicle Mercedes-Benz ML 350 manufactured in 2012. An average market price of such vehicle in 2012 varied from UAH 700,000 to 800,000 (USD 87,500 – 100,000) depending on configuration.

According to the NABU's information, total income of the candidate's parents-in-law amounted to UAH 218,069 during the period from 1998 to 2012.

In response to the Ethics Council's question about the price of this vehicle and the source of origin of funds used to purchase it, the candidate answered that he did not know the price of the vehicle and source of origin of funds as his father-in-law was not his family member.

The Ethics Council is hereby drawing attention to the fact that the candidate and his wife had the right to use this vehicle. Taking into consideration provisions

of Article 18 of the Code of Judicial Ethics and clause 4.7 of the Bangalore Principles of Judicial Conduct, a judge shall be aware of his financial and property interests. Such a rule, in particular, specifies awareness about sources of origin of funds used to purchase property which the candidate has under the right of use.

Within the framework of evaluation of candidates' compliance with the professional ethics and integrity criteria the Ethics Council uses information about official income available in state registers. The Ethics Council may take into consideration other information about income, yet the candidate should provide accurate confirmation of such information.

While answering the Ethics Council's questions, the candidate reported possible sources of origin of funds of his father-in-law, yet did not confirm it in any way and stated that he did not know and should not know about sources of origin of funds of his father-in-law as the latter was not his family member. The Ethics Council critically perceives such explanation as it does not confirm the amount of revenues of the candidate's father-in-law which could be used to purchase the vehicle. Under such circumstances the Ethics Council takes into account only official income of his father-in-law given in state registers which is three times lower during the period from 1998 to 2012 than the price of the vehicle.

In view of the above, the candidate did not provide confirmation of the legality of his father-in-law's income used to purchase vehicle Mercedes-Benz ML 350 manufactured in 2012.

According to cl. 1.3.7.3 of the Methodology, income that has not been declared with public authorities in line with requirements of the legislation shall not be considered as legal.

According to cl. 1.3.7.4 of the Methodology, if a candidate has received property free-of-charge into use, its current owner who has provided such property shall do that from legal income.

According to cl. 1.3.7 of the Methodology, sources of origin of the candidate's property are legal in case there are no reasonable doubts to the contrary.

Thus, since the candidate did not provide confirmation concerning the origin of his father-in-law's funds used to purchase vehicle Mercedes-Benz ML 350 manufactured in 2012, the Ethics Council has reasonable doubts about the legality of sources of origin of funds used to purchase this vehicle.

3. With respect to the price of vehicle Toyota Land Cruiser

In his electronic declarations for 2018–2021, the candidate specified that on 01.12.2018 his wife acquired the right of ownership for vehicle Toyota Land Cruiser manufactured in 2014. In his written answers the candidate mentioned that he knew from the Unified State Register of Vehicles that the price of this vehicle amounted to UAH 54,000.

During the interview the candidate confirmed that this vehicle had 4.4 liter diesel engine. An average price of a vehicle with such engine amounted to about UAH 1,100,000 (approximately USD 44,000) in 2018. According to the NABU's information, the previous owner of this vehicle bought it in May of 2018 for UAH 614,000 (about USD 25,000). Thus, the price of the vehicle for which the candidate's wife bought it is 20 times lower than the average market price and 11 times lower than the price for which this vehicle was bought by its previous owner.

In response to the Ethics Council's question about reasons for such low price of the vehicle, the candidate answered that the vehicle required repairs as before its purchase it had gotten into a traffic accident, was a non-runner, its engine was not working, it had broken bumper and lights. The candidate also said that it was impossible to apply criteria of the average market price of the vehicle as the price depends on configuration of such vehicle, its real mileage, and technical condition.

Accordingly, the candidate did not provide any confirmation concerning accuracy of his explanations regarding the price of vehicle Toyota Land Cruiser manufactured in 2014. In connection with this, the Ethics Council has reasonable doubts about accuracy of the stated price of this vehicle.

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

Thus, since the price of vehicle Toyota Land Cruiser manufactured in 2014 bought by the candidate's wife is 20 times lower than the average market price of such vehicle, the Ethics Council has reasonable doubts about the candidate's compliance with such indicator of the professional ethics and integrity criteria as honesty.

4. With respect to the price of vehicle Mitsubishi L200

In his paper declaration for 2015, the candidate declared property rights for vehicle Mitsubishi L200 manufactured in 2011 and indicated its price in the amount of UAH 100,000. During the interview the candidate confirmed that he bought this vehicle for UAH 100,000 in 2015 and sold it for UAH 700,000 in 2018.

An average market price of such vehicle amounted to UAH 370,000 (about USD 18,000) in 2015. In response to the Ethics Council's questions, the candidate informed in his written answers that thorough repairs preceded sale of the vehicle. During the interview the candidate pointed out that the vehicle was not damaged as of the moment of its purchase, while he meant update of technical conditions of the car.

Thus, the candidate confirmed that as of the moment of purchasing vehicle Mitsubishi L200 manufactured in 2011 this vehicle was operational and did not require repairs. In connection with this, the candidate did not provide any

explanations why the stated price of the vehicle which he purchased was lower than the average market one.

The candidate also did not provide any document to confirm improvement of the vehicle condition and did not provide a justified explanation why it caused the vehicle price increase by 7 times in over 3 years of its use.

Accordingly, the Ethics Council has reasonable doubts regarding accuracy of the declared price of this vehicle in the paper declaration for 2015.

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

Thus, since the price of vehicle Mitsubishi L200 manufactured in 2011 is more than three times lower than the average market price of such vehicle, the Ethics Council has reasonable doubts regarding the candidate's compliance with such indicator of the professional ethics and integrity criteria as honesty.

5. With respect to sources of origin of funds used to purchase vehicle Acura RDX

In his electronic declarations for 2017–2021, the candidate specified that since 03.01.2013 his wife owned vehicle Acura RDX manufactured in 2008. The candidate also declared his right to use this vehicle. An average market price of such vehicle amounted to over UAH 200,000 in 2013.

In response to the Ethics Council's question about sources of origin of funds used to purchase this vehicle, the candidate answered that his wife acquired the right of ownership for this vehicle as a result of concluding a domestic transaction with her mother. In his written answers the candidate stated that the vehicle was bought with his wife's funds, the source of origin of which was legal.

During the interview the candidate said that he did not know the price of this vehicle, means of settlement for it, and sources of origin of funds.

In his written answers the candidate said that his mother-in-law owned this vehicle since 2008. According to the NABU's information, total income of the candidate's parents-in-law during the period from 1998 to 2008 amounted to UAH 71,662, which is less than the average market price of such vehicle. The candidate did not provide any information which would confirm that they had income sufficient to purchase such vehicle.

The candidate also did not provide explanations and confirmation as to the ground based on which his wife acquired the right of ownership for this vehicle and that she did that using her legal income.

The Ethics Council is hereby drawing attention to the fact that the candidate had the right to use this vehicle since 2013. Taking into consideration provisions of Article 18 of the Code of Judicial Ethics and clause 4.7 of the Bangalore Principles of Judicial Conduct, a judge shall be aware of his financial and property interests. Such rule, in particular, specifies awareness about sources of origin of funds used to purchase property which the candidate has under the right of use.

According to cl. 1.3.7.3 of the Methodology, income that has not been declared with public authorities in line with requirements of the legislation shall not be considered as legal.

According to cl. 1.3.7.4 of the Methodology, if a candidate has received property free-of-charge into use, its current owner who has provided such property shall do that from legal income.

According to cl. 1.3.7 of the Methodology, sources of origin of the candidate's property are legal in case there are no reasonable doubts to the contrary.

Thus, since the candidate did not explain and did not provide explanation concerning origin of funds used to purchase vehicle Acura RDX manufactured in 2008, for which the candidate's wife acquired the right of ownership and the

candidate acquired the right of use, the Ethics Council has reasonable doubts about legality of sources of origin of funds used to purchase this vehicle.

6. With respect to failure to declare value of vehicles

The candidate did not declare value of such vehicles:

- Mercedes-Benz ML 350 manufactured in 2012 in his electronic declaration for 2017;
- Mitsubishi L200 manufactured in 2011 in his electronic declaration for 2017;
- Acura RDX manufactured in 2008 in his electronic declarations for 2017–2021;
- Toyota Land Cruiser manufactured in 2014 in his electronic declarations for 2018–2021.

With respect to the failure to declare value of vehicle Mercedes-Benz ML 350, the candidate stated that he did not know the value of the vehicle as it was the vehicle of his father-in-law who was not his family member. In response to a clarifying question whether he took measures to find out value of the vehicle, the candidate answered that he did not take any measures since it is a vehicle of his father-in-law.

With respect to failure to declare value of vehicle Mitsubishi L200, at first the candidate said that he did not know value of this vehicle as of 2017 and then he said that he did not declare its value by mistake.

With respect to failure to declare value of vehicle Acura RDX, the candidate said that he had not known and still did not know value of this vehicle as his wife did not provide such information to him.

With respect to failure to declare value of vehicle Toyota Land Cruiser, the candidate said that his wife did not provide information about value of the vehicle to him in response to his numerous requests. At the same time, he pointed out that his wife used their joint funds to purchase this vehicle, but he did not know how

much specifically. He does not have title documents for the vehicle and he learned about value of the vehicle from the Unified State Register of Vehicles once he received a request from the Ethics Council.

The Ethics Council is hereby drawing attention to the fact that according to cl. 6 of the NACP's Explanations No. 6 of 11.08.2016 regarding application of separate provisions of the Law of Ukraine "On Prevention of Corruption" if a family member has refused to provide information for declaring purposes, but this information is known to the person submitting the declaration or such information may be received by the latter from official sources (for example, title documents, respective state registers), then the person submitting the declaration shall indicate all known information in the declaration. If respective information is unknown to a family member and may not be received from official sources (for example, title documents, respective state registers), then it is necessary to choose mark "Unknown" in respective fields of an electronic form of the declaration. Similar provision is given in cl. 56 of the NACP's Explanations No. 11 of 29.12.2021 regarding application of separate provisions of the Law of Ukraine "On Prevention of Corruption" concerning financial control measures (submission of the declaration, notification about significant changes in the financial situation, notification about opening of a foreign currency account).

During the interview the candidate said that he did not have title documents for vehicles Toyota Land Cruiser and Acura RDX as his wife did not provide these documents to him. Moreover, the candidate answered that his wife did not inform him about the value of these vehicles and that he did not take any other measures to find out value of these vehicles. The Ethics Council is hereby pointing out that the candidate might have sent, in particular, a request to the Unified State Register of Vehicles to provide information about value of these vehicles and specify such value in his declarations.

The candidate also said that he did not take any measures to find out the value of vehicle Mercedes-Benz ML 350 owned by his father-in-law.

Accordingly, the candidate did not take any measure to provide complete information about the vehicle, though he had such a possibility, and according to Article 18 of the Code of Judicial Ethics and cl. 4.7 of хоча міг, і з огляду на ст. 18 Кодексу суддівської етики та п. 4.7. Bangalore Principles of Judicial Conduct, he should have been to do so.

The Ethics Council is hereby pointing out that existence of a technical possibility to specify in the declaration that the property value is unknown does not release the person submitting the declaration from an obligation to take reasonable measures to find out value of such property. According to the NACP's Explanations, mark "unknown" shall be selected only if information is unknown to the family member and such information may not be received from official sources. During the interview the candidate did not provide a confirmation that his family members did not know value of respective vehicles. Besides, he did not provide any confirmation that he tried to find out value of these vehicles using state registers.

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.

Thus, since the candidate did not declare value of vehicles Mercedes-Benz ML 350 manufactured in 2012, Mitsubishi L200 manufactured in 2011, Acura RDX manufactured in 2008, and Toyota Land Cruiser manufactured in 2014, the Ethics Council has reasonable doubts about the candidate's compliance with such indicator of the professional ethics and integrity criteria as diligence.

7. With respect to notifying the qualification and disciplinary commission of the bar about existence of incompatibility circumstances

The candidate received the attorney's certificate on 28.09.1995 from Odesa Regional Qualification and Disciplinary Commission of the Bar. In his answers he said that he suspended this attorney's certificate on 26.04.2000 before taking the oath of the judge of the Arbitration Court of Odesa region.

On 15.08.2012 the Law of Ukraine "On the Bar and Attorney's Activities" came into effect. According to cl. 3 of Section X "Transitional Provisions" of this Law attorneys who hold positions or perform activities which are incompatible with the attorney's activities pursuant to Article 7(1) of this Law as of the date of this Law coming into effect shall notify in writing the qualification and disciplinary commission of the bar at the place where they received their certificate about existence of incompatibility requirements within ninety days of this Law coming into effect.

According to information of the National Bar Association of Ukraine, the Unified Register of Attorneys of Ukraine contains no information about the candidate's notification on existence of incompatibility requirements within ninety days of the date of this Law coming into effect.

In his answers the candidate said that he personally gave such notification to the chair of the Bar Council of Odesa region who should have transferred it to Odesa Regional Qualification and Disciplinary Commission of the Bar. However, the candidate does not know why he did not do that.

The Ethics Council is hereby pointing out that pursuant to cl. 3 of Section X "Transitional Provisions" of the Law of Ukraine "On the Bar and Attorney's Activities" an attorney shall submit a written notification to the qualification and disciplinary commission of the bar and not to the chair of the bar council of the region. The chair of the bar council of the region does not have authorities to

submit, register, or send such notifications to the qualification and disciplinary commission of the bar instead of the attorney.

Upon the Ethics Council's request to provide a confirmation that the candidate gave a written notification to the chair of the Bar Council of Odesa region, the candidate said that he did not have and could not have such confirmation.

According to cl. 1.3.4.1 of the Methodology, the candidate fails to comply with the indicators of diligence and honesty, 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.

Since there is no information in the register of attorneys about submission of the notification on existence of incompatibility circumstances by the candidate and the candidate did not provide any confirmation that he submitted such notification, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the professional ethics and integrity criteria as diligence and honesty.

Thus, the Ethics Council has reasonable doubts about legality of sources of origin of property of the candidate's family members and candidate's compliance with such indicators of the professional ethics and integrity criteria as diligence and honesty.

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 Mykhailo Volodymyrovych Sydorenko 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