



## ЕТИЧНА РАДА

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## ETHICS COUNCIL

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**1 November 2022**

**Kyiv**

### **DECISION**

**No. 71**

***On compliance of candidate for the  
position of the member of the High Council of Justice  
Liubomyr Viktorovych Vynar  
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, Yuriy Triasun, remotely by videoconference, having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice, having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Liubomyr Viktorovych Vynar 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,

**has established:**

The Ethics Council received copies of documents of Liubomyr Viktorovych Vynar 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.

Having studied documents provided by Liubomyr Viktorovych Vynar for participating in the competition, his written explanations and documents provided by him 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 interviewed him, the Ethics Council has reached the following conclusions.

With Decree No. 620/2013 of the President of Ukraine of 07.11.2013 the candidate was appointed to the judicial office of Olevsk District Court of Zhytomyr region for the term of 5 years.

With Decision No. 79/zp-17 of the High Qualification Commission of Judges of Ukraine of 27.07.2017, pursuant to results of qualification evaluation, the candidate was included into the ranking of candidates for filling in the judicial office of the Cassation Civil Court of the Supreme Court.

With Decree No. 211/2018 of the President of Ukraine of 19.07.2018 the candidate was sent to work as a judge of Yavoriv District Court of Lviv region.

On 07.11.2018 the term of authorities of the candidate as a judge appointed to the judicial office for the first time expired. The candidate temporarily did not administer justice.

With Decision No. 535/vs-19 of the High Qualification Commission of Judges of Ukraine of 06.03.2019, pursuant to results of qualification evaluation, he was found to be capable of administering justice in the Cassation Commercial Court within the Supreme Court.

With Decree No. 735/2011 of the President of Ukraine of 07.10.2019, pursuant to Article 147(6), para. 1 of cl. 3 and cl. 340 of Chapter XII “Final and Transitional Provisions” of the Law of Ukraine “On the Judiciary and Status of Judges”, the candidate was appointed to the judicial office of Olevsk District Court of Zhytomyr region indefinitely.

1. With respect to disciplinary proceedings and conflict situation in the court where the candidate works

In 2017 the High Council of Justice received 1 disciplinary complaint (“complaint”) with respect to the candidate. During 2018 – 2019 the High Council of Justice received 18 complaints. In 2021 the High Council of Justice received 3 complaints. As evident from the note provided by the Secretariat of the High Council of Justice pursuant to results of consideration of the above mentioned complaints, the High Council of Justice did not find grounds to bring the candidate to disciplinary responsibility in any of the instances.

Analysis of complaints regarding Liubomyr Viktorovych Vynar received by the High Council of Justice during 2018 – 2019 shows that they were initiated by the president of Olevsk District Court of Zhytomyr region V. M. Kovalchuk (9 complaints), judges of this court (1 complaint), head of the court apparatus (1 complaint). In his written answers in response to the Ethics Council’s questions the candidate specified that the reason for such number of complaints concerning him was his conflict with the court management and subjective impartial attitude of the court presidents towards the candidate. During the interview the candidate explained to the Ethics Council that during 2017 – 2018 the president of Olevsk

District Court of Zhytomyr region committed systematic and biased actions to create artificial obstacles in the candidate's work, search for made-up grounds to bring him to responsibility, in particular, for participation in trainings of the National School of Judges of Ukraine, creation of a negative image of the candidate among employees of the court apparatus, etc.

The Ethics Council takes into consideration that according to requirements of the Law of Ukraine "On the Judiciary and Status of Judges" the candidate sent a statement on interference into the judge's work to the High Council of Justice. Moreover, this conflict situation in Olevsk District Court was the subject matter of the check by the Territorial Division of the State Judicial Administration of Ukraine in Zhytomyr region which established facts of the conflict among the staff. The Ethics Council has also taken into consideration the candidate's written and oral explanations regarding his sick leave, positive characteristic given to the candidate when he held the judicial office in Yavoriv District Court of Lviv region, the same characteristic given to the candidate when he held the judicial office of Olevsk District Court of Zhytomyr region in 2014, 2015, and 2017, as well as negative characteristic of 2018 given to the candidate by the court management during the period of the conflict.

Moreover, the Ethics Council is hereby pointing out that since 07.11.2018 after expiration of the five-year term of authorities the candidate was often absent from the workplace due to his health condition, which is confirmed with sick leave certificates. At the same time, in between the periods when the candidate was on sick leave, he participated in the Congress of Judges of Ukraine (19-20.12.2018), improved his judicial competence in the National School of Judges of Ukraine (03-07.12.2018, 17-18.12.2018), gave lectures in the National School of Judges of Ukraine (28-30.01.2019, 04-06.02.2019, 30.09.2019 - 29.10.2019). This shows that he as a judge engaged in active activities despite absence of an opportunity to administer justice.

Available circumstances and facts do not give grounds to make a conclusion about non-compliance or existence of reasonable doubts about the candidate's compliance with the professional ethics and integrity criteria.

2. With respect to information about the candidate's financial situation specified in his declarations of the person authorized to fulfill functions of the state or local self-governance

According to information from the candidate's declarations about financial situation submitted by him since the moment he had been appointed to the judicial office, the candidate has the right of ownership for an apartment with the total area of 53.4 sq. m. in Lviv which he acquired based on the sale and purchase agreement of 22.05.2003. According to the candidate's written explanations, his answers given during the interview with the Ethics Council, Liubomyr Viktorovych Vynar bought this apartment using his personal funds, as well as funds given to him by relatives – his grandparents. As of the moment of purchasing this apartment the candidate was not a civil servant, did not receive funds from the state budget, his relatives did not hold positions in public authorities.

According to information from the candidate's declarations about financial situation, since 2017 he has had the right of ownership for an apartment with the total area of 34.1 sq. m. in Lviv. According to written explanations given by the candidate, he received this apartment as a gift from his mother. In turn, the candidate's mother bought this apartment based on the sale and purchase agreement in 2015. According to the sale and purchase agreement, price of the apartment amounted to UAH 422,990. According to clause 1.3.7.4 of the Methodology, if the candidate has received property free-of-charge into ownership, possession, or use, its previous owner who has provided such property shall do that from legal income. In response to the Ethics Council's question the

candidate explained that the reason for giving the apartment away as a gift was his mother's personal decision. Moreover, in his written explanations and copies of documents the candidate provided information about his parents' official income during the period of 2012 – 2016. As evident from the provided documents, official income of the candidate's parents during this period allowed them to buy an apartment at this price.

According to the candidate's declarations, he owns a land plot with the total area of 1,000 sq. m. in Lviv region based on the right of private ownership. Upon the Ethics Council's written request the candidate provided copies of title documents, and during the interview he explained that he received this land plot following the procedure of free-of-charge transfer of land set out by the land legislation. The designated purpose of this land plot is "for gardening". Regardless of the fact that the candidate lives on a permanent basis in another region, he uses this land plot according to its designated purpose.

The candidate's declarations for 2013 – 2019 contain no information about the candidate having any real estate objects under the right of ownership or use which the candidate should have used as a place of residence while working in Olevska of Zhytomyr region. During the interview with the Ethics Council the candidate confirmed previously provided written explanations that during this period his working schedule was designed in such a way that the candidate arrived to work from Lviv by train on Monday and returned to Lviv on Friday evening, having worked during the week. Thus, he used a room in a local hotel during all working days. Since the hotel room could change and even during the week sometimes, the candidate did not have an opportunity how many days during the year he used each hotel room, while he did not have such hotel rooms in his use as of December 31 of every reporting period since he spent all the holidays in Lviv.

The candidate could not provide reporting documents regarding his expenses on the use of hotel rooms, but he provided a certificate regarding price

of staying in the hotel. Taking into account the level of the candidate's income, he had sufficient legal funds to stay in this hotel.

According to clause 4.7 of the Bangalore Principles of the Judicial Conduct adopted by the Resolution of the UN Economic and Social Council of 27.07.2006, 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.

The Ethics Council believes that the candidate's written answers, his oral explanations during the interview, as well as information from the candidate's declarations show that Liubomyr Viktorovych Vynar has made such efforts.

Being governed by Rules 2.3, 3.1, 3.2, and 3.16.2 of the Ethics Council's Rules of Procedure, 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, 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 Liubomyr Viktorovych Vynar as 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**