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ETHICS COUNCIL

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1 November 2022

Kyiv

DECISION

No. 73

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Oleksandr Vasyliovych Tkachenko
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 Oleksandr Vasyliovych Tkachenko 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 O.V. Tkachenko 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 of 21.07.2022.

Oleksandr Vasylovych Tkachenko was appointed to the position of the judge of the Commercial Court of Mykolaiv region with Resolution No. 2486-XII of the Verkhovna Rada of Ukraine of 19 June 1992 which he has held till now.

Having studied documents provided by O.V. Tkachenko 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 conducted the interview with her, the Ethics Council has reached the following conclusions.

1. With respect to decision-making in the context of conflict of interest

In his annual declarations for 2015–2021 the candidate specifies the right to use a land plot of Garage Cooperative "Parma" (GC "Parma") on which a metal box

is located. In his oral and written explanations the candidate informed the Ethics Council that he considered himself to be a member of this cooperative since 2008.

By his decision of June 30, 2009, O.V. Tkachenko opened proceedings in case No. 6/193/09 on the claim of TOV Parma, a third party - Parma garage cooperative (hereafter – GC Parma), to the Mykolaiv City Council for recognition of ownership and on 22.07.2009, and recognized the right of ownership of buildings and structures for the plaintiff.

The candidate does not deny that he was linked with GC Parma, as he paid the respective membership fees and used garage spaces in the cooperative. Thus, the decision in this case directly concerned the judge.

All of the above shows, that while making a decision in case № 6/193/09 dated 22.07.2009 on recognition the right of ownership of TOV Parma of metal garages in particular, O.V. Tkachenko acted in the situation that had signs of conflict of interests.

Besides, during the interview with the Ethics Council the candidate admitted that there were signs of conflict of interest, however, he did not recuse himself, because he wanted to maintain good relations with the members of the cooperative.

According to para. 3 and 5 of Article 35(1) of the Commercial Procedure Code of Ukraine, a judge may not consider a case and shall recuse oneself if he/she is directly or indirectly interested in the result of the case consideration or if there are other circumstances which cause reasonable doubts about the judge's impartiality or objectivity. In para. 2.5 of the Bangalore principles of judicial conduct it is stated that a judge shall disqualify himself or herself from participating in any proceedings if it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

Considering the above mentioned, the Ethics Council believes that the actions of O.V. Tkachenko raise reasonable doubts about his compliance with such indicator for the criterion of professional ethics and integrity as impartiality (cl. 1.3. 3 of the Methodology).

2. With respect to non-compliance with the court decision and legal requirements of the state enforcer

By the decision of the Zavodsky district court of Mykolayiv dated 31.10.2019 (entered into force on 27.02.2020) in case No. 487/5705/16-ts, the metal garage box No. 90, located on the territory of GC Parma was claimed from the illegal possession of O.V. Tkachenko; and obliged O.V Tkachenko to return this metal garage box to the GC Parma.

On May 13, 2020, the Zavodskyi District Court of Mykolayiv issued a writ of execution based on this decision, based on which enforcement proceedings were opened.

By resolution of the Deputy Head of the Zavodskyi Department of the State Enforcement Service of Mykolaiv of the Southern Interregional Department of the Ministry of Justice A.V. Volkomor a fine as imposed on the candidate for non-compliance with a court decision without valid reasons.

Lawfulness of imposition of penalties within the framework of this enforcement proceeding is confirmed with the decision of Mykolaiv District Administrative Court of 03 June 2021, left unamended by the ruling of the Fifth Administrative Court of Appeal of 14 October 2021 adopted under case No. 487/852/21 under administrative claim of O. V. Tkachenko on recognizing actions as unlawful and quashing the rulings.

Besides, during the interview the candidate confirmed that he did not pay the fine even once the court had adopted the ruling following his claim on denial in recognizing the enforcement letter as not subject to fulfilment under case No. 487/5705/16-ts as he did not accept that he was obliged to fulfil this court decision.

In accordance with the cl.1.3.6.2 of the Methodology, the candidate fails to comply with the indicator of impeccable behavior in professional activities and personal life in case he has committed any actions or undertakes a lifestyle that undermines authority of the judiciary.

In view of the above, the Ethics Council has reasonable doubts regarding the candidate's compliance with such indicator for professional ethics and integrity criterion as ethical norms and demonstration of impeccable behavior in professional activity and personal life (cl. 1.3.6 of the Methodology).

3. With respect to the inaccurate and incomplete data in the declaration of integrity

Pursuant to Article 62(7) of the Law of Ukraine "On the Judicial System and Status of Judges", the non-submission, untimely submission of a declaration of judicial integrity by a judge or submission of knowingly inaccurate (including incomplete) data shall result in disciplinary liability as stipulated by this Law. During the assessment of the candidate the Ethics Council established the circumstances that can indicate providing unreliable information in his declaration of judicial integrity, in particular, concealing information on the committed offence.

Thus, in para 22 of the declaration of integrity for 2016, the candidate confirmed that he did not commit any actions that could bring to the responsibility. At the same time, in the application from judge's file, the candidate reported that in 2016, he was charged twice with administrative responsibility for violating traffic rules.

Also, in para 22 of the declaration of integrity for 2021, the candidate confirmed that he did not commit any actions that could result in liability. At the same time in 2021, two fines were imposed upon the candidate for non-execution of court decisions of Zavodskyi District Court of Mykolayiv dated October 31, 2019. In his written and verbal answers to the questions of the Ethics Council, the candidate strongly denied his non-execution of the specified court ruling. However, such a circumstance does not give grounds for not indicating the relevant circumstances in the declaration of integrity. However, the candidate's disagreement with the court decisions has no impact on bringing him to administrative liability. Moreover, non-execution and disregarding of court decisions by a person, holding a

status of a judge is inadmissible in a state governed by the rule of law and indicates a lack of diligence in the actions of such person. That's why the candidate's explanations can't be taken as an excuse for not indicating the specified information in his declaration of integrity.

In accordance with cl. 1.3.4.1 of the Methodology, the candidate is not compliant with the indicators of honesty and diligence, in particular with regard to the reasonable doubts that such candidate, holding the official position, was acting in line with the requirements of law, professional ethics and other ethical norms on honesty and diligence.

Since Oleksandr Vasylovych Tkachenko has failed to specify information about committal of the offence, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the professional ethics and integrity criteria as honesty (cl. 1.3.2 of the Methodology) and diligence (cl. 1.3.4 of the Methodology).

4. With respect to the inaccurate and incomplete information in property declarations for 2015-2021

In the declarations for 2015-2021 the candidate indicated that since 06.05.2008 he has owned a Toyota Land Cruiser 2003 vehicle, with a value of UAH 161 600 on the date of acquisition. In accordance with NBU's official rate on 06.05.2008 UAH 161 600 is the equivalent to USD 32 000.

Results of analysis of information from the specialized website on sale of vehicles show that in 2008 an average market price of such vehicle amounted to about USD 45,000, which significantly exceeds the price declared by the candidate.

In his verbal and written explanations to the Ethics Council as to the difference between the declared and market value, the candidate stated that he purchased the vehicle for USD 40,000 and not UAH 161,600 as was declared by him earlier. The candidate explained the mistake in the value of the vehicle specified in the declarations for 2015-2021 by the fact that he incorrectly determined the NBU

official exchange rate. Thus, from 2015 to 2021, the candidate should have indicated the price not in the amount of UAH 161 600, but UAH 202 000, which is the equivalent for USD 40 000 in accordance with the NBU's official rate at that time.

Thus, the candidate admitted that in 2015-2021 he provided the inaccurate information on the price of the car Toyota Land Cruiser, 2003.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with financial control requirements and provide full and precise information in assets declarations.

Since O.V. Tkachenko did not declare the accurate information on the value of the vehicle in his declarations for 2015-2021, the Ethics Council believes that there is a reasonable doubt about the candidate's compliance with the indicator of professional ethics and integrity criteria as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of the financial control with regard to provision of full and accurate information in assets declaration (cl. 1.3.7.6 of the Methodology).

5. With respect to non-declaring the right of use of water vessels

In his property declaration for 2021, the candidate did not indicate his right to use Dominik Stingray 240 CR, 2004 water vessel, which arose on the basis of power of attorney №51901501, issued by O.G. Karpenko (power of attorney was issued for the period 01.04.2021 - 01.04.2024).

Also, in the declarations for 2020 - 2021 the candidate failed to indicate a right to use water vessel Four Winns 245, which arose on the basis of the power of attorney №50911650, issued by V.V. Moroz (power of attorney was issued for the period 18.08. 2020 - 18.08.2023).

During the interview, the candidate did not agree that he had to declare the water vessels, as on the last day and over the half of the reporting period these water vessels were not owned or used by the candidate.

At the same time, the candidate's right to use water vehicles appeared on the dates of issuing power of attorneys and stayed in force throughout the period for which they were issued. As the powers of attorney were not revoked, the candidate was obliged to declare the right to use the water vessels regardless of their actual use.

In accordance to cl. 1.3.7.6 of the Methodology, the candidate should comply with the requirements of the financial control with regard to the of full and accurate information in assets declaration.

In accordance to cl. 1.3.4.1 of the Methodology, the candidate is not compliant with the indicator of diligence is there are the reasonable doubts that such candidate has acted in line with requirements of the legislation, professional ethical rules, other ethical norms.

As the candidate did not declare his right of use of the water vehicles in his declarations for 2020 and 2021, the Ethics Council has reasonable doubts as to his compliance with the professional ethics and integrity criterion as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of the financial control with regard to the of full and accurate information in assets declaration (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 Oleksandr Vasyliovych Tkachenko 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