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ETHICS COUNCIL

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1 November 2022

Kyiv

DECISION

No. 77

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Vasyl Oleksandrovych Nepochatykh
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 Vasyl Oleksandrovych Nepochatykh 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 Vasyl Oleksandrovykh Nepochatykh 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.

With Decree No. 209/2011 of the President of Ukraine of 14.02.2011 Vasyl Oleksandrovykh Nepochatykh was appointed as the judge of Chernihiv District Administrative Court where he has worked till now.

Having studied documents provided by Vasyl Oleksandrovykh Nepochatykh 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. Concerning incomplete information in property declarations

In the declarations of property, income, expenditures, and financial liabilities from 2011 to 2015, the candidate did not reflect in Section III "Information on Real

Estate" the information on the right to use two apartments, namely: 1) place of registration in Kyiv and 2) place of actual residence in Chernihiv.

In his explanations to the Ethics Council, the candidate noted that he reported these apartments in Section I "General Information", whereas he did not indicate them in Section III "Information on Real Estate", because he did not have the relevant title documents. The candidate particularly informed that the right to use these apartments did not arise on the basis of lease or power of attorney, so when filling out the relevant declarations, he was guided by the methodological explanations of the time. At the request of the Ethics Council to indicate what kind of explanations he was guided by when filling out the forms of property declarations, the candidate was not able to provide any information.

The Ethics Council proceeds from the fact that according to Section III "Information on real estate" of the declarations of property, income, expenses, and financial liabilities in paper form, the following was subject to declaration in Paragraph A: "Property owned, leased or otherwise used by the declarant, and the declarant's expenses for the acquisition or use of such property". Therefore, in his declarations for 2011 – 2015 the candidate had to report two apartments, which he had the right to use, regardless of whether he had such a right on the basis of title documents.

Considering the content of the paper declarations, the candidate did not provide the Ethics Council with convincing arguments that would confirm that he acted properly when filling out the asset declarations in paper form for the period 2011 - 2015. Thus, the Ethics Council believes that there is a reasonable doubt about the candidate's compliance with such an indicator of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology).

2. Regarding the understatement of the value of declared property

According to the asset declaration of the candidate for 2019, he has the right to use a 2012 Volkswagen Touareg (date of acquisition of rights - 04.12.2019). This

vehicle is owned by his father. The candidate's father, in turn, acquired ownership of the vehicle on the basis of a commission agreement at a price of UAH 47,800.

The Ethics Council had reasonable doubts about the value of such a car, as provided in the declaration. Thus, according to specialized websites for vehicle sales, the market value of a vehicle of this model ranged on average from UAH 820,000 to UAH 1,182,000, which is equivalent to USD 23,000 - 33,000 as of December 2019. Therefore, the vehicle's market value is several times higher than the declared amount, which may indicate an understatement of the value of this property.

According to Article 18 of the Code of Judicial Ethics, a judge must be aware of their property interests and take reasonable measures to be aware of the property interests of their family members. Similar provisions are contained in Article 4.7 of the Bangalore Principles of Judicial Conduct.

Considering that the candidate constantly uses this vehicle owned by his father, he should have been aware of the reasons for the significant discrepancy between the market value of the vehicle and the price specified in the commission agreement. Even if we consider that the commission agreement was concluded between relatives, the difference in price is still significant.

Therefore, The Ethics Council has reasonable doubts about the compliance of the candidate with such indicator for criterion of professional ethics and integrity as honesty (cl 1.3.4.1 of the Methodology), and with the requirements of compliance with the financial control with regard to the full and accurate information in the assets declaration (cl. 1.3.7.6 of the Methodology).

3. With regard to the sources of origin of assets

Over different periods of time, the candidate accumulated money that he deposited in his bank account.

According to the candidate's property declarations, he declared the following amounts of money in his bank account in 2011-2015: 2011 - UAH 226,449; 2012 - UAH 400,500; 2013 - UAH 390,160; 2014 - UAH 548,550; 2015 - UAH 614,963.

The declared income for these years was: 2012 – UAH 157,380; 2013 – UAH 217,455; 2014 – UAH 241,971; 2015 – UAH 211,099.

The Ethics Council has doubts about the sources of funds for such savings and their further depositing in the bank account, given that there is a difference between the official income of the candidate and his savings in the specified years of declaration. In his written and oral explanations, the candidate noted that this difference was due to the fact that he had a foreign currency deposit account, which, due to exchange rate fluctuations, was changing in accordance with the hryvnia equivalent.

When asked by the Ethics Council about the source of funds for these savings, the candidate particularly noted that these funds were provided to him by his parents in the period from 2000 to 2010. To confirm the source of his parents' income for the period of ten years, the candidate provided information only that they were engaged in entrepreneurial activity. However, at the request of the Ethics Council to provide documentary evidence of the total income of his parents for the period 2000 - 2010, the candidate failed to do so.

Under such circumstances, the Ethics Council believes that there are reasonable doubts about his compliance with such indicators for the criterion of professional ethics and integrity as honesty (cl. 1.3.2. of the Methodology) and the compliance with the requirements of financial control with regard to the full and accurate information in assets declaration (cl. 1.3.7 of the Methodology).

4. Concerning the conflicts of interest

The Ethics Council found out that in 2017, the candidate took measures to prevent a conflict of interest due to the fact that he had a close relationship with his colleague, judge of the Chernihiv District Administrative Court N. M. Barhamina.

The candidate, together with N. M. Barhamina, applied to the Council of Judges of Ukraine for clarification on the potential conflict of interest during the administration of justice in the same panel.

According to Decision 73 of the Council of Judges of Ukraine of 20.09.2019, no conflict of interest was found between the candidate and the judge with whom he had a close relationship. However, the Council of Judges of Ukraine recommended the Chernihiv District Administrative Court take measures to avoid their joint work in the same panel when considering cases.

Answering the question during the interview about the above situation regarding the prevention of conflict of interest, the candidate noted that he and his colleague intend to get married. Considering such explanations of the candidate, the Ethics Council additionally clarified the existence of circumstances for declaring his colleague as a family member in the sense of anti-corruption legislation. The candidate reported that he would declare such information only after marriage. He did not provide information about cohabitation or living together with N. M. Barhamina, explaining that this information concerns another person and cannot be disclosed without her consent.

According to the first paragraph of Article 1(1)(b) of the Law of Ukraine "On Prevention of Corruption", the family members of the declarant are any persons who live together, are connected by common life, have mutual rights and obligations (except for persons whose mutual rights and obligations are not of a family nature), including persons who live together but are not married.

Thus, the Ethics Council has reasonable doubts about the compliance of the candidate with such indicator for the criterion of professional ethics and integrity as honesty (cl. 1.3.4.1 of the Methodology), and the compliance with the requirements of financial control with regard to the information about N. M. Barhamina as a family member in the light of anticorruption legislation in his 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 Vasyl Oleksandrovykh Nepochatykh 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