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ETHICS COUNCIL

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Kyiv

DECISION

No. 78

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Serhii Hryhorovych Stopnyk
with the professional ethics and integrity criteria
for 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 Serhii Hryhorovych Stopnyk 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 Serhii Hryhorovych Stopnyk 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.

Serhii Hryhorovych Stopnyk was appointed to the position of the judge of the Arbitrary Court of Ternopil Court (now – Commercial Court of Ternopil region) with Resolution No. 3777-XII of the Verkhovna Rada of Ukraine of 23.12.1993.

Having studied documents provided by Serhii Hryhorovych Stopnyk 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 behavior when pulled over by the patrol police

On June 11, 2018, at about 23:30, the patrol police pulled over the candidate near his home in the city of Ternopil, because the left headlight of the vehicle he was

driving did not work. The candidate got out of the vehicle, after which a short conversation took place between him and the patrol police officers. Having studied the video recordings of this event made by the chest cameras of patrol policemen, the Ethics Council believes that the candidate communicated with the police in an impolite, aggressive manner. Besides, he ignored the police officers' request to provide them with his driver's license and other documents related to the vehicle. Then, despite the fact that the police officers clearly did not finish communicating with him, the candidate got into his vehicle and quickly moved forward in the direction of his house, despite the fact that one of the police officers was standing directly in front of his vehicle. At the same time, other police officers tried to impede the movement of the vehicle.

In his written explanations, the candidate noted that he did not believe that he had violated the rules of the Code of Judicial Ethics with his behavior. He noted that the biggest thing that he can be blamed for is not quite tolerant behavior at night with poor health and in an unusual situation. During the interview, he added that he had been dissatisfied with his behavior in that situation but noted that an average person would hardly have done otherwise under those conditions. He said that he had been frightened by the unexpectedness of the appearance of police officers at the late time of the day and therefore he had been shocked.

The Ethics Council evaluates such explanations critically to such candidate's behavior in the light of the requirements of the Code of Judicial Ethics.

Pursuant to Clause 1.3 of the Methodology, one of the indicators of the criterion of professional ethics and integrity is compliance with ethical standards and impeccable behavior in professional activities and personal life. That is, a person's strict compliance with with professional ethical and generally acknowledged moral norms both in professional activities, and beyond them, which forms trust of the society in such person (cl. 1.3.6 of the Methodology).

According to Article 1 of the Code of Judicial Ethics, approved by the Decision of the XI regular Congress of Judges of Ukraine on February 22, 2013, a judge should be an example, among others, of observing high standards of conduct

in order to strengthen citizens' confidence in the integrity, independence, impartiality, and fairness of the court. According to Article 3 of the Code, a judge must make every effort to ensure that, in the opinion of a reasonable, law-abiding, and informed person, their behaviour is impeccable.

Taking into account the above, the Ethical Council has reasonable doubts about the candidate's compliance with ethical standards and impeccable behaviour in professional activities and personal life (cl. 1.3.6 of the Methodology).

2. Concerning the declaration of integrity

Pursuant to cl. 1.3 of the Methodology, one of the indicators of the professional ethics and integrity criteria is diligence, that is industrious, thorough, and responsible fulfillment of one's duties, which testifies to the integrity of the professional activity of a person (cl. 1.3.4 of the Methodology).

Pursuant to para 3 Article 56(6) of the Law of Ukraine "On the Judicial System and the Status of Judges", a candidate, as a judge, is obliged to submit a declaration of integrity of a judge.

2.1. Concerning the declaration of integrity for 2016

On January 20, 2017, the candidate, for the first time, submitted a declaration of integrity for 2016. In Paragraph 22 of this Declaration, the candidate confirmed the statement "I have not committed any acts that may result in bringing me to responsibility." According to para 4 of the Rules for filling out and submitting the declaration of integrity of a judge (approved by the Decision of the High Qualification Commission of Judges of Ukraine No. 137/3П-16 of October 31, 2016), a person who is filling it out for the first time should indicate the statements about the circumstances that took place throughout their whole life.

Moreover, in October 2015, a ruling on the administrative responsibility was issued against the candidate to collect a fine for speeding. In his written explanations

to the Ethics Council request, the candidate explained that he had been familiar with the rules for filling out the declaration of integrity, but he was convinced and is still sure, that if there is no repeated offense during a year, then he is considered to be a person who was not subjected to penalty in accordance with Article 39 of the Code of Administrative Offenses of Ukraine (hereinafter referred to as the Administrative Code).

The Ethics Council evaluates such explanations of the candidate with a critical eye since para 22 of the Declaration of integrity refers to whether the declarant has committed acts that may result in bringing them to responsibility, but not whether the declarant is considered to have been subjected to an administrative penalty.

The Ethics Council believes that the candidate analysed without the due diligence the statement which the declaration of integrity requires to confirm or refute, and, as a result, filled the declaration without the due diligence. The described facts raise reasonable doubts about his compliance with the indicator of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology).

2.2. Concerning the declaration of integrity for 2018

On January 25, 2019, the candidate submitted a declaration of integrity for 2018. In para 22 of this declaration, the candidate confirmed the statement "I have not committed any acts that may result in bringing me to responsibility".

However, the Ternopil District Couer was considering the case of administrative offense No. 607/11159/18 against the candidate as of 29.08.2018 and found the candidate guilty of committing an administrative offense under Article 130(1) of the Administrative Code. The candidate filled an appeal complaint on this decision to the Court of Appeal.

As of the last day for the report period (31.12.2018), as well as of the day for the filling of the declaration for 2018, Ternopil Court of Appeal was still considering the candidate's appeal complaint.

In his written explanations on this issue, the candidate has noted that it is the court (by the decision that entered into legal force) that must confirm whether the events that result in bringing to responsibility under Article 130 of the Administrative Code have taken place. Otherwise, patrol police officers would have made decisions on bringing to responsibility instead of writing out reports on committing offenses, that are sent to the courts for consideration.

The Ethics Council evaluates such explanations of the candidate critically, because the wording of para 22 of the Declaration of integrity (which is "I have not committed any acts that may result in bringing me to responsibility") directly indicates that even if there is a hypothetical possibility of bringing the declarant to responsibility for certain actions, this statement should not be confirmed. In this situation, such a hypothetical possibility was precisely indicated by the decision of the District court to bring the candidate to administrative responsibility in case No. 607/11159/18. Therefore, the Ethics Council considers that the candidate should not confirm the statement in para 22 of the 2018 Declaration of integrity.

This approach coincides with the approach of the High Council of Justice expressed in the Decision of June 06, 2017 "On rejection of submitting a nomination of Y. Y. Andreikiv for the position of a judge of the Stryi City District Court of Lviv region to the President of Ukraine". Further on it was considered in court in Case No. 800/274/17 and was upheld by the Decision of the Grand Chamber of the Supreme Court of November 8, 2018.

In the Ethics Council's opinion, the lack of diligence in understanding the statements that the declaration of integrity requires to confirm or refute, resulted in its careless filling. The described facts raise reasonable doubts about his compliance with the indicator of diligence (cl. 1.3.4 of the Methodology).

3. Concerning failure to declare a gift

During the interview with the candidate, he said that approximately in 2020-2021, the covering of the pool at his garden house totaling about USD 7,000 (about

UAH 165,803 at the exchange rate of the National Bank of Ukraine as of January 1, 2020). The constructions were paid for by his daughter. According to the Ethics Council, this actions of candidate's daughter should be viewed as a gift in the interpretation provided by Article 717 of Civil Code of Ukraine. However, the candidate did not declare it in his declarations, and also, he did not submit a notice of significant changes in the property status.

According to cl. 1.3 of the Methodology, one of the indicators of the professional ethics and integrity is diligence, which shall mean industrious, thorough, and responsible fulfillment of one's duties, which is a sign of the person's professional integrity.

One of the duties of a candidate as a judge is to submit a Declaration of a person authorized to perform the functions of the state or local self-government (in accordance with Article 45(1) of the Law of Ukraine "On Prevention of Corruption"). At the same time, in accordance with cl. 1.3.7.6 of the Methodology, a candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption legislation, including the provision of full and accurate information in assets declarations.

However, in accordance with para 7 Article 46 (1) of the Law of Ukraine "On Prevention of Corruption", the declaration indicates information about the income, including gifts, that the subject of the declaration received during the reporting period. Information about a gift is indicated only if its value exceeds five subsistence minimums established for capable persons as of January 1 of the reporting year, and for gifts in the monetary form - if the amount of such gifts received from one person (group of persons) during the year exceeds five subsistence minimums established for capable persons as of January 1 of the reporting year. As of January 1, 2020, this equaled UAH 10,510, and as of January 1, 2021 – UAH 11,350. Therefore, the candidate had to declare his daughter's gift in the declaration for 2020 or for 2021, depending on when the corresponding payment was made.

More specifically, pursuant to Article 52(4) of the said Law, in the event of a significant change in the property status of the subject of declaration, in particular,

receiving income in the amount exceeding 50 subsistence minimums established for capable persons as of January 1 of the corresponding year, the specified subject is obliged to notify thereof the National Agency within ten days from the date of receiving income. As of January 1, 2020, this amount equaled UAH 105,100, and as of January 1, 2021 – UAH 113,500. Therefore, the candidate had to submit a notice of significant changes in the property status within ten days from the date such a gift was received.

The Ethics Council believes that the reason for this is the candidate's lack of diligence in compliance with the requirements of financial control defined by the anticorruption legislation, which raises reasonable doubts about the candidate's compliance with such indicator of criteria of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of financial control with regard to notification about the changes in the property status and including the provision of full and accurate information in assets 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 Serhii Hryhorovych Stopnyk 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