



ЕТИЧНА РАДА

01601, м. Київ, вул. Липська, 18/5,
тел.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua

ETHICS COUNCIL

01601, Kyiv, Lypska St., 18/5,
tel.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua

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Kyiv

DECISION

No. 82

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Halyna Volodymyrivna Kanyhina
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 Halyna Volodymyrivna Kanyhina 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 Halyna Volodymyrivna Kanyhina 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 her to the interview with its Decision No. 33 of 21.07.2022.

With Resolution No. 516-V of the Verkhovna Rada of Ukraine of Hanna Volodymyrivna Kanyhina was appointed as the judge of the Supreme Court of Ukraine.

Having studied documents provided by Halyna Volodymyrivna Kanyhina for participating in the competition, his written explanations and documents provided by her 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.

On June 12, 2008 the European Court of Human rights (hereinafter - ECHR) decided on the case *Yaremenko v. Ukraine*, in which found violations of

European Convention on Human rights and fundamental liberties (hereinafter - Convention).

On 31.07.2009 the Supreme Court of Ukraine at a joint meeting of the Judicial Chamber in Criminal Cases and the Military Judicial Collegium, considered a criminal case based on the petition of the Deputy Prosecutor General of Ukraine and the defense attorney, submitted at the request of five judges, on review following the procedure of exceptional review of the judgment of the Court of Appeal of Kyiv of 20 November 2001 regarding O. V. Yaremenko and A. P. Samoilenko. According to the results of the review, the Supreme Court of Ukraine by a decision changed the motivational part, but left the verdict unchanged. The candidate, acting as a Judge of the Supreme Court, participated in this case as a judge-rapporteur.

In April 30, 2015, ECHR decided on the case *Yaremenko v. Ukraine* (2), in which stated that: “the decision of the Supreme Court of Ukraine in the case of Yaremenko O.V. and Samoilenko A.P. was adopted with the violations of the Convention”.

In the integrity declarations of the judge (hereinafter - declaration) the candidate was required to give answers to the following statements:

“17. I did not take decisions individually or as a member of the panel of judges, provided for in Article 3 of the Law of Ukraine “On Restoring Trust in the Judiciary in Ukraine”;

“18. I passed inspection in accordance with the Law of Ukraine “On Restoring Trust in the Judiciary in Ukraine”, the results of which did not establish any facts indicating that I had violated the judge’s oath, and no grounds were found for bringing me to disciplinary responsibility”.

In her declarations for 2015 and 2016 the candidate did not give any answer to these questions. In her declarations for 2017 and 2021 she answered “I do not confirm” to both questions.

In response to the written question of the Ethics Council why the candidate did not confirm and refute the statement that she adopted decisions set out by Article 3 of the Law of Ukraine “On Restoring Trust in the Judiciary in Ukraine” (“Law on Restoring Trust”) in her declarations for 2015 and 2016, the candidate answered that she did not take such decisions in light of her procedural authorities. The candidate also added that Article 3(2) of the Law on Restoring Trust does not use verb “take”, but it rather concerns consideration of cases or adoption of a decision.

During the interview the candidate stated that this statement in cl. 17 of the declarations did not correspond to the law, was phrased incorrectly, which is why any answer regarding this statement would be incorrect. Besides, cl. 17 concerns only Article 3(1) of the Law of Ukraine “On Restoring Trust in the Judiciary” (“Law on Restoring Trust”) as it only uses verb “take”.

The Ethics Council critically perceives such explanations of the candidate as they do not correspond to the legislation and content of cl. 17 of the declaration.

Article 3(1) of the Law on Restoring Trust stipulates that a judge of the court of general jurisdiction is subject to a check in case he/she individually or as a member of the panel of judges takes decisions from the list set out in this clause. Pursuant to Article 3(2) of this Law, a check shall also be carried out with respect to judges who individually or as a member of the panel of judges considered a case or took a decision with a violation of the Convention stated in the decision of the ECHR.

In response to the Ethics Council’s question why the candidate answered “I do not confirm” to cl. 17 of her declarations for 2017 and 2021, she answered that as of the moment of filling them in she already knew that the Temporary Special Commission on the check of judges of courts of general jurisdiction (“TSC”) which was established pursuant to the Law on Restoring Trust did not carry out a check with respect to her.

The Ethics Council critically perceives such explanation of the candidate as cl. 17 of the declaration concerns not the check of judges carried out pursuant to the Law on Restoring Trust, but rather the fact of a judge adopting decisions set out in Article 3 of this Law. During the interview the candidate confirmed that she read judgement “Yaremenko v. Ukraine (No. 2)”, which means that she knew that the ECHR stated a violation of human rights in the decision taken by the panel of judges which included the candidate. Therefore, the candidate had to provide an answer to cl. 17 of the declaration regardless of results of the check of judges.

The Ethics Council is hereby drawing attention to the fact that the candidate did not provide any answer to cl. 18 in her declarations for 2015 and 2016 as, according to her, she considered statement from cl. 18 as such which contradicted the law. At the same time, she answered “I do not confirm” in cl. 18 in her declarations for 2017 and 2021. The Ethics Council considers such actions of the candidate to be controversial since as of the moment of filling in the declarations for 2015 and 2016, as well as the declarations for 2017 and 2021 the same legislation concerning the declaration form was valid and wording of the statements in the declaration did not change.

According to Article 62(7) of the Law of Ukraine “On the Judiciary and Status of Judges”, failure to submit, untimely submission of the integrity declaration by a judge or declaring of intentionally inaccurate (including incomplete) statements result in disciplinary responsibility stipulated by this Law. Thus, judges shall declare accurate and complete statements in the declarations.

According to Article 1 of the Code of Judicial Ethics, a judge shall serve as an example of strict observance of the law, rule of law principle and judicial oath and compliance with high standards of conduct to strengthen public trust in the integrity, independence, impartiality and fairness of a court.

Cl. 1.4 of the Methodology sets out that while determining compliance with the criterion of professional ethics and integrity, the Ethics Council takes into consideration significance of any violation of ethics and integrity.

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

Thus, since the candidate did not answer to cl. 17 and 18 in the declarations for 2015 and 2016, answered “I do not confirm” in cl. 17 of the declarations for 2017 and 2021, the Ethics Council has reasonable doubts about the candidate’s compliance with such indicator 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 Halyna Volodymyrivna Kanyhina 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