



## ЕТИЧНА РАДА

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## ETHICS COUNCIL

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**May 7, 2022**

**Kyiv**

### DECISION

**No. 6**

***On failure of sitting member of the  
High Council of Justice  
V. K. Hryshchuk to comply with the  
criteria of professional ethics and integrity  
for the position of the member of the  
High Council of Justice***

Having carried out the assessment of compliance of sitting member of the High Council of Justice Viktor Klymovych Hryshchuk with the criteria of professional ethics and integrity, in line with the Law of Ukraine “On the High Council of Justice”, Rules of Procedure of the Ethics Council adopted by Decision No.1 of the Ethics Council as of December 1, 2021 and Decision No.4 as of December 9, 2021, as amended pursuant to Decision No.4 of the Ethics Council as of April 26, 2022, Methodology for assessing compliance of a candidate to the position of the member of the High Council of Justice and members of the High Council of Justice with the criterion of professional ethics and integrity adopted by Decision No.5 of the Ethics Council as of December 9, 2021, the Ethics Council consisting of Chair of the Ethics Council Lev Kyshakevych (by videoconference), Deputy Chair of the Ethics Council Sir Anthony Hooper (by videoconference), members of the Council: Yurii Triasun (by videoconference), Volodymyr Siverin (by videoconference), Robert Cordy (by videoconference), Lavly Perling (by videoconference)

**has established:**

On 14 March 2019 V. K. Hryshchuk was elected as a member of the High Council of Justice by the congress of representatives of legal higher educational institutions and research institutions and took the oath of the HCJ member.

He obtained authorities of the HCJ member on 29 April 2019.

According to Article 4 of Section II “Final and Transitional Provisions” of the Law of Ukraine “On Introducing Amendments into Some Legislative Bills of Ukraine Concerning Procedure of Election (Appointment) for the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice”, within six months of appointment of its personal composition the Ethics Council shall evaluate compliance of sitting members of the High Council of Justice (except for the President of the Supreme Court) with the criteria of professional ethics and integrity for the position of the member of the High Council of Justice.

Having studied documents provided by V. K. Hryshchuk upon the Ethics Council’s request, his written explanations, information obtained from open sources and civil society organizations, information received from the National Agency on Corruption Prevention (hereinafter referred to as the NACP) and from the National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the NABU), having interviewed him, the Ethics Council has established the following.

In the internet the NABU published an audio recording and transcript of conversations between persons, specifically, as of 02 April 2019, 20 June 2019, 21 June 2019, and 16 July 2019. The NABU has also provided these transcripts to the Ethics Council.

During the interview the HCJ member V. K. Hryshchuk stated that he was aware of the presence of such recordings of conversations and confirmed that the recordings as of 02 April 2019 and 16 July 2019 contained his conversation with the president of District Administrative Court of Kyiv (hereinafter referred to as the DACK) who held this position at that time, while the recording as of 21 June 2019

recorded a conversation with an employee of one of the Committees of the Verkhovna Rada of Ukraine.

V. K. Hryshchuk also explained that he called the president of the aforementioned court on 02 April 2019 and only asked him as the president of the court to control that the case that was in the court's proceeding under the claim raising questions about the legality of his election as the HCJ member from the congress of representatives of legal higher educational institutions and research institutions would be considered quickly. He believes that control over compliance with terms for the consideration of cases is among authorities of the court's president.

The Ethics Council considers such response to be unconvincing as the content of this recorded conversation shows that the court's president informed that he was controlling everything, as well as telling V. K. Hryshchuk that the case raised the issue of securing the claim, yet he assured him that this would not happen and that V. K. Hryshchuk would start working on 2 May and that he should not worry.

With respect to terms for the consideration of the claim, as stated by V. K. Hryshchuk, the recording does not mention that. Hence, the true purpose of the conversation between V. K. Hryshchuk and the DACK's president consisted in influencing a judge who considered the case through the court's president and make this judge adopt a decision on denying in satisfying the claim so that V. K. Hryshchuk could start performing authorities of the HCJ member. Besides, in line with Article 24 of the Law of Ukraine "On the Judiciary and Status of Judges", control over compliance with procedural terms for consideration of a case by a judge does not belong to the competence of the court's president. Newly elected member of the HCJ V. K. Hryshchuk as a specialist in the sphere of law with the scholarly degree of a professor, which was repeatedly emphasized by him during the interview, obviously knew about authorities of the local court's president.

V. K. Hryshchuk also confirmed that on 16 July 2019 he had a telephone conversation with the DACK's president who asked him to talk with persons, having named them, who could influence appointment of the HCJ member by the President of Ukraine under the quota of the latter. However, he did not fulfill this request.

According to the transcript of the conversation as of 16 July 2019, the DACK's president was talking about "our" candidate to the position of the HCJ member.

As V. K. Hryshchuk explained, they were talking about O. M. Omelchuk whom he knew as a prominent scholar, lawyer, rector of a university.

According to the transcript of the conversation as of 21 June 2019, the fact of which is not denied by V. K. Hryshchuk as well, an assistant of the people's deputy was agreeing with him on a meeting between the DACK's president and O. M. Omelchuk and the desire of the former to finally meet him in person, in response to which V. K. Hryshchuk informed that such meeting could take place in "Hilton" Hotel and he would personally inform the court's president about that by phone.

At the same time, the conversation of this court's president and the assistance of the people's deputy (transcript of the conversation as of 20 June 2019) shows that the former asked to organize a meeting for him with O. M. Omelchuk, whose candidacy he was going to lobby for appointment as the HCJ member by the President of Ukraine.

The content of the afore mentioned conversations shows that V. K. Hryshchuk did not directly refuse to fulfill requests of the DACK's president, was an active participant of such conversations, facilitated his contact with O. M. Omelchuk with a view to lobbying appointment of the latter as the HCJ member under the quota of the President of Ukraine.

Besides, during the interview V. K. Hryshchuk confirmed that he as the HCJ member considered and took decisions on leaving without consideration a complaint against the DACK's judge who was mentioned in the taped telephone conversations.

In line with Article 33 of the Law of Ukraine "On the High Council of Justice", the HCJ member may not participate in consideration of an issue and shall be subject to recusal if it is established that he/she is personally, directly, or publicly interested in the case consideration, is a relative of a person with respect to whom the issue is considered, or if there have been established other circumstances which cause doubts about his/her impartiality.

The HCJ member shall recuse oneself in case there are such circumstances.

During the interview V. K. Hryshchuk stated that he as the rapporteur under this complaint had no grounds for self-recusal.

However, recordings of the telephone conversations published by the NABU show close, trusting relations between the HCJ member V. K. Hryshchuk and the DACK's president, which might be deemed as personal and such that go beyond professional relations between the HCJ member and president of a court with respect to which he had a complaint to consider. Given that V. K. Hryshchuk requested him to assist with a positive resolution the case under which the issue of legality of his election as the HCJ member was decided, he as the HCJ member should have avoided resolution of issues related to this judge because he could not be impartial in his decision-making.

Thus, the Ethics Council has established that after election to the position of the HCJ member V. K. Hryshchuk attempted to influence consideration of a case in a manner not stipulated by the law concerning challenging of the decision of the congress of representatives of legal higher educational institutions and research institutions, pursuant to which V. K. Hryshchuk was appointed as the HCJ member; facilitated in lobbying appointment of another person as the HCJ member and assisted another person to perform the same facilitation; did not recuse himself while deciding on the issue of return of a complaint against actions of the DACK's president despite confirmed personal relations with the latter with the present conflict of interests.

Such actions of V. K. Hryshchuk undermine the authority of the High Council of Justice as the constitutional body and of the entire judiciary of Ukraine in general.

Besides, the Ethics Council is hereby pointing out that in his written responses to the Ethics Council's questions he informs that he mainly met with the DACK's president during working hours and these meetings mainly concerned preparation of the judicial reform, as well as receipt of consultations with respect to the practice of the administrative legislation application. However, the afore mentioned transcripts of telephone conversations refute such statements and show his dishonesty (cl. 1.3.2 of the Methodology).

According to cl. 1.3 of the Methodology, indicators of the professional ethics and integrity criteria include independence, honesty, impartiality, incorruptibility, diligence, compliance with ethical norms and immaculate conduct in professional activities and personal life, as well as absence of doubts regarding legality of sources of property origin, correspondence of the candidate's (sitting member's) level of life or that of his/her family members with declared income, correspondence of the candidate's (sitting member's) lifestyle with his/her status.

With respect to V. K. Hryshchuk's attempts to influence consideration of the case concerning challenging of the decision of the congress of representatives of legal higher educational institutions and research institutions, with which V. K. Hryshchuk was appointed as the HCJ member, the Ethics Council is hereby pointing out that one of the indicators of the professional ethics and integrity criteria is honesty, i.e. presence of high moral qualities, truthfulness in professional activities and personal life (cl. 1.3.2 of the Methodology). Acting in a way which may be deemed as an attempt to influence a judge considering the case in an extrajudicial manner in which the issue of legality of V. K. Hryshchuk's election as the HCJ member, the latter failed to comply with the honesty criteria, raising doubts about independence of justice as the fundamental principle of the judiciary in a democratic state, as well as putting his own interests concerning appointment to the position as soon as possible above interests of justice.

With these actions V. K. Hryshchuk also significantly breached such indicator as compliance with ethical norms and immaculate conduct in professional activities (cl. 1.3.6. of the Methodology), as attempts to get a positive resolution of his case in a manner which is not set out by the law (by means of turning to the court's president) undeniably does not constitute a manifestation of immaculate conduct in professional activities. The content of the conversation with the DACK's president directly shows that they were not talking merely about "consideration of the case within reasonable terms" as stated by V. K. Hryshchuk, even though even that would have been a violation of professional ethics. Phrases of the DACK's president that Hryshchuk should "not worry" clearly indicate that the purpose of the conversation was to remove obstacles for V. K. Hryshchuk's appointment as the HCJ member.

Similarly, V. K. Hryshchuk's participation in organization and conduct of meetings between the DACK's president and O. M. Omelchuk is a significant violation of the criteria of immaculate conduct in professional activities and personal life. V. K. Hryshchuk should have realized that he as the HCJ member should not have committed any actions which could be perceived as direct or indirect support of specific candidates for the positions of the HCJ members and that he could not organize, facilitate in organizations, and participate in meetings, the subject matter of which was lobbying of a specific person for the position of the HCJ member. However, V. K. Hryshchuk repeatedly committed such actions, did not object against requests to facilitate with appointment of a specific person for the position of the HCJ member. Documents provided for the Ethics Council's consideration do not contain any information which would allow stating that V. K. Hryshchuk denied such requests for meetings or "assistance" at least once as required by professional ethics. Moreover, V. K. Hryshchuk admitted during the interview that he stopped his communication with the DACK's president not in connection with ethically controversial or obviously unacceptable requests from the latter, but only once information concerning the court's president was entered into the Unified Register of Pre-Trial Investigations, i.e. since the moment when such communication would have harmed V. K. Hryshchuk's reputation. V. K. Hryshchuk's explanations, namely, during the interview that he did not see violations of professional ethics and integrity as it did not influence appointment of O. M. Omelchuk as the HCJ member by the President of Ukraine shows that V. K. Hryshchuk does not see any problem from the perspective of professional ethics regarding his involvement in such actions and additionally displays the lack of understanding or neglect by V. K. Hryshchuk of professional ethics and integrity standards which the HCJ member shall follow in terms of immaculate conduct.

With respect to V. K. Hryshchuk's participation in resolution of the issue of leaving without consideration a complaint against the DACK's president, the Ethics Council is hereby pointing out that indicators of the professional ethics and integrity criteria also include impartiality, i.e. absence of a negative or positive, formed in

advance subjective opinion, attitude towards someone or something, ability to adopt impartial, fair, objective decisions despite sympathies, antipathies, public opinion.

While adopting the decision during the stage of a preliminary check of the disciplinary complaint against the DACK's president with whom, as it has been established, V. K. Hryshchuk had relations that went beyond the professional ones, he did not deny in consideration of the complaint in the presence of the conflict of interests. At the same time, according to para. 3 of Article 19(5) of the Law of Ukraine "On the High Council of Justice", the HCJ member shall refuse to consider the issue if there exists a conflict of interests or circumstances which raise doubts about his/her impartiality. In view of this, the Ethics Council believes that his actions do not comply with the indicate set out in cl. 1.3.3 of the Methodology, in particular, impartiality.

According to cl. 1.5 of the Methodology, with a view to checking the candidate's (sitting member's) compliance with the criterion of professional ethics and integrity, the Ethics Council shall apply the given indicators as follows: 1) evaluation of compliance with the indicators is based on information without temporal or territorial limitations; 2) the candidate does not comply with the indicator in case non-compliance is proved or there are reasonable doubts about compliance; 3) any opinion or assessment of a national or international body relating to the candidate's professional ethics and integrity is not surely definitive and mandatory for the Ethics Council. The Ethics Council believes that the afore mentioned facts give grounds to consider it as proved that V. K. Hryshchuk does not comply with such indicators of professional ethics and integrity as honesty, impartiality, independence, and compliance with ethical norms and immaculate conduct in professional activities and personal life. These violations are significant.

Besides, the Ethics Council is hereby pointing out that analysis of given facts and evaluation of actions of V. K. Hryshchuk as the HCJ member were performed exclusively with respect to his compliance with the professional ethics and integrity criteria. Opinion of the Ethics Council pursuant to results of such evaluation is not res judicata for law enforcement bodies and court while deciding on issues concerning both V. K. Hryshchuk and other persons as stipulated by the law.



It should be separately pointed out that the level of professional competence displayed by V. K. Hryshchuk during the interview caused reasonable doubts among the Ethics Council's members as to his understanding of the essence of such important constitutional legal institute as the High Council of Justice and its role in establishment of an independent judiciary with integrity in Ukraine.

Thus, being governed by Rules 2.3, 3.2, 3.3 of the Ethics Council's Rules of Procedure, Methodology for evaluation of compliance of the candidate for the position of the member of the High Council of Justice and members of the High Council of Justice with the criteria of professional ethics and integrity, 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 Concerning Procedure of Election (Appointment) for the Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice", the Ethics Council

**h a s d e c i d e d:**

To declare sitting member of the High Council of Justice Viktor Klymovych Hryshchuk as non-compliant with the professional ethics and integrity criteria for filling in the position of the member of the High Council of Justice.

To submit a recommendation for the consideration of the congress of representatives of legal higher educational institutions and research institutions, which elected member of the High Council of Justice Viktor Klymovych Hryshchuk, on dismissal of member of the High Council of Justice Viktor Klymovych Hryshchuk based on grounds set out by cl. 3–5 of Article 24(1) of the Law of Ukraine "On the High Council of Justice".

Since the date of adoption of this decision by the Ethics Council member of the High Council of Justice Viktor Klymovych Hryshchuk shall be suspended from the position, while his authorities shall be suspended till the body, which elected this member of the High Council of Justice, adopts its decision.

**Chair of the Ethics Council**

*(signature)*

**Lev Kyshakevych**