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Indicators to Determine Noncompliance of Judges and Judicial Candidates with Integrity and Professional Ethics Criteria

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This document is developed based on best international practices in the sphere of judicial integrity and ethics which are defined in the Bangalore Principles of Judicial Conduct, Commentary thereon, recommendations of the Committee of Minister of the Council of Europe, opinions of the Venice Commission and Council of Europe Consultative Council of European Judges and with due regard to the provisions of the Code of Judicial Ethics and Guidelines of the Public Council of International Experts on Assessing Integrity, Knowledge, and Practical Skills of Nominees for Judge Positions at the High Anti-Corruption Court.

The indicators also are based on earlier practices of the Public Integrity Councils and allow for results of agreeing them with the High Qualifications Commission of Judges of Ukraine. In addition, the content of the document allows for opinions of the experts from the Council of Europe, European Union, and USAID New Justice Program.

The given list of indicators is tentative and may not be construed as exhaustive. It will be supplemented in the course of the Public Integrity Council operations. The latter will rest, among other things, on practices of the Public Council of International Experts.

Criteria 1: Independence

Indicators Evidencing Noncompliance with this Criterion

1.1 A judge or a judicial candidate is affiliate with political forces and such affiliation influences his/her career and/or activities in the judge capacity (for example, making decisions in favor of political forces or persons affiliated with such forces, non-public relations which may influence the process of making decisions on career matters, say, a political force lobbies appointment or transfer of a judge etc.). A judge violated the political neutrality principle otherwise.

1.2 While holding the position, a judge received state decorations or any other decorations, awards, merit certificates (except for awards for individual courage and heroism under conditions posing a risk to his/her life).

1.3 A judge or a judicial candidate publicly supported actions violating the rule of law principles or fundamental human rights.

1.4 A judge made unlawful decisions under influence (intervention).

1.5 A judge (or a judicial candidate, members of the judge/candidate's family, next of kin) showed behavior evidencing support of other countries' aggression against Ukraine, collaboration with such countries' representatives, occupational administration or their accomplices (for example, he/she visited the Russian Federation or temporarily occupied territories after beginning of the armed aggression without an urgent need).

However, travels to the Russian Federation, Autonomous Republic of Crimea or another occupied territory because of an urgent need to visit close relatives or resolve property-related issues per se do not constitute a failure to comply with this criterion.

1.6 A judge or a judicial candidate used kinship, friendship, or other informal relations for the purposes of advancing his/her career or receiving illegitimate preferences.

1.7 Actions or omission of a judge or a judicial candidate led to the distribution of cases in a court that violated of the randomness principle in the process of using the automated system, OR a judge intervened in the automated distribution of cases otherwise.

1.8 Actions (omission) or decision of a judge were motivated by political considerations, corporate loyalty or were carried out / made by means of manipulations with circumstances of legislation OR the judge had a personal interest in making (not making) a certain decision.

1.9 A judge or a judicial candidate used administrative, organizational, managerial or other powers to exert pressure (influence) on another judge for the purpose of making a certain decision or in response to the judge's rejection to take such actions (direct instructions, pressure by administrative means, creation of a corresponding environment etc.). OR a judge inclined another judge for wrongdoing or assisted the latter with such wrongdoing.

1.10. In the past, a judge or a judicial candidate showed behavior evidencing insufficient independence and inability to resist the influence.

Criteria 2: Impartiality

Indicators Evidencing Noncompliance with this Criterion

2.1 A judge made a decision in favor of a specific person when the judge otherwise would not, or took actions intended to secure participation, ungrounded complications, or delays in adjudication to the case. For example, the judge:

- Took part in intervening with the automated case distribution system (considered cases assigned to his/her with violations of which he/she should reasonably be aware; intervened in the case distribution process or instructed other individuals to intervene; was the only one to adjudicate cases concerning one individual when there was a possibility that the automated system would select another judge);
- Adjudicated a case in which the court composition was unlawful, and he/she could not have been unaware of this;
- Avoided adjudication of a case on the pretext of being on vacation or sick leave or abused the right of self-recusal (for example, considered one case while having a ground for self-recusal but avoided considering another similar case by disqualifying him/herself on the same ground).

2.2 A judge made comments concerning outcomes of the case in favor of one of the parties while the court proceedings were not over (unless this was a component of the dispute settlement process involving the judge).

2.3 In the past, a judge or a judicial candidate demonstrated other behavior patterns evidencing insufficient impartiality.

Criteria 3: Honesty and Incorruptibility

Indicators Evidencing Noncompliance with this Criterion

3.1 A judge or a judicial candidate reported unveracious (*inter alia*, incomplete) information in his/her integrity declaration purposely or because of neglect. For example, a judge

concealed information on wrongdoing, manifestations of improper behavior, intervention in judge's activities, etc.

3.2 A judge or a judicial candidate reported untruthful (*inter alia*, incomplete) information in his/her kinship declaration purposely or because of neglect. For example, a judge concealed information on kinship relations of his/her family member, a close relative or an individual with regard to whom there was a conflict of interest, or an individual who made dubious gifts or who received considerable incomes of dubious origin during his/her engagement with the declarant, or who has property relations with the declarant, or who has mutual commitments with the declarant.

3.3 A judge or a judicial candidate failed to report the existence of a conflict of interest and (or) failed to take measures to prevent it.

3.4 A judge failed to report intervention in his/her professional activities in the adjudication of justice.

3.5 A judge or a judicial candidate reported untruthful information in the processes of competitive selection or qualifications evaluation to receive positive results for evaluation on the professional ethics or integrity criteria or as part of other legal procedures relating to his/her professional activities or career.

3.6 A judge set limitations on exercising the right to peaceful assembly voluntarily, thus precluding people from exercising the freedom of peaceful assembly regardless of the number of people, choice of time, or place.

3.7 A judge took part in making a court decision or adjudication of a case that led to the second defeat of Ukraine in the European Court of Human Rights.

3.8 A judge or a judicial candidate engaged in making a decision which damaged the cultural heritage or posed a substantial risk of inflicting such damage.

3.9 A Judge's behavior led to serious violation of the rules of process and (or) violation of fundamental rights and liberties (this may be evidenced by the decisions of the European Court of Human Rights, decisions of higher instance courts, special court rulings, disciplining, obvious nature of violations). For example:

- Judge's actions led to a situation where the accused is transferred between a mental health facility and pre-trial detention center multiple times whereas his/her case is not decided on merits for a long time;
- When exercising judicial restraint, the judge did not react to signs of beating of an individual with regard to whom this issue is addressed;
- When adjudicating the case, the judge ignored facts evidencing obvious falsification of documents of other pieces of evidence;
- The judge violated the jurisdiction when making a decision;
- The judge substantially and groundlessly deviated from his/her own earlier case law, and such deviation led to making an unlawful decision;
- The judge made unlawful decisions while information on the influence on his/her was available;
- The duration of adjudication of a case stands out from the normal timeframe. Among other things, this evidences that the judge uses a special dubious approach to the case.
- A decision is absolutely groundless. It contains conclusions defying established circumstances, forged facts, obvious distortion of the content of a law provision, legal position of the Supreme Court, ECHR case law etc.;

- The judge made a decision while there was an obvious conflict of interests;
- The judge made a decision while litigants' access to the process or litigants' right to provide essential evidence and participate in examination thereof was denied. Thus, placing substantial limitations on the parties with regard to exercising their procedural rights.

3.10 A judge's or a judicial candidate's actions (omission) led to avoidance of lustration (refers to the purging of government officials) of his/her or another individual. For example, the judge/judicial candidate:

- Made it possible that certificates were issued on absence of grounds for applying the Law "On Government Cleansing" whereas such information was obviously untruthful;
- Failed to take measures to enter decisions which serve a basis for cleansing in the Unified State Register of Court Decisions;
- Specified untruthful information on non-application of prohibitions envisaged by the Law of Ukraine "On Government Cleansing" to him/her.

3.11 A judge or a judicial candidate used dubious ways to acquire ownership of property, establish certain legal facts, evade taxes etc.

3.12 A judge or a judicial candidate made or issued court decisions or copies thereof without actual consideration of a case or issue as required by law.

3.13 A judge or a judicial candidate either engaged or is engaged in the abuse of procedural powers or rights regardless whether such abuse is established by court.

3.14 A judge or a judicial candidate refused to explain or avoid answering in order to refute information that concerns his/her, is of a great public interest, and greatly affects the image of the judicial system or carried out other actions which negatively affect the image of the judicial system or failed to take efforts to eliminate negative consequences of such actions.

Criteria 4: Adherence to Ethical Standards

Indicators Evidencing Noncompliance with this Criterion

4.1 A judge or a judicial candidate violates the rules of ethics in professional conduct if he or she inhibits the legal rights of another or exerts an unjustified pressure on them, infringes journalist rights, affords unethical communications with journalists, fails to perform and improperly performs his/her parental/family commitments, *inter alia*, attempts to reduce the scope thereof through legal action by means of an imaginary claim, commits serious violations of traffic regulations, uses a court letterhead for private correspondence, or disseminates knowingly untruthful information etc.

4.2 A judge or a judicial candidate committed a corruption or corruption-related offense.

4.3 A judge or a judicial candidate engaged in regular communications with members of a criminal/terrorist organization, representatives of the occupational administration of the Russian Federation beyond the scope of his/her professional activities.

4.4 A judge or a judicial candidate violated principles of academic integrity, for example, used results of someone else's academic or creative activities on his/her own behalf.

4.5 A judge or a judicial candidate used his/her status to satisfy his/her or other individuals' interests or his/her actions or omission let other individuals to benefit from his/her status unlawfully.

4.6 A judge or a judicial candidate failed to declare either their own or his/her family members' liquid assets, income or substantially understated the value of such assets or groundlessly failed to provide information needed to file a family member's declaration.

4.7 A judge or a judicial candidate allowed groundless and substantial discrepancies in data contained in the declaration of assets filed.

4.8 A judge or a judicial candidate failed to take sufficient measures to establish the wealth status of individuals concerning whom he/she must file a declaration of a person authorized to perform state or local government functions, thus, leading to reporting untruthful (inter alia, incomplete) information.

4.9 A judge or a judicial candidate failed to explain sources of origin of liquid assets, expenses, benefits received (by him/her, his/her family members or close relatives) to a point where a reasonable observer could have doubts as to whether his/her official income is sufficient to acquire such assets, afford such expenses, receive such benefits.

4.10 A judge or a judicial candidate or an individual affiliated with him/her received property, income or benefits the origin of which is dubious in a reasonable observer's opinion (a large interest-free loan against lender's interests, receiving a liquid asset as a gift or acquiring it with a generous discount or using such asset for free, receiving a liquid asset from its owner who cannot confirm the legality of its origin, understating the value of such asset etc.).

4.11 A judge or a judicial candidate received government-assigned housing as a result of an abuse or privatized such housing by following ways: artificially increased a number of family members registered in it; registered his/herself in a dormitory while having own housing; transferred ownership of own housing to relatives; received one/two more apartments in the same way; received an apartment, privatized it and sold it straight away; received a government-assigned apartment and took actions to privatize it, specifically, took it out of the government-assigned category.

4.12 A judge or a judicial candidate violated compatibility requirements, for instance, failed to transfer his interest in a company.

4.13 A judge or a judicial candidate failed to react to instances of unethical behavior done by his/her colleagues which were known to his/her, covered such behavior or unlawful activities of judges, court staff, attorneys, staff of law enforcement agencies which were known to him/her, thus, neglecting the responsibility for not only his/her own behavior but also for the justice system on the whole.

Criteria 5: Equality

Indicators Evidencing Noncompliance with this Criterion

5.1 A judge gave groundless procedural preferences to a party or practiced discrimination towards a participant in a proceeding.

Criteria 6: Diligence

Indicators Evidencing Noncompliance with this Criterion

6.1 A judge, or a judicial candidate, practiced obviously negligible execution of documents. This includes but is not limited to decisions, rulings or other documents associated with his/her professional activities; document filed for the purpose of participation in competitive selection or evaluation etc.

6.2 A judge ignored the case law of the European Court of Human Rights, for example, in order to limit the right to peaceful assembly, applied the soviet decree concerning the regulation on conducting peaceful assemblies after the ECHR Judgement in case "Vyerentsov vs. Ukraine" had acquired the status of being final.

6.3 A judge, or a judicial candidate, practiced bureaucratic delays with court proceedings; as a result, reasonable deadlines were missed to the benefit of a litigant. For example, the judge took actions which made implementation of a decision impossible or enabled someone to escape liability.

6.4 A judge violated the publicity and openness principle. An example of this would be by prohibiting the use of audio records at an open court session or – after March 28, 2015 – video records by mobile gadgets. While acting in the capacity of public information manager, a judge, or judicial candidate, hampered access to public information.

6.5 While being away from his/her workplace either while staying overseas, participating in a training program, or staying on a temporarily occupied territory etc., a judge or a judicial candidate approved court decisions.

6.6 A judge, on a regular basis, willfully executed court decisions or transferred them for publication in an untimely manner if these particular cases concerned decisions in Maidan cases, high-profile cases or cases where making the decision public was disadvantageous to the judge or other individuals.

Principles of Applying the Integrity and Professional Ethics Criteria and Relevant Indicators

1. The Public Integrity Council's task is to establish the existence of grounded doubts in integrity and professional ethics of individuals undergoing the qualifications evaluation.
2. The general threshold of doubts in the compliance of a judicial candidate should be a standard of sufficient ground to believe that the judicial candidate may not meet the integrity / professional ethics criteria. Such "sufficient grounds" may exist not only if there are verified facts evidencing noncompliance with the integrity or professional ethics criteria but also when a prudent observer perceives the judicial candidate as incompliant with these criteria due to certain circumstances that negatively affects the trust in the judiciary.
3. The council should have a grounded doubt that is clearly established and that cannot be refuted by an individual or other source. This may be sufficient for the Public Integrity Council to approve its opinion or uphold it.
4. For the purpose of evaluation by the integrity and professional ethics criteria, the Public Integrity Council shall analyze information on an individual undergoing the qualifications evaluation, his/her family members and other affiliated persons.
5. Compliance with the criteria shall be evaluated based on information which is not subject to any time or territorial limitations. Opinions of other agencies, opinion or evaluation of any

national or international authority may be deemed feasible but shall not be determinative for the Public Integrity Council.