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ETHICS COUNCIL

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Kyiv

DECISION

No. 18

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Olena Oleksandrivna Hovorukha
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 Olena Oleksandrivna Hovorukha 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 Olena Oleksandrivna Hovorukha for participation in the competition for the position of the member of the High Council of Justice nominated by the President of Ukraine and admitted her to the interview with Decision No. 3 of 20.01.2023.

O.O. Hovorukha practices law as a sole proprietor, and from August 2021 to January 2023, she was holding the position of Head of the Legal Department at Nova Poshta Limited Liability Company.

Having studied documents provided by Olena Oleksandrivna Hovorukha for participating in the competition, her 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/her, the Ethics Council has reached the following conclusions.

1. Regarding the violation of the rules of professional ethics in the privatization of real property

From 2001 to 2010, O.O. Hovorukha had been living in Zaporizhzhia and held various positions in the Zaporizhzhia Regional Prosecutor's Office. According to the information from O.O. Hovorukha's personal profile, in 2003 she had received for free an apartment of 49,3 sq. m. in Zaporizhzhia as a prosecutor in need of improvement of living conditions. In 2002, O.O. Hovorukha was issued a warrant to move into the said apartment, and on January 21.01.2003, she received a certificate of title by virtue of privatization.

Since 2010, O.O. Hovorukha has been working and living in Kyiv. From 01.06.2013 to 01.04.2015, she had been holding the position of a prosecutor at the Kyiv City Prosecutor's Office and until 2015 had been living in an apartment in Kyiv under a rental agreement. According to the candidate's explanations, no one lived in the apartment in Zaporizhzhia from 2010 to 2015.

According to the assets declaration for 2021, since 25.09.2015, the candidate, her husband, son, daughter and husband's mother have been owning an apartment of 106.2 sq. m. in Kyiv on the right of tenancy in common. As the candidate reported, according to the State Property Fund, the estimated value of the apartment as of 2023 amounts to 6 118 044 UAH.

The candidate explained in her written responses that the candidate and the said family members acquired ownership of the apartment in equal shares pursuant to the Certificate of Title to the apartment issued on 25.09.2015 by the Department of Privatization of the State Housing Fund of the Housing and Communal Services Department of the Shevchenkivskyi District State Administration in Kyiv. As noted by O.O. Hovorukha during the interview, over the period from 2010 to 2014, the candidate had been on the housing waiting list as an employee of the Kyiv City Prosecutor's Office in need of improvement of housing conditions. Subsequently, on 25.12.2014, O.O. Hovorukha was issued a

warrant to move into the said apartment in Kyiv, despite the fact that she still owned an apartment in Zaporizhzhia, which she had previously privatized as a service apartment as an employee of the prosecutions.

According to the candidate's personal data, on 01.04.2015, she resigned from the Kyiv City Prosecutor's Office on 20.03.2015 due to a personal application and with a pension for the years of service. A month and a half after she resigned, on 13.05.2015, the candidate sold her previously privatized apartment in Zaporizhzhia, and on 25.09.2015, through privatization, she became the owner of a 106,2 sq. m. apartment in Kyiv.

In accordance with Article 5 (5) of the Law of Ukraine "On Privatization of the State Housing Fund" as of 30.09.2011 No. 2482-XII, every citizen of Ukraine is entitled to privatize the housing if the person occupies it free of charge within the nominal value of the housing voucher or with a partial payment.

In accordance with cl. 1.3 of the Methodology, one of the indicators for professional ethics and integrity is compliance with ethics norms and impeccable behavior in professional activities and personal life.

In accordance with cl. 1.3.6 of the Methodology, a candidate must comply with ethical norms and demonstration of impeccable behavior in professional activities and personal life shall mean persistent compliance of the person with professional ethical and generally acknowledged moral norms both in professional activities and beyond them, which forms trust of the society in such person.

Therefore, the candidate, contrary to the provisions of the Law of Ukraine "On Privatization of the State Housing Fund," exercised the right to improve her living conditions twice and privatized two real properties at once. Besides, she spent the proceeds from the sale of the property in Zaporizhzhia not on the purchase of the apartment in Kyiv but on construction and repair work in the privatized apartment in Kyiv.

Consequently, the Ethics Council has reasonable doubts about the candidate's compliance with such an indicator for the criteria of professional ethics and integrity as compliance with impeccable behavior in professional activities and personal life (cl. 1.3.4 of the Methodology).

2. Regarding full and accurate information in assets declarations

2.1 Regarding not declaring mother-in-law as a member of the candidate's family

According to the assets declaration as of 2015 and 2021, the candidate, her husband, son, daughter, and mother-in-law have been owning an apartment of 106,2 sq. m. in Kyiv, previously privatized by the candidate. The apartment is owned in equal shares on the right of tenancy in common. As noted by O.O. Hovorukha during the interview, N.P. Hovorukha, the candidate's mother-in-law, who is a co-owner of the mentioned apartment, also lives there.

However, the candidate failed to mention her mother-in-law in para. 4 "Family Members of the Declarant" of Section I "General Information" of her assets declarations for 2015 and 2021.

According to Article 1 of the Law of Ukraine "On Prevention of Corruption", family members of the declarant are, in particular, any persons who, as of the last day of the reporting period or in aggregate for at least 183 days during the year preceding the year of filing the declaration, cohabited, had mutual rights and obligations with the declaring entity (except for persons whose mutual rights and obligations are not of a family nature), including persons who cohabited with the declarant but were not married.

According to cl. 1.3.7.6 of the Methodology, the 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.

According to cl. 1.3.4.1 Methodology, a candidate fails to comply with the indicators of diligence, in particular, in cases when there are reasonable doubts that such a candidate while holding a position has acted in line with requirements of the legislation, and professional ethical rules.

Given that the candidate contrary to the requirements of the legislation failed to provide information about her mother-in-law in para 4 "Family Members of the Declarant" of Section I "General Information" of the assets declarations for 2015 and 2021, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the criteria of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of financial control to provide full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

2.2 Regarding failure to declare the right to use real property in Kyiv

According to the O. O. Hovorukha's personal file, in the period from 2010 to 2015, she had the right to use a three-room apartment in Kyiv under a rent agreement.

However, the candidate failed to provide this information about the right to use the apartment in Kyiv in Section III "Information on Real Property" of the asset declarations for 2013-2015.

In accordance with the cl. 2 of Article 46(1) of the Law of Ukraine "On Prevention of Corruption", the declaration must contain information on real property owned by the declarant and their family members as private property, including joint ownership, or leased or otherwise used by them, regardless of the form of the transaction that resulted in the acquisition of such a right.

In accordance with the cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the

anti-corruption legislation, including the provision of full and accurate information in assets declarations.

Given that the candidate failed to indicate the right to use an apartment in Kyiv in section III "Information on Real Property" of the assets declarations for 2013-2015, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the criteria of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of financial control to provide full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

2.3. Regarding not declaring the right to use a vehicle

According to the declaration for 2021, on 23.02.2018, the husband of O. O. Hovorukha acquired ownership of a 2017 Ravon R2. In response to a written request of the Ethics Council, the candidate stated that she also sometimes used the said vehicle.

However, having studied the information provided by O. O. Hovorukha in her declaration for 2021, the EC established that the candidate did not indicate information about the right to use the 2017 Ravon R2.

In accordance with the cl. 68 of the NACP Clarifications "On the Application of Certain Provisions of the Law of Ukraine "On Prevention of Corruption" Regarding Measures of Financial Control" of 29.12.2021, provided that the vehicle is owned by the declarant and simultaneously used by a member of his/her family, the rights of each person to such a vehicle (ownership, other rights of use) are indicated in the Sub-section "Rights to the said Property" of the declaration form. The same information is indicated if a vehicle is owned by a member of the declarant's family and the declarant uses it.

In accordance with the cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the

anti-corruption legislation, including the provision of full and accurate information in assets declarations.

In accordance with the cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicators of diligence, in particular, in cases when there are reasonable doubts that such a candidate while holding a position has acted in line with requirements of the legislation, and professional ethical rules.

Given that the candidate failed to indicate information about the right to use a vehicle in the declaration for 2021, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the criteria of professional ethics and integrity as diligence (Clause 1.3.4 of the Methodology) and compliance with the requirements of financial control to provide full and accurate information in assets declarations (1.3.7.6 of the Methodology).

2.4. Regarding failure to declare information on the beneficial owner and corporate rights of the candidate's husband

According to information from the Unified Register of Legal Entities, Individual Entrepreneurs and Public Organizations, the candidate's husband is the ultimate beneficial owner of Rei Brovary LLC and has corporate rights in the said LLC. In addition, the candidate's husband is one of the ultimate beneficial owners of the enterprise "Hrebinkivskyi Enterprise for Communal Services".

However, in her 2021 declaration, the candidate failed to disclose that her husband had corporate rights in Rei Brovary LLC and was the ultimate beneficial owner of Rei Brovary LLC and Hrebinkivskyi Enterprise for Communal Services in Section 8 "Corporate Rights" and Section 9 "Legal Entities, Trusts or other Similar Legal Entities, the Ultimate Beneficial Owner (Controller) of which is the Declarant or their Family Members" of the 2021 asset declaration.

In accordance with cl. 126 of the NAPC Clarifications "On the Application of Certain Provisions of the Law of Ukraine "On Prevention of Corruption"

Regarding Measures of Financial Control" of 29.12.2021, the declaration shall indicate legal entities whose ultimate beneficial owner (controller) is the declarant or their family members.

In accordance with the para. 122 of the aforementioned NAPC Clarifications, the declaration shall indicate all corporate rights owned by the declarant and/or a member of his/her family as of the last day of the reporting period, except when information on securities certifying corporate rights has already been indicated in Section 7 "Securities" of the declaration (e.g., shares).

In accordance with the cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the anti-corruption legislation, including the provision of full and accurate information in assets declarations.

In accordance with the cl. 1.3.4.1 Methodology, a candidate fails to comply with the indicators of diligence, in particular, in the case when there are reasonable doubts that such a candidate while holding a position has acted in line with requirements of the legislation, and professional ethical rules.

Given that the candidate failed to disclose information about her husband's corporate rights in Rei Brovary LLC and the status of the ultimate beneficiary in Rei Brovary LLC and Hrebinkivskyi Enterprise for Communal Services in the 2021 declaration, the Ethics Council has reasonable doubts about the candidate's compliance with such indicators of the criteria of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of financial control to provide full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

3. Regarding the negative reference in the result of the candidate's internship

According to the candidate's personal file, O. O. Hovorukha started working in the prosecutor's office on 20.07.1999. From 05.07.2005 to 28.03.2006, the candidate was undergoing an internship under the mentorship of the Deputy Prosecutor of the Zavodskyi district of Zaporizhzhia.

According to the certificate (reference) of this internship of 28.03.2006 from the candidate's profile, during the internship for the position of the deputy prosecutor of the Zavodskyi district of Zaporizhzhia, O. O. Hovorukha received a negative reference from Danylchuk M.V., the Deputy Prosecutor of the Zaporizhzhya region who was mentoring her.

Danylchuk M.V. described her as the person “who may allow the unprincipled response to obvious violations of the current legislation by employees of the Zavodskyi District Department of the Ministry of Internal Affairs of Ukraine in the region”. Besides, according to the reference, the candidate “did not fully ensure the timely detection and recording of crimes and was not diligent enough with the qualification of the crimes on the stage of the registration of the criminal records”.

In view of the above, the Deputy Prosecutor of Zaporizhzhia region described O.O. Hovorukha as insufficiently trained to perform her duties in the specified area of prosecutorial supervision, and therefore the state of the law in the Zavodskyi District Police Department of the Ministry of Internal Affairs of Ukraine in the region during the inquiry, and pre-trial investigation does not fully meet the current requirements.

In accordance to the cl. 1.3.4. of the Methodology, one of the indicators of the criterion of professional ethics and integrity is diligence which is a diligent, thorough and responsible performance of one's duties, which indicates the integrity of a person's professional activity.

In accordance with the cl. 1.3.4.1 Methodology, a candidate fails to comply with the indicators of diligence, in particular, in case when there are reasonable doubts that such candidate while holding a position has acted in line with requirements of the legislation, professional ethical rules.

Having analyzed the documents from the candidate's profile, and having studied the candidate's answers, the Ethics Council has reasonable doubts about the candidate's professional ethics and integrity as a Deputy Prosecutor of the Zavodskyi District of Zaporizhzhia and her compliance with such an indicator of professional ethics and integrity as diligence (cl. 1.3.4 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 Olena Oleksandrivna Hovorukha 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