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ETHICS COUNCIL

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DECISION

No. 4

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Ruslan Oleksandrovykh Romanov
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: Yurii Triasun, Volodymyr Siverin, Robert Cordy, Lavly Perling, remotely by videoconference, having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Ruslan Oleksandrovykh Romanov 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:

In accordance with Part 14 of Article 9¹ of the Law of Ukraine "On the High Council of Justice", the Ethics Council selects candidates for the positions of a member of the High Council of Justice in two stages:

1) selection of candidates based on the results of consideration of documents submitted by candidates, the results of a special check and relevant information from open sources and the formation of a list of candidates admitted to the interview;

2) interviewing the selected candidates and determining the list of candidates for recommendation to the bodies electing (appointing) members of the High Council of Justice.

With the Ethics Council's Decision No. 46 of 16.11.2022, Ruslan Oleksandrovysh Romanov was admitted to the interview for the position of the member of the High Council of Justice nominated by the All-Ukrainian Conference of Prosecutors.

Since January of 2021 Ruslan Oleksandrovysh Romanov has held the position of the prosecutor of the legal aid unit of the legal aid division of the International and Legal Cooperation Department of the Office of the Prosecutor General.

Having studied the documents provided by Ruslan Oleksandrovysh Romanov upon the request of the Ethics Council, his written explanations, information received from open sources and from public organizations, information received from the National Agency for Corruption Prevention ("NACP") and the National Anti-Corruption Bureau of Ukraine ("NABU"), having interviewed him, the Ethics Council has established the following.

1. With respect to the situation when the candidate was concurrently under the two oaths

Indicators of the criteria of professional ethics and integrity include independence, honesty, impartiality, integrity, diligence, compliance with ethical standards, and impeccable behavior in professional and personal life, as well as the absence of doubts about the legality of the sources of assets, the compliance of the candidate's or his family members' standard of living with the declared income, and the compliance of the candidate's lifestyle with their status. According to cl. 1.3.6 of the Methodology, compliance 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. According to cl. 1.3.6.1 of the Methodology, a candidate fails to comply with the indicator of compliance with ethical norms in case there are reasonable doubts that such candidate in the present or any past professional capacity has acted in line with the rules of professional ethics and other ethical norms.

1.1. In the course of the assessment of the candidate, the Ethics Council has established that Ruslan Oleksandrovykh Romanov works for the prosecutor's office since 2006

According to the materials available to the Ethics Council and the Unified Register of Attorneys of Ukraine (“the Register”), on 20.08.2019 Ruslan Oleksandrovykh Romanov, while working for the prosecutor's office, received the right to legal practice (the issuing authority is the Bar Council of Zaporizhzhia region). According to the Register, the right to legal practice on the basis of the petition was suspended in accordance with para. 1 of Article 31(1) of the Law of Ukraine “On the Bar and Legal practice” on the day it was received - 20.08.2019.

Under Part 1 of Article 6 of the Law of Ukraine “On the Bar and Legal practice” (“Law”), a person who, among other things, has taken the oath of an attorney and obtained a certificate of the right to legal practice may become an attorney. Pursuant to Article 12 of the Law, a person who has taken the oath of an attorney shall be issued a certificate of the right to legal practice and a Certificate of the Ukrainian Attorney on the day of taking the oath.

Having received a certificate of the right to legal practice in August of 2019, Ruslan Oleksandrovykh Romanov took the oath of an attorney, concurrently falling under the two oaths – the one of a prosecutor and the one of an attorney.

Based on the systematic analysis of the case law of the Supreme Court, it can be reasonably concluded that it is impossible to be under two oaths at the same time, as this directly violates both the independence of the prosecutor and the principles of the legal practice, in particular the independence and confidentiality. In its decisions, the Grand Chamber of the Supreme Court noted that by taking the oath of a prosecutor, a person consciously accepts all the restrictions imposed on him or her by a special law, including the prohibition of combining the office of a prosecutor with the legal practice and being under two oaths does not look legitimate and contradicts the purpose of anti-corruption legislation (Resolutions of the Supreme Court in cases No. 822/1309/17 and No. 826/9606/17).

The requirements for incompatibility of work in the prosecution office with other types of activity are stipulated in Article 18 of the Law of Ukraine “On the Prosecution Office”. According to this article, holding the position of a prosecutor is incompatible with holding a position in any state authority, other state body, local self-government body, and with a representative mandate in state elected positions. The prosecutor is subject to restrictions on concurrent employment and combining it with other activities as defined by the Law of Ukraine “On Principles of Prevention and Fight Against Corruption”. Therefore, a person holding the position of a prosecutor may not practice law or perform other paid work (para. 1 of Article 25(1) of the Law of Ukraine “On Prevention of Corruption”).

Paragraphs 15-17 of Conclusion No. 13 (2018) of the Consultative Council of European Prosecutors on the independence, accountability, and ethics of prosecutors state that “independence” means that prosecutors should not be subject to unlawful interference in the performance of their duties to ensure full respect for and application of the law and the rule of law and that they should also be free from any political pressure or undue influence of any kind.

Independence applies to the prosecution office as a whole, to its individual bodies, and to individual prosecutors. Prosecutors should exercise their freedom of expression and assembly in a manner that does not interfere with their powers and does not affect or impair the independence or impartiality of the judiciary or the prosecution office.

Paragraph 31 of the Conclusion No. 13 (2018) of the Consultative Council of European Prosecutors states that prosecutors should be independent in their status and conduct. They should enjoy external independence, i.e. with regard to undue or unlawful interference by other state or non-state bodies, such as political parties.

Prosecutors must be and appear to be impartial in their decisions, be transparent, avoid conflicts of interest or improper influence, and not favor any party through any relationship with it. If there is a risk that the prosecutor may not be able to distance himself or herself from the person concerned, he or she should abstain from the case (Paragraph 54 of the afore mentioned Conclusion).

Moreover, when applying for the right to legal practice, the prosecutor enters into non-procedural relations with the Bar Council and the legal community. Access to the profession of attorney requires fulfillment of the requirements established by law (Article 6 of the Law of Ukraine “On the Bar and Legal practice”) for persons who wish to become an attorney. Among them, in particular, is the requirement to complete an internship. Obviously, in this case, the prosecutor is in a relationship of subordination with the supervisor of the internship, who is an attorney. The same is true when organizing and conducting the qualification examination conducted by the qualification chamber of the qualification and disciplinary commission of the Bar. Such legal relations between the attorney and the prosecutor go beyond the permissible scope of relations between the prosecutor's and the attorney's communities.

The above stated shows that the intention to pass the qualification examination, internship, and obtaining a certificate of the right to legal practice while holding the position of a prosecutor is a deliberately illegitimate intention since it predictably leads to the emergence of incompatibility circumstances. Moreover, the status of an attorney (defense counsel) for a person who is a prosecutor and supports the public prosecution in court calls into question his or her independence, impartiality, and impartiality.

Therefore, one may not be concurrently under the two oaths, since their texts contradict each other and directly violate both the independence of the prosecutor and the principles of the legal practice – independence and confidentiality.

Therefore, the Ethics Council believes that under the above circumstances, there is a reasonable doubt as to the compliance of the actions of the candidate Ruslan Oleksandrovykh Romanov, who, while holding the position of a prosecutor, received the right to legal practice, with the rules of professional ethics (cl. 1.3.6.1 of the Methodology).

1.2. According to cl. 1.3.2. of the Methodology, honesty shall mean presence of high moral qualities, truthfulness in professional activities and in everyday life.

According to cl. 10.2 of the “Regulations on the organization and procedure for internship for obtaining a certificate of the right to legal practice” (hereinafter referred to as the Regulations), following the six-month internship period, the intern shall draw up a report on the results of the internship, and the internship supervisor – a report on the evaluation of the internship.

According to cl. 1.6. of the Regulations, the internship is carried out within six months and is calculated by the total accounting of the intern's working time for the implementation of the program and the internship plan. In total, the intern's working time for the entire internship period shall be at least 550 (five hundred and fifty) hours, of which at least 50 (fifty) hours shall be spent on the legal practice.

During the internship, the intern performs tasks within the framework of an individual plan for obtaining a certificate of the right to legal practice, makes appropriate notes on the degree of its fulfillment in his or her copy of the plan, and keeps an internship logbook, where he or she consistently and in detail records the progress of fulfillment of the plan.

In response to the request of the Ethics Council regarding the specialization of the supervisor of the internship – attorney I.V. Suprun-Halchanska, candidate Ruslan Oleksandrovykh Romanov stated that until the Ethics Council sent him a request, he was not interested in the specialization of the attorney and only when responding to the request of the Ethics Council he found out that during the internship the attorney specialized in criminal proceedings. Moreover, Ruslan Oleksandrovykh Romanov reported that during the internship he was present in the courtroom as an audience member only a few times. During the interview the candidate pointed out that immediate work with his internship supervisor amounted to about 8 hours out of 550 mandatory hours of the internship.

Therefore, the Ethics Council has reasonable doubts whether Ruslan Oleksandrovykh Romanov completed all the tasks for obtaining a certificate of the right to legal practice, given that he was not even aware of the specialization of the supervisor of was present in the courtroom during the hearings for gaining the practical skills only a few times during the whole time of the internship, which raises doubts about his honesty.

The Ethics Council believes that under the circumstances, there is a reasonable doubt that the actions of candidate Ruslan Oleksandrovykh Romanov as such who holds the position of a prosecutor comply with the rules of professional ethics, such as honesty, diligence (cl. 1.3.2., 1.3.4. of the Methodology).

The Ethics Council notes that such actions of candidate Ruslan Oleksandrovykh Romanov are evaluated by the Council solely in terms of their compliance with the Methodology and have no res judicata effect on other issues.

2. Regarding inaccurate and incomplete information in the candidate's assets declarations.

According to cl. 1.3.7.6 of the Methodology, the candidate must comply with the financial control requirements set forth in the anti-corruption legislation, in particular, with regard to providing complete and accurate information in the asset's declarations.

According to the clarifications of NACP, the declarant must indicate information about all real property owned by the declarant and their family members on the basis of private ownership or other rights of use.

2.1. As seen from Section 3 "Real Estate" of the asset's declarations of Ruslan Oleksandrovykh Romanov for 2015 – 2020, the candidate failed to indicate his right to use real property in Zaporizhzhia which, according to Section 2.1 "Information about the Person Submitting the Declaration" of the declaration, is his registered place of residence.

As explained by the candidate at the request of the Ethics Council, since 2013, following his transfer to the Prosecutor General's Office of Ukraine and moving to Kyiv, he has not used a room in a dormitory in Zaporizhzhia and therefore believes that information about this dormitory should not be indicated in Section 3 "Real Estate" of the Declaration for 2015 – 2020.

However, such explanations of the candidate contradict to the requirements of the Law of Ukraine "On the Freedom of Movement and Free Choice of the Place of Residence in Ukraine" which were valid as of the moment of submission of the above mentioned declarations. Hence, Article 6 of this Law sets out that for registration a person shall submit to the registration body, in particular, documents which confirm the right to reside in the accommodation, address of which is specified during registration. Thus, in connection with the registration of the place of residence there emerges the right to use a real estate object by the person submitting the declaration and his/her family members. Therefore, information about real estate objects which are the registered place of residence of the person submitting the declaration or his/her family members shall be specified in Section 3

“Real Estate Objects” of the declaration even if the person does not actually reside there.

Therefore, information about real estate properties that are the registered place of residence of the declarant, or their family members must be indicated in Section 3 "Real Estate" of the declaration, even if the person does not actually live there.

2.2. On 01.06.2014, Ruslan Oleksandrovysh Romanov acquired the right to use a room in the dormitory of the Taras Shevchenko National University of Kyiv. The candidate indicates this dormitory as his actual place of residence in his declaration, and declares the right to use it. However, in his assets declarations, he does not declare the right to use it by his family members: his wife and child. As explained by the candidate at the request of the Ethics Council, in 2014 he did indeed acquire the right to use a room in the dormitory of the Taras Shevchenko National University of Kyiv in Kyiv, where he lives with his family. He mistakenly failed to provide information on the right of family members to use a dormitory room in the section "Real Estate".

In view of the above, the Ethics Council believes that candidate Ruslan Oleksandrovysh Romanov was negligent in complying with the financial control requirements set forth by anti-corruption legislation, which raises reasonable doubts about his compliance with such indicators of the criterion of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology) and compliance with the requirements of financial control with respect to the timely provision of full and accurate information in assets declarations (cl. 1.3.7.6 of the Methodology).

Thus, being governed by Rules 2.3, 3.1, 3.15.1, 3.2 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 Ruslan Oleksandrovysh Romanov 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