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ETHICS COUNCIL

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Kyiv

DECISION

No. 5

*On non-compliance of candidate
for the position of the member of the High Council of Justice
Nataliia Vasylivna Dul'ska
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 Nataliia Vasylivna Dul'ska 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.

The Ethics Council received copies of documents of Nataliia Vasylivna Dul'ska for participation in the competition for the position of a member of the High Council of Justice nominated by the All-Ukrainian Conference of Prosecutors and by the decision of the Ethics Council No. 46 of 16.11.2022, she was admitted to the interview for the position of the member of the High Council of Justice.

Having studied the documents provided by Nataliia Vasylivna Dul'ska at the request of the Ethics Council, her written explanations, information received from open sources and from public organizations, information received from the National Agency for the Prevention of Corruption (hereinafter – NACP), the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU), having interviewed her, the Ethics Council established the following.

On 16.06.2022 Nataliia Vasylivna Dul'ska was appointed to the position of prosecutor of the Public Prosecution and Procedural Guidance of Pre-trial Investigation of Criminal Offenses in the Sphere of Laundering of the Proceeds of Crime, Department of Organization and Procedural Guidance of Pre-trial Investigation of Criminal Offenses that Affect the Functioning of the State Economy and Cybersecurity of the Prosecutor General's Office.

Having analyzed the candidate's asset declarations and cross-checked them along with other available documents, the Ethics Council found a number of cases where the candidate has provided incomplete or inaccurate information in her declarations.

1.1. According to the Unified Register of Powers of Attorney, the candidate's husband, Vadym Yuriiovych Dul'skyi, on the basis of powers of attorney No. 28800972 dated September 20.09.2009, and No. 38604645 dated 30.10.2012, issued by Vsevolod Volodymyrovych Krasikov, acquired the right to use a 2017 Toyota Land Cruiser in the period from 29.09.2009 through 29.09.2012 and from 30.10.2012 through 30.10.2015.

However, the declarations submitted by Nataliia Vasylivna Dul'ska for the specified period of time do not contain any information about the right of Vadym Yuriiovych Dul'skyi, as a member of the declarant's family, to use the said vehicle.

In her written explanations and at the interview, Nataliia Vasylivna Dul'ska explained that Vsevolod Volodymyrovych Krasikov was a friend of her husband and the latter had indeed used the vehicle a few times. However, he did not inform her about the issuance of powers of attorney for this vehicle, and therefore she had no legal grounds to include the relevant information in the declarations.

According to Article 12 (1) of the Law of Ukraine "On Principles of Prevention and Counteraction to Corruption" (hereinafter - the Law) dated 07.04.2011, in force at the time of the aforementioned legal relations, the subjects of the declaration shall annually submit a declaration of property, income, expenses and financial liabilities for the previous year at their place of work (service) by April 1, in the form annexed to this Law. This annex is the declaration to be submitted by the subject of the declaration for the respective year. In Section IV (B), the declarant shall indicate the vehicles owned, leased, or otherwise used by their family members. The anti-corruption legislation of that time did not allow any exceptions to this obligation.

1.2. The Ethics Council has discovered that from June of 2016 through June of 2018, the candidate's husband was working for a division of the Security Service of Ukraine in Sumy region. However, the candidate's declarations for 2016-2018 do not contain any information about real property in Sumy region where her husband could have lived. The candidate explained that during this period, he had lived in Sumy with a relative (her father's brother) and with his parents, and therefore she did not include this information in her declarations. At the interview, the candidate admitted that she should have declared information about his right to use this real property.

Whereas, in accordance with Paragraph 2 of Article 46(1) of the Law of Ukraine "On Prevention of Corruption", the declaration shall contain information on real property, which, amongst others, is leased by family members of the declarant or is subject to another right of use, regardless of the form of the transaction that resulted in the acquisition of such a right. Consequently, the candidate should have declared the right to use the real property in Sumy by her husband.

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 with respect to timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

Cl. 1.3.4 defines that diligence shall mean industrious, thorough, and responsible fulfillment of one's duties, which is a sign of the person's professional integrity.

Therefore, having evaluated the explanations of Nataliia Vasylivna Dulaska, having studied and analyzed documents, information from open sources, etc., the Ethics Council believes that there is a reasonable doubt about the candidate's compliance with the requirements of financial control (cl. 1.3.7.6 of the Methodology) and such a criterion of professional ethics and integrity as diligence (cl. 1.3.4 of the Methodology).

1.3. In the course of the candidate's assessment, the Ethics Council discovered that on 04.09.2019 the candidate's husband, Vadym Yuriiovych Dulskiy, sold an apartment of 40.1 sq. m. for UAH 1 113 200,00 which he owned on the right of ownership. However, in her annual declaration for 2019, Nataliia Vasylivna Dulaska failed to disclose information about the proceeds of her family member resulting from such a transaction.

At the request of the Ethics Council and at the interview, the candidate acknowledged that she did not provide complete and accurate information in her 2019 annual declaration regarding her husband's income due to the fact that she had prepared the declaration for the reporting period on the basis of the 2018 declaration. She also noted that she did not intend to conceal her family member's income.

1.4. The Ethics Council also found that during 2018-2021, the candidate's husband, Vadym Yuriiovych Dulskiy, leased a 20 000 sq. m. land plot owned by him to Agrofirma Victoria LLC, for which he received a corresponding rent. However, this income of her husband is not included in the declaration of Nataliia Vasylivna Dulaska for the specified periods of time.

At the request of the Ethics Council and at the interview, the candidate explained that her husband had acknowledged receiving income from the lease of the land plot, but he did not provide her with any explanations thereto.

1.5. Besides, according to the information available to the Ethics Council, in 2021, Nataliia Vasylivna Dulaska's husband received income from Universal Bank (additional benefit in the amount of UAH 1 227,43) and from the Kyiv City Center for the Accrual and Payment of Social Benefits (social payment in the amount of UAH 6 950,00). However, in the declaration of Nataliia Vasylivna Dulaska for 2021, the said income of her husband is not indicated.

In the explanations provided to the Ethics Council and at the interview, the candidate explained that, according to her husband, he did receive this income (from a bank institution as cashback for purchases, from the social security agency as social payments to him as a combatant). However, she was not aware of her husband's income at the time of filing the declarations.

Pursuant to Paragraph 7 of Article 46(1) of the Law, the declaration shall, in particular, contain information on the income received by the declarant or his family members, including income in the form of wages (remuneration) received both at the main place of work and on a part-time basis, fees, dividends, interest, royalties, insurance payments, charitable assistance, pensions, income from the alienation of securities and corporate rights, gifts and other income.

Therefore, the above facts give grounds for reasonable doubt as to the compliance of Nataliia Vasylivna Dulska with the financial control requirements, in particular, regarding the provision of complete and accurate information in property declarations (cl. 1.3.7.6 of the Methodology).

Moreover, the facts described above raise reasonable doubts of the Ethics Council about the candidate's compliance with such an indicator as diligence (cl. 1.3.4 of the Methodology).

1.6. The Ethics Council found that in the declarations for the reporting periods from 2015 through 2020, Nataliia Vasylivna Dulska failed to indicate the right to use a room in the dormitory No. 3 at 22 Kharchenko Street, which is her place of registration.

In her explanations, the candidate, referring to the Procedure for Completing and Submitting a Declaration of a Person Authorized to Perform State or Local Government Functions, approved by the NACP Order No. 449/21 of 23.07.2021, denied the need to indicate this data in the relevant section of the declaration. She also claimed that she did not actually have the right to use this housing.

However, in accordance with the provisions of Article 46(1) of the Law, the declaration shall contain information about the registered place of residence of the declarant and their family members, real estate owned by the declarant and their family members on the basis of private ownership, including joint ownership, or leased or otherwise used by them, regardless of the form of the transaction as a result of which such a right was acquired.

Provisions set forth in Article 6 of the Law of Ukraine "On Freedom of Movement and Free Choice of Place of Residence in Ukraine", in force as of the time of submission of the said declarations, provide that in order to register, a person shall submit documents to the registration authority confirming the right to live in the housing, the address of which is indicated when registering. In other words, in connection with the registration of the place of residence, the declarant and his/her family members acquire the right to use the real estate. Therefore, information about the real estate that is the registered place of residence of the declarant, or their family members shall be indicated in Section 3 "Real Estate" of the declaration, even if the person does not actually live there.

The Ethics Council considers the references to the NACP clarifications in the explanations of Nataliia Vasylivna Dul'ska to be illogical, since the said clarifications do not contain information on the possibility of not indicating the use of property in case a person does not live there, and they were issued by the anti-corruption body in mid-2021, while they refer to actions taken by the candidate since 2015.

In view of the above, the Ethics Council believes that there are reasonable doubts about the candidate's compliance with financial control requirements, in particular, regarding the provision of complete and accurate information in property declarations (cl. 1.3.7.6 of the Methodology).

Moreover, the said facts give rise to reasonable doubts in the Ethics Council as to the candidate's compliance with the 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 Nataliia Vasylivna Dul'ska 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