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ETHICS COUNCIL

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Kyiv

DECISION

No. 14

***On non-compliance of candidate
for the position of the member of
the High Council of Justice Holobutovskyi R. Z.
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 (remotely by videoconference), Deputy Chair of the Ethics Council Sir Anthony Hooper (remotely by videoconference), members of the Ethics Council: Yurii Triasun (remotely by videoconference), Volodymyr Siverin (remotely by videoconference), Robert Cordy (remotely by videoconference), Lavly Perling (remotely by videoconference), having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Holobutovskyi Roman Zinoviiovych 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 Decision No. 4 as of 9 December 2021 as amended pursuant to Decisions of the Ethics Council No. 1 as of 1 December 2021 and No. 4 of 26 April 2022, Methodology for assessing compliance of the candidate to 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

Decision of the Ethics Council No. 5 as of 9 December 2021 (hereinafter referred to as the Methodology),

has established:

Pursuant to Article 9¹(14) of the Law of Ukraine “On the High Council of Justice”, the Ethics Council shall carry out selection of candidates for the position 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 Holobutovsky Roman Zinoviiovych for participation in the competition for the position of a member of the High Council of Justice for election from the Verkhovna Rada of Ukraine.

Candidate Holobutovskyi Roman Zinoviiovych was admitted to the interview for the position of the member of the High Council of Justice pursuant to the decision of the Ethics Council as of 21 December 2021.

Having studied the documents provided by Holobutovskyi R. Z. 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), National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the NABU), having interviewed him, the Ethics Council has established the following.

Holobutovskyi Roman Zinoviiovych was appointed to the post of judge of the Dnipropetrovsk District Administrative Court by Presidential Decree № 950/2010 of October 11, 2010 for a period of five years, by Presidential Decree № 95/2017 of April 03, 2017, he was appointed to the position of judge of the Dnipropetrovsk District Administrative Court.

During the audit and interview with the candidate, the Ethics Council established a number of circumstances that raise reasonable doubts about the candidate's compliance with the criteria of professional ethics and integrity.

According to Paragraph 1.3.4.1 of the Methodology, a candidate fails to comply with the indicators of independence, honesty, impartiality, diligence, in particular, in case there are reasonable doubts that such candidate in the present or any past professional capacity has acted in line with requirements of the legislation, professional ethical rules (academic integrity requirements), other ethical norms regarding independence, honesty, impartiality, diligence.

During the assessing of the candidate, it was established that Holobutovskyi R. Z. has been a judge of the Dnipropetrovsk District Administrative Court since 2010.

According to the Unified Register of Advocates of Ukraine, the candidate received a certificate of the right to practice law №4412 on August 5, 2019, and stopped it only on August 30, 2019. At the same time, according to Part two of Article 54 of the Law of Ukraine "On the Judicial System and Status of Judges", a judge may not combine his activities with business, legal activity, hold any other paid positions or perform other paid work.

During the interview, the candidate explained that on the day of receiving the certificate of the right to practice law, he submitted an application for suspension of its validity.

However, the Ethics Council considers that the very fact that an active judge receives a certificate granting the right to practice law, even if the validity of this certificate has been stopped, raises reasonable doubts about compliance of Holobutovskyi R. Z. with the rules of professional ethics.

According to Article 57 of the Law of Ukraine "On the Judicial System and Status of Judges", a person appointed to the position of a judge acquires the powers of a judge after taking the judge's oath. Having taken the oath, judge Holobutovskyi R. Z. swore, in particular, to observe ethical principles and rules of conduct, not to commit actions that discredit the title of judge or undermine the authority of justice.

According to the Code of Judicial Ethics, approved by the XI regular Congress of Judges of Ukraine of March 22, 2013 (hereinafter referred to as the Code), judges

are obliged to demonstrate and promote high standards of conduct, in connection with which they voluntarily assume more significant restrictions related to compliance with ethical standards both during the administration of justice and in out – of-court behavior.

However, the actions of judge Holobutovskyi R. Z., as a candidate for the position of the member of the HCJ, related to obtaining a certificate of the right to practice law are not aimed at strengthening confidence in the judiciary and the authority of justice.

According to Part 1 of Article 6 of the Law of Ukraine "On Advocacy and Advocacy", a lawyer may be a person who, among other things, has taken the oath of a lawyer of Ukraine and received a certificate of the right to practice law. According to the requirements of Article 12 of this law, a person who has taken the oath of a lawyer is issued a certificate of the right to practice law and a certificate of a lawyer of Ukraine on the day of taking the oath.

Therefore, Holobutovskyi R. Z., being under the oath of a judge, at the same time took the oath of a lawyer.

The Ethics Council considers that under these circumstances there is a reasonable doubt about the compliance of the actions of the candidate Holobutovskyi R. Z., as an acting judge, with the rules of professional ethics (Paragraph 1.3. 6.1 of the Methodology).

The Ethics Council notes that such actions of candidate Holobutovskyi R. Z. are evaluated by the Council exclusively in terms of their compliance with the Methodology and do not have a prejudicial significance for solving other issues.

According to the requirements of Articles 6 and 10 of the Law of Ukraine "On Advocacy and Advocacy", in order to obtain a certificate of the right to practice law, a person must complete an internship with a lawyer for six months.

When asked by the Ethics Council whether the candidate had an internship with a lawyer to obtain a certificate of the right to practice law, Holobutovskyi R.Z. noted in the explanations provided and during the interview that he had completed an internship with a lawyer in his spare time.

According to Paragraph 10.1 of the "Regulations on the organization and procedure for completing an internship for a person to obtain a certificate of the right to practice law" (hereinafter referred to as the Regulations), the regional Bar Council, when appointing an internship supervisor to a person who has expressed an intention to train, sets deadlines for providing and hearing current reports of the intern on the internship.

Paragraph 10.2 of the Regulation provides that at the end of the six-month internship period, the intern makes a report on the results of the internship, and the internship supervisor makes a report on the evaluation of the internship.

However, Holobutovskyi R. Z. did not provide these reports at the request of the Ethics Council and could not explain the nature and scope of the work performed by him during the internship. The Ethics Council considers the candidate's response that his internship consisted mainly of providing the lawyer – head of the internship with advice on the practice of administrative proceedings unconvincing. Such a response of the candidate indicates that Holobutovskyi R. Z. did not receive the necessary knowledge and skills necessary for the implementation of legal activity, and calls into question his statement about his internship with a lawyer.

In view of this, the Ethics Council considers that the candidate does not meet the honesty indicator (Paragraph 1.3.4.1 of the Methodology).

The Ethics Council during the verification of the candidate revealed that on December 26, 2013 in the name of Holobutovsky R. Z. his father – Holobutovskyi Z. V. issued a notarized power of Attorney, which authorized Holobutovskyi R. Z. to exercise all rights, in particular regarding the sale, rent (hire), exchange of a vehicle 2013 Porsche Cayenne, which belonged to Holobutovskyi Z. V. on the basis of a Certificate of registration of a vehicle. However, in the declarations that were submitted in compliance with the requirements of the anti-corruption legislation for 2013-2014, the candidate did not declare this property right.

During the interview, the candidate explained that he learned about the existence of this power of attorney only in 2016 or 2017, when he was passing the qualification assessment of a judge in the High Qualification Commission of Judges of Ukraine.

This power of attorney was sent to him by his parents when he asked them to provide documents confirming income and everything related to it.

At the same time, in his written explanations, Holobutovskyi R. Z. claimed that he did not have the obligation to declare this vehicle, since he did not use it in the period from 2013 to 2014. During the interview, Holobutovskyi R. Z. gave inconsistent explanations about the time when he became aware of the specified power of attorney. Therefore, in one case, he reports that he became aware of the power of attorney in 2016 or 2017, in the other; he notes that he only learned about it in 2022.

The Ethics Council considers unconvincing the explanations of Holobutovskyi R. Z. that he did not have information about this power of attorney, since in its legal essence such a unilateral transaction is issued precisely for transferring certain rights from one person to another. Otherwise, the existence of powers of attorney would lose its legal meaning.

The analysis and comparison of the written explanations of Holobutovskyi R. Z. with his own explanations during the interview gives the Ethics Council grounds to consider them inconsistent and contradictory in terms of both his awareness of the existence of a power of attorney and the need to declare the right to property – 2013 Porsche Cayenne.

The Ethics Council considers that the established facts indicate that there are reasonable doubts about the integrity of the candidate (Paragraph 1.3.4.1 of the Methodology) and in accordance with requirements of financial control stipulated by anti-corruption legislation, including with respect to timely submission of declarations, notifications of significant changes in the property nature, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations. (Paragraph 1.3.7.6. of the Methodology).

According to the submitted documents, on June 17, 2021, Holobutovskyi R. Z. acquired ownership of a 2019 AUDI E TRON car worth 1 974 605 UAH, as reported by the NACP in the declaration on significant changes in the property status dated June 18, 2021.

The Ethics Council also established that in the period 2020-2021, Holobutovskyi R. Z. used various cars provided by the Audi Center Dnipro car dealership on a test drive basis (PE "AELITA MOTORS") and the salon of electric vehicles (Olmaks Group) and this is not disputed by the candidate.

According to the explanations of Holobutovskyi R. Z., in order to choose a car for purchase, he took various cars for testing in these car dealerships, in particular: Tesla Model X, Tesla Model 3 (used for two weeks), Mercedes-Benz B 250E (used for one day), Audi E-TRON, Audi Q7, Audi Q8 in different trim levels and with different engines (used periodically for several days).

The Ethics Council considers such explanations of the candidate unconvincing, since according to information posted on the internet, car dealerships that sell cars provide such a service as a test drive on conditions usually no more than four hours in a row or set the route length to 100 km. within the city where the vehicle is issued.

The candidate did not provide any documents that would establish other, in particular, preferential conditions for the use of test cars. The candidate did not explain the reasons for such exceptional conditions of car use provided to him.

Given the above, the Ethics Council considers that there are reasonable doubts about the honesty of the candidate Holobutovskyi R. Z. (Paragraph 1.3.4.1. of the Methodology).

In addition, during the assessment, the Ethics Council established that he, being a judge of the Local Administrative Court since 2010 with a territorial location in the city of Dnipro (at that time the city of Dnipropetrovsk) and, accordingly, the subject of the declaration, in the declarations for the period from 2012 to 2014, did not indicate a single object of real estate belonging to him on the right of ownership, rent or other right of use in this city.

In his written explanations, the candidate notes that during this period he did live in the city of Dnipro, where he rented various apartments, none of which he did not live for more than 181 days, and as of December 31 of each of the reporting periods, together with his family, he visited his parents living in the town of Boryslav, Lviv region. However, he did not live with his parents or in any other place in this locality, and during such visits he lived in various hotels in the neighboring city of Truskavets.

However, he did not name the hotels where he stayed and did not provide documents confirming his stay in them.

Based on the documents received by the Ethics Council, it was established that in 2020 the candidate declared that his wife and son had the right to use an apartment in town of Boryslav, Lviv region, however, in previous declarations of property, income, expenses and financial obligations for 2012-2015, as well as in the declarations of a person authorized to perform the functions of the state or local self-government submitted for 2015-2019, the candidate did not declare this property.

In his written explanations, Holobutovskyi R. Z., referring to the explanations of the NACP № 1 of 13.02.2020, indicated that the obligation to declare information about real estate objects in which the subject of the declaration or his family members are registered, even if the person actually lives there in Section 3 "Real estate objects" of the declaration, arose from this date and in connection with these explanations. Therefore, he was not obliged to reflect this information in the declarations for previous years.

The Ethics Council considers that the presence or absence of explanations of the authorized state body, which is the NACP, regarding the application of a particular norm of anti-corruption legislation, does not exempt the subject of declaration from strict compliance with the requirements of this legislation when filling out and submitting declarations. Based on the requirements of Paragraph 15 of Part One of Article 11 of the Law of Ukraine "On prevention of corruption", these explanations are methodological and advisory in nature and can in no way replace or supplement the law. At the same time, it is necessary to take into account the presence of Holobutovskyi R. Z. specialized legal education and practical experience.

Under these circumstances, the candidate had to indicate in the relevant declarations information about the property belonging to his family members on the right to use in the period from 2012 to 2019. Thus, the Ethics Council believes that there is a reasonable doubt about the compliance of the candidate with the requirements of financial control that are stipulated by the anti-corruption 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 (Paragraph 1.3.7.6. of the Methodology).

The candidate's explanations do not refute the above conclusions of the Ethics Council and give grounds to believe that the candidate changed his place of residence only in order not to declare the use of housing.

In addition, such conduct by Holobutovskyi R. Z. casts doubt on his compliance with the requirements of Article 18 of the Code, according to which a judge must be aware of his property interests and take reasonable measures in order to be aware of the property interests of his family members. In addition, according to Article 3 of the same Code, a judge must make every effort to ensure that, in the opinion of a reasonable, law-abiding and informed person, his behavior is impeccable. According to the Bangalore Principles of Judicial Conduct of 19 May 2006 №2006/23, approved by the UN Economic and Social Council Resolution of 27 July 2006, honesty is a prerequisite for a judge to perform his duties; he must demonstrate behavior that is impeccable even from the point of view of an outside observer.

Thus, being governed by Rules 2.3, 3.2, 3.3 of the Ethics Council's Rules of Procedure, 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, 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 Holobutovskyi Roman Zinoviiovych 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