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ETHICS COUNCIL

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Kyiv

DECISION

No. 15

***On non-compliance of candidate
for the position of the member of
the High Council of Justice L. V. Holnyk
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 Larysa Vladlenivna Holnyk 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 Larysa Vladlenivna Holnyk for participation in the competition for the position of the member of the High Council of Justice from the Verkhovna Rada of Ukraine.

Candidate Larysa Vladlenivna Holnyk 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 documents provided by L. V. Holnyk upon the Ethics Council’s request, her 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 her, the Ethics Council has established the following.

Larysa Vladlenivna Holnyk was appointed to the position of a judge of Oktiabrskiy District Court of Poltava for the term of five years by Decree No. 544/2010 of the President of Ukraine as of 16 April 2010, and she was appointed

to the position of a judge of Oktiabrskyi District Court of Poltava by Decree No. 429/2018 of the President of Ukraine as of 19 December 2018.

The Law of Ukraine “On the Judiciary and the Status of Judges” (hereinafter referred to as the Law) obliges the judge to strictly comply with the rules of judicial ethics, including demonstration and maintenance of high standards of conduct in any activity in order to strengthen public confidence in the court, ensuring public confidence in honesty and integrity of judges (para. 2 of Article 56(7) of the Law).

In her written explanations L. V. Holnyk pointed out that that she played an important role in exposing corruption, in particular, she became a whistleblower.

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.

During the evaluation of the candidate it was established that L. V. Holnyk published an article titled “Because consistent. And three times legitimate! And the staff is docile as sheep”, which is accompanied with a photo with a flock of sheep in social network “Facebook”. The article covers the regular meeting of judges of Oktiabrskyi District Court of Poltava. As seen from the article, judge L. V. Holnyk assessed this meeting: “Mindlessly voting to please Strukov, my “colleagues” showed unwillingness to take responsibility and cut the 'Gordian knot'”.

Pursuant to decision No. 1467/3dp/15-18 of the Third Disciplinary Chamber of the High Council of Justice as of 23 May 2018, judge of Oktiabrskyi District Court of Poltava Larysa Vladlenivna Holnyk was brought to disciplinary responsibility and was subject to a disciplinary sanction in the form of a reprimand with deprivation of the right to receive additional payments to the official salary of a judge for one month, and there was stated that L. V. Holnyk engaged in unethical conduct with respect to her colleagues, that comparing the staff of judges with docile sheep and using expressions “mindlessly voting” and word “colleagues” in quotation marks is offensive and constitute a violation of the rules of judicial ethics”. Decision

No. 2485/0/15-18 of the High Council of Justice as of 02 August 2018 left this decision unchanged.

The ruling of the Grand Chamber of the Supreme Court as of 17 January 2019 (case No.11-1010sap18) overturned the decision on bringing judge L. V. Holnyk to disciplinary responsibility, while stating that she engaged in unethical behavior towards her colleagues. Hence, the court decision indicates that comparing the staff of judges with docile sheep and using expressions “mindlessly voting” and word “colleagues” in quotation marks is offensive and constitute a violation of the rules of judicial ethics”.

During the interview, candidate for the position of a member of the HCJ L. V. Holnyk stated that she agreed with these statements and did not regret the afore mentioned post in the social media.

The Code of Judicial Ethics, adopted by the XIst Regular Congress of Judges of Ukraine on 22 February 2013 (hereinafter referred to as the Code) stipulates that participation of a judge in social media, internet forums and use of other forms of communication in the Internet is permissible, however a judge can post, comment only on information, the use of which does not harm the authority of the judge and the judiciary (Article 20).

In view of the above, the Ethics Council has reached a conclusion that the above mentioned actions of L. V. Holnyk fail to meet such standards and give grounds for reasonable doubts about her compliance with ethical standards and demonstration of impeccable behavior in her personal life (clause 1.3.6.2. of the 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).

The Ethics Council has also established that pursuant to the decision of the Second Disciplinary Chamber of the High Council of Justice as of 12 July 2021 it was refused to take disciplinary action against judge of Oktiabrskyi District Court of Poltava L. V. Holnyk based on the complaint of H. A. Sikalov as of 25 March 2019. The complaint submitted to the High Council of Justice is justified by the fact

that on 18 March 2019 judge L. V. Holnyk published a post on her Facebook page which contained offensive expressions and undermined honor, dignity, and business reputation of the complainant. This Decision established that “expressions used by judge L. V. Holnyk in the publication go beyond the limits of permissible dissemination of information by a judge, are offensive in nature, and violate the rules of judicial ethics’.

The decision of the Second Disciplinary Chamber of the High Council of Justice as of 12 July 2021 was not challenged by the candidate.

In its Opinion No.3 (2002) concerning the principles and rules governing the professional conduct of judges, in particular, issues of ethics, incompatible conduct, and impartiality, the Consultative Council of European Judges points out that judges should not only perform their duties professionally, but also behave with dignity in private life. It is the behavior of a judge that is a prerequisite for trust in justice.

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.

In view of the above, the Ethics Council has reached a conclusion that the afore mentioned circumstances raise reasonable doubts about compliance of L. V. Holnyk with clause 1.3.6. of the Methodology, namely, compliance with ethical standards and demonstration of impeccable behavior in professional activities and personal life, 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.

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 Larisa Vladlenivna Holnyk 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