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ETHICS COUNCIL

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DECISION

No. 47

***On non-compliance of the candidate
for the position of a member of the High Council of Justice
Liubov Yuzefivna Hrushkovska
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 Liubov Yuzefivna Hrushkovska 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 of Liubov Yuzefivna Hrushkovska for participation in the competition for the position of member of the High Council of Justice as nominated by the Congress of Judges of Ukraine.

By the Decision of 21.12.2021. the Ethics Council admitted her to the interview for the position of a member of the High Council of Justice.

The Ethics Council studied the documents provided by Liubov Yuzefivna Hrushkovska upon the Ethics Council’s request, her written explanations, information received from open sources and from civil society organizations, information received from the National Agency on Corruption Prevention (“the NACP”) and National Anti-Corruption Bureau of Ukraine (“the NABU”) and conducted the interview with her, the Ethics Council has reached the following conclusions.

With the Decree of the President of Ukraine of 14.10.2002 Liubov Yusefivna Hrushkovska was appointed to the position of the judge of Zhmerynka City Court of Vinnytsia region, and then pursuant to the Decree of the President of Ukraine of 23.03.2004 Liubov Yusefivna Hrushkovska was transferred to the position of the

judge of Zhmerynka City-District Court of Vinnytsia region where the candidate has worked till now.

The Ethics Council has reasonable doubts about the compliance of the candidate with the criteria of professional ethics and integrity.

1. Concerning possible factitious deterioration of housing conditions and subsequent unauthorized occupation of the apartment

It was after the appointment of L.Y. Hrushkovska to the position of a judge of Zhmerynka City District Court, namely since August 2005, that the candidate and her family (her husband Y.A. Senko and her minor children H.M. Koval, Y.Y. Senko) lived and were registered in a rented apartment in Zhmerynka at Proletarska Str., therefore L.Y. Hrushkovska and her family needed to improve their living conditions.

Under Article 44(7) of the Law of Ukraine "On the Status of Judges" as amended on December 15, 1992, a judge of a local court who needs to improve their living conditions is entitled to provision with comfortable housing in the form of a separate apartment or a house or service housing at the location of the court no later than six months after the election. In case of failure to provide a judge with comfortable housing within the specified period, the court, at the expense of the state budget, may purchase an apartment or a house at market prices and transfer them to the use of the judge.

On November 29, 2006, the Territorial Department of the State Judicial Administration of Ukraine in Vinnytsia region (hereinafter referred to as the TD SJA of Ukraine in Vinnytsia region) in compliance with the requirement of Article 44(7) of the Law of Ukraine "On the Status of Judges", purchased through an auction an apartment for L. Y. Hrushkovska located in Zhmerynka, totaling 58.7 sq.m.

In August 2007, L. Y. Hrushkovska and her family members, without receiving a warrant, moved into this apartment, registered, and began to live in it. During the interview, L.Y. Hrushkovska explained that in 2007 she had received

oral permission from the management of the TD SJA of Ukraine in the Vinnytsia region to move into the apartment without proper documents.

Thus, according to Article 58 of the Housing Code of Ukraine, a citizen receives a warrant based on the decision of the executive committee of the district, city, municipal district, town, or village council to provide residential premises in a house of state or public housing stock. The warrant is the only basis for moving into the provided residential premises. The warrant itself can only be issued for vacant residential premises.

In January 2008, the TD SJA of Ukraine in the Vinnytsia region applied to the Executive Committee of the Zhmerynka City Council of Vinnytsia region with a request to accept the apartment in municipal ownership and to issue a warrant for the moving in of L. Y. Hrushkovska and her family members. However, it is noted in the response of the Zhmerynka City Council of Vinnytsia region that this issue cannot be resolved, since legislative documents regulating the transfer of the state housing stock which is in the full economic or operational management of enterprises, institutions, and organizations, to municipal ownership, do not provide for the transfer of a separate apartment in a residential building to municipal ownership. Furthermore, a warrant could not be issued, since L.Y. Hrushkovska and her family members had been registered in the specified apartment since August 2007, and a warrant for moving in can be issued only for a vacant living space.

The claim of L.Y. Hrushkovska to the TD SJA of Ukraine in the Vinnytsia region was satisfied by the Decision of the Sharhorod District Court of Vinnytsia region of April 04, 2008, Case 2/227-2008, and L.Y. Hrushkovska's ownership of the apartment in Zhmerynka was recognized.

Based on copies of documents and explanations of L.Y. Hrushkovska the Ethics Council found out that from August 27, 1999, through August 27, 2000, L. Y. Hrushkovska had been living and that she had been registered in a rented apartment in Zhmerynka. From September 4, 2001 through August 14, 2005, she and her family had been living and they had been registered in a house built by her parents in Zhmerynka. From August 14, 2005, through August 14, 2007, L. Y.

Hrushkovska and her family members started residing again and they registered in a rented apartment in Zhmerynka therefore there was a need to improve her living conditions and the living conditions of her family members, which was subsequently implemented by purchasing an apartment in Zhmerynka by TD SJA of Ukraine in the Vinnytsia region.

Despite the absence of the any documents for gaining of the ownership from candidate or her family members, she occupied the apartment in an unauthorized way. Since August 14, 2007, L.Y. Hrushkovska and her family members had been registered and they had been residing in the apartment at this address.

To obtain the right of ownership and to preserve the right to further free privatization of the state housing stock, L.Y. Grushkovska filed a claim to the Sharhorod District Court to recognize her sole ownership of the apartment, even though the TD SJA of Ukraine in the Vinnytsia region had purchased the apartment taking into account the need to improve housing conditions not only of L.Y. Hrushkovska but also of her family members (husband Y.A. Senko and minor children H.M. Koval, Y.Y.Senko).

However, on January 25, 2010, L.Y. Hrushkovska, by the donation agreement, transferred ownership of apartment to her mother H.I. Hrushkovska, and subsequently moved to the aforementioned house, built by her parents, located at Kazkova Street in Zhmerynka and since February 21, 2014, she has been registered there, and she has been living there ever since.

Subsequently, on November 14, 2012, the apartment bought by the TD SJA of Ukraine in the Vinnytsia region was donated by H.I. Hrushkovska to L.Y. Hrushkovska's daughter– H.M. Koval, who eventually sold it on October 11, 2013.

During the interview, L.Y. Hrushkovska noted that the apartment that was purchased for her by the TD SJA of Ukraine in the Vinnytsia region, she donated to H.I. Hrushkovska subject to exchange for the parents house. However, the ownership of this house belonged, and it still belongs to H.I. Hrushkovska.

The Ethics Council considers an unauthorized occupancy of an apartment without any title documents and a warrant to move in, especially when it is carried

out by a judge who, more than ordinary citizens, should be aware of the importance of preserving the rule of law and exercising their rights in the manner prescribed by law or at least not contrary to the law. Further applying to the court to legalize such actions and to obtain ownership of the apartment, further alienation of the apartment without acquiring (obtaining ownership) other housing for permanent residence is a violation of ethical and generally recognized moral rules of conduct.

Taking into account the above, the Ethics Council has reasonable doubts about the honesty of the candidate (cl. 1.3.2 of the Methodology), the integrity of her behavior, as well as the steadfastness of her compliance with professional ethical and generally acknowledged moral norms both in professional activities and beyond them, which forms trust of the society in such person. (cl. 1.3.6 of the Methodology).

According to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicators of independence, honesty, impartiality, diligence, in particular, in case when 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, other ethical norms regarding independence, honesty, impartiality, diligence.

2. Concerning adjudging decisions in a potential conflict of interest

When assessing the candidate, the Ethics Council found that on May 24, 2018, L.Y. Hrushkovska being familiar with V.I. Shevchenko and being in friendly relations with his wife – S.A. Shevchenko, adjudged the decision in case No. 1-кк/130/389/2018 to strike the case under the claim of V.L. Shevchenko on the inaction of the investigator of the Criminal Investigation Department of the Zhmerynka Criminal Investigation Department of the Main Directorate of the National Police in Vinnytsia region. During the interview, the candidate confirmed her written explanations and provided similar explanations.

In her written explanations, L. Y. Hrushkovska justified the lack of grounds for her recusal in this case by saying that the case was not considered on its merits.

The Ethics Council considers the candidate's explanation unconvincing, because according to para 4 Article 75(1) of the Criminal Procedure Code of Ukraine, an investigating judge, a judge, or a juror may not participate in criminal proceedings if other circumstances raise doubts about their impartiality.

Paragraph 2.5 of the Bangalore Principles of Judicial Conduct, as endorsed by Resolution 2006/23 of the UN Economic and Social Council on 27 July 2006, states that a judge declares their recusal from considering a case also if an outside observer might have doubts about the judge's impartiality.

L.Y. Hrushkovska, being familiar with the plaintiff – V.L. Shevchenko should have refrained from making any procedural decision in this case. The Ethics Council considers that the established facts indicate that there are reasonable doubts about the independence and impartiality of the candidate in adjudging court decisions (cl. 1.3.4.1 of the Methodology).

3. Failure to declare the real estate

When assessing the candidate, the Ethics Council found out that since February 21, 2014, L.Y. Hrushkovska has been living in the house of her mother – H.I. Hrushkovska located in Zhmerynka.

In her written explanations, the candidate justified the lack of information about the real estate concerning the legislation in force in 2014-2015. In her opinion, the legislation in force was not obliging her to declare the rights to real estate.

The Ethics Council considers the explanations of L.Y. Hrushkovska regarding the failure to declare the real estate unsubstantiated since according to para 2 Article 46(1) of the "Law of Ukraine on Prevention of Corruption" as amended on October 14, 2014, the real estate owned by the subject of declaration and members of their family on the right of private property, including common property, or is leased or otherwise used, regardless of the form of the conclusion of the transaction consequent of which such a right was acquired from, are subject to declaration. Thus,

the legislation in force at that time contained the direct provision which obliged the candidate to declare real estate.

The Ethics Council considers that L.Y. Hrushkovska provided incomplete information in the declaration for 2014 regarding the use of the real estate, namely living in a house owned by H.I. Hrushkovska. The Ethics Council believes that the candidate acted with the lack of diligence with regard to the requirements of the financial control as stipulated by the anticorruption legislation, and thus there's a reasonable doubt about the candidate's 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 Liubov Yuzefivna Hrushkovska 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