



## ЕТИЧНА РАДА

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## ETHICS COUNCIL

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**1 November 2022**

**Kyiv**

### DECISION

**No. 58**

*On non-compliance of candidate  
for the position of the member of the High Council of Justice  
Nataliia Mykolayivna Kovalenko  
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 Nataliia Mykolayivna Kovalenko 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 9<sup>1</sup> 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 submitted by Nataliia Mykolayivna Kovalenko for participation in the competition for the position of the member of the High Council of Justice by the Congress of Judges of Ukraine and admitted her to the interview with the Decisions 33 of 21.07.2022.

With the Decree of the President of Ukraine of 21 June 2006 Nataliia Mykolayivna Kovalenko was appointed to the position of the judge in the Commercial Court of Kirovohrad region.

Having studied documents provided by Nataliia Mykolayivna Kovalenko for participating in the competition, her written explanations and documents provided upon the Ethics Council’s request, information obtained from open sources and from civil society organizations, information received from the National Agency for Corruption Prevention (“the NACP”) and the National Anti-Corruption Bureau of Ukraine (“the NABU”), having conducted the interview with her, the Ethics Council has reached the following conclusions.

1. With respect to legality of sources of origin of property and correspondence of the level of life of the candidate's family members with declared income.

According to cl. 1.3.7. of the Methodology, sources of origin of the candidate's property are legal, the candidate's level of life or that of his family members corresponds to their declared and legal incomes, and the candidate's lifestyle corresponds to his status in case there are no reasonable doubts to the contrary.

Hence, during evaluation of candidate Nataliia Mykolayivna Kovalenko the Ethics Council has established a range of circumstances which cause reasonable doubts about compliance of candidate Nataliia Mykolayivna Kovalenko with the professional ethics and integrity criterion.

In particular, the Ethics Council has a reasonable doubt about the candidate's compliance with requirements of financial control and legality of sources of origin of property, correspondence of the candidate's family member with declared income (cl. 1.3 of the Methodology).

**1.1.** In her declarations for 2013, 2014, 2015 candidate Nataliia Mykolayivna Kovalenko specified two apartments belonging to her family member – her mother H. O. Kovalenko under the right of private ownership with the areas of 48.82 sq. m. and 42.5 sq. m. respectively. Besides, candidate Nataliia Mykolayivna Kovalenko specified that the right of ownership for these apartments emerged on 01 April 2009 and 30 July 2009 respectively. As of the moment of their acquisition value of these two apartments amounted to UAH 54,618 (UAH 44,142 and UAH 10,476) or about USD 6,800 according to the NBU's currency exchange rate as of 2009. At the same time, according to the judicial dossier (p. 39), as of 2009 mother of candidate Nataliia Mykolayivna Kovalenko was a working pensioner – heat handler at sewing factor “Zorianska”. Given that in 1998-2009 income of the candidate's mother amounted to UAH 94 472 before taxation )which is UAH 4,500 per month) on average according to information from the State Register of Individual Taxpayers, the Ethics Council had a reasonable doubt about legality of sources of origin of funds used to purchase the apartments by the candidate's family member which the candidate uses as well.

Upon the Ethics Council's request and during the interview, with respect to sources of origin of funds used by her family member – her mother to purchase the apartments, candidate Nataliia Mykolayivna Kovalenko stated that she did not control income and expenses of her mother.

However, such explanations of candidate Nataliia Mykolayivna Kovalenko contract cl. 4.7 of the Bangalore Principles of Judicial Conduct of 19 May 2006, according to which a judge shall inform himself or herself about the judge's personal and fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family. Moreover, they contradict provisions of Article 18 of the Code of Judicial Ethics adopted by the decision of the XIth regular Congress of Judges of Ukraine of 22 February 2013, according to which a judge shall be aware of his/her financial interests and take reasonable steps to be aware of the financial interests of his/her family members.

Current anticorruption legislation of Ukraine sets out that indicator of information about income and expenses of family members of the person submitting the declaration in the declaration includes the obligation to properly justify them as well.

In view of the above, the Ethics Council is of the opinion that there are reasonable doubts about correspondence of the level of life of candidate Nataliia Mykolayivna Kovalenko with her declared and legal income (cl. 1.3.7 of the Methodology).

**1.2.** According to information from the declaration on property, income, expenses, and financial liabilities for 2013, the candidate's mother who was back then the candidate's family member acquired the right of ownership for 2013 Toyota RAV-4 on 05 October 2013, value of which amounted to UAH 317,731 as of the date of acquisition into ownership. According to information from the declaration for 2013, income of the candidate's mother who was a pensioner and worked at the position of a heat handler at Public Joint-Stock Company "Kirovohrad Sewing Factory "Zorianska" amounted to UAH 87,457 during 2012-2013. The Ethics

Council had a reasonable doubt about legality of sources of origin of funds used by the candidate's family member to purchase Toyota RAV-4.

Having received a respective question from the Ethics Council, Nataliia Mykolayivna Kovalenko explained that "the vehicle was purchased with joint funds of relatives, besides, the family took a unanimous decision to register the right of ownership for this car in the name of her mother H. O. Kovalenko".

However, Nataliia Mykolayivna Kovalenko could not confirm these explanations with documents, prove that her parents had savings to buy this case, or explain why Toyota RAV-4 was bought using joint savings of the family and registered in the name of the candidate's mother in her written answers and during the interview with the Ethics Council.

Hence, such explanations of candidate Nataliia Mykolayivna Kovalenko contract cl. 4.7 of the Bangalore Principles of Judicial Conduct of 19 May 2006, according to which a judge shall inform himself or herself about the judge's personal and fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family. Moreover, they contradict provisions of Article 18 of the Code of Judicial Ethics adopted by the decision of the XIth regular Congress of Judges of Ukraine of 22 February 2013, according to which a judge shall be aware of his/her financial interests and take reasonable steps to be aware of the financial interests of his/her family members.

**1.3.** According to the NABU, on 20.08.2029 the candidate's mother purchased an apartment with the area of 51.24 sq.m. in Kropyvnytskyi valued at UAH 1,210,000. Given that Nataliia Mykolayivna Kovalenko's mother is a pensioner, the Ethics Council had a reasonable doubt about legality of sources of origin of funds used to purchase this flat.

In response to the Ethics Council's question Nataliia Mykolayivna Kovalenko explained that her mother was not her family member, which is why she did not control her income and expenses. Besides, she specified that in 2021 her mother sold Toyota RAV-4 for UAH 875,000 and sold an apartment in Kropyvnytskyi of Kirovohrad region for UAH 806,700.

However, the candidate's mother received income from the sale of a vehicle and apartment in 2021, which is why she could not use these funds to buy the apartment in 2020. Accordingly, the candidate has failed to provide documents to prove legality of sources of origin of her mother's funds used to buy the apartment in 2020.

Thus, upon the Ethics Council's request, the candidate has not provided copies of any documents which would refute reasonable doubts about legality of sources of origin of funds used by her mother to purchase the apartment with the area of 51.24 sq.m. in Kropyvnytskyi on 20.08.2020.

In view of the above, the Ethics Council has a reasonable doubt about Nataliia Mykolayivna Kovalenko's compliance with such indicator as honesty (cl. 1.3.2. of the Methodology). Moreover, the Ethics Council is of the opinion that there are reasonable doubts about correspondence of the level of life of candidate Nataliia Mykolayivna Kovalenko's family member with her declared and legal income (clause 1.3.7 of the Methodology).

2. With respect to compliance with ethical norms and demonstration of impeccable conduct in personal life.

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.

Hence, in her declaration for 2020 candidate Nataliia Mykolayivna Kovalenko indicated her husband S. M. Bershadskyi, born on 09.08.1984 (married since 01.12.2020), as her family member. However, in her declaration for 2021 Nataliia Mykolayivna Kovalenko did not specify information about her husband anymore. As established by the Ethics Council, with the decision of Kirovskyi District Court of Kirovohrad of 07.02.2022 under case No. 405/6933/21 marriage between Nataliia

Mykolayivna Kovalenko and S. M. Bershadskyi and registration entry about it were found to be invalid.

As evident from the decision of Kirovskyi District Court of Kirovohrad of 07 February 2022, Nataliia Mykolayivna Kovalenko filed a claim against S. M. Bershadskyi (born in 1984) on recognition of the marriage as invalid, justifying her claim petition with the fact that the marriage between her and the respondent was concluded under prolonged psychological pressure, fictitiously, without the intention to create a family and acquire rights and obligations of the married couple, but exclusively based on self (beneficial) moral and financial motives of the defendant.

According to 40(2) of the Family Code of Ukraine, a marriage is found to be invalid pursuant to the court's decision in case it is fictitious. A marriage is fictitious if it is concluded by a man and a woman or by one of them without the intention to create family and acquire rights and obligations of the married couple.

As the candidate explained in response to the Ethics Council's request, the marriage was concluded without the intention to create family and acquire rights and obligations of the married couple, Nataliia Mykolayivna Kovalenko and S. M. Bershadskyi did not live together, they did not have jointly acquired property, mutual financial support and respect.

Having studied copies of respective documents at disposal of the Ethics Council, the Ethics Council had a reasonable doubt about compliance by candidate Nataliia Mykolayivna Kovalenko with ethical norms and impeccable conduct in personal life and strict adherence to generally acknowledged moral norm, as such fictitious family legal situation results in distrust of the society in such person, while in some countries fictitious marriage is a ground for bringing the person to criminal responsibility.

Moreover, the Ethics Council learned that based on the deed of gift of 12.06.2012, the candidate's mother H. O. Kovalenko received a land plot of 1,200 sq. m. (cadaster number 3522587200:02:000:3191, address: Sokolivska village council, Kirovohrad district), valued at UAH 1,592, from future husband of

the candidate S. M. Bershadskyi, which contradicts explanations of candidate Nataliia Mykolayivna Kovalenko that S. M. Bershadskyi married her based on gain-motivated interests.

Hence, in particular, in response to the Ethics Council's request, Nataliia Mykolayivna Kovalenko specified "It became clear to me from S. M. Bershadskyi's behavior that this person is basically a gigolo, accordingly, I reached a conclusion that he married me without the intention to create family and acquire rights and obligations of the married couple, but solely based on gain-motivated moral and financial motives".

In the Ethics Council's opinion, these circumstances evoke a reasonable doubt about Nataliia Mykolayivna Kovalenko's compliance with such indicator as honesty (cl. 1.3.2. of the Methodology).

Besides, information available to the Ethics Council shows that on 26 June 2012 S. M. Bershadskyi, who worked as the head of the court apparatus in the same court as Nataliia Mykolayivna Kovalenko before marrying her, received a license on carrying out activities as insolvency officer (asset manager, rehabilitation manager, bankruptcy commissioner), series AV No. 600845. During the period of 2012-2021 insolvency officer S. M. Bershadskyi carried out authorities of asset manager and bankruptcy commissioner under bankruptcy cases.

From the court decisions available in the Unified Register of Court Decisions the Ethics Council learned that, while working as the judge of the Commercial Court of Kirovohrad region, Nataliia Mykolayivna Kovalenko repeatedly appointed S. M. Bershadskyi, once he received the license and respective certificate, as asset manager, bankruptcy commissioner under cases in which she was the rapporteur and soon after that she married him.

After conclusion of such marriage, under cases No. 912/3485/19 of 02.12.2020 and No. 912/2428/16 of 07.12.2020 the candidate adopted rulings, under which self-recusal of judge Nataliia Mykolayivna Kovalenko was satisfied. Materials of these bankruptcy cases were transferred for another automated distribution.



As Nataliia Mykolayivna Kovalenko explained in response to the Ethics Council's request, appointment of insolvency officer S. M. Bershadskyi as asset manager or bankruptcy commissioner under bankruptcy cases took place in line with provisions of the Law of Ukraine "On Restoring Solvency of the Debtor or Recognizing the Debtor's Bankruptcy" and Code of Ukraine on Bankruptcy Procedures, upon the suggestion of the initiating creditor and committee of creditors, while marriage with S. M. Bershadskyi whom she appointed as the asset manager or bankruptcy commissioner under bankruptcy cases during 2014–2016 could not cause reasonable doubts about her integrity, while the fact that she knew S. M. Bershadskyi did not impact her impartiality and objectivity in the course of fulfilling professional activities.

However, the Ethics Council considers such explanations to be unreasonable and such which cause reasonable doubts about her compliance with requirements of the anticorruption legislation and compliance with ethical norms in professional activities and personal life, which forms trust of the society in such person.

3. With respect to compliance with requirements of financial control stipulated by the anticorruption legislation.

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 provision of full and accurate information in asset declarations. 3.1. In Section III "Real Estate Objects" of the declaration on property, income, expenses, and financial liabilities for a respective year, a person submitting the declaration shall specify information about property belonging under the right of ownership, rent, or under any other use to the person submitting the declaration, as well as expenses of the person submitting the declaration on purchase of such property or its use. The person shall also provide the same information about his/her family members.

Contrary to these requirements, in her declaration on property, income, expenses, and financial liabilities for 2013 Nataliia Mykolayivna Kovalenko did not specify any real estate object suitable for living which she would have under the right of use.

While answering the Ethics Council's question about this issue, Nataliia Mykolayivna Kovalenko stated that in 2013 she lived at the place of residence in Kirovohrad, yet she believed by mistake that while indicating the place of residence in cl. 2 of the declaration, she did not have to specify this place again in line "Property belonging to the person submitting the declaration under the right of ownership, rent, or any other right of use".

However, such explanations of the candidate are unreasonable and cause reasonable doubts about compliance of Nataliia Mykolayivna Kovalenko with requirements of financial control stipulated by the anticorruption legislation, in particular, with respect to provision of complete and accurate information in her asset declarations (cl. 1.3.7.6 of the Methodology).

3.2. In her declarations for 2014, 2015 Nataliia Mykolayivna Kovalenko specified that since 01 April 2009 she had an apartment under the right of use with the area of 48.82 sq. m. under the right of use. At the same time, this information was not indicated in her declaration on property, income, expenses, and financial liabilities for 2013.

As Nataliia Mykolayivna Kovalenko explained, absence of information about her right to use an apartment with the area of 48.82 sq. m. in her declaration on property, income, expenses, and financial liabilities for 2013 was not caused by her desire to conceal this information as this apartment was specified in all of her declarations as the place of residence (registration) in addition to indication of her family member's right of ownership for it at that time.

However, such explanations of the candidate are unreasonable and cause reasonable doubts about Nataliia Mykolayivna Kovalenko's compliance with requirements of financial control stipulated by the anticorruption legislation, in

particular, with provision of complete and accurate information in asset declarations (cl. 1.3.7.6 of the Methodology).

3.3. According to information available to the Ethics Council, in 2011 she had vehicle Volkswagen under the right of ownership. In December of the same year Nataliia Mykolayivna Kovalenko issued a power of attorney for disposal of this vehicle to a third person. The vehicle was sold in 2013, but Nataliia Mykolayivna Kovalenko did not specify the right of ownership for this vehicle in her asset declaration for 2012 and did not declare income from the sale of vehicle Volkswagen in her declaration on property, income, expenses, and financial liabilities for 2013.

In response to the Ethics Council's question about this issue, as well as during the interview with the Ethics Council, Nataliia Mykolayivna Kovalenko explained that "in 2011 my father bought vehicle Volkswagen without deciding in which country, how and with whom he was going to live in the future and asked me to register the right of ownership for it in my name. I agreed to such registration, but I did not spend my own funds for the purchase of this car. I did not have an actual intention to conclude a transaction to acquire into ownership such vehicle and considered this vehicle to be my father's property, which is why I did not specify the right of ownership for this vehicle in my declaration on property, income, expenses, and financial liabilities for 2012. In 2011 or in 2012, I cannot recollect specifically, my father sold this vehicle and I issued the power of attorney on disposal of this vehicle to the buyer of this vehicle. I did not receive funds from the sale of this vehicle, which is why I did not indicate income from the sale of this vehicle while submitting the declaration for 2013. It is my father M. V. Kovalenko who received funds from the sale of vehicle Volkswagen".

However, according to provisions of the current anticorruption legislation, in the declaration on property, income, expenses, and financial liabilities for a specific year a person submitting the declaration shall specify information about property belonging to the person submitting the declaration under the right of ownership, rent, or under any other right of use, as well as expenses of the person submitting the declaration on purchase of such property or its use.

Hence, the candidate's explanations that she did not spend her own funds to purchase this vehicle, that she did not have a driving license are unreasonable and do not release her from the obligation to declare property belonging to her under the right of ownership or use.

Besides, according to cl. 1.3.7.6 of the Methodology, the candidate shall comply with requirements of financial control stipulated by the anticorruption legislation, in particular, with respect to provision of full and accurate information in asset declarations.

3.4. In her declaration for 2020 candidate Nataliia Mykolayivna Kovalenko specified her husband S. M. Bershadskyi, born on 09.08.1984 (married since 01.12.2020) as her family member. However, in her declaration for 2021 Nataliia Mykolayivna Kovalenko did not specify information about her husband any more. As established by the Ethics Council, with the decision of Kirovskyi District Court of Kirovohrad of 07.02.2022 under case No. 405/6933/21 marriage between Nataliia Mykolayivna Kovalenko and S. M. Bershadskyi and registration entry about it were found to be invalid.

Thus, in 2021 as of the last day of the reporting period candidate Nataliia Mykolayivna Kovalenko was married to S. M. Bershadskyi and regardless of their joint residence during the reporting period she was obliged to indicate information about him in her asset declaration, but she did not do that.

Hence, the Ethics Council had reasonable doubts about the candidate's compliance with requirements of financial control as Nataliia Mykolayivna Kovalenko did not provide full and accurate information in her asset declarations, which contradicts cl. 1.3.7.6 of the Methodology.

Besides, in the Ethics Council's opinion, these circumstances cause reasonable doubt about Nataliia Mykolayivna Kovalenko's compliance with such an indicator as honesty (cl. 1.3.2. 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 9<sup>1</sup> 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 Mykolayivna Kovalenko 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**