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ETHICS COUNCIL

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Kyiv

DECISION

No. 70

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Viktoriia Vitaliyivna Koretska
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 Viktoriia Vitaliyivna Koretska 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 V. V. Koretska for participation in the competition for the position of a member of the High Council of Justice as nominated by the Congress of Judges of Ukraine and admitted her to the interview with Decision No.33 of 21.07.2022.

V. V. Koretska was elected for the position of a judge of Kivertsivskyi District court of Volyns'ka Oblast' by the Decree of Verkhovna Rada of Ukraine No. 479-VIII of 21.05.2015.

Having studied the competition documents submitted by V. V. Koretska, her written explanations and documents submitted upon the Ethics Council's request, information received from open sources and from civil society organizations, information received from the National Agency on Corruption Prevention (hereinafter referred to as the NACP) and National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the NABU), having interviewed her, the Ethics Council came to the following conclusions.

1. Concerning incomplete and incorrect information in property declarations

According to cl. 1.3 of the Methodology, one of the indicators of the professional ethics and integrity criteria is diligence, that is the diligent, thorough, and responsible performance of duties, which testifies to the integrity of the professional activity of a person (cl. 1.3.4 of the Methodology).

One of the duties of a candidate as a judge is to submit a Declaration of a person authorized to perform the functions of the state or local self-government (in accordance with Article 45(1) of the Law of Ukraine “On Prevention of Corruption”). At the same time, according to cl. 1.3.7.6. of the Methodology, a candidate must meet the requirements of financial control defined by anti-corruption legislation, int.al., regarding the provision of complete and accurate information in property declarations.

The Ethics Council discovered instances where the candidate indicated incomplete information in her property declarations.

1.1. Concerning non-declaring the place of residence of O. P. Koretskyi (the candidate's husband) in Kyiv in 2019

According to the declaration of the candidate's family ties for 2017-2021, her husband, O. P. Koretskyi, had been working in Kyiv in senior positions in the State Bureau of Investigation (hereinafter - SBI) from 14.03.2019 through 23.07.2020. However, in the candidate's property declarations for 2019 and 2020 (in 2020, he had been working in Kyiv for more than 6 months) there is no information on any real estate in Kyiv where her husband could live.

The candidate explained this by saying that during the specified period, her husband had been staying free of charge at different addresses of four different

acquaintances. According to her, her husband had been staying with each of them for no more than 183 days, which is less than half of the days in the reporting period. In view of this, the candidate did not indicate the information about her husband's right to use any real estate in Kyiv in her declarations. In support of this claim, the candidate provided four letters from her husband's acquaintances - V. I. Maksymov, Y. M. Dukh, O. I. Tertyshnyk and M.O. Levchuk, wherein they state that her husband had indeed stayed with them during 03–07.2019; 08–11.2019, 12.2019–03.2020, and 04–07.2020 respectively (specific dates when her husband began and stopped living there are not indicated in the letters).

Accepting that the candidate's explanations are true, then on the last day of the reporting period of 2019, her husband had the right to use the apartment of O. I. Tertyshnyk. At the same time, in accordance with para 2 of Article 46 (1) of the Law of Ukraine "On Prevention of Corruption" (as amended on 01.01.2020), real estate objects that are leased by the family members of the declarant or otherwise used by them, regardless of the form of a deed, as a result of which such a right was acquired, must be reported in the declaration. According to Section 2 of the said Article, the data on the object to be declared, which was, in particular, in the use of the declarant's family members, shall be indicated in the declaration if such an object was in use on the last day of the reporting period or for at least half of the days during the reporting period. Therefore, the candidate had to declare the right of her husband to use the apartment of I. O. Tertyshnyk, which her husband had on 31.12.2019, but failed to do so.

Given this, the Ethics Council has reasonable doubts about the candidate's compliance with the indicators of diligence (cl. 1.3.4 of the Methodology) and financial control requirements regarding the provision of full and correct information in the property declarations (cl. 1.3.7.6 of the Methodology).

1.2. Concerning the candidate's failure to indicate the value of vehicles on the right of use in the property declarations

According to the candidate's property declarations for 2015-2019, she used a 2006 Lexus RX 350 for free starting from 01.02.2015. It belonged to her mother, N. I. Petrovych, who registered it on 10.11.2012. The value of the vehicle is indicated as unknown in all mentioned declarations of the candidate.

According to the candidate's corrected declaration for 2019, she used a 2012 BMW X3 for free that year (date of acquisition of the right – 31.08.2019). This vehicle also belonged to her mother, who registered it on the same day. The value of the vehicle is indicated as unknown in the declaration. Upon request of the Ethics Council regarding its value, the candidate provided a certificate of the RSC of the GSC of the MIA in Volyn region dated 29.08.2022, according to which the value of the car was UAH 780 462,28 on the date of registration.

According to the candidate's declarations for 2020 and 2021, since 23.05.2020 the candidate has been using a 2015 MERCEDES BENZ ML 250 BLUETEC for free. This vehicle also belonged to her mother, who registered it on the same day. The value of the vehicle is indicated as unknown in the declaration. Upon request of the Ethics Council regarding its value, the candidate provided a certificate of the RSC of the GSC of the MIA in Volyn region dated 29.08.2022, according to which the value of the car was UAH 90,000 on the date of registration.

The candidate explained the failure to indicate the value of the vehicles in her declarations by the fact that she did not know the actual value of these vehicles at the time of filling the respective declarations. At the same time, in accordance with para 3 of Article 46 (1) of the Law of Ukraine "On Prevention of Corruption", information on valuable movable property, the value of which exceeds 100 subsistence minimums (in previous editions – 100 minimum wages), established for able-bodied persons as of January 1 of the reporting year, which

is in use by the declarant, regardless of the form of the transaction as a result of which such a right was acquired, is subject to indication in the declaration. Such information includes int.al., data on the value of the property of the date of its acquisition for use. Moreover, pursuant to cl. 4. 7. of the Bangalore Principles of Judicial Conduct, a judge must be aware of his/her personal and material interests of a confidential nature and must take reasonable measures to obtain information about the material interests of his/her family members.

It does not appear from the written explanations of the candidate and her answers during the interview that she took any actions to find out the value of the vehicles that she used to indicate it in her property declarations. At the same time, for the purposes of providing it to the Ethics Council, the candidate managed to obtain such information rather quickly, which indicates that it did not pose a significant difficulty for her.

Given this, the Ethics Council has reasonable doubts about the candidate's compliance with the indicators of diligence (cl. 1.3.4 of the Methodology) and financial control requirements regarding the provision of full and correct information in the property declarations (cl. 1.3.7.6 of the Methodology).

2. Concerning the professional ethics of the candidate (with respect to the academic integrity)

2.1. With respect to publication “General Theory of Evidence and Proof”

V. V. Koretska has academic degree of the candidate of legal sciences. The academic degree was awarded based on defense of dissertation “Organizational and Regulatory Provisions of Optimization of the Judiciary”. The defense took place at the university “Lviv University of Business and Law” in December 2020.

In the text of the dissertation (page 13), the candidate claimed to have published a range of academic papers on the topic of the dissertation, in particular, article “General Theory of Evidence and Proof” (Bulletin of V. N. Karazin University. Series “Law”. 2018. No. 25. pp. 199-202). This Bulletin volume (all of its articles) were approved for printing on 25.06.2018¹, which means that the candidate’s article had to be included into the Bulletin volume not later than on this date. In her written explanations and during the interview, the candidate confirmed that she published this article in this academic journal exactly in 2018.

Resolution No. 608 of the Cabinet of Ministers of Ukraine of 10.05.2002 approved the list of recipients of mandatory free-of-charge copy of publications in Ukraine. According to this list, V. I. Vernadskyi National Library of Ukraine shall receive all periodical and extended publications in all languages. The Ethics Council has established that the printed copy of this Bulletin volume sent to V. I. Vernadskyi National Library of Ukraine mandatorily does not contain this article of the candidate. It is also absent from the electronic copy of this Bulletin volume available at the website of V. I. Vernadskyi National Library of Ukraine². In both copies, the last publication of volume 25 ends on page 198 with article by H. V. Rossikhina and V. V. Rossikhina “With Respect to Constitutional and Legal Regulation of Financial Relations”. At the same time, the list of publications under the topic of V. V. Koretska’s dissertation (page 13 of the dissertation) specifies that article “General Theory of Evidence and Proof” is on pages 199-202 of volume 25 of the Bulletin.

¹ See: <https://periodicals.karazin.ua/law/issue/view/787>

² See following the link: http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?Z21ID=&I21DBN=UJRN&P21DBN=UJRN&S21STN=1&S21REF=10&S21FMT=njuu_all&C21COM=S&S21CNR=20&S21P01=0&S21P02=0&S21COLORTERMS=0&S21P03=I=&S21STR=K29137:IIp.%2F2018%2F25

In view of the above, at least as of the moment of submitting the mandatory copy of the Bulletin (2018, No. 25) to V. I. Vernadskyi National Library of Ukraine, it did not contain the candidate's article.

At the same time, the candidate's article is available at the website of the above mentioned academic journal³. It is also available at other pages of the Bulletin (202-206) than the candidate mentioned in her dissertation (199-202) and uploaded to the publication website on 26.12.2019. While downloading the article, it is stored in the form of a file titled "6279-Article text-32219-1-10-20200924". At the same time, other articles of the Bulletin available in volume 25 dated 2018, which are also available in the mandatory copy sent to V. I. Vernadskyi National Library of Ukraine, are downloaded from the website of the Bulletin with a similar title, but with the last figures "20181205" or "20181206". It may be assumed that in this case, names of files reflect the date of their creation or being converted into PDF format. Moreover, according to metadata of the candidate's article as the PDF file, this file was modified for the last time at 12:34:59 on 22.09.2020, and www.ilovepdf.com is indicated as the file author. Hence, it may be concluded that the file with the article was converted for upload to the Bulletin website in 2020.

The candidate did not provide any explanation as to why her article is absent from the printed and electronic copies stored at V. I. Vernadskyi National Library of Ukraine or why the article was uploaded to the Bulletin website much later than articles of other authors.

Taking into account data from the Bulletin website, a conclusion that the candidate's article was added to the electronic copy of volume 25 of the Bulletin in 2020 seems to be the most probable.

The Ethics Council is also hereby drawing attention to the fact that according to the electronic version of volume 25 of the Bulletin placed at the

³ See following the link: <https://periodicals.karazin.ua/law/issue/view/787>

publication website, the candidate's article follows the article of her husband O. P. Koretskyi. Her husband's article is titled "Procedural Means of Receiving and Recording Information in the Process of Proof"⁴. These articles are placed together: the initial paragraph of V. V. Koretska's article is available on the last page of the file with O. P. Koretskyi's article, while the final part of O. P. Koretskyi's article is available on the first page of the file with V. V. Koretska's article. In view of this, these articles were published at the same time.

In the article authored by the candidate's husband, who defended his candidate's dissertation on the same day as she did, in the same educational institution (university "Lviv University of Business and Law") and with the same academic supervisor (D. S. Slinko) the following position of him is indicated: "Head of the Department of the State Bureau of Investigations". At the same time, as the Ethics Council has established, the candidate's husband started working in the State Bureau of Investigations at the position of the head of the third investigative department of the First Division on Organization of Pre-Trial Investigations only on 14.03.2019 (he was appointed to the position with the order of 11.03.2019). He was announced as the winner of the competition for this position on 21.12.2018. Hence, as of the date of approval of content of the volume (2018, No. 25) of the Bulletin (25.06.2018) the candidate's husband did not hold the position specified in his academic publication and the competition for this position had not been announced yet.

This allows to question explanations of the candidate regarding the fact that the mention of her husband holding the mentioned position in the name of the article was a technical mistake, as well as the fact that the aforementioned article by O. P. Koretskyi and respectively the article by V. V. Koretska were published

⁴ See following the link: <https://periodicals.karazin.ua/law/article/view/16278>

before March of 2019, when O. P. Koretskyi was appointed to the position in the State Bureau of Investigations.

All these facts cumulatively raise reasonable doubts of the Ethics Council that the candidate's article "General Theory of Evidence and Proof" was really published in the Bulletin of V. N. Karazin University. Series "Law" (2018, No. 25) following the established procedure along with other articles. An explanation that this article was included into this volume of the Bulletin later (in 2019 or even in 2020), without the respective approval of the Academic Council of the V. N. Karazin University and in violation of the internal proceedings of the mentioned journal, seems to be more logical to the Ethics Council. This additionally raises doubts about the candidate's statement that she published this article in 2018 and shows her dishonesty in answers given to the Ethics Council.

Besides, the Ethics Council is hereby pointing out that the practice of "publishing" academic articles by means of adding them to already published volumes contradicts existing requirements to academic integrity and evokes doubts about compliance of the candidate and persons involved into organization of such publications with these requirements.

2.2. With respect to publication "Special Requirements to Judges of Higher Specialized Courts"

According to the text of the candidate's dissertation, the Ethics Council has also established that the candidate published an approbatory paper titled "Special Requirements to Judges of Higher Specialized Courts" (International Research and Practical Conference. Topical Problems of Science and Practice: Lviv, 11.12.2017. Lviv: Private University "Lviv University of Business and Law", 2017. URL: <http://lubp.com.ua/apsp-2017-bedratyi-y/>). In the dissertation, the candidate indicated as the sole author of this paper. In her explanations she confirmed that she was the sole author.

The Ethics Council has also established that while following this link, academic publication of Yu. V. Bedratyi popped up with the same title and content. The fact that initially only Yu. V. Bedratyi was indicated as the author of the publication is confirmed with cached Google-link⁵. Once the candidate was requested to provide explanations regarding that, the composition of authors of this publication at the website of university “Lviv University of Business and Law” changed to Yu. V. Bedratyi, V. V. Koretska, and O. P. Koretskyi.

At the interview, the candidate said at first that she had no idea why, when following the relevant link, a version of the file opened for the Ethics Council where Yu.V. Bedratyi was indicated as the sole author. She noted that when she would open the abstracts from the site as a file, the document would display her authorship.

In view of this, at the interview, the Ethics Council asked a clarifying question about why the metadata of this work (as a file) shows that it was modified about 3 hours after the candidate received the relevant questions about the authorship of the work. This time the candidate explained that she had contacted the university to ask why her name was not displayed in the file as the author of the work. According to the candidate, university representatives told her that there had been a failure in the system, possibly due to martial law, and that they had rebooted it, whereupon the information that the candidate was the author of the work appeared in the article.

⁵ See: http://webcache.googleusercontent.com/search?q=cache%3Alubp.com.ua%2Fwp-content%2Fuploads%2F2020%2F04%2FБедратий-АПНП2017.pdf&client=safari&rls=en&sxsrf=ALiCzsZzByq23haoJFCu_-TSTYInx3qmcA%3A1666070735910&ei=zzhOY8yUN-qj5NoP4ZmyyAU&ved=0ahUKEwiMuImThen6AhXqEVkFHeGMDFkQ4dUDCA4&uact=5&oq=cache%3Alubp.com.ua%2Fwp-content%2Fuploads%2F2020%2F04%2FБедратий-АПНП2017.pdf&gs_lcp=Cgnd3Mtd2l6EANKBAhBGAFKBAhGGABQ1wRY1wRgiwdoAXAAeACAATGIATGSAQEXmAEOAEBwAEB&sclient=gws-wiz

However, the Ethics Council emphasizes that in her written explanations the candidate did not report any of her contacts with the university after receiving questions from the Ethics Council. In fact, the candidate said in response to the question that she did not understand why the Ethics Council noted another person as the author in her work and provided an identical reference to a work in which she was already listed as its author. Besides, the candidate failed to explain at the interview how military actions could affect the correct information about the author of the article.

In addition, after the interview with the candidate, the Ethics Council received a letter from the Lviv University of Business and Law signed by its rector Fedir Horbonos, which concerned the above-mentioned approbatory paper. It states that the candidate, her husband, and Yu. V. Bedratyi conducted research at the same university, contacted each other, and exchanged views. They prepared the mentioned publication in co-authorship. However, later, as it was found by the internal investigation, in the course of preparation and submission of materials for defense, the applicants made a technical mistake, not indicating the co-author of the material (allegedly, the candidate). In addition, the letter states that the co-authors agreed that a technical mistake was made.

The Ethics Council critically assesses the evidentiary value of this letter, because, at the interview, the candidate twice confirmed that she did not know Yu.V. Bedratyi, who was listed as the sole author in the approbatory work. These explanations of the candidate are inconsistent with the statements in the letter signed by the rector Fedir Horbonos about the constant contact and exchanges of views between the candidate, her husband, and Yu. V. Bedratyi.

This shows that either the candidate is not the author of paper “Special Requirements to Judges of Higher Specialized Courts” or she is the co-author of this paper together with Yu. V. Bedratyi and O. P. Koretskyi. In any case the

Ethics Council does not have grounds to agree with the candidate who claims that she is the only author of this paper.

Pursuant to Article 42(4) of the Law of Ukraine “On Education” (in the version that was valid as of the moment the candidate defended her dissertation), a violation of academic integrity includes, in particular, academic plagiarism – publication (partially or fully) of academic (creative) results received by other persons as results of own research (art) and/or replication of published texts (published art) of other authors without specifying authorship. In view of this, the Ethics Council thinks that the candidate committed a violation of academic integrity by specifying herself as the only author of academic paper “Special Requirements to Judges of Higher Specialized Courts” (International Scientific and Practical Conference. Topical Problems of Science and Practice: Lviv, 11.12.2017. Lviv: Private University “Lviv University of Business and Law”, 2017. URL: <http://lubb.com.ua/apsp-2017-bedratyi-y/>).

According to cl. 1.3.2. and cl. 1.3.4 of the Methodology, indicators of professional ethics and integrity include honesty, which means presence of high moral qualities, truthfulness in professional activities and in everyday life, and diligence, which means industrious, thorough, and responsible fulfillment of one’s duties which is a sign of the person’s professional integrity.

Besides, according to cl. 1.4.1 of the Methodology, a candidate does not comply with such indicators as independence, honesty, impartiality, diligence if there are reasonable doubts that the candidate in the present or past professional capacity acted in line with requirements of academic integrity.

In the context of the candidate’s academic activities, the Ethics Council has reasonable doubts about the candidate’s compliance with such indicator as honesty as in her explanations to the Ethics Council the candidate indicated her academic article as published in 2018 when it was published later, as well as

indicating the academic publication as her independently published paper in which, at the very least, the candidate was not the only author.

The Ethics Council also has reasonable doubts about the candidate's compliance with such indicator as diligence since the way in which the candidate published article "General Theory of Evidence and Proof" by means of its later addition to the already published publication does not comply with existing requirements and practices of academic integrity. Moreover, publication of the academic paper with a violation of requirements to indication of publication authors also constitutes a violation of the diligence indicator.

3. Regarding the lack of diligence in consideration of cases of administrative offenses under Article 130 of the Code of Ukraine on Administrative Offenses (hereinafter - CAO)

On 15.04.2019 the candidate delivered a ruling in the case No. 570/368/19, whereby she found a person guilty of an administrative offense under Article 130 (2) of the CAO. However, the candidate closed the proceedings in the case due to the expiration of the three-month term for imposing an administrative penalty. According to the ruling, the offense was committed on 16.01.2019. This was also confirmed by the candidate in her written explanations.

At the same time, according to Article 38 of the CAO (in the edition in force at the time of consideration of the case), an administrative penalty for committing offenses under Article 130 of the CAO may be imposed within 3 months from the date of its commission. Therefore, on 15.04.2019, the candidate unreasonably closed the proceedings in case No. 570/368/19 before the expiration of the aforementioned term, as a result of which the offender evaded administrative liability. At the same time, a report on the commission of an offense under Article 130 (2) of the Code of Administrative Offenses was issued against the offender, which indicates that he committed the offense repeatedly.

The Ethics Council fully shares the position of the High Council of Justice (expressed in the Decisions of the Third Disciplinary Chamber of the High Council of Justice of 21.01.2021 № 123/3ДП/15-21 and of 24.02.2021 № 453/3ДП/15-21) on the special social importance of proper consideration of cases of holding drivers to administratively liable for driving under influence of alcohol and the need for judges to pay special attention to the careful planning of their consideration. Studying and assessing all the circumstances of such cases by judges and making every effort to achieve the objectives of the CAO, in particular, the correction of offenders and the protection of public order should be the key goals during the consideration of such cases.

During the consideration of this case, the candidate, due to her negligent attitude to her duties, violated the norms of the CAO and contributed to the creation of conditions for the offender to avoid liability.

In view of the above, the Ethics Council has reasonable doubts about the candidate's compliance with the indicator of 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:

the candidate for the position of the member of the High Council of Justice Viktoriia Vitaliyivna Koretska 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