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To: Mr Yevgeniy Zakharov
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23 September 2026

Dear Sir,

On 10 September 2026, the Kharkiv Human Rights Protection Group (KHPG) requested Rule of Law Empowerment Association (ROLE) to conduct an independent peer review of the legal analysis entitled *"Amicus Curiae Brief for the High Anti-Corruption Court of Ukraine in the Case of Criminal Investigation and Charges against Yulia Tymoshenko"*, prepared by Mr. Yonko Grozev and Mr. Armen Harutyunyan, former judges of the European Court of Human Rights, and to provide ROLE's independent assessment of the conclusions reached therein in relation to the criminal proceedings no. 42025000000001123 brought against Ms. Yulia Tymoshenko.

In its request, KHPG explained that, in the course of its human rights monitoring of the criminal proceedings against Ms. Yuliia Tymoshenko, a Member of Parliament of Ukraine and Head of the parliamentary faction of the political party All-Ukrainian Union "Batkivshchyna", it had commissioned a strictly legal analysis of the investigation materials and the charges brought against Ms. Tymoshenko. The amicus curiae brief, entitled *"Amicus Curiae Brief for the High Anti-Corruption Court of Ukraine in the Case of Criminal Investigation and Charges against Yulia Tymoshenko"*, was provided to ROLE on the same date.

Between 10 and 21 September 2026, ROLE conducted the requested independent peer review. Having independently examined the legal reasoning and the authorities relied upon in the aforementioned amicus curiae brief, the peer review endorses the principal conclusions reached by the authors and considers them to be correctly grounded in the applicable standards of the European Convention on Human Rights and the case-law of the European Court of Human Rights and adequately supported by the factual circumstances described in the Legal Opinion.

Sincerely,

Anna Maralyan
President
Rule of Law Empowerment Association (ROLE)

Encl.: Independent Peer Review of the Amicus Curiae Brief for the High Anti-Corruption Court of Ukraine in the Case of Criminal Investigation and Charges against Yulia Tymoshenko

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INDEPENDENT PEER REVIEW OF THE AMICUS CURIAE BRIEF FOR THE HIGH ANTI-CORRUPTION COURT OF UKRAINE IN THE CASE OF CRIMINAL INVESTIGATION AND CHARGES AGAINST YULIA TYMOSHENKO

I. Scope and purpose of the peer review

Rule of Law Empowerment (ROLE) has been requested to provide an independent peer review of the legal analysis entitled *"Amicus Curiae Brief for the High Anti-Corruption Court of Ukraine in the Case of Criminal Investigation and Charges against Yulia Tymoshenko"*, prepared by Mr. Yonko Grozev and Mr. Armen Harutyunyan (hereinafter the "Amicus Curiae Brief").

The purpose of this peer review is not to substitute a separate factual or legal opinion for that of the authors. Rather, it is to assess whether the Amicus Curiae Brief accurately identifies and applies the relevant principles of the European Convention on Human Rights (hereinafter "the Convention" or "ECHR") and the case-law of the European Court of Human Rights (hereinafter "the Court" or "ECtHR"), and whether its conclusions are sufficiently supported by the factual material described in the Amicus Curiae Brief.

The Amicus Curiae Brief expressly recognises that the domestic proceedings are at a preliminary stage and that the fairness of criminal proceedings under Article 6 must ultimately be assessed as a whole. It therefore does not purport to establish that a Convention violation has already occurred, but identifies deficiencies which, if not remedied during the domestic proceedings, may result in violations of the Convention. This constitutes an appropriate and legally sound starting point.

On the basis of the material reviewed, it is considered that the Amicus Curiae Brief identifies the principal Convention issues arising from the investigation, namely: (i) restrictions on access to evidence; (ii) restrictions on the examination of prosecution witnesses; (iii) possible police incitement or entrapment; and (iv) an alleged ulterior purpose underlying the investigation and prosecution. These issues are closely interconnected and are appropriately considered together rather than as entirely separate questions.

II. General assessment

The Amicus Curiae Brief is legally well-founded in its identification and application of the relevant Convention principles. Its central concern - that the combination of restrictions on the examination of key witnesses and restrictions on access to the primary recording may materially impair the defence's ability to challenge the prosecution case and raise concern of having a hidden agenda when restricting the defendant's rights- is well supported by the Court's case-law.

This is particularly important because the Convention does not establish a general regime governing the admissibility of evidence in domestic criminal proceedings. The Court's task is instead to determine whether the proceedings as a whole were fair, including the manner in which evidence was obtained, disclosed, challenged and used. The Court's current case-law specifically identifies as relevant whether the accused had an opportunity to challenge the authenticity of evidence and oppose its use in conditions respecting adversarial proceedings and equality of arms, the reliability of the evidence, the manner in which domestic courts dealt with challenges to it, and whether the evidence was decisive for the outcome.

The factual circumstances described in the Amicus Curiae Brief make those principles particularly relevant. According to the material reviewed, the defence received only a derivative copy of the audio recording and was not provided with the complete recording or the original physical medium. Independent examinations identified technical anomalies which could raise questions concerning the continuity and integrity of the recording.

The significance of this issue is reinforced by the apparent evidentiary role of the recording. The Amicus Curiae Brief describes the audio recording as the key evidence supporting the charge and the testimony of witnesses Mazur and Oliinyk as important for placing that recording in its factual context.

In these circumstances, the question is not simply whether the defence has been given "some" access to the evidence. The relevant question is whether the defence has had a genuine and practical opportunity to test the authenticity, integrity, reliability and evidential significance of the material relied upon by the prosecution. This approach is consistent with the Court's established Article 6 jurisprudence.

III. Access to evidence and the right to challenge its authenticity

The Amicus Curiae Brief correctly relies on the principles of adversarial proceedings and equality of arms in addressing the defence's access to evidence. In addition to the analysis in the Amicus Curiae Brief, it should be noted that the Court has reiterated that an accused must have an opportunity to challenge the authenticity of evidence and oppose its use in circumstances in which adversarial proceedings and equality of arms are respected (*Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20). The Court also attaches importance to whether the evidence was decisive for the outcome of the proceedings.

This is particularly relevant to the audio recording in the present case. According to the Amicus Curiae Brief, the defence was denied access to the complete recording and the original recording medium and was ultimately provided only with a derivative copy. The defence's technical examinations were therefore conducted on material supplied by the prosecution. The Amicus Curiae Brief further records that independent examinations identified anomalies which could be inconsistent with a continuous original recording and potentially indicate rearrangement or splicing.

A defence challenge does not necessarily require the defence to establish that a recording has been manipulated. It is sufficient, at the procedural stage, that the defence has identified concrete reasons why access to the primary material may be necessary to test authenticity, continuity, integrity or context.

The relevance of *Yüksel Yalçınkaya v. Türkiye* [GC] is therefore substantial, although the factual circumstances of that case should not be treated as identical to the present case. The Grand Chamber held, in the context of electronic evidence, that access to derivative or analytical material cannot necessarily substitute for access to the underlying source material where that source material may contain information capable of casting doubt on the admissibility, reliability or probative value of the evidence. The Court also stressed the need for procedural safeguards enabling the defence genuinely to test the reliability and evidential value of the material.

The present case arguably raises an analogous procedural concern: if the original recording is unavailable to the defence, while the prosecution relies upon a derivative version as central evidence, the defence's ability to conduct an independent assessment of the evidence is materially constrained.

Therefore, to meet the standards set by the Court, it is necessary that the examination of the complete original recording be conducted, or otherwise ensured an equivalent and effective procedure through which its authenticity, completeness, integrity and evidential value can be

independently tested. This is particularly important where the defence has raised concrete technical concerns.

The Court's approach also makes clear that the question cannot be resolved merely by saying that the domestic court itself has access to the original evidence. The relevant issue is whether the defence has been afforded a genuine opportunity to challenge the evidence and whether adequate counterbalancing safeguards exist.

IV. The significance of the recording as potentially decisive evidence

The Amicus Curiae Brief is persuasive in identifying the recording and the testimony of Mazur and Oliinyk as central elements of the prosecution case.

Should during the criminal proceedings, the audio recording and the testimony of witnesses Mazur and Oliinyk constitute sole, decisive or otherwise significant evidence supporting the charges, the restrictions imposed on the defence's ability to examine the witnesses and to test the integrity and reliability of the recording require particularly rigorous scrutiny and adequate counterbalancing safeguards.

The greater the evidential weight attributed to material which the defence is unable effectively to examine or challenge, the greater the importance of ensuring procedural safeguards capable of preserving the overall fairness of the proceedings.

V. Anonymous witnesses and effective cross-examination

The Amicus Curiae Brief correctly identifies the anonymity of witnesses Mazur and Oliinyk as a separate but closely related issue.

The Court accepts that witness protection may, in appropriate circumstances, justify restrictions on disclosure of a witness's identity. Such restrictions, however, require relevant and sufficient reasons and must be accompanied by safeguards capable of maintaining the overall fairness of the proceedings.

In the present case, the Amicus Curiae Brief identifies several circumstances requiring careful examination: the general nature of the reasons given for anonymity; the fact that the defence claims

to have identified Mazur; the central evidentiary role attributed to his testimony; and the importance of his evidence to the entrapment issue.

The point that deserves particular emphasis is that the identity of the witness is not relevant merely as an abstract matter. It may be directly relevant to the defence's ability to investigate:

- the witness's relationship with the accused;
- the witness's political or other affiliations;
- possible motives or incentives for cooperating with the investigation;
- possible pressure exerted upon the witness;
- the source of the witness's knowledge;
- inconsistencies between the witness's different statements; and
- the witness's role and motives in initiating the covert operation.

These matters appear particularly significant in this case because the Amicus Curiae Brief itself identifies the conduct and motivations of Mazur and Oliinyk as central to the entrapment analysis.

The Court's case-law requires the domestic court to examine the justification for anonymity concretely and to consider whether adequate counterbalancing safeguards exist. The greater the evidential weight of testimony that the defence cannot properly examine, the more rigorous the safeguards must be.

VI. Entrapment

The Amicus Curiae Brief correctly identifies the Court's two-stage approach to entrapment: the substantive test and the procedural test. The Court has repeatedly distinguished legitimate undercover investigation from police incitement and has emphasised that undercover methods may be used to investigate crime, but the authorities must not create the offence where it would otherwise not have been committed.

The central factual question in the present case is therefore appropriately identified as whether the authorities, directly or through persons acting under their instructions or control, remained essentially passive or instead exerted such influence on the defendant as to incite the commission of an offence. This requires a careful examination of the events preceding the covert operation, and not merely the content of the recorded meeting itself.

The Amicus Curiae Brief is also correct to attach importance to the question whether the evidence of prior criminal activity is independent of the covert operation.

Accordingly, the present materials appear sufficient to require a full judicial examination of the entrapment allegation, including disclosure and examination of the relevant evidence.

VII. Article 18: Legal framework and evidentiary assessment

The Amicus Curiae Brief correctly identifies Article 18 as potentially relevant to the case and appropriately relies on *Merabishvili v. Georgia* [GC] for the predominant-purpose test.

The Court has established in the *Merabishvili* case that a restriction may pursue a legitimate Convention purpose while nevertheless violating Article 18 if an ulterior purpose was predominant.

Accordingly, Article 18 is violated where the legitimate purpose relied upon by the authorities merely serves as a pretext enabling them to pursue an ulterior objective that constitutes the real and overriding reason for the impugned measure.

When determining whether an ulterior purpose was predominant, the Court considers a number of factors. These include whether the authorities attached particular importance to measures targeting a specific individual or group, and whether the impugned measures form part of an established pattern of misuse of power by the respondent State (*Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13; *Anti-Corruption Foundation (FBK) and Others v. Russia*, nos. 13505/20 and 138 others).

An established pattern of misuse of power may be demonstrated in two ways. First, it can be shown that the restrictions imposed form part of a continuing pattern of violations directed against the defendant personally (*Navalnyy v. Russia* [GC], 9580/12, 36847/12, 11252/13, 12317/13 and 43746/14). Secondly, even where the defendant, the applicant before the ECtHR, relies on a single set of proceedings, the broader domestic context may demonstrate that the case is not isolated but forms part of a wider practice affecting a significant number of persons belonging to the same category or group (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17).

The Amicus Curiae Brief has rightly concluded that in the present case at the current stage, there are grounds for contending that the interference with the defendant's Convention rights was not

merely unlawful, but that the measures taken against him pursued a predominant ulterior purpose within the meaning of Article 18 of the Convention.

Complementing the Amicus Curiae Brief, it is suggested that the domestic court examine this case against the background of any broader pattern of proceedings in Ukraine brought against individuals who expose alleged wrongdoing in areas that are politically or otherwise particularly sensitive for the authorities. The Court's judgment in *Sytnyk v. Ukraine* (no. 16497/20) may be of particular relevance in this regard. In that case, the Court found a violation of Article 18, concluding that the applicant's prosecution had pursued a hidden agenda, namely to discredit him personally rather than to achieve the legitimate objective of combating corruption. The Court attached considerable weight to the serious shortcomings in the domestic proceedings and concluded that their overriding purpose had not been the prevention of corruption in the public service, but rather a personal attack on Mr. Sytnyk's integrity. Similarly, in *Logvynskyy v. Ukraine and two other applications* (nos. 25382/20, 32671/20 and 41027/20), currently pending before the Court, the applicant alleges that he was subjected to criminal prosecution after publicly exposing serious violations of the rights of lawyers and advocating against grave human rights violations while serving as a Member of Parliament. Although that case remains pending and no conclusions may be drawn as to its merits, it nevertheless illustrates that allegations of politically motivated prosecutions continue to arise in Ukraine.

It is also noteworthy, as a matter of contextual assessment, that Ukraine ranks third among the Council of Europe member States in terms of the number of judgments finding violations of Article 18 of the Convention, after Azerbaijan and Türkiye. While the mere existence of these cases does not. By itself, establish a systemic practice or prove an ulterior purpose in the present proceedings, such jurisprudence may form part of the broader context considered by the domestic court.

Further, the domestic courts are also invited to examine whether there are grounds for arguing that the defendant was individually targeted because of her political standpoint in respect of NABU and SAPO.

The Amicus Curiae Brief is also correct that Article 18 may be examined in conjunction with Article 6. This is important for the assessment of whether the investigation pursued an ulterior purpose and therefore requires examination by the trial court together with the direct evidence concerning the conduct and motivations of the investigators and other persons involved.

VIII. Relevant contextual evidence under Article 18

The Amicus Curiae Brief rightly identifies contextual elements which may properly be considered in an Article 18 assessment:

- the political position of the defendant;
- her opposition to NABU and SAPO;
- the timing of the investigation in relation to legislative developments concerning those institutions;
- the scope initially attributed to the investigation;
- the subsequent focus on the defendant;
- the rapid progression from the initiation of the investigation to the covert operation and searches;
- the search of the office of another Member of Parliament involved in parliamentary scrutiny of NABU and SAPO;
- the public communication strategy surrounding the investigation; and
- the publication of excerpts of the recording.

These circumstances should not be treated as individually determinative. Their relevance derives from their cumulative evidentiary significance and from their relationship to the stated purpose and conduct of the investigation.

The Court's approach in Article 18 cases confirms that the assessment may take account of the overall configuration of events rather than isolated procedural decisions.

IX. Article 8 issues

This peer review shares Amicus Curiae Brief's standpoint in that the legality of the surveillance and searches as principally raising issues under Article 8 should be taken through separate proceedings. Meanwhile, it is essential to highlight that the authorisation and execution of the surveillance and searches may have evidential relevance to the Article 6 and Article 18 questions. In particular, the basis upon which the surveillance warrant was obtained may bear on the question whether the authorities had objective suspicions before commencing the covert operation. Similarly, the circumstances of the search of the office of Mr. Vlasenko may be relevant to the broader assessment of the conduct and purpose of the investigation.

The trial court should therefore distinguish between:

1. whether the surveillance or search complied with Article 8;
2. whether evidence obtained through those measures is admissible under Ukrainian law and standards developed by the ECtHR; and
3. what the circumstances surrounding those measures demonstrate concerning the fairness and purpose of the criminal proceedings.

These are related but legally distinct questions.

X. Overall conclusion of the peer review

The Amicus Curiae Brief provides a substantial, coherent and generally well-founded Convention-law framework for the issues arising in the proceedings against Ms Tymoshenko. Having independently revied the Amicus Curiae Brief, it is considered that its principal legal conclusions are correct and well supported by the ECHR standards and the case-law of the Court.

In particular the peer review endorses the Amicus Curiae Brief's assessment that the cumulative significance of the restrictions imposed on the defence warrants close judicial scrutiny. The anonymity of key witnesses, the limited ability to cross-examine them, and the restriction on access to the complete original audio recording are not merely isolated procedural matters. Their interaction may materially affect the defence's ability to challenge the prosecution case and therefore engages important requirements of adversarial proceedings, equality of arms and the overall fairness of the criminal proceedings.

The Amicus Curiae Brief is also justified in identifying the entrapment issue as requiring a full judicial examination. The central factual questions, including the existence of objective suspicions before the covert operation, the origin and motivation of the persons involved, their contacts with the defendant before cooperation with NABU, the nature of any instructions received, and the conduct during the covert operation, are directly relevant under the Court's substantive and procedural entrapment jurisprudence.

The Article 18 analysis also raise a serious issue for examination by the domestic court. The timing and sequence of events, the stated scope of the initial investigation, the subsequent focus of the investigation, the involvement of persons connected with the governing majority, the searches, and the public dissemination of excerpts of the recording may all constitute relevant contextual evidence. They should, however, be assessed cumulatively and together with direct evidence concerning the conduct and motivations of the investigators and other participants. The existence of those circumstances should not itself be treated as establishing an ulterior purpose.

Accordingly, the Amicus Curiae Brief provides a coherent and relevant application of the Convention standards to the issues arising in the pending proceedings. Its principal conclusions are supported by the applicable ECtHR jurisprudence and by the factual material identified in the Amicus Curiae Brief. In particular, it appropriately calls upon the domestic court to ensure that the defence has a genuine opportunity to challenge the key prosecution evidence, to examine the entrapment allegation through an adversarial and comprehensive procedure, and to consider the evidence relevant to the alleged ulterior purpose of the investigation. Such an approach would be consistent with the Court's requirement that the fairness of criminal proceedings ultimately be assessed as a whole and that identified procedural deficiencies be effectively remedied at the domestic level. Subject to the factual qualifications expressly identified above, the peer review therefore endorses the principal conclusions and recommendations of the Amicus Curiae Brief.