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ETHICS COUNCIL

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Kyiv

DECISION

No. 11

***On non-compliance of candidate
for the position of the member of
the High Council of Justice S. O. Babii
with the professional ethics and integrity criteria
for filling in the position of the member
of the High Council of Justice***

The Ethics Council consisting of Chair of the Ethics Council Lev Kyshakevych (remotely by videoconference), Deputy Chair of the Ethics Council Sir Anthony Hooper (remotely by videoconference), members of the Ethics Council: Yurii Triasun (remotely by videoconference), Volodymyr Siverin (remotely by videoconference), Robert Cordy (remotely by videoconference), Lavly Perling (remotely by videoconference), having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Serhii Oleksandrovykh Babii with the criteria of professional ethics and integrity, according to the Law of Ukraine “On the High Council of Justice”, the Rules of Procedure of the Ethics Council adopted by the Ethics Council’s Decision No. 4 as of 9 December 2021 as amended pursuant to Decisions of the Ethics Council No. 1 as of 1 December 2021 and No. 4 of 26 April 2022, Methodology for assessing compliance of the candidate to the position of a member of the High Council of Justice and sitting members of the High Council of Justice with the criterion of

professional ethics and integrity adopted by Decision of the Ethics Council No. 5 as of 9 December 2021 (hereinafter referred to as the Methodology),

has established:

Pursuant to Article 9¹(14) of the Law of Ukraine “On the High Council of Justice”, the Ethics Council shall carry out selection of candidates for the position of the member of the High Council of Justice in two stages:

1) selection of candidates pursuant to results of consideration of documents submitted by candidates, results of the special check and respective information from open sources, and formation of the list of candidates admitted to the interview;

2) conduct of interviews with selected candidates and determination of the list of candidates recommended to bodies which elect (appoint) members of the High Council of Justice.

The Ethics Council received copies of documents submitted by Serhii Oleksandrovysh Babii for participation in the competition for the position of the member of the High Council of Justice from the Verkhovna Rada of Ukraine.

Candidate Serhii Oleksandrovysh Babii was admitted to the interview for the position of the member of the High Council of Justice pursuant to the decision of the Ethics Council as of 21 December 2021.

Having studied documents provided by S. O. Babii upon the Ethics Council’s request, his written explanations, information obtained from open sources and civil society organizations, information received from the National Agency on Corruption Prevention (hereinafter referred to as the NACP), National Anti-Corruption Bureau of Ukraine (hereinafter referred to as the NABU), having interviewed him, the Ethics Council has established the following.

S. O. Babii was appointed to the position of a judge of Pavlohrad City-District Court of Dnipropetrovsk region for the term of five years by Decree No. 484/2012 of the President of Ukraine as of 23 August 2012.

While evaluating the candidate, the Ethics Council has established a number of circumstances that raise reasonable doubts about the candidate's compliance with the criteria of professional ethics and integrity.

In particular, regarding the circumstances of the candidate's wife's purchase of 2018 Toyota C-HR car worth UAH 783,180, what amounts to approximately USD 30,000. In his written explanations, the candidate notes that 50% of the cost of the car was paid by him, and the remaining 50% of the cost was paid by Larysa Volodymyrivna Tytarenko (the candidate's mother – in-law). At the same time, in the declaration for 2018 it is indicated that the amount of funds paid by the mother-in-law is only UAH 168,901 (approximately USD 6,500), and not UAH 390,000 (approximately USD 15,000), which will be half the cost of the car. The candidate's explanations about the discrepancy between the declared and actually paid amount of expenses for the purchase of a 2018 Toyota C-HR car due to the legal illiteracy of his wife and mother-in-law, the Ethics Council considers unfounded, since they contradict the actual data available in the relevant documents (declaration for 2018, 2019, 2020, purchase and sales agreement dated 12.07.2018).

A candidate for the position of the HCJ member shall be considered as compliant with the professional ethics and integrity criteria if he/she is independent, honest, impartial, incorruptible, diligent, follows ethical norms, and displays immaculate conduct in professional activities and personal life, as well as if there are no doubts concerning legality of the sources of property origin, correspondence of the level of life of the candidate or his/her family members with the declared income, correspondence of the candidate's lifestyle with his/her status (Article 9¹(16) of the Law of Ukraine “On the High Council of Justice”).

Clause 1.3.7.3 of the Methodology stipulates that income that has not been declared with public authorities in line with requirements of the legislation or that has been declared, yet with respect to which there are reasonable doubts that it has been, in particular, a tool or result of legal or declared activity, shall not be considered as legal.

In view of the above, the Ethics Council has reached a conclusion that incomplete declaration of expenses by the candidate under these circumstances casts doubt on his compliance with clause 1.3.7.3. of the Methodology.

Based on the studied documents, it has also been established that the candidate's wife purchased shares of PJSC "EBRD" (EDRPOU code 19364584) at her own expense in 2013 in the amount of UAH 109,899. However, during the interview the candidate could not explain the legality of the sources of origin of funds for the purchase of these shares, taking into account the fact that the income of his wife, according to information from the State Register of individuals who pay taxes, in the period from 1998 to 2012 amounted to only 70 989 UAH. The obligation to fully and reliably reflect information about the income of the declarant and his family members follows from the requirements for financial control defined in Article 12 of the law of Ukraine as of April 7, 2011 "On the basics of preventing and combating corruption", which was in force at that time.

According to clause 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/her status in case there are no reasonable doubts to the contrary.

In view of the above, the Ethics Council has reached a conclusion that the candidate did not provide convincing and reasonable explanations, supporting documents regarding the sources of origin of his wife's funds for the purchase of shares. In this regard, the Ethics Council considers that there are reasonable doubts about compliance of candidate S. O. Babii with clause 1.3.7.2 of the Methodology.

Rule 3.9.1 of the Ethics Council's Rules of Procedure sets out that a candidate is required to provide the Ethics Council with a list of relevant documents, in particular, copies of all powers of attorney (or data from the Unified Register of Powers of Attorney about all powers of attorney) issued in the name of the candidate or on behalf of or in the name of his family members, if such powers of attorney are valid as of the date of receipt of the notice of intent to conduct an assessment, or

were valid for the last ten years before the date of receipt of such notice. According to the Unified Register of Powers of Attorney, as of 23.07.2016, under the registration number 44199060, H. P. Laryushkina (the candidate's mother) issued a power of attorney in the name of S. O. Babii on the right to manage and dispose of all movable and immovable property. However, neither the original nor a copy of the specified power of attorney was provided by the candidate. The Ethics Council considers unconvincing the explanations of Babii S. O. that he became aware of the existence of this power of attorney only in 2018 or 2019, and so far he cannot receive it due to the fact that he is not entitled to request it or send a request regarding the content of such a power of attorney. These statements contradict the requirements of Article 8(7) of the Law of Ukraine “On Notary Service”, according to which certificates of notarial actions performed and copies of documents stored by a notary are issued by a notary exclusively to individuals and legal entities on whose behalf or in respect of which notarial actions were performed. In the Ethics Council’s opinion, such actions of the candidate call into question his compliance with such an indicator of the criterion of professional ethics and integrity as honesty (clause 1.3.2 of the Methodology).

During the interview, the Ethics Council established that at the time of taking the judge's oath in 2012, S. O. Babii was registered as an individual entrepreneur and stopped such activities only in 2014. In his explanations, the candidate noted that he stopped entrepreneurial activity on 4 April 2012, by submitting an application to the state registrar. In the future, the fate of this statement did not bother him. He believes that he did not violate the requirements of the legislation of Ukraine, since he has not carried out business activities since the specified date. However, the Ethics Council considers that the very fact that S. O. Babii had been in the legal status of a judge and an individual entrepreneur for more than two years simultaneously casts doubt on the candidate's compliance with ethical standards and demonstration of impeccable behavior in professional activities and personal life (clause 1.3.6 of the Methodology).

Thus, being governed by Rules 2.3, 3.1, 3.15.1, and 3.2 of the Ethics Council's Rules of Procedure, Methodology for evaluation of compliance of the candidate for the position of the member of the High Council of Justice and members of the High Council of Justice with the criteria of professional ethics and integrity, Article 9¹ of the Law of Ukraine "On the High Council of Justice", Final and Transitional Provisions of the Law of Ukraine "On Introducing Amendments into Some Legislative Bills of Ukraine Regarding the Procedure of Election (Appointment) to Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice", the Ethics Council

has decided:

to recognize candidate for the position of the member of the High Council of Justice Serhii Oleksandrovych Babii 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