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ETHICS COUNCIL

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Kyiv

DECISION

No. 12

***On non-compliance of candidate
for the position of the member of
the High Council of Justice M. M. Voinarivskyi
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 Mykola Mykolaiovych Voinarivskyi 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 Mykola Mykolaiovych Voinarivskyi for participation in the competition for the position of the member of the High Council of Justice from the Verkhovna Rada of Ukraine.

Candidate Mykola Mykolaiovych Voinarivskyi 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 M. M. Voinarivskyi upon the Ethics Council’s request, her 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 her, the Ethics Council has established the following.

M. M. Voinarivskyi was appointed to the position of a judge of Mykolaiv District Court of Mykolaiv region for the term of five years by Decree

No. 802/2010 of the President of Ukraine as of 6 August 2010; and he was appointed to the position of a judge of Mykolaiv District Court of Mykolaiv region by Decree No. 295/2017 of the President of Ukraine as of 28 September 2017.

The Law of Ukraine “On the Judiciary and the Status of Judges” (hereinafter referred to as the Law) obliges the judge to strictly comply with the rules of judicial ethics, including demonstration and maintenance of high standards of conduct in any activity in order to strengthen public confidence in the court, ensuring public confidence in honesty and integrity of judges (para. 2 of Article 56(7) of the Law).

During the evaluation of candidate M. M. Voinarivskyi, the Ethics Council established that he owned a two-room apartment with the area of 50.8 sq. m. in Mykolaiv, which he sold to O. V. Yusova under the sale and purchase agreement as of 28 August 2010 for UAH 21,940, which amounted to about USD 2,500 under the NBU’s official exchange rate as of the moment of sale.

Afterwards, M. M. Voinarivskyi registered at the address of residence of his mother and later, in the period from 7 October 2011 to 29 March 2014, he was registered in the Mykolaiv Regional Center of Registration of Homeless Citizens at the following address: Mykolaiv, 21 Ivanova Street. At the same time, in 2011 he was registered in the housing register as a person in need of better living conditions, and in 2020 he returned to live in the apartment that he had previously sold to O. V. Yusova. According to him, it was done on terms of debt compensation for the utility bills.

The candidate sold the real estate at a price significantly lower than its market value and subsequently registered, but didn’t actually lived at a municipal institution, the main function of which is to provide social assistance to low-income citizens. The Ethics Council finds this fact to be an artificial deterioration of living conditions in order to obtain housing at the expense of the state.

Candidate M. M. Voinarivskyi explained during the interview that he was forced to register at Mykolaiv Regional Center for Registration of Homeless Citizens due to the lack of other available places for registration in Mykolaiv.

However, having considered the afore given circumstances, the Ethics Council finds this explanation to be unconvincing and illogical.

The Code of Judicial Ethics, adopted by the decision of the XIst Regular Congress of Judges of Ukraine as of 22 February 2013 (hereinafter referred to as the Code), stipulates that judges voluntarily commit themselves to substantial limitations as to the conformity with the rules of ethics both while rendering justice and off the bench (paragraph 2 of the Preamble to the Code). A judge shall serve as an example of strict compliance with high standards of conduct to strengthen public trust in the integrity, independence, impartiality, and fairness of a court (Article 1 of the Code). He shall make every effort for his/her conduct to appear impeccable to a reasonable, law-abiding, and well-informed person (Article 3 of the Code). In its Opinion No.3 (2002) on principles and rules governing judges professional conduct with especial reference to ethics, incompatible behavior and impartiality, the Consultative Council of European Judges states that judges shall not only professionally discharge their duties, but also behave with dignity in private life. The conduct of a judge is a prerequisite for public trust in the justice system.

The above actions of M. M. Voinarivskyi do not meet such standards and give the Ethics Council grounds for reasonable doubts as to his compliance with the rules of ethics and demonstration of impeccable conduct in personal life (clause 1.3.6. of the Methodology).

M. M. Voinarivskyi's declarations for 2013 and 2014 contain no information about real estate objects that he and/or his family members had under the right of ownership or use. During the interview, the candidate explained that the anti-corruption legislation in effect at the time only required a person to indicate in the declaration the place of registration of the person. In his opinion, the law did not require him and/or his family members to reside at the specified place, and he was not required to provide information about the real estate objects in which he resided for no more than 181 days in aggregate. He also noted that due to family circumstances (wife's pregnancy, childbirth, and subsequent childcare) and

depending on the time of year, his family occasionally lived either at the address of his wife's parents in Mykolaiv, or at his parents' house in Savran village of Odessa region, located more than 270 km from the candidate's workplace. At the same time, the spouses were registered in different places. Moreover, the candidate lived either with relatives or rented rooms from strangers in Mykolaiv.

The Ethics Council is critical of M. M. Voinarivskyi's explanation in this respect, as they contradict the requirements of Article 6 of the Law of Ukraine “On Freedom of Movement and Free Choice of Residence in Ukraine” as amended in 2013 and 2014. According to this Law, citizens of Ukraine, foreigners, or stateless persons permanently or temporarily residing in Ukraine must register their place of residence within ten days of their arrival at the new place of residence. Registration of a place of residence is done on the day of submission of documents by a person. Registration of a place of residence at the request of a person may be carried out with simultaneous removal of previous residence registration.

In addition, according to Note 4, para. 2 of the declaration on property, income, expenses and obligations of a financial nature shall provide information on the place of residence, indicating the address of residence at the end of the reporting year. M. M. Voinarivskyi's explanations and documents available to the Ethics Council suggest that he has violated these requirements of financial control.

According to clause 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 past professional capacity has acted in line with requirements of the legislation, professional ethical rules, other ethical norms regarding independence, honesty, impartiality, diligence.

In the opinion of the Ethics Council, the above circumstances raise a reasonable doubt about compliance of M. M. Voinarivskyi with the indicator of honesty (clause 1.3.2. of the Methodology).

According to Article 12(1) of the Law of Ukraine “On Principles of Preventing and Combating Corruption” as of 7 April 2011 (as amended by Law of

Ukraine No. 224 – VII as of 14 May 2013), subjects of declaration shall be obliged annually by April 1 to submit at the place of their employment (service) a declaration on property, income, expenses, and obligations of a financial nature for the previous year according to the form appended to this Law.

In Section III “Information about Real Estate” of the declaration on property, income, expenses, and obligations of a financial nature for a given year, a person submitting the declaration shall indicate information about the property owned, leased, or used under another right by the declarant, and the expenses of the declarant to acquire or use such property. He shall provide the same information with respect to his/her family members. M. M. Voinarivskyi failed to comply with these requirements and did not provide such information in his declarations for 2013 and 2014.

Thus, being governed by Rules 2.3, 3.2, 3.3 of the Ethics Council’s Rules of Procedure, Methodology for assessing compliance of a candidate to the position of the member of the High Council of Justice and members of the High Council of Justice with the criterion 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 Mykola Mykolaiovych Voinarivskyi 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