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ETHICS COUNCIL

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Kyiv

DECISION

No. 13

***On non-compliance of the candidate
for the position of the member of
the High Council of Justice Kutsenko V. D.
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 the 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 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 Kutsenko Volodymyr Dmytrovych 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 Kutsenko Volodymyr Dmytrovych for participation in the competition for the position of a member of the High Council of Justice for election by the Verkhovna Rada of Ukraine.

Candidate Kutsenko V. D. 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 the documents provided by Kutsenko V. D. 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.

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

From December 2017 to April 2019 Kutsenko V. D. worked as the head of the Inspectors Service of the High Council of Justice, which is located in Kyiv. At the same time, in the declarations of Kutsenko V. D. for 2018-2019, there is no information

about any real estate objects located in the city of Kyiv that would be owned or used by the candidate or his family members. In addition, in these declarations Kutsenko V. D. notes that the actual place of his permanent residence is city of Odesa.

During the interview, Kutsenko V. D. confirmed that between December 2017 and May 2019 he had indeed worked as head of the Inspectors Service of the High Council of Justice (city of Kyiv). On weekends, public holidays, and vacation periods, the candidate stayed in Odesa with his family. On working days, he returned to Kyiv, where he lived at family members' or close persons. However, Kutsenko V. D. could not explain how he was able to quickly and without excessive material costs cover the distance of 475 km several times a week. Kutsenko V. D. did not provide convincing explanations to the Ethics Council regarding the determination of his actual place of residence. Considering the vast majority of days of the calendar year Kutsenko V. D. spent in Kyiv, then the declaration by him city Odesa, as a place of actual residence, seems dubious and obviously groundless. The above beyond a reasonable doubt indicates the inconsistency of Kutsenko V. D. to criteria of professional ethics and integrity, in particular such indicators as honesty and compliance of the candidate's lifestyle with his status.

In his declaration for 2020 Kutsenko V. D. declared 1/6 of the land plot belonging to him on the right of private ownership, with a total area of 1000 sq.m., in town Biliaivka, Odesa region, and a residential building with a total area of 64 sq.m. According to information from the Unified State Register of Court Decisions Kutsenko V. D. received ownership of this property back in 2010 based on a gift contract.

Answering the question of the Ethics Council Kutsenko V. D. explained that in 2010 he had signed a gift contract for 1/6 of the land plot, with a total area of 1000 sq.m. in town Biliaivka, Odesa region. However, the state registration of ownership of the specified part of the land plot was carried out in 2020, which is confirmed by an information certificate from the State Register of Real Rights to Immovable Property. Registration of ownership rights to 1/2 share of a residential building with a total area of 64 sq.m. also took place in 2020. Since real rights to immovable property subject to state registration arise from the date of such registration, therefore, the candidate began to indicate information about the specified property from 2020, that is, from the

moment the right arose. At the same time, such a land plot, in accordance with Paragraph 8 of Section V "Real estate" of the explanations of the National Agency for Corruption Prevention, was subject to declaration as an object that is the subject of the declaration and/or a member of his family, on the right of use.

On April 15, 2019 Kutsenko's wife and sister for 40 000 UAH acquired a land plot with an area of 885 sq.m. in the resort village of Shaian, Khust district, Zakarpattia region.

In his explanations Kutsenko V. D. noted that the price of this land plot was 26 000 UAH. However, the results of the analysis of information posted on specialized sites for the sale of land plots and other real estate objects indicate that the price of this land plot was significantly underestimated. Significant difference between the declared and market value of the real estate object, as well as the insolvency of Kutsenko V. D. to give convincing reasons for such a disparity, certainly calling into question both his own integrity of the candidate.

According to the Unified State Register of Vehicles on April 23, 2021, wife of Kutsenko V. D. acquired ownership of a 2021 Audi Q7 car. The legality of the sources of funds for the purchase of this car seems questionable, since according to the candidate's declaration for 2020 Kutsenko V. D. and his family members, as of December 31, 2020, collectively owned 900,000 UAH.

During the interview Kutsenko V. D. explained that the 2021 Audi Q7 car was purchased by the candidate's wife, Adamets Oksana Ivanivna, for 2 362 613,00 UAH, which she earned during her professional activities during 2020-2021. In addition, in 2021, Adamets V. D., the wife's mother, lent her funds in the amount of 750 000,00 UAH, which she returned after selling a 2017 LEXUS ES 300N car. The Ethics Council did not receive any documentary evidence of the fact that the funds were given my mother. The above raises reasonable doubts in the Ethics Council that the sources of origin of the candidate's property are legal, and the standard of living of the candidate or his family members corresponds to their declared and legal income (Paragraph 1.3.7 of the Methodology).

In his declarations for 2019-2020, Kutsenko V. D. did not indicate the value of a number of real estate objects that belong to the candidate and his family members on the right of private ownership, in particular: 1) an office with an area of 100,6 sq.m. in Odesa, 2) non-residential premises with an area of 109,8 sq.m. in Odesa, 3) land plot with an area of 885 sq.m. in village Shaian Khust district, Zakarpattia region, 4) garden (country) house with an area of 413,9 sq.m. in Odesa.

In explanations at the request of the Ethics Council Kutsenko V. D. noted that the information on the above objects of declaration was entered by him in the declarations on the basis of documents on registration of ownership, which do not contain information on the value. According to the candidate, these objects were purchased for the income received in 2016-2020, which was declared.

According to Paragraph 1.3.7 of the Methodology, the source of origin of the candidate's property is 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.

In view of the above, the Ethics Council concluded that the candidate did not provide convincing and substantiated explanations supporting the documents regarding the sources of funds.

According to Paragraph 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 timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

In the declaration for 2015 Kutsenko V. D. pointed out that the value of all objects of movable and immovable property belonging to the candidate and his wife is one hryvnia. In all subsequent declarations, he did not indicate the cost of these objects. The above raises reasonable doubts in the Ethics Council in providing the candidate with complete and accurate information in his property declarations.

According to Clause 1.3 of the Methodology for assessing compliance of a candidate to the position of a member of the High Council of Justice and sitting

members of the High Council of Justice with the criteria of professional ethics and integrity, approved by the Decision of the Ethics Council № 5 of 09.12.2021, the indicators for the criteria of professional ethics and integrity include independence, honesty, impartiality, incorruptibility, diligence, compliance with ethics norms and and impeccable behavior in professional activities and personal life as well as absence of doubts regarding legality of the sources of origin of property, conformity of the candidate's level of life or that of his family members with declared incomes, conformity of the candidate's lifestyle to his status.

The Rules of Procedure of the Ethics Council provide that candidate shall be found noncompliant with the professional ethics and integrity criterion if noncompliance is proved or there are reasonable doubts about compliance (Paragraph 3.3. of the Rules of Procedure of the Ethics Council).

Together, all the above circumstances prove the inconsistency of Kutsenko Volodymyr Dmytrovych with the criteria of professional ethics and integrity, in particular such indicators as honesty (Paragraph 1.3.2. of the Methodology) and legality of the sources of property, compliance of the standard of living of the candidate or his family members with the declared income, compliance of the candidate's lifestyle with his status (Paragraph 1.3.7. of the Methodology).

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 Kutsenko Volodymyr Dmytrovych 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