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ETHICS COUNCIL

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Kyiv

DECISION

No. 55

***On non-compliance of candidate for the
position of the member of the High Council of Justice
Ivan Ivanovych Kotubey
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 Ivan Ivanovych Kotubey 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 9-1 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 submitted by Ivan Ivanovych Kotubey for participation in the competition for the position of the member of the High Council of Justice by the Congress of Judges of Ukraine and admitted him to the interview with Decision No. 6 of 21.12.2021.

Ivan Ivanovych Kotubey was elected for the position of a judge of Mukachivskyi City-District court of Zakarpats'ka Oblast by the Decree of the Verkhovna Rada of Ukraine № 445-VII of 05.09.2013, where he continues to work.

Having studied documents provided by Ivan Ivanovych Kotubey for participating in the competition, his written explanations and documents provided upon the Ethics Council's request, information obtained from open sources and from civil society organizations, information received from the National Agency for Corruption Prevention ("the NACP") and the National Anti-Corruption Bureau of

Ukraine (“the NABU”), having conducted the interview with him, the Ethics Council has reached the following conclusions.

1. With respect to the candidate’s expenses on construction of a house

On 16.12.2021 the candidate submitted a notification on significant changes in his financial situation in which he specified that since 09.12.2021 he had the right of ownership for a residential house in Mukachevo with the area of 256.5 square meters. In his written explanations to the Ethics Council, the candidate stated that this house had two stories. Also, he stated that, overall, the house has eight rooms (premises) in total, including a living room, a guest room, a kitchen, a summer kitchen on the first floor and two children’s rooms, a bedroom, a wardrobe on the attic floor.

According to the technical passport for the house, the first floor also has a hallway, bathroom, stairs, entry to the basement, a garage, and a boiler house, while the attic floor has a corridor and a bathroom. Besides, there is a basement with the area of 18.8 square meters under a part of the house. In addition to there, there is a shelter shed with the area of 49.5 square meters close to the house. A fence with gates is installed around the house, and the yard is laid with paving stones. During the interview the candidate informed that a sunshade had been built over the house terrace, the house had been connected to water supply, water sanitation, sewers, furniture and other items needed for living had been installed in the house.

In the notification on significant changes in the financial situation the candidate specified that the house value amounted to UAH 2,867,000.00 At the same time, according to information from the Certificate on Estimated Value of the Real Estate Object from the Unified Database of Reports on Estimates, Formation of Electronic

Certificates on Estimated Value of the Real Estate Object, and Registration of Reports on Property Estimates which is administered by the State Property Fund of Ukraine, the estimate value of the candidate's house amounts to UAH 4,452,796.56.

In his written explanations to the Ethics Council the candidate specified that according to his estimates an approximate amount spent on construction of the house in total amounted to UAH 2,000,000.00 – 2,300,000.00.

In response to the Ethics Council's request to provide confirmation of expenses on construction of the house, the candidate informed that he could not provide documents which would confirm value of the purchased materials, provided services, and performed works as he did not store them. In response to the Ethics Council's clarifying questions, the candidate responded that in 2013 he spent about UAH 20,000.00 – 25,000.00 to purchase some materials for the foundation construction; in 2014 – about UAH 50,000.00 on the foundation construction; during 2015-2017 – about UAH 300,000.00 – 400,000.00 to purchase the main part of brick, roofing material, pay for works; in 2018 – about UAH 120,000.00 – 150,000.00 to insulate the roof and partially install windows in the house; in 2019-2021 – about UAH 1,500,000.00 – 1,600,000.00 on internal works and exterior façade works.

Besides, the candidate specified that he managed to find fiscal and sales receipts as of 2016 to confirm these expenses: on brick in the total amount of UAH 27,693.63; channel bars valued at UAH 448.21; fixture and its delivery for the total amount of UAH 1,408.50. Moreover, the candidate provided the following documents covering 2020: sales receipts on the purchase of wallpapers, encapsulant, and liquid nails for the total amount of UAH 14,324.42, primer surfacer and screws for the total amount of UAH 1,550.00; consignment for construction materials for the total amount of UAH 94,000.00 and bill for the purchase of parquet planks valued at UAH 25,430.00.

Besides, Ivan Ivanovych Kotubey provided the Ethics Council with a confirmation of performance of non-cash settlements (receipts) in 2018-2021 for the total amount of UAH 28,328.95, yet the provided receipts contain no information about purchased goods, which is why it is impossible to establish whether these settlements concerned expenses related to the house construction. This way, the candidate provided documents which confirm his expenses on construction of the house for the total amount of UAH 164,854.76, which is less than 10% from the amount that, according to him, was spent on the house construction. Accordingly, the candidate failed to confirm most of the expenses that, as he claimed, he spent on the construction of the house, and failed to prove that such expenses were incurred from legitimate income. During the interview the candidate also confirmed that he could not prove that he made expenses from the legal income as he did not have agreements, invoices, any documents confirming performance of building operations and expenses on construction.

In his written explanations, the candidate stated that during the period of construction in 2014-2021 he did not have any other significant expenses, except for the vitally needed ones, neither he, nor his family members bought expensive goods, spent significant amounts on rest as almost all received income was aimed at funding the house construction.

At the same time, in his asset declaration for 2019 the candidate specified that since 07.10.2019 he owned vehicle Audi A4 manufactured in 2016. In the same declaration he specified that the value of this vehicle amounted to UAH 351,277.00, while expenses on its customs clearance amounted to UAH 123,500.00. During the interview the candidate agreed that this vehicle was an expensive good. Yet, as the candidate explained, in his written explanations he meant not that he did not buy any expensive goods, but rather that he did not buy any other expensive goods except for

the vehicle since he had funds to buy the vehicle. The Ethics Council takes into account the contradiction in the candidate's written and oral explanations.

In response to the Ethics Council's clarifying questions the candidate specified that he went abroad three times in 2019 and two times in 2021.

The Ethics Council is drawing attention to the fact that the candidate provided detailed information and supporting documents relating to most of his expenses and those of his family members on trips abroad in 2019-2021, yet he cannot provide supporting documents to confirm expenses on construction of the house during the same years.

Besides that, in 2019 the candidate bought vehicle Audi A4 manufactured in 2016 for UAH 351,277.00 and carried out its customs clearance for UAH 123,500.00 and travelled abroad with his family in 2019 and 2021. Taking this into account, the Ethics Council critically evaluates the candidate's statement that during the period of the house construction in 2014-2021 he did not have any other significant expenses, except for the vital ones.

In his written answers Ivan Ivanovych Kotubey specified that he personally, his father, brothers, father-in-law, participated in the process of the house construction at different periods of time. Also, two workers (external persons) whose work was paid for by the candidate, participated in the process.

In his subsequent answers, the candidate specified that he directly participated in the house construction as he was never shy of such work. In particular, the candidate provided help to specialists in the process of walls construction; personally performed all land works for construction of fence, pipe laying for water supply and sanitation; built the fence together with his brothers; personally, without any external help carried out works on roof insulation and almost all works on landscaping of the yard (filling and levelling of the territory with rubble, soil, grass cover); personally

helped his brother to carry out works on interior plastering of walls, installation of drywall; personally laid parquet planks and laminate flooring; helped the specialist with putting wallpapers on walls.

During the interview, Ivan Ivanovych Kotubey specified that he acquired construction skills back when he was young as he lived in the rural area, and when he was 18-20 years old, he had temporary construction-related jobs. The candidate also specified that he did not carry out works which required special skills and abilities and that such works were performed by specialists.

At the same time, according to information from the candidate's autobiography, during the period from 1994 to 1996, when the candidate was 18-20 years old, he was a student of Mukachevo Pedagogical Lyceum and teacher of a foreign language at Klymovets secondary school. In connection with that, the Ethics Council has doubts regarding the candidate's statement that he had construction skills as the very fact of living in the rural area does not confirm existence of construction skills in any way. Moreover, in the candidate's autobiography and other documents provided by him to the Ethics Council did not contain any information about his construction-related experience. Moreover, the Ethics Council perceives critically the candidate's statement that the works which he performed did not require special skills and abilities as the majority of works mentioned by him cannot be performed without special training, knowledge, and skills in the construction sphere acquired, among other things, through respective training.

When it comes to the documentary evidence confirming involvement of the respective specialists into construction, during the interview the candidate replied that he did not have documentary evidence and that he concluded an oral agreement with a private entrepreneur. In his written answers the candidate specified that two workers were constructing walls and worked on construction of the roof.

The Ethics Council is drawing attention to the fact that pursuant to Article 206(1) of the Civil Code of Ukraine it is possible to conclude oral transactions in case they fully fulfilled by the parties as of the moment of their conclusion. However, works on construction of walls and roof of the house take some time and may not be fully fulfilled as of the moment of the transaction conclusion. In view of this, the Ethics Council has doubts that the candidate complied with the requirements of the law when concluded a contract with a private entrepreneur in oral form.

The Ethics Council is hereby emphasizing that in case the candidate complied with requirements of the Civil Code of Ukraine, he could have provided confirmation of completed works and amount of his expenses on such works. However, because of the absence of any confirmation regarding content of the agreement with the private entrepreneur, number of engaged specialists, amount paid pursuant to such agreement, issued invoices, actually performed works by involved specialists, scope of works performed personally by the candidate and his relatives, any other information or documents which would prove the candidate's statements, I. I. Kotubey could not confirm his expenses on works relating to construction of the house.

Pursuant to cl. 1.3.4.1 of the Methodology, a candidate fails to comply with the indicator of honesty in case when there are reasonable doubts that such candidate in the present professional capacity has acted in line with requirements of the legislation, professional ethics rules, other ethical norms regarding honesty.

In view of the above, in particular, given the area of the house, number of floors and rooms (premises) in it, existence of a garage, shelter shed, and fence, connection of the house to water supply and sanitation, furniture and installation of all items needed for living; declared value of the house in the amount of UAH 2,876,000.00 and estimated value of the house in the amount of UAH 4,452,796.56; contradiction

in the candidate's answers regarding absence of significant expenses except for the vital ones, as well as his existence of construction-related experience; the candidate's admission that he cannot prove expenses on construction of the house in the amount of UAH 2,000,000.00 – 2,300,000.00 as he does not have agreements, invoices, any documents confirming performed works and expenses on construction, the Ethics Council has reasonable doubts about the candidate's honesty concerning his actual expenses on construction of the house.

1.1. With respect to declaring of the candidate's expenses on construction of the house

The candidate's asset declarations for 2015-2020 contain no information about expenses on construction of the house and in 2021 the candidate did not submit a notification on significant changes in the financial situation due to expenses on construction. At the same time, according to requirements of the Law of Ukraine "On Prevention of Corruption" as of 14.10.2014, the declaration shall indicate, in particular, information about expenses if the amount of a respective expense exceeds 50 minimum salaries established as of January 1 of the reporting year.

According to requirements of the mentioned Law, since 01.01.2017 information about expenses shall be declared in case their amount exceeds 50 subsistence levels established for able-bodied persons as of January 1 of the reporting year. The amount of the minimum salary amounted to UAH 1,218.00 as of 01.01.2015, and since 01.01.2016 it was UAH 1,378.00. The amount of the subsistence level established for able-bodied persons as of 01.01.2017 amounted to UAH 1,600.00, as of 01.01.2018 – UAH 1,762.00, as of 01.01.2019 – UAH 1,921.00, as of 01.01.2020 – UAH 2,102.00.

Correspondingly, information about the person's expenses in the amount of UAH 60,900.00 was subject to declaring in 2015, in 2016 – UAH 68,900.00, in 2017 – UAH 80,000.00, in 2018 – UAH 88,100.00, in 2019 – UAH 96,050.00, in 2020 – UAH 105,100.00. According to this Law in the version as of 15.12.2020, the person submitting the declaration shall submit a notification on significant changes in the financial situation in case there is an expense in the amount which exceeds 50 subsistence levels established for able-bodied persons as of January 1 of the respective year. Since as of the subsistence level for able-bodied persons amounted to UAH 2,270.00, expenses in the amount of UAH 113,500.00 had to be declared.

According to para 2 of Article 60(1) of the Law of Ukraine “On Prevention of Corruption”, the persons specified in para. 1, 2, of Article 3(1) of this Law (in particular, judges) are prohibited from providing untimely, unreliable or incomplete information, which should be provided in accordance with the law.

According to cl. 1.3.7.6 of the Methodology, a 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, and provision of full and accurate information in asset declarations.

According to cl. 1.3.4.1 of the Methodology, the candidate does not comply with the indicator of diligence, in particular, in the case of reasonable doubts that such a candidate, while in the current or any previous position, acted in accordance with the requirements of the law, rules of professional ethics, other ethical norms regarding honesty.

Taking into consideration existence of a reasonable doubt about the candidate's honesty regarding his actual expenses on construction of the house, declared and estimated values of the house, its technical complexity, and potentially high prices

for construction materials and services in Ukraine, taking into consideration that the candidate confirmed that he had main expenses on construction in 2020 (UAH 600,000.00 – 700,000.00) and in 2021 (UAH 700,000.00 – 800,000.00), the Ethics Council has reasonable doubts that during this period (2015-2021) the candidate has never had at least one expense related to the construction and decoration of a house in the amount which exceeded 50 minimum salaries (subsistence levels). Thus, the Ethics Council has reasonable doubts about the candidate's compliance with the requirements of financial control and the candidate's compliance with the diligence indicator of the criteria of professional ethics and integrity.

2. On abiding professional ethics criteria in the consideration by the candidate of administrative violation cases under Article 130 of the Code of Ukraine on Administrative Offences (hereinafter - “CAO”)

The Ethics Council has received information on numerous instances of the candidate closed proceedings in administrative offence cases which created conditions for offenders to actually avoid liability.

While checking the aforementioned information, within the framework of its authorities set out by the law, the Ethics Council does not raise any doubts about legality and does not carry out evaluation of the candidate's decisions under cases on administrative offences. The Ethics Council takes into consideration that court decisions under all cases belong to the judge's exceptional discretion and constitute an element of judicial independence. The Ethics Council's authorities do not include conduct of a check of legality of court decisions. However, organization of the process of preparation for consideration of a court case by a judge, management of a court hearing, planning of working time, actions and conduct of a judge in the

process of justice administration, etc. may be elements in the evaluation of the judge's professional ethics.

Hence, during the period from 2018 to 2021 the candidate adopted decisions on closure of proceedings under 96 cases on administrative offences due to expiration of the three-month term for bringing to administrative liability. 41 cases out of these 96 administrative cases concerned holding liable drivers who were driving under the influence of alcohol or drugs (Article 130 of the Code of Ukraine on Administrative Offences).

The Ethics Council analyzed information about the candidate's court proceedings on administrative offences published in the Unified State Register of Court Decisions during 2019 – 2020. Results of this analysis (Annex No. 1) show that the candidate brought 86 persons to liability for administrative violations envisaged by Article 130 of the Code of Ukraine on Administrative Offences and closed 23 cases due to expiration of the three-month term for imposition of an administrative sanction. During the same period of time, the candidate also brought 86 offenders to liability under Article 124 of the Code of Ukraine on Administrative Offences (Violation of traffic rules, which resulted in damages of vehicles, cargo, roads, streets, railways, road structures, or other property) and closed only 4 cases due to the expiration of the three-month term.

It is necessary to point out that out of these 4 closed cases under Article 124 of the Code of Ukraine on Administrative Offences materials on administrative offences were submitted for the candidate's consideration after expiration of the three-month term in 3 cases (No. 303/1271/18, No. 303/6163/20, No. 303/2219/19). At the same time, out of 23 closed cases under Article 130 of the Code of Ukraine on Administrative Offences materials only with respect to one case (case No.

303/3321/20) were submitted for the candidate's consideration after expiration of this term.

Given that both types of the above mentioned offences are given in the same chapter of the Code – “Administrative offences using transport, in the sector of railway facilities and communication”, the procedure, terms, process of their consideration are the same. The Ethics Council is drawing attention to the fact that the number of cases under Article 130 of the Code of Ukraine on Administrative Offences that the candidate closed because of expiration of the term is much higher as compared to the number of cases under Article 124 of the Code of Ukraine on Administrative Offences, which may be a sign of the candidate's intentional or non-intentional lack of diligence to the procedure of organization and consideration of cases on driving under the influence of alcohol or drugs.

In his answers to the Ethics Council's written questions regarding reasons for missing the term for consideration of cases on administrative offences set out by Article 130 of the Code of Ukraine on Administrative Offences, the candidate provided contradictory explanations. He specified that quite often proceedings on administrative offences were closed by him in connection with such cases being sent to the court only after expiration of the term for imposition of administrative sanction. However, such tendency is not evident among decisions of 2019 – 2020 analyzed by the Ethics Council, as well as with respect to cases regarding which the candidate provided detailed explanations.

The candidate also specified that it would be appropriate to provide justification or disclose reasons for failure to ensure consideration of a case within the term set out for bringing to administrative liability in rulings on closure of administrative cases due to expiration of the term for bringing to administrative liability in order to

avoid external observer's doubts about the judge's impartiality, integrity. However, there is no justification in rulings adopted by the candidate.

The Ethics Council has analyzed explanations provided by the candidate under 18 cases on bringing to administrative liability under Article 130 of the Code of Ukraine on Administrative Offences and has established the following.¹

2.1. Case No. 303/7188/19

Under case No. 303/7188/19 administrative offence was committed on 26.10.2019. In view of provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of an offence), the term for imposition of administrative sanction under this case expired on 26.01.2020. The case was allocated to the candidate on 04.11.2019, i.e. he had 83 days for its consideration before expiration of the term. The candidate adopted the ruling on closure of the case on 29.01.2020, i.e. 3 days after expiration of the three-month term.

The hearing under the case was postponed 6 times. As evident from documents provided by the candidate and explanations, for the first three times postponement of the case consideration was caused by the absence of information about notification of an offender. For the fourth time the candidate postponed the hearing in connection of the offender's motion on involvement of a defense attorney. For the fifth time the candidate postponed the hearing appointed for 10.01.2020 in connection with the motion of the offender's defense attorney on provision of time

¹ In the text of the analysis relating to circumstances of the candidate considering cases on administrative offences persons, with respect to whom protocols on administrative offences were executed, are called "offenders" with a view to saving time and shortening the text, yet it does not entail any assumptions or statements regarding the person's guilt of committing respective offences.

to get acquainted with the case materials for 20.01.2020. On 20.01.2020 the hearing of this case did not take place because the candidate was involved in the criminal case.

Materials submitted by the candidate show that the address of the offender to which the court sent summons many times during the entire period of the administrative case consideration did not change. The offender's motion submitted for the fourth hearing specified the same address. Hence, the offender actually ignored the first three hearings and summons. During the next two hearings the offender and his defense attorneys submitted motions which resulted in postponement of the case consideration. These circumstances may be a sign that the offender was delaying the case consideration which the candidate should have taken into account while planning time for the case consideration. Since the case consideration was postponed five times, the candidate had to approach consideration of the case responsibly during the last hearing within the three-month term.

Moreover, the candidate could not but know that on 09.01.2020 he already scheduled hearings in two other criminal proceedings for 20.01.2020: No. 303/8203/19 for 10:00, No. 303/8194/19 for 14:00. Despite this, on 10.01.2020 the candidate postponed hearing the case on administrative offence and appointed it for 20.01.2020 as well.

Regardless of the fact that 5 times reasons for postponement of the hearing under this case depended on actions of the offender and his defense attorney, consideration of the case on 20.01.2020, during the last hearing within the three-month term for bringing the offender to liability, did not take place exclusively because of the candidate's actions. While planning his work schedule, the candidate had to realize that the hearing on 20.01.2020 was the last possible date for consideration of the case within the term for imposition of the administrative

sanction. However, the candidate did not plan his schedule and did not organize administration of justice in a proper way, which resulted in postponement of the hearing to the date outside the term for bringing to administrative liability and actually resulted in the offender avoiding liability.

2.2 Case No. 303/8178/19

Under case No. 303/8178/19 administrative offence was committed on 19.12.2019. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of the offence), the term for imposition of administrative sanction under this case expired on 19.03.2020. The case was allocated to the candidate on 27.12.2019, i.e. he had 83 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 24.03.2019, i.e. in 5 days after expiration of the three-month term.

The hearing under the case was postponed 5 times. Explanations given by the candidate and copies of documents show that the first two times postponement of the case consideration was caused by the absence of information about notification of the offender. For the third hearing prior to the date of the case consideration the offender submitted a motion on involvement of the defense attorney, which is why the candidate postponed consideration of the case for almost a month (from 06.02.2020 to 02.03.2020). The fourth hearing under the case did not take place as well since on that day the court received an application from attorney V. V. Marhit on its postponement. For the fifth time the judge could not consider the case as on 13.02.2020 he was in the deliberations room and considered another criminal proceeding.

As evident from documents submitted by the candidate, during the entire period of the case consideration summons were sent to the offender to the same address. The offender did not appear to the first hearings, and later on his own or through his attorney directly on the day of the hearing he submitted applications on postponement. On 02.03.2020 the candidate postponed consideration of the case in connection with the attorney's application which did not contain an order or agreement on provision of legal aid to the offender, which also caused doubts about the attorney's procedural status under the case. It is necessary to point out that the candidate gave almost a month to involve the attorney, yet during this period of time neither the offender, nor the attorney turned to court to get acquainted with the case materials. Under this case citizen I. F. Martynuzi was brought to administrative liability, with respect to whom previously on 17.05.2016 Mukachevo District Court already imposed administrative sanction set out by Article 130 of the Code of Ukraine on Administrative Offences (case No. 303/2487/16-П).

2.3. Case No. 303/7519/19

Under case No. 303/7519/19 administrative offence was committed on 17.11.2019. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of the offence), the term for imposition of administrative sanction under this case expired on 17.02.2020. The case was allocated to the candidate on 20.11.2019, which means that he had 89 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 02.03.2020, i.e. in 14 days after expiration of the three-month term.

The hearing under the case was postponed 6 times. Explanations given by the candidate and copies of documents show that the first hearing appointed for 05.12.2019 did not take place because of the candidate's business trip. The candidate did not provide documents and explanations as to how the offender was notified about the second hearing, but on the day when it had to be held (19.12.2019) the offender submitted an application on postponement of consideration with a view to involving the defense attorney. The candidate postponed the third hearing pursuant to the offender's application in connection with being on a sick leave, but the court was not provided with the any evidence regarding that. The next hearing appointed for 17.01.2020 was postponed in connection with receipt of a motion from the attorney who was providing legal aid to the offender. For the fifth time the case consideration did not take place because of the candidate's business trip. The candidate also postponed the sixth hearing under the case appointed for 13.02.2020 in connection with the offender's application in which he specified his inability to participate in the court hearing because of being on a sick leave and because of the attorney being busy in another judicial proceeding. The offender did not provide any evidence regarding circumstances mentioned in the application.

Thus, under case No. 303/7519/19 the candidate postponed consideration of the case twice due to his business trip. After the offender's motion as of 19.12.2019 on postponement of the hearing with a view to involving the offender, on 16.01.2020, i.e. almost one month later, the court received the attorney's motion on postponement of the case consideration to get acquainted with the case materials. The candidate satisfied both motions. In the context of the offender's actions which, as it might be reasonably assumed, could result in delay of the case consideration, the candidate did not take sufficient measures to ensure timely consideration of the case within the three-month term. In particular, the candidate provided the offender

with 1,5 months to involve the attorney and get acquainted with a small scope of materials of the administrative case, which amounts to half of the term stipulated by the law for imposition of administrative sanction. Such undiligent actions of the candidate facilitated creation of an opportunity for the offender avoiding administrative liability.

2.4 Case No. 303/2314/20

Under case No. 303/2314/20 administrative offence was committed on 25.04.2020. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of the offence), the term for imposition of administrative sanction under this case expired on 25.07.2020. The case was allocated to the candidate on 09.06.2020, which means that he had 46 days to consider it before expiration of the term. The candidate adopted ruling on closure of the case on 27.07.2020, i.e. in 2 days after expiration of the three-month term.

The hearing under the case was postponed twice. Explanations given by the candidate and copies of documents show that the first hearing appointed for 24.06.2020 did not take place due to the failure of the offender to appear and his submission of a motion on postponement of the case consideration with a view to involving an attorney. The second hearing appointed for 08.07.2020 did not take place due to the failure of the offender to appear and absence of information about his proper notification. The candidate provided a certificate, showing that a message created at 13:10:15 on 08.07.2020 was not delivered to the recipient (offender). The next hearing was appointed for 27.07.2020 when the ruling on closure of administrative proceedings was adopted.

While evaluating explanations of the candidate regarding consideration of this case, the Ethics Council would like to point out the following. The candidate did not provide proper documents to confirm timely notification of the offender about court hearings appointed for 08.07.2020 and 27.07.2020. Submission of the offender's application on involvement of the attorney and postponement of the case consideration dated 24.06.2020, i.e. on the day of the case consideration, shows that he knew about the date of the hearing and the judicial proceeding in general. The statement on failure of SMS message delivery to which the candidate referred shows that the notification under the case was created on 08.07.2020, processed on 09.07.2020, processing result was "not delivered to the recipient, subscriber is temporarily unavailable". The candidate did not provide documents which would show that the offender submitted an application to the court on intention to get court summons in the electronic form as set out by the Procedure of Sending of Texts of Court Summons to Participants of the Judiciary Proceeding (Criminal Proceeding) in the Form of SMS-messages, which is why it is not clear why the court used the method of SMS-messages to notify the offender. This certificate also makes it impossible to determine about which particular date the court was informing the offender. In his explanations the candidate stated that with respect to court hearing on 08.07.2020 another summons was sent to the offender again and it was not delivered, but he did not provide evidence concerning that. If the certificate on failure to deliver SMS concerned notification about the hearing appointed for 27.07.2020, this shows that the candidate's explanations are contradictory.

Thus, on 08.07.2020, having enough time to hold a hearing before 25.07.2020 (over two weeks), the candidate acted without proper diligence, did not use opportunities to consider the case in a timely manner and within three months and postponed the case consideration for 27.07.2020. Such actions of the candidate

facilitated creation of an opportunity for the offender avoiding administrative liability.

2.5 Case No. 303/2489/20

Under case No. 303/2489/20 administrative offence was committed on 08.05.2020. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 08.08.2020. The case was allocated to the candidate on 18.05.2020, which means that he had 82 days to consider it before expiration of the term. The candidate adopted ruling on closure of the case on 16.09.2020, i.e. in 39 days after expiration of the three-month term.

The hearing under the case was postponed 5 times. Explanations given by the candidate and copies of documents show that the first hearing appointed for 02.06.2020 was postponed in connection with the absence of post marks in the court and failure to notify the offender. The next hearing did not take place as the candidate was on annual leave. The third and fourth hearings appointed for 26.06.2020 and 10.07.2020 respectively were postponed due to the receipt of applications from the attorney and offender. At the same time, the attorney's application as of 26.06.2020 mentioned family circumstances which made it impossible for the attorney to participate in the hearing. However, the offender's attorney did not confirm such circumstances with any evidence. In his application as of 10.07.2022 the offender requested to postpone the hearing. As a reason for the postponement, the offender mentioned that his defense attorney was on annual leave, yet he did not provide any evidence to confirm that. The fifth hearing appointed for 24.07.2020 was postponed

by the candidate to 16.09.2020 in connection with receipt of a motion from the offender's attorney on repeated summons of witnesses, i.e. for almost two months, which amounts to almost $\frac{2}{3}$ of the general term for imposition of administrative sanction by the court.

The Ethics Council is hereby pointing out that while determining the next date for the hearing under the case on 24.07.2020 the candidate had to take into account that his annual main leave started on 03.08.2020. Failure to consider the case before 03.08.2020 would lead to missing of the threshold term for imposition of the administrative sanction and creation of conditions for the offender avoiding liability.

On 16.09.2020 neither offender, not his attorney appeared at the court hearing. The candidate does not specify in the ruling as of 16.09.2020 whether he summoned witnesses to this hearing, but the reason for the previous postponement of the hearing on 24.07.2020 was specifically the motion of the offender's attorney on repeated summons of witnesses. Moreover, the candidate did not provide any evidence which would confirm summons of witnesses.

Thus, in this case the candidate acted without diligence, which, in particular, was evident in numerous postponements of the case consideration for a long period of time based on questionable grounds like annual leave of the offender's attorney and summons of witnesses that did not happen pursuant to the ruling under the case. Such actions of the candidate facilitated creation of opportunities for the offender to avoid administrative liability.

2.6 Case No. 303/3189/20

Under case No. 303/3189/20 administrative offence was committed on 16.06.2020. Taking into account provisions of Article 38 of the Code of Ukraine on

Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 16.09.2020. The case was allocated to the candidate on 23.06.2020, which means that he had 85 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 24.09.2020, i.e. in 8 days after expiration of the three-month term.

The hearing under the case was postponed 3 times. Explanations given by the candidate and copies of documents show that the first and second hearings appointed for 08.07.2020 and 22.07.2020 respectively were postponed in connection with failure to appear and absence of the evidence of proper notification of the offender. The third hearing was appointed for 16.09.2020. This date was the last possible day for imposition of administrative sanction. The hearing was postponed by the candidate as the defense attorney submitted an application on getting familiarized with the case materials. The candidate did not attach a copy of this attorney's application to his written explanations. The Ethics Council is hereby drawing attention to the fact that submission of the application by the attorney on 16.09.2020 on getting familiarized with the case materials shows that both the offender and his attorney knew about the date of the case consideration. The candidate did not provide documents which would confirm authorities of the attorney under the case and contain information as to since when the offender received legal aid. However, based on the date of previously appointed hearing – 22.07.2020, it is obvious that the offender and his attorney had enough time to get familiarized with the case materials. In the opinion of the Ethics Council, the character of planning of court hearings in the case facilitated the appearance of the conditions for the offender to avoid administrative liability.

2.7. Case No. 303/6126/16-p

Under case No. 303/6126/16-p administrative offence was committed on 08.10.2016. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 08.01.2017. The case was allocated to the candidate on 13.10.2016, which means that he had 84 days to consider it before expiration of the term. The candidate adopted ruling on closure of the case on 10.01.2017, i.e. in 2 days after expiration of the three-month term.

The hearing under the case was postponed 6 times. Explanations given by the candidate and copies of documents show that the first hearing appointed for 27.10.2016 was postponed in connection with failure to appear and absence of evidence about proper notification of the offender. At the same time, the candidate did not provide documents which would confirm sending of court summons to the offender. On 15.11.2016 the case consideration was initiated, the motion on summoning of witnesses was satisfied, the case consideration was postponed till 29.11.2016. For the third time the hearing was postponed to 13.12.2016 due to witnesses' failure to appear. During the fourth hearing the candidate satisfied the motion on requesting the certificate on medical examination from a hospital and postponed consideration till 26.12.2016. Since the court did not receive such certificate, the case consideration was postponed for 10.01.2017 when the ruling on closure of the proceeding was adopted. As evident from the text of the court ruling as of 10.01.2017, the court confirmed existence of the offender's guilt, yet the proceeding was closed due to expiration of the three-month term. Based on the text

of the ruling, the candidate established the offender's guilt, while questioning of witnesses and study of the medical examination certificate did not take place.

The Ethics Council is hereby pointing out that according to Articles 1, 245 of the Code of Ukraine on Administrative Offences completeness of actions and study of all circumstances under the case constitute one of the key tasks of judiciary proceedings under cases on administrative offences. However, they have to be ensured by judges taking into account the need to implement other objectives of the Code of Ukraine on Administrative Offences as well, including timeliness of consideration, legality, prevention of offences, awareness-raising among citizens in terms of complete and strict adherence to the Constitution and laws of Ukraine, respect for rights, honor, and dignity of other citizens, rules of co-existence, diligent fulfillment of duties, responsibility to the society. Under such circumstances postponement of the case consideration due to the motion on summoning of witnesses, repeated summoning of witnesses, requesting the medical examination certificate and repeated requesting of such certificate, further failure to study them, and appointment of yet another date for the case consideration by the candidate outside of the term for imposition of administrative sanction did not facilitate fulfillment of the afore mentioned objectives of the Code of Ukraine on Administrative Offences. Postponement of the case consideration by the candidate in these instances created conditions for the offender avoiding administrative liability.

2.8 Case No. 308/13132/19

Under case No. 308/13132/19 administrative offence was committed on 11.11.2019. Taking into account provisions of Article 38 of the Code of Ukraine on

Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 11.02.2020. The case was allocated to the candidate on 26.12.2019, which means that he 47 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 13.02.2020, i.e. in 2 days after expiration of the three-month term.

The hearing under the case was postponed 3 times. Explanations given by the candidate and copies of documents show that the first hearing appointed for 09.01.2019 was postponed in connection with failure to appear and absence of evidence on proper notification of the offender. For the second time the candidate postponed the case consideration which was appointed for 22.01.2020 due to the receipt of an application from the offender which mentioned the need to urgently travel outside Zakarpattia region and need to engage a defense attorney. Evidence on urgency of the offender's travel like that was not attached to the application. The third hearing appointed for 04.02.2020 was postponed by the candidate in connection with receipt of an application from the offender on his illness and request to postpone the case consideration. Any evidence which would confirm illness of the offender was not attached to this application. The offender's application is dated 03.02.2020, which means that as of the moment of its submission the offender should have been already sick and should have provided evidence to confirm that.

The Ethics Council is of the opinion that while postponing the case consideration for the third time the candidate should have planned the next date for the hearing taking into consideration the fact that the previous application of the offender in which he specified the need to involve the attorney was not implemented (the candidate did not provide an agreement on legal aid provision to confirm that the offender concluded such agreement). Thus, given actions of the offender which

could be reasonably assumed at the ones resulting in the delay of the case consideration, the candidate did not take sufficient measures to ensure timely consideration of the case within the three-month period. In view of the materials provided by the candidate and his explanations to the Ethics Council, these circumstances, in particular, sickness of the offender and reasons for travelling outside the region were not checked by him. Postponement of the case consideration by the candidate in these instances created conditions for the offender avoiding administrative liability.

2.9 Case No. 303/1510/20

Under case No. 303/1510/20 administrative offence was committed on 11.03.2020. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 11.06.2020. The case was allocated to the candidate on 19.03.2020, which means that he had 84 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 23.06.2020, i.e. in 12 days after expiration of the three-month term.

The hearing under the case was postponed 6 times. Explanations given by the candidate and copies of documents show that the first hearing appointed for 02.04.2020 was postponed in connection with the offender's application on ability to participate in the case consideration due to family circumstances. The offender did not attach any evidence to the application which would confirm existence, nature, and validity of such circumstances. Consideration of the case appointed for 10.04.2020 did not take place due to the candidate's annual leave. The third hearing

which had to take place on 28.04.2020 was postponed by the candidate in connection with the offender's motion which indicated introduction of the emergency situation in Ukraine and absence of interregional transportation as a ground for postponement. On 12.05.2020 the case consideration was postponed for the fourth time upon the offender's application on the need to engage a defense lawyer. On 27.05.2020 and 23.06.2020 hearings were postponed due to the offender's failure to appear and absence of information about his notification. The candidate did not provide documents which would confirm sending of a notification to the offender about the case consideration on 27.05.2020 and 23.06.2020.

While evaluating the candidate's explanations regarding reasons for several postponements of the case consideration, which finally resulted in closure of the proceeding, the Ethics Council considers them to be unconvincing. Hence, on 28.04.2020 the case consideration was postponed following the offender's motion to another date due to the absence of interregional transportation. However, as evident from the motion, the offender lives in the village of Bobovyshche of Mukachevo district (about 10 km from Mukachevo) which did not require interregional transportation; moreover, the offender is a driver and could use private transport. The candidate explains reasons for postponement of the case on 27.05.2020 and 09.06.2020 with the offender's failure to appear and absence of information about his proper notification, but the candidate did not attach evidence on sending of summons to his explanations. Given that the offender turned to the court three times with motions and applications and was aware of the judicial proceeding, the Ethics Council critically perceives such explanations of the candidate.

While deciding on the issue on further consideration of the case on 09.06.2020, the candidate did not take into account the above mentioned circumstances.

According to Article 268 of the Code of Ukraine on Administrative Offences, in the absence of a person brought to administrative liability a case may be considered only in instances when there is information about timely notification of such person about the date and time of the case consideration and if such person has not submitted a motion on postponement of the case consideration. The candidate did not provide evidence of sending notification to the offender, which may be a sign of his non-diligent approach towards organization of the case consideration and towards taking all measures necessary to its timely consideration within the terms prescribed for by the law.

In turn, postponement of the case consideration by the candidate in the aforementioned instanced created conditions for the offender avoiding administrative liability.

2.10 Case No. 303/6217/20

Under case No. 303/6217/20 administrative offence was committed on 18.10.2020. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 18.01.2021. The case was allocated to the candidate on 09.11.2020, which means that he had 69 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 01.02.2021, i.e. in 14 days after expiration of the three-month term.

The hearing under the case was postponed 5 times. Explanations given by the candidate and copies of documents show that the first two hearings under the case were postponed in connection with the absence of post marks in the court and failure

to notify the offender. The candidate appointed the third court hearing for 23.12.2020 and was on annual leave on that day. On 05.01.2021 the candidate postponed consideration of the case for the fourth time due to receipt of an application from the offender on summoning of witnesses and appointed for the fourth hearing for 18.01.2021 – date of his annual leave. The Ethics Council is hereby drawing attention to the fact that four postponements of the case consideration (2 because of the absence of post marks, 2 because of the judge being on annual leave) were related to functioning of the court managed by the candidate and actions of the candidate. While the absence of post marks was an objective factor which did not depend on the candidate, appointment of the hearing for dates when the candidate was on annual leave which he as the court president planned on his own and issued respective decrees is a sign of undiligent attitude towards planning of his work schedule and ensuring of conditions for timely consideration of court cases.

Besides, on 05.01.2021 the judge postponed consideration of the case based on the offender's application on summons of witnesses. The candidate did not provide explanations and documents which would confirm summoning of witnesses to the court hearing. As evident from the ruling available in the Unified State Register of Court Decisions, witnesses were not questioned under the case. The Ethics Council is hereby pointing out that according to Articles 1, 245 of the Code of Ukraine on Administrative Offences completeness of actions and study of all circumstances under the case constitute one of the key objectives of judiciary proceedings under cases on administrative offences. However, they shall be ensured by judges along with taking into account the need to implement other objectives of the Code of Ukraine on Administrative Offences as well, including timeliness of consideration, legality, prevention of offences, awareness-raising of citizens in terms of accurate

and strict adherence to laws. Under such circumstances postponement of the case consideration due to motions on summoning of witnesses, lack of completion of such procedural action, and appointment of yet another date for the case consideration by the candidate beyond terms for imposition of administrative sanction did not facilitate fulfillment of the afore mentioned objectives of the Code of Ukraine on Administrative Offences. Postponement of the case consideration by the candidate in these instances created conditions for the offender avoiding administrative liability.

2.11 Case No. 303/8184/18

Under case No. 303/8184/18 administrative offence was committed on 21.12.2018. Taking into account provisions of Article 38 of the Code of Ukraine on Administrative Offences (in the version valid as of the moment of committal of offence), the term for imposition of administrative sanction under this case expired on 21.03.2019. The case was allocated to the candidate on 27.12.2018, which means that he had 84 days to consider it before expiration of the term. The candidate adopted a ruling on closure of the case on 28.03.2021, i.e. in 7 days after expiration of the three-month term.

The hearing under the case was postponed 5 times. Explanations given by the candidate and copies of documents show that the first two hearings under the case appointed for 09.01.2019 and 23.01.2019 were postponed in connection with the offender's failure to appear and absence of information about his notification. The third hearing appointed for 07.02.2019 did not take place due the candidate being in the deliberations room under another criminal proceeding. For the fourth time the

case was not considered on 25 February 2019 because of the candidate's annual leave. Consideration of the case appointed for 18.03.2019 did not take place as well.

The candidate provided contradictory explanations and documents regarding grounds for postponement of the case consideration. As evident from the certificate as of 04.03.2019, the candidate appointed the case for consideration for 08:30 on 25.02.2019. On the same day (25.02.2019) the candidate as the court president also signed decree No. 40/08-08 on annual leave which, according to the candidate's explanation, started on the same day (25.02.2019). Under such circumstances the fact that the candidate signed the decree on annual leave on 25.02.2019 shows that he had to be at a workplace on that day, it was his official working day and, accordingly, the candidate had an opportunity to consider the case.

With respect to postponement of the case consideration on 18.03.2019, in his explanations the candidate refers to absence of information about handover of the summons to the offender. At the same time, copies of documents attached by the candidate to his explanations contain a sheet of paper signed by the candidate with the chronology of the case consideration, according to which the reason for postponement of the case consideration on 18.03.2019 was the offender's application.

The Ethics Council is hereby specifically drawing attention to the fact that in these two instances of postponement of the case consideration the candidate provided contradictory explanations, which causes a reasonable doubt about his honesty.

2.12. Conclusion regarding the compliance of the candidate with the professional ethics criteria in relation to the consideration of administrative cases under Article 130 of the Code of Ukraine on Administrative Offences.

The generalized analysis of circumstances relating to planning of the case consideration schedule by the candidate, which resulted in missing of the term for imposition of administrative sanctions, allows reaching a conclusion that postponements often took place with account for motions of offenders concerning engagement of a defence attorney, request of documents, or questioning of witnesses, yet further the offender and defence attorney ignored court hearings, witnesses did not appear to court hearings, documents were not submitted to the court. Such similar “scenarios” of possible evasion of administrative responsibility by offenders which might be seen from the analysis of cases considered by the candidate during 2018 - 2021 did not cause a respective response from the candidate aimed at eliminating abuses of procedural rights by participants to proceedings, in particular, taking of all possible measures aimed at ensuring timely consideration of court cases within the set terms. Absence of a proper response from the candidate resulted in emergence of conditions allowing offenders to evade responsibility and closure of proceedings due to the expiration of terms for imposition of an administrative sanction.

While evaluating the candidate’s actions concerning consideration of the aforementioned administrative cases, the Ethics Council considers the Ruling of the Grand Chamber of the Supreme Court as of 28 October 2021 under case No. 11-250cap21. Hence, while considering a court case on lawfulness of the High Council of Justice bringing a judge to disciplinary liability with respect to facts of closure of proceedings under cases on administrative offences set out by Article 130 of the Code of Ukraine on Administrative Offences, the Grand Chamber of the Supreme Court states the following:

- Article 268(2) of the Code of Ukraine on Administrative Offences determines that participation of a person brought to administrative liability under Article 130 of the Code of Ukraine on Administrative Offences is not mandatory;

- Article 245 of the Code of Ukraine on Administrative Offences stipulates that objectives of the proceeding under cases on administrative offences include timely, comprehensive, complete, and objective establishment of circumstances of each case, its resolution in strict compliance with the law, prevention of offences, awareness-raising among citizens in terms of compliance with the laws, strengthening of legality;

- while considering this category of cases, a judge shall take all possible measures to ensure fulfillment of all objectives of the Code.

The practice of the High Council of Justice bringing judges to disciplinary liability for violations committed while considering this category of cases (committal of offence set out by Article 130 of the Code of Ukraine on Administrative Offences) shows that the High Council of Justice considers failure to comply with the terms while considering cases on administrative offences to be a disciplinary offence. The following decisions of the High Council of Justice show that:

- Decision of the Third Disciplinary Chamber of the High Council of Justice of 21.01.2021 No. 123/3дп/15-21 on bringing judge of Mykolaiv District Court of Lviv region I. M. Karbovnik to disciplinary liability and adoption of 30 rulings on closure of the proceeding due to expiration of the term for imposition of administrative sanction;

- Decision of the Third Disciplinary Chamber of the High Council of Justice of 24.02.2021 No. 453/3дп/15-21 on bringing judge of Desnianskyi District Court of Kyiv V. V. Babko to disciplinary liability for the judge failing to take significant

efforts and having a negligent attitude while considering cases on administrative offences set out by Article 130 of the Code of Ukraine on Administrative Offences, adopted 8 rulings on closure of the proceeding due to expiration of the term for imposition of disciplinary sanction.

The Ethics Council, while exercising its power to establish compliance of the Candidate with the professional ethics and integrity criteria, fully shares the opinion of the High Council of Justice expressed in the afore mentioned cases with respect to special public importance of this category of cases and necessity for judges to pay special attention to thorough planning of their consideration, study and evaluation of all circumstances of such cases, taking maximum efforts to ensure fulfillment of objectives of the Code of Ukraine on Administrative Offences, in particular, correction of offenders and protection of civil order.

The Ethics Council has reasonable doubts that while considering cases on administrative offences set out by Article 130 of the Code of Ukraine on Administrative Offences the candidate acted diligently in at least 11 cases and, thus, this resulted in the violation of the afore mentioned principles of the Code of Ukraine on Administrative Offences.

In view of the above, taking into account explanations of the candidate, documents provided by him, and afore mentioned circumstances, the Ethics Council states existence of reasonable doubts about the candidate's compliance with such indicators as honesty (cl. 1.3.2. of the Methodology), financial control requirements (cl. 1.3.7.6. of the Methodology), and 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:

to recognize candidate for the position of the member of the High Council of Justice Ivan Ivanovych Kotubey 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