



ЕТИЧНА РАДА

*01601, м. Київ, вул. Липська, 18/5,
тел.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua*

ETHICS COUNCIL

*01601, Kyiv, Lypska St., 18/5,
tel.: (044) 277-76-29, (044) 277-76-32
e-mail: ec@court.gov.ua*

1 November 2022

Kyiv

SEPARATE OPINION

of the Chair of the Ethics Council Lev Yuriiovych Kyshakevych and members of the Ethics Council Yurii Rostyslavovych Triasun and Volodymyr Ivanovych Siverin regarding the Decision of the Ethics Council № 55 dated 01.11.2022, whereby the candidate for the position of a member of the High Council of Justice Ivan Ivanovych Kotubei was recognized as non-compliant with the criterion of professional ethics and integrity, in accordance with the Law of Ukraine "On the High Council of Justice", the Rules of Procedure of the Ethics Council, approved by the decisions of the Ethics Council №1 dated 01.12.2021 and №4 dated 09.12.2021, as amended by the decision of the Ethics Council №4 dated 26.04.2022, the assessment Methodology.

Content of the separate opinion

Ivan Ivanovych Kotubei was recognized as non-compliant with the criterion of professional ethics and integrity for filling in the position of the member of the High Council of Justice by the decision of the Ethics Council № 55 dated 01.11.2022.

Using the right granted by cl. 2.3.6 of the Ethics Council's Rules of Procedure adopted by the Ethics Council's Decisions No. 1 of 1 December 2021 and No. 4 of 9 December 2021, as amended by the Ethics Council's Decision No. 4 of 26 April 2022 ("Rules of Procedure"), we consider it as necessary to give a dissenting opinion regarding the decision adopted taking into account decisive votes of the Council's

members nominated by international and foreign organizations (cl. 2.3.3 of the Rules of Procedure).

In particular, the Chair of the Ethics Council Lev Yuriiovych Kyshakevych and members of the Ethics Council Yurii Rostyslavovych Triasun and Volodymyr Ivanovych Siverin disagree with the following conclusions of the Ethics Council:

Regarding the candidate's expenses for the construction of the house.

The Decision of the Ethical Council states that "the candidate submitted a notice of significant changes in the property status on 16.12.2021, wherein he indicated that since 09.12.2021, he had been owning a residential building in Mukachevo totaling 256.5 sq. m. In his written explanations to the Ethics Council, the candidate informed that this building had two floors. He also noted that in total there were eight rooms (premises) in the house, including a living room, a guest room, a kitchen, a summer kitchen on the ground floor, two children's rooms, a bedroom, and a dressing room on the attic floor.

In the Notification about significant changes in property status, the candidate indicated that the value of the house amounted to UAH 2 867 000,00. Whereas according to the information of the Formal Note on the Estimated Value of the Real Property from the Unified Database of Assessment Reports, Preparing e-Certificates on the Estimated Value of the Real Property and Registration of Property Assessment Reports, which is administered by the State Property Fund of Ukraine, the estimated value of the candidate's house amounted to UAH 4 452 796,56".

The Ethics Council, having studied candidate's written explanations and documents provided upon the Ethics Council's request, information obtained from open sources and from civil society organizations, taking into account the floor area of the house, the number of floors and rooms (premises) in it, the presence of a garage, a pavilion and a fence, the availability of water supply, sewerage, installed furniture and everything necessary for living; the declared value of the house in the amount of UAH 2 876 000,00 and the estimated value of the house in the amount of UAH 4 452 796,56; the contradictory answers of the candidate regarding the absence of significant expenses, except for vital ones, as well as the lack of his construction experience; the candidate's acknowledgment that he could not prove the

expenses for the construction of the house in the amount of 2,000,000.00 - 2,300,000.00, because he did not have copies of contracts, invoices, any documentary evidence of the work performed and construction expenses, indicated that it had reasonable doubts about the candidate's honesty regarding his actual expenses for the construction of the house".

In view of the foregoing, the Ethics Council concluded that the candidate did not comply with cl. 1.3.4.1 of the Methodology, namely: with such indicator as honesty, since the Ethics Council has reasonable doubts that such a candidate, while in his current position, acted in accordance with the requirements of legislation, rules of professional ethics, and other ethical norms regarding honesty.

We think that this conclusion is not based on the evidence studied by the Ethics Council in view of the following.

In his explanations candidate Ivan Ivanovych Kotubei provided information on what expenses were incurred by him for the construction of the house and in what years, he submitted the calculation documents available to him and proved that the construction of the house had been lasting from 2014 to December of 2021. According to the technical and registration documents provided, the value of the house at the time of its commissioning amounted to UAH 2 867 000,00. In 2014 - 2021, the income of the candidate and family members cumulatively amounted to more than UAH 6 400 000,00. As the candidate noted in his explanations, "even if the amount of taxes paid, expenses for living and for purchasing movable property as well as recreation expenses are excluded, this amount is sufficient to cover the cost of the house construction".

As the candidate noted in his explanations, the construction of the house began in 2014, and the preparation for it (purchasing building materials) was carried out in 2013.

In particular, a part of the material for the construction of the foundation was purchased in 2013, which cost about UAH 20-25 thousand (at that time it totaled about USD 3,000). The total income of the candidate's family in 2013 amounted to

about UAH 240 000,00 (specified in the 2013 Declaration), which at that time amounted to about USD 30 000, and this income allowed the candidate to incur the above expenses.

The foundation for the house was built in 2014, which cost about UAH 50 000,00 (at that time it amounted to about USD 4 000). The total income of the candidate's family in 2014 amounted to about UAH 265 000,00 (as specified in the 2014 Declaration), which at that time amounted to about USD 20 000,00, and this income allowed to cover the above expenses. The fact that the foundation was built in 2014 is also confirmed by the photograph provided to the Ethics Council by NGOs. For instance, in one of the photographs of the land plot (Google image), taken in June 2015, which is annotated with the information that the construction started in 2015, the presence of the foundation is clearly recorded. This confirms that as of June of 2015, the foundation had already been built (as the candidate noted in 2014) and that no other works had been carried out at that moment.

According to the candidate, no construction works were carried out in 2015. The total income of the candidate and his family in 2015 amounted to about UAH 335 000,00 (indicated in the 2015 Declaration), which at that time amounted to about USD 15 000,00, and this income allowed him to incur the above-mentioned expenses.

In 2015-2017, 300-400 thousand UAH was spent on construction. The official income of the candidate and his family members during these years amounted to more than UAH 1 000 000,00 and this income allowed to incur the said expenses.

In 2018, the candidate insulated the roof on his own, the money was spent only on the material for insulation; also, windows were partially installed in the house. Subsequently, major and expensive works were carried out in 2019-2021. Particularly, UAH 1 500 000 – 1 600 000 was spent.

The official income of the candidate and his family in 2019-2021 amounted to more than UAH 4 000 000,00 so this income allowed to cover the said expenses.

Thus, having analyzed materials available to the Ethics Council, explanations of Ivan Ivanovych Kotubei, and copies of documents attached thereto, it is possible to reach a conclusion that the Ethics Council's Decision has not refuted the candidate's explanations in which he proves that all expenses on the construction of the house were paid using legal revenues received by the candidate and his family members.

Besides, explanations on the legality and availability of sufficient funds for the construction of the house were provided by candidate Ivan Ivanovych Kotubei and non-governmental organizations and, based on the results of the explanations submitted, the Chair of the Board of the NGO "Anti-Corruption Center" Vitalii Viktorovych Shabunin sent a letter to the Ethics Council dated 17.02.2022 (available in the assessment files), which stated that the candidate completely refuted doubts about the availability of sufficient funds for the construction of the house.

In addition, in his responses to the request of the Ethics Council, the candidate indicated that he "directly participated in the construction of the house, provided assistance to specialists during the construction of walls; independently carried out all excavation work for the construction of a fence, laying of sewerage and water supply; together with his brothers built a fence; personally, without assistance, carried out work on the insulation of the roof and almost all work on the improvement of the courtyard (embankment and leveling of the territory with crushed stone, soil, lawn); helped to carry out work on the internal plastering of walls, installation of plasterboard; personally laid a parquet board and laminate on the floor; helped a specialist to glue wallpaper on the walls".

The conclusion set out in the Decision that "since the autobiography and other documents provided by the candidate to the Ethics Council lack any information about his construction experience, the candidate could not independently perform the specified works without special knowledge, skills and abilities in the field of construction acquired through appropriate training" is incorrect and groundless.

These conclusions set out in the Decision are unacceptable assumptions, rather than reasonable doubts about compliance with the criterion of professional ethics

and integrity, and they are refuted by the documents submitted by the candidate, information received at the request of the Ethics Council, information from open sources, as well as the results of the interview with the candidate.

Thus, we believe that during evaluation the Ethics Council has not received any evidence which would refute explanations given by the candidate; on the contrary, documents provided by the candidate correspond to his explanations, which is why doubts about his non-compliance with the professional ethics and integrity criteria for filling in the position of the member of the High Council of Justice are unjustified.

In view of the above, being governed by cl. 2.3, 3.1, 3.2, 3.16.2 of the Ethics Council's Rules of Procedure, Methodology, Article 9-1 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", we strongly disagree that the candidate does not meet the criterion of honesty (cl. 1.3.2 of the Methodology), the requirements of financial control (cl. 1.3.7.6 of the Methodology) and diligence (cl. 1.3.4 of the Methodology), as specified in the Decision of the Ethics Council.

Lev Yuriiovych Kyshakevych

Yurii Rostyslavovych Triasun

Volodymyr Ivanovych Siverin