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ETHICS COUNCIL

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Kyiv

DECISION

No. 59

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Mykhailo Ivanovych Kobal
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 Mykhailo Ivanovych Kobal 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 9¹ 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 Mykhailo Ivanovych Kobal 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. 33 of 21.07.2022.

Mykhailo Ivanovych Kobal was appointed to the position of the judge of Sevastopol Administrative Court of Appeal with Resolution No. 4633-VI of the Verkhovna Rada of Ukraine of 12.04.2012. With Decision No. 1816/0/15-19 of the High Council of Justice of 09.07.2019 he was transferred to the position of the judge of the Sixth Administrative Court of Appeal.

Having studied documents provided by Mykhailo Ivanovych Kobal 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. Regarding the legality of sources of funds used to buy an apartment where the Candidate lives and two parking spaces.

The Candidate informed that he, his wife, and son currently use and permanently live, on a free-of-charge basis, in a 129 sqm apartment in Kyiv. This apartment is owned by the Candidate’s mother, A. V. Kobal, who bought it for UAH 650,000 on 15.10.2015.

The Candidate declared the right to use this apartment for the first time in his 2016 declaration, mentioning 15.10.2015 as the date of the acquisition of the right to use it.

In his written replies to the Ethics Council and during the interview, the Candidate explained that the source of funds to purchase this apartment was the salary of his brother, P. I. Kobal. Between 2006 and 2009, the Candidate’s brother was a member of the Ukrainian peacekeeping contingent of civilian police observers in the UN Mission in Kosovo.

According to information from the Unified Register of Powers of Attorney, on 21.11.2009 the candidate's brother issued a power of attorney to his parents for representation of his interests for 5 years. According to the candidate, this power of attorney was issued regarding disposal of his brother's bank accounts. However, the candidate did not provide confirmation of information about the content of the power of attorney. Besides, the candidate does not know the amount of funds which his brother had then.

Later on, according to the Candidate, his mother deposited a certain amount of the funds earned by his brother into her deposit accounts for the period from June 2010 to December 2014. Later, she withdrew money totalling around EUR 51,429.44 from her deposit accounts. The mother spent some of these funds to

purchase the apartment where the Candidate currently resides and two parking spaces (car spaces in the underground parking – *from the declaration*) used by the Candidate and located in the same residential space. According to the Candidate, buying this property was an investment to protect the accumulated savings from depreciation. She spent some more funds on the repairs in the apartment (as a newly built property), but the Candidate does not know whether it was the entire remaining balance or not after the purchase of the apartment and parking spots in the underground parking. However, neither the Candidate's mother nor his brother has ever lived in this apartment. They have lived and continue living in Zakarpattia Oblast. They use the apartment sometimes when they come to Kyiv. The Candidate's mother does not have a driving licence. Moreover, the Candidate purchased two parking spaces on behalf of his mother who gave him the respective power of attorney.

To confirm his brother's income, the Candidate provided a scanned copy of a statement confirming that his brother was indeed a member of the mission in Kosovo from 13.12.2006 to 18.01.2009. In addition, the Candidate also provided a bank statement regarding his brother's bank account, where stated that Candidate's brother had EUR 9,650.56 as of 31.07. 2007. The Candidate also noted that these sums did not constitute the entire savings his brother had, but he could not provide other confirmation of his income/savings due to the passage of a considerable amount of time.

As to the deposit accounts of the Candidate's mother, the Candidate provided a bank statement of 27.04.2016 confirming that his mother had ten (10) deposit accounts, to which she credited UAH 33,846.44, USD 13,733.3, and EUR 45,400.7 in total. The statement did not show when exactly those funds were credited. Moreover, the statement showed that on the day of its issuance, the Candidate's mother closed all the deposit accounts and thus received funds of UAH 48,254.7, USD 16,529.7, and EUR 51,190.5.

Pursuant to cl. 1.3 of the Methodology, the absence of doubts regarding legality of the sources of origin of property of a candidate is one of the indicators for the criterion of professional ethics and integrity. Sources of origin of the candidate's property are legal if, in particular, there are no reasonable doubts to the contrary (Clause 1.3.7 of the Methodology). Pursuant to Clause 1.3.7.4 of the Methodology, if a candidate has received property free-of-charge into ownership, possession, or use, its previous owner (and current owner in case of transfer of the property into ownership or use) who has provided such property shall do that from legal income.

Having analysed the documents provided by the Candidate and his explanations, the Ethics Council has reasonable doubts regarding the legality of the sources used to buy the Candidate's property. In particular, the Candidate did not provide the Ethics Council with evidence that his brother had sufficient income from lawful sources, which, as the Candidate stated, his mother later used to purchase the apartment and two parking spaces currently used by the Candidate.

Moreover, the Ethics Council had no evidence that the cash the Candidate's mother credited to her deposit accounts were the funds transferred directly to her from the lawful income of the Candidate's brother, or that such funds were transferred to her at all. Therefore, the Ethics Council has reasonable doubts that the apartment and parking spaces currently used by the Candidate were purchased using legal income. In light of the above, the Ethics Council has reasonable doubts about the legality of sources of origin of the candidate's property (cl. 1.3.7 of the Methodology) and compliance with the requirements of the financial control, in particular with regard to full and accurate information in assets declaration (cl. 1.3.7.6 of the Methodology).

2. Regarding incomplete information in property declarations of the Candidate.

In all of his asset declarations for 2013 and 2014 the candidate specified incomplete and inaccurate information.

On 12.04.2012 Verkhovna Rada of Ukraine appointed Mykhailo Ivanovych Kobal as a judge of Sevastopol Administrative Court of Appeal. In clause 2 “Place of residence” of the declaration for 2013 (submitted on 31.03.2014) the Candidate indicated a house in Sevastopol. According to the Note 4 of the property declaration, the clause 2 shall contain information on the place of residence, and address at the end of the reporting period. At the same time, according to information from the Internet, it is a five-storey administrative building, in which the police department of the aggressor state is currently located. It implies that this building was the place of registration of the Candidate, not his actual place of residence. At the same time, the Section 3 of the Candidate’s declaration “Information on real estate” does not contain any information on the immovable property in Sevastopol, owned or used by the Candidate or his wife in 2013.

In his written explanations to the Ethics Council requests regarding this, the Candidate explained that he was renting temporarily several apartments in Sevastopol. Given that Sevastopol is a resort city, and the cost of rent went up high during summer period, the Candidate had to change his place of residence frequently to be able to pay the rent. The Candidate explained that in 2013 he did not live at one place longer than 6 months, and that is why he did not declare any.

Later, by the Decree of the President of Ukraine dated 23.04.2014, the Candidate was transferred to the Kyiv Appeal Administrative Court. In Clause 2 “Place of residence” of the declaration for 2014 (submitted on 31.03.2014), the Candidate indicated a dormitory in Kyiv. At the same time, the Section 3 of the declaration “Information on real estate” does not contain any information about property in Kyiv, owned or used by the Candidate and his family in 2014.

As for the non-declaring the right to use the dormitory, the Candidate explained that he did not actually live in it, being only registered there. He added that since being transferred to Kyiv, he rented several apartments. Among all of the apartments that he rented, the one that appeared first in his declarations was a 49 sq. m. apartment in Kyiv located at Mykilsko-Slobidska street. He declared the right to use this apartment in his 2015 paper and electronic declarations, since he lived in it longer than 6 months.

Pursuant to cl. 1.3 of the Methodology, one of the criteria of professional ethics and integrity indicators is diligence, in particular, industrious, thorough, and responsible fulfilment of one's duties, which is a sign of the person's professional integrity (cl. 1.3.4. of the Methodology).

Also, during 2013-2015, one of the Candidate's obligations as a judge was to submit annual declaration of property, income, expenses and financial liabilities for the previous year by April 1 at the place of work (service) in the form approved by the Law of Ukraine "On the principles of preventing and countering corruption".

The Ethics Council finds such explanations of the Candidate unconvincing. The provisions of anti-corruption legislation that were in force back at the time of submission of the Candidate's declarations for 2013 and 2014, the notes to the declaration form, as well as the wording used in the titles of Subsections A and B of Section 3 "Information on real estate" of the declaration, where the property that is owned, leased or otherwise used by the declarant and his family members was to be declared, did not give grounds to interpret them restrictively.

Thus, the Candidate did not declare any of the real estate objects nor under the right to use, not under the right of the ownership. As a result, it is impossible to identify any real estate where the Candidate actually lived with his family in Sevastopol or in Kyiv based on the Candidate's declarations for 2013-2014.

Furthermore, the Candidate also interpreted Clause 2 "Place of residence" of the declaration as such that requires to specify the place of registration without

indicating the actual place of residence, which is why the Candidate indicated the administrative building as the place of residence in the declaration for 2013, and in the declaration for 2014 - a dormitory, which, according to him, he never used.

The absence in the Candidate's declarations of any immovable property owned or used at his places of work may cause a reasonable doubts that the Candidate properly disclosed in them information on his property status.

Considering the fact that the Candidate was not diligent when filing his declarations, the Ethics Council has reasonable doubts about the Candidate's compliance with such professional ethics and integrity indicator as diligence (cl. 1.3.4 of the Methodology), as well as his compliance to the requirements of the financial control, in particular with regard to full and accurate information in assets declaration (cl. 1.3.7.6 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 Name Mykhailo Ivanovych Kobal 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