



## ЕТИЧНА РАДА

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## ETHICS COUNCIL

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**1 November 2022**

**Kyiv**

### DECISION

**No. 65**

***On non-compliance of candidate  
for the position of the member of the High Council of Justice  
Maryna Dmytrivna Kukhar  
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 Maryna Dmytrovna Kukhar 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<sup>1</sup> 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 Ethical Council received copies of the documents submitted by Maryna Dmytrivna Kukhar for participation in the competition for the position of the member of the High Council of Justice as nominated by the Congress of Judges of Ukraine and admitted her to the interview with its Decision of 21.07. 2022

Maryna Dmytrivna Kukhar was appointed to the position of judge of the Kharkiv District Administrative Court on 19.08.2008, which she still holds.

Having studied the documents provided by Maryna Dmytrivna Kukhar for participating in the competition, her 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/her, the Ethics Council has reached the following conclusions.

1. Regarding incomplete and inaccurate information in the assets declarations.

In 2012–2013, Maryna Dmytrivna Kukhar was registered and lived in an apartment in Kharkiv, owned by her father – D.I. Kukhar, and in 2013 – 2015 – in

an apartment in Kharkiv, owned by her grandmother – S.M. Komiahina. The candidate acknowledged the provided information in her written explanations.

The Ethics Council found that in the annual declarations of the candidate for 2012-2014, no information is available about any real estate owned or used by her.

During the interview, the candidate explained that the anti-corruption legislation in force at that time required that the declarant indicate only the place of registration in the declaration, which she did. In her opinion, the law did not require reporting on the actual place of residence, provided it coincided with the place of registration, nor did it require entering in the declaration information about the real estate where the declarant lives, provided it is not owned by them.

The Ethics Board finds such explanations unconvincing, as they contradict the legislation in force at that time.

According to Part 1 of Article 12 of the Law of Ukraine dated 07.04.2011 "On the Principles of Prevention and Counteraction to Corruption" (as amended by the Law of Ukraine No. 224-VII dated 14.05.2013), the subjects of the declaration are obliged to submit a declaration of property, income, expenses and liabilities of a financial nature for the past year annually before April 1 at the place of work (service) according to the form attached to this Law. The subject of the declaration is required to specify in Section III - "Information on Real Property" of the Declaration of property, income, expenses and liabilities of a financial nature any information about the property owned, leased, or otherwise used by the declarant, as well as the declarant's expenses for the acquisition or use of the such property. The same information shall be provided by them in respect of family members.

Therefore, the law directly requires that the candidate shall enter information in the declaration not only about the real estate owned by them but also the real estate used by them on the right of use. Contrary to the stated requirements of the law, Maryna Dmytrivna Kukhar, while using D.I. Kukhar's apartment in 2012 - 2013, and S. M. Komiahina's apartment in 2013 - 2014, failed to specify such information in the declarations for this period.

According to Clause 1.3.7.6 of the Methodology, the candidate must meet the requirements of financial control specified by the anti-corruption legislation, in particular, regarding the timely submission of declarations, notifications of significant changes in property status, notifications of open accounts with banking and financial institutions (including abroad) and the provision of complete and accurate information in property declarations.

In view of the above, the Ethics Council has reasonable doubts about the candidate's compliance with the indicator of diligence (cl. 1.3.4 of the Methodology), as well as about her compliance with the requirements of financial control (cl. 1.3.7.6. of the Methodology).

2. Regarding the inconsistency of the candidate's standard of living with the declared income

In the 2018 Declaration, Maryna Dmytrivna Kukhar reports monetary assets in the amount of USD 5,000 and UAH 81,416, and in the 2019 Declaration, the candidate declared monetary assets in the amount of USD 37,300.

In her written explanations, Maryna Dmytrivna Kukhar noted that the growth of monetary assets in 2019 was solely due to the income received at her place of work.

According to the certificate of the State Register of Individual Taxpayers, the income of Maryna Dmytrivna Kukhar in 2019 amounted to UAH 967,265, which was approximately equivalent to USD 38,000.

During the interview, the candidate acknowledged her written explanations and, when asked by the Ethics Council about expenses in 2019, said that during this period of time, in addition to current expenses, she had expenses related to tourist trips abroad. At the same time, she noted that travel costs were negligible, as tourist tours were purchased in advance.

According to the information available to the Ethics Council, in 2019, Maryna Dmytrivna Kukhar traveled abroad three times and had been staying in Italy from

25.05.2019 to 30.05.2019, in Turkey from 23.07.2019 to 02.08.2019, and in the Dominican Republic from 22.11.2019 to 05.12.2019, which is not contested by the candidate.

The Ethics Council believes that there are reasonable doubts that the expenses of Maryna Dmytrivna Kukhar for utilities, vehicle maintenance, tourist trips abroad, and other daily expenses in 2019 amounted to USD 5,000, which as of the specified year is equivalent to about UAH 125,000, since only a two-week tour to the Dominican Republic in 2019 could cost approximately UAH 95,000 – UAH 115,000. The candidate failed to provide the Ethical Council with convincing evidence to refute the above cost of the tour and to support her calculation of expenses.

In view of the above, the Ethics Council believes that there are reasonable doubts about the honesty of Maryna Dmytrivna Kukhar (cl. 1.3.4.1 Methodology) in terms of justifying the amount of her expenses in 2019 and, as a result, the legality of the sources of origin of the candidate's property, namely monetary assets declared as of the end of 2019 (cl. 1.3.7 Methodology).

### 3. Regarding the candidate's failure to declare the value of the inherited apartment

The Ethics Council, while assessing the candidate, found that on 13.05.2019 Maryna Dmytrivna Kukhar inherited the apartment from her grandmother - S.M. Komiahina in Kharkiv. In the declarations for 2020 - 2021, the candidate failed to specify its value as of the date of acquisition of title or according to the last monetary assessment.

In the written explanations to the question of the Ethics Council, the candidate noted that she did not have information about the value of the specified apartment and did not have documents to confirm its value, and therefore she did not enter the due information in the declaration.

However, during the interview, the candidate explained that her grandmother had purchased the apartment under the sales agreement dated 11.04.2012, which the candidate provided to the notary for the formalization of the inheritance.

Since the value of the property that is the subject of the transaction must be specified in a sales agreement, Maryna Dmytrivna Kukhar was aware of the value of the apartment she inherited.

After comparing the written explanations of Maryna Dmytrivna Kukhar with her oral explanations during the interview, the Ethics Council has reasonable doubt that the candidate was unaware of the value of the apartment she acquired the title to.

According to cl. 1.3.7.6 of the Methodology, the candidate shall comply with applicable requirements of financial control that are stipulated by the anticorruption legislation, including with respect to timely submission of declarations, notifications about significant changes in the financial situation, notifications about opening of accounts with banking and financial institutions (including abroad) and provision of full and accurate information in assets declarations.

The Ethics Council deems that Maryna Dmytrivna Kukhar provided incomplete information in the declarations for 2020 - 2021, namely, she failed to enter information about the value of the apartment, which raises reasonable doubts about her compliance with the requirements of financial control, that are stipulated by the anticorruption legislation (cl. 1.3.7.6. of the Methodology).

4. Regarding the legality of the sources of origin of the funds for the purchase of the apartment in Kharkiv

The Ethics Council, in the course of the assessment of the candidate, also found that on 29.02.2012 the candidate's mother - L.B. Kuchar acquired title to an apartment totaling 52.6 sq.m in Kharkiv, valued at UAH 415,480.

During the interview, Maryna Dmytrivna Kuchar said that the said apartment had been purchased by her parents for their personal savings.

According to the certificate from the State Register of Individual Taxpayers, the income of the candidate's parents from 1998 to 2012 totaled: L.B. Kukhar – UAH 123,665 UAH, and D.I. Kukhar – UAH 648,725. Consequently, their total income for this period amounted to UAH 772,390.

Given that on 18.09.2009 the candidate's father - D.I. Kukhar acquired title to an apartment totaling 74.1 sq.m in Kharkiv, valued at UAH 508,725, doubts arise about the truthfulness of the explanations of Maryna Dmytrivna Kukhar regarding the purchase of an apartment totaling 52.6 sq.m in Kharkiv, valued at UAH 415,480, specifically at the expense of her parents.

Therefore, the Ethics Council deems that there are reasonable doubts about the candidate's compliance with the such indicator of the criterion of professional ethics and integrity as honesty (cl. 1.3.2. of the Methodology) and the legality of sources of origin of the property (cl. 1.3.7. of the Methodology).

5. Regarding the legality of the sources of origin of the funds for the purchase of a vehicle

The Ethics Council, while assessing the candidate, found that on 20.04.2013 Maryna Dmytrivna Kukhar acquired title to a 2012 Mercedes - Benz C180, with a declared value of UAH 226,000.

In the written explanations to the questions of the Ethics Council, the candidate noted that the source of origin of the funds for the purchase of the vehicle was the proceeds from the sale of the Hyundai Accent owned by her on the right of ownership, for UAH 57,000 in 2013, as well as her personal funds received at the place of work in the Kharkiv District Administrative Court.

The Ethical Council deems unconvincing the explanation of Maryna Dmytrivna Kukhar that the 2012 Mercedes – Benz C180 valued at UAH 226,000 was purchased by the candidate in 2013 for her personal savings and the proceeds from the alienation of the Hyundai Accent.

According to the State Register of Individuals Taxpayers certificate, the candidate's salary in 2012 amounted to UAH 139,420, and in 2013 - UAH 163,098. At the same time, in the 2012 Declaration Maryna Dmytrivna Kukhar did not declare any savings. Therefore, taking into account the proceeds received from the sale of the Hyundai Accent and the income that the candidate received in January - April of 2013 at the place of work, there are reasonable doubts that the candidate had enough official income to purchase the 2012 Mercedes – Benz C180.

In view of the above, the Ethics Council deems that there are reasonable doubts about the candidate's compliance with such an indicator of the criterion of professional ethics and integrity as honesty (cl. 1.3.2 of the Methodology) and the legality of sources of origin of the property (cl. 1.3.7 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 9<sup>1</sup> 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 Maryna Dmytrivna Kukhar 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**