

December 16, 2014

LETTER
concerning restrictive measures (sanctions)
against Mr. Portnov (№ 5 in the EU's sanctions list)

Dear All,

I am writing to you as far as I find the restrictive measures (sanctions) against me quite groundless and subject to further revision.

I served as the Deputy Head of the Presidential Administration of Ukraine from 2010 to 2014. Implementation of European standards in the areas of legislation, which were within my competence, was my first priority. I headed the working groups on reforming the criminal justice system, powers of prosecutor, advocacy and judicial system. In this respect I closely cooperated with foreign experts and institutions inter alia the Venice Commission. It should be pointed out that we made great progress, carrying out a number of reforms, which the Council of the EU had expected from Ukraine since it joined this organization in 1995. It is enormous preparatory work done by the groups of experts, headed by me that helped to reform Ukrainian legislation and resulted in passing a number of laws by Verkhovna Rada, the highest legislative body of Ukraine. They were as follows:

Firstly, there was passed the new Criminal Procedural Code of Ukraine. "Ukraine took nearly 100 % of our recommendations regarding the new criminal procedural code"¹, said Thorbjørn Jagland, the Secretary General of the Council of Europe. Moreover, Christos Giakoumopoulos, the Director of Human Rights in the Council of Europe's Directorate General Human Rights and Rule of Law, called the new Criminal Procedural Code of Ukraine an extremely modern instrument in comparison with similar laws working in other countries - members of the Council of Europe².

Secondly, the Law of Ukraine "On Advocacy Activity" was passed. The European Commission praised this law as well as the whole judicial reform in the ENP Progress Report (2012). The European Commission pointed out "positive developments in the field of legal reform, including the judiciary, where some important laws were enacted (entry into force of a new Criminal Procedure Code, the new legislation on the Bar, the establishment of a National Preventive Mechanism against torture), and in the area of freedom of association"³.

Thirdly, the Law "On Decriminalization" was enacted. This Law cancelled custody for minor offences, criminal liability for a number of acts, which do not

¹ <http://assembly.coe.int/Main.asp?link=/Documents/Records/2013/E/1310021530E.htm>

² http://www.ukrinform.ua/eng/news/council_of_europe_calls_ukraines_new_criminal_procedure_code_one_of_best_312232

³ <http://www.enpi-info.eu/library/content/ukraine-enp-progress-report-2012>

pose social threat, and imprisonment for certain criminal offences. These abovementioned kinds of punishment were replaced with fine.

Fourthly, the working group under my guidance drafted the Law “On Public Prosecutor’s Office”, which has been adopted by Verkhovna Rada of Ukraine recently. This law facilitates the transition from the Soviet model of prosecutor’s powers and authorities to the European one.

Besides, the working group prepared the draft of the constitutional amendments concerning the guarantees of judicial independence, which were positively assessed by the Venice Commission.⁴ Moreover, this European institution repeatedly pointed to the need for its early adoption by the Parliament of Ukraine⁵. Unfortunately, the Parliament rejected the draft in July 2014 for unknown reasons. Meeting my European colleagues, experts and representatives of different European organizations I always expressed my readiness to ensure compliance of Ukrainian internal laws with high European standards and did my best to make the standards an integral part of the national legislation.

Unfortunately, despite all these facts the Council of the EU adopted Decision 2014/119/CFSP of March, 5, 2014, applying restrictive measures against me “for alleged embezzlement of state funds and its illegal transfer outside Ukraine”, as they put it.

I want to draw Your attention to the fact that such restrictive measures were based on the letter from O. Makhnitsky, the Prosecutor General of Ukraine at office, to C. Ashton, the EU High Representative for Foreign Affairs and Security Policy, of March, 3, 2014. I was accused of abuse of powers and authorities, which constituted in misuse of the office of the Deputy Head of the Presidential Administration of Ukraine. As it was mentioned in the letter, I used my position to become the Head of the Constitutional Law Department in Taras Shevchenko National University. Besides, I was charged with misappropriation of the salary, paid to me by the University, and misuse of the office of the Deputy Head of the Presidential Administration as I was elected as the member of the Supreme Council of Justice.

I would like to point out that all the facts, presented in the Letter of March, 3, 2014, are inadequate and incorrect. I could use neither the position in the University nor the post in the Presidential Administration to gain a seat in the Supreme Council of Justice. First, it is necessary to clear up the timeline. I was elected to the Supreme Council of Justice in 2009 and I took the positions at the University and the Presidential Administration only in 2010. Moreover, the information concerning misappropriation of “funds by collecting salary without actually doing any work”⁶ is also false. I kept delivering lecture courses and arranging meetings of the Department being the Head of it. I did not receive the

⁴http://zib.com.ua/ua/print/41722-golova_evropeyskoi_komisii_za_demokratiyu_cherez_pravo_dzhan.html

⁵ <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4667&lang=2&cat=3>

⁶ Quotation from the Letter of the Prosecutor General of Ukraine as of 08 July 2014.

money because I left it for the needs of the Department. Neither did I steal or transfer it outside Ukraine.

More than eight months have passed since the EU restrictive measures were imposed. The Prosecutor General hasn't even notified me of crime suspicion as well as the evidence against me so far though it is legally binding. The Prosecutor General's Office failed to comply with the current Ukrainian laws and present the evidence of my being involved in alleged crimes, thus infringing human rights. It is worth mentioning that the facts submitted by the Prosecutor General in the Letter to High Representative of the Union for Foreign Affairs and Security Policy have already been refuted by Ukrainian Courts.

Thus, the grounds for the restrictive measures, imposed by the EU against me, were based on unreliable information, that simply couldn't be confirmed even within a considerable time period. If we turn to the word combinations "embezzlement of state funds" and "illegal transfer of state funds abroad" quoted in the Decision of the EU Council, they stem from unverified and misleading information as well.

Having introduced restrictive measures, the EU Council was not guided by the presumption of innocence, the highest European standard, the right to equal protection, proportionality between the offence and the applicable restrictions. It was easier to be misled than to provide a thorough insight into the case.

Taking into account the absence of any prerequisites for applying sanctions against me, I appealed to the EU General Court and I hope for a positive decision and restoration of my violated rights. In this respect I should mention that the decision of the EU Council was the cause of the loss of my business reputation, discrediting my honor and dignity. The information, containing in such decisions, as well as the EU decisions themselves are widely spread through the media, business and political circles and also among the ordinary people of Ukraine. Furthermore, the latter may doubt my innocence because they have always trusted in the EU bodies.

I would like to underline the fact that Ukrainian authorities are still spreading false information about me. In particular, an online edition published some information, received from the EU representative in Ukraine. It dealt with "misappropriation of state funds of Ukraine, and the frozen assets I have in the EU". But at the same time it was remarked that I was not prohibited to travel within the Union⁷. It must stress the fact that I do not have any assets and accounts in any financial institutions in the EU (that information can easily be checked).

I would be grateful to You if You could inform me of the amount of the frozen assets and specify the country of their location.

Sincerely yours,
A. Portnov

⁷ <http://www.pravda.com.ua/news/2014/11/11/7043875/>