

Letter from Mr. Portnov to the Council of the European Union

Dear All,

My name is Andrey Portnov (№ 5 in the EU's sanctions list). 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 (please see the link below http://portnov.com.ua/?page_id=9).

05 March 2014 the Council imposed restrictive measures (sanctions) against me by its Decision 2014/119/PESC for allegedly embezzlement of state funds and illegal transfer outside Ukraine.

Taking into account lack of legal grounds for sanctions implementation against me, I appealed to the General Court of the European Union. I hope to get favorable judgment and restore my violated rights.

I would like to draw Your attention to the fact that such restrictive measures did not result in assets freeze which, according to the Prosecutor General's Office, were accumulated by me from allegedly misappropriated state funds. I strongly insist that I have never conducted any actions connected with embezzlement, misappropriation of state funds or conversion of property by malversation. My decision to contest restrictive measures represents my principled stands to restore my reputation.

I insist that the abovementioned restrictive measures were imposed against me only for giving lecture courses in the universities. Ukrainian prosecution authorities have to the full extent misrepresented all the information about me, filed to the EU starting from March 2014.

Particularly, the Prosecutor General's Office has informed the High Representative of the Union for Foreign Affairs and Security Policy Mrs. Catherine Ashton on pre-trial investigation against me connected with "abusing the official powers while holding the office of the Deputy Head of the Presidential Administration of Ukraine to obtain employment as the Head of the Constitutional

Law Department of Kyiv Taras Shevchenko National University and to misappropriate funds by collecting salary on this position without actually doing any work as well as to become a member of the supreme Council of Justice under the quota of the Congress of representatives of legal universities and scientific institutions” (please see the link below <http://portnov.com.ua/wp-content/uploads/2014/11/list080714.pdf>).

It is worth mentioning that in spite of such accusations against me the Prosecutor General’s Office has not even notified me on suspicion within 10 months.

I would like to underline the fact that the abovementioned information is not consistent with the reality. I could not abuse official powers while holding the office of the Deputy Head of the Presidential Administration of Ukraine to obtain employment as the Head of the Constitutional Law Department of Kyiv Taras Shevchenko National University or to be elected as a member of the Supreme Council of Justice, because I was appointed as the Deputy Head of the Presidential Administration after my employment in the University and election in the Council of Justice.

I’m writing this letter to turn Your attention to a politically motivated criminal prosecution by the Ukrainian police authorities by falsification of criminal case files and spreading false accusations against me.

More than 10 months from the beginning of investigation have passed. The Prosecutor General’s Office notified me on suspicion in the criminal proceedings N 4201410000000209 under art. 191 sect. 3 of the Criminal Code of Ukraine (repeated misappropriation of somebody else’s property by malversation) only 29 December 2014 (please see the link below <http://portnov.com.ua/wp-content/uploads/2014/11/pidozr.pdf>).

The notice of suspicion unlike the letter to Mrs. Ashton, the Prosecutor General’s Office made no mention of any accusations, connected with abuse of official powers while holding the office of the Deputy Head of the Presidential Administration of Ukraine to become a member of the supreme Council of Justice under the quota of the Congress of representatives of legal universities and scientific institutions, due to their inconsistency.

Besides, in the prosecution’s opinion, I allegedly committed several crimes. According to the Prosecutor General’s Office, after my employment in the Presidential Administration from 02.04.2010 to 20.02.2014 I knew that subject to Guidelines of the Ministry of Labor of 1993, on the terms of secondary employment I couldn’t hold any office connected with organizational/ management responsibilities (interim head of department), as well as hourly paid pedagogic duties if the labor extent exceeds 240 hours per year. Moreover, the Prosecutor General’s Office pointed that I intentionally placed pressure upon officials in the universities to retain my position in the University and to strengthen my credibility as an academic. According to the Prosecutor General’s Office:

1. I worked as professor and interim head of constitutional law department of Kyiv Taras Shevchenko National University 1 755,2 hours on terms of secondary employment. I caused a loss by receiving my salary in

the amount of UAH 94 577,07 and disposing it on my own needs. Such my actions resulted in an allegedly loss which I inflicted to the University in the amount pointed above.

2. I worked as professor in international relations department of Kyiv VadimGet'man National Economic University within 997 days on terms of secondary employment. I caused an allegedly loss by receiving salary in the amount of UAH 43 061,95 and disposing it on my own needs. According to Prosecutor General's Office, such my actions resulted in a loss which I inflicted to the University in the amount pointed above.

According to the position of prosecution I allegedly misappropriated my salary in the total amount of 137 639,02 (approximately 6 000 euro for 4 years).

I would like to point out that the circumstances, on which the prosecution refers to, are totally false.

Thus, the Prosecutor General's Office claims that I'm not entitled to be engaged in teaching paid by hour, if the labor extent exceeds 240 hours per year. Such statements of the Prosecutor General's Office are not based on rules of law and totally contradict the Ukrainian legislation. Subject to subsection 1 of the section 1 of the Article 7 of "On Principles of Preventing and Counteracting Corruption the Law of Ukraine" it is forbidden for officials "to be engaged in other paid or entrepreneurial activities (apart from teaching, scientific, and creative activities, medical practice, and sports coaching and referee practices), if not otherwise stipulated by the Constitution or laws of Ukraine". As a matter of fact, the Law allows teaching activity for officials.

Moreover, the information concerning misappropriation of "funds by collecting salary without actually doing any work" is also false¹. I kept delivering lecture courses and arranging meetings of the Department being the Head of it. I did not receive the money because I left it for the needs of the Department. Neither did I steal or transfer it outside Ukraine.

According to the statement of the bank, the staff members of the department conducted only one operation in the total amount of 40 euro, the rest of money that was misappropriated by me and transferred outside Ukraine still remains in the bank account (please see the link below http://portnov.com.ua/wp-content/uploads/2014/11/printer_12.jpg).

It is important to point out that the notice on suspicion was based only on the violation of labor law. Due to this fact, Ukrainian Labor Inspection Service (special state service) conducted revision in the Kyiv Taras Shevchenko National University (please see the link below <http://portnov.com.ua/wp-content/uploads/2015/01/derzhpratsya.pdf>). Upon completion of this revision the Labor Inspection Service did not detect any violations conducted by any staff members of the University (including me). The result of such revision demolishes any arguments of the Prosecutor General's Office concerning labor law violation.

¹Quotation from the Letter of the Prosecutor General of Ukraine as of 08 July 2014.

I could not place any pressure on universities' administrations, as my position in the Presidential Administration of Ukraine was related only to legal system reform and was not connected with educational and science issues.

Moreover, my powers and authorities did not involve giving instructions to administrations of universities, staff members, other officials, except for my subordinates in the Presidential Administration.

The prosecution did not determine objective aspect of crimes allegedly committed by me and did not mention place, time and way of committed crimes, and did not specify the list of persons subject to my pressure. These facts prove lack of any pressure from my side. In the notice of suspicion the prosecution mentioned an abstract term "administration of the universities" without any specification. That means that the prosecution could not identify any persons that have been allegedly under pressure, and brought unexamined charges against me.

I want to draw Your attention to the fact that the circumstances mentioned in the notice of suspicion could not be even qualified as "misappropriation of somebody else's property by malversation" or as any other crime subject to the Criminal Code of Ukraine, because the latter does not specify any liability for breach of secondary employment provisions, or for "misappropriation" of somebody's own salary accrued for completed job. From my point of view such accusations are quite nonsensical.

According to art. 191 of the Criminal Code of Ukraine misappropriation of somebody else's property by malversation represents property crime and involves specific intent, interested motives and mercenary purpose. In the notice of suspicion the investigator mentioned that this crime was committed by me with a purpose "to retain my position in the University to strengthen my credibility as an academic", that statement totally contradicts the art. 191 of the Criminal Code of Ukraine and proves lack of essential component elements of a crime.

Subject to case law concerning the art. 191 of the Criminal Code of Ukraine "misappropriation of somebody else's property by malversation" means that the person abuses powers and authorities and uses organizational/management responsibilities contrary to the interest of the official to illegally and gratuitous reverse of the property for personal gain. It is important to mention that the person misappropriates the property under his/hers management within given powers and authorities.

As was describes above my powers and authorities were not connected with staff members, salary and educational institutions, where I have worked. I may say that in my case there are no component elements of a crime described in the art. 191 of the Criminal Code.

I would like to add that I currently head the Law Reforms Institute and conduct an oppositional activity. I oppose to actual Ukrainian authorities in regard to constitutional and judicial reforms, reforms of the police authorities and other issues.

I suppose that current Ukrainian authorities may not positively assess my criticism. Such negative position of the authorities resulted in political struggle against me in the form of illegal prosecution.

Political struggle against me in the form of illegal prosecution may be proved by the fact that Ukrainian police authorities revised all legal firms where I have worked for the last 14 years (please see the link below <http://portnov.com.ua/wp-content/uploads/2014/11/list290714.pdf>) as well as my salary in the Securities Commission, where I previously have worked, for the last 17 years (please see the link below <http://portnov.com.ua/wp-content/uploads/2015/01/%D0%B4%D0%BE%D0%B2%D1%96%D0%B4%D0%BA%D0%B0-%D0%BF%D0%B5%D1%80%D0%B5%D0%B2-%D0%94%D0%9A%D0%A6%D0%9F-%D1%82%D0%B0-%D0%92%D0%9D%D0%97.pdf>).

It is obvious that such intensive attention towards my labor activity for last decades may evidence that the police authorities are intended to impose liability on me, and use criminal prosecution as an instrument of pressure towards political opponent.

The abovementioned detailed inspection of my labor activity conducted by police authorities resulted in absurd criminal proceedings on allegedly misappropriation of my salary. Besides, Ukrainian police authorities did not notify me on other crime suspicions.

I would like to draw Your attention that I sued the Prosecutor General's Office in Ukrainian courts as a legal remedy. Ukrainian courts delivered 11 judgments in my favor (7 decisions in first instance, 4 in courts of appeal) (please see the link below http://portnov.com.ua/?page_id=432).

These court decisions demolish all accusations brought against me by the Prosecutor General's Office. Inter alia, Ukrainian courts revealed falsification of facts presented by the Prosecutor General's Office against me and engaged Prosecutor General's Office to inform the EU on such falsifications. However Prosecutor General's Office totally ignores decisions of the Ukrainian courts and avoids its obligations.

Besides, I would like to turn Your attention to the abovementioned notice of suspicion especially to its unlawful nature. Under Ukrainian law there is a special procedure for attorneys' notification of any suspicion in connection with investigations.

As I am a Ukrainian attorney and I have an admission certificate to the bar, I must have been notified of suspicion solely by prosecutor general, deputy prosecutor or district prosecutor. According to the Law of Ukraine "On Advocacy Activity" "An attorney may be notified of suspicion only by prosecutor general, deputy prosecutor or district prosecutor".

Although, contrary to the law I was notified of suspicion by an ordinary investigator. As I was the author of the Law "On Advocacy Activity" and headed the working group on reforming advocacy, I may affirm that the abovementioned provision was included in this Law subject to the decisions

of the Court of Human Rights. In the view of the forgoing I consider the abovementioned notification of suspicion being totally unlawful.

It is evident that the abovementioned actions of Ukrainian authorities are predominantly political, as well as all accusations against me are politically motivated.

Would You be so kind as to take into account the information contained in this letter when considering restrictive measures renewal.

Let me express my deep respect and thank You for Your attention to this letter.

Sincerely Yours,
Andrey Portnov.