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former adviser of President Yanukovych,
removed from the list of EU sanctions
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1

ИЗБРАННОЕ

1



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Editor-in-Chief Willy Fautre
Email: international.secretariat.brussels@hrwf.net
Website: www.hrwf.eu

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Table of Contents

UKRAINE

**Andrii Portnov, former adviser of President Yanukovich,
removed from the list of EU sanctions**

15 July 2015



Website: www.hrwf.eu

UKRAINE

Andrii Volodymyrovych Portnov, former adviser of President Yanukovich, removed from the list of EU sanctions

HRWF (15.07.2015) - On 6 March 2015, Andrii Volodymyrovych Portnov, former adviser to the President of Ukraine, was removed from the list of EU sanctions after Ukrainian courts had ruled in all the cases referred to by the EU to justify its sanctions that there was no evidence that

- he had allegedly been involved in the mass murder of Maidan activists in Kyiv
- he was allegedly involved somehow in legalization of assets and misappropriation of land and buildings belonging to V.Yanukovich, in Mizhgyrye district
- he had allegedly abused his official position as the Head of the Department of Constitutional Law at the Taras Shevchenko National University in Kyiv and appropriated its assets in the form of salary, not actually doing any work.

A.V. Portnov challenged all these accusations in courts to defend his honor, his dignity and his business reputation.

TIMELINE OF THE BLACKLISTING

On 3 March 2014, the government of Ukraine announced that it had initiated criminal proceedings against a number of former Ukrainian officials and close associates.

On 5 March 2014, the Council of the European Union, referring to information from General Prosecutor's Office in Ukraine, issued a "Decision (Ref. 2014/119/CFSP) concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine."

The Decision was targeting 18 persons "subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine."

A.V. Portnov was number 5 on the list. He was also put on the lists of Norway and Switzerland.

The Council agreed to focus on restrictive measures on the freezing of assets. But it did not check if he actually had any assets. Eventually it turned out that he had no assets or bank accounts within the EU so the aforementioned restrictive measures were applied in vain.

First case: Accusation of involvement in a mass murder

28 February 2014: A.V. Portnov accused of involvement in the mass murder of Maidan activists by the General Prosecutor's Office

The General Prosecutor's Office of Ukraine published on its official website:

"The General Prosecutor's Office of Ukraine asks the new leaders of the Ministry of the Interior and the Security Service of Ukraine to immediately detain persons involved in the mass murder of activists in the center of Kyiv since this February 18 till 22. Among the people being wanted: Former Deputy Head of the Presidential Administration Andrii Portnov."

15 August 2014: The Pecherskyi District Court of Kyiv declares A.V. Portnov non-guilty

In its Decision, the said court "recognized as false, being not true, violating the rights of freedom, defaming the honor, dignity and business reputation of A.V. Portnov, the information disseminated by the General Prosecutor's Office of Ukraine on 28 February 2014."

The court also obliged the General Prosecutor's Office to publish its decision on its website within one month if an appeal was not filed within 10 days.

Failure of the General Prosecutor's Office to answer requests from A.V. Portnov's lawyer

Between 12 June and 18 July 2014, attorney Nikitin S.P. addressed several requests to the General Prosecutor's Office about the violation of his client's right to protection of his honor, dignity and business reputation but they remained unanswered.

On 22 July 2014, the Plaintiff, A.V. Portnov, filed a lawsuit against the General Prosecutor's Office regarding the acknowledgment of the information as unreliable and discrediting his honor, dignity and business reputation.

On 25 August 2014, the County Administrative Court of Kyiv ruled that "the activity of the General Prosecutor's Office is to be adjudicated unlawful, which lies in the failure to grant responses to the requests of the attorney Nikitin S.P."

On 7 October 2014, failing to agree with the court Resolution as of 25 August 2014, the defendant's representative issued the appeal petition. However, the Kyiv Administrative Court of Appeal resolved that: "The appeal petition of the defendant - the General Prosecutor's Office of Ukraine - is to be dismissed. The decree of the County Administrative Court of the city of Kyiv dated 25 August 2014 is to be left unchanged. The resolution is final, definitive and is not subject to any appeal."

23 October 2014: Court of appeal confirms A.V. Portnov is non-guilty

In its Resolution, the Kyiv Appeal Court rejected the appeal of the General Prosecutor's Office against the Decision of Pecherskyi District Court of Kyiv dated 15 August 2014, left the Decision without changes.

Second case: Accusation of participation in criminal offences

On 20 May 2014, during a session of the collegiate organ of the General Prosecutor's Office, the first deputy of the General Prosecutor, Mr. M. Ya. Golomsha said in a speech:

"Former first deputy of the Chief of Staff Mr. Portnov is involved in the commission of criminal offences.

He was allegedly involved somehow in legalization of assets and misappropriation of land and buildings, belonging to V.Yanukovych, in Mizhgirye district."

The information stated was made public through video record publication in the social network Facebook on the publicly available profile of the Ukrainian General Prosecutor's Office (information addresses in the global network of internet with a hyper reference to Youtube internet resource). Moreover, a relevant video record was made public on Youtube official page of the Ukrainian General Prosecutor's Office.

9 October 2014: The Pecherskyi District Court of Kyiv ruled the accusation unreliable

At the court hearing of the Pecherskyi District Court of Kyiv, where the representative of the Defendant (Mr. M. Ya. Golomsha) did not appear, the Plaintiff considered that information negative, untrue and subject to denial. Consequently, the court delivered its Decision considering the case by default in accordance with article 224 of the Ukrainian Civil Procedure Code. The court recognized the aforementioned information as "unreliable and violating the individual non-proprietary rights of A.V. Portnov." It obliged the General Prosecutor's Office to deny the unreliable information with 10 days and to post the message regarding the court decision delivered in the case on Facebook and Youtube. Though, the decision by default could be reviewed upon written demand by the Defendant within 10 days.

6 November 2014: The Pecherskyi District Court of Kyiv dismissed the application of the General Prosecutor's Office for a review of its decision in absentia

In its Decree, the Pecherskyi District Court of Kyiv approved the dismissal of the application of the General Prosecutor's Office for a review of its decision in absentia under the claim of A.V. Portnov to the General Prosecutor's Office, the third person who does not claim independent demands on the subject on the party of the defendant, Mykola Yaroslavovych Golomsha, on the recognition of information to be false and degrading the honour, dignity, business reputation and its denial.

25 December: Appeal of the General Prosecutor's Office dismissed. A.V. Portnov confirmed non-guilty

In its Decree, the Court of Appeal of Kyiv denied the appeal by Oleksandr Mykolaiovych Gudz in the interests of the General Prosecutor's Office and left the default decision of the Pecherskyi District Court of Kyiv dated 9 October 2014 unchanged.

Third case: Accusation of abuse of his position at the University

December 2014: Legal action by A.V. Portnov against the General Prosecutor's Office

In December 2014, A.V. Portnov took legal action against the General Prosecutor's Office, the third party Zalisko O.I., asking the court:

"To recognize the information set out in the letter of the General Prosecutor's Office of Ukraine dated 10 October 2014, addressed to the EU High Representative for Foreign Affairs and Security Policy, inadequate information which tarnishes honor, dignity and business reputation of A.V. Portnov, in particular the following phrases:

- 'Chief Investigation Department of the General Prosecutor's Office of Ukraine holds prejudicial investigation on cases of A.V. Portnov,'
- '...on the fact of abuse of official position by A.V. Portnov as the Head of the Department of Constitutional Law in Taras Shevchenko National University of Kyiv and appropriation of the assets in the form of salary at this position, not actually doing any work, and also holding the rank of member of the High Council of Justice of Ukraine under the quota of the Congress of Representatives of Higher Legal Educational Establishments and Scientific Institutions,'
- 'organization by A.V. Portnov, together with other persons and People's Deputies of Ukraine from the fraction Party of the Regions, of the adoption on 16 January 2014 by the Verkhovna Rada of Ukraine, with violation of the established procedure of voting,

laws which significantly narrow constitution rights and freedoms of citizens contributing to the suppression of protests on Maidan Nazalezhnosti in Kyiv that caused grave consequences'

To oblige the General Prosecutor's Office to inform the European External Action Service on the decision taken in this case within 10 working days since the decision enters into force."

A.V. Portnov justified his action by the fact that in a first letter dated 8 July 2014, signed by Baganets A.V. (former first Deputy Prosecutor General of Ukraine), General Prosecutor's Office had notified the EU High Representative Catherine Ashton that he was under prejudicial inquiry on the aforementioned issue.

Besides, in November 2014, A.V. Portnov turned to court with the claim for recognizing as false the information violating the honor, dignity and business reputation contained in the letter of the General Prosecution Office Ukraine dated 08.07.2014 submitted to the European Union High Representative for Foreign Affairs and Security Policy.

On 7 November 2014 the Pecherskyi District Court of Kyiv ruled "To adjudge as unreliable information, which violates A.V. Portnov's personal non-property rights, contained in the letter as of 08.07.2014 sent from Public Prosecutor's Office to Ms. Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy."

On 20 January 2015, the Kyiv Court of Appeal left the Decision as of 07 November 2014 unaltered.

29 December 2014: Official notification of suspicion

The General Prosecutor's Office notified Mr A.V. Portnov that he was suspected of committing the following misdeed: "holding the office at the Presidential Administration of Ukraine, he seized the property of Taras Shevchenko National University of Kyiv and Kyiv Economic University named after Vadym Hetman by abusing the office repeatedly, i.e. in committing a crime, stipulated by Part 3 of Art. 191 of the Criminal Code of Ukraine."

In short, he was accused of "the seizure of another's property through abusing his office repeatedly."

13 January 2015: Decision of the Pecherskyi District Court of Kyiv in favor of A.V. Portnov

The court decided

"to satisfy the notice of the claim on the protection of honor, dignity and business reputation of Mr A.V. Portnov to the General Prosecutor's Office of Ukraine, the third party Zalisko Oleh Ihorovych;

to oblige the General prosecutor's Office of Ukraine to inform the European External Action Service about the decision taken in this case within 10 working days from the day of its entering into force."

CONCLUSIONS AND COMMENTS

A.V. Portnov has been relentlessly prosecuted but all the courts have dismissed the official accusations that were made public by the General Prosecutor's Office through its official website and the social media, disregarding the presumption of innocence.

It is obvious that Ukrainian authorities were guided by personal revenge and political settlement of scores.

This case and increasing malpractices in many areas denounced by Ukrainian NGOs show that

there is still a long way to go for the heirs of Maidan to live up to their commitments to democracy and the rule of law in Ukraine.

What is worse is the international impact of the miscarriage of justice of the EU in A.V. Portnov's case. He was blacklisted by the EU and some other non-EU countries and subject to their public sanctions. In a sense, the EU participated in and was also partly responsible for the international disgrace of A.V. Portnov, although he was removed from the list of sanctions one year later. In the future the EU might have to reconsider its sanctions procedures in the light of the presumption of innocence.

ANNEX: Professional activities of A.V. Portnov

Born on 27 October 1973 in Lugansk in a family of workers. He graduated from intermediate school Nr 50 in Lugansk.

From 1991 to 1992, he served in Armed Forces of the USSR and Ukraine.

In 1993 he began to work as a lawyer in industrial enterprises and law firms in Luganshina. At the same time he studied at the Extension Department of Law Faculty of East Ukrainian National University.

From 1997 to 2001, he worked in the Securities and Exchange Commission as a main specialist, head of the department, head of assistant and advisers staff of the President of Commission, director.

From 2003 to 2005, he was a member of the Commission and headed the administrative office of the Commission.

From 2005 to 2006, he practiced law.

From 2006 to 2010, he was a member of 5th and 6th Legislatures of the Parliament of Ukraine, Deputy Head of the Verkhovna Rada Committee on Justice.

In 2009, he was elected for 6 years as a member of the High Council of Justice of Ukraine by the decision of the Third Ukrainian Congress of Representatives of Legal Institutions of Learning and Scientific Institutions.

From 2010, he was Deputy Head of the Presidential Administration of Ukraine - Head of the Main Department on Judicial Matters, Advisor of the President of Ukraine.

From 2014, he was the first Deputy Head of the Presidential Administration of Ukraine (dismissed as of 26.02.2014). He coordinated the work of the judiciary department, the department of reforming police authorities. He represented the Presidential Administration of Ukraine in courts, handled opinions on draft laws, etc.

From March 2014, he practiced law.

From November 2014, he became the Head of the Law Reforms Institute.

Academic and other titles

Ph.D. in Economics (2001).

Honored lawyer of Ukraine (2004).

S.J.D. (2009).

Head of Constitutional Law Department of Taras Shevchenko National University of Kiev (2010-2014).

Member of the Presidential Commission on Mercy (2010).

Head of the Working Group on Criminal Justice Reforms (2010).

Member of the Specialized Academic Board of National Academy of Prosecution of Ukraine (2011).

Head of the Working Group on Prosecution and Advocacy Reforms (2011).

He is the author of two scientific monographs and more than 30 scientific works on problems of legal regulation of constitutional justice, and on theory of constitutional process.

Head of composite authors of the Criminal Procedural Code of Ukraine, law on judiciary and status of judges, laws on prosecution and advocacy activity, laws on humanization of criminal liability for economic crimes, law on anti-raider crimes, etc.

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Some activities in 2015

Presentation on "Implementation of legislation about minorities in some post-totalitarian states of Europe" at a seminar for civil servants held in Kiev by the Friedrich Ebert Foundation, the Assembly of Nationalities and the Jewish Foundation of Ukraine (08.07.2015)

Interview by the EPP Television on the persecution of Christians in the world (01.07.2015)

Presentation on "Persecution of Christians in China, Iran and North Korea" at the conference "Persecution of Christians in the World" organized by the EPP Group at the European Parliament (01.07.2015)

Conference chaired by Baroness Berridge (All Party Parliamentary Group on FORB) and Lord Alton on HRWF Report 'In Prison for their Religion or Beliefs' at the House of Lords in London (24.06.2015)

Publication of *Who's Who de la "République Populaire du Donetsk"* by Willy Fautré in *Histoire & Liberté* Nr 57 (pp 79-86), Institut d'Histoire Sociale, Paris (06.2015)

Participation in an expert seminar on "Dialogue on freedom of religion or belief and gender related rights" organized by "Geneva for Human Rights" with keynote speech by Willy Fautré and panel moderator Mark Barwick (18.06.2015)

Conference on HRWF Report 'In Prison for their Religion or Beliefs' in the European Parliament (26.05.2015)

Presentation about "Ethnic Turks in Greece, a Muslim Minority" at FUEN's International Congress in Komotini (15.05.2015)

Article published in Euractiv: "Stormy times ahead for human rights defenders in Armenia" (15.05.2015)

Training on the theories and practice of Justice by Dr Mark Barwick for the annual meeting of EU-CORD, a network of Christian relief and development agencies (06.05.2015)

Participation in the International Support for Ukraine Conference (28.04.2015)

Visiting civil society organizations in Kyiv (26.04 - 02.05.2015)

Civil society capacity building training in Belarus by Dr Mark Barwick, HRWF Policy Advisor (22.04.2015 - 24.04.2015)

Interview on religious freedom issues of HRWF director with Vårt Land, a Norwegian newspaper (20.04.2015)

Visiting human rights organizations in Armenia (18.04 -25.04.2015)

Sect Observatories: Neutrality of the State and Public Powers. European Court Jurisprudence and Good Practices, (in English and in Ukrainian) in Mitna Sprava Nr 1 (97) 2015 (Magazine of the Academy of Law, University of Odessa), pp 10-16 (April 2015)

Presentation by Dr Mark Barwick, HRWF Policy Advisor, at a conference on advancing equality legislation in Europe, organised by ILGA-Europe and the European Network on Religion and Belief (ENORB) (26.03.2015)

Training in Prague by Dr Mark Barwick, HRWF Policy Advisor, on 'Dialogue as a tool in the prevention of mass atrocities' (26.02.2015)

Presentation about the NGOs contributions on the Kashmir issue at the UN Universal Periodic Review on Kashmir Solidarity Day in Brussels (05.02.2015)

Interview in EU TODAY: "Masato Ishibashi missing in Japan" (29.01.2015)

Interview in THE BRUSSELS TIMES about the disappearance of Masato Ishibashi in Japan (28.01.2015)

Publication in the Parliament Magazine, Issue 404 (pp 8-9/) The Case of Toru Goto in Japan (26.01.2015)

Interview by NTDTV on political propaganda and freedom of expression in Russia and China (22.01.2015)

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IRAQ: Assyrian Aid Society

JAPAN: Life Fund for North Korean Refugees

MOLDOVA: Promo-LEX Association

NEPAL: Human Rights Without Frontiers/ Nepal

RUSSIA: Sova-Center

RWANDA: Association Rwandaise des Travailleurs Chrétiens

SERBIA: Centar 9

SOUTH KOREA: Korean Rehabilitation Center for Torture Victims and Families (KRCT)

TCHAD: Droits de l'homme sans frontières

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Human Rights Without Frontiers

Avenue d'Auderghem 61/16

1040 Brussels, Belgium

Phone: +32 2 3456145

Fax: +32 2 3437491

Website: www.hrwf.eu / <http://www.hrwf.org>

E-mail: international.secretariat.brussels@hrwf.org

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