

Mr. Viktor Yanukovich
President of Ukraine

APPEAL

*On the unconditional execution of the judgment
of the European Court of Human Rights in the case of
Yulia Tymoshenko*

Dear Viktor Fedorovich,

I have to appeal to you with a request of your personal intervention in the case, which has become the prime example of the real human rights and freedoms situation in Ukraine.

During my fourteen years of work as the Ukrainian Parliament Commissioner for Human Rights, I had to deal with cases of injustice, illegal deprivation of liberty, the abuse of the right to arrest, torture, miscarriage of justice, abuse of power, intolerable conditions in prisons and other numerous shortcomings of the system of justice, police, prison service, and the national human rights protection system as a whole almost on a daily basis. Due to the delay in the effective implementation of the necessary reforms in the system of law-enforcement and judiciary for many years, these painful problems have turned to be wide-scale and systematic. Ukraine has become a country of the poor and deprived people.

In fact, Ukrainians have no possibility to get fair justice in their own country: the judiciary is dependent on the executive power in the center as well as in the regions, the number of decisions that are based on the violation of the rule of law and the presumption of innocence is progressively growing, the level of professionalism of the judges has significantly reduced as well as the public trust in judges in consequence. Even after people secure a court judgment in their favor they have to fight for its implementation for years. Thus, 70% of the judgments of the domestic courts are not implemented. Therefore, there are a growing number of appeals to the European Court of Human Rights. And then Ukraine does not implement 95% of the European Court's judgments to the full extent!

The loss of independence and impartiality by the courts has been most brutally manifested in selective criminal justice against the opposition leader Yulia Tymoshenko and members of her government. If the arrest and imprisonment of

the former Prime Minister of Ukraine was "arbitrary and illegal", as found in the judgment of the European Court of Human Rights, what then can be said about the tens of thousands of imprisoned and convicted ordinary citizens of Ukraine whose rights are constantly violated! As a result of the monitoring carried out between January and May 2011 by the Commissioner for Human Rights in the Kyiv pre-trial detention center where there were nearly 4000 inmates in the presence of 2850 seats, I made a special appeal to the leadership of the State Penitentiary Service of Ukraine on elimination of brutal violations of constitutional rights of women and children to health care, decent treatment and life in the pre-trial detention centers. The situation has also been aggravated due to the fact that tens of thousands of prisoners are denied the right to use the Law of Ukraine on amnesty for the third consecutive year!

Immediately after the arrest of Yulia Tymoshenko, on 8 August 2011 I officially addressed the Pechersk District Court Judge Rodion Kireev with a proposal to revise his own decision about her arrest, which even could not be a subject for appeal, but received a negative response. Procedural violations listed in my letter to the judge Rodion Kireev were later analyzed and reflected in the judgment of the European Court of Human Rights.

The case of Yulia Tymoshenko, which I started to investigate at the position of the Commissioner for Human Rights, has combined probably all possible violations inherent in Ukrainian justice and law enforcement system. These are the nonstop daily hearings, deprivation of the opportunity to have effective legal defense, and the illegal use of arrest as a preventive measure, and interrogations in the cell of the Kyiv pre-trial detention center as a manifestation of inhumane treatment, and the "field hearings" on 7-8 December 2011 in the prison cell while she was provided health care, and 24 hour video surveillance by the hidden cameras, carried out by male officers, and illegal online publication of the video materials with the purpose to discredit her. And, finally, use of violence and beating Yulia Tymoshenko on 20.04.2012 by the officers of the penitentiary service during her forced removal from Kachanivska prison at night, the effects of which were documented by me personally.

On July 31, 2013 the judgment of the European Court of Human Rights of 30.04.2013 in the case of Yulia Tymoshenko came into force. In its decision the European Court of Human Rights held unanimously that Yulia Tymoshenko's arrest was arbitrary, and the legality of her detention was not properly evaluated by the Ukrainian justice. The Law of Ukraine "On Implementation of Judgments and Application of the Case-Law of the European Court of Human Rights" clearly obliges the state to enforce the judgment of the European Court and restore the violated rights of the individual. In case of the illegal arrest, the restoration of the rights of an illegally arrested person provides for his/her release. Unfortunately, there have been made no any appropriate steps to restore the violated rights of Yulia Tymoshenko and she remains behind bars. Furthermore, the presence of other criminal cases against her cannot be a ground for non-enforcement of the judgment of the European Court, as there are principles of the rule of law and the presumption of innocence in Ukraine.

I am strongly convinced that the unconditional execution of the European Court of Human Rights' judgment and the release of Yulia Tymoshenko shall demonstrate clear position of the leadership of our state with regard to the irreversible movement of Ukraine towards international standards of human rights and freedoms. The illegal detention of the former Prime Minister of Ukraine casts a shadow on the long-awaited ongoing reforms and remains one of the key problems in relations with the European Union, and an insurmountable barrier for the European integration of Ukraine. The release of Yulia Tymoshenko will demonstrate to the country and the world the end of selective justice and strengthening of the rule of law in the law-enforcement practice of Ukraine.

You were the initiator of the adoption of the new Criminal Procedure Code of Ukraine, which regulates the court proceedings in a more democratic and humane way. This very fact gives basis for release of Yulia Tymoshenko and restoration of her constitutional right to liberty and fair trial in accordance with the provisions of the effective Criminal Procedure Code and the Convention on the Protection of Fundamental Human Rights and Freedoms.

On the eve of the Vilnius summit, where Ukraine has a chance to sign the Association Agreement with the European Union, I believe that the Ukrainian government can solve this problem and prove to the international partners that it fully complies with the undertaken obligations.

I am sure that you as the President of the Ukrainian State have all the necessary powers to address this vital issue for our country. Therefore, I appeal to you, **dear Viktor Fedorovich**, as the Guarantor of human rights and freedoms in Ukraine, and, eventually, as a wise man with the following request: under the Constitution of Ukraine, the Criminal Procedure Code of Ukraine and the Convention for the Protection of Fundamental Human Rights and Freedoms, and the United Nations International Covenant on Civil and Political Rights to show good political will and take all possible measures, including clemency, for immediate execution of the judgment of the European Court of Human Rights and restoration of the violated rights of Yulia Tymoshenko, her release from serving the sentence and giving her possibilities to receive necessary treatment abroad.

With best regards,

**First Ombudsman of Ukraine,
Board member of the European Ombudsman Institute Nina Karpachova**