

Murder and Selective Use of Justice in Ukraine (Part One)

Publication: Eurasia Daily Monitor Volume: 10 Issue: 35

February 25, 2013 02:54 PM Age: 11 days

By: Taras Kuzio



Former Ukrainian Prime Minister Yulia Tymoshenko (Source: Kyiv Post)

On February 25, President Viktor Yanukovich arrived to a frosty reception in Brussels for a European Union–Ukraine summit (Kyiv Post, February 25), less than two weeks after Kyiv’s Pechersky District Court launched investigatory proceedings into the 1996 murder of then Ukraine’s wealthiest oligarch, Yevhen Shcherban. The prosecutor’s office alleges the CEO of United Energy Systems of Ukraine (YESU) Yulia Tymoshenko and Shcherban had “a conflict of business interests” related to the supply of natural gas and its price. Tymoshenko and Pavlo Lazarenko then allegedly put into effect a “joint criminal intention” to eliminate Shcherban, whereby Lazarenko was to find the murderers, while Tymoshenko was to pay for the assassination. Tymoshenko purportedly paid \$2.329 million from her accounts, while Lazarenko allegedly paid another half a million dollars in cash.

The Shcherban murder opens up a Pandora’s Box from the 1990s that many in Ukraine’s political elite would prefer to remain closed. If the opposition returns to power, it will arguably be able to use this precedent to open up murder investigations of other high-profile Ukrainians from the 1990s. According to Ukrainian journalist Sergei Vysotsky, “Following Tymoshenko’s conviction, the entire Ukrainian oligarchy and political class will lose their legitimacy. They will be taken back in time twenty years” (http://liga.net/opinion/98778_delo-shcherbanya-syadut-vse.htm#).

Re-opening only one murder case and investigating only the 2009 gas contract are both selective uses of justice. Vysotsky believes observers “will be entitled to ask the question, why only Tymoshenko? Did no other current oligarchs and political leaders give bribes, misappropriate state property and order the removal of their competitors in the 1990s?” (http://liga.net/opinion/98778_delo-shcherbanya-syadut-vse.htm#).

Former Interior Minister Yuriy Lutsenko, also a victim of the authorities’ selective use of justice, gave details of how First Deputy Prosecutor Renat Kuzmin released two alleged heads of organized crime groups, Aleksandr Melnyk (see EDM, February 17, 2012) and Givi Nemsadze, the alleged head of the bloodiest organized crime gang in Ukraine active in the Donetsk region in the 1990s where, Lutsenko said, he was responsible for 57 murders (<http://www.unian.ua/news/484218-lutsenko-moya-sprava-prirechna-na-vipravdalniy-virok-tekst-vistupu-u-sudi.html>). Nemsadze was released from criminal liability by Kuzmin who claimed that not Givi but his deceased brother Guram had led the gang. Journalist Tetyana Chornovil’s investigations found that Nemsadze was a business partner of Borys Kolesnikov, currently Ukraine’s first deputy prime minister (<http://blogs.pravda.com.ua/authors/chornovol/51069d2d85e92/>; blogs.pravda.com.ua/

[authors/chornovol/51091bb245751/](#)).

The Tymoshenko murder charge will increase the already high 70-percent distrust in Ukraine's judicial system (AP, February 6) and further undermine the country's already poor rule of law. The prosecutor's office has been led by Donetsk loyalists Svyatoslav Piskun (2002–2003 and 2004–2005), Hennadiy Vasylyev (2003–2004), Oleksandr Medvedko (2005–2010) and Viktor Pshonka (since 2010). Vasylyev, Pshonka and First Deputy Prosecutor Kuzmin held senior positions in the Donetsk prosecutor's office in the 1990s when they failed to investigate a single high-profile murder. Eastern European expert Hans Van Zon writes that Vasylyev was in office "during the gang wars in the province without managing to capture a single one of the assassins of the dozens of politicians and gang masters" ("The Rise of Conglomerates in Ukraine: the Donetsk Case" in Alex E. Fernandez Jilberto and Barbara Hogenboom eds., *Big Business and Economic Development: Conglomerates and Economic Groups in Developing Countries and Transition Economies Under Globalization*, London: Routledge, 2007, p. 389). In 2007, the United States Embassy wrote from Kyiv that the prosecutor's office was stalling the investigation into the (still unresolved) 2004 poisoning of Viktor Yushchenko because Kuzmin is "prone to politically-motivated comments about orange politicians" (<http://www.wikileaks.org/cable/2007/02/07KYIV282.html>).

The "blackmail state" pressures individuals and collects corrupted evidence (see EDM, January 20, 2012). Former Ukrainian President Leonid Kuchma said that Tymoshenko's name was never mentioned in the Shcherban investigation (see EDM, February 6). Moreover, Serhiy Taruta, one of three current heads of the Industrial Union of Donbas (ISD), noted that the gas dispute between ISD and YESU had been resolved by January 1996, eleven months before Shcherban was murdered (<http://www.pravda.com.ua/rus/articles/2013/02/8/6983135/>).

Yevhen Shcherban's son, Ruslan, who survived the assassination that killed his father and mother, never mentioned Tymoshenko or Lazarenko during the trial of Vadym Bolotskykh (pseudonym Vadyk Moskovych) who was sentenced to life imprisonment in 2003 for the assassinations of Akhat Bragin (1995), Alexander Momot and Yevhen Shcherban (both 1996)—who, with Rinat Akhmetov, were co-owners of ISD. Bolotskykh claimed he had undertaken these murders on behalf of Yevhen Kushnir who allegedly led an organized crime gang that reportedly was behind 27 murders and 17 attempted murders (http://gazeta.dt.ua/POLITICS/aktualni_spravi_minulih_dniv.html). The prosecutor's office claims Tymoshenko and Lazarenko hired Kushnir's gang.

"New evidence" has now come from three "witnesses," who investigative reporter Chornovil found had long-term business relationships with Oleksandr Yanukovych, the Ukrainian president's son (<http://blogs.pravda.com.ua/authors/chornovol/511cf62064a09/blogs.pravda.com.ua/authors/chornovol/511e5bc4a816d/>). Furthermore, Serhiy Zaytsev and Ihor Maryinkov had testified in previous criminal trials in the 1990s in Donetsk. Criminal cases were closed against Zaytsev in exchange for providing the right kind of testimony, according to former Deputy Interior Minister Hennadiy Moskal (<http://glavcom.ua/articles/10015.html>). Moskal claimed the third witness, Ruslan Shcherban, gave testimony under pressure because he had been with a group of hunters where there had been an accidental death (http://tvi.ua/new/2013/01/21/rozsliduvannya_tvi_khto_spravzhniy_zamovnyk_vbyvstva_scherbanya).

Additional evidence comes from Petro Kirichenko who resides in the US and testified at Lazarenko's trial (<http://www.ord-ua.com/2013/01/26/donetskij-zhurnalst-dokazyivaet-cto-ubijstvo-scherbanya-mog-zakazat-ahmetov/>). In Ukraine there had been two criminal cases pending against Kirichenko and one against his spouse, Isabella. Their three Ukrainian apartments and one office had been seized by authorities. In September

2011, Isabella Kirichenko travelled to Ukraine to sell the apartments and was imprisoned for three months, followed by one month under house arrest, on charges of fraud and forgery. In August 2012, the charges against Isabella Kirichenko were dropped after the prosecutor's office obtained from her "evidence" against Lazarenko and Tymoshenko (<http://www.kyivpost.com/content/ukraine/wife-of-ex-lazarenko-aide-arrested-on-fraud-charge-112484.html>; www.kyivpost.com/content/ukraine/us-citizen-says-she-was-used-as-bargaining-chip-in-124807.html).

Kuzmin travelled to the United States in summer 2012 to collect further evidence without informing the US authorities and his visa has since been revoked (<http://www.kyivpost.com/content/politics/us-ambassador-kuzmin-was-really-deprived-of-us-visa-but-he-can-apply-for-a-new-one-317442.html>).

Four questions remain unanswered:

Firstly, in relation to the Shcherban murder investigation, journalist Serhiy Kuzin asks why nobody has questioned law enforcement officers about how it was possible for, "a group of people to freely sneak into the airport dressed as airport workers and police, shoot the deputy and quietly escape from the crime scene?" (http://gazeta.dt.ua/POLITICS/aktualni_spravi_minulih_dniv.html). Secondly, why have the murders of Bragin and Momot not been re-opened? Thirdly, why is there no investigation of the suspicious deaths of Bolotskykh's two accomplices in jail? Fourthly, why has there been no investigation of the two failed assassination attempts on Akhmetov in 1994 (<http://forbes.ua/nation/1347849-delo-shcherbanya-chleny-bandy-kushnira-dvazhdy-pytalis-ubit-ahmetova>) and Lazarenko three weeks after he was appointed prime minister in May 1996?

Planning for, and execution of, the murder charge against Tymoshenko has been in motion since Viktor Yanukovich came to power in 2010—irrespective of the torrent of Western criticism of his government's selective use of justice. Tymoshenko's probable sentence for murder (Ukrainian courts have an incredibly high conviction rate of 95 percent) could bring about US and EU sanctions. Indeed, on the same day that investigative proceedings were launched in Ukraine, the US Senate began discussing sanctions against Ukrainian officials (<http://www.kyivpost.com/content/ukraine/senator-mccain-us-congress-to-consider-sanctions-against-ukrainian-officials-320401.html>).

Murder and Selective Use of Justice in Ukraine (Part Two)

Publication: Eurasia Daily Monitor Volume: 10 Issue: 44

March 8, 2013 02:23 PM Age: 5 hrs

By: Taras Kuzio



Yevhen Shcherban (Source: Kyiv Times)

One month ago (February 14), Kyiv's Pechersky District Court launched investigatory proceedings into the 1996 murder of then Ukraine's wealthiest oligarch, Yevhen Shcherban. Yet, as investigative journalist Tetyana Chornovil has pointed out, the murder of Shcherban cannot be separated from political-economic-criminal conditions in

Donetsk from the late 1980s to the late 1990s (http://gazeta.ua/articles/politics/_nayanukovicha-povisili-vbivstvo-scherbanya/480045).

Part One of this two-part series of articles analyzing the selective use of justice in investigating the Shcherban murder explored why the investigation has been launched now, nearly two decades after the oligarch's assassination (see [EDM, February 25](#)). Part Two will attempt to answer who was actually behind this murder and who benefitted from Shcherban's death.

In a country with functioning rule of law, it would be impossible to imagine how a trial of a suspect (Yulia Tymoshenko) accused of the grave crime of murder could be undertaken without important witnesses being questioned. In this case, these would presumably include businessmen who founded the Industrial Union of Donbas (ISD) in 1995—Volodymyr Shcherban, Renat Akhmetov and Serhiy Taruta. Other witnesses would likely be President Leonid Kuchma, then-First Deputy Governor Viktor Yanukovich and head of the Social-Market Choice (SMC) parliamentary faction Yevhen Marchuk (the SMC was tied to the Liberal Party led by Yevhen and Volodymyr Shcherban). Yevhen Shcherban had many enemies in Donetsk oblast, Kyiv and Moscow, which raises seven theories as to who may have been behind his murder.

First, local:

Shcherban came into conflict over the Azovstal Iron and Steel Works plant with Mariupol Mayor Mykhaylo Pozhyvanov, who also alleged he was being blackmailed by Shcherban (http://genshtab.info/wiki/Щербань,_Евгений_Александрович). Chornovil cites a June 1996 newspaper account of Governor Shcherban threatening Pozhyvanov: "Remember, when there is a person there is a problem, when there is no person there is no problem. For us, nine grams of lead is not an unfortunate issue; it is a very cheap solution" (<http://blogs.pravda.com.ua/authors/chornovol/5122684597f9f/>).

Second, Russian:

American citizen Pol Tatum was murdered in Moscow a few hours after Shcherban. The two men previously had business ties (see separate section on Tatum at genshtab.info/wiki/&).

Third, energy:

ISD were not only in conflict with Tymoshenko's United Energy Systems of Ukraine (YESU) but also with another large gas trader—Itera Energy (<http://blogs.pravda.com.ua/authors/chornovol/5122684597f9f/>). The head of Itera, Aleksandr Shvedchenko was murdered in Kyiv in March 1996. Lawyer Dmytro Poyizd said his former client, Vadym Bolotskykh, sentenced in 2003 for Yevhen Shcherban's murder, had never met Pavlo Lazarenko or Tymoshenko to receive "weapons or money" to carry out the assassination (<http://www.pravda.com.ua/news/2013/01/23/6982101/>).

Fourth, law enforcement:

Prevailing chaos during the 1990s was so extensive that former Soviet KGB (becoming the Security Service—SBU) and police officers were co-opted by emerging business structures and organized crime. Former police officer Vyacheslav Sinenko was sentenced for involvement in the killing of organized crime leader Akhat Bragin as well as other murders. Sinenko claimed he was framed by then Donetsk (and future Ukrainian) Prosecutor General Hennadiy Vasylyev. Sinenko escaped to Greece but in 2005 was extradited to Ukraine (<http://www.ostro.org/general/society/news/20845/>). The head of the Donetsk oblast interior ministry at the time was Volodymyr Malyshev who became

Chief of Security at Systems Capital Management (SCM) and is currently a Party of Regions deputy (http://w1.c1.rada.gov.ua/pls/site2/p_deputat?d_id=8820&skl=8).

Fifth, political:

Donetsk had challenged Kyiv in 1993 with coalminers' strikes, which forced President Leonid Kravchuk to hold pre-term presidential elections in June 1994 and appoint Donetsk "Red Director" Yufym Zvyahilsky to the office of prime minister. Shcherban and SMC faction deputy Marchuk intended to challenge Kuchma in the 1999 presidential elections and were therefore a potential threat to his re-election.

In 1997, Kuchma agreed to promote Viktor Yanukovych to Donetsk governor, with the support of businessman Renat Akhmetov, as part of a deal whereby the region would support the president politically. In 1999, Kuchma defeated Communist leader Petro Symonenko in Donetsk, and the region provided the most votes in 2002 to Kuchma's "For a United Ukraine" bloc. In exchange for not challenging Kuchma, local Donetsk elites received de facto autonomy along with the adoption of legislation in 1999 on free economic zones in Donetsk and Transcarpathia. In 2002, because of his loyalty, Yanukovych was made prime minister, and in 2004, he ran as the authorities' presidential candidate.

Sixth, Akhmetov:

As with the accusation against Tymoshenko, this is a weak allegation. His attorneys from the Akin Gump law firm have stated, "We found no evidence that would indicate Mr. Akhmetov was behind the tragic events surrounding [Yevhen] Shcherban and other businessmen. It was actually the case that some of those businessmen who died in the 1990s were the closest friends of Mr. Akhmetov" (Ukrayinska Pravda, January 25).

Poyizd (the former lawyer of Vadym Bolotskykh who was convicted of murdering Shcherban), commentator Chornovil and former Deputy Interior Minister Hennadiy Moskal (first deputy head of the parliamentary Committee on Fighting Organized Crime and Corruption) nonetheless claim Akhmetov should be treated as a suspect because he financially gained from Shcherban's death (see interviews with Poyizd ontvi.ua/program/2013/01/24/znak_oklyku_schodnya_vid_23012013 and www.radiosvoboda.org/media/video/24710918.html; Chornovil in her Ukrayinska Pravda blog, January 28, 30, 2013; and Moskal in obozrevatel.com/interview/34065-moskal-ya-znayu-kto-zakazal-scherbanya.htm).

Seventh, organized crime:

In the first half of the 1990s, Donetsk organized crime leader Akhat Bragin ("Alik the Greek") was so powerful that all major business leaders in Donetsk had to deal with him. In October 1995, Bragin and six of his bodyguards were killed in Donetsk Shakhtar football stadium by a bomb explosion so strong that he could only later be identified by his expensive watch. Bragin had survived an assassination attempt in March the previous year. Akhmetov usually accompanied Bragin everywhere, but on that occasion he arrived after the explosion (http://censor.net.ua/resonance/203607/vendetta_kto_ubil_scherbanya).

Poyizd claimed his client, Bolotskykh, received money from the Yevhen Kushnir organized crime group to murder Shcherban (<http://www.pravda.com.ua/news/2013/01/23/6982101/>). Kushnir had been a business partner of another organized crime leader, Aleksandr Krantz, who was assassinated in 1992. Akhmetov and Bragin were photographed at Krantz's funeral. (A photograph can be seen at blogs.pravda.com.ua/authors/chornovol/5106584eed6da/; analyst Sławomir Matuszak provides a link to a police surveillance video at www.youtube.com/watch; also

see www.osw.waw.pl/en/publikacje/osw-studies/2012-10-16/oligarchic-democracy-influence-business-groups-ukrainian-politics).

After these murders, Volodymyr Shcherban, Akhmetov and Taruta created the ISD steel manufacturing group, which they divided in 2000. Taruta and two of his partners retained a portion of the ISD, while Akhmetov established the independent SCM. The prosecutor general's office, "is silent about what happened with Yevhen Shcherban's business empire"

(http://censor.net.ua/resonance/203607/vendetta_kto_ubil_scherbanya). Akhmetov's lawyers at Akin Gump stated that Akhmetov did not benefit from Shcherban's estate (<http://www.pravda.com.ua/news/2013/01/25/6982229/>). Serhiy Kuzin and Batkivshchina deputy Oleksandra Kuzhel disagree (http://gazeta.dt.ua/POLITICS/aktualni_spravi_minulih_dniv.html; www.ostro.org/general/politics/articles/407351).

Akhmetov is ranked 38th (\$18.9 billion) in Bloomberg's 200 wealthiest people in 2012; his fortune is greater than Russia's two wealthiest oligarchs—Roman Abramovich (51st at \$14.7 billion) and Oleg Deripaska (90th at \$10.5 billion) (<http://www.bloomberg.com/news/2012-11-01/the-world-s-200-richest-people.html>).

The Ukrainian authorities' politicized investigation of the Shcherban murder continues to be based on a poor quality of witnesses and paltry evidence. But, as with the prosecution of former government officials over their alleged abuse of office—such as Tymoshenko's incarceration over the 2009 Russian-Ukrainian gas contract—the Shcherban case sets a dangerous precedent. Upon returning to power, the current opposition may choose to also investigate other gas contracts and murder cases. The Yanukovich team will only be immune to such prosecution if they never leave office.