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Only the U.S. tries and convicts

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The sentencing two weeks ago of former Prime Minister Pavlo Lazarenko to nine years imprisonment and a \$10 million fine brings to an end an investigation and trial that followed Lazarenko's arrival in the U.S. seven years ago seeking 'political asylum' from Ukraine. The major irony of the sentencing of Lazarenko by a U.S. court is that it would have never happened in Ukraine, where senior officials have always remained above the law, and still do.

If Lazarenko had stayed in Ukraine, or had been extradited to Ukraine by the U.S., he would have never been sentenced by the prosecutor's office or tried in a Ukrainian court. A transcript made illicitly by Major Mykola Melnychenko in President Leonid Kuchma's office has the latter to Prosecutor Mykhaylo Potebenko in 2000 about Lazarenko.

Kuchma suggests asking the U.S. to extradite Lazarenko to Ukraine. Potebenko replies that this would not be a good idea as Lazarenko's testimony in court would implicate Kuchma and other senior officials. During Lazarenko's Prime Ministership in 1996-1997, he was awarded two state medals by Kuchma.

No senior Kuchma era officials have been sentenced for abuse of office, election fraud or violence against journalists and political opponents. Such sentences are now highly unlikely as these same officials now have parliamentary immunity or are in government.

Senior Kuchma era officials were not to know that Yushchenko, once in power, would be so forgiving and tolerant of their misdemeanors. Different proposals for constitutional reforms were introduced by President Kuchma in his last two years in office to transform Ukraine into a parliamentary republic out of fear of an elected President Yushchenko with extensive executive powers stemming from the 1996 constitution.

With the failed parliamentary vote for constitutional reforms in April 2004, the dirtiest election campaign in Ukrainian history was unleashed to block Yushchenko's election. This culminated in an attempted poisoning of Yushchenko in September 2004, followed by a failed bomb attempt two months later on Yushchenko's election headquarters. Exaggerated fear of the threat following Yushchenko's victory led some senior officials, such as Transport Minister Heorhiy Kirpa, to commit suicide.

A large number of Kuchma era officials were not prevented from fleeing to Russia where they have been protected by the Russian authorities as political allies. Senior Kuchma era officials who fled to authoritarian Russia as well as those who remained in democratic Ukraine avoided criminal charges.

Last year, Donetsk oligarch and Party of Regions MP Rinat Akhmetov hid in Monaco out of fear of criminal charges being launched against him after murder accusations were levelled against him. Last month Akhmetov was included by the presidential secretariat in the list of Ukrainian VIP's who received a state medal.

Former Sumy Governor Volodymyr Shcherban was the only senior official who sought 'political asylum' in the U.S., rather than Russia. Following Lazarenko's conviction, only Shcherban can therefore, among Kuchma era officials allegedly guilty of abuse of office, be charged and tried.

On Ukrainian Independence Day President Yushchenko said that society is seeking equality of all Ukrainian citizens before the law. Yet, Yushchenko admitted that 'We have not achieved this'.

The Ukrainian authorities have an uphill struggle on transforming Ukraine into a state based on the rule of law. In 2004, the last year of Kuchma's rule, 76 percent of Ukrainians believed there was no equality before the law, according to a Democratic Initiatives poll. Two years into the Yushchenko administration and this figure has only declined to 75.

Around 73 and 75 percent of Ukrainians, respectively, believe that if an individual has money or they belong to the authorities they can then escape justice. In other words, the current administration's own inaction against senior Kuchma era officials has made people continue to believe there is no rule of law.

As the Ukrainian anecdote says, if you steal a cabbage you can go to jail. But, if you steal billions you run for parliament and have a criminal record better still, you are invited by the President to sign a Universal document and form the government.

Ukraine's progress towards a state based on rule of law is being de-railed by five inherited legacies and contradictions within the Yushchenko administration.

First, the 'new' ruling elites did not arrive from abroad in 2004. President Yushchenko faithfully served President Kuchma from 1994-2001 and they both signed a denunciation of anti-Kuchma protestors in February 2001.

As events since the Orange Revolution have shown, Ukraine's ruling elites protect each other from criminal charges. When President Yushchenko ordered the Prosecutor's office to investigate charges of corruption made by presidential secretariat head Oleksandr Zinchenko against Yushchenko's business allies, Yushchenko said he knew in advance that no evidence would be found. Such a comment is a signal to the Prosecutor's office not to find any evidence.

In September 2005, President Yushchenko and opposition leader Viktor Yanukovych signed a Memorandum that permitted the Party of Regions to vote in favor of Yuriy

Yekhanurov's candidacy for Prime Minister. In the Memorandum, President Yushchenko agreed to give an amnesty for election fraud and reintroduced immunity for local deputies.

Lazarenko is the only Ukrainian politician to ever have his immunity stripped by the Ukrainian parliament. Parliament refused to consider Kuchma's demand to strip Tymoshenko of immunity.

Second, there is no political will to prosecute senior officials inside Ukraine. Only the U.S. has ever prosecuted a senior Ukrainian official.

The 1996-2005 Ukrainian constitution permitted President Yushchenko to remove the Prosecutor. Following 2006 constitutional reforms this can only be undertaken with parliament's approval.

Yushchenko did not replace Prosecutor Svyatoslav Piskun, whom he inherited from the Kuchma era, till nine months into his presidency. Piskun protected senior Kuchma era officials and eventually became an MP with the Party of Regions.

Serhiy Kivalov, head of the Central Electoral Commission in 2004 when election fraud occurred, is also a Party of Regions deputy. He was never charged and continued to be Dean of Ukraine's most prestigious Law Academy in Odessa. He is also the current head of a parliamentary committee.

Third, the Yushchenko administration has always been divided in its attitudes towards the past. Yulia Tymoshenko believes she was upholding the Orange Revolution by supporting the launching of criminal proceedings for Kuchma era crimes, including calling for opening investigations into past privatizations.

President Yushchenko and Our Ukraine disagreed with Tymoshenko's approach to the past. In his address to parliament on the day Viktor Yanukovich was elected premier, Yushchenko said, 'We should not be looking for problems in the past. This is the only way out'. The head of the presidential secretariat, Oleh Rybachuk, described mutual accusations between Yushchenko and Yanukovich in the 2004 elections as merely 'asymmetrical', 'impetuous' and 'nasty things'.

Ukraine certainly needed reconciliation between warring political groups and inflamed regional tensions after the election. But one wonders whether reconciliation should be at the cost of the fundamental principal of a rule of a law-based state that everyone is equal before the law.

Fourth, last month Yushchenko unveiled a monument to former Rukh leader Vyacheslav Chornovil. An investigation has been re-opened into his death in what many have always believed was a suspicious car accident in March 1999.

If the new investigation finds that Chornovil's death was not due to an 'accident', will the Yushchenko administration seek to find the high level organizers? This is highly doubtful on the basis of their record in office when dealing with the organizers of the murder of journalist Heorhiy Gongadze in 2000.

Only three lower ranking police officers have been put on trial. The organizers of Gongadze's murder have never been charged, have been allowed to stay in politics, even though retired and out of office, to flee Ukraine or may have even been murdered.

Fifth, the Yushchenko administration, which has pledged to uphold the constitution and rule of law, is itself often not in compliance with the law. Presidential decrees in early 2005 to increase the power of the National Security and Defence Council, in order that it become a counter-weight to the Tymoshenko government, were unconstitutional.

A law adopted on Aug. 4, and signed into law that day by President Yushchenko, which prevents the Constitutional Court from reviewing constitutional reforms is illegal, according to U.S. Judge Bohdan Futey, a long time adviser to the International Republican Institute on legal reform in Ukraine. President Yushchenko cannot usurp the rights of the Constitutional Court.

Members of Our Ukraine in 2005 and 2006 refused to relinquish their parliamentary seats after entering government. Legislation requires this no later than 20 days following joining the government.

Roman Zvarych, the current Minister of Justice and Our Ukraine member, has ignored the Aug. 24 deadline to relinquish his parliamentary seat. He should set an example by upholding the law.

Following the return of Yanukovych to government, which is dominated by Kuchma era officials, Ukraine's Orange Revolution is at a crossroads. Ukraine can either continue to slowly move forward democratically or stagnate towards the policies of the Kuchma era. A state based on the rule of law is a central feature of a democracy and, therefore, if Ukraine is to continue to muddle ahead then this area needs radical institutional and cultural overhaul.

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