



UKRAINE: Gongadze convictions are selective justice

Tuesday, March 25 2008

EVENT: The Gongadze file is not closed until the instigators of his murder have been held to account, Council of Europe rapporteur Sabine Leutheusser-Schnarrenberger said on March 19.

SIGNIFICANCE: The three-year trial of three former policemen accused of killing journalist Georgii Gongadze has ended in jail terms of 12-13 years, but inside and outside Ukraine there have been calls for the investigation to move onto those behind the murder. One of the main factors why former supporters are so disillusioned with President Viktor Yushchenko -- who now has approval ratings of just 10% -- rests on his poor handling of the investigation of a murder that he promised as a matter of honour to resolve.

ANALYSIS: The origins of the November-December 2004 wave of protests against election fraud that became known as the Orange Revolution lie in the 'Kuchmagate' crisis of four years earlier. In November 2000, Socialist Party leader Oleksandr Moroz, an opponent of President Leonid Kuchma while Moroz was parliamentary speaker in 1994-98, revealed to parliament tapes made in the president's office. They were part of hundreds of hours recorded by a Security Service (SBU) officer in the presidential guard, Mykola Melnychenko, in 1999-2000.

Melnychenko was working for former SBU Chairman Yevhen Marchuk, who had a poor relationship with the then SBU head, Leonid Derkach. Marchuk accused Derkach and the SBU of involvement in Ukraine's illegal arms trade, and campaigned in the 1999 elections on an anti-Kuchma platform. The compromising intelligence on the tapes could have been used to force Kuchma to step down early and appoint a strongman, such as Marchuk, just as power was transferred in Russia from President Boris Yeltsin to Vladimir Putin in 1999-2000. Melnychenko fled to Prague in early November 2000, where he broadcast further tape recordings to Ukraine on the US government's Radio Liberty. In April 2001, he sought asylum in the United States.

The recording released by Moroz was purportedly of Kuchma and Interior Minister Yuriy Kravchenko, with Kuchma ordering the police to kidnap Georgii Gongadze, the editor of an internet-based newspaper critical of the administration. Gongadze had officially reported being followed in July 2000. He disappeared on September 16. His decapitated body was found on November 2.

Gongadze fallout. The discovery of Gongadze's body had four strategic ramifications that dominated Kuchma's entire second term in office (2000-04):

- Yulia Tymoshenko was propelled into the leadership of the radical wing of the national-democratic opposition. She had been deputy prime minister in 1999-2001 but was dismissed and arrested on trumped-up corruption charges relating to her United Energy Systems company in 1995 (see [UKRAINE: Opponents fear tough Tymoshenko - February 10, 2005](#)).
- The parliamentary coalition of national-democrats and centrists supporting Viktor Yushchenko's government disintegrated, leading to a parliamentary vote of no confidence in April 2001. This transformed Yushchenko from a technocrat into a politician: his newly formed Our Ukraine won the 2002 elections, and he himself stood for president in 2004.
- A large anti-Kuchma opposition movement emerged, first called 'Ukraine without Kuchma' (2000-01) and then 'Arise Ukraine!' (2002-03). With the assistance of Serbian and Georgian non-governmental organisations, Ukrainian activists were trained in the non-violent tactics that were used in the Orange Revolution.
- Kuchma's plans to implement the controversial April 2000 referendum backing a super-presidential system collapsed.

Attitudes to Kuchmagate. Pro-Tymoshenko radicals and pro-Yushchenko moderates have approached the culpability of senior Ukrainian leaders in the Gongadze murder differently:

- During Kuchmagate, the radical opposition supported impeaching Kuchma and, failing that, his post-election trial.
- The moderate opposition opposed impeachment and colluded in granting Kuchma immunity in return for Yushchenko's election.

In February 2001, Kuchma, Yushchenko (who was then prime minister) and Parliamentary Speaker Ivan Pliushch (who emerged in 2007 as an anti-Tymoshenko member of the president's Our Ukraine-People's Self Defence parliamentary group) denounced protestors from Ukraine without Kuchma as "fascists". When Tymoshenko was arrested, Yushchenko neither resigned nor made any protest.

UKRAINE: Gongadze convictions are selective justice - p. 2 of 2

Gongadze trial. The three policemen sentenced this month were present at Gongadze's murder (see [UKRAINE: New government fails to bring justice - October 11, 2005](#)). General Oleksii Pukach, who commanded the surveillance unit, was accused in his absence of strangling Gongadze. Following the convictions, Tymoshenko, the current prime minister, called for the investigation to move to finding the organisers. Gongadze's family and other Orange politicians have concurred. The Party of Regions, whose leader Viktor Yanukovych was prime minister in Kuchma's last two years in office, has made no statement.

The US FBI has verified portions of the Melnychenko tapes as authentic, and the US Department of Justice is offering to verify the remainder. However, the Ukrainian procuracy, headed by either Svyatoslav Piskun or Oleksandr Medvedko for most of the period since July 2002, has placed obstacles in the way of accepting the tapes as evidence in Ukrainian courts.

Officials implicated. There is little likelihood that senior officials will be charged while Yushchenko is president. Some have already received de facto immunity; others are no longer alive:

- **Kuchma.** The former president was given a verbal promise of immunity by Yushchenko during the Orange Revolution negotiations brokered by the EU. Guarantors of the deal were Piskun, who was reinstated as prosecutor-general on December 9, 2004, one day after parliament approved the negotiated compromise package; and senior EU officials, especially former Polish President Aleksandr Kwasniewski, a close friend of Kuchma. The ruling elite dropped its support for Yanukovych and accepted constitutional reform in return for Yushchenko's victory in the re-run second round on December 26, 2004. Since 2005, Kuchma has lived in retirement in Kiev.
- **Kravchenko.** The former interior minister officially committed suicide with two bullets to the head on March 4, 2005, the same day he was to testify to the procuracy. Expert testimony has contested this, on the grounds that he would have been unable to fire the second shot.
- **Pukach.** The most senior policeman implicated in the Gongadze murder reportedly absconded during the Orange Revolution, and in 2005 the SBU claimed he was in Israel. The SBU, under Tymoshenko associate Oleksandr Turchynov, tried to apprehend him, but Pukach was tipped off. Although there is an international warrant for his arrest, he is probably now dead.
- **Prindiuk.** The case against Pukach for destroying documents relating to the Gongadze investigation was closed in April 2004 by the judge, Maria Prindiuk, who not only continued to sit as a judge but received a state medal from Yushchenko in December 2007.
- **Potebenko.** The International Federation of Journalists, which has issued three reports on the Gongadze case, believes that former Prosecutor-General Mykhailo Potebenko deliberately obstructed the investigation. Potebenko entered parliament in 2002 as a Communist. Last February, the retired Potebenko received a state medal from the president.
- **Honcharov.** A key witness, detective Ihor Honcharov, died in custody in August 2003, allegedly after receiving a lethal injection. He was cremated two days later without an autopsy being performed. Honcharov claimed to know who was behind Gongadze's murder. Three prison guards received light sentences for their involvement in the detective's murder.

CONCLUSION: In seeking to prosecute only those involved in the actual killing of Gongadze, while ignoring those who organised it, the Yushchenko administration continues a long-standing policy of keeping the ruling elite above the law, in a judicial system that works in a highly selective manner.

Keywords: EE, RUCIS, Ukraine, EU, United States, politics, assassination, election, government, judicial, legislation, opposition, police, industry, constitution, corruption, media, referendum

Word Count (approx): 1184