

The Gongadze Inquiry

**An investigation into the failure of legal
and judicial processes in
the case of Georgy Gongadze**

Supported by:

- The International Federation of Journalists
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**Report No. 3: Official Obstruction
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1. Introduction

This is the third report on the Gongadze case published by the inquiry established in November 2003 by the International Federation of Journalists, the Institute of Mass Information of Ukraine, the National Union of Journalists of the UK and Ireland and the Gongadze Foundation. It is an update and continuation of our two earlier reports, published in January 2005¹ and September 2005.²

The case of Gongadze, the founding editor of the *Ukrainska Pravda* web site who was murdered in September 2000, remains crucial not only for Ukraine but for Europe, and internationally. Above all the case concerns the impunity of those in power who sanction violence and intimidation against journalists. Gongadze was brutally murdered, allegedly by officers in the internal affairs ministry. *Prima facie* evidence was made available, soon after Gongadze's death, of discussions between senior politicians about harming him, and these almost certainly had some connection with the preparation of the murder.

The multiple attempts by senior Ukrainian officials to frustrate and sabotage investigations of the murder, both before and after the Orange revolution of December 2004, are testimony to the importance of the issue of impunity. It is not surprising that Georgy's family and colleagues have, together with international journalists' organisations and media freedom campaign groups, been at the forefront of calls for new international legal and political frameworks to confront the impunity of those who try to silence journalists by violence.

The title of this third report – Official Obstruction Is Rewarded – refers, in particular, to the award to former general prosecutor Mikhail Potebenko in February 2007 by president Yushchenko of the Order of Prince Yaroslav the Wise. It was Potebenko to whom Georgy Gongadze appealed for help in July 2000, when he realised he was being followed; it was Potebenko who ignored that appeal. It was Potebenko who repeated to the public fanciful and illogical hypotheses about Gongadze's disappearance, which he probably knew had no foundation. It was Potebenko who continued to obstruct the investigation of the murder by refusing to consider the "Melnichenko tapes" and other crucial evidence. It was Potebenko who was ultimately responsible for carrying out an effective investigation of Gongadze's murder, which, the European Court later found, the authorities failed to do.

That the Ukrainian president has presented Potebenko with a state honour – while the investigation of those who ordered the murder has moved far too slowly during the two-and-a-half years since the Orange revolution – epitomises the official indifference, and even opposition, to dealing with many of the issues raised by the case.

We have concluded from our research that the investigation of the case indeed faces indifference and opposition at the political level. No matter how many hundreds of statements are made about the need to solve the case, actions such as the honouring of Potebenko, taken while his successors at the general prosecutor's office (GPO) continue to resist pursuing crucial issues, and while those investigating officers who have made the most progress on the

¹ *The Gongadze Inquiry: an investigation into the failure of legal and judicial processes in the case of Georgy Gongadze. Preliminary report* (January 2005). <<http://www.ifj.org/pdfs/gongadze-january2005.pdf>>.

² *The Gongadze Inquiry: an investigation into the failure of legal and judicial processes in the case of Georgy Gongadze. Report No. 2: the instigators are getting away* (September 2005). <<http://www.ifj.org/pdfs/gongadze2.pdf>>.

case are removed from it without explanation, can not be characterised as mere “lack of political will”. If at a time there was political will to find the instigators of Gongadze’s murder, it appears that it has now been overcome by the will for members of the political establishment to protect each other, and each other’s reputations.

This report covers the investigation of the case, and factors impacting upon it, in the period of approximately two years (September 2005-August 2007) since the publication of our Report No. 2. It is structured as follows:

Section 2 covers the trial of three ministry of internal affairs (MIA) officers charged with conspiracy to murder and other offences in respect of the killing of Gongadze, which is currently in progress. Almost all official sources, journalists, and others monitoring the case, agree that Gongadze was probably killed by general Oleksiy Pukach, former head of the Chief Directorate of Criminal Investigations of the MIA, with the help of these three officers, who have made statements confessing to their involvement. Since this case was sent to trial in August 2005, the GPO and other Ukrainian law enforcement agencies have continued to investigate the instigation and preparation of Gongadze’s murder, and the remainder of this report covers this issue.

Section 3 reviews the information now available about the system of intimidation that operated in the MIA, to which Gongadze fell victim, and considers the failure of the authorities investigating Gongadze’s murder to pursue this avenue.

Section 4 reviews the information now available about the “Melnichenko tapes”, recorded by Nikolai Melnichenko, a former bodyguard of president Kuchma, that are crucial to the case. It examines the failure by the GPO, and by major Melnichenko, to present these tapes as evidence in the way required by the Ukrainian legal system.

Section 5 reviews the attitude of some leading Ukrainian politicians, who are potentially important witnesses, to the case.

Having reviewed the new information available on these three crucial aspects of the case, the report then, in Section 6, considers the investigation carried out by the GPO. It covers the numerous changes of personnel and policy at the office during this period; the pursuit of general Pukach; and the GPO’s decision to close the case of former internal affairs minister Yuri Kravchenko, whose death in March 2005 was linked to the Gongadze case.

Section 7 of the report examines the attitude of Ukrainian political institutions and politicians to the case, and concludes that a lack of political will in Kiev has been an essential factor in the lack of progress in the investigation of the case. Section 8 makes recommendations.

1.a. Terms and scope of this inquiry

The purpose of our inquiry is to examine the apparent failure of legal and judicial processes in the Gongadze case and the reaction of institutions and civil society to the case. We stated at the outset that: “The inquiry will not attempt to undertake any forensic investigation of the circumstances of the murder. Rather it will examine whether the forensic investigation has been properly undertaken and, if not, why not. The inquiry will examine the political and social circumstances that surrounded the murder; political and social factors that have

hindered a full investigation; the response of relevant state institutions and civil society to the case and their role in advancing and/or hindering the investigation; and the weakness in legal and political systems highlighted by the case.”³

Our sources of information for this third report have been: (i) Ukrainian media outlets; (ii) official documents; (iii) the BBC Monitoring archive; and (iv) interviews with key figures, including deputy general prosecutor Mykola Holomsha, Myroslava Gongadze and her legal representative, Oleksiy Podolsky, and journalists.

2. Trial of participants in the kidnapping

On 8 August 2005, the GPO announced that it had completed its investigation into accusations against three former MIA officers – Valeriy Kostenko, Mykola Protasov and Oleksandr Popovych – under Article 93 (plotting to commit a premeditated murder by an organised group) and Article 166, Part 3 (abuse of powers) of the Ukrainian Criminal Code. On 23 November, the GPO sent cases to court under these provisions. This prosecution was separated from case No. 60-1241 on the premeditated murder of Georgy Gongadze, pre-trial investigation of which was to be continued by the GPO.⁴ There was concern among politicians, journalists and civil society that this separation of the cases would lead to an indefinite postponement of the investigation of the instigators and organisers of the killing: this investigation is dealt with in Sections 3-6 below.

On 28 November 2005, the Supreme Court ruled that the case would be heard by the Kiev court of appeal; on 19 December preliminary hearings were held; on 9 January 2006, the court, presided over by Judge Irina Hryhoryeva, held its first session, at which the case was opened and adjourned until 23 January.⁵ Two of the defendants entered guilty pleas, and one entered a plea of partial guilt, which he said he would explain during his testimony in court.⁶

In the first weeks of the court case, there was some public criticism of the fact that some sessions were closed to the public. Lawyers for the GPO argued that because members of police intelligence units would be called as witnesses (according to press reports, there were up to 15 witnesses), the trial should be partly closed; lawyers for the defendants also argued against the use of recording devices by journalists at the trial; and on 22 March 2006 the interior ministry declared case material to be “top secret”, which required all attendees at court to obtain security clearance. Andriy Fedur, the lawyer who was at that time representing Georgy Gongadze’s mother Lesya Gongadze, was among those who demanded complete openness of the trial; Valentyna Telychenko, representing Myroslava Gongadze, accepted that the trial should be partly closed to conform with legislation on state secrets. Having heard arguments and requested expert advice, judge Hryhoryeva has closed some, but not all, sessions of the trial.⁷

³ “Scope and aims of the inquiry”, agreed at a meeting of sponsoring organisations in Brussels on 5 November 2003.

⁴ UNIAN news agency, Kiev 28 November 2005 (BBC Monitoring); Interfax-Ukraine news agency, Kiev, 0932 GMT, 25 November 2005 (BBC Monitoring).

⁵ TV 5 Kanal, Kiev, 1000 and 1300 GMT, 9 January 2006 (BBC Monitoring).

⁶ *Segodnia*, Kiev, 11 February 2006 (BBC Monitoring).

⁷ *Segodnia*, Kiev 11 February 2006 (BBC Monitoring); UT1, Kiev, in Ukrainian 1900 GMT 22 Mar 06 (BBC Monitoring).

Telychenko summed up the progress of the trial during 2006 in an end-of-year interview, saying that the court had heard testimony from the three accused, a victim of the crime (Myroslava Gongadze), and 24 witnesses out of a total list of 47. These included three employees of law enforcement agencies; Sergei Shushko, who with his late father Vladimir Shushko had found the body at Tarashcha on 3 November 2000 that is believed to be Gongadze's; journalists who worked with Gongadze including Olena Prytula, Lavrentii Malazoniia, Konstantin Alaniia and Liudmila Dobrovolskaya; and Igor Vorotintsev, the Tarashcha coroner. Telychenko said that when sittings reopened in 2007, representatives of the victims of the crime intended to call other witnesses not yet listed.⁸

2.a. Political pressure on the court

This inquiry notes with concern that deputies to the Verkhovna Rada (parliament) have on several occasions made unsubstantiated derogatory comments about the conduct of the trial. The trial judge was denounced from the parliamentary tribune without any reasoned explanation. Such comments can not possibly have helped the work of the court, and, on the contrary – since all judicial appointments in Ukraine are subject to political approval – could be interpreted as, potentially, a form of pressure on the judge.

On 5 September 2006, Aleksandr Moroz, speaker of parliament and leader of the Socialist Party, commented negatively on the work of judge Hryhoryeva, bracketing her conduct of the case with that of the GPO and giving no further explanation. In remarks to parliament about the Gongadze case, Moroz said: “To continue this comedy with the investigation [...] is shameful, and it won't work. *The judge* [our emphasis] and the prosecutors in this case are bringing shame on themselves. [...] we can not continue to mark time for this imitation of an investigation *and trial* [our emphasis]”.⁹ It seems incongruous that Moroz is linking the failings of the prosecutor with the conduct of the trial.

On 15 September 2006, Sergei Golovaty, a former justice minister and appointed representative of Georgy Gongadze's mother Lesya, who then represented the Our Ukraine bloc led by president Yushchenko and is now in the Party of Regions, stated in parliament that the process of the trial was “a political trial, which in plain language is called a farce”.¹⁰ He in no way justified this statement, apart from making reference to the fact that some of the trial is being conducted behind closed doors (discussed above).

We are concerned that senior political figures should attempt to discredit the judge and the conduct of the trial, without explaining why.

3. Investigation of criminal activity within the internal affairs ministry

In our previous reports, we criticised the GPO for its reluctance to investigate the Gongadze case in connection with other criminal activity within the MIA. Such activity included (i) the

⁸ *Ukrainska Pravda*, 26 December 2006.

⁹ Verbatim record of the Verkhovna Rada session, 5 September 2006.

¹⁰ KID news agency, 15 September 2006; *Delovaya Nedelia*, 15 September 2006.

conduct within the MIA of a system of intimidation of political opponents and dissidents, to which Gongadze fell victim; and (ii) the conduct of kidnappings and murders for private, non-political gain by informal networks of MIA officers, former officers and criminals.

Immediately after the Orange revolution, hopes were raised that such issues would be taken into account. It was hoped that the political changes in Ukraine would create better conditions for the investigation into the instigation of Gongadze's murder to progress, and that it would focus on the chains of command in the MIA, including formal, informal and illegal relationships. This was clearly understood in the Ukrainian political establishment: in May 2005, Yuri Lutsenko, then internal affairs minister, responded to "sceptics, who maintain that the death of Yuri Kravchenko has broken the thread leading to those who ordered the crime", by saying that "very many witnesses in the case are still alive", including some in parliament and some "top officials in the law-enforcement agencies" now in retirement.¹¹

More than two years later, there is no indication that these highly-placed witnesses have been interviewed, or that, in general, the investigation of the instigators of Gongadze's murder has moved in this direction. On the other hand, (i) some progress has been made in the GPO's investigations of the two types of criminal activity (i.e. political and non-political) within the MIA, and (ii) as a result of the efforts of journalists and others, and as a result of the announcement of reforms in the MIA by the government, more information has come into the public domain about these criminal activities. Here we summarise the new information that has become available on these two types of illegal activity.

3.a. The Podolsky case and the system of political intimidation

On 9 June 2000, Oleksiy Podolsky, a journalist and political activist, was abducted, beaten up, tortured by being strangled with a belt, and left, severely injured, in a forest. His attackers – who, later investigations showed, were a group of police officers led by Oleksiy Pukach – threatened to kill him unless he stopped his civil and political activities. The similarities with the Gongadze case are remarkable: the leader of the gang, the manner of abduction, the method of torture, and the type of threats, were the same. The only substantial difference was that Podolsky escaped with his life. The Podolsky case showed that the attack on Gongadze was not unique, but that Pukach and other officers in the MIA were more than once called on to deal in this fashion with journalists, or other people considered undesirable.

Podolsky and his friends faced obstructions to having his case investigated similar to those faced by Gongadze's family and friends. Podolsky told this inquiry that immediately after he was attacked, he wrote a statement claiming that Kravchenko, then internal affairs minister, had ordered the attack, and demanding that that aspect of the case be investigated. He had been a member of "Mi", a civil society group that campaigned on political and human rights issues, and the group had issued a declaration complaining of a campaign of surveillance and harassment against it. Other members of the group had been beaten, less seriously, by unknown assailants. Despite all this, it was only two months after the attack, in August 2000, that law enforcement agencies began an investigation – and then only under the paragraph of the criminal law code on "hooliganism".¹²

¹¹ *The Gongadze Inquiry: Preliminary Report* (January 2005), pp. 25-30; *The Gongadze Inquiry. Report no. 2* (September 2005), especially pp. 5-6 and 8-9; Lutsenko in *Zerkalo Nedeli*, 14 May 2005.

¹² Interview with Oleksiy Podolsky, 2 March 2007.

It was only after the Orange revolution of December 2004, and the subsequent changes at the GPO, that the investigation of the Podolsky case was accelerated, and successfully brought to court, by the team of investigators headed by Roman Shubin and Yuri Hryshchenko. It is clear from GPO documents that have come into the public domain that Shubin and Hryshchenko considered the Podolsky case to be closely linked to that of Gongadze, and believed that by investigating the organisation of both attacks, they might uncover a system of intimidation within the MIA of which they both formed part. In October 2005, investigator Shubin and two investigators from the SBU, major E. Skulish and major I. Gerasimovich, jointly signed a plan for further investigating the Gongadze case, entitled “Plan of Further Investigative Activity and Operational-Search Measures in Criminal Case No. 60-1241 on the Premeditated Murder of the journalist G.P. Gongadze”.¹³ Among measures to push forward the investigation of the instigators of Gongadze’s murder – which are fully listed in Section 6 below, pages 21-22 – Shubin and his SBU colleagues proposed to investigate those who ordered, and carried out, the attack on Podolsky, and to investigate those who had obstructed the investigation of the Podolsky case.

The investigation of those who carried out the attack on Podolsky was completed last year, the case went to the Kiev court of appeal, and on 8 May 2007 a verdict was reached: two former policemen, former colonel Mykola Naumets and former major Oleh Marynyak, were found guilty of attacking and kidnapping Podolsky. They were sentenced to three years’ imprisonment, stripped of their ranks, and barred from senior posts in future. During the pretrial investigation, Naumets admitted his guilt, repented, and asked the victim and his family for forgiveness, as a result of which Podolsky and his lawyers asked for minimum punishment for Naumets. The prosecution stated in court that the perpetrators of this crime were Naumets, Marynyak, and general Pukach. The latter is also alleged to have led the attack on Gongadze, and is believed to have left Ukraine and is the subject of an Interpol search warrant. The court heard that Pukach, Naumets and Marynyak abducted Podolsky, took him to a forest outside the village of Petrovske in Pryluky district, Chernihiv region, beat him, up and threatened to kill him unless he stopped his civil and political activities. When threatening murder, they showed Podolsky a canister and a spade. Pukach tortured Podolsky by strangling him with a belt.¹⁴

For the investigation team led by Shubin and Hryshchenko, the attack on Podolsky was one piece of a larger jigsaw that included the Gongadze case. Their “Plan of Further Investigative Activity” set out a method of tracing the path by which the Gongadze murder was instigated, initially by examining Pukach’s formal and informal links with other MIA officers, and of simultaneously tracing the path by which the attack on Podolsky was organised. One of the investigators’ hypotheses was that whoever ultimately ordered Gongadze’s murder may have used networks run by two of the most senior MIA officers, Eduard Fere and the late Yuri Dagaev, and others.

Among the plan’s proposals were: (i) to widen the scope of the investigation to consider the contacts, superior officers etc of Pukach, who had organised the attacks on both Podolsky and

¹³ The deputy general prosecutor, Mykola Holomsha, confirmed to this inquiry the veracity of the text of this document, which was leaked and published on the internet in December 2006. Interview with Mykola Holomsha, 3 July 2007; “Plan dodatkovikh slydchikh dyi ta operativno-rozshukovikh zakhodyv u krimynal’nyi spravy no. 60-1241 za faktom umisnogo vbivstva zhurnalysta Gongadze G.P.”, published with commentary by Stanislav Rechinskii at <http://www.ord.kiev.ua/categ_1/article_51160.html> (accessed 15 January 2007).

¹⁴ UNIAN news agency, Kiev, 8 May 2007 (BBC Monitoring).

Gongadze “having received an illegal instruction from senior officials of the MIA who have not yet been identified by the investigation”; (ii) to examine the significance of contacts after Gongadze’s murder between Pukach, Dagaev and Fere, and to examine evidence of their involvement in the planning of Gongadze’s murder; (iii) in this connection, to investigate further the transfer of Gongadze’s body to Tarashcha; (iv) in this connection, to investigate the destruction of documents relating to the Gongadze case in 2001 and in 2003 – the crime in connection with which Pukach was detained in 2003 – in the first place by questioning officials of the Chief Directorate of Criminal Investigations; and (v) in this connection to “ascertain those persons who were involved in erecting obstacles to the investigation and solution of a serious crime, i.e. the premeditated murder of the journalist G.P. Gongadze”, and in the first instance to question a series of named senior officials who had failed to provide documentation to the GPO.

One of breakthroughs in the investigation, which enabled investigators to proceed along this path, was the recording of testimony by Aleksandr Popovich, one of the three officers now on trial for his part in the attack on Gongadze. Popovich, who had been Pukach’s driver, told investigators, and repeated in court, that Pukach, Fere and Dagaev met at a restaurant in late October 2000, five or six weeks after Gongadze’s death, and discussed Gongadze’s death and the need to rebury his body. A journalistic investigation of this issue, on the web site Glavred.info, suggested that there is a possibility that Dagaev, then Kuchma’s chief of staff, had conspired together with Fere and Pukach to organise Gongadze’s murder without the knowledge of Kuchma and Kravchenko. We regard this as a credible hypothesis that should be further tested.¹⁵

When we compiled our previous reports, we were unaware of the interest being shown by the investigating officers in the role of Fere and the late Dagaev. It is worth recounting published information about their careers.

Fere, aged 71, began work in the MIA in 1962. From 1977 Fere worked at the highest level of the MIA, as a deputy head of its Chief Committee. In 1984-92 he headed the 7th directorate of the MIA, which, according to a journalistic investigation, had in Soviet times “been responsible for surveillance of dissidents and for punishing them by means of ‘taking them out to the woods’”¹⁶ – exactly the method used against Podolsky and Gongadze. In 1992-95, Fere headed one of the MIA’s departments dealing with criminal investigations. In 1995, when Kravchenko became internal affairs minister, Fere was appointed to head the ministry apparatus; in November 2001, after his friend Dagaev had become head of the state administration, Fere became an adviser to Dagaev.

Dagaev, a major-general, started work in the MIA in 1972 at the age of 22; from 1993 headed the GAI traffic police of Ukraine; and in the late 1990s became deputy interior minister, under interior minister Kravchenko; at that time he was involved in the formation of the elite armed formation “Cobra”. In February 2000 Dagaev was appointed, by means of an unpublished, confidential order, as head of the state administration, effectively president Kuchma’s chief of staff.

¹⁵ “Plan dodatkovikh slydchikh”, op. cit.; Glavred.info, “Novye imena v dele Gongadze ili Molchanie generalov”, part 1, <<http://glavred.info/archive/2006/09/13/115242-6.html>> (accessed 23 July 2007).

¹⁶ Glavred.info, “Novye imena v dele Gongadze ili Molchanie generalov”, part 1, op. cit.

The wide-ranging investigation proposed by Shubin and his colleagues into the MIA's system of intimidation, and the extent to which it formed the context for the murder of Gongadze, appears to have foundered for three main reasons:

Firstly, Dagaev died in mid 2003, and from about the same time Fere has been in a coma, from which doctors do not expect him to recover.

Secondly, Shubin and Hryshchenko were removed from the investigation at some point in the year following this plan being drawn up.

Thirdly and most important, we presume that – since strong political support would have been required for the investigation to proceed along these lines – that there has been either negligence or obstruction at the political level.

The death of Dagaev and illness of Fere, together with the death of interior minister Kravchenko and the disappearance of Pukach, mean that, with respect to the organisation of Gongadze's murder within the MIA, none of the most important potential witnesses known to investigators can be questioned. Not surprisingly, the fates of Dagaev and Fere have been the subject of a considerable amount of media speculation. Fere suffered from a stroke in June 2003 that left him in a vegetative state; since then he has been in a coma, in the central MIA hospital, and is not expected to recover; he has lost his functions of muscle movement and speech. Three weeks after Fere's stroke, Dagaev also suffered from a stroke which led, after an unsuccessful operation at an Austrian clinic, to his death.¹⁷ Suggestions that they may have been poisoned have been published in the Ukrainian media, and we believe that this issue should be considered by the GPO.

3.b. Informal networks conducting non-political criminal activity inside the MIA

From 2002, there has been public discussion in Ukraine of possible links between the instigation and organisation of Gongadze's murder and the second type of illegal activity within the MIA, i.e. murder, kidnapping and other crimes carried out for private gain rather than for political ends.

Much of this discussion has related to the case of the “werewolves”, a gang that included serving and former MIA officers and carried out 11 murders and a series of kidnappings between 1996 and 2000, mainly aimed at the extortion of ransom payments from victims' families. Details of the case were first made public by investigative journalists in 2002;¹⁸ under Kuchma, investigation of it by the law enforcement agencies proceeded slowly, and it was finally referred to court by the GPO straight after the Orange revolution.¹⁹ The trial of 12 gang members, including four former MIA officers, began in the Dneprovsky district court in November 2005.²⁰

¹⁷ Glavred.info, “Novye imena v dele Gongadze ili Molchanie generalov”, part 2, <<http://glavred.info/archive/2006/09/14/134142-8.html>>, accessed 23 July 2007.

¹⁸ *Segodnia*, Kiev, 1 August 2002 and 27 November 2002.

¹⁹ See for example *Zerkalo Nedeli*, Kiev, 5 March 2005.

²⁰ ProUA.com, 29 November 2005, <<http://www.proua.com/news/2005/11/29/221812.html>>.

There are indirect links between the “werewolves” case and the Gongadze case, and possibly direct links. The possibility of a direct link, mentioned in our previous reports, was raised by Ihor Honcharov, a leader of the “werewolves” gang and senior MIA officer, who died in police custody in August 2003. Before his death, Honcharov wrote letters alleging that the “werewolves” had undertaken Gongadze’s murder on the orders of interior minister Kravchenko, and that others within the MIA wanted to kill him to prevent him making this public. Subsequently, documentation came into the public domain suggesting that Honcharov may have been murdered, or his death may have been hastened, by the improper administration of anaesthetic.²¹ It is outside the scope of this report to deal with Honcharov’s case in detail. But media freedom campaigners and other observers concur that his testimony was probably unreliable, and that the letters he wrote may have been used deliberately to disorient the investigation of the Gongadze case and divert it from the truth, rather than to push it forward. But in either case – that Honcharov’s assertions had some merit, or that they were the subject of manipulation – a study of the background to them may help to clarify the situation within the MIA in which the attacks on Gongadze and Podolsky were organised.

At least as significant as this possible direct link is the indirect link between the “werewolves” case and the Gongadze case. The “werewolves” case revealed a system of illegal activity within the MIA that continued through the 1990s and survived into the new millennium. This system combined straightforward criminal activity such as that carried out by the “werewolves”, and criminal activity carried out for political reasons, such as the attacks on Gongadze and Podolsky.

The existence of such a problem was tacitly acknowledged by president Kuchma as early as 6 February 2003, when he issued a decree proclaiming the work of the MIA directorates on organised crime and corruption to be “inadequate and ineffective”, and ordering changes. It was subsequently confirmed that officers linked to the “werewolves” case and other illegal activity worked in the departments to which Kuchma referred, e.g. the Chief Directorate of Criminal Investigations (in which general Pukach also worked) and the Directorate to Combat Organised Crime.²²

The issue of criminal activity within the MIA was repeatedly discussed by Ukrainian journalists long before the Orange revolution, for example by Aleksandr Primachenko of *Zerkalo Nedeli*, who wrote:

Many officers of the law enforcement agencies are today convinced that what is unique about the “werewolves” gang, about whom so much is said and written, is not its existence, but the fact that it has been uncovered. Because in our state, in the transitional period, such “informal groupings” are certainly not isolated cases. Not if you define them by the concrete criminal activities with which their members are incriminated, at any rate.²³

Primachenko, in order to show the scale of the problem, pointed out that in 2003 the courts had convicted 160 law enforcement officers, including 139 from the MIA, of criminal offences. In December 2006 it was reported that the case of a further gang of seven

²¹ *The Gongadze Inquiry. Preliminary report*, pp. 28-30.

²² RFE/RL Organized Crime and Terrorism Watch, 27 March 2003.

²³ *Zerkalo Nedeli*, 26 June 2004.

“werewolves”, who had been MIA employees based in Kiev and Zhitomir, had been sent to court.²⁴

After the Orange revolution, Yuri Lutsenko, the new internal affairs minister, announced wide-ranging reforms of the MIA. One of the changes was that the Directorate to Combat Organised Crime was reorganised. Lutsenko stated in a newspaper interview that the system of surveillance, to which Gongadze’s attackers had belonged, had also been completely reorganised, so that MIA officers’ activity is systematically checked by SBU officers.²⁵ However, as is discussed in Section 6 of this report, there is no evidence that these efforts to reform the ministry have been accompanied by any substantial progress by the GPO in examining the role played by these criminalised sections of the MIA, or networks within them, in the instigation and organisation of Gongadze’s murder. On the contrary, the proposals by the Shubin-Hryshchenko team in this regard appear to have been abandoned.

4. Lack of progress in making use of the “Melnichenko tapes”

The revelation of the “Melnichenko tapes” in the Ukrainian parliament in November 2000, by Socialist party leader Moroz, was a key turning point in the Gongadze case. Before then, Gongadze was another in a long list of murdered journalists whose attackers seemed likely to escape justice. The tapes, made by major Melnichenko in the office of president Kuchma, for whom he had served as a bodyguard, amounted to *prima facie* evidence that Kuchma and other senior politicians such as Volodymyr Lytvyn, Leonid Derkach and the late Yuri Kravchenko had discussed harming Gongadze in the weeks leading up to his kidnapping.

In the period between the revelation of the tapes and the Orange revolution (November 2000-December 2004), there were significant barriers to the tapes and/or major Melnichenko ever being brought before a Ukrainian court in the Gongadze case. Melnichenko had fled the country, reasonably calculating that the publication of the tapes put his life in danger. Successive general prosecutors, bowing before political pressure from Kuchma and others, declined to consider the connection between the tapes and the Gongadze case, dismissed credible examinations of the recordings that confirmed their authenticity, and frequently made statements designed to discredit the recordings.²⁶ As a result of the Orange revolution, hopes were raised that the political opposition to using the tapes, and testimony by Melnichenko, in court, would be overcome. Shortly after the Orange revolution, in March 2005, Sviatoslav Piskun, who was reappointed general prosecutor as the result of a decision taken by the courts during the Orange revolution, closed a case that had been opened on the illegal surveillance of the president’s office (no. 49-945), which constituted a significant barrier to Melnichenko’s return to Ukraine.²⁷

²⁴ Persho Dzherelo web site, 18 December 2006, <http://jerele.com.ua/ru/news/show_print_version/12135>.

²⁵ *Fakty i Kommentarii*, Kiev, 6 January 2006 (BBC Monitoring); Taras Kuzio, “Kyiv Launches Far Reaching Reform of Interior Ministry”, Eurasia Daily Monitor web site, 4 March 2005.

²⁶ *The Gongadze Inquiry: Preliminary report*, pp. 17-23, and *The Gongadze Inquiry. Report no. 2*, pp. 10-11.

²⁷ *Segodnia*, Kiev, 17 March 2006; also interview with Mykola Holomsha, deputy general prosecutor, 3 July 2007.

In the period since then, i.e. just under two-and-a-half years, major Melnichenko has visited Ukraine at least twice, in November 2005 and September 2006. He has met with officials at the GPO on at least six occasions, addressed parliament and made a large number of public statements. But he and the GPO have missed, declined, or avoided one opportunity after another to cooperate with each other to meet three essential legal prerequisites for the tapes to be used as evidence in the Ukrainian courts, i.e.:

- (i) that the original tapes made by Melnichenko (rather than copies) are delivered to the GPO and attached to the case file on the premeditated murder of Gongadze;
- (ii) that the apparatus used to make the tapes is delivered in the same way; and
- (iii) that Melnichenko himself gives testimony to the GPO, with a view to repeating it in court, which (a) sets out the conditions under which the tapes were made and (b) provides a motivation for making them (which was clearly an illegal act) that will be accepted as “substantial”, enabling the court to accept them as evidence.

Up to the time of writing, neither the original tapes nor the apparatus on which they were recorded have been made available by Melnichenko. Yuri Felshtinsky of the Civil Liberties Foundation, a non-governmental body sponsored by the Russian billionaire Boris Berezovsky, with which Melnichenko at one time cooperated, in November 2005 handed to the GPO copies of the tapes on CD disks, which the Foundation had received from Melnichenko.²⁸

This two-and-a-half year delay, in a case that was already four years old at the time of the Orange revolution, has been excused on the parts of both the GPO and major Melnichenko under pretexts that scarcely bear repetition. At the same time, secondary and irrelevant issues relating to the tapes have repeatedly been discussed in public by the GPO and other officials.

For example, in September 2006, general prosecutor Aleksandr Medvedko reported that phonoscopic tests were being carried out on the tapes. In July 2007, deputy general prosecutor Holomsha stated, in an interview with this inquiry, that tests were being arranged in the president’s office to determine whether the “Melnichenko tapes” could really have been made there.²⁹ These tests even became the subject of a public dispute between Melnichenko and the present head of the presidential administration, Viktor Baloha.³⁰ But such tests could have little bearing on the preparation of any legal proceedings in the Gongadze case, since all that is needed for these is the original tapes, the original apparatus used to make them, and Melnichenko’s own evidence.

Publicly, therefore, the impression has been created that a great deal of activity is going on around the tapes, while there has been almost no progress towards presenting them as evidence in court. Major Melnichenko has given testimony to the GPO, but has stated publicly that he will not give evidence in court until various conditions are met. So on 15 September 2006, the sixth anniversary of Gongadze’s disappearance, his friends and relatives witnessed the sight of Melnichenko telling parliament that he would only testify in court when the tapes are “accepted as evidence”, and the then general prosecutor Medvedko retorting that

²⁸ Interfax-Ukraine news agency, Kiev 1511 GMT, 2 November 2005 (BBC Monitoring).

²⁹ TV 5 Kanal, Kiev, 0910 GMT 8 September 2006 (BBC Monitoring); interview with Mykola Holomsha, deputy general prosecutor, 3 July 2007.

³⁰ TV 5 Kanal, Kiev, 1100 GMT 20 June 2007 (BBC Monitoring); *Ukrainska Pravda*, 20 June 2007.

the tapes could not be accepted because Melnichenko had failed to provide evidence of their authenticity.³¹

One of the difficulties of researching the issue of the tapes is in understanding major Melnichenko's continued reluctance to meet the criteria needed to bring the case to court. In the immediate aftermath of the Orange revolution, when the political situation in Ukraine remained unstable, he expressed distrust of the GPO and other authorities – and this is entirely understandable, given the conduct of the Gongadze case by these authorities. In response to these expressions of distrust, not only was the case against Melnichenko closed in March 2005, but guarantees of his personal safety given both by government ministers and the security services.

While we in no way wish to suggest that the conditions in Ukraine were ideal, or that the standards of the judicial system are particularly high, it is also unrealistic to expect that these will improve rapidly. If the case on the premeditated murder of Gongadze (i.e. the case concerning not only those who carried out the crime but also those who instigated it) is ever to come to court, it will be in the Ukrainian court system that currently exists. Given these realities, it is hard to explain major Melnichenko's reluctance.

An additional problem is that there is now a great deal of contradictory information in the public domain about the way that the "Melnichenko tapes" were made. Various credible sources, including the late Aleksandr Litvinenko, a close friend and former security services colleague of Melnichenko, had long ago stated that Melnichenko worked with other security services officers in making the tapes.³² We remain of the view expressed in our previous reports – that however the tapes were made, they remain an essential source of evidence in the Gongadze case. Nevertheless, it has now become clear that the issue of how the tapes were made may have some bearing on Melnichenko's reluctance to give evidence about them.

In March 2006, information came into the public domain suggesting that Melnichenko had worked closely with Socialist leader Moroz and former prime minister Yevhen Marchuk during 2000, when he made the tapes. This information, in the form of statements recorded in private by Melnichenko himself, also throws doubt on the version of events that Melnichenko has given in public.

As a result, *Ukrainska Pravda*, the site founded by Georgy Gongadze, called editorially for the case against Melnichenko for illegally bugging Kuchma's office to be reopened. In a significant shift of its editorial line concerning the death of its founder, *Ukrainska Pravda* argued that this was now the best means of compelling Melnichenko to give evidence vital to the case, in a way that he has failed to do since making the tapes public.

The evidence that has raised these questions was published in March 2006 by *Ukrainska Pravda*, in the form of a transcript of a conversation in 2003 between Melnichenko and a potential biographer, the Radio Liberty journalist Roman Kupchinsky. The conversation was published by *Ukrainska Pravda* in text form, with MP3 audio files also made available. Kupchinsky also gave evidence to the prosecutor's office and handed the recordings to investigating officers. In the recording, Melnichenko can be heard saying that he shared with

³¹ TV 5 Kanal, Kiev, 0720 GMT and 0850 GMT, 15 September 2006 (BBC Monitoring). The speeches by both Melnichenko and Medvedko were broadcast live.

³² *The Gongadze Inquiry. Report no. 2*, p. 11.

Marchuk and Moroz information received as a result of bugging Kuchma as early as 1999 and 2000, although the two have denied this before.³³

Ukrainska Pravda stated that the publication of the tapes had not been sanctioned by Melnichenko. By way of editorial comment, the site said that since Gongadze's death, Marchuk and Moroz had "categorically denied they had anything to do with the making of Melnichenko's recordings". Ukrainska Pravda argued that "it has been proved that Yevhen Marchuk was in constant contact with Melnychenko in 1999 and encouraged him, including financial incentives, to make recordings in Kuchma's office"; there is "reason to believe", moreover, that Moroz cooperated with Melnichenko "long before Georgy Gongadze disappeared – from the beginning of 2000".

In the recordings, Melnichenko explains how he first met Marchuk in the early spring of 1999; how he took money from him; how he conveyed information to him that he had learned from the recordings; how he met Moroz in early 2000; how Moroz arranged secret means of meeting; how he passed on information to Moroz about provocations against opposition politicians being discussed in Kuchma's office.

Ukrainska Pravda further reported that, although Melnichenko had visited Ukraine and held six meetings with officers from the GPO, he had "refused to talk about the circumstances under which he made his recordings or explain the matter of the original recordings". Melnichenko explained his reticence at first by claiming that Myroslava Gongadze had asked him not to answer questions; this was subsequently denied publicly by Myroslava Gongadze. Ukrainska Pravda concluded: "Earlier, the criminal case against Melnichenko seemed to hamper the investigation of the Gongadze case. Now, because of Mykola's behaviour, the situation has changed to exactly the opposite." Only reopening the case on illegal bugging of Kuchma's office would persuade Melnichenko to speak, Ukrainska Pravda argued.

In practice, Melnichenko's refusal to give any details about how the tapes were made, together with the continued weaknesses of the GPO's investigation, have obstructed any significant progress towards the "Melnichenko tapes" being brought to court as evidence. We believe that unless the GPO can bring the tapes to court without resorting to reopening a criminal case against Melnichenko, it should consider that course of action.

5. Leading politicians' attitude to the investigation

Given the importance of the Gongadze case for the development of Ukrainian democracy, we believe that the attitude of leading politicians who have either themselves suggested that they have information about the case, or who may logically be believed to have that information, deserves to be scrutinised. Among the questions that may be raised are the following.

5.a. Aleksandr Moroz

Aleksandr Moroz, speaker of the Ukrainian parliament and leader of the Socialist Party, is clearly an important witness in the Gongadze case. Moroz, who received the "Melnichenko

³³ Ukrainska Pravda, 15 March 2006.

tapes” from major Melnichenko and played them in parliament in November 2000, has spoken many times in public about the case. Nevertheless some questions about his role remain unclear even now, seven years after Gongadze’s death.

Firstly. Moroz has stated that he had known that Gongadze was being followed by the security services, and warned Gongadze about this. In an interview in February 2001, he stated: “Since I left the post of parliamentary speaker [in May 1998], I have retained good contacts with high-ranking employees from the interior ministry, the SBU and other structures. From those sources [NB], I learned that Gongadze had been shadowed. I told Gongadze that something serious was being prepared. However, he could not believe it. [...] I advised him to write to the GPO.”³⁴ On 7 September 2006, Moroz again publicly asserted, at a press briefing, that he hoped to give evidence in court about “the situation, when he had warned Gongadze, that he was being followed, and urged him to get in touch with the GPO about this”.³⁵

These statements raise the questions: from which “high ranking employees from the interior ministry, the SBU and other structures” exactly did Moroz learn of the surveillance of Gongadze? What else did he know about the system of intimidation within the MIA? Has he yet given testimony to the GPO on these issues? What else has he done with this information in the two-and-a-half years since the Orange revolution?

Secondly. It remains unclear when Moroz first came into contact with Melnichenko, and what the nature of their collaboration was. Moroz has many times insisted that he met Melnichenko for the first time on 18 October 2000, i.e. more than a month after Gongadze was murdered. This is however contradicted by other accounts, i.e.:

(a) The account of the “cassette scandal” by Volodymyr Tsvil’, who helped to protect Melnichenko when he first left Ukraine in November 2000, who wrote that Moroz introduced him to Melnichenko in the spring of 2000;³⁶

(b) Melnichenko’s own account, recorded in private and published by *Ukrainska Pravda* in March 2006 (see above), which says that he was put in touch with Moroz in early 2000, and from that time gave him information based on the material in the recordings.

Since by early 2000 Moroz already knew enough about the system of intimidation in the MIA to be able to warn Gongadze about the surveillance being conducted, and given the repeated public suggestions that he met with Melnichenko prior to the date he himself suggests, it is surely in the investigation’s best interests that he testifies in detail on these issues.

Certainly the Shubin-Hryshchenko team at the GPO, when it sought to widen the investigation in November 2005, considered the contacts between Melnichenko and Moroz to be an important avenue to follow. In their “Plan of Further Investigative Activity”, they proposed to investigate the “circumstances under which N. Melnichenko and A. Moroz had come to know each other”, by establishing which individuals apart from Melnichenko might have taken part in the recording operation in the president’s office; to whom and under what

³⁴ *Vecherniye Vesti*, Kyiv, 2 February 2001, quoted in J.V. Koshiw, *Beheaded: the killing of a journalist* (Reading: Artemia Press, 2003), pp. 80-81.

³⁵ UNIAN news agency, 7 September 2006; www.glavred.info, 7 September 2006.

³⁶ Tsvil’, Volodymyr, *V tsentre kasetnogo skandala* (Starnberg, Germany, 2004), p. 24.

circumstances Melnichenko handed the tapes that he had made; who had offered the tapes to Communist party leader Petr Simonenko; what contact if any there had been between Moroz, Gongadze, and various other politicians; and whether Melnichenko's associates A.I. Evko and "Pashun" had been involved in the copying and publication of the tapes.³⁷ When interviewed by this inquiry in July 2007, deputy general prosecutor Holomsha declined to comment on whether these avenues of investigation were still being followed.

In its editorial commentary on Melnichenko's recordings, *Ukrainska Pravda* asserted that Moroz had not cooperated with the GPO's investigation, in response to which Moroz sued for libel. On 26 December 2006, the Pechersky district court upheld Moroz's complaint and ordered *Ukrainska Pravda* to publish a correction, and *Ukrainska Pravda* announced that it intended to appeal.³⁸ In fact Moroz's assertion that he has cooperated with the investigation does not fully agree with accounts by the GPO itself. The GPO investigator Oleksandr Kharchenko confirmed, in a letter to *Ukrainska Pravda*'s lawyers, (i) that investigators had met with Moroz in December 2000, and again in 2005, but that these meetings had always been held in the parliament building, and (ii) that the meetings always ended due to Moroz's insistence that he had other duties, i.e. before the questioning was completed. A further letter from investigator Hryhorhi Harbuz, who had worked on the Gongadze case but was then removed, and subsequently retired from the GPO, had also complained of the difficulty of arranging to speak with Moroz about the case.³⁹ This inquiry wrote to Moroz to ask for comment on all the issues raised, but received no reply.

5.b. Yevhen Marchuk

Melnichenko has stated that he first began recording conversations in president Kuchma's office at the behest of Yevhen Marchuk, the former prime minister and former senior KGB officer, who afterwards, in late 1999, was appointed as secretary of the National Security and Defence Council of Ukraine. We have been unable to find any record of any public statement by Marchuk about the Gongadze case. As a former prime minister and former senior KGB officer, he should have information about the system of intimidation that operated in the MIA, and also should be able to corroborate or dispute Melnichenko's version of events. We are not aware that he has given testimony to investigators.

5.c. Volodymyr Lytvyn

The involvement in the Gongadze case of Volodymyr Lytvyn, one of Ukraine's most senior parliamentarians, stems from his alleged participation in conversations with president Kuchma about harming Gongadze that were recorded by Melnichenko. Lytvyn was an aide to president Kuchma from 1994 to 1999, and was then appointed head of the president's office, a position he held throughout 2000. From 2002 to 2006, i.e. both before and after the Orange revolution, Lytvyn was the parliamentary speaker. The "Melnichenko tapes" record four conversations where doing harm to Gongadze is discussed, the participants in which are

³⁷ "Plan dodatkovikh slydchikh", op. cit.

³⁸ Glavred.info, 26 December 2006.

³⁹ "Raport" by H. Harbuz, 9 February, letter from Viktor Shokin, deputy general prosecutor, to Aleksandr Moroz, 14 June 2006, and letter from Oleksandr Kharchenko, investigator, to Valentyna Telychenko (copies made available to the inquiry). On Harbuz, see also *The Gongadze Inquiry. Preliminary report*, p. 35.

Kuchma, Kravchenko, Leonid Derkach and Lytvyn. The conversation in which Lytvyn allegedly participated reads as follows. This version is based on the copy of the tapes stored at the International Press Institute in Vienna, translated into English by J.V. Koshiw, author of a book on the Gongadze case:

[Kuchma] Give me the same about *Ukrainska Pravda* and ... And we will decide what to do with him. He has gone too far.

[Lytvyn] I need to begin a [court] case.

[Kuchma] What?

[Lytvyn] Start a case? [undecipherable]

[Kuchma] Good.

[Lytvyn] The case – we will make in duplicates.

[Kuchma] No, I don't need a case.

[Kuchma] *Ukrainska Pravda* well is simply too much – the scum, fucker, Georgian, Georgian.

[Lytvyn] Gongadze?

[Kuchma] Gongadze. Well, who is financing him?

[Lytvyn] Well, he actively works with [...] Moroz, with *Grani* [a newspaper sponsored by the Socialist party]. On Saturday I saw ... with [Socialist MP Volodymyr] Makeyenko.

[Kuchma] Maybe take the MP to court, let the lawyers take it to court. This goes to the prosecutor, right?

[Lytvyn] No, let loose Kravchenko, in my opinion, decide how, and also [Horbaneyev, or Komanyeyev?] and Kholondovych [who was head of the main directorate for logistic control of the MIA].

[Kuchma] Simply shit – is there any limit, after all, son-of-a-bitch – he needs to be deported – the scum – to Georgia and thrown there on his ass!

[Lytvyn] Take him to Georgia and drop him there.

[Kuchma] The Chechens should kidnap him and ask for a ransom!

(Source: IPI, GO3007p2.dmr, 0:07:38-0:10:45, July 3, 2000).⁴⁰

⁴⁰ Koshiw, *Beheaded*, pp. 73-74.

We have found no record of any comment by Lytvyn on the Gongadze case prior to the Orange revolution. During the revolution, Lytvyn, who had formerly been a strong Kuchma supporter, switched sides and declared his support for the re-running of the elections that the revolution's supporters had demanded. Having retained his position as parliamentary speaker, he began to comment publicly on the Gongadze case.

In October 2005, Lytvyn addressed the Parliamentary Assembly of the Council of Europe on Ukrainian integration into European institutions and other issues. The following question was asked by Matyas Eorsi, a Hungarian deputy:

Mr Eorsi (Hungary). We were very pleased to hear president Yushchenko say that the Gongadze case would be investigated, but we also heard that you personally were one of those who were heard on the Melnichenko recording discussing how to get rid of the critical journalist, Gongadze, with former president Kuchma. I should very much like to hear your comments.

The official transcript of the session in English, which is not a literal translation, records the answer as follows:

Mr Lytvyn said the situation was not as clear as had been suggested. Certain phrases had been added to the report [of the Ukrainian parliamentary commission on the Gongadze case], there was no conclusion, and he rejected any suggestion of politicisation.

A reporter from *Ukrainska Pravda* was present, and, having heard Lytvyn speaking in Ukrainian, recorded that Lytvyn had also said that “international analysis” had found that the Melnichenko tapes had been doctored. Lytvyn also said that the report of the Ukrainian parliament’s commission on the Gongadze case, which had suggested that Lytvyn was implicated in the murder, was “not objective”.⁴¹ If such “international analysis” exists, it has never been published. On the other hand, the most substantial international analysis of the tapes, by former FBI agent Bruce Koenig – who, unlike the specialists mentioned by Lytvyn, made his conclusions public – showed, on the contrary, that the sections of the “Melnichenko tapes” recording conversations about Gongadze had *not* been doctored.⁴²

In our opinion Lytvyn, who has elsewhere stated that he hopes that the Gongadze case is resolved, could help the investigation by explaining: which “international analysis” showed that the Melnichenko tapes had been doctored and why has it not been published? How does he account for the contradiction between this and the analysis by Koenig and other specialists? Why has he not done more in the years that have passed to resolve these issues? Does he have any record of his conversation with president Kuchma on 3 July 2000, and if so, in what way was it falsified? We have written to Lytvyn to ask for comment on these issues, and received no reply.

⁴¹ *Ukrainska Pravda*, 6 October 2005; verbatim report of PACE session at <http://assembly.coe.int/Main.asp?link=/Documents/Records/2005/E/0510061000E.htm#4>.

⁴² *The Gongadze Inquiry. Preliminary report*, pp. 19-20.

5.d. Politicians' statements about the medical expertise on Gongadze's body

We also note the extraordinary statements made by some politicians in the last two years, casting fresh doubt on one of the established facts in the Gongadze case, i.e. that the so-called "Tarashcha corpse" indeed is that of Gongadze. In November 2000, Russian experts had established with 99.9% certainty that the Tarashcha corpse was Gongadze's, and three further expert groups from the US, Switzerland and Germany confirmed this, all admitting a possibility of error of less than 1% and some of less than 0.01%. (It should be noted that DNA tests can not produce a zero margin of error; these were as good as any.)⁴³ There was one test, undertaken by the Genedia clinic at Munich, Germany, that failed to produce a positive result, but journalistic investigations have shown that the standard procedures were not followed and that the biological matter tested may not have come from the "Tarashcha corpse".⁴⁴

In spite of the certainty that the "Tarashcha corpse" was Gongadze's, sufficient not only under Ukrainian law but under all recognised international standards, the politicians Sergei Golovaty, a former justice minister, and Valerii Ivasiuk, a former health minister and member of the parliamentary commission on the Gongadze case, have again raised this question, which this inquiry regards as solved. Ivasiuk stated at a press conference in March 2005 that most of the experts had found that the body was "not Gongadze's", despite their conclusions having been just the opposite,⁴⁵ while Golovaty stated in September 2005 that he "did not accept" the results produced by the various experts.⁴⁶

We are disturbed by the possible impact of these statements on the investigation, since they can add to the public confusion about the case, which in turn creates better conditions for those who are obstructing progress.

6. Investigation by the GPO into the instigators of the murder

6.a. Progress of the investigation

On 17 September 2005, five years after Gongadze's murder, and a few weeks after the GPO completed its case against the three MIA officers who were present when he was killed, president Yushchenko said that the next stage of the investigation – finding the instigators and organisers of the murder – would be much more difficult. "Many of the players are dead, and many of those who are alive have fled in different directions. [But] I am sure that we possess investigators who will be able to complete this case", he said.⁴⁷

Another two years has gone by, but the investigation has moved forward very slowly. Investigators regarded by knowledgeable observers as the most capable have been removed from the case. No action has been taken against officials who obstructed the investigation at an earlier stage. And one of those who carries the greatest personal responsibility for

⁴³ *The Gongadze Investigation. Preliminary report*, pp. 10-11; Koshiw, *Beheaded*, pp. 176-178; *Ukrainska Pravda*, 1 December 2006.

⁴⁴ Koshiw, *Beheaded*, p. 178.

⁴⁵ ForUM news agency, 2 March 2005, *Vremya Novostei*, Moscow, 3 March 2005.

⁴⁶ GlavRed web site, 14 September 2005; ForUM news agency, 14 September 2005.

⁴⁷ *Ukrayina TV*, Donetsk 1800 GMT 17 September 2005 (BBC Monitoring).

obstructing the investigation, former general prosecutor Potebenko, has been awarded a state honour.

In October 2005, some significant moves were made to take the case forward. But then a series of changes were made at the GPO that appear first to have slowed down the investigation and then brought it to an almost complete standstill.

On 8 October 2005, a criminal case was opened under Part 3, Article 365 of the Ukrainian Penal Code on the unlawful dismissal on 29 October 2003 of Prosecutor-General Svyatoslav Piskun by Ukrainian President Leonid Kuchma, on the grounds that this had “significantly hampered” the earlier investigation of the Gongadze case. This raised the possibility of an investigation of the sequence of events in 2003 that began with Piskun’s sacking, and ended with the freeing from prison of general Oleksiy Pukach, who by almost all credible accounts murdered Gongadze and would have been a prime witness against those who instigated and organised the crime.⁴⁸

On 12 October 2005, Piskun (who had been returned to his post in December 2004, during the “Orange revolution), stated that a plan had been approved by Yuri Lutsenko, interior minister, and Ihor Drizhchanyy, security services chairman for the second stage of the investigation.⁴⁹ It seems probable that Piskun was referring to the “Plan of Further Investigative Activity and Operational-Search Measures in Criminal Case No. 60-1241 on the Premeditated Murder of the journalist G.P. Gongadze”, drafted by investigator Shubin and two investigators from the SBU, major E. Skulish and major I. Gerasimovich, which has been referred to above in sections 3 and 5.⁵⁰ The main points in this document, which was leaked and published on the internet, and whose authenticity was confirmed to this inquiry by the GPO, were:

(i) proposals to widen the scope of the investigation to consider the contacts, superior officers, etc., of Pukach, who had organised the attacks on both Podolsky and Gongadze “having received an illegal instruction from senior officials of the MIA who have not yet been identified by the investigation”;

(ii) operational proposals on the search for Pukach;

(iii) it drew attention to the significance of contacts after Gongadze’s murder between Pukach, Dagaev and Fere, and proposed to investigate “all the contacts” between Dagaev and Fere, and to examine any possible evidence of their involvement in the decision to murder Gongadze;

(iv) operational proposals for investigating the transfer of Gongadze’s body to Tarashcha;

⁴⁸ Source: UNIAN news agency, Kiev, 1030 GMT 9 October 2005, quoting an announcement by the GPO. (BBC Monitoring).

⁴⁹ Interfax-Ukraine news agency, Kiev, 12 October 2005 (BBC Monitoring).

⁵⁰ The deputy GPO, Mykola Holomsha, confirmed to this inquiry the veracity of the text of this document, which was leaked and published on the internet in December 2006. Interview with Mykola Holomsha, 3 July 2007; “Plan dodatkovikh slydchikh dyi ta operativno-rozshukovikh zakhodyv u krimynal’nyi spravy no. 60-1241 za faktom umisnogo vbivstva zhurnalysta Gongadze G.P.”, published with commentary by Stanislav Rechinskii at <http://www.ord.kiev.ua/categ_1/article_51160.html> (accessed January 2007).

(v) proposals to investigate the issue of the destruction of documents relating to the Gongadze case in 2001 and in 2003, in the first place by questioning officials of the State Directorate of Criminal Investigations;

(vi) measures to “ascertain those persons who were involved in erecting obstacles to the investigation and solution of a serious crime, i.e. the premeditated murder of the journalist G.P. Gongadze”, and in the first instance to question a series of named senior MIA officials (Iu. Smirnov, former minister; O.A. Gapon, former state secretary at the MIA; Iu.E. Cherkasov, former first deputy state secretary; G.V. Epur, former state secretary at the MIA; and A.M. Karatsiuba, former head of the secret department) who had failed to provide documentation to the GPO;

(vii) measures to investigate those who ordered, and carried out, the attack on Podolsky;

(viii) proposed measures to investigate those who had obstructed the investigation of the Podolsky case;

(ix) proposals to investigate public statements in September 2000 by the politician Sergei Golovaty, who said that he had invited Gongadze to a press conference on 15 September to expose a campaign by Kuchma to discredit Golovaty; proposals to investigate the “circumstances under which N. Melnichenko and A. Moroz had come to know each other”, by establishing which individuals apart from Melnichenko might have taken part in the recording operation in the president’s office, to whom and under which circumstances Melnichenko handed the tapes that he had made, who had offered the tapes to Communist party leader Petr Simonenko, what contact if any there had been between Moroz, Gongadze, and various other politicians, and whether Melnichenko’s associates A.I. Evko and “Pashun” had been involved in the copying and publication of the tapes.

The publication of this document on the internet did not have entirely positive consequences. It contained some details that compromised some witnesses, and others the publication of which forewarned people who have things to hide about the investigators’ plans. The manner of the leak, a year after the document was written, was perhaps partly a consequence of the public perception that the investigation is moving too slowly. In any case, we believe that the document touched on many of the most important avenues that should be followed by the investigation, and it is worth reviewing what is publicly known about the progress made in the year since it was drafted.

As far as we can ascertain from publicly available sources, little or nothing has been accomplished with regard to points (i) on Pukach’s contacts and superiors, (ii) on the search for Pukach (see section 5.c below), (iii) on Fere and Dagaev and (viii) on the obstruction of the investigation of the Podolsky case. On point (vi) on the obstruction of the initial investigation of the Gongadze case, and point (ix) on Melnichenko and various politicians, some interviews have been carried out, but an enormous amount of work remains to be done.

In the case of point (v) on the destruction of documents, progress has been limited, at least partly due to legislation on state secrets.

The GPO has dealt more or less fully only with points (iv) on the reburial of Gongadze’s body and (vii) on the attack on Podolsky.

When this inquiry interviewed deputy general prosecutor Holomsha in July 2007, we asked what the main directions being followed by the investigation were. He said (a) that “the veracity of the tapes presented to us by Melnichenko” were being checked by means of a test to be staged in the president’s office – a test on tapes that are not originals, with a machine that is not an original, and therefore can have little bearing on the case, and (b) that the search for Pukach is continuing. In response to specific questions he added that the GPO is examining the connection between the Gongadze and Podolsky cases, and the relationship between Pukach, Fere, Dagaev and other senior MIA officials.⁵¹

6.b. Changes of personnel

On 14 October 2005, around the time the “Plan of Further Investigative Activity” was drafted, general prosecutor Piskun was sacked by president Yushchenko.⁵² (Piskun had been sacked in October 2003, soon after ordering the arrest of Pukach, and returned to office during the Orange revolution.)

Soon after Piskun’s second departure, deputy general prosecutor Viktor Shokin was replaced as head of supervision of government agencies by Viktor Pshonka; this was interpreted as an effective demotion for Shokin, although he retained the title of deputy prosecutor general. Shokin later said that at this point he was removed from being in charge of the Gongadze investigation.⁵³

In September 2006, Renat Kuzmin, who had risen through the ranks of the prosecutor’s offices in Donetsk in eastern Ukraine, was appointed deputy prosecutor general, and was put in charge of the Gongadze investigation. In November 2006, he spoke publicly about the case, suggesting that the GPO was studying “new versions” of the crime.⁵⁴ In February 2007, Shokin resigned his post.⁵⁵

In April 2007, Medvedko was sacked as general prosecutor and replaced by Piskun, who returned to the post for a third time.⁵⁶ Piskun’s return resulted temporarily in a weakening of the position of Kuzmin and a strengthening of Holomsha: on 17 May, Piskun removed Kuzmin from being in charge of the Gongadze case and three other important cases (those of the poisoning of Yushchenko, the death of nationalist party leader Vyacheslav Chornovil in 1999 and of alleged financial improprieties by Oleksiy Ivchenko, head of the national oil and gas company), and transferred these to Holomsha.⁵⁷

Many of these changes were correlated with political changes. President Yushchenko replaced Piskun with Medvedko in October 2005, shortly after the dismissal of the government headed by Yulia Tymoshenko, at a time when the “Orange coalition” collapsed and the power of the eastern industrial lobby and the Party of Regions increased; the Party of Regions leader

⁵¹ Interview with Mykola Holomsha, 3 July 2007.

⁵² *Zerkalo Nedeli*, Kiev, 5 November 2005, and other press reports.

⁵³ *Segodnia*, Kiev, 18 October 2005 and 24 February 2007 (BBC Monitoring).

⁵⁴ *Kommersant-Ukrainy*, 24 November 2006.

⁵⁵ *Segodnia*, Kiev, 24 February 2007.

⁵⁶ *Ukrainska Pravda*, Obkom, Interfax, 27 April 2007 (BBC Monitoring).

⁵⁷ *Segodnia*, Kiev, 17 May 2007 (BBC Monitoring).

Viktor Yanukovich was appointed prime minister in August 2006; the president replaced Medvedko with Piskun again in April 2007, at a time when friction was mounting between Yushchenko and Yanukovich.

For the Gongadze investigation, the most important change in personnel was the removal from the investigation in late 2006 of the investigators Roman Shubin, Yuri Hryshchenko and Yuri Stoliarchuk, who had pushed the investigation forward most effectively. It is worth quoting an interview with Valentyna Telychenko, lawyer for Myroslava Gongadze, who has had continuous contact with the GPO during the investigation of the case.

Question. You say that the GPO recently made another change in the investigative team. Wasn't that motivated by a desire to bring a "fresh view", since the case has already been under investigation for several years?

Telychenko. I have the impression that the investigative group is changed only when it gets rather too close to certain people, so that the new investigators can start checking versions that their predecessors have long since discounted. With only one difference: previously, the investigators were closing in on those who carried out the crime, but this time they were getting closer to the organisers and instigators. I can not get it out of my head that the new authorities [i.e. those who came to power in the Orange revolution] are doing this deliberately.

It is very hard to take seriously the assertion by deputy general prosecutor Renat Kuzmin that "the decision was taken so that someone with a fresh eye, new ideas and a new approach can take the case, and swiftly get to grips with it". If the investigative group really needed strengthening, they could simply have added to it someone with "new ideas".

Question. And why have they changed the investigative group just now? It's a long time since there was any indication of movement forward by the GPO.

Telychenko. In my opinion, the dismissal of the principal investigators is evidence of the intention to obstruct any consistent information-gathering, because even a very talented investigator would need time to acquaint himself with a new case – and in this one there are 100 volumes [of evidence] – and to get to know the large number of witnesses. And right now time is of the essence. It's getting more difficult to get to the truth with every day that goes by. [...] With every passing day, witnesses' memories will fade and important material evidence will be lost. For example, the period during which official archives have compulsorily to retain relevant documents, which could stand as proof of particular facts, is running out.⁵⁸

Asked which group of investigators had worked most effectively, Telychenko said that, judging by the documentation that had come to court, it was Shubin, Stoliarchuk and Hryshchenko – "and those are just the ones who have several times been taken off the case".

In view of Telychenko's remarks, this inquiry believes that the international journalistic community and civil society should seek an explanation for the changes of personnel that have negatively impacted on the investigation.

⁵⁸ "Osen' 2006. Ocherednye pokhorony dela Gongadze?", *Ukrainska Pravda*, 1 December 2006.

6.c. Failure of the search for Pukach

In our first report, we detailed how general Oleksiy Pukach, who had been arrested for destroying documents relevant to the Gongadze case, had been released from prison. In our second report, we detailed the way in which Pukach, who by 2005 had become publicly acknowledged as the chief suspect in the murder, had evaded arrest, and how in June 2005 information was leaked about measures being taken to detain Pukach in Israel, thus allowing him to escape. We asked what was being done to investigate (i) the leakage of information in June 2005 that had allowed him to escape, and (ii) the background to his release, and the related dismissal of Piskun as prosecutor, in 2003.⁵⁹

In September and October 2005, newspaper articles were published suggesting variously that Andriy Kozhemyakin, the SBU officer who travelled to Israel to arrest Pukach, and Viktor Shokin, then deputy general prosecutor, were partly responsible for the failure of the arrest.⁶⁰ In our view the rehearsing of these mutual recriminations in public results from (i) the failure of the GPO energetically to investigate the actions that allowed Pukach to evade justice in both 2003 and 2005, which clearly amount to aiding and abetting criminal activity, and (ii) the unwillingness of Ukraine's political leadership to compel the law enforcement agencies to investigate the Gongadze case with the necessary vigour.

Since the failure of the law enforcement agencies to arrest Pukach in June 2005, little information has come into the public domain about the search for him. According to the then general prosecutor Medvedko, in March 2006 the Israeli prosecutor general issued a warrant to arrest Pukach on suspicion of murdering Gongadze if he appeared in Israel.⁶¹

In June 2006, the SBU web site reported that the SBU had seized a foreign passport issued in Pukach's name, when conducting searches related to illegal "money conversion" operations, and contraband imports and sales of precious stones. A journalistic investigation by *Ukrainska Pravda* showed that the raid reported by the SBU had been at a premises owned by Valentyn Brodovskyy, a minor figure in Yulia Tymoshenko's political bloc, who stated that he had been interviewed in the money-laundering case only as a witness. *Ukrainska Pravda* concluded in editorial comment that the SBU's report could be a result of either (i) a "mix of truth and lies, and an SBU operation to discredit Tymoshenko", or (ii) it could be true.⁶²

None of this apparently moved the search for Pukach forward. In September 2006, the then general prosecutor Medvedko said that information had been received that Pukach may have tried to travel to India.⁶³

6.d. Closure of the investigation in to Kravchenko's death

The death of Yuri Kravchenko, former interior minister, in March 2005, deprived the investigation into the instigation and organisation of the Gongadze murder of a key witness. A voice that is apparently Kravchenko's is heard on the "Melnichenko tapes" discussing with

⁵⁹ *The Gongadze Inquiry. Preliminary Report*, p. 27. *The Gongadze Inquiry. Report no. 2.*, pp. 6-8.

⁶⁰ *Segodnia*, 19 and 25 September and 18 October 2005 (BBC Monitoring).

⁶¹ TV 5 Kanal, Kiev, in Ukrainian 0910 GMT 8 September 2006 (BBC Monitoring).

⁶² *Ukrainska Pravda*, 16 and 20 June 2006.

⁶³ TV 5 Kanal, Kiev 0910 GMT 8 September 2006 (BBC Monitoring).

former president Kuchma the need to harm Gongadze. The attack on Gongadze was subsequently carried out by officers answerable to Kravchenko. In March 2005, after general prosecutor Piskun had called Kravchenko for questioning in an extravagantly public manner, and on the day that the questioning was due to take place, Kravchenko's body was found with two bullet wounds in the head at his house.

Although his death was apparently by suicide, there were suspicions about it, due to the unusual nature of his injuries (two gunshot wounds to the head). Investigators originally judged that Kravchenko's death was a suicide, but in 2006 the Pechersky district court ruled that the case should be reopened. On 27 February 2007, the prosecutor's office once again concluded that Kravchenko's death was by suicide, and once again closed the case.⁶⁴

Explaining the decision in a television interview, Andriy Ralsky, the investigator for especially important cases at the GPO, stated that an expert commission made up of senior health ministry specialists on facial surgery, toxicology and other branches of medicine concluded that Kravchenko could have shot himself in the head twice. Ralsky said that there have been numerous cases where people have shot themselves in the head even four or five times. He said:

It should be taken into account that the first shot in the chin was not life threatening: the bullet did not touch the brain or main arteries, damaging only the teeth and soft tissues. The special expert examination investigated the possibility of a repeat suicide attempt taking into account the nature of the head wound and the general's individual physical characteristics.

Ralsky said that investigators were unable to confirm suggestions that Kravchenko was under surveillance in the days before his death. He also dismissed media reports that two of Kravchenko's fingers were broken, and that there were other injuries to Kravchenko's body.⁶⁵

These conclusions have been disputed by Mykola Polishchuk, a former health minister and Ukraine's foremost expert in firearms injuries. In an interview with *Zerkalo Nedeli* newspaper he stated:

Polishchuk. Going by the nature of the injuries described in the documents, it is quite clear that this was a violent death and the injuries could not have been inflicted by the person's own hand. The possibility that this could have been suicide has to be ruled out. [...] The first firearms wound was at close range from a weapon pressed against the body. The direction of the wound is uncharacteristic of a wound inflicted by the person himself, because it travels from bottom to top and from inside to outside. It is extremely difficult to believe that a person would be capable of injuring himself in this way: it would be too awkward. As a result of this firearms wound he sustained several fractures of the lower jaw, seven teeth were broken (traumatic amputation), a fracture of the upper jaw and nasal cartilages and damage to the tongue. Thus, he had to lose consciousness as a result of such a trauma.

Question. Do you admit there is a hypothetical possibility, albeit one in a thousand, that with such an injury a person could not lose consciousness?

⁶⁴ TV 5 Kanal, Kiev, 27 February 2007 (BBC Monitoring).

⁶⁵ *Fakty i Kommentarii*, Kiev, 6 March 2007 (BBC Monitoring).

Polishchuk. I don't think that is possible, however strong-willed he might be. After such an injury he could only have grown weak and feeble and he would have to have let a pistol fall from his hands. Nobody could have held a weapon in his hands after such an injury. He was sitting not in an armchair, in which he could have propped himself up on his elbows, but on a high chair. With his height (over 190 cm) and weight, it is also ruled out that after such a shot he would not have fallen from the chair. Unfortunately, the question of whether he could have lost consciousness was not put to the experts.

The second injury – to the temple – was the fatal one. It was delivered at close range, but it left no contact imprint. That would have been characteristic of a suicide, and especially bearing in mind the previous injury, if he had shot himself he would have had to press the barrel against his temple.⁶⁶

Kravchenko's successor as internal affairs minister, Yuri Lutsenko, has publicly questioned whether Kravchenko committed suicide, stating that "the investigation should have carried out more thorough tests".⁶⁷

The Ukrainian criminal code includes an article on driving a person to suicide. Given the confident assertion of former general prosecutor Medvedko that Kravchenko had committed suicide, we asked deputy prosecutor general Holomsha whether any case would be opened under this paragraph. He said that prosecutors are "studying that issue".⁶⁸

6.e. The lack of accountability for previous failures

We have raised in our second reports our concern that, even after the Orange revolution, no measures had been taken to investigate the "broad collusion within the Ukrainian establishment [in 2000-04] to obstruct and divert the investigation", and the extent to which such collusion had been the cause of the "catalogue of elementary failures, and breaches of procedure and law, in the investigation into the Gongadze case by the GPO".⁶⁹ We argued that an investigation of these issues was relevant to the investigation of the murder itself. In the two years since that report was drafted, there has been no indication whatever that any progress has been made along these lines.

In November 2006, Vasily Silchenko, deputy head of parliamentary commission on the Gongadze case, noted that he was "very surprised" by the declaration to the commission in late 2006 by former deputy general prosecutor Shokin that "everything was done correctly on the Gongadze case, but we started again from the beginning". Silchenko wrote:

How is that? Did the previous investigators do nothing? If so, they must answer for that! Should they not be punished? Shokin also asserted, that the Melnichenko tapes are not essential for the Gongadze case, and that the general prosecutor will get to the truth

⁶⁶ *Zerkalo Nedeli*, Kiev, 29 July 2006.

⁶⁷ One Plus One TV, Kiev, in Ukrainian 1630 GMT 20 July 2006 (BBC Monitoring).

⁶⁸ Interview with Mykola Holomsha, Kiev, 3 July 2007.

⁶⁹ *The Gongadze Inquiry. Report no. 2.*, p. 13.

even without the tapes. In which case, the question arises: what is holding up the completion of the case?⁷⁰

We remain of the view that a proper accounting of previous failures is an essential part of the successful investigation of the murder.

6.f. Assessment of the GPO investigation by the parliamentary commission

In December 2006, Vladimir Moisyk reported to parliament on behalf of the parliamentary commission on the Gongadze case, and summed up the commission's concerns about the progress of the investigation. He made the following points, to which we draw attention:

During this period [since Gongadze's murder], there have been five changes of general prosecutor in Ukraine, and of course all of them were to some degree involved in the investigation. There were also a number of changes in the investigation group, and the officers in charge of it, which in the commission's view served no purpose. You can imagine a situation where there are more than 150 volumes of documents for the case, and just to familiarise oneself with them is physically a major problem.

[...] In the general prosecutor's opinion, one of the reasons that the investigation has gone so slowly is the behaviour of Nikolai Melnichenko. The prosecutors believe that he does not want to cooperate with them, give evidence or hand over the original recordings that relate to Gongadze's murder.

[...] The slow pace of the investigation also made possible the release from custody of general Pukach, who could have given evidence both about the actual murder and about those who ordered it. The need to question responsible officials then, when there was a possibility to do so, was ignored. Yuri Kravchenko died, Ihor Honcharov died, Eduard Fere is critically ill and Pukach is being sought.⁷¹

Moisyk concluded that the prerequisites for the case to move forward are for the trial of those accused of involvement in the murder to be completed; for a pre-trial investigation to be completed of responsible officials whose actions or inaction slowed down the investigation; for it to be proved to 100% certainty that the body recovered at Tarashcha is Gongadze's;⁷² and for Melnichenko to hand over the recordings, and for these to be checked in accordance with Ukrainian law.

While this inquiry differs from the parliamentary commission on the issue of the "Tarashcha corpse", we concur with its other conclusions.

Finally we draw attention to the opinion of Vasily Silchenko, deputy chairman of the parliamentary commission, who felt able to reinforce Moisyk's conclusions more forcefully outside the formalities of parliament, in an article that called for a change to the law on the protection of witnesses:

⁷⁰ Ukrainska Pravda, 9 November 2006.

⁷¹ Stenogramme of the session of the Verkhovnaia Rada, 20 December 2006.

⁷² Here we consider the parliamentary commission to be in error. See section 5.d above, page 20.

The strange and unexpected death of the nurse from the Tarashcha morgue, the early death of Dagaev, the coma that has struck Fere, the “suicide” of Kravchenko ... And more: the death in a custody cell of Goncharhov, the grenade attack on Nesterov, a member of the “werewolves” gang, who was being guarded by the militia [...], the disappearance of Pukach even after he was arrested, the “small calibre bullet” in the skull of Irina Radzievskaya [an important witness in the case of the death of Kravchenko]. ... And these were all important witnesses, who had things to say about the Gongadze case! And they all in one way or another were in the field of vision of the law enforcement agencies or special forces. How many more “coincidental” deaths must there be in this chain, until it becomes impossible to refute the obvious logic?⁷³

7. Obstruction of the investigation at the political level, and conclusions

7.a. Political support for officials responsible for failures of the investigation

We have catalogued in this and earlier reports the negligence and deliberate obstruction of the investigation of Gongadze’s death, in particular by the GPO under general prosecutors Potebenko and Vasiliev, but also by officials of the MIA and a range of other state institutions. We have set out above in section 6.e, page 27, the failure of the GPO and other authorities to incorporate the issue of past lapses as a crucial element of the investigation itself.

At political level, too, despite the regular statements by president Yushchenko and other senior state officials about the importance of the Gongadze case – and, for example, the public promise by Petr Poroshenko when secretary of the National Security Council that “there are specific people who will answer for this!”⁷⁴ – there has been no attempt to investigate instances of negligence and deliberate obstruction.

This year, president Yushchenko took the political obstruction of the Gongadze murder investigation to its logical conclusion, by awarding a high state honour to one of those who carries the most personal responsibility for the failure of the investigation. On February 17, 2007, Yushchenko signed a decree awarding the Order of Prince Yaroslav the Wise to Mykhaylo Potebenko, general prosecutor from 1998 to 2002 and currently adviser to the GPO. It is to this award that the title of this report refers.

As explained in our previous reports, it was Potebenko who failed to respond to Georgy Gongadze’s letter of 11 July 2000, appealing for protection from those who were following him. In this respect, Potebenko by his negligence paved the way for Gongadze to be kidnapped and killed – a failure that the European Court in November 2005 adjudged to be a breach of human rights.

After Gongadze went missing, the GPO under Potebenko continued to pursue avenues of investigation that were false; and it issued false and misleading statements about the case apparently designed to deflect attention from the relevance to it of the Melnichenko tapes. Our first report concluded that the GPO under Potebenko had perpetrated a “deliberate

⁷³ Ukrainska Pravda, 9 November 2006.

⁷⁴ Ukrainska Pravda, 29 June 2005.

obstruction” of the investigation.⁷⁵ In the light of subsequent events it appears that it would have been more appropriate to launch a criminal investigation into the sabotage of the inquiry – instead of which Potebenko was awarded a medal.

In March 2007, a group of ten NGOs and journalists’ trades unions, headed by the International Federation of Journalists, protested to Yushchenko about the award to Potebenko, stating that: “the fact of such an award, together with failure to carry out a proper investigation as to the attempt to manipulate the case of Gongadze, is an outrage to those who are working to consolidate democracy and a law-based state in Ukraine”.⁷⁶ They received no reply.

Other officials who played key roles in the failure of the investigation may also yet receive state awards. For example judge Maria Prindiuk, who in April 2004 had closed the criminal case against general Pukach for destroying documents related to the investigation of the Gongadze case – and thereby made it easier for general Pukach to evade justice – was in July 2007 proposed for a state honour, the title of “Lawyer of Honour of Ukraine”, by the collegium of the Kiev Appeal Court. Of course the legislative and executive branches of government had no role in this decision. Nevertheless, in our opinion it would be more fitting if an investigation was undertaken that would compel judge Prindiuk to explain her decision on Pukach.⁷⁷

In our first report, we catalogued the GPO’s failure, under successive general prosecutors, to conduct an inquiry into the Gongadze case that met even basic standards. In our second report, published shortly after the Orange revolution, we listed examples of the failure of the GPO’s work, investigation of which might itself shed light on the collusion of state officials in the intimidation of opponents under the Kuchma regime.⁷⁸

Under Yushchenko, not only have these issues not been pursued – despite the readiness to do so declared by investigator Shubin and others in October 2005 – but Potebenko, the state official most directly culpable in sabotaging the investigation of Gongadze’s murder, has been awarded a state honour.

7.b. Ukraine’s reaction to the European Court judgement in the Gongadze case

Further evidence that the Ukrainian political authorities are not only failing to push the Gongadze investigation forward, but are effectively obstructing it, comes from the attitude of the Cabinet of Ministers and the ministry of justice to a verdict passed against Ukraine in the Gongadze case on 8 November 2005 by the European Court of Human Rights.

⁷⁵ *The Gongadze Inquiry: Preliminary report*, especially pp. 10-13, 15-17.

⁷⁶ Press release at <<http://www.ifex.org/en/content/view/full/82034/>> (accessed 23 July 2007). The protest was signed by the International Federation of Journalists, the Institute of Mass Information (Kyiv), the Kharkiv Human Right Group, the Independent Media Trade Union of Ukraine, Internews-Ukraine, the Media Law Institute, the Center of Social Media, the Laboratory of Legislative Initiatives, the National Union of Journalists of the United Kingdom and Ireland and the Gongadze Foundation.

⁷⁷ *The Gongadze Inquiry: Preliminary Report*, p. 27.

⁷⁸ *The Gongadze Inquiry: Preliminary Report*, especially pp. 10-16, 30-36 and 49-51; *The Gongadze Inquiry. Report no. 2*, especially p. 13.

The court unanimously established that Article 2 of the European Convention on Human Rights was violated in the Gongadze case, as the Ukrainian authorities were unable to protect the life of Georgy Gongadze, and failed to carry out an investigation into his death. The court expressed “serious doubts” about the authorities’ commitment to investigating the case thoroughly, and ruled that the authorities had been “more preoccupied with proving the lack of involvement of high-level state officials than by discovering the truth” about Gongadze’s disappearance and death. The jury also said that Article 3 of the convention (forbidding inhumane treatment) and Article 13 (the right for efficient legal protection) were also violated. It ordered Ukraine to pay 100,000 euros in compensation to Myroslava Gongadze.⁷⁹

Prior to this judgement, in the summer of 2005, the Ukrainian Cabinet of Ministers had offered Myroslava Gongadze an out-of-court settlement of the case being heard in the European Court, and said it was willing voluntarily to pay her 100,000 euros in compensation for financial and moral damages, and all expenses incurred. However with such an out-of-court settlement in place, Myroslava Gongadze would have lost the right to complain against Ukraine. The only possible purpose of this offer – which was turned down by Myroslava Gongadze – was to try to buy her silence over the breaches of human rights implicit in the case, to avoid Ukraine being embarrassed by a negative judgement.⁸⁰

Following this judgement in the European Court, the Committee of Ministers of the Council of Europe stated that it would “continue to ensure [...] that Ukraine adopts all necessary measures to comply with the judgements of the European Court of Human Rights”, that it was supervising changes in Ukraine necessary to “prevent new violations” of the European Convention on Human Rights, and that it “counts on the full co-operation of the Ukrainian authorities in this respect”.⁸¹ But in October 2006, the justice ministry wrote to Myroslava Gongadze, communicating a decision confirming the payment of 100,000 euros in compensation, but also saying that the execution of all the tasks presented to the Ukrainian government as a result of the European Court ruling had been closed.⁸² In other words, there was no response to the European Court’s criticism of the authorities, or to the proposals for change made by the Council of Europe.

7.c conclusions

The GPO’s investigation of the Gongadze murder over the last seven years falls approximately into three phases.

In the first phase (2000-04, up until the Orange revolution), the GPO proceeded in a grossly negligent manner, starting with the catalogue of deliberately false and misleading public

⁷⁹ European Court of Human Rights, Second Section: Case of Gongadze v. Ukraine (application no. 34056/02): Judgment (Strasbourg, 8 November 2005), especially pp. 23 and 25. Available on the European Court of Human Rights web site, <<http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=11345&sessionId=1474411&skin=hudoc-en&attachment=true>>.

⁸⁰ Interfax-Ukraine news agency, Kiev, 1521 GMT 8 November 2005 (BBC Monitoring).

⁸¹ Parliamentary Assembly of the Council of Europe, doc. 10785, 16 January 2006, Honouring of obligations and commitments by Ukraine: reply from the Committee of Ministers. Available on the PACE web site.

⁸² “Postanova no. 70/13 pro zakinchennia vikonavchogo provadzhennia”, issued by the department for executing state orders of the ministry of justice, 24 October 2006.

statements, continuing with successive prosecutors' refusal even to consider the "Melnichenko tapes" and culminating with the freeing of general Pukach from arrest.

In the second phase (in the months after the Orange revolution, from December 2004 to the autumn of 2005) the political changes in Ukraine gave an impetus to the investigation. While the intention to deal with the instigators and organisers did not often go beyond public declarations, and the death of general Kravchenko and other events set back that aim, there was one significant breakthrough: the three MIA officers who had allegedly participated in the attack on Gongadze were arrested and put on trial.

In the third phase of the investigation, from the autumn of 2005, there has been one significant step forward – the Podolsky case was brought to court, and a connection established between it and the Gongadze case – but in other respects, the investigation of the instigators and organisers of the crime has foundered, changes in personnel at the GPO have hindered the investigation, and crucial time has been lost. Finally, in this third phase, the position of Ukraine's political establishment has changed: while the statements about the investigation have been supportive, as they were in the second stage, in practice it has hardened its stance against the investigation. Thus the award to Potebenko and the refusal to take up the points made by the European court.

Consequently, during the last two years, many of the Ukrainian politicians, lawyers and journalists who have monitored the Gongadze inquiry most carefully from the start believe that the principal obstacle to the case being solved is political. The emphasis has been on the president's failure to act more decisively.

When Vladimir Moisyk reported to parliament on behalf of the parliamentary commission on the Gongadze case in December last year, the parliamentary deputy Nikolai Onishchuk asked Moisyk:

What do you see as the basic – I emphasise, the basic – reason that the investigation of this criminal case moves forward so complacently, and has not been completed?

Moisyk: All five general prosecutors that were involved in investigating this case referred to the lack of political will for it to be completed. But if we talk about political will, we must talk about those who express that will. And so the answer is clear to you, I think.⁸³

Valentyna Telychenko, Myroslava Gongadze's lawyer, asked whether she believed that those responsible for Georgy's death would ever be punished, answered:

The Gongadze case is not just a case of three militiamen who abused their official powers, who killed a person who was previously unknown to them. The murder of the founder of *Ukrainska Pravda* was political: it's a long time since anyone had doubts on that score. And that's the reason the case is so hard to investigate, that's why it was important for parliament to monitor the investigation, that's why for the investigation to be effective, the political will of the senior leadership of the state is essential – including the holder of the highest office, the president of Ukraine.

⁸³ Stenogramme of the session of the Verkhovnaia Rada, 20 December 2006.

You can change as many general prosecutors as you like, but the crime against Gongadze will not be solved until the president takes care to ensure that the investigation is undertaken by experienced professionals, and that politicians can neither block its progress nor influence the courts. Unfortunately, the case will not be pursued to the end if the president maintains his current passive stance.

Given the failure of the presidency and other political institutions to support the type of investigation to which Telychenko refers, and given the political support given to those such as Potebencko who obstructed the investigation, it is logical to conclude that while strong verbal support is being given to solving the case, in practice it is being obstructed at the political level.

8. Recommendations

This inquiry calls on the general prosecutor:

- (i) To make public – without exceeding the limits on publicity required by any criminal investigation – the priorities being adopted in the investigation of the instigators and organisers of the murder of Gongadze; for those priorities to deal with the murder in the context of the system of intimidation developed in the MIA;
- (ii) To open criminal cases against those who obstructed the investigation of the Gongadze case at earlier stages;
- (iii) To open criminal cases against those who destroyed documents related to the Gongadze case, and to take measures to preserve relevant documents whose period of compulsory retention is coming to an end;
- (iv) To clarify publicly what measures are being taken to bring major Melnichenko to court as a witness, and to bring to court the original recordings and apparatus that made them; and if necessary to open a criminal case to achieve this end;
- (v) To clarify publicly, with a view to answering concerns expressed in parliament and in civil society, his policy on the staffing of the Gongadze investigation.

We call on the president and government of Ukraine:

- (i) To urge the general prosecutor to pursue more vigorously the investigation into the instigators and organisers of the murder, and give him the guarantees necessary to do so;
- (ii) To urge the general prosecutor to pursue more vigorously the investigation into all those, up to ministerial level, who obstructed the investigation of the case, urge him to open the relevant criminal cases, and give him the guarantees necessary to do so;
- (iii) To direct the minister of internal affairs to take measures to encourage employees to divulge instances of criminal activity and abuse of power, that are relevant to the Gongadze and Podolsky cases and the system of intimidation of which they were part;

(iv) To consider urgently the issue of protection of witnesses raised by members of the parliamentary commission on the Gongadze case;

(v) To strip former prosecutor Mykhaylo Potebencko of the state honour awarded to him, and to ask the general prosecutor to investigate his actions with respect to the Gongadze case, with a view to opening a criminal case;

(vi) To ask the general prosecutor to investigate the actions of former prosecutor Gennady Vasiliev with respect to the Gongadze case, with a view to opening a criminal case.

We recommend to the Council of Europe:

(i) To express its concern to the government of Ukraine over the obstructions faced by the investigation both within the general prosecutor's office and at political level;

(ii) To continue to monitor the investigation.

We recommend to journalists and civil society, both inside and outside Ukraine:

(i) To continue to report on and monitor the investigation;

(ii) To put pressure on the Ukrainian government to stop obstructing the investigation.

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This report was drafted by Simon Pirani.

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