

The Gongadze Inquiry

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

Supported by:

- The International Federation of Journalists
- The Institute of Mass Information
- The National Union of Journalists of the UK and Ireland
- The Gongadze Foundation

Report no. 2: **The instigators are** **getting away**

Introduction

This second report on the case of Gyorgy Gongadze, commissioned by the International Federation of Journalists, the Institute of Mass Information (Kyiv), the Gongadze Foundation and the National Union of Journalists of the UK and Ireland, updates our first report published in January 2005.¹ It reviews developments in the investigation of the case between January and September 2005. Our main conclusion, set out in the last section, is that the investigation of the process by which Gongadze's murder was ordered has suffered serious setbacks. Progress has been made in bringing to trial interior ministry officers who allegedly participated in Gongadze's kidnap, and were present when he was murdered. But the investigation's failures with respect to the links between these direct perpetrators and those who ordered the murder are so blatant and numerous that they can most likely be explained as the result of continued political interference and resistance. Senior political figures have stated publicly that the instigators of Gongadze's murder are known to investigators, but no details have been made public; this has left the impression that these statements were part of the "public relations management" of the investigation, which was meanwhile directing its focus away from the instigators.

Our most serious concerns relate to the case of General Olexiy Pukach, who was named by the general prosecutor's office as the ringleader of the gang that killed Gongadze. It appears that, in June this year, a leak of information from the general prosecutor's office (GPO) enabled Pukach to evade detention by the security forces in Israel; this leak, which apparently allowed the escape of the person linking the direct perpetrators of the murder with those who ordered it, does not appear to have been investigated; the circumstances of Pukach's original release from prison in November 2003, and the possible criminal liability of those responsible, appear not to have been re-examined. Negligence by the GPO and other agencies with respect to the death in March this year of another person possibly linking the perpetrators to those who ordered the murder, former interior minister Yuri Kravchenko, also deserves consideration. In the context of these shortcomings, the failure of the general prosecutor and other authorities to resolve the problems related to the presentation of the "Melnichenko tapes" as evidence in court requires scrutiny.

The likelihood that continued political interference and pressure has played a part in these failures is underlined by the absence of any publicly-reported scrutiny of the conduct of the case by the general prosecutor's office between 2000 and 2004, which would no doubt throw light on the forms of political interference at that time. A further sign of political interference is parliament's repeated decision not to hear the report of its own commission on the case.

On 8 September, as work on this report was being completed, president Yushchenko dismissed the government led by Iuliia Tymoshenko, bringing out into the open political tensions that have been growing in the months since the "Orange revolution". The issue of political interference in the Gongadze case was raised. Mykola Tomenko, having resigned as deputy prime minister, accused Petr Poroshenko, leader of the Our Ukraine group in parliament; Mykola Martynenko, senior aide to Yushchenko; Oleksandr Tretiakov; and Volodymyr Lytvyn, parliamentary speaker, of trying to hinder the investigation and of "doing everything they could" to hinder discussion of the Gongadze case in parliament and in the media.² Lytvyn dismissed Tomenko's statement as "nonsense". Myroslava Gongadze, widow of Gyorgy, said at a news conference that Lytvyn should explain what role he had played in the case, and said that she was "alarmed" by Yushchenko's position on the issue and the "lack of political will" to drive forward the investigation.³

¹ The Gongadze Inquiry: Preliminary Report, available at <http://www.ifj.org/default.asp?index=2917&Language=EN>

² One Plus One TV, 0700 gmt 8 September 2005, relayed by BBC Monitoring.

³ UNIAN news agency, 1318 gmt 8 September 2005 (Lytvyn) and TV 5 Kanal, 1400 gmt 9 September. Relayed by BBC Monitoring.

Scope of this report

Our first report examined the reasons for the failure of the investigation into the Gongadze case in the four years after Gongadze's disappearance on 16 September 2000. Our inquiry, according to its own terms of reference, did not "undertake any forensic investigation of the circumstances of the murder. Rather it [sought to] examine whether the forensic investigation has been properly undertaken and, if not, why not." We included in the subject matter of our inquiry "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."⁴

Our first report, published a few weeks after the presidential elections and the "Orange revolution", concluded that the Gongadze case was a "litmus test" for democracy in Ukraine and had important implications for civil society internationally. We argued that the investigating authorities had "deliberately obstructed and confounded the investigation over a long period of time", and that a stream of false and/or contradictory public statements about the case pointed to "broader political collusion within the Ukrainian establishment to obstruct and divert the investigation". We welcomed the readiness of Sviatoslav Piskun, after his reappointment as general prosecutor in December 2004, to acknowledge the connection between the surveillance of Gongadze by interior ministry officers and his murder. But we noted Piskun's reluctance to bring the "Melnichenko tapes" into the investigation; we submitted that "this issue must be investigated together with that of senior politicians' possible involvement in the affair" and that "any attempt to break the link between these two parts of the investigation would be a step backwards." This present report concludes that, in many respects, that link has been broken.

This present report has, due to the limited resources available, been compiled solely on the basis of (i) publicly-available information on the progress of the case (including a wide selection of reports in the Ukrainian media, monitored directly by ourselves, and by BBC Monitoring), and (ii) records kept by the Institute of Mass Information, one of the organisations sponsoring this inquiry.

1. Preparation of trial of alleged participants in kidnapping

On 8 August the General Prosecutor's Office (GPO) announced that a criminal case is complete against Valeriy Kostenko, Mykola Protasov and Oleksandr Popovych, as part of the case of the premeditated murder of Gongadze.⁵ It is now expected that they will be brought to court. A detailed account of how the murder was committed, based on statements by the accused and by witnesses, had previously been given in interviews by Viktor Shokin, deputy prosecutor general. According to Shokin, Gongadze was kidnapped by a group of serving internal affairs ministry officers (i.e. policemen), led by Pukach and including the three mentioned above. Gongadze was taken to the Bilotserkivskyy district, where he was beaten and then strangled with his own belt by Pukach. Pukach and a second, different, group of people, subsequently moved Gongadze's body to Tarashcha, where it was discovered.⁶

⁴ "Scope and aims of the inquiry", agreed at a meeting of sponsoring organisations in Brussels on 5 November 2003.

⁵ The case is No. 60-1241. *Ukrainskaia Pravda*, 8 August 2005; Interfax-Ukraine news agency, Kiev, 1530 gmt 8 August 2005 (relayed by BBC Monitoring)

⁶ *Stolichnyye Novosti*, Kiev, 22 June 2005 (BBC Monitoring); *Fakty i Kommentarii*, Kiev, 5 Jul 2005 (BBC Monitoring)

The GPO has also stated that, while the three accused are brought to court, its investigations in to other aspects of the case will continue, including the search for Pukach and the “ascertaining of the organisers of the murder and those that ordered it”. General prosecutor Piskun has stated that Pukach “can be sentenced in his absence, if he is not found, as his complicity in the crime has been proved.”⁷ However Myroslava Gongadze, Gyorgy’s widow, and Lesya Gongadze, Gyorgy’s mother, have stated that it is too early to bring the case to court, given that the main suspect is at large and that no progress has been made in the investigation of those who ordered the murder. Myroslava Gongadze stated in a television interview: “When I was in Kiev [in April] prosecutor general Piskun agreed with me that this case should not be submitted to court until both the direct killers and those who ordered the murder are clearly established. Now [...] he is moving away from this stance.”⁸

At a press conference in Kiev on 9 September, Myroslava Gongadze raised some issues arising from the court papers on the case of Kostenko, Protasov and Popovych. The GPO intends to try the defendants under a paragraph of Article 93 of the Ukrainian criminal code covering premeditated murder, and a paragraph of Article 166 on breach of public duty. Myroslava Gongadze said: “I am concerned that the case is not being brought under the paragraph of Article 93 covering murder under orders, rather than the paragraph on premeditated murder. This again leads the case away from those who ordered and organised the murder. I believe the general prosecutor is again trying to manipulate public opinion. At the conclusion of this trial, people will assume that the case has been solved, when in fact the most important part of it, regarding those who ordered the murder, has not begun.”

Clearly the Ukrainian government has political reasons for bringing the case to court early. For example, Petr Poroshenko, secretary of the National Security Council and one of president Yushchenko’s most senior advisers, stated in an interview that while the issue of past failures of the investigation should be pursued (see section 6 below), it was essential to bring a case into court soon, in order that the president could be seen to be keeping his word. Poroshenko said: “The president has been informed – and I was present then – that there are confessions of the direct killers. And that is enough, I’m convinced, to hand the case to the court. I’m convinced that they are the killers.” Asked whether a trial of the immediate perpetrators could have the effect of postponing the case of those who ordered the murder into the distant future, Poroshenko denied that and said: “The killers have been found and established! To wait for Pukach, Kravchenko and the higher people who gave the orders, and I don’t rule out the possibility that they exist – but society has to know that the killers of Gongadze are in the dock and convicted by the court ... And the killing of journalists is a matter that will bring accountability in Ukraine.”⁹

Given the complex of circumstances detailed below, and the GPO’s failure to make progress on the issue of those who ordered the crime, we draw to the attention of the Council of Europe legal affairs commission in particular, and civil society in general, the danger that the trial of the immediate perpetrators may be used to postpone indefinitely the search for those who ordered the murder.

⁷ Ukrainskaia Pravda, 16 August; TV 5 Kanal, Kiev, in Ukrainian 1740 gmt 1 Aug 05 (relayed by BBC Monitoring)

⁸ TV 5 Kanal, Kiev, in Ukrainian 1700 gmt 2 August 2005 (relayed by BBC Monitoring)

⁹ Ukrainskaia Pravda website, 29 June 2005

2. Lack of progress of investigation into those who ordered the murder

2.(a) General issues

The GPO has concluded that Gongadze was killed by a group of internal affairs ministry officials headed by Pukach. It is generally accepted – by the GPO and other investigating bodies among others, to our best knowledge – that this group was part of a larger team undertaking surveillance of Gongadze up to the time of his death, and indeed of a more widespread system of surveillance and intimidation organised within the interior ministry. (A considerable amount of information, and speculation, has long been in the public domain on this system, and of the connection between it and the case of the “werewolves”, a group of murderers comprising mainly former officers, which was sent to court by the GPO in January this year.) There are therefore a number of obvious starting-points for an investigation into those who ordered the murder of Gongadze. Progress on each one of these has been negligible, judging by publicly available information, as follows:

-- General Pukach himself is missing, despite investigating agencies having been aware of his whereabouts in June. See (b) below.

-- The former minister of internal affairs, Yuri Kravchenko, died in mysterious circumstances in March, and alleged irregularities in the GPO’s treatment of his case have not been scrutinised. Kravchenko, who can be heard on the “Melnichenko tapes” assuring former president Kuchma and others that he will deal with Gongadze, was, in the words of Oleksandr Turchynov, director of the Ukrainian Security Service (SBU), “one of the prime suspects”¹⁰ in the Gongadze case. It is possible that, having had the conversations recorded on the tapes, Kravchenko gave orders to interior affairs ministry officers including Pukach regarding Gongadze. See (c) below.

-- The minister of internal affairs, Yuri Lutsenko, announced in February that the ministry was undertaking a new investigation into the surveillance of Gongadze, including into its legal status, if any. He announced that witnesses among the ministry’s staff who had not been directly involved in the murder of Gongadze would be given immunity in exchange for information. And in mid-March, Lutsenko commented in a television interview that: “In addition to the perpetrators and organisers of the murder, many other people knew about this, especially those who communicated with Gen Pukach regarding the shadowing of Heorhiy Gongadze. In a week after my announcement [guaranteeing immunity], people began approaching me”, including a retired officer who produced a written plan for Gongadze’s abduction.¹¹ Clearly this investigation could help to clarify the nature of the command structure of which Pukach was part. But in the five months since Mr Lutsenko made this statement, no further public statements have been made on the progress of this investigation.

-- Other senior internal affairs ministry officers or retired officers, who have been publicly named as having been involved in the surveillance system, have to our knowledge not been questioned. See 2.(d) below.

-- The investigation of the “Melnichenko tapes”, and the negotiations with major Melnichenko about providing the originals, appear close to stalemate. On 10 September, in a TV interview, general prosecutor Piskun stated that he is now in talks with officials in the US about arranging for Melnichenko to be questioned; this contradicted his earlier claims that such questioning had already taken place. Furthermore, although the investigating authorities accept that material available from copies of the tapes may be used by them as circumstantial evidence, they have not

¹⁰ UNIAN news agency, Kiev, in Ukrainian 2300 gmt 4 March 2005 (relayed by BBC Monitoring)

¹¹ TV 5 Kanal, Kiev, in Ukrainian 1900 gmt 15 March 2005 (relayed by BBC Monitoring)

given any public indication that they have pursued this line of inquiry. For example there are other crimes about which the tapes provide circumstantial evidence (e.g. attempted murder of, and other criminal attacks on, political opponents of the Kuchma government), none of which have been the subject of a successful criminal investigation. See section 3 below.

The lack of progress on all these issues is all the more disturbing in the light of the vagueness of the public statements from the GPO and other investigating authorities about the instigators of the murder. On 2 March, general prosecutor Piskun stated at a press conference that he knew who had organised the murder, but that “the names will not be made public until charges have been filed”¹². On 20 April, at a meeting with Myroslava Gongadze, president Yushchenko said that the names of those who ordered the crime are known.¹³ On 14 May, interior affairs minister Lutsenko stressed that there are “very many witnesses in the [Gongadze] case”, some in parliament, some retired officials from law-enforcement agencies, etc (see also section 3(c) below).¹⁴ On 9 June, general prosecutor Piskun reiterated in a television interview that Pukach was following “orders from above”.¹⁵ On 19 June, deputy prosecutor Shokin stated in a television interview that the investigation of the murder was “nearing its logical end in terms of organisers and those who ordered it”¹⁶ – but, again, without giving any details.

It is of serious concern that, despite these repeated claims that information is available about the way in which Pukach received orders to murder Gongadze, not even a small amount of detailed information has been made public, even after the completion of the criminal case against Kostenko, Protasov and Popovych.

2.(b) Case of general Pukach

General Pukach, former head of external surveillance and investigations of the ministry of internal affairs, was first arrested in relation to the GPO’s investigation of the Gongadze case on 23 October 2003, and charged in connection with the destruction of documents that testified to the surveillance of Gongadze. This arrest, during Piskun’s first period as general prosecutor, was regarded as an important breakthrough in the Gongadze investigation. Six days later, on 29 October 2003, Piskun was dismissed by the then president, Leonid Kuchma, in response to a request from the presidential co-ordinating committee for fighting organised crime and corruption. On 5 November 2003, Pukach was released from custody as a result of an appeal court decision; his lawyers confirmed at that time that his case was related to Gongadze’s, and that he had destroyed the relevant documents.¹⁷ On 18 November 2003 Gennadii Vasiliev was appointed General Prosecutor, and closed the case against Pukach; he stated that there were “no suspects” in the Gongadze case and that his investigation of it was starting from scratch.¹⁸

Piskun was reinstated by Kuchma as general prosecutor on 10 December 2004, after a court had upheld Piskun’s appeal against dismissal. This was at the height of the “Orange revolution”, and some days after Kuchma and current president Yushchenko had agreed on a constitutional settlement. On 14 January this year, the GPO reopened the case against Pukach, but meanwhile he had disappeared.¹⁹ After the arrest of Kostenko, Protasov and Popovych (all of whom gave testimony about Pukach’s involvement in the murder), and the death of Kravchenko (who had

¹² One Plus One TV, Kiev, in Ukrainian 1410 gmt 2 March 2005 (relayed by BBC Monitoring)

¹³ Inter TV, Kiev, in Ukrainian 1700 gmt 20 Apr 05 (relayed by BBC Monitoring)

¹⁴ Zerkalo Nedeli, 14 May 2005

¹⁵ TV 5 Kanal, Kiev, in Ukrainian 1840 gmt 9 Jun 05 (BBC Monitoring)

¹⁶ One Plus One TV, Kiev, in Ukrainian 1630 gmt 19 Jun 05 (BBC Monitoring)

¹⁷ UNIAN, 6 November 2003, as reported on Topping Web Portal, <http://mynews-in.net/news/scandals/2003/11/06/217728.html>

¹⁸ These events were covered in our previous report.

¹⁹ IMI web site, 3 February 2005

been Pukach's superior at the internal affairs ministry), the pivotal role of Pukach, recognised by many observers at the time of his initial arrest, was no longer denied by anybody. On 15 March, internal affairs minister Lutsenko publicly appealed to Pukach to give himself up, as his life was in danger.²⁰

In June this year, Pukach apparently escaped arrest as a result of manoeuvres that some observers conclude must have been conducted inside the GPO. On 23 June, the Ukrainian newspaper Segodnia, citing unspecified sources, reported that Pukach was in Israel, under surveillance by Israeli law enforcement agencies working together with their Ukrainian colleagues. The Israeli police and justice ministries, contacted by other journalists, issued emphatic denials. Then president Yushchenko, questioned by journalists in Kyiv that afternoon, confirmed that "investigative bodies have been working on this information for around four days". But nobody detained Pukach. A few days later the German media reported, citing sources in the Israeli foreign ministry, that Pukach really was in Israel and that the authorities there hoped to detain him.²¹ At the time of writing, i.e. early September, he had not been detained.

Two days after Segodnia's report on Pukach's whereabouts, Zerkalo Nedeli, the respected analytical weekly, published detailed reportage of the incident, in which it stated that people within the GPO, including deputy prosecutor Shokin, had ensured that public signals were sent out that the Israeli-Ukrainian investigation was at an advanced stage, which gave Pukach time to evade investigators. Zerkalo Nedeli reported that a meeting between the GPO, the SBU and other investigating agencies took place on 22 June, after which information on the case was leaked to Segodnia. And on 23 June, while Israeli investigators and their colleagues from the SBU – who knew Pukach's whereabouts, but were awaiting the outcome of various legal processes needed to sanction the repatriation of Pukach to Ukraine – were desperately trying to repair the damage, information was fed through to president Yushchenko, who was encouraged by his advisers to confirm that the operation was taking place. According to Zerkalo Nedeli, the information may have passed from deputy prosecutor Shokin, to national security council secretary Poroshenko, to Yushchenko. Zerkalo Nedeli commented: "It all looks professional and smells bad."²²

There are two groups of obvious questions about the Pukach case, investigation of which may yield valuable information about possible deliberate obstruction of the investigation of the Gongadze case. Such information would in turn shed light on the method by which the murder was ordered.

First, what action has been taken, or will be taken, at the GPO, to investigate the leak of information that effectively sabotaged the investigation being undertaken by the SBU and their Israeli colleagues. (Zerkalo Nedeli posed a related question: "The professional work of the Segodnia journalist, whose aim was to find and publish a sensation, became possible because of a crime of duty committed by someone in the GPO or by someone who took part in that [inter-agency] conference [on the Pukach case]. It will be interesting to see whether, at least this time, the SBU will institute a criminal case under article 378 of the Criminal Code (from a fine to three years) and bring to court the person who betrayed the information to the journalist? All the more so because the identity of the high-ranking informant is known.")

Second, what action has been taken, or will be taken, by the GPO, to investigate the means by which Pukach was released from custody in October 2003? In the light of (i) the success of

²⁰ TV 5 Kanal, Kiev, 1900 gmt 15 March 2005 (relayed by BBC Monitoring)

²¹ Initial article in Segodnya, Kiev, 23 June 2005; Israeli denial on TV 5 Kanal, Kiev, 1700 gmt 23 June 2005; Yushchenko statement on TV 5 Kanal, Kiev, 1607 gmt 23 June 2005; foreign ministry acknowledgement, UNIAN news agency, Kiev, in Ukrainian 1536 gmt 28 June 2005 (all relayed by BBC Monitoring)

²² Zerkalo Nedeli, 25 June 2005

General Prosecutor Piskun's successful appeal against his dismissal by president Kuchma, (ii) the way in which that dismissal appeared to follow so directly from Pukach's initial arrest, and (iii) the information that has subsequently come to light about Pukach's crucial role as the organiser of Gongadze's murder, what action is being taken to investigate the background to the dismissal, including the subsequently-overturned decision by the president's special commission that triggered the dismissal? Has any investigation been undertaken of the decision by Vasiliev, at the start of his term as general prosecutor, to close the case against Pukach? In the light of information now available, has the possibility of political interference in this decision been considered?

Despite the obvious logical connection of these issues, and their relevance to the issue of how the Gongadze murder was ordered, the GPO and the Ukrainian government have, as far as we can determine, held back from any examination of them. We urge the Council of Europe legal affairs committee, and civil society, to pursue these issues.

2.(c) Other interior ministry officers

Given the connection between the murder of Gongadze and the broader system of surveillance that was run by internal affairs ministry officers, it seems clear that investigation of the latter may help clarify the way that orders were given for the former. On 1 March, after president Yushchenko had announced that the Gongadze case was "solved" (see section 4 below), the internet newspaper founded by Gyorgy Gongadze, *Ukrainskaia Pravda*, ran an editorial expressing scepticism that the end of the investigation could come so easily, and reminding readers of those senior internal affairs ministry officers who had been involved in running surveillance operations, and whose names had come into the public domain in 2003-04. It stated: "we know who possesses information on Gongadze case – colonels Berdak and Sydorenko who directly supervised the surveillance over Gongadze, General Gapon, Pukach, and Prilipko."²³ On 14 May, interior affairs minister Lutsenko acknowledged the importance of interviewing those who had been links in the chains of command in the ministry and in other state bodies, when he told a newspaper interviewer: "I want to tell the sceptics, who maintain that the death of Yuri Kravchenko has broken the thread leading to those who ordered the crime, that very many witnesses in the case are still alive. Some of them are now in the Supreme Council [i.e. parliament]. They are people who were then top officials in the law-enforcement agencies. Some of them have now retired. To restore the threads leading to the person who ordered the crime, there are sufficient witnesses."²⁴

A related issue is that of the investigation into the "werewolves" gang. In our previous report we referred to the case of Ihor Honcharov, a member of the gang who was apparently murdered in prison last year, and who left a considerable amount of written evidence on the activities of the "werewolves" and its possible connection to the Gongadze case. While investigation of Honcharov's death might also shed more light on the Gongadze case, we are unaware that any progress has been made in that regard. On the other hand a case against members of the gang in respect of other murders is now going to trial. On 28 February this year, there was an unsuccessful grenade attack on Yuri Nesterov, a member of the gang who is under police guard as a witness in that case. Such an attack would appear to be aimed at silencing yet another witness who may help shed light on the chains of command that operated inside the internal affairs ministry. General prosecutor Piskun has publicly hinted that a group related to the gang ("werewolves 2") continues to operate, and Oleksander Zhyr, former chairman of the parliamentary commission on the Gongadze case, has commented that energetic investigation of the attack on Nesterov could

²³ *Ukrainskaia Pravda*, 1 March 2005

²⁴ *Zerkalo Nedeli*, 14 May 2005

uncover information about it.²⁵ However, we are unaware of any progress in the investigation of this case either.

In contrast to the wealth of public statements giving details regarding the forthcoming trial of Kostenko, Protasov and Popovych, there has been no indication from the GPO of any progress in the investigation of these chains of command.

2.(d) the death of former internal affairs minister Kravchenko

Former internal affairs minister Yuri Kravchenko was the obvious starting-point for investigating links between the conversations about harming Gongadze in the office of former president Kuchma, which are heard on the “Melnichenko tapes”, and the activities within the internal affairs ministry mentioned above. Kravchenko participated in the conversations, and was in a position to give orders to internal affairs ministry officers including Pukach. On 3 March, after president Yushchenko’s announcement that the Gongadze case was “solved”, general prosecutor Piskun gave a press conference at which he stated that he knew who had given the “criminal order” to Pukach to commit the murder, but could not name that party. He went straight on to say of Kravchenko: “We are inviting him to the Prosecutor’s General Office on Friday at 10 a.m. to give evidence.”²⁶ On 4 March, the following day, Kravchenko’s body was found at his country villa, with two gunshot wounds, one to the chin and one to the temple. A note to his family, found on his body, said he was innocent of wrong-doing and had “fallen victim to the political intrigues of president Kuchma and his entourage”.²⁷ SBU director Turchynov and other officials have stated that the available evidence shows that Kravchenko committed suicide. The GPO also considers that the death was suicide, although it has opened a murder case with respect to it. Interior affairs minister Lutsenko has stated, “I have doubts about this suicide, but nothing more than that”.²⁸

Two issues relevant to the Gongadze case arise with respect to Kravchenko’s death. The first is that general prosecutor Piskun’s decision to invite Kravchenko for questioning through the media, rather than inviting him for interview or detaining him in the standard fashion – a decision that he has subsequently defended vigorously in public²⁹ – has not been subject to scrutiny by any public body. Nor has the decision not to detain Kravchenko with a view to protecting him as a witness. SBU head Turchynov implied in a newspaper interview that the issue of detaining Kravchenko was considered but rejected. Asked whether Piskun’s announcement had not put pressure on Kravchenko, Turchynov replied: “You know, the only way to have prevented the suicide would have been to arrest him. *We considered this option* which would have fully saved him from death. But *the prosecutor general’s office did not have grounds* for acting in this way. The security service would not have allowed Kravchenko to disappear in an unknown direction, but it was impossible to prevent him from committing suicide or to stop [Kravchenko’s] hand which took the weapon. [Emphasis added.]”³⁰ Clearly it would be proper for the GPO’s decision to invite

²⁵ Report of attack on TV 5 Kanal, Kiev, in Ukrainian 1600 gmt 28 Feb 05; interview with Zhyr in Fakty i Kommentarii, Kiev, in Russian 1 Apr 05; also Holos Ukrayiny, Kiev, in Russian 5 May 05, (all relayed by BBC Monitoring)

²⁶ ProUa news service, relayed by IMI

²⁷ The suicide and contents of the note were widely reported, based on statements by the law-enforcement agencies, e.g. Ukrainskaia Pravda 4 March 2005, RFE/RL Newslines Vol. 9, No. 43, Part II, 7 March 2005.

²⁸ A statement by Turchynov on the day of Kravchenko’s death, UNIAN news agency, Kiev, 2300 gmt 4 March 2005 (relayed by BBC Monitoring). Turchynov’s detailed replies to journalists’ questions about how Kravchenko could have shot himself twice, Ukrayina Moloda, 16 March 2005, and Ukrainskaia Pravda, 12 April 2005. As well as the forensic issues, some suspicion about the manner of Kravchenko’s death was raised by the fact that he was given a burial service in a church, which is normally not done in cases of suicide. Deputy prosecutor Shokin confirmed that a murder case had been opened, and gave some other details, in an interview in Segodnia on 12 April 2005. Lutsenko in Zerkalo Nedeli, 14 May 2005.

²⁹ Ukrayina Moloda, 5 May 2005

³⁰ Ukrayina Moloda, 16 March 2005

Kravchenko for interview not only publicly, but provocatively, to be subject to scrutiny. Otherwise the suspicion that the Gongadze investigation was deprived of one of its most important witnesses as a result of a mistake by the general prosecutor will remain.³¹ This will undermine still further the credibility of the GPO's investigation.

The second issue is that, as long as the GPO has a murder case open with respect to Kravchenko's death, which implies at least the possibility that another crucial witness in the Gongadze case was killed to ensure his silence, it is hard to see how the GPO can claim that the Gongadze case is being brought to a close.

3. Unresolved issues surrounding the "Melnichenko tapes"

3.(a) Failure of liaison with Melnichenko

The "Melnichenko tapes" provide *prima facie* evidence that former president Kuchma, Kravchenko, and other senior government figures including Volodymyr Lytvyn and Leonid Derkach, discussed harming Gongadze several days before his death. In our previous report we expressed concern that in the four years after Gongadze's death, the GPO and other investigators had refused to consider material from the tapes, and we argued that no investigation could be considered complete without that material being taken into account.

It was obvious, prior to the "Orange revolution", that political opposition from within the Ukrainian government was a major obstacle to any investigation of the tapes. The failure of successive general prosecutors (Potebenko, Piskun and Vasiliev) to examine the tapes did not meet any substantial political resistance. In the aftermath of the "Orange revolution", i.e. during Piskun's second term as general prosecutor starting on 10 December 2004, the tapes have been accepted as a legitimate subject of inquiry by politicians and the GPO alike. But the GPO has failed to overcome obstacles to obtaining the original recordings and the testimony of major Melnichenko himself, both of which would be necessary if the tapes were to be used as primary evidence in the Ukrainian courts. This has been combined with a reluctance on the part of Melnichenko himself to co-operate with Piskun.

Despite the obvious importance of the Melnichenko tapes, general prosecutor Piskun limited himself during his first months back at the GPO to laying down conditions publicly for Melnichenko to fulfil and complaining publicly about Melnichenko's reluctance to co-operate with him. Piskun's reluctance to engage with Melnichenko may be summarised as follows. On 18 February 2005, two months after his appointment, Piskun said that the GPO intended to undertake expert examination of the tapes. This appears to have been irrelevant to the investigation in a way similar to previous announcements during Piskun's previous term as prosecutor, since the originals were in Melnichenko's possession, and the copies available had already been subjected to numerous expert examinations, as discussed in our previous report. On 25 February 2005, after Socialist Party leader Oleksandr Moroz had demanded Piskun's resignation if he failed to attach the tapes to the Gongadze case file, Piskun said he would do so only on condition that Melnichenko provided the original recordings. Only on 2 March 2005, after the case had been declared "solved" by Yushchenko, did Piskun invite Melnichenko publicly to return to Ukraine. On 5 April 2005, Piskun stated in a newspaper interview that he had made attempts to meet

³¹ This suspicion was widely voiced after Kravchenko's death, e.g. by the parliamentary deputy Oleh Tiahnybok (Ukrainskaia Pravda, 3 March 2005). President Yushchenko was moved to announce that he had no intention of sacking prosecutor Piskun.

Melnichenko but that Melnichenko had changed the appointments, and said that he was “afraid” that Melnichenko may not have recorded the conversations in Kuchma’s office at all.³²

Seven months after his re-appointment, four months after president Yushchenko’s announcement that the Gongadze case was “solved”, and three months after the Council of Europe’s rapporteur on the Gongadze case, Sabine Leutheuser-Schnarrenberger, had called on the GPO to undertake forensic examination of the tapes in the USA, Piskun finally visited the USA, where Melnichenko has been granted political asylum. He failed to meet with Melnichenko, and left the USA quickly prior to a meeting that had been arranged. But he reached an agreement with the US Department of Justice that US investigators would take testimony from Melnichenko, and that the justice department would store the originals of the tapes and the recording equipment with which they were made. At a briefing on 25 August, general prosecutor Piskun stated that Melnichenko had answered 86 questions that had been put to him on the GPO’s behalf by US investigators, but on 1 September the US State Department issued a statement specifically denying this, and on 10 September general prosecutor Piskun himself admitted that he was only “in negotiations” with the US Justice Department about the issue of questioning Melnichenko.³³

We hope that the belated contact with major Melnichenko leads to evidence from the tapes being made available to the Ukrainian courts. It is essential that all obstacles to this are overcome.

We are aware of the enormous amount of public discussion of the tapes’ contents, by Melnichenko himself and many others, and we believe that the authorities must ensure that this does not hinder the investigation. Firstly, it appears possible that major Melnichenko did not make the “Melnichenko tapes” on his own. For example, his friend and long-time collaborator Aleksandr Litvinenko stated in an interview on 1 April that Melnichenko had worked as part of a team supervised by Yevhen Marchuk, former defence minister.³⁴ Secondly, over the last year in particular major Melnichenko has made large numbers of public and often contradictory statements about the contents of the tapes, his own motives and his own actions. He has participated by way of such statements in various political debates surrounding the tapes. Thirdly, reports have appeared in the Ukrainian media suggesting that Melnichenko accepted a large sum of money from associates of former president Kuchma in the course of (ultimately unsuccessful) negotiations to secure his silence.³⁵

Judgements on these issues are beyond our remit. However, neither the possibility that Melnichenko worked with others, nor his subsequent actions, should influence the validity of the tapes as evidence. This must be determined by forensic examination.

3.(b) Use of circumstantial evidence available from the tapes

There are strong grounds for the “Melnichenko tapes” to be used as circumstantial evidence and as an aid to the investigation. Internal affairs minister Lutsenko has made this point, when he said that regardless of who made the recordings, “this does not change the criminal conversations which

³² Piskun’s announcement, Interfax-Ukraine, 18 February, relayed by IMI; Moroz, and Piskun’s response, Tovarishch, 24 February 2005, relayed by IMI; RFE/RL news service, 25 February 2005, relayed by IMI; Piskun questions Melnichenko’s role, Ukrayina Moloda, 5 May 2005.

³³ Ukrayina Moloda, 13 July 2005; Interfax-Ukraine news agency, 1246 gmt 9 Aug 2005 (relayed by BBC Monitoring); IMI, 18 August; Ukrainskaia Pravda, 25 August 2005; IMI, 1 September 2005; TV 5 Kanal, 10 September 2005.

³⁴ Litvinenko on Interfax-Ukraine, 1 April 2005, relayed by IMI. There has been much speculation in the Ukrainian press and elsewhere on the possibility that Melnichenko was working as part of a team, which we regard as irrelevant to our inquiry.

³⁵ "Bolshie torgi", by Semen Shevchuk, Ukrainskaia Pravda, 5 July 2005

were held”, and for that reason they should be added to the Gongadze investigation.³⁶ As we suggested in our previous report, the method of comparing conversations on the tapes in which criminal acts were discussed, and the carrying-out of those crimes at around the same time, may help determine their authenticity, and indeed to solve those crimes. In our previous report we mentioned the attack on the STB television station in 1999, the attack on parliamentary deputy Oleksandr Yelyashkevych on 8 February 2000 and the kidnapping of Oles Podolsky on 9 June 2000.³⁷ However we are unaware of any progress made in the investigation of these crimes, or whether those who are heard discussing them on the tapes have been questioned about them. Clearly such measures would assist the investigation of the instigation of Gongadze’s murder.

We draw to the attention of the Council of Europe rapporteur on the case, and civil society, the continuing importance of the circumstantial evidence available from the tapes and the failure to follow the lines of inquiry opened up by it.

Former president Kuchma, current parliamentary speaker Volodymyr Lytvyn, and former defence minister Leonid Derkach, all of whom are heard on the "Melnichenko tapes" discussing the need to harm Gongadze, have been questioned by the GPO on the case.³⁸ No information has been made available about what lines of inquiry were followed. However if all the other context provided by the tapes has been left out of account, as the GPO appears to have done, it is difficult to believe that this questioning can have been conclusive.

4. Continuing "PR management" of the investigation

In our previous report we drew attention to the “cynical manipulation of public opinion inside Ukraine and internationally” by the GPO and senior politicians. In the period covered by this report, the political situation has changed as a result of the “Orange revolution”, and whereas president Kuchma’s statements on the Gongadze case were limited and unenthusiastic, president Yushchenko has repeatedly discussed the case and said that he regards its resolution as a matter of “honour” for himself and the nation. Nevertheless, within this context, there has been considerable “PR management” of the investigation, in which its successes have been exaggerated. In particular, we are concerned that the trial of Kostenko, Protasov and Popovych will be presented as a significant achievement, while the search for the instigators – in which no progress has been made, and which has suffered from the death of one of the two key witnesses, the disappearance of another, and a failure to follow many basic lines of inquiry – will grind to a halt.

The most problematic statement made in the period covered by this report was president Yushchenko’s assertion at a press briefing on 1 March that there was “reason to believe that the case has been solved”.³⁹ This was widely criticised by Myroslava Gongadze, other campaigners, editorially by *Ukrainskaia Pravda*, by senior politicians and by the parliamentary commission on the Gongadze case. At this point no-one had been charged in connection with the murder, let alone tried and found guilty. Even now, six months later, three people who were accessories to the crime have been charged; the person believed by the GPO to be its main perpetrator is missing and no apparent progress has been made on the case against the instigators.

³⁶ Interfax-Ukraine news agency, 1613 gmt 1 April 2005 (relayed by BBC Monitoring)

³⁷ The Gongadze Inquiry: preliminary report, p23; Koshiw, Beheaded, pp 32-34, 58-60, 67-68 and 82

³⁸ Interfax-Ukraine, 16 March 2005 (as relayed by BBC Monitoring); *Segodnia*, 12 April 2005; *Ukrayina Moloda*, 5 May 2005

³⁹ UNIAN, 1 March 2005 (relayed by IMI) and TV 5 Kanal, Kiev, 1500 gmt 1 March 2005 (relayed by BBC Monitoring)

Yushchenko's statement was followed by a series of announcements from the GPO exaggerating the success of the investigation. Examples include Piskun's statement on 5 May that Pukach is "alive and will soon be here"; Piskun's statement on 7 June that the Gongadze case would be in court in July; and Shokin's assertion in a newspaper interview on 19 June that "the crime has been completely proved" and that the investigation of those who ordered it is "nearing its logical end".⁴⁰ It is furthermore of concern that, in numerous interviews and press briefings, many of which we have already quoted, general prosecutor Piskun and deputy prosecutor Shokin have encouraged media attention on the immediate perpetrators of the murder and pushed issues related to the instigators to the background.

5. Unresolved issues surrounding the GPO's work on the Gongadze case 2000-04

In our previous report we referred to "broad political collusion within the Ukrainian establishment to obstruct and divert the investigation", as being the reason for a "catalogue of elementary failures, and breaches of procedure and law, in the investigation into the Gongadze case by the GPO". The existence of such collusion has been widely acknowledged in Ukraine and, arguably, was one of the features of the country's political life against which the "Orange revolution" was aimed. We assume that this collusion was directed, above all, at shielding not so much the perpetrators of Gongadze's murder as the instigators. It logically follows that an examination of the past failures of the GPO in the first four years of its investigation of the Gongadze case could throw important light on the instigators and those who sought to protect them.

We have already referred to an important example, i.e. the case of general Pukach. A re-examination of the consequences of his initial arrest, the subsequent dismissal of general prosecutor Piskun from his first term in office, and Pukach's release, could help to explain the political efforts being made at that time to obstruct the Gongadze inquiry, and in turn shed light on the way in which the murder was originally ordered. National security council secretary Poroshenko has indicated the importance of these issues when he said in a recent interview: "I'm sure that the people who released Pukach from the remand centre should also be held accountable. Or those who destroyed the proof, dissolved the investigation group and blocked the investigation for a year! [...] There are specific people who will answer for this!"⁴¹

Other important questions about past failures of the investigation were raised on 13 January in a letter from researchers for this inquiry to general prosecutor Piskun. Many of these questions retain their importance now, since the answers may help to illuminate the process by which the Gongadze murder was ordered. These include the GPO's declarations that the Melnichenko tapes were "fakes", the repeated assertions by the GPO and others that they had been fabricated by parliamentary deputy Mykola Rudkovskyy, and the failure to bring a case against Rudkovskyy; the GPO's failure to investigate the surveillance of Gongadze and subsequent change of course on that issue; the GPO's failure to investigate the Honcharov case; the dismissal on 30 November 2004 of deputy prosecutor Mykola Holomsha, the public accusation by the GPO that he had "improperly" organised the investigation into Gongadze's death, and his subsequent reinstatement on 29 December 2004.

We draw attention to the continuing importance of these issues. In particular, we call on the Ukrainian authorities to open criminal investigations into the instances of deliberate obstruction of the Gongadze investigation by the GPO.

⁴⁰ Piskun on Pukach, *Ukrayina Moloda*, 5 May 2005; Piskun on July trial, *Interfax-Ukraine*, 7 June 2005 (relayed by BBC Monitoring); Shokin on One Plus One TV, 1630 gmt 19 June 2005 (relayed by BBC Monitoring)

⁴¹ *Ukrainskaia Pravda*, 29 June 2005

6. Political pressure aimed at limiting the scope of investigations

6.(a) General

In the period since the “Orange revolution”, the character of political resistance to the investigation of the Gongadze case has changed. Before then, the pressure was directed to obstructing the investigation at all levels. This year, the pressure appears to us to have been directed towards concentrating attention on some of the immediate perpetrators of the crime in order all the better to prevent those who ordered it being brought to justice.

As we stated in our previous report, it is widely assumed that during the “Orange revolution” an understanding was reached between former president Kuchma and current president Yushchenko, providing immunity from prosecution for Kuchma and some of his associates, with reference to the Gongadze case and other high-profile cases. This is considered by analysts both within and outside Ukraine as a convincing interpretation of events.⁴² President Yushchenko has denied the existence of such a deal. We make no assumptions on this issue. However, we acknowledge that the Gongadze case has been conducted in such a way consistent with the existence of such an arrangement, however informal or general its terms. In this respect it is worth reproducing the statement by deputy prime minister Mykola Tomenko in a newspaper interview: “For me, the ‘Gongadze affair’, which I wanted so much to speed up, is the case of Leonid Kuchma and, as experts think, Volodymyr Lytvyn. Possibly, there was no arrangement with Kuchma. But there was, to a large extent, a conscious decision not to enter into direct conflict with several political players. I have the feeling that a certain group of politicians have agreed on a collaboration that will guarantee that they won't come in for any attention from the law-enforcement agencies. I say once again that, if I were the prosecutor, I would start with the case of Kuchma, since the ‘Gongadze affair’ is derivative and is directly connected with the case of Kuchma.”

Tomenko argued that the investigation should start in the reverse fashion from the one adopted, i.e. “from the top”: “Only the architects of the political regime should be the subject of the discussions, although I agree that there will be no ‘Kuchma case’ in the near future. And, if that doesn't take place, then none of all the other cases will either. At the moment, I can't see the Gongadze and Yelyashkevych affairs coming to an end.”⁴³ As discussed above in section 1, there is strong political pressure within government to take the opposite approach, i.e. to bring the immediate perpetrators to trial as quickly as possible, to show the public that the new regime is meeting its obligations. This political approach coincides with the practical approach of the GPO.

Apart from the general aversion within the political establishment to the approach advocated by Tomenko, there is also political pressure to curtail international scrutiny of the case. A clear example of this is the special declaration on the Gongadze case that the government has ordered the Ukrainian plenipotentiary representative for observing the European Convention on Protection of Human Rights and Fundamental Freedoms to sign. This declaration provides for Myroslava Gongadze, Gyorgy's widow, to receive €100,000 as a pledge of a friendly out-of-court settlement of the case that she has brought in the European Court on the failed investigation into the circumstances of her husband's disappearance. Under the terms of the proposed settlement, Myroslava Gongadze would lose the right to file any complaints against Ukraine with regard to the case. She has publicly rejected any such arrangement.⁴⁴

⁴² For a recent discussion of this theme, see Jane's Intelligence Digest, 6 July 2005

⁴³ Den, 15 July 2005 (relayed by BBC Monitoring)

⁴⁴ Inter TV, Kiev, 1700 gmt 1 June 2005 (relayed by BBC Monitoring); “Resolution of Gongadze Murder Blocked”, by Taras Kuzio, Eurasia Daily Monitor, 20 July 2005

6.(b) Parliament's failure to hear report of its own commission

The single clearest indication of political resistance to the pursuance of investigations of the instigators of the Gongadze murder is the Ukrainian parliament's failure to hear the report of its own commission in to the case. Some indication of the contents of the parliamentary commission's report, the suppression of which we referred to in our first report, were given by the commission's chairman, Hryhoriy Omelchenko, in an interview on 18 March.⁴⁵ He said that the report names former president Kuchma and former internal affairs minister Kravchenko as the organisers of the murder; it names parliamentary speaker Volodymyr Lytvyn and former defence minister Leonid Derkach as being responsible for "instigating the perpetration of violent acts" against Gongadze. Omelchenko said that the report had cited evidence from the Melnichenko tapes and "evidence from witnesses". This all suggests that the motive for preventing publication of the report is precisely that it concentrates on the issue of those who ordered the murder, rather than the perpetrators.

Commission chairman Omelchenko had proposed delivering his report on numerous occasions in 2003-04, and been blocked from doing so. In March 2005, the issue came up again at a meeting of the conciliation commission of parliamentary fractions, which declined to approve the timetabling of a report by the Omelchenko commission. Socialist fraction leader Oleksandr Moroz, addressing a parliamentary session, said the decision was a "disgrace", aggravated by "dubious excuses that allowing the commission to report would violate some political agreements".⁴⁶ In a subsequent interview, Omelchenko claimed that the pressure to block the commission's report emanated from president Yushchenko and speaker Lytvyn. He said: "I have exhausted already all the possibilities provided by the law to force this question through. The only things I haven't done is to smash up the rostrum, seize people by the lapels, tear my shirt or declare a hunger strike in protest. [...] at the conciliation council Oleksandr Moroz, Anatoliy Matviyenko [deputy from the Yuliya Tymoshenko Bloc] and your humble servant [i.e. himself] once again demanded from the speaker a hearing of the commission of inquiry's report. But there was nothing doing. Volodymyr Lytvyn got nervous and looked irritated. And he replied that he had talked with president Yushchenko, and the latter had requested that the report not be heard, in order not to politicise the situation."⁴⁷ On 19 April, a plenary session of parliament voted against hearing Omelchenko's report and a report by general prosecutor Piskun: only 184 deputies out of 424 voted to add it to the agenda, with the majority of deputies from Our Ukraine (Yushchenko's party), the Ukraine People's Party (Lytvyn), the United Social-Democratic Party (Kuchma ally Viktor Medvedchuk) and Regions of Ukraine not participating in the vote. Volodymyr Stretovich, head of the parliamentary commission on combating organised crime, stated in an interview that the vote resulted from "someone [being] very much afraid of the information becoming public" and a political hope that "the [Gongadze] case will be stifled".⁴⁸

We urge the Council of Europe rapporteur on the Gongadze case, journalists' organisations and civil society to take note of the political pressure being exerted to divert the investigation of the Gongadze case away from the instigators.

⁴⁵ Segodnia, 18 March 2005

⁴⁶ TV 5 Kanal, 0900 gmt 16 Mar 05 (BBC Monitoring) Segodnia, 18 March 2005

⁴⁷ Kiyevskiye Vedomosti, 29 March 2005

⁴⁸ Den, 19 July 2005

Conclusions and recommendations

We conclude that the only progress made by the investigation into the murder of Gongadze this year is the completion of the case against Kostenko, Protasov and Popovych. On the other hand the investigation has suffered a number of substantial setbacks, including:

- The disappearance of general Pukach; the leaking of information that disrupted the work of Ukrainian and Israeli agencies who were preparing to detain him; the lack of any public scrutiny of that potentially criminal action; and the absence of any investigation into the process by which general Pukach was previously released and the Pukach case closed in December 2003;
- The death of former internal affairs minister Kravchenko, who could have provided important information about the link between the conversations recorded by Melnichenko and the murder; and the lack of any public scrutiny of possible negligence by the GPO in its handling of the case of Kravchenko and in protecting him as a witness;
- The failure to interview the numerous witnesses from within the internal affairs ministry with a knowledge of the system of surveillance operated there; and the failure to investigate thoroughly the links between the “werewolves” case and the Honcharov case with the Gongadze case;
- The failure to resolve the problems surrounding the Melnichenko tapes, with a view to using them as primary evidence in court, caused mainly by the mistakes and sluggishness of the GPO;
- The failure to follow lines of inquiry arising from circumstantial evidence available on the Melnichenko tapes, including information on other criminal acts that senior state officials can be heard discussing on the tapes.

As a result of these manifold failures, the opportunity provided by the political changes in Ukraine following the “Orange revolution” has in some respects been missed. These failures, by their nature, can hardly be other than deliberate. Overall, they present a picture of unwillingness on the part of the GPO to investigate the Gongadze case to its end, and in particular to pursue the instigators of the crime.

The persistence with which the Ukrainian president and government have supported the GPO, combined with the efforts made to prevent the publication of the conclusions of the parliamentary inquiry on the Gongadze case, indicate a level of political collusion to limit the Gongadze investigation. Whereas under the Kuchma government this collusion was aimed at stifling the investigation all together, under the new government it appears to be aimed at limiting the investigation to the immediate perpetrators of the crime.

We recommend:

To the Ukrainian government:

- To put in place mechanisms for public scrutiny of the GPO’s work, and to commence an immediate investigation into the basic failures of the GPO as listed above;

To the Ukrainian parliament:

- To hear with urgency a report from the GPO on the Gongadze case;

-- To hear without further delay the report of the parliamentary commission on the Gongadze case.

To the Council of Europe rapporteur on the Gongadze case:

-- To bring pressure to bear on the GPO with regard to the failures listed above;

-- To question the GPO about these failures and to examine the issue of continuing political collusion to limit the investigation of the Gongadze case.

To civil society and journalists' organisations, within Ukraine and across Europe:

-- To continue to bring pressure to bear on the Ukrainian government and GPO for the investigation of the Gongadze case to focus on the instigators of the crime and not to be limited to the immediate perpetrators.

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