

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

**Report No. 4: After
Pukach's arrest, the
instigators are still
untouched**

September 2009

Introduction

This report continues the long-term monitoring of the investigation into the killing of the Ukrainian journalist Gyorgy Gongadze. The monitoring is undertaken – with the support of the International Federation of Journalists, the National Union of Journalists of the UK and Ireland, the Gongadze Foundation and the Institute of Mass Information – to record the failure of legal and judicial processes in the case, and to challenge the impunity of those who ordered the killing. This report is published in the light of the arrest on 21 July this year of Aleksei Pukach, the main suspect in the murder. It is an addendum to our three previous reports¹ and should be read in conjunction with them.

The ninth anniversary of Gyorgy Gongadze's death is approaching. He was kidnapped on 16 September 2000 by a group of internal affairs ministry officers, and soon afterwards his headless body was found buried in woods near Kyiv. In November 2000, major Mykola Melnychenko, a former bodyguard of former president Leonid Kuchma, made public tape recordings, apparently made in the president's office, of conversations about harming Gongadze. The participants were senior politicians, including Kuchma, current Ukrainian parliamentary speaker Volodymyr Lytvyn, and the late Yuri Kravchenko, then internal affairs minister.

There followed several years during which the investigation of the murder was deliberately obstructed both by successive general prosecutors and at the political level. Matters were made still worse by failures and mistakes by investigating officers. For example, Pukach was identified as a key suspect, but released from custody by a court. The prosecutor who had presided over his arrest was sacked and the judge who wound up the criminal case against him, allowing him to be released, was promoted. In 2005, when, according to statements by the authorities, SBU officers were preparing to arrest Pukach in Israel, he was tipped off by unknown sources inside the security services and vanished. No investigation was conducted into the tip-off.²

Meanwhile, individuals who seemed likely to have acted as links in the chain between Pukach and senior political figures who ordered the murder disappeared from the scene: in 2005 former internal affairs minister Yuri Kravchenko died in suspicious circumstances, and subsequently so did Eduard Fere and Yuri Dagaev, senior internal affairs ministry officers who had come to investigators' attention. In 2007, three junior officers who had accompanied Pukach in kidnapping Gongadze were convicted and sentenced for their part in the crime.

On 21 July this year, Pukach was arrested in the village of Molochky in Zhytomyr region, in an operation conducted jointly by the General Prosecutor's Office (GPO) and officers of the Ukrainian security service (Sluzhba Bezpeky Ukrainy, SBU). The GPO stated subsequently that, during questioning, Pukach told investigating officers where Gongadze's head was buried. The site was searched, and in August, a skull that is almost certainly Gongadze's was found.

Gongadze's family and fellow journalists have expressed concerns – which we share – that Pukach's arrest will be followed not by a more thorough investigation of the instigators of Gongadze's murder, but by Pukach's case being sent rapidly to court and the investigation of the instigators being further obstructed and delayed.

¹ The reports, published in January 2005, September 2005 and September 2007, are available on the Ukraine page of the International Federation of Journalists web site (<http://europe.ifj.org/en/tags/228/contents>). The way that our Inquiry was established and its terms of reference are detailed in the introductions to Report no. 1 and Report no. 3.

² The Gongadze Inquiry, Report no. 2, pp. 6-8; Report no. 3, p. 25.

There are also widespread fears in Ukraine that, with a presidential election approaching in January and politicians anxious to bolster their reputations, the arrest and possible trial of Pukach will be heralded as a successful end to the case. Such an outcome would be a blow to justice and to the freedom of speech, and a signal to those with power and influence that they can order physical attacks on journalists with impunity.

This report surveys developments since Pukach's arrest, and makes recommendations aimed at intensifying the investigation into the instigators of the killing.

Surveillance and arrest of Pukach

Fears that Pukach's arrest may have been timed according to some political agenda were raised by officials' statements that he had been under surveillance for a long period. Nikolai Golomsha, deputy general prosecutor, said in a television interview on 28 July that "we have for two years in a row, together with the SBU and operational officers of the ministry of internal affairs, followed in Aleksei Pukach's tracks. We knew where he was."³

Why, then, was Pukach arrested in July, and not earlier? Was he previously under the protection of elements in the law enforcement agencies? Such a possibility was raised by Aleksandr Medvedko, general prosecutor, on 24 July. He told a press conference that prosecutors would check information they had received that Pukach, while in hiding, had had contact with a senior official in the Ministry of Internal Affairs (MIA). He said that prosecutors had so far not confirmed this information.⁴

While Medvedko's announcement that such contacts will be checked is welcome, it underlines the glaring lack of such checks in the past. The GPO's failure to conduct an investigation of Pukach's possible links with his former colleagues, and possible connections between the Gongadze case and other criminal networks within the MIA, has been raised many times in the Ukrainian media, and in our previous reports.⁵

The questioning of Pukach

We are concerned about two issues arising from the questioning of Pukach following his arrest. First, and most seriously, is the fact that he was questioned without a lawyer being present. Valentyna Telychenko, legal representative of Myroslava Gongadze (Gongadze's widow and next of kin), has warned that this could invalidate some of Pukach's testimony in a future court case.⁶

Secondly, after Pukach's arrest, law enforcement agencies made a flood of contradictory statements about information Pukach had supposedly provided about the instigators of Gongadze's murder. This heightened the impression that the GPO and political leaders were more interested in the favourable public impression created by the murderer's arrest than by the urgency of discovering on whose orders he acted.

On 22 July, Vasily Gritsak, deputy head of the SBU, said that Pukach had named those who ordered the killing. This was contradicted on 23 July by Sergei Osyka, Pukach's lawyer, who said that Pukach had not given any such information. On 24 July, *Kommersant* newspaper, citing

³ 5-y Kanal TV, 28 July, cited by Ukrainska Pravda

⁴ UNIAN press agency 24 July, cited by Ukrainska Pravda

⁵ The Gongadze Inquiry, Report no. 3, pp. 20-23, and elsewhere.

⁶ Ukrainska Pravda, 23 July and 24 July.

sources in the SBU, reported that Pukach had provided investigators with three names. On 28 July, *Segodnia* newspaper, citing sources close to the investigation, claimed Pukach had provided “objective information”, but given no names.⁷

On 7 September, general prosecutor Medvedko stated at a press conference that Pukach was in good health and “actively cooperating” with investigators. But when asked about the progress of inquiries into the instigators of the murder, Medvedko said: “[We have] no instigators, not yet. When the time comes, we’ll tell you.”⁸ Six weeks after Pukach’s arrest, therefore, the most important issues remain unclear. Has he answered questions about the instigators of the crime? Have prosecutors acted to verify such information? Or are Pukach and the prosecutors “actively cooperating” to protect those instigators?

Ukrainian law allows for pre-trial questioning to continue for up to 18 months. Valentina Telychenko, Myroslava Gongadze’s lawyer, has urged that all the time necessary be used, to maximum effect, to question Pukach on issues that may shed light on the instigators of the murder, and to check information received.

Above all, we warn that *any attempt to bring Pukach to trial before substantial progress is made towards finding the instigators of the crime will further undermine the search for those instigators.*

Recovery of a skull

On 28 July, the GPO confirmed at a press conference that fragments of a human skull, which investigators believed to be Gongadze’s, had been found in Belotserkovsky district in Kyiv region, near Sukholisy. Investigators had searched a site the location of which had been identified by Pukach.⁹ In the weeks that followed, Ukrainian forensic experts confirmed that the skull belonged to Gyorgy Gongadze.¹⁰ Investigators have now decided, with the agreement of Myroslava Gongadze, to arrange for further confirmation of the identity of the skull, by foreign experts using DNA techniques, working together with their Ukrainian colleagues.

We urge that this additional confirmation is undertaken as swiftly as possible.

The investigation of criminal activities within the MIA

We reiterate our call, made in previous reports, for the investigation of the instigators of Gongadze’s murder to take into account the possible connection between the Gongadze case and other cases of punishment squads and other illegal gangs organised within the MIA. These cases include: the case of Oleksiy Podolsky, a journalist abducted in June 2000 (three months before Gongadze’s murder) by a group of MIA officers apparently organised by Pukach, some of whom have been convicted and imprisoned; and the case of the “werewolves”, a group of former MIA officer accused of a series of kidnappings and murders, one of whom, Ihor Honcharov, died in custody in 2003.¹¹

⁷ Ukrainska Pravda, 22 July and 23 July; *Kommersant-Ukrainy*, 24 July; *Segodnia*, 28 July, cited by Ukrainska Pravda

⁸ UNIAN news agency, 7 September

⁹ UNIAN news agency, 28 July

¹⁰ UNIAN news agency, cited by Ukrainska Pravda, 27 August

¹¹ The Gongadze Inquiry, Report no. 1, pp. 28-30 and Report no. 3, pp. 6-12

A dramatic reminder of the power of these gangs was provided this month. During court hearings on the “werewolves” case, Yuri Nesterov, the only member of the gang who has turned state’s witness, and on whose testimony the prosecution case heavily relies, was arrested in court and detained in a prison where other members of the gang are also being held. Nesterov indicated in a message smuggled out to a journalist that he considers his life to be in serious danger. Nesterov’s arrest, which was sanctioned by the presiding judge, is a shocking breach of the promise made to him by law enforcement officers under Ukrainian legislation – which provides, as does criminal law in many countries, that he and his family would be afforded protection in return for him cooperating with the prosecution.¹² Nesterov’s arrest raises the serious possibility that the “werewolves” case could collapse. Such a setback could only harm the progress of the investigation into the instigators of Gongadze’s murder.

Conduct of the investigation

The unsatisfactory conduct of the GPO’s investigation, and in particular its stubborn refusal to pursue avenues that could identify the instigators of the murder, has been noted in our previous reports. The questioning of Pukach without a lawyer, and the confusion in the GPO’s statements about Pukach’s testimony, has added to our concerns. This issue has now been raised in correspondence between Valentina Telychenko, Myroslava Gongadze’s lawyer, and the GPO.

On 1 July, i.e. three weeks before Pukach’s arrest, general prosecutor Medvedko transferred overall charge of the investigation from his deputy Nikolai Golomsha to another deputy general prosecutor, Vitalii Shchetkin. Shchetkin was a member of the team that worked on the case in 2005-06, during the period when the most progress was made on it.¹³ However, after Pukach’s arrest, Golomsha presented information on the case to the public and appeared to be back in charge. As a result, Telychenko wrote to the prosecutor asking that the decision to replace Golomsha with Shchetkin be upheld. Telychenko also called for Aleksandr Kharchenko, who had led the investigation since 2006, be removed. Telychenko expressed concern that “the investigators’ lack of professionalism threatens to undermine the work of the prosecuting attorneys, and is making [the prosecuting attorneys’] work impossible, due to political pressures and political speculation”.¹⁴

The president of Ukraine, Viktor Yushchenko, has taken the opposite view, by last month awarding state honours to Golomsha and Kharchenko – and by implication expressing approval of their investigation, which has so demonstrably failed to take the elementary steps necessary to find the instigators of the crime. On 18 August Golomsha was awarded the Order of Prince Yaroslav the Wise, and on 20 August Kharchenko was given the status of state adviser on justice (3rd class).¹⁵

In 2007, President Yushchenko similarly honoured former general prosecutor Mikhail Potebenko, who was responsible for sabotaging the investigation in the weeks following Gongadze’s murder in 2000. Yushchenko has ignored protests by the Parliamentary Assembly of the Council of Europe, and ourselves, about that award – and has now again implicitly approved the actions of officers who have obstructed the investigation.

¹² *Zerkalo Nedeli*, 5 September

¹³ The Gongadze Inquiry, Report no. 3, pp. 23-24

¹⁴ *Ukrainska Pravda*, 29 July

¹⁵ Web site of the President of Ukraine, 18 August and 20 August

Political commentary on the case

President Yushchenko responded to Pukach's arrest with an extraordinarily optimistic statement, which heightened fears that Pukach would be rushed to court and the investigation of the instigators curtailed. Yushchenko told a group of journalists that "we are now on the home strait. The arrest of general Pukach has helped a great deal. After this, the investigation received answers to key questions." He added that political pressure to stop the investigation had been exercised by people "in high places", and that those implicated by the inquiry who were no longer in power "have preserved colossal influence".¹⁶

These are extraordinary, and contradictory, statements. If Yushchenko has more exact information about the questioning of Pukach than the prosecutors have made public, why does he not clear up the confusion on that issue? In which way has testimony helped, since there have been no further arrests, nor answers to basic questions posed by investigating officers, journalists and this inquiry two or three years ago? In which sense is the investigation on the "home strait"? And if Yushchenko knows that people "in high places" are obstructing the investigation, why does he not name them and urge the GPO to open cases under which their activities can be investigated? The answer has probably been given in practice, by Yushchenko's decision to honour Golomsha and Kharchenko: he appears in reality to be satisfied with the arrest of Pukach as a substitute for finding the instigators, and not as a step towards that aim.

It is also noteworthy that the parliamentary speaker, Volodymyr Lytvyn, expressed the hope that, following Pukach's arrest, the investigation of the case would continue in an "objective and unbiased" manner. In response, we repeat the questions that Hungarian parliamentarian Matyas Eorsi raised in the Parliamentary Assembly of the Council of Europe in 2005, and that we raised in our report in 2007: what are Lytvyn's comments on what appears to be a recording of a conversation about harming Gongadze, in which he participated on 3 July 2000, along with former president Kuchma, Leonid Derkach and the late former internal affairs minister Yuri Kravchenko? Does Lytvyn dispute the version of the conversation published by the International Press Institute and verified by experts as having been reproduced without tampering? If not, does he have any other record of this conversation on 3 July 2000? Why has he not done more over the years to clarify these issues?¹⁷ We hope that even at this stage Lytvyn will respond to our letter of July 2007 on these issues.

In addition, there has been a great deal of comment, by prime minister Yulia Timoshenko and others, to the effect that the timing of Pukach's arrest in the run-up to the presidential election on 17 January 2010 may not have been coincidental. Various scenarios under which the arrest could work to the benefit of one or other candidate have been aired.

For this reason we urge the GPO and other agencies *to reopen, after the arrest of Pukach, aspects of the investigation that will help to establish who the instigators of the crime were.*

Conclusions

The arrest of Pukach is of course a welcome step forward. But there is clearly a danger that it will lead not to a furthering of the search for the instigators of the crime, but to the avenues of investigation that lead to them being closed off.

¹⁶ *Ukraina Molodaya*, 28 August.

¹⁷ The Gongadze Inquiry, Report no. 3, pages 17-19

In our Report no. 3 we highlighted steps that could be taken to further the investigation of the instigators of the murder of Gongadze. Two years later, despite Pukach's arrest, there has been little or no progress on these. Here we reiterate these steps, in the light of Pukach's arrest.

We call on the GPO:

- To plan ways of building on Pukach's arrest in investigating the instigators of Gongadze's murder, and to provide as much information as possible publicly on these plans;
- To coordinate the sending of Pukach to court with the investigation into the instigators of the murder; not to send a case against Pukach alone to court, so long as opportunities exist to widen the case against the instigators; to use all the opportunities afforded under Ukrainian law to conduct pre-trial questioning of Pukach for up to 18 months and to check information received;
- To initiate criminal cases against those who obstructed the inquiry at earlier stages;
- To make clear what measures are being taken to bring major Melnychenko, whose testimony on the veracity of the tapes made of former president Kuchma and others is needed, to court to testify;
- To clarify publicly his policy on staffing the Gongadze investigation.

We call on the president and government of Ukraine:

- To call on the general prosecutor to pursue more vigorously the instigators of the murder, and give him the necessary support to do so;
- To urge the general prosecutor to investigate those, up to ministerial level, who have at various times obstructed the investigation;
- To direct the minister of internal affairs to encourage, and to provide protection for, those who can give evidence on illegal activities within the ministry, including the Gongadze and Podolsky cases and the system of intimidation of which they were part;
- To revoke the state awards to prosecutors Potebenko, Golomsha and Kharchenko, and to judge Prindiuk (who in 2004 closed the earlier criminal case against Pukach); to ask the general prosecutor to consider the efficacy of opening criminal prosecutions against former prosecutors Potebenko and Vasiliev for their obstruction of justice in the Gongadze case.

(ends)