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**MORE SETBACKS FOR RULE OF LAW IN UKRAINE**

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On March 4, 2005, former Ukrainian interior minister Yuriy Kravchenko was found dead with two bullet wounds to the head. The official verdict was suicide. Two years on, Kravchenko's family has launched a private investigation claiming that two self-inflicted gunshots to the head would be impossible and that therefore he was murdered because he was a key witness in the fall 2000 murder of journalist Georgy Gongadze. Ukraine's gunshot forensic specialists have backed up this theory.

The Kravchenko case has raised numerous debates about the nature and number of the agreements reached during the roundtable negotiations that resolved the disputed 2004 presidential election. Specifically, did Viktor Yushchenko grant immunity to outgoing president Leonid Kuchma to secure his election on December 26, 2004? Such a deal would have undermined the Orange coalition's platform stressing the rule of law.

Granting Kuchma immunity during the Orange Revolution would have been an easy decision for Yushchenko and his Our Ukraine allies, as they had never supported the Yulia Tymoshenko Bloc's demands to impeach Kuchma for abuse of office. What has disillusioned orange voters the most is that the December 2004 immunity deal seems to have been far wider than just Kuchma.

Kravchenko is not the only official implicated in the Gongadze murder to be fired, allowed to flee abroad, or granted state honors. General Oleksiy Pukach, head of the Interior Ministry's criminal surveillance branch, allegedly kidnapped and murdered Gongadze. Pukach supposedly fled Ukraine in late 2004, but suspicions linger that he, like Kravchenko, is no longer alive.

Former prosecutor Mikhail Potebenko was more fortunate than Kravchenko and Pukach. A February 16 presidential decree awarded him a state medal for his supposed "personal contribution to the building of a rule of law-based state, strengthening of legality, and law abiding and long years of conscious toil."

Potebenko was prosecutor from July 1998-April 1992, three of the five years when presidential guard Mykola Melnychenko bugged Kuchma's office, recording conversations that would implicate Kuchma in Gongadze's death. The European Court of Human Rights believes that Potebenko headed a sham investigation and covered up evidence implicating senior officials.

Gongadze's widow told Jamestown that awarding a medal to Potebenko is a de facto "amnesty" to men behind the murder of her husband. "For me, the award is a sign of a signal that it is possible to undertake similar illegal actions in the future," Myroslava Gongadze added.

Potebenko's award also reflects the disorganization in the Yushchenko administration, which granted the award eight days before Our Ukraine signed an agreement on opposition unity with the Tymoshenko bloc. Potebenko was instrumental in preparing the trumped up criminal case that placed Tymoshenko in Lukianivska prison from February 13-March 27, 2001.

Discredited Kuchma era-officials continued to receive honors even after the Orange Revolution. In summer 2005, Donetsk and Kyiv oligarchs Renat Akhmetov and Hryhoriy Surkis were awarded state medals. Last month, Valentyn Zgursky, who helped Social Democrat leader Viktor Medvedchuk and Surkis to build their business empire in Kyiv in the 1990s, was honored with a medal.

The rule of law is under threat in Ukraine because senior officials continue to believe that they are not responsible for their actions and they are above the law. Prime Minister Viktor Yanukovich reports that allegations of election fraud in 2004 have "not met with success." Yanukovich believes that the accusations "do not show there was falsification as there are 48 million inhabitants and only 1,000 cases."

M.I. Melnyk's Criminal Responsibility for Crimes against Election Laws, published last year in Kyiv, investigates the criminal cases brought by the authorities for election fraud after the Orange Revolution. Of the 1,297 cases brought by the prosecutor are against the perpetrators; no case has been brought against the organizers. Of the perpetrators, the courts only found 265 guilty but they were either given suspended sentences or they received amnesty. Yushchenko granted amnesty, without any invested legal right, in a September 23, 2005 memorandum signed with Yanukovich.

After coming to power on August 4, 2006, the Yanukovich government moved quickly. It ended speculation regarding a further re-privatization of oligarch assets, a policy that had divided Yushchenko and Tymoshenko in 2005. It also closed criminal cases against senior Kuchma-era officials, cases that Yanukovich's Party of Regions had always attacked as "political repression" (see EDM, March 6). Our Ukraine issued a statement condemning the prosecutor and asserting, "The court system and legality in Ukraine is increasingly becoming an arm of corporate interests of the Party of Regions."

However, the real problem is the lack of reform in the legal system and the prosecutor's office. Since the Orange Revolution, the prosecutors appointed by the president have been either unable or unwilling to follow through on criminal investigations of abuse of office by senior elites. As interior minister, Yuriy Lutsenko accused the prosecutor's office of sitting on the documents that his ministry had submitted regarding criminal cases. Tymoshenko dismissed this explanation as "child's talk."

Three conclusions follow.

First, the return of former Sumy region governor Volodymyr Shcherban to Ukraine after fleeing to the United States in April 2005 and the subsequent dismissal of the case against him, confirms the fact that senior Ukrainian officials are only convicted in the United States, never in Ukraine. In 2006 a U.S. court sentenced former prime

minister Pavlo Lazarenko to nine years in prison.

Second, the failure to act on these issues has undermined voter support for Yushchenko, which is now at a catastrophic low of 11%. In a November 2005 poll by the Razumkov Center, one-third of Western and Central Ukrainians were dissatisfied with the authorities because of inaction in this area. These voters have moved to the Tymoshenko bloc.

Third, Yushchenko's amnesty to the organizers of the Gongadze murder, and his unwillingness to abide by the European Court of Human Rights Resolution 1516 on observing the rule of law, undermines international faith in whether his support for Ukraine's Trans-Atlantic integration is genuine.

Instituting equality before the rule of law was a key objective of the Orange Revolution, an objective that now is unlikely to be fulfilled under Yushchenko.

(Zerkalo Nedeli, November 19-25, 2005; Ukrayinska pravda, February 1, 15, 2006; March 1, 5; razom.org.ua, February 28; president.gov.ua, February 16)