

END NOTE

U.S. LAWYERS ARRIVE IN UKRAINE TO GATHER DEPOSITIONS FOR FORMER
PREMIER'S TRIAL

By Taras Kuzio

A team of U.S. defense and prosecution attorneys have arrived in Ukraine, where they will collect depositions over the next three-six weeks from more than 100 Ukrainian officials, including President Leonid Kuchma, in preparation for the trial of former Ukrainian Prime Minister Pavlo Lazarenko. Lazarenko is charged by the United States with embezzling \$114 million during his tenure as prime minister from May 1996-July 1997 and as governor of Dnipropetrovsk Oblast from 1992-95. He is the most prominent foreign citizen to be prosecuted in the United States after Panamanian dictator Manuel Noriega, who was convicted on narcotics charges in 1992.

Lazarenko was one of numerous officials from Dnipropetrovsk, the traditional home base of Ukraine's ruling elites in the Soviet era, who were brought to Kyiv after Kuchma was elected president in 1994. Lazarenko was appointed prime minister in 1996 but served only one year in that post before being replaced by another Dnipropetrovsk native, Valeriy Pustovoytenko. Pustovoytenko led the government until the 1999 presidential elections, when he handed over a nearly bankrupt country to Viktor Yushchenko.

Of Ukraine's 10 governments since 1992, Lazarenko's is generally considered the most corrupt, although any analysis of this question will inevitably be hampered by a lack of comparative evidence. Lazarenko was never charged or prosecuted while prime minister. The Ukrainian authorities began investigating his possible involvement in corruption only after he went into opposition in late 1997, at which time the West was beginning to focus on the extent of money laundering in the former USSR.

Having secured his capital base through control of the energy market, Lazarenko became the only Ukrainian oligarch ever to go into opposition to the executive, creating the now-defunct Hromada political party, which crossed the 4 percent threshold for parliamentary representation in the March 1998 elections. Hromada challenged Kuchma in his home base of Dnipropetrovsk and, worse still for Kuchma, entered an alliance with the Socialists led by Kuchma's long-time opponent, Oleksandr Moroz, and Yevhen Marchuk, prime minister in 1995-96.

Kuchma construed Lazarenko's alignment with the opposition as a personal betrayal. In addition to Communist Party leader Petro Symonenko, four people posed a threat to Kuchma's re-election as

president in 1999. Former National Bank Chairman Vadym Hetman, who was set to finance Yushchenko's presidential candidacy, was killed in 1998. Lazarenko has been charged in absentia with involvement in the assassinations of parliamentary deputy Yevhen Shcherban in 1996 and Hetman in 1998. Rukh head and long-time dissident Vyacheslav Chornovil died in what is now considered a suspicious car accident in March 1999. Marchuk, who lasted just one year as Lazarenko's predecessor as prime minister, continued his opposition to Kuchma until the second round of the 1999 presidential elections, when he was co-opted by Kuchma as secretary of the National Security and Defense Council and has remained marginalized ever since.

In 1998-99, Lazarenko also set his sights on the 1999 presidential elections, and it was that which prompted the authorities to institute the corruption charges that led parliament to strip him of his immunity. At that juncture, the authorities could have demonstratively arrested Lazarenko and placed him on trial. This, though, would have revealed too much possibly incriminating information about other persons who benefited from his alleged corrupt activities as prime minister. Lazarenko was therefore allowed to leave Ukraine "for medical treatment" in February 1999 and he fled to the United States. He requested asylum upon his arrest by U.S. authorities and has denied the embezzlement charges, and remains in detention in San Francisco.

Ironically, the present situation in Ukraine differs little from that in 1997-99. A high-profile corruption trial held in 1998-99 would have negatively affected Kuchma's election chances in 1999. Lazarenko's trial is due to begin in August in a San Francisco district court, and is expected to run throughout the campaign leading up to the October 2004 presidential elections. Although the executive and oligarchs control television, which likely means little coverage of the trial will be aired on domestic media, events since the Kuchmagate crisis began in November 2000 show that it is impossible to block all sources of information to Ukrainians.

The Lazarenko trial will therefore exacerbate the crisis facing the executive branch as it attempts to ensure the election as president of a loyal successor who would guarantee Kuchma immunity from prosecution. Recent changes in legislation in Kazakhstan and Uzbekistan suggest that other CIS leaders also fear they might be vulnerable to allegations of corruption once they step down from office.

The U.S. team in Ukraine seeks to take depositions from people who will never attend the Lazarenko trial. As Lazarenko's attorney, Dennis Riordan, said, "Nothing like this has ever been attempted." Lazarenko's lawyers seek to obtain testimony as to how the gas market was divided up in the 1990s in Ukraine, with the intention of arguing that any resultant corruption extended far beyond Lazarenko personally.

Prosecuting attorneys have submitted a list of 50 Ukrainian officials they want to interview, while lawyers representing Lazarenko have said they want to interview up to 100 officials. U.S. Ambassador to Ukraine Carlos Pascual has admitted that Kuchma is among the officials on those lists, although some reports state he might refuse to cooperate with the U.S. team. Ukrainian legislation

deems a refusal to provide evidence a criminal offense, although this might not be applicable to the president, who has immunity. Kuchma is accused by the defense of receiving "expensive gifts" from Lazarenko (to whom Kuchma awarded two state medals), and of either turning a blind eye to, or conniving in, Lazarenko's illegal activities. Others to be interviewed include Marchuk; Pustovoytenko, who has said he will not cooperate with the U.S. prosecutors; First Deputy Prime Minister and former Tax Administration head Mykola Azarov; oligarch Viktor Pinchuk, who is Kuchma's son-in-law; and oppositionist and former Lazarenko business partner Yuliya Tymoshenko.

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