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UKRAINE'S ELITES REMAIN ABOVE THE LAW

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Ukraine's orange elites are facing a growing scandal surrounding Yuriy Lutsenko, head of the pro-presidential Our Ukraine-People's Self Defense bloc (NUNS). Lutsenko allegedly lobbied on behalf of Ukrainian New Telecommunications (UNTC) when he was interior minister. Lutsenko's wife is UNTC's financial director, and the company was established in 2005 by members of Lutsenko's extended family from Rivne oblast. Lutsenko allegedly supported instructions to shift Interior Ministry cell phone contracts to UNTC.

The Lutsenko scandal suggests that Ukraine's ruling elites remain above the law.

Since Ukraine became an independent state in 1992, only three senior Ukrainian officials have been charged and sentenced, two in Germany (Viktor Zherdytsky and Ihor Didenko) and one in the United States (Pavlo Lazarenko). No senior Ukrainian officials have ever been charged inside Ukraine, in part because they possess parliamentary immunity.

In a June 20 address to the country, President Viktor Yushchenko called upon parliament to revoke its right to immunity as a step toward "overcoming parliamentary corruption." He claimed that Ukraine's parliament was the world's most corrupt, a factor that negatively influenced the national interest and rule of law.

Yushchenko called for separating business and politics, saying, "People in big business should be separate from the political life of the country," due to potential conflicts of interest.

Our Ukraine and the Yulia Tymoshenko Bloc have both stated their readiness to voluntarily forfeit their immunity. NUNS is collecting signatures to hold a referendum on ending immunity, claiming that corrupt businessmen run for parliament to hide from the law.

Prime Minister Viktor Yanukovich criticized these calls for action and accused the

president of “populism.” He also pointed out that calls to revoke parliamentary immunity are regularly heard during election campaigns but quietly forgotten afterward.

As media restrictions have eased, the press has leveled accusations of abuse of office and corruption against the president’s son and other orange leaders. Consequently, the orange camp has adopted a two-pronged standard response of denying the media’s right to make such investigations and claiming that the accusations are part of a political conspiracy.

NUNS member Volodymyr Stretovych, head of the parliamentary committee to combat organized crime, has claimed that the latest allegations against Lutsenko are an orchestrated conspiracy against “one of the most popular leaders of the democratic camp.” According to him, the accusations against Lutsenko are the criminal world’s response to the prospect of losing parliamentary immunity.

However, ending parliamentary immunity is unlikely to remove Ukrainian elites’ legal privileges for several reasons. First, Ukraine inherited this political culture of elites being above the law from the Soviet era. Second, there is also a close link, particularly evident among the orange national democratic camp, between elites and the preservation of Ukrainian statehood. Yushchenko and his allies who went on to establish Our Ukraine opposed efforts to impeach former president Leonid Kuchma over the murder of journalist Georgy Gongadze, as they believe that the president represents the state and any undermining of his position would thereby undermine the Ukrainian state.

Third, the elites enjoy a strong degree of mutual solidarity. When corruption accusations were made against Yushchenko’s allies in September 2005 he agreed to launch an investigation, but he outlined its pre-determined conclusion by publicly declaring their innocence.

Two examples demonstrate the difficulty of breaking with the culture of elite immunity.

First, in 2005, Yushchenko bestowed Gongadze with the “Hero of Ukraine” title as he “gave his young life for our freedom and independence.” But then eighteen months later a presidential decree awarded a state medal to former prosecutor Mykhailo Potebenko, who reportedly covered up Kuchma’s involvement in Gongadze’s murder.

Second, Prime Minister Yanukovich has a criminal record. Yanukovich served two prison terms: in 1967-70 for theft and robbery and in 1970-1972 for the “infliction of bodily injuries of medium seriousness.” There were reports that a Donetsk oblast court had allegedly annulled his two convictions in 1978, but the relevant documents were found to be forgeries executed when Yanukovich first became prime minister after 2002.

Yushchenko has defended his nomination of Yanukovych as prime minister in August 2006, claiming he had little alternative. However, Article 12 of Ukraine's 1993 law on State Service clearly states that persons with a criminal record cannot be appointed or voted into a government post. This seemingly would eliminate Yanukovych's eligibility to be prime minister or president. Polls in 2004 found that 60-69% of Ukrainians believed that a former felon should not be president.

The Lutsenko corruption scandal will tarnish the orange camp going into the September 30 parliamentary elections. Lutsenko is close to Yushchenko, who is depending on him to improve the pro-presidential camp's results in the 2006 elections, when it obtained only 14% of the vote.

Based on similar cases, no charges are likely to be laid against Lutsenko, and the culture of elite protection will not change even if parliamentary immunity is removed.

(Ukrayinska pravda, June 30, July 11, 19, 26-27, 2007; May 26, June 3, 2004, president.gov.ua, June 20; Zerkalo nedeli, September 3, 2004; Vidomosti Verkhovnoii Rady, no. 52, 1993)

