



HELSINKI COMMISSION HEARING

UNITED STATES COMMISSION ON
SECURITY AND COOPERATION IN EUROPE

Testimony :: Adrian Karatnycky

President - Freedom House

Mr. Chairman, members of the Commission on Security and Cooperation that you for inviting me to address this hearing on Ukraine ten years after independence.

I am president of Freedom House, an organization that monitors political right and civil liberties around the world. With support from the US Agency for International Development and private foundations, Freedom House works in a number of societies in transition away from tyranny and toward democratic rule. We maintain offices in six Central and East European countries, including Ukraine, where we promote Polish-Ukrainian collaboration on reform issues and assist Ukraine's pro-reform public policy think tanks.

I believe this broad range of work gives us important firsthand insights into the processes of change in the strategically vital European country that is the subject of today's hearing.

I think that most neutral and objective observers would have to say that in its first decade of independence, the state of freedom in Ukraine and Ukraine's record of progress toward a competitive market economy and an open democratic society has been disappointing.

Disinformation emanating from state television in Ukraine and from some of the broadcast and print media has reached an appalling scale. In recent weeks, many of Ukraine's media have added to their already shameful record of distortion. Media controlled by oligarchic groups conducted a campaign of invective against Prime Minister Viktor Yushchenko and his American-born wife by disseminating stories that had originated in Russia. State television was no better. Ukraine's government-owned UT-1 channel reported on a "so-called Brzezinski Plan, which aims to give the U.S., the self-acclaimed bastion of democracy, the capacity to keep Ukraine on a short leash, as well as stifle cooperation with Russia." That preposterous story suggested that the plan, allegedly inspired by former U.S. National Security Adviser Zbigniew Brzezinski, had three stages: 1) weakening Mr. Kuchma and empowering Mr. Yushchenko; 2) neutralizing Mr. Yushchenko's presidential rivals; 3) provoking a conflict between Ukraine and Russia.

Such crude propaganda deserves careful monitoring, for it reflects a growing uncertainty and nervousness within segments of the ruling Ukrainian elite. In the coming months, as a power struggle unfolds among forces jockeying for influence at a time when President Kuchma is

weakened by scandal and the erosion of support, the media are likely to be a principal tool of unscrupulous power-seeking political forces and journalists are likely to be placed under even more intense pressure and harassment than heretofore.

Last Thursday, ironically the 15th anniversary of the Chernobyl nuclear disaster, Ukraine's parliament overwhelmingly passed a "no-confidence" vote against Viktor Yushchenko, the country's highly effective prime minister. The toppling of a reformist prime minister has set in motion a period of intense political jockeying and high uncertainty that may result in the consolidation of political power by several political factions controlled by the country's economic oligarchs.

The removal of Prime Minister Yushchenko (who may stay on as a lame duck for the next two months) was not dictated by economic failure. A former head of the Central Bank, Mr. Yushchenko, was the first effective head of government in the 10-year history of Ukrainian independence. He kept inflation in check and accelerated the privatization of agriculture, while steering the country to a rise in GDP of 6.3% over the last 12 months, eliminating longstanding wage and pension arrearages, and increasing pension payments. Ukraine's industrial production soared, powered by the growth of its food processing and consumer goods sectors.

These policies and accomplishments made Mr. Yushchenko Ukraine's only widely popular political leader. His dismissal was opposed by a 52 percent to 23 percent margin, according to public opinion polls conducted in March. But Mr. Yushchenko's reassertion of control over Ukraine's corruption-riddled energy sector had angered a small group of oligarchs whose political parties represent over 20% of the seats in the country's fractious parliament. The loss of more than \$1 billion annually in ill-gotten energy receipts led the economic magnates to act.

Parties controlled by oligarchs broke from their fragile alliance with reform parties and joined in a tactical bloc with the country's retrograde Communist party to bring down the government. Their action was facilitated by the growing political weakness of President Leonid Kuchma, who is embroiled in a widening crisis of his own. The president's troubles have been precipitated by a steady flow of revelations of alleged corruption and criminal activity from tapes of what appear to be private conversations he held with his political cronies.

Mr. Chairman, the current crisis in Ukraine is integrally associated with the disappearance and likely murder of the internet journalist Heorhiy Gongadze, whose decapitated and badly decomposed body was found near a town outside of Kiev in November last year.

The Gongadze case has emerged as an international human rights cause célèbre because it embodies all the elements of misrule that ail Ukraine: corruption at the upper echelons of power; harassment, intimidation, and surveillance of the media and democratic groups in opposition to President Leonid Kuchma; and the blatant disregard for the rule of law and the politicization of the upper reaches of the procuratorial, police and security services, which have obstructed justice in this case.

In addition to embodying the many deficiencies in Ukraine's democracy, the Gongadze case is linked to the "Kuchmagate" tapes. Indeed, the catalyst for Ukraine's political crisis was the disappearance on September 16, 2000 of Mr. Gongadze, whose investigative journalism succeeded in angering the country's small coterie of corrupt oligarchs by reporting on their financial machinations.

On November 16, 2000, a headless and badly decomposed body was found in the town of Tarascha, near Kiev. Gongadze's friends were tipped off to the appearance of a body and obtained information from a preliminary autopsy by a local investigator (later subjected to intimidation by the country's Prosecutor-General) that suggested the body was the journalist's. Within hours of their arrival, the body was surreptitiously removed from the morgue and after several days, it resurfaced in Kiev.

In the days that followed, the Prosecutor General's Office declared the body had been dead far longer than two months. Later government investigators declared the body was too badly decomposed to determine identity. Ukrainian officials also announced there had been sightings of Gongadze in other countries and issued an Interpol alert for the missing journalist. But Gongadze's colleagues and family launched a public campaign and law suits to press authorities for a complete investigation of the body.

The Gongadze case became an issue of great domestic concern and international attention because it galvanized press and human rights groups that feared it was setting a dangerous precedent in a country where numerous journalists are subjected to threats and violence. It assumed politically seismic proportions on November 28th, when the leader of the Socialist Party and former Parliament Speaker opened the doors to Ukraine's greatest political crisis in ten years of post-Soviet independence. Moroz told a stunned parliament he had audiotapes of conversations between Ukraine's President Leonid Kuchma, his chief of staff, the head of State Security, and Interior Minister that suggested complicity in the disappearance of the journalist.

The conversations heard by parliament were laced with obscenities, crude humor and even a dose of anti-Semitism. They depicted a President obsessed with muzzling Gongadze and other media critics. At one point, President Kuchma speaks approvingly of deporting Gongadze to Georgia (the reporter had Georgian and Ukrainian roots) and approvingly suggests kidnapping and handing him over to the Chechens. "Grab him, strip him, leave him without his pants, let him sit there," the voice of the President appears to urge his Interior Minister.

In the tapes, a voice that resembles Kuchma's complains about numerous publications critical of his administration and listens to detailed reports from the security services about efforts to harass and intimidate media critics. At one point, Interior Minister Yuri Kravchenko (since dismissed) reports to Kuchma about an elite unit engaged in dirty tricks and harassment of the media and political opponents. "This unit, their methods, they're without morals, they don't have any principles," the Interior Minister boasts. "My group is beginning to stifle [Gongadze]. And with your permission I will also talk with [head of the Tax Service Mykola]

Azarov," the Minister notes, apparently seeking sanction for harassment through tax inspections. Ukraine's top police official also brags to the President about an act of arson against a distributor of anti-presidential newspapers. Each of these conversations, apparently recorded in the summer of 2000, is corroborated by real events. The opposition newspapers discussed in the conversations had their print runs confiscated by authorities and editors, journalists, and distributors were harassed.

Initially, President Kuchma maintained a silence about the tapes, while his aides declared them fabrications. For six weeks, Ukraine's Prosecutor General claimed the President could not have been taped, as his security system was ironclad. More recently, authorities have acknowledged their authenticity, but this Sunday President Kuchma told CBS "60 Minutes" reporter Steve Kroft that the tapes had been altered to incriminate him, even as he declared that he has not listened to them.

In December and January, the authorities stonewalled on the identity of the headless body. But by February they relented as DNA tests in Russia showed a more than 99.9 percent match and the tape scandal broadened. The source of the tapes was revealed to be Mykola Melnychenko, a 34-year old officer assigned to the President's security detail. Major Melnychenko, a decorated and highly trusted official, claimed he had used a digital recorder to tape the President's conversations over a period of a year-and-a-half. The FBI has now been brought into the case and is attempting to make its own independent determinations of the forensic evidence in the Gongadze case.

Public opprobrium has mounted as the contents of the tapes --which Melnychenko now says consist of many hundreds of hours of conversations--began to filter into Ukraine through US-funded Radio Liberty and through Ukrainian re-reporting of stories by Western newspapers. Ukraine's media, mostly controlled by President Kuchma and a small clique of sympathetic oligarchs, could not ignore the steady flow of sensational revelations.

The tapes released so far--a small portion of the recordings-- include alleged conversations in which a governor offers the President's family a 25 percent share in a factory soon to be privatized. There are discussions between the President and his security and law enforcement ministers about intimidating judges, shutting down the Ukrainian services of Radio Liberty and the BBC, and interfering in criminal investigations. There is a discussion in which the head of the State Tax Administration tells the President how he is covering up of a multimillion-dollar tax fraud by a friendly oligarch. Additional conversations contain explicit orders to ensure local officials deliver the vote Mr. Kuchma wants in the 1999 presidential election.

Because the tapes were digital recordings, their authenticity remains a matter for further inquiry. Western technical experts say it cannot be completely excluded that some portions of the tapes could have been altered at a professional level by a foreign or Ukrainian security service. But the sheer volume of the data suggests that the source is authentic. Moreover, President Kuchma--whose aides at first denied he was taped--now admits that the voice and the crude conversational style are his. He claims the tapes have been altered, however, to include incriminating details. But despite such denials, the behavior of the President's inner

circle has only reinforced public sentiments that the conversations are authentic. Indeed, if the tapes are distortions and the subject of a political plot, President Kuchma should do everything in his power to openly and transparently prove this. Regrettably, he has not. Parliamentarians examining the tapes have been harassed and legislation that would empower parliament to have the resources to conduct significant investigations of alleged official crimes and misconduct has been blocked and vetoed by the President.

At the same time, corroboration of some taped conversations has come from parliamentary deputies and journalists whose meetings with the President were recorded.

Polling suggests President Kuchma is well on the way to losing the battle for the hearts and minds of Ukrainians. Today, less than one in eight Ukrainians today believes the President's claim that the tapes are falsifications, while 25 percent are already convinced the tapes are authentic.

At the same time there has been a further decline in Mr. Kuchma's already low approval ratings and an erosion of confidence in Mr. Kuchma to the point that by February 2001, only 11 percent of the public trusts him, while 53 has absolutely no trust in the president. A steep decline in public confidence in the security and law enforcement authorities is also reflected in new polling data. A February 2001 poll by the Socis Company shows that only 5 percent of the population is content with the current state of affairs in Ukraine, while 95 percent registers disapproval.

Frequent demonstration organized by a broad coalition of political parties have drawn up to 20,000 protestors and brought a new generation of student activists to protest politics. These numbers are expected to swell when --after long delay--the funeral of the murdered journalist Gongadze is held.

Tent cities that sprouted around Ukraine in the winter were attacked by unknown groups of thugs (one calling itself the Anarchist Syndicate) and dismantled by police. Several demonstrations have included significant violence, which protest organizers say were incited by plain clothes security operatives infiltrating the opposition ranks. Demonstrations in regional centers have been disrupted. Leaders of the nascent "Ukraine Without Kuchma," the broad-based "Forum for National Salvation," and other opposition groups have been openly followed by plainclothes operatives and surveillance has been reported of oppositionist by operatives using unmarked cars. Anti-Kuchma parliamentarians have been under surveillance by plain clothes operatives in unmarked cars, although the shadowing of legislators is prohibited by Ukrainian law.

Contributing to public anger and cynicism has been the behavior of the authorities--and the conduct and performance of the President --in addressing the crisis.

Indeed, despite declarations from President Kuchma that he wishes to have a thorough investigation of the case, the actions of Ukraine's ministries of internal affairs and national security, the Procurator-General's Office and the Tax Administration suggest they are impeding the search for the truth, refusing to cooperate with the parliament in its oversight

functions, and intimidating those involved in independent investigations. And in December 2000, President Kuchma again vetoed a bill on committees that would have given the parliament broad investigative powers and the resources to pursue such inquiries. Instead of supporting parliament's investigative authority, Ukrainian authorities have harassed parliamentary deputies from a special investigative commission on the Gongadze case, and routinely shadowed and intimidated legislative staff involved in investigating the tape scandal. On March 7th, President Kuchma's National Security Council Secretary Yevhen Marchuk (a former KGB general) declared: "No-one else should interfere with the investigation into Gongadze's case..." apart from Ukraine's Prosecutor-General's Office. General Marchuk further charged that " when the parliament put the case on the agenda for public discussions, this inflicted quite serious damage on the investigation".

Despite compelling evidence of obstruction of justice by Prosecutor- General Mykola Potebenko, the President has rejected calls to remove him from office. And despite serious allegations of criminal behavior against the Minister of Interior-- implicated on the tapes in the disappearance of Mr. Gongadze-- there has been no arm's length investigative body established by President Kuchma, even as there is growing evidence of the Interior Ministry's efforts to impede the investigation of the Gongadze case. A forensic scientist examining the DNA evidence in the Gongadze case was intimidated by Ukrainian interior police. And a physician who was assisting in an independent DNA analysis of the Tarashcha corpse is now seeking asylum in the United Kingdom after threats against his life.

While both the interior minister and the head of the state security service have been replaced, there has been no explanation for their removal, no evidence of a transparent investigation, and there have even been suggestions that they may be rewarded with other positions in government.

Three days after it was reported that my organization, Freedom House was assisting the Vienna-based International Press Institute in taking a look at the digital tapes evidence, our Kiev office received a letter from Ukrainian tax authorities announcing an inquiry into Freedom House's office and pro-democracy activities in Ukraine in connection with an unspecified criminal case. Instead of welcoming this and other Western efforts to assist Ukraine's parliament in investigating the matter, President Kuchma has denounced such cooperation. I should note for the record that the head of Ukraine's tax service is simultaneously the head of a political party, the Region's of Ukraine, and a potential candidate for the post of prime minister. Despite his access to the complete financial records of all his potential political rivals and opponents, apparently neither the President nor the Ukrainian parliament appear to see in this any potential conflict of interest or the danger of politicization of the tax inspection services.

If President Kuchma is innocent of the serious abuses of power, he has been extremely ill served by his closest advisors, whose behavior suggests they are intent on covering up serious crimes and abuse of power. Their actions have created the impression of a wide-ranging cover-up.

Moreover, the content of the tapes reinforces what many Ukrainian reformers and foreign governments have long believed, the Mr. Kuchma sits at the top of a corrupt, perhaps, criminal structure of power. Whether he directs this system or is trapped by the structure of corrupt power is a matter of conjecture. What is clear is that President Kuchma and his security officials have tolerated or failed to put in place safeguards that would prevent the wide scale looting of Ukraine's treasury through tax evasion, illegal siphoning of state revenues, and corrupt insider privatization.

For years, the U.S. and other Western government for years had been pressing Mr. Kuchma unsuccessfully to sever his links with allegedly corrupt oligarchs. Indeed, when President Kuchma visited the US in November 1999, the US Embassy refused to issue visas to oligarch Oleksander Volkov, a close ally of the President. Now Mr. Kuchma's callous indifference to alleged corruption in his inner circle is coming home to roost and is reinforcing the belief that he is corrupt himself.

The cascade of sensational revelations is not likely to end. Parliamentary deputy Taras Chornovil (whose father was leader of the Rukh, the civic movement that pressed Ukraine toward independence and who died in an auto crash some believe was an assassination) was told by the President's Representative to Parliament that Mr. Kuchma routinely taped his meetings as a means of record keeping. It may turn out that Major Melnychenko --now somewhere in the United States from which he has received refugee status--may not have recorded Kuchma's conversations surreptitiously, but copied recordings from the Presidential archives. This would explain the dismissal of State Security chief Leonid Derkach-- rumored to have been responsible for setting up the recording system.

In addition to the tapes, reliable sources report that parliamentarians possess documents relating to President Kuchma's own financial accounts and transactions, which they are readying for release at an appropriate moment. Proceedings in a San Francisco court related to the US attorneys indictment of Pavlo Lazarenko, President Kuchma's erstwhile Prime Minister, allege that Mr. Lazarenko transferred over \$ 114 million into US bank accounts alone over an 18-month period. Mr. Lazarenko's attorney says he is ready to provide additional revelations on the President Kuchma's financial dealings. Another source may be Mr. Lazarenko's former moneyman Petro Kirichenko, arrested last summer in Tiburon California where he had helped Mr. Lazarenko to purchase a \$ 7 million home belonging to the actor Eddie Murphy.

The mounting scandal is of crucial significance. Rather than feeding apathy and indifference, it has become a catalyst for pro-reform civic forces, now organized around a youth- and student-led movement called, "For Truth." These civic forces reflect the emergence in Ukraine of a new generation of activists, many of them emerging from the country's elite campuses. And while civic action and parliamentary opposition will not necessarily lead to the near-term removal of President Kuchma from office (it should be pointed out that he has still not been impeached and charges against him have not been brought in a formal judicial process), it is likely to lead to the emergence of a potentially crucial new factor in Ukraine's political life, a broad coalition committed to honest government.

The ongoing crisis also is contributing to parliamentary and public momentum in favor of diminishing the vast and unregulated power of the Ukrainian presidency. Thus, the crisis can also be the occasion for setting right Ukraine's many deeply flawed institutional arrangements, particularly the imbalance of power between Ukraine's executive, legislative, and judicial power. Central to this effort is a proposal for a new constitutional dispensation that would reconstitute Ukraine as a parliamentary republic. Significantly, draft amendments to the constitution that would redirect power to parliament have now been endorsed by a majority of deputies including leaders of the pro-reform Fatherland Party, the moderate nationalist Ukrainian People's Movement, the Socialists, and the Communists. Support for the amendments by two-thirds of deputies would then set in motion a nationwide referendum on ratification.

What is the way out of Ukraine's crisis and this regrettable state of affairs?

To answer this question, it is important to understand that the problems that plague Ukraine are systemic. They are not the outgrowth only of the personal deficiencies of individual leaders of the country. Moreover, the deficiencies in Ukraine's economic and political development are more than a matter of the legacy of communism or the consequence of the historic denial of Ukraine's statehood, first under the Russian Empire and Poland, and later under the Soviet Union.

The major challenges to Ukraine economic dynamism and full-fledged political freedom are the consequence of two factors: a corrupt, patrimonial economic system and the excessive concentration of unchecked power in executive branch.

The web of corruption that envelops the Ukrainian state and economy is such that it has trapped many of its leaders, possibly including President Leonid Kuchma himself.

Prime Minister Viktor Yushchenko, who challenged this system and refused to play by its rules, was subjected to intense attacks by the administration, and by large segments of the oligarchic economic interests.

Today, no less than a quarter of the parliament is a plaything for oligarchs. Parties dominated by oligarchic interests include the United Social Democratic Party, the Labor Ukraine, the Regions of Ukraine party, the Democratic Union, the Green Party, and the Yabloko (Apple) party. Other parties are significantly influenced by economic clans.

Most oligarchic parties, now euphemistically called "political-financial groupings" in Ukraine's media, represent different regional groups and sometimes even represent generationally different networks of economic interest.

Such unprecedented and highly articulated differentiation is a unique characteristic of Ukrainian political life without parallel in other countries. Indeed, in no other post-Communist state is there such a high number of parties linked to narrow economic interest groups.

The reason for this high degree of active engagement by economic interests in Ukraine's politics arises directly from the patrimonial economic system. First, given the corrupt, illegal, and quasi-legal nature of wealth accumulation in the first years of privatization in Ukraine, economic oligarchs establish their own parliamentary factions to protect themselves from prosecution and the status of a legislative deputy confers parliamentary immunity. Second, these economic magnates use these political factions in negotiating with the executive branch and government to extract favors, protect ill-gotten investments, and attain additional opportunities for favorable access to money-making opportunities on a non-competitive basis.

This system, in the end, is highly inefficient and corrosive of democratic politics and independent media.

So well entrenched is this system of corruption that those who have chosen to break with past corrupt practices and function openly, honestly, and transparently are subjected to the most intense attacks and repression by the state. Such was the case with the former energy magnate and former Deputy Prime Minister Yuliya Tymoshenko, who legitimately sought to reform the corrupt energy sector from which she had once benefited.

The second factor threatening Ukraine's democratic development is the inordinate and virtually unchecked power of the executive.

Mr. Chairman, in my view the heart of the current crisis derives from the structure of the Ukrainian state. As in nearly all the former Soviet republics, Ukraine's system is based on excessive presidential power. Interestingly, our annual democracy survey of the region, Nations in Transit finds that parliamentary systems predominate in the Baltic states and the post-socialist states of Central and Eastern Europe, most of which have had far more successful political and economic transitions.

Ukraine's President appoints the Prime Minister (subject to parliamentary approval) but the parliament has no role in voting for individual ministers, who are direct presidential appointees. He appoints regional governors, giving a powerful influence on local affairs. These governors, in turn, determine the budgets of the judicial branch, giving them important control over the judicial branch. The president, moreover, directly names one-third of the judges in the higher courts, and has extensive power to dissolve the parliament. In addition, the President can independently issue economically significant regulations. He also has the power of calling referenda and can only be removed from office only by vote of more than 4-5ths of parliament.

Such concentration of power means there are few checks and balances on executive authority. This has proved exceedingly dangerous and has created a tempting environment for forces interested in unbridled economic gain during the once-in-a-lifetime process of privatization of state-owned enterprises and resources, which has created unprecedented opportunities personal enrichment through the instruments of the state.

In Ukraine, the problem of checks and balances is accentuated by the absence of a system of parliamentary review. As much as legislative authority, the system of parliamentary

committees with investigative authority acts as an important check on corruption and the abuse of executive power. This system is almost entirely absent in Ukraine. Committees function, but they have no budgetary authority to pursue detailed investigations.

It is important that in our discussions of how to assist Ukraine we have an objective and balanced understanding of the political nature of the country and that we dispel myths and reject hyperbole. Let me focus on several salient facts.

First, while constitutionally President Kuchma de jure has excessive and unchecked power, the current crisis has de facto weakened him considerably. In turn, this was the major factor that precipitated the current power struggle over the shape of the government and parliament.

Second, while I can agree that Ukraine has deep and serious problems with press freedoms, lacks an effective and independent rule of law system, and suffers from substantial pressure by authorities against opposition groups, Ukraine's President is not a tyrant like Belarus's Alyaksandr Lukashenka. There is today in Ukraine political space --often an uncomfortable space, but a space nevertheless--for opposition parties, civic groups, for freedom of association and freedom of speech and protest. Moreover, despite the fact that many media are under the tight control of oligarchs or the executive branch, enough free media exist to enable most Ukrainian citizens have access to objective information and to make it impossible for the controlled media to avoid discussion of the major controversies around the unfolding political crisis. At the same time, as an emerging power struggle among oligarchic, national security, and opposition groupings unfolds, the media will be subject to intense state and oligarchic pressure.

Clearly, there is pressure placed on independent opposition newspapers, and many of the media are in the hands of oligarchs who exploit them and intrude into the objectivity and accuracy of news reporting. It is also true that large segments of the broadcast media are state owned and tightly controlled by the government. Nevertheless, Ukrainian citizens have ample access to accurate information about the ongoing "Kuchmagate" scandal and are independently drawing their own conclusions about their political leaders, offering hope for the prospects of positive change.

Third, despite problems of rampant corruption not all of Ukraine's economic magnates are wedded to or dependent on corruption; many are now in a position to thrive in markets

Fourth, even some economic oligarchs may be willing to back significant reforms, provided there is a political solution that does not threaten them with prosecution and imprisonment.

Finally, many oligarchs as well as the clear majority of Ukrainian citizens do not wish to fall under Russian economic and political domination and are eager to have good relations with the U.S. and the West.

In the end it is clear that the billions of dollars in U.S. and West European aid and loans to Ukraine have not all been in vain. Ukraine now has a large pro-reform and pro-Western constituency. And this pro-democratic force, which has particular appeal to Ukraine's young,

has a real chance in the coming months and years to lead the strategically vital country back onto the path of political and economic freedom.

Clearly, Ukraine's democratic and economic reform processes have suffered serious setbacks in recent months. But a policy of U.S. and Western engagement, of vigorous diplomacy that condemns rights violations and demands due process under the rule of law, and of significant aid to civil society, can be a catalyst for long-needed internal reforms.

Thank you for the honor of testifying at this timely and important meeting, which I hope will be the first among many held by the U.S. Congress on Ukraine