



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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Ukraine: the Gongadze Case

Introduction

This report* deals with the disappearance on 16 September 2000 of Georgiy Gongadze, the editor of the on-line publication *Ukrainskaya Pravda*, and with the developments that stemmed from this case, including the investigation conducted by the Office of the State Prosecutor. Several theories persist surrounding the disappearance of Gongadze. On 28 November 2000, Alexander Moroz, an opposition leader and member of the Verhovna Rada (Parliament), made public allegations that implicated the President of Ukraine in being indirectly involved in the Gongadze case. This sparked a public debate, reasonably freely covered in the local media.

Background

Georgiy Gongadze was the editor of *Ukrainskaya Pravda* (www.pravda.com.ua), an on-line publication founded in April 2000 and generally critical of the current government. Previously he worked as news director on Radio Continent and co-hosted a television programme. Igor Gavrilo, First Deputy Chairman of the Committee on Freedom of Expression and Information of the Verhovna Rada (one of the leaders of the Greens' Party), believed that Gongadze was not "politically affiliated although he did work closely with the opposition." The owner of Radio Continent Sergei Sholoh stressed that Gongadze was very critical of the President. They both, according to Sholoh, lobbied in the US for freedom of expression in Ukraine.

Gongadze took part in the round-table held by the OSCE Representative in Kiev on 2 December 1999 on Libel in Ukraine (organised together with the Council of Europe and IREX/ProMedia) where he read out a statement signed by many journalists regarding the state of free media in the country.

On 16 September 2000, Georgiy Gongadze went missing. He was last seen at 22:30 by Aliona Pritula, an editor at *Ukrainskaya Pravda*, in downtown Kiev. He was supposed to go home to his wife and two daughters - a twenty minute walk. He was never heard from again.

What Has Been Done

Since September 2000, the OSCE Representative on Freedom of the Media and his advisers on several occasions raised the Gongadze case - in oral and written communications with government officials calling for an investigation that would bring the perpetrators of this crime to justice. On 31 January - 2 February 2001, Alexander Ivanko, Adviser to the OSCE Representative, made an assessment visit to Kiev where he met with several government officials, parliamentarians, journalists and lawyers (see list).

The Delegation of Ukraine to the OSCE issued a statement on 25 January 2001 in which it stressed that the investigation into the disappearance of Gongadze "is carried out on the basis of full impartiality and transparency."

The case was also investigated by Reporters sans frontieres (RSF), which published a report *Mutilation of the Truth* on 22 January 2001. RSF experts visited Kiev on 5-12

January where they had meetings with government officials, including Ukrainian President Leonid Kuchma, parliamentarians, journalists. Among the RSF recommendations to the Ukrainian authorities was the need to "take all necessary steps to put an end to violence against journalists in Ukraine, so that they can work freely and safely."

On 25 January the Council of Europe Parliamentary Assembly issued recommendation 1497 (2001) which called on the Ukrainian authorities "to inform it [the Council of Europe] on the results of the investigation in the disappearance or death of the journalist Heorhiy Gongadze as soon as possible."

On 6 February the European Union issued a statement calling for a "transparent inquiry into the disappearance of Mr. Gongadze." The EU urged Ukraine to ensure a "safe, secure and harassment-free environment for journalists to operate in."

The Investigation into the Case

In general, most observers agreed that the investigation into the disappearance of Gongadze was conducted in a manner that First Deputy Chairman of the Human Rights Committee of the Rada Refat Chubarov described as "extremely unprofessional." The President's Press Secretary Olexander Martynenko acknowledged that the investigation was taking too long and that this was raising questions.

The handling of the disappearance of Gongadze became even more questionable after the discovery on 2 November 2000 of a headless body near Tarasha, a small village outside Kiev. It has been pointed out by several government officials that the body was found in Moroz's electoral district, which Moroz does not dispute.

The local forensic expert believed that the body was buried for approximately 50 days. On 15 November the forensic expert met with a group of journalists who arrived in Tarasha. They were given a x-ray of the body's right hand that showed fragments of shrapnel identical to those Gongadze received seven years ago in Abkhazia. As a result, the expert issued a death certificate in the name of Gongadze. The State Prosecutor considered this action by the forensic expert as illegal. As a result the Ministry of Health took over the identification of the body. It brought in experts from the Russian Forensic Centre.

Speaking in the Verhovna Rada on 10 January 2001, the State Prosecutor Mihailo Potebenko stated that the probability that Mrs Lesia Gongadze is the mother of the unidentified man was no less than 99,6 percent. However, the State Prosecutor is still working under the assumption that Gongadze may be alive. "Officials in the State Prosecutor's Office have some doubts that the body belongs to Gongadze, that is why they are conducting additional investigations," stressed Olexander Martynenko, the President's Press Secretary. There are also reports that a Ukrainian citizen living abroad was harassed by the SBU (Ukrainian Secret Service) in connection with the investigation. He was involved in locating a company outside Ukraine that provided DNA testing.

The lack of transparency regarding the identification of the body, contradicting statements coming from different experts, a clear lack of professionalism on the part of the State Prosecutor had led a number of lawyers, journalists and parliamentarians to question the motives behind the Prosecutor's actions. "This whole case shows that an individual has no protection in Ukraine," said Gavrilov. He also felt that the Ukrainian President was genuinely interested in "unearthing" the truth.

None of the experts and politicians (except those representing the government) believed that under the current circumstances the investigation into the disappearance-possible murder of Gongadze would ever have public credibility - no matter what were the final results. In the view of Olexander Zinchenko, Chairman of the Rada Committee on Freedom of Expression and Information, this case was "increasing discontent and mistrust of the state." The situation can only be rectified by authorising a new investigation, possibly headed by a well-respected local judge and involving foreign experts. The existing ad-hoc Committee of the Rada on the Gongadze case does not have the needed authority.

Reactions to the Investigation

The situation around Gongadze and allegations against the President made public by the opposition had led to an unprecedented public debate that spilled into the media which has become more combative. Those involved in the drama are interviewed daily on radio, television and in the newspapers. Many views and theories (including far-fetched ones) are openly aired. Alexander Moroz, a long-time critic of the state of free media in Ukraine, admitted that "the local media are now more objectively describing events."

However, consistent reports are received by the OSCE Representative that certain media are still harassed. Radio Continent, an intimate participant in the Gongadze case, is currently under a re-licensing procedure which its owner believed was connected to his statements related to Gongadze and to his re-broadcasts of Radio Liberty. The owner of Radio Continent disputed the fact that his licence expired on 25 October 2000 as stated in the OSCE Permanent Council on 1 February 2001 by Ambassador Volodymyr Ohrysko.

Zerkalo Nedeli, another critical newspaper, was expected to be targeted later this year by the tax police. The 30 January assault in Kiev on Izvestia correspondent Yanina Sokolovskaya was also being tied to her critical publications (the assailant was later arrested. The Izvestia editorial board has certain questions regarding how the investigation into the attack was conducted). Initially, the newspapers Tovarish were pressured. Its case was raised by the OSCE Representative in written communication with Ukrainian Foreign Minister Anatoliy Zlenko.

Recommendations

- The Government of Ukraine should undertake a new effort to investigate the Gongadze case especially related to the identification of the body and to the circumstances around his disappearance. The possibility of starting such a new investigation should be explored, headed by a well-respected independent judge and involving foreign experts. The investigation should be transparent with information provided in a timely manner to the public.

- All acts of harassment of media, including through the use of the tax police, should cease immediately. Radio Continent should receive its new licence.

- Recommendations issued in a report on the current media situation in Ukraine prepared on 10 March 2000 by the OSCE Representative should be implemented. The Representative took note of the letter of 31 January 2001 by Ambassador Volodymyr Ohrysko, Head of Mission of Ukraine to the OSCE, where he quotes Foreign Minister Zlenko on "the necessity to give a more substantial assistance to Ukrainian Mass Media in the course of the overall democratic process in our country." The Representative will provide the Ukrainian mission with relevant information regarding training of journalists, as requested.

- The OSCE Representative believes that there is a need to conduct an open hearing on the state of media freedom in Ukraine. The hearing should involve the Representative's "four constituencies" - government officials, parliamentarians, journalists and NGOs. It could take place in either Vienna or Kiev.

*Note: Information provided in this report comes from public documents, statements and from interviews conducted by Alexander Ivanko on 31 January - 2 February in Kiev with the following individuals:

- Ivan Drach, Chairman of the State Committee on Information Policy;
- Igor Gavrillov, First Deputy Chairman of the Committee on Freedom of Expression and Information of the Verhovna Rada (Parliament);
- Refat Chubarov, First Deputy Chairman of the Committee of the Verhovna Rada on Human Rights, National Minorities and Interethnic Relations;
- Olexander Martynenko, Press Secretary to the President;

- Leonid Kozhara, Deputy Director, Foreign Affairs Department, Administration of the President;
- Timothy O'Connor, Resident Adviser, IREX/ProMedia;
- Mary Mycio, Project Director-Lawyer, IREX/ProMedia;
- Natalya Petrova, Media Lawyer
- Sergei Sholoh, Chairman of the Independent Association of Broadcasters of Ukraine, owner of Radio Continent;
- Volodymyr Mostovoi, Editor-in-Chief, Zerkalo Nedeli Weekly;
- Alexander Moroz, Chairman of the Ukrainian Socialist Party, Member of the Verhovna Rada.