

# **The Gongadze Inquiry**

**An investigation into the failure of legal  
and judicial processes in  
the case of Georgy Gongadze**

Supported by:

- The International Federation of Journalists
- The Institute of Mass Information
- The National Union of Journalists of the UK and Ireland
- The Gongadze Foundation

## **Preliminary Report**

## **Contents:**

### **1. Introduction, p.3**

- 1.i Summary of conclusions, p.4
- 1.ii Preliminary recommendations, p.7

### **2. The inquiry, p.9**

### **3. Assessment of official investigations, p.10**

- 3.i Early misinformation from officials, p.10
- 3.ii False announcements that suspects are in custody , p.13
  - 3.ii.a "Citizen K", p.13
  - 3.ii.b "Citizens D and G", p.15

### **4. Refusal to assess the "Melnichenko recordings", p.17**

- 4.i Melnichenko tapes initially dismissed as fabrications, p.18
- 4.ii The response to Bek Tek, p.19
- 4.iii An alternative approach to authenticating the recordings, p.22

### **5. Police surveillance of Gongadze and its possible connection to his murder, p.23**

- 5.1 Denial, confirmation, denial, confirmation..., p.23
- 5.ii Possible connections with Gongadze's murder, p.25
- 5.iii Honcharov's death and possible connections with the Gongadze case, p.28

### **6. Evidence of intimidation and harassment by the authorities, p.30**

- 6.i Pressure on individuals investigating the Gongadze case, p.30
  - 6.i.a Ihor Vorotyntsev, district coroner, Tarashcha, p.31
  - 6.i.b Andriy Fedur, defence lawyer for Lesya Gongadze, p.32
  - 6.i.c Oleksandr Zhyr, former chair of the parliamentary commission on the Gongadze case, p.32
  - 6.i.d Mykola Zamkovenko, former chair of the Pechersky district court, Kyiv, p.33
  - 6.i.e Svetlana Karmelyuk, legal medical expert involved in DNA tests on the Tarashcha corpse, p.34
  - 6.i.f Hryhoryi Harbuz, investigator, p.34
- 6.ii Pressure on media investigating the Gongadze case, p.36

### **7. Other investigations into the Gongadze case, p.37**

- 7.i Parliament's ad hoc commission on Gongadze, p.37
- 7.ii Kroll Associates, p.40
- 7.iii Journalists' investigations, p.43
  - 7.iii.a Koshiw, p.43
  - 7.iii.b Azhur, p.43
  - 7.iii.c Reporters Sans Frontières, p.46
  - 7.iii.d Television documentaries, p.47

### **8. Conclusions and recommendations, p.49**

Appendix I: The work of the inquiry, p.52

Appendix II: Chronology of investigations into the murder of Georgy Gongadze, p.53

Appendix III: Organisations and individuals supporting this inquiry, p.56

Appendix IV: Motion for a resolution of the Parliamentary Assembly of the Council of Europe, p.58

## 1. Introduction

The political events surrounding the Ukrainian presidential elections of November-December 2004 have raised hopes for continuing democratic change in Ukraine and elsewhere in Eastern Europe and the former Soviet Union. The issue of free speech has been central to these political events: demands were made for an end to the system of lies and distortion perceived by millions of Ukrainians to be a central aspect of the misrule of their country, while journalists used the opportunity provided by the political changes to assert and exercise their right of free speech.

The perception of free speech as a key issue for Ukraine did not develop overnight. A key stage in the crystallisation of public opinion was the murder in September 2000 of the journalist Georgy Gongadze, and the authorities' subsequent failure to find his killers. A measure of the importance of this case in Ukrainian politics is the fact that both candidates for the presidency made a point of promising to solve the murder should they be re-elected.

On November 18, 2004, Viktor Yushchenko told foreign journalists who asked him about the Gongadze case:

“I give you my word that all the high-profile cases closed by Kuchma will be revisited, commissions will be appointed and we will carry out full-scale investigations.”

Mr Yushchenko guaranteed that his presidency would work to stop the persecution of journalists and that they would be able to work freely: “Now the overwhelming majority of the political elite, journalists and business circles understand one thing – a free press is an inalienable part of the progress” of Ukrainian society.<sup>1</sup>

The sacking of the general prosecutor three weeks later and the reinstatement of former general prosecutor Svyatoslav Piskun immediately focussed renewed attention on the Gongadze affair. Although in our view the reasons for Mr Piskun's earlier dismissal are unclear, Mr Piskun's lawyer claimed that it had been due to the progress he made with the Gongadze case.<sup>2</sup> And within a few days of his reinstatement, Mr Piskun reappointed one of his former deputies who had previously led investigations of the Gongadze case<sup>3</sup>. Mr Piskun also referred to court a criminal case against former policemen charged with having committed kidnappings and murders for ransom. These former policemen included a key suspect in the Gongadze case.<sup>4</sup>

The timing of our Preliminary Report is therefore fortuitous. We undertook to examine the failure of the official investigations of the Gongadze case and the issues that raised, because of our belief that this failure constituted a serious blow to press freedom not only in Ukraine but across Europe and internationally. Following the political changes in

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<sup>1</sup> UNIAN news agency, Kyiv, in Ukrainian, November 19, 2004

<sup>2</sup> UNIAN news agency, Kyiv, in Ukrainian, December 10, 2004

<sup>3</sup> Ukrayinska Pravda web site, in Ukrainian, December 15, 2004

<sup>4</sup> UNIAN news agency, Kyiv, in Ukrainian, January 13, 2005

Ukraine, we believe that new opportunities have been created for the Gongadze case to be resolved, and make recommendations in this regard below.

### **1.i Summary of conclusions**

At the outset our investigation undertook to examine the apparent failure of legal and judicial processes in the Gongadze case and the reaction of institutions and civil society to the case. We therefore stated at the outset that:

“The inquiry will not attempt to undertake any forensic investigation of the circumstances of the murder. Rather it will examine whether the forensic investigation has been properly undertaken and, if not, why not. The inquiry will examine the political and social circumstances that surrounded the murder; political and social factors that have hindered a full investigation; the response of relevant state institutions and civil society to the case and their role in advancing and/or hindering the investigation; and the weakness in legal and political systems highlighted by the case.”<sup>5</sup>

Further information about our methodology is given in section 2 below, and Appendix I.

This Preliminary Report covers four aspects of the official investigation into the Gongadze case:

- The substantial and presentational failures of the investigation (section 3);
- The failure to deal with the Melnichenko recordings (section 4);
- The alleged surveillance of Gyorgy Gongadze by officials of the ministry of internal affairs and its possible connection with his murder (section 5); and
- A series of cases of intimidation of public officials who dealt with the case (section 6).

Finally, we have briefly reviewed and commented on other investigations of the case (section 7).

**In section 3** we note the catalogue of elementary failures, and breaches of procedure and law, by the investigation into the Gongadze case by the Ukrainian general prosecutors’ office. We summarise the mass of contradictions in the public announcements by the investigating authorities. Our findings concur with those of Mr Krüger of the Council of Europe in 2003: namely, that the investigating authorities deliberately obstructed and confounded the investigation over a long period of time, and also made inconsistent announcements, often on the basis of fabricated “solutions” to the case, that betrayed an unwillingness to solve it.

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<sup>5</sup> “Scope and aims of the inquiry”, agreed at a meeting of sponsoring organisations in Brussels on 5 November 2003.

We submit, further, that the purpose of these announcements was the cynical manipulation of public opinion inside Ukraine and internationally. The presentation of such false information to the Council of Europe (statement of 1 March 2001 at the 739th meeting of ministers' deputies) suggests that this "public relations management" of the investigation was undertaken not only the general prosecutor's office but also by other senior politicians and officials. This points to broader political collusion within the Ukrainian establishment to obstruct and divert the investigation, the substance and motivation of which needs to be uncovered in the interests of human rights and the rule of law.

**In section 4** we review the failure of the authorities investigating the Gongadze case to deal with the so-called "Melnichenko recordings". Wider issues concerning the recordings fell outside our terms of reference, and we do not seek to prejudge their authenticity or significance. But we note the substantial body of evidence suggesting that the sections of the recordings that concern the Gongadze case are a genuine record of conversations involving senior Ukrainian political figures. We submit that no serious investigation of the Gongadze case can be completed without examining these sections of the recordings and the nature of the connection between them and Gongadze's murder.

In this report we detail:

- The contradictory accusations by the general prosecutor's office that the recordings were fabricated by Ukrainian politicians, and its inconsistent actions in relation to these accusations;
- The general prosecutor's arbitrary and inconsistent attitudes to the various expert examinations of the recordings;
- The refusal of the general prosecutor's office at any time in the last four years to acknowledge that the recordings must form part of the investigation of the Gongadze case.

To our knowledge, neither Mr Piskun nor any other senior Ukrainian official has returned to this central question in the weeks following the presidential election. We submit that any progress made in the investigation of events in the Ministry of Internal Affairs will be compromised if the influence on those events of discussions within the senior Ukrainian leadership at the time of the murder is not also thoroughly investigated.

**In section 5** we cover the alleged surveillance of Georgy Gongadze by officials of the Ministry of Internal Affairs in the period leading up to his death, and the possible connection of this surveillance with his death. As with the investigation of the murder itself, official investigations of this surveillance were characterised initially by an unwillingness to investigate central pieces of evidence, by obstruction of the judicial process and by a mass of contradictory public statements.

In 2003, progress was made on this aspect of the case that brought it dramatically into the political sphere. Public accusations were made by former police officers and by the head of the ad-hoc parliamentary commission on the Gongadze case of a connection between

the surveillance of Gongadze and his murder, of the involvement in this of senior interior ministry officials, and of the existence of illegal armed gangs operating within the internal affairs ministry. The general prosecutor's office arrested the former head of the interior ministry intelligence directorate, Oleksiy Pukach, and charged him with destroying documents related to the surveillance of Gongadze. A former policeman, Ihor Honcharov, died in custody after making accusations about the case. Finally, detailed information appeared in a UK newspaper and on the internet relating to these matters. But this investigation was halted after the sacking of Mr Piskun as general prosecutor in October 2003.

Since being reappointed as general prosecutor in December 2004, Mr Piskun has made clear his readiness to return to these issues. We welcome his declared intentions. However, we note that since the political changes of November-December 2004 there has been no change in the official stance on the Melnichenko recordings. This has led to concern among journalists and human rights campaigners in Ukraine that an attempt will be made to defuse the issues raised by the Gongadze case.<sup>6</sup> We submit that this issue must be investigated together with that of senior politicians' possible involvement in the affair: any attempt to break the link between these two parts of the investigation would be a step backwards.

**Section 6** of our report deals with a series of cases of intimidation and harassment of public officials who, in pursuance of their duties, became involved in some way with the Gongadze case, and of media that attempted to report the case in its early stages. The list of "victims" who themselves suffered intimidation through trying to pursue the case is striking for its breadth. It includes:

- A district coroner who tried to perform his duties in regard to Gongadze's body;
- A lawyer who attempted to perform his duties by representing Gongadze's mother;
- A former chair of the ad-hoc parliamentary commission on the case;
- A former chair of the district court who issued a judgement that Mrs Gongadze had the right to be represented as an aggrieved party in the case;
- And a medical expert who tried to perform her duties with regard to Gongadze's corpse.

These findings highlight the question mentioned above in relation to section 3 of the report: namely, that there was a considerable network of forces working to obstruct the investigation of the case. This again raises the issue of political collusion against the investigation. We submit that, to bring the Gongadze case to a satisfactory conclusion and to strengthen human rights in the country, the Ukrainian authorities and international bodies concerned with the case must look at the extent of this collusion and the reasons for it.

**Section 7** of this report assesses a number of other investigations made into the case. In the absence of a serious official investigation, and due to the political significance of the

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<sup>6</sup> See, for example, the article by Volodymyr Boiko, [www.ord.com.ua/categ\\_1/article\\_3188.html](http://www.ord.com.ua/categ_1/article_3188.html), in Ukrainian, December 12, 2004

case, several investigations were undertaken by NGOs, journalists and a private detective agency. These fall into two categories: investigations that relied mainly on journalistic methods and investigations that relied on private investigative and/or quasi-police methods. We comment on the unsatisfactory presentation of the material of the latter investigations (those by Kroll Associates of New York and Azhur of St Petersburg) and call for their results, along with clear indications of their methodology, to be published in full.

We also note the difficulties faced by the Ukrainian parliament's ad-hoc commission on the Gongadze case, which had insufficient powers in law to do its work, and the results of which have been kept hidden by the misuse of parliamentary procedure, which has prevented the commission's chairman from making a report. This again points to political collusion to obstruct the investigation of the Gongadze case. We hope that, in the new political conditions in Ukraine, it will at last be possible for this report to be presented to parliament and published in full.

**The Gongadze case will be a litmus test for Mr Yushchenko's promises to democratise Ukraine and fulfil the expectations of the crowds that brought him to power. Continued failure to resolve it encourages abuses of power to silence and intimidate journalists. Without answers to the questions posed by the case:**

- **No citizen can have confidence in parliament, the judiciary and the executive;**
- **No journalist can feel safe to expose abuses of power;**
- **There can be no talk of genuine free speech in Ukraine.**

**The case has important implications, too, for international civil society. There is prima facie evidence that, shortly before Gongadze's death, the Ukrainian president and other senior politicians discussed harming him. The fact that, more than four years later, this evidence has not been investigated and no framework has even been established for such an investigation, suggests that those in power still enjoy an unacceptable level of impunity with respect to alleged intimidation of journalists by murder and other violent means. For this reason we have made recommendations to the Ukrainian authorities, international bodies and civil society.**

### **1.ii Preliminary recommendations**

We call on president Yushchenko, the general prosecutor's office and the government of Ukraine:

- To bring together and coordinate investigations into the possible surveillance of Georgy Gongadze, investigations into allegations of illegal armed formations operating within the Ministry of Internal Affairs, and investigations of the Melnichenko recordings and the issues raised by them;

- To accept the proposal made last year by journalists' organisations and NGOs for the expert examinations of the Melnichenko recordings to include observers from civil society;
- To devise a transparent form of investigation of the nature of the links between the Melnichenko recordings and the Gongadze case;
- To initiate a public inquiry, in an appropriate form under the Ukrainian constitution, into the broad issue of political collusion in the obstruction of justice in the Gongadze case;
- To ensure that such an inquiry covers the possible political involvement in the case suggested by the Melnichenko recordings, the apparently deliberate obstruction of the original investigations into the case, the presentation of false information about these investigations to the public and to international institutions, and intimidation of public officials who dealt with the Gongadze case.

We call on the Ukrainian parliament:

- To hear the report of its ad-hoc commission on the Gongadze case without further delay and to publish its findings and accompanying documentation in full.

We call on the Council of Europe, and other international bodies such as the UN and OSCE:

- To support the Legal Affairs Commission of the Parliamentary Assembly of the Council of Europe in following closely and reporting on legal and procedural developments in the case, with regard to its wider aspects, as outlined in the Motion of Resolution to the Parliamentary Assembly by Ms Hanne Severinsen and others (see Appendix IV);
- To promote similar monitoring by other international bodies;
- To urge the Ukrainian government to commit itself to a broad examination of all aspects of the case as outlined above.
- To develop mechanisms for rapid and concerted international action in the case of journalists killed for apparently political motives;

We call on the International Federation of Journalists, journalists' organisations and NGOs committed to freedom of speech:

- To develop an international campaign around the issue of impunity of senior political figures in respect of allegations of violent intimidation of journalists.



## **2. The inquiry**

In November 2003 representatives of four organisations – the International Federation of Journalists, the Institute of Mass Information of Ukraine, The National Union of Journalists of the UK and Ireland, and the Gongadze Foundation – launched an inquiry with the aim of reviewing and assessing the numerous investigations of the murder. As explained above (section 1.i), we set out to examine the apparent failure of legal and judicial processes in the Gongadze case and the reaction of institutions and civil society to the case. We had no access to material evidence, had limited resources and had no pretensions to forensic expertise.

We therefore made no claim to be able to solve the murder case; rather, we sought to assess the previous investigations, and in particular the failure of the Ukrainian authorities to make progress in the case, in its political context.

We have performed the following work:

- Established a comprehensive internet archive of reports of previous investigations into the Gongadze case, including media reports on these investigations and published or broadcast interviews with key investigators (we intend in the near future to make this information resource available to other researchers working on the case);
- Sought on the basis of these materials to identify the strengths and weaknesses in the approaches adopted in the investigations, and to examine the apparent contradictions in statements about these investigations;
- Interviewed key witnesses in the case, with an emphasis on the manner of the investigations conducted, during a visit to Kyiv in September, 2004 (a list of interviews conducted is given in Appendix I);
- Presented a Memorandum to the Council of Europe on the case, which has helped to inform the council's discussions.<sup>7</sup> This was followed by the presentation of a Motion of Resolution on the case on October 15 to “follow closely and report on the legal and procedural developments of the investigation of the Gongadze case”, with particular attention to this inquiry's findings (see Appendix IV).

Our inquiry has won the support of prominent organisations and individuals, reflecting the wide concern in international civil society about the Gongadze case (Appendix III). We record our thanks to all of them for the support given in various ways, in particular in campaigning to highlight the case.

In presenting this Preliminary Report, we recognise that, even under the terms of reference to which we worked, further research is required (Appendix I). However we

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<sup>7</sup> Press Freedom and the Murder of Georgy Gongadze: Memorandum to the Parliamentary Assembly of the Council of Europe, available at [www.ifj.org/default.asp?index=2721&Language=EN](http://www.ifj.org/default.asp?index=2721&Language=EN)

believe that this report can positively impact on the investigation as it unfolds in new political circumstances.

### **3. Assessment of official investigations**

The following account of the investigations into Georgy Gongadze's death by the Ukrainian general prosecutor, and related activity by the internal affairs ministry, is based on public statements about the case and on information collected by ourselves and by journalists; the authorities have been reluctant to discuss the case, and, in particular, declined to meet our researchers in Kyiv.

#### **3.i Early misinformation from officials**

The first stage of the official investigation into the case of Georgy Gongadze, who went missing on 16 September, 2000, was notable for its distractions, inconsistencies and breach of due procedure under law.

**After a corpse had been found in Tarashcha, a town near Kyiv, on November 2, 2000, in the space of two weeks information was revealed which indicated that the headless torso was probably Gongadze: its physical dimensions, jewellery found with the corpse, the stomach contents, and shrapnel wounds to the hand. However, rather than allowing for this probability, which soon became a certainty, investigators tried to convince the public that the corpse was not Gongadze's and that he was still alive.**

It is reported that Ukraine's chief coroner, Yuriy Shupyk, removed the stomach contents but gave no instructions for the rest of the body to be moved to cold storage in Kyiv.<sup>8</sup> The corpse therefore continued to decompose in the local morgue. On November 15 journalists arrived at the Tarashcha morgue to claim the corpse, which was suddenly and inexplicably seized by the police and taken to Kyiv. The next day, deputy interior minister Mykola Dzhyha told parliament the corpse was too short to be Gongadze and had been in the ground for two years.<sup>9</sup>

In the meantime, officials emphasised that there were sound reasons to believe Gongadze might still be alive. On September 25, Mr Dzhyha said Gongadze had been seen in a Kyiv café the day after he disappeared;<sup>10</sup> the interior minister himself, Yuriy Kravchenko, repeated this information on October 6.<sup>11</sup> On the day after the corpse was found, deputy prosecutor general Serhiy Vynokurov announced that Gongadze had been seen on a train in Donetsk Region.<sup>12</sup> On January 10, 2001, prosecutor general Mykhaylo Potebenko told the media he had received new information which "suggests that the journalist is still alive".<sup>13</sup>

<sup>8</sup> J Koshiw, *Beheaded: The Killing of a Journalist*, Artemia Press, 2003, pp128, 133

<sup>9</sup> *Ibid.*, chapters 16 and 17

<sup>10</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1500 gmt, September 25, 2000

<sup>11</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1500 gmt, October 6, 2000

<sup>12</sup> Ukrainian Television Second Programme, Kyiv, in Ukrainian, 1730 gmt, November 3, 2000

<sup>13</sup> UNIAN news agency, Kyiv, in Ukrainian, January 10, 2001

A few days later his deputy, Aleksei Bahanets, went to Lviv to question people who said they had seen Gongadze; he said he had “no doubt that they were not mistaken”.<sup>14</sup> He repeated this claim a month later.<sup>15</sup> In late January Mr Potebenko said an accurate Czech visa had been issued to Gongadze after he disappeared.<sup>16</sup> In late April, Mr Bahanets told Russian television: “We have a witness who was on holiday in the Czech Republic” and saw Gongadze in February.<sup>17</sup>

**There is no indication that the authorities properly investigated these claims. If they had done, they would have informed the public subsequently of the results. This did not happen.**

Valentina Telychenko, the lawyer for Gongadze’s widow Myroslava, points out that a photofit picture [sic] of Gongadze was pasted up in hallways all over Ukraine in the weeks after he disappeared. Inevitably, given the scale of this campaign, people came forward claiming to have seen someone resembling the photofit, creating a large amount of work for investigators and deflecting their attention from other lines of inquiry.<sup>18</sup>

In January 2001, Russian forensic experts issued the results of DNA tests on the corpse, which indicated a 99.6 per cent probability that it was Gongadze’s. In other words, four mothers in 1,000 could be expected to match their DNA with that of the corpse. Despite this, the general prosecutor announced in parliament: “There are no sufficient grounds to say that the body is that of journalist Gongadze unless additional forensic examination is made.” He said Gongadze could have been kidnapped by Ukrainian politicians in order to discredit their political opponents.<sup>19</sup>

Six weeks later (February 22), however, the Russians forensic experts raised their estimate of the probability to 99.9 per cent. On February 26, the prosecutor general confirmed that the corpse found in Tarashcha was Gongadze’s, based on these results.<sup>20</sup> Only then did he launch a murder investigation.<sup>21</sup> In other words, at least another six weeks had been lost in the investigation just because of a 0.3 per cent probability that the corpse was not Gongadze’s.<sup>22</sup>

In fact, the police investigator Hryhoriy Harbuz had contacted Gongadze’s widow Myroslava and his colleague Olena Prytula three days after the corpse was found and learned from them that the jewellery he had found on the corpse was identical to Gongadze’s.<sup>23</sup> In other words, there were grounds to launch a murder investigation four months before the general prosecutor did so.

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<sup>14</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1800 gmt 17 January 17, 2001

<sup>15</sup> Kyivskiy Vedomosti, Kyiv, in Russian, February 15, 2001

<sup>16</sup> Kyivskiy Vedomosti, Kyiv, in Russian, January 27, 2001

<sup>17</sup> Russia TV, Moscow, in Russian, 1000 gmt, April 20, 2001

<sup>18</sup> Interview in Kyiv, September 13, 2004.

<sup>19</sup> ITAR-TASS, January 10, 2001

<sup>20</sup> ‘Corpse confirmed as dead writer’, the Independent (London), February 27, 2001

<sup>21</sup> Los Angeles Times, February 28, 2001

<sup>22</sup> Note that this was before the announcement by parliament’s ad-hoc commission investigating Gongadze that DNA tests conducted in Germany suggested the corpse was not Gongadze’s. Further tests subsequently showed the German tests to be flawed.

<sup>23</sup> Koshiw, op. cit., p170

All the same, even as late as August 2002 the deputy prosecutor general refused to fully rule out the possibility that Gongadze may still be alive. He told Ukrainian television: “We don’t know for sure whose body this is.”<sup>24</sup> Exactly a year previously, his predecessor in the post had announced on television that tests had “fully confirmed” that the body belonged to Gongadze.<sup>25</sup>

These contradictory statements were accompanied by numerous announcements that the various genetic and forensic tests on the corpse were biased, flawed or otherwise inadmissible as evidence. This served to drag out the investigation and to prevent any progress.

Furthermore, the prosecutor general refused to recognise Gongadze’s mother, Lesya, as the aggrieved party in the case, thereby preventing her and her lawyer from having access to the materials of the case and independently observing its progress. The Pecherskyy Court in Kyiv ruled on February 9, 2001, that the prosecutor’s office had acted outside the law in refusing to recognise Lesya Gongadze’s rights.<sup>26</sup>

Hans Christian Krüger, special envoy of the Council of Europe, noted these shortcomings in his report to the Council in July, 2003. He said: “The Prosecutor General’s Office made numerous -- and sometimes contradictory -- statements to the press and before Parliament. ... Inconsistencies in the authorities’ statements were often interpreted as proof of bias and unwillingness really to establish the truth.”<sup>27</sup>

To this conclusion we can add, on the basis of our research, that:

- The Interior Ministry also made statements with no basis in fact and which were subsequently shown to be false;
- The general prosecutor’s office (GPO) continued to pursue avenues of investigation that subsequently were proved to be false, even when the authorities knew there was a high probability they were false;
- The GPO delayed making the Gongadze case a murder investigation for at least six weeks, and possibly for several months, in the face of evidence that the corpse was his;
- It continued to make public statements that false avenues of investigation were valid long after they had been shown to be false.

**The authors of this research submit that the effect of these contradictory statements and actions was seriously to delay the progress of the investigation and to spread confusion among the public about the case.<sup>28</sup> As a result, fresh clues and**

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<sup>24</sup> Novyy Kanal television, Kyiv, in Ukrainian, 1600 gmt, August 9, 2002

<sup>25</sup> Inter TV, Kyiv, in Russian, 1700 gmt, September 17, 2001

<sup>26</sup> Interview with judge Mykola Zamkovenko, formerly chair of the Pecherskyy Court, Kyiv, September 15, 2004

<sup>27</sup> Report by Mr Hans Christian Krüger to the Bureau of the Parliamentary Assembly of the Council of Europe, AS/Bur (2003) 60, 2 July 2003, paragraphs 2.18 and 2.19

<sup>28</sup> Further material supporting this conclusion is contained in Koshiw, op. cit., pp97-137. Koshiw also points to the fact that the local coroner Ihor Vorotyntsev correctly assessed the corpse’s height at over 190cm, while deputy interior minister

**information may have been overlooked or discredited, or their significance ignored. The consequences for the later progress of the investigation need to be assessed.**

In September, 2002, Myroslava Gongadze filed a case to the European Court of Human Rights against Ukraine, claiming: “The State of Ukraine failed to conduct an effective investigation on Georgy Gongadze’s case and therefore violated Article 13 of the European Convention on Human Rights.” The case is still in progress.

### **3.ii False announcements that suspects are in custody**

#### **3.ii.a “Citizen K”**

The lack of progress and the flawed investigation in the early stages of the case might seem to contrast with announcements in 2004 made by prosecutor general Henadiy Vasylyev. Mr Vasylyev appeared to have made no progress in the case until June 21, 2004, when he unexpectedly announced that a suspect, “Citizen K”, was in detention.

**The announcement raised a mass of contradictions, which the prosecutor general failed to answer despite his requirement to do so under Ukrainian law.**

On June 21, 2004, the press department of the general prosecutor’s office declared that a suspect, “Citizen K”, had said he killed Gongadze. A spokesperson announced: “The man’s testimony is corroborated by the circumstances of the crime, such the time [of the crime] and some other key facts established by the investigation, including the beheading [of Gongadze].”<sup>29</sup> Citizen K had previously been prosecuted for several other murders that involved beheading, the spokesperson said.

On the next day a spokesperson for the general prosecutor’s office, said: “Citizen K has said he executed and beheaded Heorhiy Gongadze ... We are almost certain he did it.”<sup>30</sup>

The announcement about Citizen K, which was widely reported, came just two days after the appearance of an article in the *Independent* (London), which revealed that leaked documents of the general prosecutor’s investigation showed that senior government officials had obstructed those investigations.<sup>31</sup> The prosecutor general’s office later confirmed the authenticity of the documents on which the article was based.<sup>32</sup> The appearance of this article cast the prosecutor’s investigation in a very bad light. The announcement about Citizen K, in contrast, was made as if it marked a breakthrough in the investigation.

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Dzhyha told parliament the corpse was too short to be Gongadze. Furthermore, no explanation was given: why an obvious murder victim was allowed to rot in an unrefrigerated morgue; why the corpse had become just a pile of bones by the time it was viewed by Gongadze’s widow on December 17; why ex-president Kuchma initially said on television that the authorities thought it was a homeless person; why Mr Potebenko did not tell parliament during his report on January 10 that the Tarashcha coroner had jewellery on the corpse and that Gongadze’s widow had told him it matched Gongadze’s just three days after the corpse was found. *Ibid.*, pp170-175.

<sup>29</sup> ‘Ukraine prosecutors report breakthrough in Gongadze case’, Interfax-Ukraine, June 21, 2004

<sup>30</sup> Associated Press Online, June 22, 2004

<sup>31</sup> Askold Krushelnicky , ‘Pressure piles on Ukrainian leader after leaks reveal attempts to cover up killing’, *Independent* (London), June 19, 2004

<sup>32</sup> UNIAN news agency, Kyiv, in Ukrainian, August 2, 2004

In July, 2004, the Institute of Mass Information, the Ukrainian Law Organization, the International Federation of Journalists and the National Union of Journalists of Great Britain and Ireland wrote a formal letter of inquiry to the general prosecutor to ask for information about Citizen K under article 9/32/33 of the Ukrainian law on information. A reply was received from the general prosecutor's office on August 13, signed by chief of the Department of the Investigation of Very Important Cases. Mr A. Chumachenko stated that Citizen K had not been arrested as part of the Gongadze case, and that an investigation was continuing. His letter said only that all theories would be examined and none had yet been ruled out.<sup>33</sup>

On July 14, 2004, the lawyer for Georgy Gongadze's mother also received a letter from the prosecutor general's office, in which deputy prosecutor general Hryshenko stated that "at the present moment there are no suspects in the criminal case of the murder of Gongadze. In this case no charges have been brought against anyone." This letter fully contradicted the previous public announcements by the prosecutor general.<sup>34</sup>

Astonishingly, on August 16 the prosecutor's office retracted its earlier statement about Citizen K. A spokesperson announced that there are no grounds for saying that Citizen K "has any status in the Gongadze case" and that "it would not be appropriate to report any other circumstances" regarding Citizen K.<sup>35</sup>

**The information presented above strongly suggests that the general prosecutor's office made a false announcement in June 2004 about the progress of the case in order to improve its image. This amounts to a serious breach of law and procedure and in no way can be seen as furthering the progress of the case.**

Moreover, we submit that the prosecutor's handling of "Citizen K" is not an isolated incident: it is simply the most recent in a pattern of announcements about the case by the general prosecutor and other officials that cannot be reconciled with known facts about the investigation. These announcements appear to have been made primarily with the aim of "managing" the investigation's public image before both the Ukrainian public and the Council of Europe and other international bodies.

As noted, in June 2004 the prosecutor general announced that Citizen K's confession marked a breakthrough in the case. However, the Ukrainian delegation to the Council of Europe had already informed the CoE more than three years previously that a Citizen K had been detained by the prosecutor general. The delegation, citing the prosecutor general's office, informed the CoE that "information about the circumstances of the murder of G. Gongadze could be possibly known to Citizen K., who is currently in custody ... for committing a number of grave crimes, including premeditated murders by order." Citizen K had been ordered to murder a "famous oppositional journalist in Kyiv", the delegation's report to the CoE stated.<sup>36</sup>

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<sup>33</sup> The letter is numbered No. 06/2-9310-01

<sup>34</sup> The letter has been seen by the inquiry

<sup>35</sup> Interfax-Ukraine, August 16, 2004

<sup>36</sup> Annex to Appendix I distributed by the Ukrainian Delegation on March 1, 2001, at the 739th meeting of the Ministers' Deputies regarding the results of the investigation into the G. Gongadze case. The report is signed by Oleksandr

The information provided to the CoE by the Ukrainian delegation was effective in persuading the Parliamentary Assembly not to ask for Ukraine to be immediately excluded from the Council of Europe; instead, in April Ukraine was granted an extension.<sup>37</sup> Instead, in April 2001 Ukraine was granted guarantees of its further membership of this international organisation.

No more was heard about Citizen K until the prosecutor general's surprise announcement in June, 2004, followed by its equally surprising retraction of its statement two months later (see above).

### **3.ii.b "Citizens D and G"**

Dated March 1, 2001, the Ukrainian delegation's report to the Council of Europe stated that the prosecutor general's office was analysing the possible involvement in Gongadze's murder of "Citizens D and G", who belonged to an organised criminal groups and whose corpses had been found and identified. The report stated: "The General Prosecutor of Ukraine is analysing the information on [the] possible involvement in the murder of G. Gongadze of Kyiv residents belonging to one of the organised criminal groups -- citizens D. and G., who disappeared at the beginning of November 2000. Elaboration of this version established the fact that these persons were murdered. Due to joint actions of the bodies of the Prosecutor General's Office and of the Interior forces, the suspects involved in the murder of the mentioned persons were identified and the location of the corpses of D. and G. was discovered. At present, possible involvement of these persons in the murder of G. Gongadze is being verified."<sup>38</sup>

"Citizens D and G" stood for Igor Dubrovsky and Pavlo Gulyuvaty, also known by their nicknames Tsyklop (Cyclops) and Matros (Sailor). The president of Ukraine, the interior minister and his deputy, the general prosecutor and his deputy all proceeded to announce that the case had been solved and that citizens D and G had murdered Gongadze.

**Within a few months, however, this allegation was revealed to be completely untrue, and the interior minister and the general prosecutor's office were forced to retract their earlier statements.**

On March 6, 2001, the deputy general prosecutor in charge of the Gongadze case, Mr Bahanets, said on Ukrainian television that: "A group of people from a criminal group may have been involved in Georgy Gongadze's disappearance. One of them has a nickname Cyclops. They took a journalist, a Georgian, to a forest to get him to pay some debts."<sup>39</sup>

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Lavrynovych, head of parliament's ad hoc commission investigating Gongadze and later to become minister of justice in Mr Kuchma's government.

<sup>37</sup> 'Assembly grants another extension to Ukraine', CoE press statement, Strasbourg, April 26, 2001, ([http://press.coe.int/cp/2001/302a\(2001\).htm](http://press.coe.int/cp/2001/302a(2001).htm))

<sup>38</sup> Annex to Appendix I distributed by the Ukrainian Delegation on March 1, 2001, at the 739th meeting of the Ministers' Deputies regarding the results of the investigation into the G. Gongadze case

<sup>39</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1600 gmt, March 6, 2001

On April 29, 2001, Mr Bahanets, repeated this allegation.<sup>40</sup> Two weeks later, ex-president Kuchma announced that investigators had “practically discovered” the killers,<sup>41</sup> and he was shortly backed up by his interior minister; two days later interior minister Smyrnov, declared the case had been “solved”: “We have proof concerning the criminals, who have died, to our sorrow,” he said.<sup>42</sup>

On the same day Mr Smyrnov’s deputy, Mr Dzhyha, announced that Gongadze had been killed by these two criminals.<sup>43</sup> On May 24, 2001, the general prosecutor, Mr Potebenko, told Ukrainian television: “We have enough proof in order to consider this case as such to be nearing completion.”<sup>44</sup>

However, on May 25 a Kyiv newspaper revealed that the two criminals blamed for Gongadze’s death had both been filmed at a wedding on the day Gongadze disappeared.<sup>45</sup> The very next day, Mr Smyrnov, the interior minister, retracted his claim.<sup>46</sup>

The fact that the two criminals were still alive was originally discovered by the Russian *Agenstvo zhurnalisticheskikh rassledovaniy*, or Azhur (see section 7.iii.b below). On December 13, 2001, representatives of Azhur company gave parliament’s ad-hoc investigating commission the proof, including video evidence, that Matros, was safe and sound in Dnipropetrovsk and nobody had ever arrested him.<sup>47</sup> In January 2002, deputy prosecutor general Mr Bahanets announced that the investigation had not confirmed that the two Kyiv criminals, previously said to have killed Gongadze and to now be dead themselves, were involved in the journalist’s murder.<sup>48</sup>

**This episode demonstrates that information given to the Council of Europe by the Ukrainian delegation, and which was used to justify claims by senior state officials that the investigation was making progress and had even solved the Gongadze case, was based on elementary errors. As noted above, this information was used to persuade the CoE not to suspend Ukraine’s membership.**

The information accusing the two criminals was also widely used in Ukraine to convince the general public that the investigation into the case was nearing completion.

We believe that the success or failure of the Ukrainian authorities’ investigation, and the reasons for it, cannot be fully assessed without taking this aspect into account.

To sum up, over the four years since Gongadze was killed there was a pattern of announcements by officials leading the investigation that Gongadze’s killer(s) had been identified and the case was solved. These announcements concerned “Citizen K” and “Citizens D and G”. In both cases, however, within a few months the announcements

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<sup>40</sup> Ukrainian New Channel television, Kyiv, in Russian, 1120 gmt, April 29, 2001

<sup>41</sup> Interfax news agency, Moscow, in English, May 14, 2001

<sup>42</sup> ‘Ukraine aide says thugs killed newsman’, The Boston Globe, May 16, 2001

<sup>43</sup> UNIAN news agency, Kyiv, in Ukrainian, May 16, 2001

<sup>44</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1700 gmt, May 24, 2001

<sup>45</sup> Segodnya, Kyiv, in Russian, May 25, 2001, p 8

<sup>46</sup> ‘Ukraine government backtracks on slaying’, The New York Times, May 26, 2001

<sup>47</sup> Holos Ukrayiny, Kiev, in Ukrainian, January 9, 2002; interview with Valentina Telychenko, lawyer of Myroslava Gongadze, Kyiv, September 13, 2004

<sup>48</sup> Novyy Kanal television, Kyiv, in Ukrainian, 1700 gmt, January 25, 2002



were fully retracted, in the first case after requests were made to the general prosecutor's office to clarify the situation, and in the second after the media exposed that the suspects, who were announced to have been identified and the location of their corpses discovered, were alive and well and had been at a wedding when Gongadze disappeared.

**The mass of contradictions in the public announcements by the investigating authorities suggest that they made these announcements, often on the basis of fabricated “solutions” to the case, with the cynical aim of manipulating public opinion inside Ukraine and internationally. The presentation of such false information to the Council of Europe suggests that not only the general prosecutor's office but also other politicians and senior officials colluded in this “PR management” of the investigation. These issues are relevant to the issue of whether or not there was broader political collusion to obstruct and divert the investigation, and must therefore be investigated thoroughly.**

#### **4. Refusal to assess the “Melnichenko recordings”**

The authors of this report believe that there is *prima facie* evidence on the so-called “Melnichenko recordings” that, shortly before Gongadze's murder, the president of Ukraine and senior ministers discussed harming him. As Oleksandr Lavrynovych, chair of the Ukrainian parliament's ad hoc commission on Gongadze, put it in 2001: “In my opinion, ... the original audio records from the president's office ... can shed some light on the alleged involvement of the state's top officials in the murder of the journalist...”<sup>49</sup> However, the Ukrainian general prosecutor's office has refused at all times for the last four years to consider this central aspect of the case.

In November 2000, one of ex-president Kuchma's guards, Mykola Melnichenko, released recordings which he claimed he had made in the president's office. On at least five occasions from June 12 to July 3, 2000, ex-president Kuchma and his ministers -- head of the president's administration Volodymyr Lytvyn, interior minister Yuriy Kravchenko, secret police chief Leonid Derkach -- discussed following Gongadze closely, “crushing” him, “taking care of” him and “throwing him to the Chechens”. Mr Lytvyn, now speaker of parliament, is apparently heard suggesting to Mr Kuchma that he should “let loose Kravchenko to use alternative methods”.<sup>50</sup>

By September 2004, four laboratories had conducted tests on the authenticity of the recordings (The Kyiv Forensic Science and Research Institute, the International Press Institute (Vienna), Bek Tek (USA), the U.S. Department of Justice), and several individuals. The results have been inconclusive, but successive Ukrainian prosecutor generals have made highly contradictory statements about the recordings. These statements undermine their claims that the recordings are inadmissible as evidence in the Gongadze case.

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<sup>49</sup> Ukrayina Moloda, Kyiv, in Ukrainian, March 2, 2001

<sup>50</sup> Koshiw, op. cit., p250

We are aware of the many issues, including human rights issues, raised in the public discussion of the genesis of and contents of these recordings. However, these important matters fall outside the scope of our investigations. We are concerned only that all the available evidence points to the authenticity of the sections of the tape on which Gongadze is discussed (namely, those that have been publicly available since November 2000). The possible connection or connections between those conversations and the murder of Gongadze is a matter for forensic and judicial inquiry that we in no way seek to pre-judge. Our concern is that such inquiry has not yet begun.

#### **4.i Melnichenko tapes initially dismissed as fabrications**

Before the February 2002 examination of the recordings by the U.S. firm Bek Tek, the prosecutor general's office consistently dismissed the authenticity of recordings and their relevance to the case. Thus in December 2000 prosecutor general Potebenko announced that the recordings were "categorically a fake".<sup>51</sup> In his January report to parliament he said the Kyiv Forensic Science and Research Institute had found that the recordings had been manipulated with deletions and additions of "phrases, words, fragments of words and sounds".<sup>52</sup>

As a result, the general prosecutor ended investigations into the possible complicity of top officials and opened a criminal case against Melnichenko for slander. Mr Potebenko said the voices on the recordings had been fabricated "by means of superimposing dictation".<sup>53</sup>

On January 18, 2001, the PGO's investigators raided the apartment of Mykola Rudkovskyy, an aide to Socialist Party leader Oleksandr Moroz and now a member of parliament, seizing a computer and CDs. Later that month Mr Potebenko said that the search had revealed an "underground laboratory" that had "a direct relation to the audio tape scandal". The investigators, he said, found several hours of records of speeches by Ukrainian leaders: "It is possible that the faked records were compiled from separate words and excerpts from those audio materials. Examination will be conducted soon to answer a lot of questions."<sup>54</sup>

A few days later, Mr Potebenko said the recordings were "compromised with certain words or fragments".<sup>55</sup> His deputy, Mr Bahanets, said a week later that the recordings "were compiled from separate fragments of conversations".<sup>56</sup> On February 8, Ukraine's deputy interior minister, Petro Kolyada, repeated that the recordings had been edited together from several different sources: "Some words were put together letter by letter," he said on Ukrainian television. "The voice is that of a real person, but comes from various originals. The experts have pointed out that one piece is from a digital recording,

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<sup>51</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1600 gmt, December 14, 2000

<sup>52</sup> Koshiw, op. cit., p174

<sup>53</sup> Ukrinform news agency, Kyiv, in Ukrainian, in Ukrainian, January 10, 2001

<sup>54</sup> Kyivskiy Vedomosti, Kyiv, in Russian, January 27, 2001

<sup>55</sup> Financial Times, February 7, 2001 (USA Edition)

<sup>56</sup> Kyivskiy Vedomosti, Kyiv, in Russian February 16, 2001

one is from a tape recording, some were recorded with a microphone and some without.”<sup>57</sup>

More than 18 months later (October 2002), and despite the fact that no evidence had been presented in court that Rudkovskyy had manipulated the tapes, prosecutor general Piskun returned to this issue, stating that the Gongadze episodes on the recordings were edited on Mr Rudkovskyy’s computer.

According to Mr Piskun, the editing started on 18 September 2000 and was carried out for a month.<sup>58</sup> Mr Piskun’s deputy, Viktor Shokin, added shortly afterwards that Gongadze “disappeared on 16 September, while the piece of tape ... in which the president allegedly spoke about Gongadze started to be assembled on 18 September. This has been proved by expert analysis.”<sup>59</sup>

Mr Piskun spelled out the implication: that the Ukrainian opposition had fabricated the recordings, and possibly murdered Gongadze, in order to frame ex-president Kuchma for the murder.<sup>60</sup> Mr Shokin repeated this allegation: “The motive was indeed to frame the president.”<sup>61</sup>

Despite these extremely serious allegations, no charges were brought against Mr Rudkovskyy. Furthermore, none of the examinations of the recordings have implicated Mr Rudkovskyy in fabricating the recordings; indeed, Mr Rudkovskyy threatened to sue Mr Piskun for the allegations against him.<sup>62</sup>

#### **4.ii The response to Bek Tek**

Bruce Koenig, founder of the American audio/video specialist firm Bek Tek and formerly supervisor of the FBI’s audio/video forensic laboratory, examined the five Gongadze-related excerpts from the recordings and concluded in February 2002 that the recordings had not been doctored. Bek Tek concluded:

“The specimen Q1 recordings are consistent with being clone recordings and there are no indications of alterations or edits to the audio data in the five designated areas in the two .DMR files. Based on the flow of speech in the five designated portions, no phraseology or sentence structure was pieced together by using individual phonemes, words or abort phrases.

“...it is the opinion of BEK TEK that the five designated portions, within the two specimen Q1 files, are continuous and unaltered, based on the above listed analyses. Though the existence of any digital manipulation is highly improbable, if it did occur,

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<sup>57</sup> Novyy Kanal television, Kyiv, in Ukrainian, February 8, 2001

<sup>58</sup> Interfax-Ukraine news agency, Kyiv, in Russian, 1409 gmt, October 2, 2002

<sup>59</sup> Segodnya, Kyiv, in Russian, November 28, 2002

<sup>60</sup> Interfax-Ukraine news agency, Kyiv, in Russian, 1134 gmt, October 2, 2002

<sup>61</sup> Segodnya, Kyiv, in Russian, November 28, 2002

<sup>62</sup> Rudkovskyy agreed he had copies of the recordings on his computer -- Moroz has never denied that he has copies -- but that was all. (Interfax-Ukraine news agency, Kyiv, in Russian, 1409 gmt, October 2, 2002)

without now being obvious, then the most probable scenario would be a loss of data, and not additions or editing of content.”<sup>63</sup>

Mr Koenig sealed the materials he examined and has stated he is prepared to defend his examination in court.<sup>64</sup>

An examination in September 2002 by the US Justice Department of those parts of the recordings concerning illegal arms sales to Iraq confirmed Bek Tek’s conclusions.<sup>65</sup> Among the excerpts of the recordings provided to the US Justice Department were two excerpts on the Gongadze case; Melnichenko himself has complained that the Justice Department was “deliberately delaying” its results as a means of putting pressure on president Kuchma.<sup>66</sup>

Prosecutor general Piskun said he took the Bek Tek findings seriously. He announced: “Taking into account the new findings about [authenticity] tests held on the so-called Melnichenko records, the Prosecutor-General’s Office has ordered an additional phonoscopic test.”<sup>67</sup>

No test was forthcoming, however. Almost a year later -- in March 2003 -- the PGO announced: “The prosecutor-general has sent a request to the US Department of Justice to conduct a joint examination of the original recordings concerning Gongadze.”<sup>68</sup> In September 2003, Mr Piskun announced in the Kyrgyz capital Bishkek that he had commissioned a “unique expert examination” which should clear up the question.<sup>69</sup> Finally, in December 2003 the new prosecutor general requested and received \$160,000 from the Ukrainian government to conduct an international expert examination of the recordings<sup>70</sup>; the money went to the Kyiv Forensic Science and Research Institute.

**These statements are in direct contradiction to the prosecutor general’s earlier statements that the recordings had been fabricated by Mr Rudkovskyy. If the recordings had been fabricated, why was there any need to repeat the examination? If they had not been fabricated, why were such allegations made against Mr Rudkovskyy?**

The prosecutor general turned down requests in 2004 by the organisations sponsoring this research and others that international journalistic and civil society organisations be allowed to observe the latest examination.<sup>71</sup> Oleksandr Zhyr, former head of the parliamentary commission investigating the Gongadze case, said he is prepared to produce the materials in his possession for examination by the prosecutor general, on condition that the examination should be under the control of international journalists’

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<sup>63</sup> Quoted in Koshiw, op. cit., pp247-248

<sup>64</sup> Interview with Oleksandr Zhyr, Kyiv, September 15, 2004

<sup>65</sup> Interview with Hrihoryy Omelchenko in Ukrayina Moloda, Kyiv, in Ukrainian, September 3, 2002

<sup>66</sup> Ukrayinska Pravda web site, Kyiv, in Russian, August 2, 2004

<sup>67</sup> Interfax-Ukraine news agency, Kyiv, in Russian, July 19, 2002

<sup>68</sup> Interfax-Ukraine news agency, Kyiv, in Russian, April 1, 2003

<sup>69</sup> Interfax-Ukraine news agency, Kyiv, in Russian, September 4, 2003

<sup>70</sup> Interfax-Ukraine news agency, Kyiv, in Russian, January 8, 2004

<sup>71</sup> Letter from IFJ, NUJ, RSF, Article 19, IMI to the General Prosecutor of the Ukraine, February 2, 2004; Reply from the General Prosecutor, February 19, 2004; Second letter from IFJ, NUJ, RSF, Article 19, IMI to the General Prosecutor of the Ukraine, February 24, 2004; Reporters Without Borders press release, March 25, 2004

organisations to ensure objectivity and to prevent tampering with the recordings.<sup>72</sup> The general prosecutor has not responded to this long-standing proposal.

On September 10, 2004, the head of the Kyiv institute announced the results of the latest tests: the recordings were a doctored copy, he said, and the voices on them were unrecognisable.<sup>73</sup>

However, three days later the prosecutor general's office stated that the tests had been performed on copies of the recordings provided by members of parliament, implying that without the originals absolute certainty was impossible.<sup>74</sup> This announcement made a nonsense of the Kyiv institute's statement that the examination had revealed that the recordings were copies -- the investigators already knew that this was the case.<sup>75</sup>

**Our findings suggest that the prosecutor general's office commissioned an expensive new examination of the recordings which was certain to produce no new information.**

On September 22, 2004, the prosecutor general again returned to the allegations last made by his predecessor almost two years ago, announcing to a press conference that editing of the Gongadze excerpts on the recordings had begun on September 18, 2000, two days after the journalist's disappearance. He said experts had reached this conclusion after inspecting a computer hard drive and some CDs. He announced a criminal investigation into the doctoring of the recordings.<sup>76</sup>

This announcement was made as if it was news, although the prosecutor first made precisely these allegations in January, 2001, after raiding Mr Rudkovskyy's flat.

**On the basis of the information at our disposal, we conclude that the prosecutor general's office:**

- **Made serious allegations against a member of parliament on the basis of insufficient evidence and in the face of evidence to the contrary;**
- **Failed to substantiate those allegations;**
- **Repeatedly used those unsubstantiated allegations over a 3.5-year period to discredit the authenticity of the recordings;**
- **Dismissed credible examinations of the recordings that have confirmed their authenticity;**
- **Ordered a new examination of the recordings, apparently in the knowledge that it would be certain to provide no new information.**

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<sup>72</sup> Interview with Oleksandr Zhyr, Kyiv, September 15, 2004

<sup>73</sup> Interfax-Ukraine news agency, Kyiv, in Russian, September 10, 2004

<sup>74</sup> Era, Kyiv, in Ukrainian, September 13, 2004

<sup>75</sup> The lawyer Andriy Fedur showed this investigation written proof from the deputy prosecutor general that the prosecutor's office already knew that the recordings used in the latest examination were not originals. Interview with Fedur, Kyiv, September 14, 2004

<sup>76</sup> UNIAN news agency, Kyiv, in Ukrainian, September 22, 2004

**The GPO's contradictory actions in relation to Mr Rudkovskyy, its arbitrary and inconsistent attitude to the various expert examinations of the Melnichenko tapes, its refusal to co-operate with the journalistic organisations and press freedom NGOs following the Gongadze case, and, above all, the lack of a clear statement from the GPO at any time in the last four years acknowledging that the tapes must form part of any serious investigation of the Gongadze case all add up to an evasion of a crucial aspect of the Gongadze case.**

**To our knowledge, neither Mr Piskun nor any other senior Ukrainian official has returned to this central question in the weeks following the presidential election. Yet any investigation of the case that fails to tackle this issue will also leave unresolved the questions raised about possible political involvement in the murder. Any progress made in the investigation of events in the ministry of internal affairs will be compromised if the possible influence on those events of discussions within the senior Ukrainian leadership at the time of the murder is not also dealt with. We therefore call on president Yushchenko, the general prosecutor's office and the Ukrainian government as a whole to accede urgently to our request for a proper expert examination of the tapes with observers from civil society and for a transparent form of investigation of the possible links between the conversations allegedly recorded on the tapes and the Gongadze case.**

#### **4.iii An alternative approach to authenticating the recordings**

The prosecutor general has consistently refused to perform a method of analysis of the recordings suggested by an authoritative institution: namely comparison of the recordings with real events known to have taken place.

After examining the recordings, the International Press Institute (Vienna) concluded: "Comparison between the violations of law and the criminal acts suggested in the recordings and the actual happenings in the Ukraine may be a proper method in achieving a solution".<sup>77</sup>

Only the Ukrainian parliament's commission on Gongadze has applied this method.

In February, 2003, the commission held a meeting to attempt to reconstruct ex-president Kuchma's day on 12 June, 2000, according to the recordings. Two members of Parliament, Borys Oliynyk of the Communist Party and Ivan Drach of the opposition Our Ukraine bloc, testified after listening to the recordings that recordings of their conversations with ex-president Kuchma on that day were genuine.<sup>78</sup>

Oleksandr Zhyr, chair of parliament's ad hoc commission on Gongadze, told this investigation: "At the time we didn't have the technology of Bek Tek, so we took the route of voice recognition. We gave the recordings to a range of people, and they agreed

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<sup>77</sup> Letter to Oleksandr Lavrynovych and Serhiy Holovaty, Investigative Commission of the Supreme Council, Kyiv, from Prof. Johann P. Fritz, director, IPI, Vienna, February 22, 2001

<sup>78</sup> Interfax-Ukraine news agency, Kyiv, in Russian, February 11, 2003; UNIAN news agency, Kyiv, in Ukrainian, February 11, 2003

that it was their voices on the tapes and their conversations in the president's office. The president and [interior minister Yuriy] Kravchenko refused to take part, however."<sup>79</sup>

In his book on the Gongadze case, the Ukrainian journalist J.V. Koshiw has also drawn attention to several instances in which conversations on the recordings predicted subsequent events known to have taken place.<sup>80</sup> These are:

- The attacks on independent TV station STB in 1999 were apparently discussed by president Kuchma and the head of the tax office, Mykola Azarov;
- The physical attack on member of parliament Oleksandr Yelyashkevych (February 8, 2000) was apparently discussed by ex-president Kuchma and SBU chief Derkach on the day before it happened;
- The June 9, 2000, kidnapping and severe beating of political activist Oles Podolsky was apparently discussed three days later by ex-president Kuchma and interior minister Kravchenko;
- Deputy head of the Kyiv city police, Petro Opanasenko, launched an investigation into Gongadze's complaint that he was being followed -- the complaint was apparently discussed by Mr Kucha and Mr Kravchenko on September 11, 2000.

**We submit that a new investigation should assess attempts to apply this approach to authenticating the Melnichenko recordings.**

## **5. Police surveillance of Gongadze and its possible connection to his murder**

### **5.1 Denial, confirmation, denial, confirmation...**

On July 14, 2000, Georgy Gongadze sent an open letter to the prosecutor general to complain he was being followed. Senior Ukrainian state officials at first denied the fact of surveillance, then made contradictory statements which continue to this day, despite *prima facie* evidence of Gongadze's surveillance by police before he was murdered. When, however, serious investigations into police surveillance appeared to be undertaken, the president of Ukraine intervened to stop the investigation.

**We submit that failure to take seriously the surveillance of Gongadze, and its possible connection to his murder, is part of a pattern of repeated failure to properly investigate vital aspects of the case.**

In October 2000, Ukrainian television reported that both first deputy minister of internal affairs Dzhyha and a representative of the Security Service of Ukraine "categorically

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<sup>79</sup> Interview in Kyiv, September 14, 2004

<sup>80</sup> Koshiw, op. cit., pp32-34, 58-60, 67-68, 82

denied” their organisations’ involvement in shadowing Gongadze.<sup>81</sup> In February 2001, deputy prosecutor general Bahanets stated that his office had investigated Gongadze’s allegations of police surveillance and had found no evidence that such surveillance took place.<sup>82</sup>

However, a year later the GPO had changed its tune. On February 20, 2003, prosecutor general Piskun stated: “Gongadze himself announced that he was being followed.”<sup>83</sup>

Moreover, the GPO moved to arrest a police officer for destroying evidence of Gongadze’s surveillance by police. On October 24, the prosecutor announced that the former head of the interior ministry intelligence directorate, general Oleksiy Pukach, had been arrested in the Gongadze murder case, accused of issuing orders to destroy documents listing people who conducted surveillance of Gongadze.<sup>84</sup>

**These remarks and actions directly contradict the statements made previously by interior ministers and the GPO in the month immediately after Gongadze’s disappearance. This was not the end of contradictory announcements on this matter, however.**

In June 2004, information from leaked documents from the prosecutor’s investigations in 2003 was published in the *Independent* (London). The documents appeared to show that interior ministry undercover police teams carried out surveillance on Gongadze for weeks until the time of his abduction on the orders of Mr Pukach. They showed that the surveillance continued until Gongadze’s disappearance on 16 September 2000; on that day, Mr Pukach told officers to forget that there had been any surveillance operation against Gongadze.<sup>85</sup> The original documents were later published on a website.<sup>86</sup>

At first prosecutor general Vasylyev stated that he was “very dubious about [publications] with quotations from anonymous sources, or from mythical employees of law enforcement bodies”.<sup>87</sup> Only six weeks later did the prosecutor general’s office state at a press conference that the documents were genuine.<sup>88</sup>

In the meantime, the prosecutor general stated most emphatically in an open letter to the *Independent* that Gongadze had indeed been under surveillance: “The information about the fact that Gongadze was under surveillance prior to his disappearance has been at the disposal of the parliamentary ad-hoc investigation commission for a long time,” Mr Vasylyev wrote. “I knew about this information when I worked in the commission in 2000-02. ... Therefore it is, to put it mildly, not serious to say that the published information is a sensation!”<sup>89</sup>

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<sup>81</sup> Ukrainian Television Third Programme, Kyiv, in Russian, 1700 gmt, October 3, 2000

<sup>82</sup> Kyivskiye Vedomosti, Kyiv, in Russian, February 14, 2001

<sup>83</sup> ‘Q&A with Prosecutor General Svyatoslav Pyskun’, Kyiv Post, February 20, 2003

<sup>84</sup> Ukrainian Television first programme, Kyiv, in Ukrainian, 0800 gmt, October 24, 2003

<sup>85</sup> Askold Krushelnycky, ‘Pressure piles on Ukrainian leader after leaks reveal attempts to cover up killing’, *Independent* (London), June 19, 2004

<sup>86</sup> [www.delogongadze.org](http://www.delogongadze.org)

<sup>87</sup> Ukrayinska Pravda web site, Kyiv, in Ukrainian, June 21, 2004

<sup>88</sup> UNIAN news agency, Kyiv, in Ukrainian, August 2, 2004

<sup>89</sup> UNIAN news agency, Kyiv, in Ukrainian, July 8, 2004



Despite this clear statement confirming the surveillance of Gongadze, the interior ministry announced a new investigation into the matter. On September 14, the ministry reported the results of its investigation, saying it had not been able to establish whether Gongadze had been followed because documents had been destroyed and employees denied any surveillance.<sup>90</sup> Two days later the ministry qualified its initial statement, telling journalists that it was in no position to say yes or no.<sup>91</sup>

**The official statements assembled above are among the most startlingly contradictory in the Gongadze case. They point to extreme confusion within the investigating organs on a key aspect of the case. We submit that an adequate investigation of the case must start from the prima facie evidence of surveillance and must prove that surveillance did not take place, rather than starting from this assumption.**

On October 12, 2004, the Supreme Court of Ukraine confirmed the lawfulness of the reinstatement of a criminal case against Mr Pukach; the Supreme Court criticised the prosecutor general's office for abandoning the case a year before.<sup>92</sup> On January 14, 2005, it was reported that prosecutor general Piskun intends to re-open the case against Pukach.<sup>93</sup>

**We welcome the prosecutor general's readiness to pursue this line of inquiry. However it must be emphasised that the issue of illegal armed formations within the internal affairs ministry is only one aspect of the Gongadze case. We do not believe that pursuit of this issue in isolation can lead to a satisfactory solution of the case.**

## **5.ii Possible connections with Gongadze's murder**

The Melnychneko recordings provided the first suggestion that the surveillance of Gongadze might have been connected with his abduction and murder. This possibility was ruled out by the general prosecutor early in 2001 on the basis that the recordings were fabrications. However, two years later (February 2003) a letter to an opposition newspaper Hrani claiming to be from police officers alleged that the police and interior minister Kravchenko had been involved in Gongadze's murder.

The GPO appeared to take this letter seriously, or perhaps it was already working along this line of investigation when the letter appeared. So on February 20, 2003, prosecutor general Piskun said he was investigating the involvement of interior ministry staff in Gongadze's death and was searching for the people who had carried out surveillance of the journalist. Contradicting previous statements by the interior ministry and the prosecutor general, Mr Piskun stated: "We do not rule out the possibility that he was murdered precisely by the people who were following him. And we are looking for those people."<sup>94</sup> On February 24, Mr Piskun repeated this statement.<sup>95</sup>

<sup>90</sup> TV 5 Kanal, Kyiv, in Ukrainian, 1400 gmt, September 14, 2004

<sup>91</sup> Ukrainska Pravda, September 16, 2004

<sup>92</sup> TV 5 Kanal, Kyiv, in Ukrainian, 1200 gmt, October 12, 2004

<sup>93</sup> Ukrainska Pravda website, Kyiv, In Ukrainian, January 14, 2004

<sup>94</sup> 'Q&A with Prosecutor General Svyatoslav Pyskun', Kyiv Post, February 20, 2003

<sup>95</sup> Interfax-Ukraine news agency, Kyiv, in Russian, February 24, 2003

On February 28, however, Mr Piskun categorically denied saying that his office was investigating possible police involvement: “It is a lie. I never said that,” Mr Piskun told a newspaper.<sup>96</sup> This statement requires explanation, because Mr Piskun is on record as saying the exact opposite.

Indeed, two months later Mr Piskun’s deputy, Mr Shokin, directly contradicted Mr Piskun, saying security service involvement in the murder was being investigated.<sup>97</sup> When asked if the GPO had rejected the theory about involvement of security forces in Gongadze’s disappearance and murder, Mr Shokin replied: “No theory ... can be rejected until the murderers are found. That includes the theory of the participation of security forces.”

In the same interview Mr Shokin also confirmed that the GPO was checking on the involvement in Gongadze’s murder of the so-called “werewolves”, a gang of current and former police officers, including senior officers, who allegedly kidnapped people for ransom and sometimes murdered their victims.

That summer an important development heightened existing suspicions of police involvement in Gongadze’s disappearance. On August 1, 2003, a key witness, Ihor Honcharov -- a former policeman of the interior ministry’s directorate for fighting organized crime -- died in custody in mysterious circumstances. Shortly afterwards, letters of his were made public on the web-site [www.imi.org.ua](http://www.imi.org.ua). He had told the prosecutor general’s investigators a year before the names of police officers involved in surveillance of Gongadze. He also alleged that policemen had killed Gongadze on interior minister Kravchenko’s orders.<sup>98</sup>

On August 11, the prosecutor’s office said Mr Honcharov’s letters contained “practically no new information” because they had already questioned him.<sup>99</sup> However, a month later Mr Piskun said the letters had helped them make “significant progress”,<sup>100</sup> confirming that the “some facts [contained in the letters] have proved to be true”.<sup>101</sup>

Despite these contradictory statements, during this period the prosecutor general’s office became confident that it was nearing a solution to the Gongadze case.

On April 25, deputy general prosecutor Shokin said: “There is very serious progress in the investigation, and I hope that it will develop appropriately. I reckon that the case will soon be cleared up, moreover perhaps more quickly than the prosecutor-general promised

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<sup>96</sup> 2000, Kyiv, in Russian, February 28, 2003

<sup>97</sup> Segodnya, Kyiv, in Russian, April 25, 2003

<sup>98</sup> The text of one of Honcharov’s letter is on the Ukrayinska Pravda web site, Kyiv, in Ukrainian, August 7, 2003; See also Interfax-Ukraine news agency, Kyiv, in Russian, August 11, 2003. It may be significant to draw attention to the circumstances in which Honcharov’s letters were made public after his death. The letters were made public by Maria Sambur, formerly lawyer to the Institute of Mass Information, who gave numerous interviews at the time in which she said the letters show ex-president Kuchma had nothing to do with Gongadze. According to the Institute of Mass Information (IMI), Ms Sambur removed those parts of Honcharov’s letters which were relevant to Mr Kuchma’s alleged involvement before she made them public. The issue is currently the subject of several court cases. Interview with Sergiy Taran, director of IMI, Kyiv, September 12, 2004.

<sup>99</sup> Interfax-Ukraine news agency, Kyiv, in Russian, August 11, 2003

<sup>100</sup> 2000, Kyiv, in Russian, September 5, 2003

<sup>101</sup> Kyiv Post, September 12, 2003

at one time.”<sup>102</sup> On May 13, 2003, Mr Vynokurov, the first deputy prosecutor general, said the office had “come very close to solving” the case.<sup>103</sup>

On September 4, prosecutor general Piskun said the case was “practically solved”.<sup>104</sup> Five days later he issued arrest warrants for two suspects. On September 21, Mr Piskun told Ukrainian television the investigation was “at the final stage”.<sup>105</sup> Hryhory Omelchenko, now chair of the parliamentary commission on Gongadze, had already announced that his explanation of the murder coincided with that of Mr Piskun’s;<sup>106</sup> he subsequently confirmed that they were agreed on the issue of Gongadze’s surveillance by interior ministry police.<sup>107</sup>

It is interesting to note that, unlike 2001 when the GPO declared the investigation was solved and Gongadze had been killed by the criminals “Cyclops” and “Sailor”, in mid to late 2003 there were no statements by the president or interior ministers supporting the prosecutor’s contention that the case was nearly over.

It was also during this period (Winter 2002-Autumn 2003) that the Council of Europe’s special envoy, Hans Christian Krüger, complimented Mr Piskun’s office, praising a “professional” investigation, transferring his authority to Piskun as reporter on Gongadze to the Council of Europe, and then issuing a report saying Mr Piskun was “doing all he can” to solve the case.<sup>108</sup>

In October 2003, the investigation appeared to have reached a climax with the arrest of general Pukach in the Gongadze murder case, charged with destroying evidence of Gongadze’s surveillance by police.

**At this point, however, further progress of this investigation was halted. On October 29 Mr Piskun was sacked by ex-president Kuchma, for reasons that are still unclear. Mr Pukach was released from custody a week later (he was cleared by a Kyiv court in April 2004)<sup>109</sup>.**

Ex-president Kuchma dismissed Mr Piskun after a request from the Presidential Coordinating Committee for Fighting Organized Crime and Corruption, which accused Mr Piskun of “committing serious breaches of current legislation and committing dishonest actions”. The committee further accused Mr Piskun of “overpoliticising” his office, of failing to implement presidential decrees, and of large-scale corruption.<sup>110</sup>

The new prosecutor general, Mr Vasylyev, denied that the Gongadze case was nearly solved: “The words came ahead of the deed,” he told reporters at his first news

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<sup>102</sup> Segodnya, Kyiv, in Russian, April 25, 2003

<sup>103</sup> UNIAN news agency, Kyiv, in Ukrainian, May 13, 2003

<sup>104</sup> Interfax-Ukraine news agency, Kyiv, in Russian, September 4, 2003

<sup>105</sup> ICTV television, Kyiv, in Russian, 1500 gmt, September 21, 2003

<sup>106</sup> One Plus One TV, Kyiv, in Ukrainian, 1730 gmt, December 11, 2002

<sup>107</sup> Interview with Omelchenko, Kyiv, September 16, 2004

<sup>108</sup> ‘European envoy praises Ukraine’s journalist murder probe’, One Plus One TV, Kyiv, in Ukrainian, 1730 gmt, December 14, 2002; Interfax-Ukraine news agency, Kyiv, in Russian, June 24, 2003; Report by Mr Hans Christian Krüger to the Bureau of the Parliamentary Assembly of the Council of Europe, AS/Bur (2003) 60, 2 July 2003

<sup>109</sup> Era TV, Kyiv, in Ukrainian, 1300 gmt, April 23, 2004

<sup>110</sup> Interfax-Ukraine news agency, Kyiv, in Russian, October 29, 2003

conference since taking up the post in November.<sup>111</sup> In May, 2004, he met the president of the National Union of Journalists of Ukraine, Ihor Lubchenko, to whom he announced that “everything has been started from a clean slate” in the murder investigation.<sup>112</sup>

In January, 2004, representatives of the Parliamentary Assembly of the Council of Europe monitoring committee met Mr Vasylyev in Kyiv, but were disappointed that they “did not learn any news” about the investigation into the Gongadze case, which appeared to them to have been “shelved”. A member of the committee, Renate Wohlwend, said: “The optimism with which [former prosecutor-general] Svyatoslav Piskun told us that the investigation was close to completion was something new for us. But now it looks as if this issue were simply shelved. The prosecutor general’s office has taken a different tone, and this is disappointing,” she said.<sup>113</sup>

This inquiry is in no position to assess the evidence on which Mr Piskun and his deputies based their optimistic statements about progress in the case. Nor can it comment on the reasons for their dismissal from their posts. However, there appear to be very serious and substantial grounds for subsequent investigations to continue to examine possible links between Gongadze’s surveillance and his death.

**On the basis of the information available to this inquiry, we submit that the Ukrainian authorities at first made every effort to avoid reaching the conclusion that Gongadze was followed by police before his death, and that this surveillance may have been linked to his disappearance. When, however, lines of inquiry appeared to be leading towards this conclusion, the investigation was halted and the investigating personnel were replaced.**

**Since the political changes of November-December 2004, there have been encouraging indications that this issue may now be taken up again. We believe that progress in investigating the surveillance is integral to a successful solution of the Gongadze case.**

### **5.iii Honcharov’s death and possible connections with the Gongadze case**

Ihor Honcharov, the witness who died in custody in August 2003, gave detailed evidence of the operation of a gang, whose members included policemen, who kidnapped and murdered people for money. This gang, of which Mr Honcharov was a member, has become known in the press as the “werewolves”. Mr Honcharov alleged that the gang abducted and killed Gongadze on the orders of interior minister Kravchenko.

He also said that, after he informed the head of Kyiv’s directorate for combating organized crime about these facts, he was given a savage beating and warned not to tell anyone else. Two months later he died in custody and the body was hastily cremated. Fearing for his life, Mr Honcharov had written letters, referring to these issues, and requested they be published in the event of his death.

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<sup>111</sup> AP Online, December 18, 2003

<sup>112</sup> Ukrayinska Pravda web site, Kyiv, in Ukrainian, May 18, 2004

<sup>113</sup> Interfax-Ukraine news agency, Kyiv, in Russian, 20 January 20, 2004

**Mr Honcharov’s evidence points to the possible existence and operation of illegal “death squads” within the Ukrainian state. Despite the seriousness of this evidence, and the authority of its source, the evidence available to this inquiry strongly suggests that the Ukrainian authorities have failed to mount a proper investigation.**

Very early on, suspicions were aired that Mr Honcharov did not die a natural death. In November 2003, the respected Ukrainian newspaper Zerkalo Nedeli revealed that specialists had concluded that Mr Honcharov was administered a series of injections, in particular a preparation that paralysed the breathing.<sup>114</sup> In December 2003, however, prosecutor general Vasylyev told a news conference: “A medical examination did not establish the cause of death as violent.”<sup>115</sup>

In June 2004, the Independent (London) published information based on leaked documents, including a secret autopsy on Mr Honcharov which showed he was injected with a drug called Thiopental, an anaesthetic. The newspaper concluded: “The autopsy and tests performed for the government by six experts show Honcharov was injected with Thiopental, which the experts said probably led to death. Doctors have told The Independent that there would have been no legitimate medical reason to use the drug.”<sup>116</sup>

Only after this publication did prosecutors for the first time say that a Mr Honcharov did not die of natural causes, as previously claimed, although they denied that the death was caused by injection of drugs. The prosecutor general’s office said it had opened a criminal investigation into Mr Honcharov’s death in May, 2004; the results showed the cause of death was a blow to the spine.<sup>117</sup>

Two days later, however, the prosecutor’s office announced that the detective investigating Mr Honcharov had been removed from the case, and that the prosecutor had opened another investigation into Mr Honcharov’s death.<sup>118</sup>

At the time of his removal from office, Mr Vasylyev had not made any obvious progress in investigating the cause of Honcharov’s death and the information he had left regarding the activities of the “werewolves”. Despite Mr Honcharov’s claim that his life was in danger, the prosecutor general only admitted to his murder after documents from the Gongadze investigation had been made public in the British press. As shown above, the prosecutor general was also reluctant to investigate Mr Honcharov’s evidence that Gongadze had been placed under surveillance.

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<sup>114</sup> Zerkalo Nedeli, Kyiv, in Russian, November 8, 2003

<sup>115</sup> Interfax-Ukraine news agency, Kyiv, in Russian, December 18, 2003

<sup>116</sup> Independent (London), June 19, 2004. In fact there was a legitimate medical reason: the detailed medical records included among the documents on which the newspaper based its report show that Honcharov was injected with Thiopental over three weeks before his death as part of a procedure to move him onto mechanical breathing apparatus as his condition gradually deteriorated. The Thiopental was administered before intubating the lung; Thiopental is widely used as a bronchial anaesthetic. However, the autopsy make the point that thiopental was also administered not long before his death, and that this fact was not documented in the medical records. The autopsy concludes that Thiopental was “contraindicated” for a patient in his condition and “could have contributed to the rapid onset of death”. See document aut13.jpg at [www.delogongadze.org](http://www.delogongadze.org)

<sup>117</sup> Interfax-Ukraine news agency, Kyiv, in Russian, 1002 gmt, June 21, 2004

<sup>118</sup> UNIAN news agency, Kyiv, in Ukrainian, June 23, 2004

The evidence presented here suggests that further examination of the “werewolves” case may reveal information relevant to the Gongadze murder case. As a leading member of the “werewolves” himself, Honcharov’s testimony is therefore of the utmost importance, as are the circumstances surrounding his death.

Part of the problem with the Honcharov issue has been the reluctance at the highest level of the Ukrainian establishment to acknowledge the need for action to be taken. This was brought home to our researchers by our interview with Oleksandr Lavrynovych, formerly chair of the parliamentary commission on Gongadze and now minister of justice in Ukraine. He told this investigation that the Ukrainian government did not discuss matters such as the possible operation of rogue elements within state structures: “The question of illegal groups [operating in the interior ministry] has not been discussed in the government. What is there to discuss? The work should be done by those whose job it is. If investigators are making investigations, and the investigations are not complete, they do not make reports to the government -- that has never been the case in the whole of human history.”<sup>119</sup>

On the contrary, we submit that “death squads” or other illegal formations within the state are of primary importance for the government, which ought to take an active interest in the progress of investigations into their operations.

We therefore welcome the fact that, soon after Mr Piskun was reinstated to the post of general prosecutor during the “Orange Revolution”, the general prosecutor’s office referred the so-called “werewolf” case to court. The case was brought against 12 individuals, including four former policemen, with having committed about kidnappings and murders for ransom in the period 1996-2000. At one period the gang was headed by Honcharov.<sup>120</sup> It remains to be seen whether the forthcoming case will throw any new light on Gongadze’s murder.

## **6. Evidence of intimidation and harassment by the authorities**

### **6.i Pressure on individuals investigating the Gongadze case**

The authors of this report believe that, such has been the resistance by various figures in the Ukrainian government, administration and law enforcement bodies to progressing the Gongadze investigation, that intimidation and harassment may have been used against those who sought to do so.

We draw attention to the following officials who became involved in the case and as a consequence may have suffered intimidation and harassment, in breach of both international conventions on human rights and Ukrainian law.

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<sup>119</sup> Interview with Lavrynovych, Kyiv, September 14, 2004

<sup>120</sup> UNIAN news agency, Kyiv, in Ukrainian, January 13, 2005

### 6.i.a Ihor Vorotyntsev, district coroner, Tarashcha

Ihor Vorotyntsev conducted the first autopsy on the Tarashcha corpse and matched it with Gongadze (the external examination of the corpse should by law have been performed in the presence of an official investigator, although this often does not happen<sup>121</sup>). He also issued a death certificate in Gongadze's name to Gongadze's colleague Olena Prytula (by law relatives of the deceased have the legal right to remove the corpse from the morgue<sup>122</sup>).

Mr Vorotyntsev alleges that he was mistreated and put under pressure because he tried to carry out his duties in line with his job description, rather than in line with the wishes of the general prosecutor's office.

Mr Vorotyntsev told this investigation that prosecutor general Potebenko had come to his home to question him. "Potebenko came to my place and ordered to me to tell the truth. With Piskun it was even more 'fun' -- it was awful. They shouted at me for a long time, swore at me, put moral pressure on me. Then they wanted me to sign a protocol saying that there hadn't been any such pressure."

Other examples of the pressure placed on Mr Vorotyntsev include a phone call to say that a black maria was on its way [*"konvoi uzhe zakazali"*], being asked where he had "hidden the money", as if he was carrying out orders for material gain, and being called early in the morning and told to be in the general prosecutor's office for questioning by 10am.

"It was the same under Potebenko, but under Piskun it started with new vigour, on a bigger scale," Mr Vorotyntsev told this investigation.

Mr Vorotyntsev is presently on sick leave, having suffered a heart attack.<sup>123</sup>

**Mr Vorotyntsev came under intense pressure from successive general prosecutors, who seemed to want to blame him and other local officials for irregularities and therefore deflect attention from the much greater irregularities committed by top state officials.**

In December 2002, charges were brought against Serhiy Obozov, the Tarashcha prosecutor, and Serhiy Belinsky, an investigator from the local prosecutor's office. They were charged with abuse of office, fraud and complicity in crime during the Gongadze case investigation.<sup>124</sup> Obozov was sentenced to 2.5 years in jail, although the sentence was subsequently suspended.<sup>125</sup>

Mr Vorotyntsev said: "Potebenko had Belinsky sacked. Obozov has suffered more than anyone."

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<sup>121</sup> Interview with the journalist Vladimir Boiko, Kyiv, December 30, 2004

<sup>122</sup> Ibid.

<sup>123</sup> Interview with Ihor Vorotyntsev, Tarashcha, September 13, 2004

<sup>124</sup> One Plus One TV, Kyiv, in Ukrainian, 1730 gmt, December 11, 2002

<sup>125</sup> One Plus One TV, Kyiv, in Ukrainian, 1630 gmt, May 6, 2003

### **6.i.b Andriy Fedur, defence lawyer for Lesya Gongadze**

Having agreed to be the lawyer for Lesya Gongadze, Georgy's mother, lawyer Andriy Fedur says he faced harassment from state officials as a result.

On October 12, 2002, the authorities in Kyiv arrested Mr Fedur on suspicion of forging documents.<sup>126</sup> Two months later the prosecutor general's office prohibited Mr Fedur from participating in the Gongadze case.<sup>127</sup>

Mr Fedur told this investigation: "First they made some changes to the law in 2001, to the effect that if a criminal case is taken out against a lawyer, that lawyer cannot defend others. A criminal case was duly taken out against me and I was put in prison. No judge looked at my case, no one decided I was guilty.

"The new law is unique -- there is no such law anywhere else. If the conditions of the law came into effect after sentencing, of course, that would be quite another matter. But as things stand they have deprived me of my profession."

On April 30, 2003, the Kyiv city prosecutor Andriy Boiko declared that Mr Fedur had not falsified any documents. This investigation has seen a copy of Mr Boiko's ruling.

"Boiko was in charge of the investigation into my falsifying documents," Mr Fedur said. "He announced in court that the documents were not falsified and that I, Fedur, did not falsify them.

"I also have a copy of a magistrate's decision ruling that I was held in jail illegally."<sup>128</sup>

The changes to the law under which Mr Fedur was taken off the Gongadze case were introduced under presidential chief of staff Viktor Medvedchuk, who is also the chair of the Ukrainian Union of Lawyers and a member of the Supreme Council of Justice. He therefore has the power to appoint judges.

**This investigation points to an apparent breakdown in the separation of powers between the executive and the judiciary in this instance.**

### **6.i.c Oleksandr Zhyr, former chair of the parliamentary commission on the Gongadze case**

Oleksandr Zhyr says the results of an election which he was forecast to win by a handsome majority were falsified because of his role in investigating the Gongadze case.

Late in the evening on July 12, 2002, a local court disqualified Mr Zhyr -- then chair of the parliamentary commission investigating the Gongadze case -- from standing in an

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<sup>126</sup> Interfax-Ukraine news agency, Kyiv, in Russian, October 12, 2002

<sup>127</sup> UNIAN news agency, Kyiv, in Ukrainian, December 16, 2002

<sup>128</sup> Interview with Andriy Fedur, Kyiv, September 14, 2004



election for parliament on July 14.<sup>129</sup> The lateness of the decision meant Mr Zhyr could not appeal.

An election watchdog, the Committee of Voters of Ukraine, condemned the disqualification.<sup>130</sup> The ad-hoc parliamentary commission monitoring the observance of law during the by-election stated that “massive vote rigging” had taken place.<sup>131</sup>

Mr Zhyr told this investigation: “The first round of the election took place on March 31. I received information that I had been elected and that 76 per cent voted for me.

“Then we were told the numbers of votes had been falsified. We have a video from a hidden camera of how the head of the electoral commission gathered together all the members of the commission and said: get a pen and write down what the numbers of votes should be.

“Two thousand militia came to the ward. Convoys of coaches arrived with militia. They frightened people.

“A week before the election, [Mykola] Ahafonov [a member of parliament] came and warned me that I would be crushed. He explained that a number of high-ranking officials had spoken to him. They had decided to get rid of me in court. I was told to stop all meetings with voters.

“I was removed from the electoral roll on the Friday before the elections, effectively two minutes before the day of the election.

“The governor, [Mykola] Shvets, did not hide that Kuchma had told him: ‘It’s either you or Zhyr.’

“I didn’t contest the decision in court. There wasn’t any point. And my wife had died between the first and second rounds of voting.”

At the time, the Ukrainian media frequently linked Mr Zhyr’s mistreatment to his role in investigating the Gongadze case. Mr Zhyr confirmed to this investigation: “I have no doubt that this was linked to the Gongadze case, it was done because of Gongadze. I can prove that the elections were fixed so that the deputy was appointed, not elected. I can prove this in court.”<sup>132</sup>

#### **6.i.d Mykola Zamkovenko, former chair of the Pechersky district court, Kyiv**

For several months after Gongadze’s disappearance, the prosecutor general refused to recognise Mrs Lesya Gongadze, Gongadze’s mother, as the aggrieved party. In February 2001, the judge Mykola Zamkovenko established that deputy prosecutor Bahanets had acted outside the law in this regard.

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<sup>129</sup> UNIAN news agency, Kyiv, in Ukrainian, July 13, 2002

<sup>130</sup> Interfax-Ukraine news agency, Kyiv, in Russian, July 13, 2002

<sup>131</sup> UNIAN news agency, Kyiv, in Ukrainian, July 17, 2002

<sup>132</sup> Interview with Oleksandr Zhyr, Kyiv, September 15, 2004

At about the same time (March, 2001), Mr Zamkovenko ruled that a prominent opposition leader and businesswoman, Yulia Timoshenko, should be released from custody.

In May 2001, a criminal suit was filed against Mr Zamkovenko for cases he had ruled on several years earlier.<sup>133</sup> Viktor Kudryavtsev, the first deputy prosecutor general, gave permission for a search of Mr Zamkovenko's premises to be conducted. A court later ruled that this search had been illegal.<sup>134</sup>

In July 2001, a presidential decree was issued, at the request of the Supreme Council of Justice, sacking Mr Zamkovenko.<sup>135</sup>

Mr Zamkovenko's case was passed to the oblast appeals court in Kyiv, where a judge delivered a verdict of negligence [*khalatnost*']. Mr Zamkovenko appealed and the Supreme Court will examine the case on September 30, 2004.<sup>136</sup>

It is suggested here that Mr Zamkovenko's dismissal may have been related not only to his ruling on Mrs Lesya Gongadze's application, but also on his ruling on Mrs Timoshenko's bail application. He himself sees his mistreatment as connected to the Gongadze case;<sup>137</sup> Mr Bahanets stated publicly that his appeal to the judicial qualification commission to discipline Zamkovenko was a consequence of the Gongadze case<sup>138</sup>.

**The Timoshenko case falls outside the scope of our investigation. Our concern is with the evidence of a possible causal connection between Mr Zamkovenko's decision on Mrs Gongadze's application and his subsequent dismissal, which may have been in breach of human rights and Ukrainian law.**

#### **6.i.e Svetlana Karmelyuk, legal medical expert involved in DNA tests on the Tarashcha corpse**

In late December 2000, Svetlana Karmelyuk, a legal medical expert who was required to make DNA tests on the Tarashcha corpse, refused to cooperate further with the official Gongadze investigation because she saw that procedural rules were being broken. She took leave and prepared to go away.

Two policemen came to her home at 9pm on December 30. They demanded she give them her foreign passport. An argument ensued and the policemen tried to seize the passport.

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<sup>133</sup> UNIAN news agency, Kyiv, in Ukrainian, May 25, 2001

<sup>134</sup> UNIAN news agency, Kyiv, in Ukrainian, May 31, 2001; Ukrainian Television Second Programme, Kyiv, in Ukrainian, 1500 gmt, June 15, 2001

<sup>135</sup> Ukrainian Television Third Programme, Kyiv, in Russian 1500 gmt, July 18, 2001

<sup>136</sup> Interfax-Ukraine news agency, Kyiv, in Russian, March 29, 2004

<sup>137</sup> Interviews with Andriy Fedur and Nikolai Zamkovenko, Kyiv, September 14 and 15, 2004

<sup>138</sup> Segodnya, Kyiv, in Russian, April 4, 2001;

The incident was reported as an instance of pressure on the medical expert, who had been due to fly to Germany to examine the results of independent DNA analysis commissioned by the parliamentary commission on Gongadze.<sup>139</sup>

### **6.i.f Hryhoryi Harbuz, investigator**

Myroslava Gongadze, the journalist's wife, told Reporters Sans Frontières in early 2001: "The judge in charge of the investigation, Hryhoryi Harbuz, started by carrying out a serious inquiry. I trusted him". But Mr Harbuz was replaced in early November 2000, after the discovery of Gongadze's corpse.<sup>140</sup>

Valentina Telychenko, Myroslava Gongadze's lawyer, added: "He [Mr Harbuz] was very experienced, very correct, he behaved with Myroslava very humanely. As soon as he saw that the SBU was interested in the case, however, he met us in a café and said: 'The case is very serious, the SBU is all over it [sidit plotno]'. This was in the first week after Gongadze's disappearance.

"Harbuz advised me not to give evidence that I believed that [head of the president's administration] Lytvyn and [businessman] Volkov had a motive to kill Gongadze. He said it would ruin my life. I insisted none the less.

"I thought they had simply thrown my protocol away, because the people whose names I gave were not interrogated. But I was wrong. A few years later I found out that my protocol still exists.

"Then they took Harbuz off the case, sent him to hospital, then on leave, and then into retirement."

We submit that a senior investigator's opinion that giving evidence in the case could "ruin the life" of that person is further evidence that the investigation into Gongadze's disappearance was highly prejudiced from the outset. The fact that Ms Telychenko's protocol, drawn up together with Mr Harbuz, was not then acted upon further substantiates this conclusion. We are also concerned that the investigator who voiced this opinion was swiftly removed from the case.

**This section of our report emphasises not only the seriousness of the Gongadze case but the extent to which it has become a touchstone for human rights in general in Ukraine. The extraordinary array of people who were involved with it who subsequently faced intimidation by identified or unidentified people within various Ukrainian state structures suggests that a considerable network of forces was working deliberately to obstruct and derail the pursuit of justice. For human rights and press freedom to be assured in Ukraine in future, it is important to clarify the nature of this network. We submit, therefore, that all the cases mentioned in this**

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<sup>139</sup> Ukrainiska Pravda, Kyiv, January 2, 2001; interview with Valentina Telychenko, lawyer of Myroslava Gongadze, Kyiv, September 13, 2004

<sup>140</sup> Mutilation of the Truth: Inquiry into the Murder of Journalist Georgiy Gongadze. RSF, Paris, January 22, 2001

**section form part of the background to the case and should be taken into account in future investigations.**

## **6.ii Pressure on media investigating the Gongadze case**

In the period immediately after the discovery of Gongadze's corpse, several media affirmed that they were under pressure to change their coverage of the case. The Reporters Sans Frontières delegation met some 10 editors of newspapers who claimed that officers of the police and local SBU were behind this pressure on publications, printing works and distributors.

After publication of the November 26, 2000, edition of Hrani, in which the lead stories were devoted to revelations in the Melnichenko recordings, the newspaper's printers, which depend on the ministry of science, cancelled their contract. In December the paper's editor-in-chief, Yuriy Lutsenko, received a document by fax resembling a report by the security police in which his daily habits and itinerary were described. After announcing on January 12, 2001, that he had information on the identity of the civil servants who shadowed Gongadze, he claimed he was also followed in Kyiv.

On November 27, officials who introduced themselves as SBU agents from the town of Chernenko tried to prevent the printing of the next day's edition of the newspaper Roubezh, which ran a lead story on the Gongadze affair. On 28 November one of the vehicles distributing the newspaper was stopped by three militia who confiscated the entire load.

On November 29 a newspaper of the party Trudova Poltavshchina in the eastern town of Poltava was the victim of a bomb scare. The paper was about to publish an appeal by socialist leader Moroz concerning the Gongadze affair. The editor S. Bulba recalled: "We divided up all our copies between the different journalists and employees, who stored the newspapers in their homes until distribution the next day".

On the same day the printers Pressa Ukrainy refused to print the edition of another socialist party newspaper Tovarishch, featuring an article on possible involvement of the government in the Gongadze's disappearance. The December 6 edition of the newspaper Litsa in the southern town of Dnipropetrovsk, which published a transcription of the recordings, was refused by the printers Knizhnaya Tipographia, following intervention by an agent from the regional SBU. The newspaper was printed in another region.

The December 7 edition of the newspaper Slovo Veterana in the town of Pavlograd was censored. A full page devoted to the Gongadze affair and headed "The Scandal of the Year" was removed as the newspaper was going to press. The editor-in-chief, Ludmila Pregseva, said she was called in at 7.30 p.m. by the manager of the printing works. The manager "explained to me that she could not print the edition with that article, following the intervention of an officer from the Pavlograd SBU office. I refused to put another article in its place and the edition was printed with a blank page instead of the censored article".

On January 12, 2001, people claiming to be Ukrainian intelligence officers approached members of Radio Free Europe-Radio Liberty's Ukrainian Service and threatened reprisals against them if the service did not modify its coverage of Ukrainian political developments concerning Gongadze. The station had broadcast numerous exclusive interviews with individuals key to the Gongadze situation, including Melnichenko.<sup>141</sup>

On December 13, 2000, Matlid Publications, publisher of "Eastern Economist" magazine, was raided by tax police and its employees interrogated a week after it published a scathing editorial on the Gongadze scandal. The magazine's Kyiv bank account was seized the previous day.

On February 7, 2001, a government-owned printing house refused to run an edition of the Kyiv newspaper Kommersant, which featured a story on anti-Kuchma demonstrations.<sup>142</sup>

## **7. Other investigations into the Gongadze case**

Owing to the intense interest in the Gongadze case, its political importance – at one stage in early 2001, protests focussed on the issue threatened to bring down the government – and the failure of official investigations to solve it, semi or unofficial investigations have had a resonance and impact on public opinion disproportionate to their scale. Moreover, given Ukraine's geopolitical importance, there have been frequent accusations that investigations into the case have been covertly sponsored by foreign governments in pursuit of their own interests, to which they are supposedly prepared to sacrifice an impartial assessment of the facts. Semi-official or unofficial investigations claiming to have made progress in the case have therefore become objects of political polemic. This inquiry has attempted to assess the contributions they have made.

### **7.i Parliament's ad hoc commission on Gongadze**

On September 21, 2000, parliament, under pressure from journalists voted to establish a 15-strong commission to look into Gongadze's disappearance. Oleksandr Lavrynovych, from the national-democratic political party Rukh, was elected the commission's chair.

The commission's work was hampered from the start because parliament did not have the right to set up committees with powers to subpoena witnesses or use law enforcement agencies to investigate. Its investigating powers were therefore strictly limited. Moreover, it rarely achieved a quorum -- members from pro-Kuchma factions in parliament chose not to attend, so it was left to individuals on the commission to try to make some progress.

Furthermore, the commission was charged not only with investigating Gongadze. Its commission's full name, as defined by a parliamentary resolution, is as follows: "The temporary ad hoc investigation commission of the Supreme Council on the state of the

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<sup>141</sup> Ibid.

<sup>142</sup> IPI Report No.1, 2001. International Press Institute, Vienna

investigation into the disappearance of journalist Gongadze, civil activist Boychishyn, the murders of people's deputies Shcherban and Hetman, the attempt on People's Deputy Bortnyk, the attacks against people's deputies Yelyashkevych and Khara, the abduction of people's deputy Alyokhin's son and the death of people's deputies Boyko, Myaskovskyy and Drahomaretskyy."<sup>143</sup> Hence its work was spread across several investigations, although its main focus was Gongadze.

In September 2004, Mr Lavrynovych, who later became minister of justice in Mr Kuchma's government, was positive about his time as chair of the commission. He told this investigation: "During my period [as chair], there was no obstruction of our investigations. We did a lot to help those who were investigating."

At the time, however, his opinion of the commission's work appeared to be very different. In December, 2000, he told *The Guardian* (London) that he was losing confidence in the official investigation: "The remains of the body were brought to Kyiv in the middle of November and we still don't have a positive identification - an unusually long time. No one has revealed what kind of analyses are being carried out and how much longer the process will continue for, which undermines one's confidence in the whole process."<sup>144</sup>

He told *The Washington Post* in February, 2001, that the situation was so politically risky he wished he had never agreed to head the commission. "Basically, I don't have any support," he said.<sup>145</sup> A month later he told a newspaper:

"I assess the investigation of the Gongadze case by the law-enforcement bodies as unsatisfactory. There have been and there certainly will be so many irregularities and faults that I just don't know of anyone who is satisfied by the investigation. We have seen that different agencies cannot always find a common language, that coordination of their actions has not been up to standard."<sup>146</sup>

In October 2001, Socialist Party deputy Oleksandr Zhyr took over as chair of the commission. In December 2001, Mr Zhyr made a brief report to parliament on the commission's findings so far in the Gongadze and other cases. He accused the prosecutor general's office of legal violations and inaction and complained that Mr Kuchma and other state officials had refused to meet with the commission. He also called on parliament to earmark 500,000 hryvnia to create an international group to examine the Melnichenko recordings.<sup>147</sup> Mr Zhyr also criticised the work of the private investigators Kroll, who had been hired to look into the Gongadze case (see section 7.ii below).

After Mr Zhyr failed to be re-elected to parliament in a by-election he claims was rigged against him (see section 6.i.c above), Hrihoriy Omelchenko became chair of the commission.

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<sup>143</sup> *Ukrayina Moloda*, Kyiv, in Ukrainian, March 2, 2001

<sup>144</sup> *The Guardian* (London), December 15, 2000

<sup>145</sup> *The Washington Post*, February 18, 2001

<sup>146</sup> *Ukrayina Moloda*, Kyiv, in Ukrainian, March 2, 2001

<sup>147</sup> *Holos Ukrayiny*, Kyiv, in Ukrainian, January 9, 2002.

In December 2002, Mr Omelchenko sent prosecutor general Piskun the documentary evidence on the Gongadze case compiled by the commission, with a request that the prosecutor address parliament about the matter. However, prosecutors Piskun and then Vasylyev chose not to appear before parliament. In March 2004, Mr Omelchenko re-sent the materials to the PGO at the same time as he took out a writ against it for non-appearance before parliament.

Mr Omelchenko has hitherto been unable to make public in parliament the results of the commission's work – he is forbidden by law to do so until a majority votes for it in parliament. But for two years parliament blocked the commission's report, Mr Omelchenko says, refusing to include it on the agenda. "I make requests that it be placed on the agenda three to five times every month," Mr Omelchenko told this investigation.

Nevertheless, he was prepared to summarise his views on the case: "There is proof that, on [interior minister Yuriy] Kravchenko's orders, Gongadze was placed under surveillance by the secret service of the MVD. The direct organiser of the surveillance was Kravchenko. This is where we coincided with [prosecutor general] Piskun. There are the protocols of the police officers who carried out the surveillance; the prosecutor general has confirmed them. There are also the letters from the three police officers in February 2003.

"Pages were torn out [by general Pukach] of the journals which contained this information [about surveillance]. This is easily proved. Pukach was released precisely because the next step was to arrest Kravchenko.

"With a heavy heart Piskun was forced to carry out the commission's instructions. But as soon as the commission reached the conclusion that Kuchma was complicit, all cooperation ceased. Piskun was scared.

"A whole series of examinations were conducted by the commission and the general prosecutor, up until the point at which the commission concluded that Kuchma, Kravchenko, Derkach and Lytvyn were to blame. The commission has concluded that Kuchma organised the disappearance of Gongadze. It has decided that Kuchma should be impeached. Lytvyn was also complicit."<sup>148</sup>

**Clearly parliament's ad hoc commission is rent with deep divisions and statements by its members are highly politicised. This inquiry is concerned that confrontational tone adopted by its members is likely to have undermined the commission's work.**

**However, the commission has enjoyed privileged access to certain information, and it is the closest approximation to a watchdog placing the work of official investigators under democratic scrutiny. With the new political situation in Ukraine since Mr Yushchenko's victory, it is to be hoped that Mr Omelchenko will be able at last to make public the commission's work and persuade the prosecutor general to report to parliament on progress in the case.**

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<sup>148</sup> Interview in Kyiv, September 16, 2004

## 7.ii Kroll Associates

In March 2001, the well-known American detective agency Kroll Associates, New York, was hired by the Working Ukraine party to investigate the Gongadze case. According to party leader Sergei Tyhypko, he discussed the idea with president Kuchma, who approved it.<sup>149</sup> Working Ukraine had previously opposed an investigation into Kuchma, but now they proposed bringing in a foreign firm to do precisely this.<sup>150</sup>

Neither the prosecutor general nor any other state or parliamentary organisation obtained a copy of Kroll's report officially, but its conclusions were widely publicized by Working Ukraine party leaders and Ukrainian representatives in the Council of Europe.<sup>151</sup> This investigation has also obtained a copy of the original report.

The agency's representatives questioned a huge number of witnesses about the journalist's murder. According to some people who met with the detectives, they behaved very professionally and sounded unusually well-informed about both the details of the case and the intricacies of rules of Ukrainian political life.<sup>152</sup> However, Andrei Konstantinov of the Petersburg Agency for Journalistic Investigations (see section 7.iii.b below) made a somewhat different assessment: "Among them [the Kroll detectives] there were only two Russian speakers, and their knowledge of it for such work was highly problematic -- to say nothing of their knowledge of Ukrainian. There were a couple of guys who seemed to me to be real policemen, but the others were, forgive me, something out of Hollywood."<sup>153</sup>

Kroll released the results of its investigation in September 2001. It gave no answer as to who ordered and organised the crime, but stated that president Kuchma was not involved in it. "Neither the circumstances of Gongadze's disappearance nor the records provide grounds to speak about the president's involvement," Kroll's report stated.<sup>154</sup>

Indeed, Kroll stated that the purpose of its report was solely to investigate president Kuchma's possible involvement in Gongadze's murder:

**"The alleged involvement of President Kuchma in the disappearance and death of Gongadze has been the focus of this investigation.** During the course of the investigation we have become acquainted with alternative theories of the crime which have been reported in the press, conveyed to us in our interviews, or otherwise suggested by our investigation. We have not investigated these theories and we do not possess information or evidence that would support one theory versus another."<sup>155</sup> (emphasis added)

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<sup>149</sup> ITAR-TASS, March 23, 2001

<sup>150</sup> Koshiw, op. cit., p220

<sup>151</sup> According to Oleksandr Zhyr, *Holos Ukrayiny*, Kyiv, in Ukrainian, January 9, 2002

<sup>152</sup> *Zerkalo Nedeli*, Kyiv, in Russian, September 29, 2001

<sup>153</sup> *Segodnya*, Kyiv, in Russian, February 22, 2002

<sup>154</sup> Kroll's report, p28 (the 53-page document is neither titled nor dated). The report was available in 2001 from Working Ukraine's web site, but has since been withdrawn from it

<sup>155</sup> *Ibid.*, p37



Most of Kroll's report consists of a fairly detailed chronology of events during Gongadze's last day. None of this is contested, however, and by the time the report appeared (June 2001) most of it was already known. The core of the investigators' work was an examination of the Melnichenko recordings and the circumstances in which they were made.

Kroll's investigators said they regarded Melnichenko's statement that he had been working on his own and had recorded conversations on a digital recorder under the sofa as doubtful. According to Kroll, it was likely the bugging equipment had been in the presidential office since Soviet times, and that Melnichenko either merely activated it or acted as a member of a group that used other bugging equipment to record conversations.

However, they made no conclusive statement as to the authenticity of the recordings. Kroll's audio expert simply raised a number of questions about how they were made and about the excerpts that they had downloaded from the internet.<sup>156</sup> Kroll therefore based the conclusions of its report largely on statements by the very people whose conversations were allegedly recorded by Melnichenko:

“[The unreliability of the recordings] coupled with the fact that President Kuchma has spoken with us and has continued to maintain that he did not make any derogatory remarks about Gongadze, is the reason we find there is no conclusive evidence to link the President to the murder.”<sup>157</sup>

Elsewhere the investigators' inability to obtain the testimony of major protagonists of the recordings is taken as evidence to support their conclusions:

“The other participants in the conversations as well as Melnichenko are all unavailable to explain the circumstances under which the comments were made and the actions they took as a result. Under these circumstances, the recordings lack the necessary indicia of reliability to be accepted without other corroboration, of which there is none.”<sup>158</sup>

“Kuchma denies making the critical statements attributed to him and the other parties to the conversations are unavailable. Moreover, the President asserts that his words were edited so as to be taken out of context. Again, no witnesses to the discussions are available to dispute him.”<sup>159</sup>

Oleksandr Zhyr, chair of the Ukrainian parliament's ad hoc commission argued that Kroll was hired by a pro-Kuchma political party, and therefore its conclusions were suspect. Kroll's report also stated that it relied on “continued efforts”<sup>160</sup> by president Kuchma to be permitted access to certain witnesses; this amounted to “preferential treatment”,

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<sup>156</sup> A discussion of the technical failings in Kroll's examination of the Melnichenko recordings can be found in Koshiw, op. cit., p221-223.

<sup>157</sup> Ibid., p36

<sup>158</sup> Ibid., p6

<sup>159</sup> Ibid., p43

<sup>160</sup> Ibid., p3, footnote 1

according to Mr Zhyr's report to parliament. The commission believed that, as a result, Kroll's report was not reliable.<sup>161</sup>

Yulia Mostova, deputy editor of the weekly newspaper Zerkalo Nedeli, described how Kroll's detectives first presented their results in public on a live TV link between Kyiv, Brussels and New York. "The reaction of journalists, gathered to hear Kroll's findings, who at the beginning of the link looked genuinely keen to learn results of the investigation, gradually and obviously changed from disappointment to irony and, finally, sarcasm with regard to the results." She explained the basis of doubts in Kroll's work as follows:

- A pro-presidential party hired Kroll, therefore "one can hardly speak of an impartial and fair investigation";
- Being a foreign agency, Kroll was not entitled to carry out investigations on Ukrainian soil. Consequently, no matter what conclusions they drew and what evidence they produced, none of it would be admissible in court;
- Kroll's detectives were denied access to case materials and forensic assessments.<sup>162</sup>

**This inquiry concludes that there were weaknesses in Kroll Associate's investigation, the main stated aim of which was to investigate president Kuchma's alleged complicity in the Gongadze case, rather than to examine the case as a whole. These narrow terms of reference, Kroll's employment by an organisation with an interest in clearing Mr Kuchma's name, and the selective reporting of the investigation's results substantially devalue the results of the inquiry. Furthermore, it is doubtful that Kroll had access to all the evidence necessary to make a fully informed judgement on Mr Kuchma's role.**

However, as Ms Mostova has pointed out, Kroll's report deserves attention since it is the first piece of quasi-legal evidence that Mr Melnichenko did not operate on his own and that recordings were made in a rather different manner to the way he has described it in public. This issue demands further investigation.

We also draws attention to the inconclusive nature of much of Kroll's report. It draws conclusions from the absence of evidence contrary to its hypotheses, rather than clear supportive proof. Kroll's document raises far more questions that it answers, and therefore invites further investigations rather than closing them off.

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<sup>161</sup> Holos Ukrayiny, Kyiv, in Ukrainian, January 9, 2002

<sup>162</sup> Zerkalo Nedeli, Kyiv, in Russian, September 29, 2001. Kroll's report accepts this point (p3, footnote 1)

## 7.iii Journalists' investigations

### 7.iii.a Koshiw

In 2003, J.V. Koshiw, a former deputy editor of the “Kyiv Post”, published a book in English devoted to the Gongadze case<sup>163</sup>; an expanded and updated version of the book was published in Ukrainian a year later.

This is the first and only book-length treatment of the issue. Although it concentrates on the period up to early 2002, the information it has gathered from published sources and interviews makes it is an essential guide to journalists and other researchers seeking a concise introduction to the issues raised by the case. This report has drawn substantially on the information gathered in the book.

### 7.iii.b Azhur

Staff of the St Petersburg-based Agency for Journalistic Investigations (*Agenstvo zhurnalistskikh rassledovaniy*, or “Azhur”) were present in Kyiv at the time of Gongadze’s disappearance. They had been invited to Ukraine to take part in training journalists by Irex Pro-media, an American non-governmental organisation. Formed in 1996 by the crime journalist and novelist Andrei Konstantinov, the agency first started working on the Gongadze case after a chance meeting former Crimean prime minister Sergei Kunytsyn. It then continued its investigations on the invitation of former Ukrainian prime minister Valery Pustovoitenko, leader of the pro-presidential People’s Democratic Party.

The first results of Azhur’s investigations were published on its website [fontanka.ru](http://fontanka.ru) on November 11, 2000, before the agency’s researchers found out about the discovery of Gongadze’s body in Tarashcha. A series of articles appeared on this site between November 11 and November 20.<sup>164</sup> A 140-page report in Russian also appeared in 2001. It was not published, but was circulated to a small number of NGOs. A copy of this, unbound and undated, has been seen by this inquiry.<sup>165</sup>

In March, 2001, Mr Konstantinov gave a series of interviews to the press in Kyiv, which were the subject of intense public interest. A year later he published a novel in Russian, “The Investigator” (“Rassledovatel”), loosely based on the Gongadze case but with the names of the main protagonists slightly altered. The foreword to the novel states that the book is a work of fiction, not a literary version of the agency’s research: “The real Gongadze case served only as the informational basis for writing a work of fiction. In fact, everything happened... DIFFERENTLY [sic], and not quite as described in this novel.”<sup>166</sup>

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<sup>163</sup> J Koshiw, *Beheaded: The Killing of a Journalist*, Artemia Press, 2003

<sup>164</sup> [www.fontanka.ru/60799](http://www.fontanka.ru/60799), [www.fontanka.ru/60800](http://www.fontanka.ru/60800), [www.fontanka.ru/60801](http://www.fontanka.ru/60801), [www.fontanka.ru/60802](http://www.fontanka.ru/60802), [www.fontanka.ru/60803](http://www.fontanka.ru/60803), [www.fontanka.ru/60804](http://www.fontanka.ru/60804), [www.fontanka.ru/60805](http://www.fontanka.ru/60805), [www.fontanka.ru/60806](http://www.fontanka.ru/60806), [www.fontanka.ru/60787](http://www.fontanka.ru/60787)

<sup>165</sup> “Delo Gongadze”, n.d. However, a four-page addendum at the back of the report is headed “April-May”, suggesting the document was compiled in February-March 2001. The addendum takes the place of the “Preliminary Conclusions” promised in the contents list of the report, but which are absent.

<sup>166</sup> A. Konstantinov and A. Novikov, *Rassledovatel’: Predlozhenie Krymskogo Prem'era*, St. Petersburg, 2004, p6

However, from Azhur's first publication on November 11, 2000, the agency held to a consistent explanation of Gongadze's death. Gongadze, Azhur claimed, was deeply involved in "black PR" – black propaganda – on behalf of major business interests. Gongadze was murdered because of these activities by people who were already in possession of Melnichenko's recordings; they wanted the crime to correspond to ex-president Kuchma's private conversations to make it look as though the president was to blame.<sup>167</sup> As Mr Konstantinov told the press in March 2001: "The more we worked, the more we clearly we understood that Kuchma had nothing to do with it." (Segodnya, Kyiv, in Russian, February 22, 2002) The murder had clear political motives, he said.

Azhur's suggestion that Gongadze's murder was committed by the people who controlled the Melnichenko recordings was frequently referred to by official investigators in the Gongadze case (see section 5 above). Most controversially, however, Azhur claimed that Olena Prytula, the editor of Ukrayinska Pravda website and the person who last saw Gongadze alive, was unwittingly involved with those who planned to murder Gongadze, and therefore knew their names; she kept quiet for fear of what might happen to her.

For the purposes of this inquiry, we shall examine the materials in Azhur's 140-page report "Delo Gongadze", where the evidence for these conclusions is reproduced in full and we can assess the agency's methods.

The unpublished document consists mainly of quotes taken from interviews with witnesses, interspersed with the telephone records of certain protagonists and followed at intervals by Azhur's comments. (The interviews are reproduced in full at the back of the report, making up almost half its volume.) The editing suggests that this is a draft, not a finished report: for example, the same quote from Ms Prytula is reproduced three times within five pages of the report. There are numerous instances of such repetition.

The report is notable for the way in which it extrapolates from seemingly minor details to make far-reaching conclusions. For example, Ms Prytula maintains that Gongadze briefly left her apartment to buy some catfood just a few minutes before he left the apartment for the last time. Azhur was unable to find anyone who would confirm Ms Prytula's statement, which -- together with much speculation about the business interests that were backing Gongadze and Ukrayinska Pravda -- became the basis for Azhur's conclusion that she was involved in a complex plan to lure Gongadze out of her apartment.

"Prytula's behaviour [after immediately Gongadze had left her apartment] is evidence that she was in no way a conscious participant in his abduction," the report states (p.35). But on the basis of the catfood incident, Ms Prytula's use of the internet for 58 minutes on the night of Gongadze's disappearance, and the unproven assumption that Gongadze was involved in black propaganda for certain business interests -- the report accuses her of knowing the people who kidnapped and killed Gongadze, but of being too scared to say.<sup>168</sup>

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<sup>167</sup> "Delo Gongadze", op. cit., pp139

<sup>168</sup> Ibid., 34-36

The report also makes much of the telephone records that Azhur's investigators managed to obtain. In particular, a phone call was made from Tarashcha to Ms Prytula's apartment before Gongadze's disappearance, and from Tarashcha to the offices of Ukrayinska Pravda after he disappeared. There were also calls from a Tarashcha factory to Czechoslovakia in August and November, at about the same time as Melnichenko was arranging his visa to escape there. The report states that this "cannot be a coincidence".<sup>169</sup>

Finally, many telephone calls were made between Lavrentiy Malazoniya, a close colleague of both Gongadze and Prytula, and numbers differing by one digit only. The report states: "According to our information all these numbers belong to [Kyiv businessman Hryhoriy] Surkis's people."<sup>170</sup>

These telephone calls became the object of intense speculation in the Ukrainian media and had a significant impact on public opinion. However, much remains to be explained about Azhur's use of the telephone records it obtained. For example, the Kyiv journalist Oleksiy Stepura obtained a copy of Mr Malazoniya's telephone records used by Azhur. Mr Stepura claims that the telephone numbers that differed by one digit were those of the workplace of Mr Malazoniya's girlfriend -- a major television station. All calls in or out of the station were automatically routed via phone lines that differed by one digit.<sup>171</sup>

Moreover, the call from Tarashcha to Ms Prytula's apartment came from a caller who dialled the wrong number, according to the Kroll detectives who appear also to have been given these private telephone records. Kroll concluded that the caller may have been trying to get through to Kyiv's central market, whose number differs by only two digits from Ms Prytula's.<sup>172</sup>

Ms Prytula commented on Azhur's investigation as follows: "The first time I communicated with the Petersburg journalists I honestly told them everything I knew. But after the publication of their results I felt like I needed immediately to have a wash. Then they phoned me and apologised and promised to publish corrections, but this they didn't do. I don't trust them any more and want nothing to do with them."<sup>173</sup>

Some of the information revealed by Azhur undoubtedly requires further investigation. Azhur was invited to appear before parliament's ad hoc commission on Gongadze, to which it handed over some (but not all)<sup>174</sup> of its documents. It remains for these documents to be made public so they can be given a full and balanced assessment.

**According to the information available to this inquiry, there were serious flaws in the methods of Azhur's research and in the way it was presented to the public. The terms of reference on which it worked, the way in which it was financed and the methods it used are unclear. In the light of Mr Pustovoitenko's strong public**

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<sup>169</sup> Ibid., p60

<sup>170</sup> Ibid., p42

<sup>171</sup> Koshiw, op. cit., p217

<sup>172</sup> Kroll's report, p27

<sup>173</sup> Fakty i Komentarii, Kyiv, in Russian, March 28, 2001

<sup>174</sup> Konstantinov quoted in Segodnya, Kyiv, in Russian, February 22, 2002

**support for the investigation, the lack of any indication by Azhur about exactly what his relationship was to the inquiry inevitably compromised its results.<sup>175</sup>**

**Azhur assembled original information which might be of considerable importance to any investigation of the Gongadze case. However, it presented this information in unsuitable forms -- brief and speculative internet articles, a novel, and a press conference in the company of a leading Ukrainian politician (Mr Pustovoitenko). Azhur also circulated to a number of NGOs an unpublished, undated report which shows signs of being hurriedly put together. Despite this unsatisfactory procedure and its untransparent research methods, Azhur made far-reaching conclusions on the basis of speculation as to the significance of its findings. Hence Azhur made it easy for its conclusions to be appropriated by certain political interests at the peak of the political crisis of 2001 that was caused by the Gongadze case.**

**Suspicious of political interference in the inquiry can only be laid to rest, and a proper assessment of the information can gathered, if its results are published and a proper explanation given of its methodology and conclusions.**

At the time of Azhur's research, the agency placed little emphasis in its public pronouncements on the failures of official investigations into Gongadze's disappearance. Four years later, in a brief telephone interview for this inquiry, Mr Konstantinov said: "I was amazed at the unprofessionalism of the organs of law and order." The reasons for this, he said, were that a proper investigation would have uncovered details unfavourable to the authorities: "Ethical questions would have arisen none the less if the organs of law and order had worked properly. Crudely speaking, Kuchma didn't have Gongadze killed, but other unpleasant aspects would have come out. It was more advantageous for them not to investigate."<sup>176</sup>

### **7.iii.c Reporters Sans Frontières**

The Paris-based NGO Reporters Sans Frontières (RSF) sent a mission of inquiry to Kyiv from 5 to 12 January 2001. In this short period it took the testimonies of dozens of people (family, friends, experts, doctors, judges and jurists, civil servants and journalists), and also met Mr Kuchma, head of the state council for security and defence Evgen Marchuk, minister of the interior Kravchenko, head of the SBU Derkach, president's spokesperson Martynenko, head of the tax department Azarov, chair of the parliamentary commission of inquiry Lavrynovych, and the members of parliament of the different parties represented on this commission of inquiry.

Published ten days after the RSF delegation left Ukraine, its 15-page report, "Mutilation of the Truth: Inquiry into the Murder of Journalist Georgiy Gongadze", is a model of

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<sup>175</sup> Asked about the wisdom of holding a press conference together with such a high-ranking politician, Mr Konstantinov told this investigation: "If there was something "incorrect" about the press conference, do you think I would have taken part in it? Pustovoitenko was simply one of its initiators. Several Ukrainian politicians wanted to be associated with our investigations at different times, but they quickly lost interest. They saw that it didn't coincide with their interests."

Telephone interview, January 19, 2005

<sup>176</sup> Ibid.

journalistic investigations of this type and stands in sharp contrast to the work of Azhur (see above). The report is clear, logical, concise and free of speculative hypothesising.

The RSF mission concentrated on the conditions of the journalist's disappearance, attempts to intimidate him in the weeks preceding his disappearance, and steps taken in the official inquiry, both before and after the discovery of the body on 2 November. It describes why Gongadze's journalism might have made him a target, how he was shadowed before he went missing (an issue seemingly overlooked by Azhur), how the inquiry into the disappearance had led nowhere, how identification of the body was obstructed (also overlooked by Azhur), and the concerns raised by Melnichenko's recordings. It also lists detailed examples of intimidation of the media over the Gongadze case (see below). None of these points have yet been shown to be mistaken.

The RSF mission noted that there had been "an accumulation of mistakes, of exceptional gravity, made throughout the judicial inquiry. It appears that the investigation was carried out primarily with the intention of protecting the executive from the serious accusations made against it, rather than for the purpose of uncovering the truth." RSF also condemned the treatment by the authorities of Gongadze's family and friends.

**This inquiry believes that RSF's investigation must be a reference point for any serious investigation of the Gongadze case. While it does not and cannot claim to answer all the questions raised by the case, the evidence it compiled deserves at least to be taken seriously.**

#### **7.iii.d Television documentaries**

Two television documentaries broadcast in March 2002 received a great deal of attention, partly because they appeared on the eve of elections in Ukraine during a period of intense political interest. They both told very different stories, however.

"PR", by American producer Peter Powell, presented by Financial Times correspondent Charles Clover, and broadcast on ICTV, a Ukrainian channel, argued that the same plotters were behind both the Gongadze and Melnichenko affairs. Mr Powell and Mr Clover drew on the testimonies of Andrei Konstantinov (see above) and Oleksei Stepura, a Kyiv journalist known for his opinion that the people who made the recordings were the same who killed Gongadze. The documentary also interviewed the head of Kroll Associates (see above).<sup>177</sup>

While stressing the way in which much "journalism" had become financed and therefore controlled by business interests, and concluding that Gongadze was a willing tool of these interests, it ignored the tradition of independent campaigning journalism in the country. There was no mention of state and business hostility to good journalism in Ukraine, an important part of the background to Gongadze's murder. Nor was there any mention of the high level of violence and repression against journalists in Ukraine, among the worst in Europe, or that Gongadze's murder was one of a succession of murders of journalists.

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<sup>177</sup> Koshiw, op. cit., pp.224-228

“PR” dealt with the Melnichenko recordings in a one-sided manner. It stated that they are a montage, manipulated to change the meaning of the conversations recorded. As we have seen, however, authoritative experts have ruled out such manipulation. The film also ignored other evidence that the conversations about Gongadze on the tape were genuine, such as the identification by people in the political elite in Kyiv of voices on the tape, and the correspondence of conversations on the tapes with real events. The documentary proposed that Melnichenko could have been “part of a conspiracy to discredit the president”, of which the murder of Gongadze itself was a part. “PR” proposed this conspiracy theory without seriously testing its logic or quoting the large number of authoritative observers of the case who could refute it.

The makers of “PR” faced, and denied, accusations that the film’s approach had been influenced by the pro-Kuchma stance of ICTV, the channel that aired the film and was partly controlled by Viktor Pinchuk, a leading Ukrainian businessman and son-in-law of ex-president Kuchma. Viktor Yushchenko, then leader of the Ukrainian opposition, claimed that the film had been “ordered” (i.e. paid for by local business interests with a view to influencing its content). Charles Clover, one of the film makers, strongly denied this allegation, stating that he was “dismayed” that people believed he would need to be paid to believe in Kuchma’s lack of complicity in Gongadze’s murder.<sup>178</sup>

“PR” was project financed by a US-based company, East European Media Project, which, as far as we can ascertain, has made no films before or since. In June 2002, Clover was contacted by the NUJ (of which he was not a member) and invited to respond to concerns about the film raised with the union’s ethics committee by an NUJ member familiar with events in Ukraine. One of the suggestions made was that the film makers clarify the nature of the relationship between East European Media Project, ICTV and other business entities related to Pinchuk, in order to ensure the highest journalistic integrity, uphold the reputation of western journalism in Ukraine and rebut Yushchenko’s accusations. Clover declined to respond to, or discuss, the points raised.<sup>179</sup>

A quite different documentary with a different approach, “Killing the Story”, was produced in March 2001 by the BBC and presented by Tom Mangold. It took its themes from Melnichenko’s recordings. It interviewed Mr Yelashkevich and Mr Podolsky, attacks on whom matched the tapes (see section 5.iii above). It also interviewed Oleh Yeltsov, a high-profile investigative journalist who claimed to have been persecuted because of his work. The programme’s interviews of deputy general prosecutor Bahanets and president Kuchma were hostile.

In something of a scoop, the BBC obtained a lengthy interview with Melnichenko himself, who described the wider context of the crimes discussed by president Kuchma with other high-ranking figures, and told how he had been offered six million dollars by Kyiv to buy his silence.<sup>180</sup>

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<sup>178</sup> Kyiv Post, 21 March 2002

<sup>179</sup> Correspondence between the NUJ and Charles Clover has been seen by this inquiry

<sup>180</sup> A transcript of the documentary is available at

[http://news.bbc.co.uk/1/hi/english/static/audio\\_video/programmes/correspondent/transcripts/1932609.txt](http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/correspondent/transcripts/1932609.txt)



In September 2004, a third television documentary, “No-Go Area”, presented by Volodymyr Arev and shown on opposition station Channel 5, introduced the possibility that the Russian secret services were involved in Gongadze’s murder. The programme based this conclusion on interviews with SBU general Valeriy Kravchenko, who defected to Germany in 2004, and the former Ukrainian consul in Munich Volodymyr Tsvil, who now lives in Germany. The two men said that that Melnichenko was likely to have had contact with the Russian Federal Security Service.

None of the television documentaries added very much new or original to investigations of the Gongadze case, but rather popularised the results of previous investigations.

## **8. Conclusions and recommendations**

This Preliminary Report concludes:

**First**, that there has been a catalogue of elementary failures, and breaches of procedure and law, in the investigation into the Gongadze case by the Ukrainian general prosecutors’ office. There is a mass of contradictions in public announcements by the investigating authorities. There has been broad political collusion within the Ukrainian establishment to obstruct and divert the investigation.

The investigating authorities have deliberately obstructed and confounded the investigation over a long period of time, and also made inconsistent announcements, often on the basis of fabricated “solutions” to the case, that betrayed an unwillingness to solve it. The purpose of these announcements was the cynical manipulation of public opinion inside Ukraine and internationally. This “public relations management” of the investigation was undertaken not only the general prosecutor’s office but also by other senior politicians and officials, suggesting political collusion.

**Second**, that there is a substantial body of evidence suggesting that the sections of the Melnichenko recordings that concern the Gongadze case are a genuine record of conversations involving senior Ukrainian political figures. However, the general prosecutor’s office made contradictory accusations that the recordings were fabricated by Ukrainian politicians, and took inconsistent actions in relation to these accusations. It also expressed arbitrary and inconsistent attitudes to the various expert examinations of the recordings. And yet no serious investigation of the Gongadze case can be completed without examining these sections of the recordings and the nature of the connection between them and Gongadze’s murder.

**Third**, that official investigations into Gongadze’s surveillance in the weeks leading up to his death were characterised initially by an unwillingness to investigate central pieces of evidence, by obstruction of the judicial process and by a mass of contradictory public statements. In 2003, progress was made on this aspect of the case, but abruptly halted again after the dismissal of Mr Piskun as general prosecutor.

**Fourth**, there has been a series of cases of intimidation and harassment of public officials who, in pursuance of their duties, became involved in some way with the Gongadze case,

and of media that attempted to report the case in its early stages, pointing to a considerable network of forces working to obstruct the investigation of the case and, again, to political collusion.

We also note that high-profile unofficial investigations that dismissed any involvement by Ukrainian government officials in Gongadze's murder were based on highly unsatisfactory methods. Moreover, the Ukrainian parliament's ad-hoc commission on the Gongadze case had insufficient powers in law to do its work, and its results have been kept hidden by the misuse of parliamentary procedure, again pointing to political collusion to obstruct the investigation of the Gongadze case.

The Gongadze case will be a litmus test for Mr Yushchenko's promises to democratise Ukraine and fulfil the expectations of the crowds that brought him to power. Continued failure to resolve it encourages abuses of power to silence and intimidate journalists. Without answers to the questions posed by the case:

- No citizen can have confidence in parliament, the judiciary and the executive;
- No journalist can feel safe to expose abuses of power;
- There can be no talk of genuine free speech in Ukraine.

The case has important implications, too, for international civil society. There is prima facie evidence that, shortly before Gongadze's death, the Ukrainian president and other senior politicians discussed harming him. The fact that, more than four years later, this evidence has not been investigated and no framework has even been established for such an investigation, suggests that those in power still enjoy an unacceptable level of impunity with respect to alleged intimidation of journalists by murder and other violent means. For this reason we have made recommendations to the Ukrainian authorities, international bodies and civil society.

We therefore call on president Yushchenko, the general prosecutor's office and the government of Ukraine:

- To bring together and coordinate investigations into the possible surveillance of Georgy Gongadze, the allegations of illegal armed formations operating within the Ministry of Internal Affairs, and the Melnichenko recordings and the issues raised by them;
- To accept the proposal made last year by journalists' organisations and NGOs for the expert examinations of the Melnichenko recordings to include observers from civil society;
- To devise a transparent form of investigation of the nature of the links between the Melnichenko recordings and the Gongadze case;

- To initiate a public inquiry, in an appropriate form under the Ukrainian constitution, into the broad issue of political collusion in the obstruction of justice in the Gongadze case;
- To ensure that such an inquiry covers the possible political involvement in the case suggested by the Melnichenko recordings, the apparently deliberate obstruction of the original investigations into the case, the presentation of false information about these investigations to the public and to international institutions, and intimidation of public officials who dealt with the Gongadze case.

We call on the Ukrainian parliament:

- To hear the report of its ad-hoc commission on the Gongadze case without further delay and publish its findings and accompanying documentation in full.

We call on the Council of Europe and other international bodies such as the UN and OSCE:

- To support the Legal Affairs Commission of the Parliamentary Assembly of the Council of Europe in following closely and reporting on legal and procedural developments in the case, with regard to its wider aspects, as outlined in the Motion of Resolution to the Parliamentary Assembly by Ms Hanne Severinsen and others (see Appendix IV);
- To promote similar monitoring by other international bodies;
- To urge the Ukrainian government to commit itself to a broad examination of all aspects of the case as outlined above.
- To develop mechanisms for rapid and concerted international action in the case of journalists killed for apparently political motives;

We call on the International Federation of Journalists, journalists' organisations and NGOs committed to freedom of speech:

- To develop an international campaign around the issue of impunity of senior political figures in respect of allegations of violent intimidation of journalists.

**The International Federation of Journalists**  
**The National Union of Journalists of the UK and Ireland**  
**The Gongadze Foundation**  
**The Institute of Mass Information**

## **Appendix I: The work of the inquiry**

This Preliminary Report was drafted by David Crouch (NUJ) and Simon Pirani (NUJ). The research for the report, and assembly of the internet archive, was carried out by David Crouch. Robert Shaw (IFJ), Alla Lazareva (IMI) and Myroslava Gongadze (Gongadze foundation) participated in research and campaigning. Documentation was provided by IMI, the Gongadze foundation, the BBC, Ukrainskaya Pravda and by a number of journalists. Thanks are due to Sergei Taran and colleagues at IMI, Mike Holderness (NUJ), Gavin Knight (NUJ), J.V. Koshiw, and others who have assisted us.

Interviews were carried out in Kyiv by David Crouch and Simon Pirani during a visit in September 2004. We interviewed Andriy Fedur, Oleksandr Lavrynovych, Ihor Lubchenko, Hrihory Omel'chenko, Sergiy Taran, Valentina Telychenko, Ihor Vorotyntsev, Nikolai Zamkovenko and Oleksandr Zhyr. The General Prosecutor and the Minister of Internal Affairs declined to be interviewed.

All the work of the inquiry has been funded by the four organisations sponsoring it.

In order to produce a final report, under the terms of reference used, the authors consider that at a minimum further work would be needed, as follows:

- In relation to the investigation carried out by the general prosecutor's office, interviews to be sought with general prosecutor Piskun, investigators Bahanets, Harbuz, Shokin and Vynokurov, and former general prosecutor Potebenko;
- In relation to the "Melnichenko recordings", interviews to be sought with Major Melnichenko, Mykola Rudkovskyy, experts who have worked on the tapes, and representatives of Kroll Associates;
- In relation to the other non-official investigations, interviews to be sought with representatives of Azhur and Kroll.

We should also emphasise that, solely due to constraints of time and funding, we have not had the opportunity to interview formally some Ukrainian journalists and others who have a close knowledge of the case, and hope this will be possible also.

The completion of such research, and drafting of a final report, will be dependent on the availability of resources.

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**Contact.** Queries about the inquiry may be addressed to Robert Shaw, IFJ, IPC-Residence Palace, Bloc C, Rue de la Loi 155, B-1040 Brussels, Belgium. [robert.shaw@ifj.org](mailto:robert.shaw@ifj.org)

## Appendix II: Chronology of investigations into the murder of Georgy Gongadze

- **2000**

**September:** On the instructions of the prosecutor general, the Security Service of Ukraine and the Ukrainian Internal Affairs Ministry carry out investigations on surveillance of Gongadze; prosecutor interrogates policemen allegedly involved in surveillance, all deny it categorically.

Parliament votes to establish a 15-strong committee to investigate Gongadze's disappearance, led by Oleksandr Lavrynovych of Rukh.

**November:** Post mortem conducted on the body.

**December:** Prosecutor general unites criminal investigations into Gongadze's disappearance, into the corpse found in a forest in Tarashcha, and into libel against top officials accused of committing severe crimes united into one single investigation (December 7).

Parliament asks the International Press Institute (Vienna) to examine the Melnichenko recordings

- **2001**

**January:** General prosecutor Potebenko presents to parliament his report on the Gongadze investigation (January 10)

Russian experts conclude that recordings of alleged conversations between ex-president Kuchma and colleagues about Gongadze's disappearance were fake; prosecutor ends investigation of top officials; Melnichenko charged with criminal slander.

The Judicial-Medical Centre of the Health Ministry issues its examination of the Tarashcha corpse.

DNA tests by Russian forensic experts identify a 99.6 per cent chance that the decapitated body is Gongadze's (a month later the Russian experts raise their estimate to 99.9 per cent).

Mykola Rudkovskyy's flat searched, audio recordings and computers seized.

Reports Without Borders issue their report: "Mutilation of the Truth"

The Council of Europe issues two reports calling for independent investigations of the case

**February:** Prosecutor Potebenko launches murder investigation into Gongadze's disappearance.

International Press Institute concludes that the Melnichenko recordings are "likely to be genuine"

European Union delegation demands a "robust, clear and thorough investigation"

**March:** Prosecutor general's office announces it is investigating the possibility that criminals, one nicknamed Cyclops, killed Gongadze.

Parliament announces results of German tests on Tarashcha corpse's DNA, claims Tarashcha corpse is not Gongadze's

Political party "Working Ukraine" invites US investigators Kroll to examine the case.

**April:** Forensic experts from the FBI and the U. military go to Ukraine to help identify the corpse

**May:** The FBI confirms that the body belonged to Gongadze.

**June:** Prosecutor general's office asks the Council of Europe to help with one more examination of the Tarashcha body; Reporters Sans Frontières proposes using an experienced French expert.

Kroll delivers the results of its investigation, clearing ex-president Kuchma

**July:** Prosecutor general's office rejects involvement of French expert.

Prosecutor general's office is investigating the possibility that Gongadze was killed in a car crash.

**October:** Oleksandr Zhyr becomes chair of ad hoc parliamentary commission investigating Gongadze.

**December:** Council of Europe calls for an international commission to investigate the case.

- **2002**

**January:** Ad hoc parliamentary commission on Gongadze releases brief report on Kroll findings.

**February:** US firm Bek Tek issues results of examination of the Gongadze sections of the Melnichenko recordings, claims they are genuine.

**March:** US-produced TV documentary "PR" broadcast, claiming to support ex-president Kuchma's innocence in the affair.

BBC documentary "Killing the Story" premiers in London.

**April:** Prosecutor Potebencko resigns.

**July:** Svyatoslav Piskun appointed, sacks deputy Bahanets, appoints Viktor Shokin to lead the Gongadze investigation.

Prosecutor Piskun announces new Gongadze investigation, including new third-country tests on the Melnichenko trapes and new DNA tests.

Hrihory Omelchenko becomes chair of parliamentary ad hoc Gongadze commission.

**August:** Prosecutor general's office announces it is investigating:

- The complicity of criminal groups, including Kyiv-based criminal groups led by Pryshch and Kysil;
- A group of three police officers from the investigative group at the Ukrainian Interior Ministry's department to combat organized crime, who are accused of kidnapping and murdering people, burying their victims' bodies in Kyiv Region.

British foreign minister calls for international commission on Gongadze.

**September:** US Justice Ministry carries out another examination of the Melnichenko's recordings and confirms their authenticity.

Prosecutor Piskun announces a "special international investigation group" to investigate the Melnichenko recordings and their relevance to the Gongadze case; experts from the USA, France and Great Britain will be invited to take part.

French expert to examine Tarashcha corpse with prosecutor general's approval.

**November:** Institute of Forensic Medicine in Lausanne (Switzerland) sends a letter to the Prosecutor-General's Office of Ukraine inviting it to take part in an expert examination of the samples received by French expert Jean Rivolier.

British expert Peter French, hired by private detectives the Arkin Group (New York) carries out repeat analysis on the extracts examined by Bek Tek, concludes they cannot be proved to be either authentic or false.

- **2003**

**January:** Parliamentary ad hoc commission submits report to PGO.

**April:** Parliamentary ad hoc commission claims Lausanne tests "incomplete" because they did not examine hair samples (The Swiss test showed 99.991 per cent certainty that the corpse was Gongadze).

Prosecutor general's office asks the US Department of Justice to hold a joint Ukrainian-US examination of the Melnichenko recordings concerning Gongadze.

**July:** The Parliamentary Assembly of the Council of Europe's special envoy in charge of the Gongadze case, Hans Kruger, issues a report praising the PGO's "sincere" efforts to resolve the case according to internationally accepted standards.

**September:** Mr Piskun commissions another expert examination of the Melnichenko recordings

**Mr Piskun:** Gongadze investigation "at the final stage".

**October:** Mr Piskun dismissed, Hennady Vasylyev appointed, dismisses Mr Piskun's deputies working on the Gongadze case

- **2004**

**January:** Prosecutor Vasylyev announces additional tests in the Gongadze case, including the Melnichenko recordings, will be carried out by the Kyiv Forensic Science and Research Institute with the involvement of foreign experts.

Representatives of the Parliamentary Assembly of the Council of Europe [PACE] monitoring committee disappointed on progress: "It looks as if this issue was simply shelved".

**May:** Mr Vasylyev announces that "Everything has been started from a clean slate" in the Gongadze case .

**July:** Interior Ministry of Ukraine launches internal investigation into Gongadze surveillance.

**September:** TV documentary "No-Go Area" gives detailed new version of Gongadze murder.

Kyiv Forensic Studies Research and Science Institute declares Melnichenko recordings are fabrications; GPO says "doctoring" of recordings began on September 18, 2001.

**October:** Detailed new research identifies weaknesses and omissions in investigations into the Gongadze case; the research is sponsored by the International Federation of Journalists, National union of Journalists, Institute of Mass Information, Gongadze Foundation.

**November:** Mr Vasylyev sacked.

**December:** Mr Piskun re-instated, re-appoints former Gongadze investigators.

### **Appendix III: Organisations and individuals supporting this inquiry**

The inquiry has been organised, funded and undertaken by the International Federation of Journalists, the National Union of Journalists of the UK and Ireland, the Gongadze Foundation and the Institute of Mass Information. Those who have expressed support include:

Aidan White, International Federation of Journalists (IFJ)

Alla Lazareva, Institute of Mass Information (IMI)

Jeremy Dear, National Union of Journalists of the UK and Ireland (NUJ)

Myroslava Gongadze, The Gongadze Foundation

Robert Ménard, Reporters Without Borders (RSF)

Chris Warren , Media, Entertainment and Arts Alliance (MEAA), Australia

Ann Cooper, Committee to Protect Journalists (CPJ)

Johann Fritz, International Press Institute (IPI)

Jean-Paul Marthoz, Human Rights Watch (HRW)

Andrew Puddephatt, ARTICLE 19

Arnold Amber, Canadian Journalists for Free Expression (CJFE)

Oleg Panfilov , Center for Journalism in Extreme Situations (CJFES)

Hans Verploeg, Netherlands Association of Journalists (NVJ)

Mark Bench, World Press Freedom Committee (WPFC)

Timothy Balding, World Association of Newspapers (WAN)

Suman Basnet, World Association of Community Radio Broadcasters (AMARC), Asia-Pacific

Adriana León, Instituto Prensa y Sociedad (IPYS), Peru

Juliana Cano Nieto, Fundación para la Libertad de Prensa (FLIP), Colombia

Owais Aslam Ali, Pakistan Press Foundation (PPF)

Ibrahim Nawar, Arab Press Freedom Watch (APFW)

Luckson Chipare , Media Institute for Southern Africa (MISA)

Carl Morten Iversen, Norwegian PEN

Azer Hasret, Central Asian and Southern Caucasian Freedom of Expression Network (CASCFEN)

Kwame Karikari, Media Foundation for West Africa (MFWA)

Edetaen Ojo, Media Rights Agenda (MRA)



Robert Russell, Cartoonists Rights Network (CRN)

Shobhakar Budhathoki, Center for Human Rights and Democratic Studies (CEHURDES), Nepal

Karin Deutsch Karlekar, Freedom House (FH)

Corina Cepoi, Independent Journalism Centre (IJC), Moldova

Professor O. Andriewsky, Chair, Department of History, Trent University, Peterborough, Ontario

Zenia Chernyk, Chair, Ukrainian Federation of America,

Prof. Keith Darden, Yale University

Marta Dyczok, DPhil (Oxon), Associate Professor, Departments of History and Political Science, University of Western Ontario

Bill Emmott, Editor, The Economist

Ihor Gawdiak, Ukrainian Federation of America

Neil Gerrard, MP (United Kingdom)

Prof. Alexandra Hrycak, Associate Professor, Department of Sociology, Reed College

Rohan Jayasekera, Index on Censorship

Jaroslav Koshiw, Author of "Beheaded: The Story of a Journalist"

Askold Krushelnycky, Correspondent, Radio Free Europe

Dennis McShane, MP, Minister for Europe.(United Kingdom)

Paschal Mooney, Council of Europe Parliamentary Assembly

Dr. Natalia Pylypiuk, Associate Professor Modern Languages and Cultural Studies University of Alberta, Edmonton. Member of the Executive of the Canadian Association of Slavists

Roman Senkus, President, Canadian Association for Ukrainian Studies, Canadian Institute of Ukrainian Studies, Toronto Office, University of Toronto

John Simpson, BBC World Affairs Editor

Morgan Williams, Executive Director, Ukrainian Federation of America

**If you or your organisation wishes to add your name to our list of supporters, please contact Robert Shaw at the IFJ.**

## **Appendix IV: Motion for a resolution of the Parliamentary Assembly of the Council of Europe**

Doc. 10330

15 October 2004

### **Motion for a resolution**

presented by Mrs Severinsen and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. The Assembly is seriously concerned by the lack of any progress in the investigation of the murder of the Ukrainian journalist Georgiy Gongadze. September 16, 2004 was the fourth anniversary of his unsolved disappearance and brutal murder.

2. The Assembly regrets the fact that, more than a year after the report presented by the independent expert it had designated, the Ukrainian authorities have not succeeded in finding and bringing to justice those guilty of this particularly horrible crime.

3. Moreover, there are clear indications that the third prosecutor general appointed to deal with this case is not pursuing the investigation in an appropriate and timely manner. In this respect, the Assembly refers to the findings of the representatives of the International Federation of Journalists, the National Union of Journalists of the UK and Ireland, the Institute of Mass Information and the Gongadze Foundation, which were issued on October 1, 2004, and shares the concerns expressed therein.

4. The Assembly regrets that the Verkhovna Rada inquiry commission was prevented from presenting its report on Gongadze and Alexandrov cases to a plenary session of the parliament.

5. Stressing the importance of the Gongadze case for freedom of speech in Europe and democracy in Ukraine, the Assembly decides to follow closely and report on the legal and procedural developments of the investigation of the Gongadze case, in particular as regards:

- the contradictory statements of the general prosecutor's office on the so-called "Melnichenko tapes";
- the failure of the Ukrainian authorities to investigate the surveillance of Gongadze by interior ministry staff in the weeks prior to his murder and possible connections between this surveillance and the murder;
- the possible connections between the Gongadze case, that of former police officer Ihor Honcharov (deceased), and criminal activity within the ministry of internal affairs;
- the recent announcement that a suspect is in custody, and the failure to bring this suspect to court.

Signed [1]:

SEVERINSEN, Hanne, Denmark, LDR  
ARVELADZÉ, Giorgi, Georgia, NR  
ATES, Abdülkadir, Turkey, SOC  
BARGHOLTZ, Helena, Sweden, LDR  
BINDIG, Rudolf, Germany, SOC  
BRUCE, Malcolm, United Kingdom, LDR  
GORIS, Stef, Belgium, LDR

HERKEL, Andres, Estonia, EPP/CD  
HOLOVATY, Serhiy, Ukraine, LDR  
JAKIC, Roman, Slovenia, LDR  
JARAB, Josef, Czech Republic, LDR  
JUDD, United Kingdom, SOC  
LINDBLAD, Göran, Sweden, EPP/CD  
LLOYD, Tony, United Kingdom, SOC  
MIKKELSEN, Lars Kramer, Denmark, SOC  
NÉMETH, Zsolt, Hungary, EPP/CD  
PANGALOS, Theodoros, Greece, SOC  
PETROVA-MITEVSKA, Eleonora, "the former Yugoslav Republic of Macedonia", SOC  
POURGOURIDES, Christos, Cyprus, EPP/CD  
RUSSELL-JOHNSTON, United Kingdom, LDR  
TEVDORADZE, Elene, Georgia, EDG  
TOSHEV, Latchezar, Bulgaria, EPP/CD

- End -