

U.S. judge throws out 23 of 53 counts against Lazarenko

by Roman Kupchinsky

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The trial of former Ukrainian Prime Minister Pavlo Lazarenko that began on March 15 and is continuing in a Northern District federal court in San Francisco is the second of its kind in the history of U.S. jurisprudence. (The first was that of deposed Panamanian leader Manuel Noriega in 1990.) Lazarenko is accused in a second superseding indictment filed by U.S. prosecutors of money laundering to the tune of some \$114 million and mail fraud, which together carry a maximum sentence of 370 years imprisonment.

The trial, which has received scant coverage in the Ukrainian media, took a sharp turn on May 7 when Judge Martin Jenkins tossed out 23 of 53 counts against Lazarenko. The judge concluded that the government was unable to establish proof of violations of existing Ukrainian law and sufficient evidence of fraud to sustain a conviction.

The move hints at the difficulty the prosecution is likely to have in securing a conviction of Lazarenko, who served as Ukraine's prime minister from October 1996 to July 1997.

Justin Kane of the Center for Investigative Journalism in San Francisco filed the following report with RFE/RL's Ukrainian Service:

"All charges related to [Unified] Energy Systems of Ukraine and opposition leader Yulia Tymoshenko were dismissed. The judge also dismissed all charges connected to the energy company Itera, the alleged extortion of businessman Oleksiy Dydyatkovskyy, and the sale of prefabricated homes to the Ukrainian government.

"Lazarenko's acquittal on the charges of wire fraud and transportation of stolen property leaves 28 counts in the indictment, all related to Lazarenko's alleged extortion of his former partner, Petro Kirichenko, and the alleged fraud at Naukovy State Farm. Prosecutors had already dropped two additional charges.

"The ruling substantially undermined what remains of the prosecutors' case against Lazarenko, casting doubt on whether they can convince jurors that Lazarenko violated both U.S. and Ukrainian law. In his order, Judge Martin J. Jenkins agreed with the defense's arguments that the prosecutors had not established a violation of Ukrainian law for the charges he dismissed. 'No reasonable trier of fact could

find that it has," the judge wrote.

"The judge consistently rejected the government's theories that Lazarenko had defrauded the Ukrainian government and had deprived Ukrainian citizens of his honest services. 'The government has utterly failed to establish material harm' to the Ukrainian people or government, Jenkins wrote. He also dismissed a government claim that Lazarenko had defrauded RAO Gazprom in the course of his actions during the restructuring of the Ukrainian gas industry."

Writing in his response to a request by the defense to acquit their client under rule 29(a) of the Federal Rule of Criminal Procedure, however, Judge Jenkins rejected a defense request to drop an extortion charge. The government had presented sufficient evidence "that a reasonable juror could find beyond a reasonable doubt that Mr. Lazarenko committed extortion with respect to Mr. Kirichenko," Jenkins concluded.

Lazarenko's former partner, Kirichenko, testified on behalf of the government at the trial.

The defendant

Pavlo Ivanovich Lazarenko, born on a collective farm in the Dnipropetrovsk Oblast of Ukraine, became prime minister on October 21, 1996. He was removed from the post on July 1, 1997. He was detained by the U.S. Immigration and Naturalization Service (INS) at New York's JFK Airport in February 1999 as he disembarked from a flight from Greece, charged with attempting to enter the United States on an invalid visa. Lazarenko then applied for political asylum, claiming he was "being persecuted" by the regime of Ukrainian President Leonid Kuchma. The asylum application was never ruled upon, and, shortly afterward, Lazarenko was arrested on charges of money laundering and mail fraud. Lazarenko has since spent nearly five years in federal detention in the San Francisco area, where he had previously purchased a house in Marin County for approximately \$7 million cash.

Widespread corruption?

Tales of pervasive corruption at the highest levels of government in Ukraine have been heard throughout the depositions in this trial, both videotaped and in the courtroom. Testimony has also arguably been damaging to the Swiss and Caribbean banking systems, which seem to have allowed opaque transactions and taken minimal steps to check the origins of funds entering their banking systems.

Swiss banks have been accused of laxity in their dealings in the past, including some high-profile cases of allegedly illicit funds being funneled or diverted by Russian and Ukrainian officials. In the early 1990s, Kremlin property manager in the Yeltsin administration Pavel Borodin was accused of using Swiss accounts to launder some \$30 million in connection with the Mabatex-Kremlin reconstruction scandal. Borodin was found guilty by a Swiss court in 2003 and ordered to pay a fine of \$700,000, which he has so far refused to do. In December 2003, Russian State Duma deputy and popular singer Josef Kobzon - long reputed to have ties to organized crime - had \$743,000 confiscated from a Swiss

account by Swiss police who claimed the money came from illicit activities.

Witnesses at the Lazarenko trial suggested that managers at Credit Suisse, a bank initially used by Lazarenko, might have been negligent in their due-diligence duties or, on the other hand, genuinely believed the funds were clean.

Other witnesses testified that Lazarenko later withdrew his funds from Credit Suisse and deposited them with the Federal European Credit Bank in Antigua, which he and former business partner Kirichenko had bought. The Caribbean connection in this alleged money-laundering scheme played a significant role in future money transfers to the United States.

Ukrainian media coverage

The proceedings in San Francisco are taking place during a presidential election year in Ukraine; as such, they could have some impact on Ukraine's future leadership if unbiased information about the hearings was being made available to the electorate. That, however, has not been the case thus far.

As Lazarenko's trial was about to commence, RFE/RL saw its programs dropped from a nationwide FM radio network in Ukraine. Two days after RFE/RL found a new partner to broadcast its Ukrainian-language programming, Radio Kontinent, the Ukrainian authorities shut down that station for allegedly "violating its license." Some commentators have linked those events with the Lazarenko trial and its accompanying coverage.

President Kuchma has denied that his administration had anything to do with RFE/RL's predicament, but members of the Ukrainian opposition have expressed a different view. A demonstration in Kyiv on March 10 attended by nearly 7,000 people to protest attacks on press freedoms was not mentioned on any of Ukraine's nationwide television-news programs.

It is worth noting that there are no television crews or correspondents from Ukraine attending the Lazarenko trial. As far as the Ukrainian media is concerned, this trial might as well not be taking place at all.

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