

Repeated failures by Ukraine General Prosecutor's Office show politics at work, serious reform needed

 antac.org.ua/en/news/burisma-group-of-companies-are-still-under-criminal-investigation-in-ukraine-despite-

Allegations that Ukraine's General Prosecutor's Office abuses its power and has helped an alleged criminal keep stolen assets show much more must be done to clean up this important institution if the country is to effectively combat systemic corruption and put an end to an ugly legacy of theft by public officials and other elites.

The National Anti-Corruption Bureau of Ukraine (NABU) is investigating whether officials in the prosecutor's office failed to take actions relating to criminal proceedings against Burisma Group President Mykola Zlochevskyi. The failure to act resulted in a missed opportunity to recover US\$23.5 million stolen from Ukraine.

Furthermore, despite overwhelming evidence suggesting criminal actions, the Prosecutors Office recently dropped its cases against Zlochevskyi and his company Burisma. The NABU continues to investigate^[1] several cases.

"Confiscation of \$US23.5 million from Zlochevskyi's companies in London would have been the first success story in Ukraine's efforts to recover funds laundered abroad by Yanukovich and his associates. But instead of handing evidence to the UK's Serious Fraud Office in a timely fashion, the Prosecutor General's Office did everything possible to prevent this potential asset recovery success story from happening, said **Daria Kaleniuk from the Anti-Corruption Action Centre**.

No one in the Prosecutor General's Office has been punished for the dumping of Zlochevskyi's case. No prosecutor or investigator has been found liable. The leadership of the office, which tried to cover up the dumping of the criminal case concerning Zlochevsky, resigned only under enormous public and diplomatic pressure.

"Nowadays, the General Prosecution Office is a political entity, not a law enforcement agency," said **Yaroslav Yurchyshyn, the Executive Director of Transparency International - Ukraine**.

To fix this situation TI-Ukraine and AntAC made the following recommendations:

1. **PGO to explain publicly detailed reasons and conditions of closing criminal investigations against Zlochevskyi and Burisma Group companies; consider reopening these cases.**

2. **Ukraine and United Kingdom to establish joint investigation team, which should** investigate not only activities of Zlochevskyi and Burisma, but also alleged corruption and abuse of power of prosecutors and investigators who dumped the initial criminal investigation. The team should be led by foreign law enforcement officers.
3. **Parliament to consider passing legislation, which sets up competitive public selection procedure of the Prosecutor General of Ukraine, who should be independent professional beyond politics.**
4. International partners to condition Ukraine on delivering measurable results in recovery proceeds of grand corruption prior to granting financial technical assistance to the country.

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List of attached documents:

1. Letter of General Prosecutors Office 072-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, translation
 2. Letter of General Prosecutors Office 1715-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, translation
 3. Letter of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General O.Zalisko from Nov 20, 2014, translation
 4. Report of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General Vitalii Yarema, translation
 5. London Criminal Court Judgment in the Case NoRSTO72014
 6. Official letter №041-204/20487 from the National Anti-corruption Bureau from June, 23.06.2016
 7. Press release in PDF
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Notes for editors:

There are reasonable grounds to believe that close associates of current Ukrainian President Petr Poroshenko, have significantly assisted Mykola Zlochevskyi in dismissing criminal cases against him by PGO.

Specifically, on Dec 24, 2016 Mykola Zlochevskyi was filmed at the meeting in Vienna restaurant with Igor Kononenko, incumbent Member of Parliament, who is first deputy head of the largest political faction in parliament called Poroshenko's Bloc. Kononenko is publicly known as close friend and business partner of President Poroshenko. Kononenko joined official leadership of the Poroshenko Bloc after Mr. Yuri Loutsenko left the position of its

head to become Prosecutor General of Ukraine in May 2016. President appointed Yuriy Lutsenko after initiating special amendments allowing Lutsenko to become Prosecutor General despite the absence of legal education.

It is said that Kononenko personally supervises the work of a separate department of investigation of specially important cases. Exactly this department has been investigating the cases concerning Zlochevskyi and the companies of Burisma group.

This how the cases month by month were dumped by the General Prosecutor's Office of Ukraine:

1. **In 2014-2015 the General Prosecutor's Office of Ukraine**, which was managed by Vitaliy Yarema at that moment, **assisted Mykola Zlochevskyi with unblocking 23.5 mln USD seized in the UK.**

In April 2014, British Serious Fraud Office started a preliminary investigation of money laundering in the amount of 35 million dollars allegedly committed by Mykola Zlochevskyi. In this criminal case, the British law enforcers blocked 23.5 mln USD on the accounts of the companies beneficially owned by Zlochevsky. The Ukrainian party became aware of this in late July 2014, when the GPO **received request** for mutual legal assistance from the British counterparts. In particular request asked to provide information regarding Zlochevskyi and companies related to him.[ii] On Aug 5, 2014, on the basis of the request and report [iii] of the Deputy Prosecutor General (at that time), Vitaliy Kasko, the Main Investigative Department of the GPO initiated criminal proceedings No 4201400000000805 [iv] regarding illicit enrichment and money laundering in especially large sizes committed by Zlochevskyi.

Two months from the start of the preliminary investigation, on Sept, 23, 2014, the investigation **issued[v] the first letter stating "uncertain legal status and absence of notification of suspicion of Mykola Zlochevskyi"** at the request of his defence attorney who tried to cancel the seizure of funds in the UK.

The British law enforcers received partial response [vi] to their preliminary request to Ukrainian party on Sept 25, 2014, **after** Zlochevskyi's defense had already received the certificate confirming absence of criminal investigation regarding him.

On Nov 20, 2014, Vitaliy Kasko, responsible at that moment for international cooperation, notified the management of the GPO on the need to timely provide British law enforcers with requested information "due to the court hearings scheduled for the beginning of Dec, particularly regarding the legitimacy of seizure of Zlochevskyi's assets in the UK" [vii].

On Dec 2, 2014, **one day before the court hearings** in the Central Criminal Court of London, the GPO issued the **second letter[viii] stating "uncertain legal status and absence of notification of suspicion of Mykola Zlochevskyi"** at the request of his

defense. The letter was used immediately by Zlochevskyi attorneys during court hearings in London on Dec 3-5, 2014^[ix]. The results of those hearings as well as arguments of the parties were used later by the court as a **ground of decision to unblock the seized assets**.

On Dec 4, 2014, five months after the investigation had started in Ukraine, in violation of the law and **without any reasonable grounds** the Deputy General Prosecutor, Herasymiuk M.V. **transferred this investigation to the Ministry of Internal Affairs.**^[x] Therefore, the collection of evidence necessary for preparation of notification of suspicion was stopped for two weeks.

On Dec 10, 2014, the representatives of the British Embassy in Ukraine informed ^[xi] the GPO regarding Zlochevsky's challenge of the seizure of funds and "possible cancelation of the seizure by the British court due to **lack of active actions from Ukrainian side in investigation of the indicated criminal proceedings**, particularly due to the absence of notification of suspicion and request to seized the abovementioned funds".

On Dec 25, 2014, the GPO received letter^[xii] from the respective US authorities regarding the risk of the January court decision to unblock the funds due to slow-pace investigation of Zlochevsky's case, that would also question the EU, Lichtenstein and Switzerland sanctions against Yanukovych and his associates.

On Dec 29, 2014, the GPO took the criminal investigation back from the Ministry of Internal Affairs. **At the same day the GPO issued the notification of suspicion** to Zlochevskyi in illicit enrichment and money laundering. The very next day, on Dec, 30, 2014, the Pechersk Court of the Kyiv City seized the assets blocked in London.^[xiii] However, **on Jan 21, 2015**, the Central Criminal Court of London cancelled^[xiv] the seizure of the accounts.

The Court did not take into account the information regarding the suspicion of Zlochevskyi and the decision of Pechersk Court to seize the assets due to the lack of the evidence which Ukrainian prosecutors and court used to justify their decisions, The decision of the London Court drew conclusion no new sufficient evidence were collected during 8 months of investigation to prove the necessity of seizure. The absence of such evidence was the result of the GPO's inaction, which did not investigate the origin of 23.5 mln USD on the accounts of Zlochevskyi's companies. The British judge also stressed attention at the **inconsistency of the position of Ukrainian prosecutors, who during the period of 27 days both issued the letter confirming the innocence of Zlochevsky and notified him about suspicion**.

2. In criminal proceedings regarding **illicit enrichment and money laundering** (No4201400000000805) the prosecutors investigated **payment of taxes in Ukraine by Zlochevsky, but not the origin of money, seized in Britain**; they also "blurred" the criminal proceedings by adding other unrelated episodes.

On Dec 29, 2014, in this criminal proceeding Zlochevskyi was notified of suspicions in illicit enrichment in large-scale and money laundering,^[xv] but the GPO **did not transfer this episode to court**. Investigation continued, and in two years it **transformed into tax avoidance investigation**. As part of the preliminary investigation, Ukrainian investigators had to establish the origin and legitimacy of significant funds on bank accounts of companies belonging to Zlochevskyi as former top official.

Instead, investigators checked the payment of the personal income tax by Zlochevskyi during his time in the office^[xvi]. District tax inspection hold an audit and did not find any outstanding taxes^[xvii].

On this basis, the GPO closed^[xviii] the criminal proceedings in the regard of suspicion of Zlochevskyi in **illicit enrichment and money laundering on** Nov 1, 2016. The reason for the closure was "absence of corpus delicti" (the event of the crime).

PGO manipulatively stated^[xix] that decision of the court in London also confirmed lack of violation of tax law by Zlochevskyi. While court in London was discovering not just likelihood of tax avoidance by Zlochevskyi, but possibility of illegal origin of seized 23.5 mln USD at the accounts of companies of Burisma holding in Britain.

The PGO didn't check the source^[xx] of origin of 23.5 mln USD, which according to the statements made in the British court by Zlochevskyi's attorneys Burisma obtained^[xxi] from offshore companies of Mr.Kurchenko, a frontman of corrupt financial and gas empire within Yanukovych regime. Mr.Kurchenko, who had been under the EU sanctions since March 2014. He is now suspect by the PGO for organized crime, fraud, fictitious entrepreneurship, embezzlement and abuse of power, which all together caused losses to the Ukrainian state in gas and banking sector totaling to at least 5 bln UAH.

At the same time, the Prosecutor General of Ukraine, Yuriy Lutsenko, appointed in 2016 by the President Poroshenko, could not just close the criminal proceedings, which lasted three years and had a considerable public attention in Ukraine and abroad.

On October 10, 2016, the Office of Large Taxpayers of the State Fiscal Service of Ukraine held unscheduled tax audit of Esko-Pivnich LLC, which was part of Burisma holding. The tax audit **concerned the period of 8 months of 2016** and establishes a violation of tax law.

Based on the results of the tax audit the Chief Accountant of Esko-Pivnich LLC, Volodarska R.Z., was notified of suspicion of tax evasion in especially large amounts. It was done within the same criminal proceedings whereas Ukrainian investigators studied tax payments by Zlochevskyi in his time in the office. The investigation revealed that Volodarska underestimated the income tax of Esko-Pivnich LLC in the amount of 33,099,840 UAH. In addition to accrued taxes, Esko-Pivnich LLC paid penalties in the amount of 16,549,920 UAH. The company reimbursed the unpaid taxes and damages completely during the period of

preliminary investigation[xxii]. This has been done because according to the Criminal Code of Ukraine, a person who has committed a tax crime is exempted from criminal liability if he or she pays in full the taxes and damages to the state before the indictment is announced.

On Nov 1, 2016, **the same day** when the GPO **closed the criminal proceedings regarding illicit enrichment** and money laundering allegedly committed by Zlochevskyi, during the interrogation the Chief Accountant, Volodarska, informed the investigators on full reimbursement of the damages and **appealed for exemption from criminal liability**. On November 17, 2016, Podil District Court of the Kyiv city confirmed the full reimbursement of the damages and exempted the Chief Accountant of Esco-Pivnich LLC from criminal liability.[xxiii]

Within available court decisions it is hard to trace any **evident logic** in the actions of Ukrainian investigators who combined the episode of company's tax evasion in 2016 with the criminal proceedings on illicit enrichment and money laundering allegedly committed by Zlochevskyi in 2010-2014.

At the same time, with the closure of the criminal proceedings against Mykola Zlochevskyi Ukrainian prosecutors lost the opportunity to further confiscate Zlochevskyi's assets seized[xxiv] in Ukraine, namely 2 land plots, 3 houses and Rolss-Royce Phantom car.

3. Since May 7, 2014 GPO has been investigating case No4201400000000375 of alleged criminal activity of subsidiaries of Burisma in Ukraine, namely companies Esco-Pivnich LLC, Pari LLC and First Ukrainian Oil & Gas Company LLC which extract and sell gas in Ukraine based on agreements on joint activity with state-owned company Ukrgasvydobuvannya.

Allegedly Burisma subsidiaries were extracting and selling gas in Ukraine for significantly discounted prices to related companies to reduce official profits, which according to the agreements on joint activity had to be shared with the state-owned company. Officials of Ukrgazvydobuvannya state-owned company were allegedly embezzling funds of the company through such schemes. According to the information shared by the General Prosecutor Yuriy Lutsenko, on 7 July 2016, Burisma subsidiaries were also allegedly involved in the large scale tax avoidance schemes. Lutsenko estimated amount of unpaid taxes at 1 billion UAH during 2014-2015.

Since August 2016 this criminal investigation focuses only on the episode of tax avoidance by Burisma subsidiaries and does not focus on proper execution of agreements on joint activity by Burisma subsidiary. **Starting from October 2016 the description of the case in the court decisions in the framework of this criminal investigation does not include any mentions of subsidiaries of Burisma.**[xxv]

Investigation of tax avoidance crime instead of embezzlement gives green light for prosecutors to close the case should Burisma holding pay to the budget of Ukraine estimated by prosecutors losses.

References:

[i] Criminal case No4201500000001142 regarding **issuing illegally natural resources licenses** to companies Pari LLC, Esko Pivnich LLC, First Ukrainian Oil Gas Company LLC, Aldea Ukraine LLC, Ukrnaftoburinnya CJSC, Krymtoenergoposervice LLC, Gasoilinvest LLC, Company Azov-oil LLC, Nadragas LLC, Tekhnoresource PJSC by officials of the Ministry of Environment and Natural Resources of Ukraine during the period of 2010-2015 years aimed for self-enrichment and criminal case No4201400000000181 regarding **embezzlement of state funds totaling to 49,380 mln UAH at public procurement** of consulting services for implementing technologies of remote land exploration during Zlochevskyi's tenure of the Minister of Environmental Protection of Ukraine. The case was investigated by the General Prosecutor's Office (GPO) in Ukraine until the end of 2015. At the beginning of 2016, the NABU has taken over this case and investigation currently continues (from the official Official letter №041-204/20487 from the National Anti-corruption Bureau from June, 23.06.2016).

[ii] From the letter of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General O.Zalisko from Nov 20, 2014 // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[iii] From the Report of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General Vitalii Yarema // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[iv] From the letter of General Prosecutors Office №17/1/5-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, signed former deputy to Prosecutor General O.Baganets // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/5549e581cb3df/>

[v] From the letter of General Prosecutors Office №17/1/5-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, signed former deputy to Prosecutor General O.Baganets // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/5549e581cb3df/>

[vi] From the Report of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General Vitalii Yarema // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[vii] From the letter of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General O.Zalisko from Nov 20, 2014 poky // first published in MP Sergiy

Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[viii] Official letter issued by the General Prosecutor Office as of Dec, 2, 2014 p. to the attorney P.Boyko // first published in MP Sergiy Leschenko blog
<http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[ix] London Criminal Court Judgment in the Case NoRSTO72014

[x] From the letter of General Prosecutors Office №17/1/5-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, signed former deputy to Prosecutor General O.Baganets // first published in MP Sergiy Leschenko blog
// <http://blogs.pravda.com.ua/authors/leschenko/5549e581cb3df/>

[xi] From the Report of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General Vitalii Yarema // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[xii] From the Report of the former deputy Prosecutor General Vitalii Kasko addressed to the former Prosecutor General Vitalii Yarema // first published in MP Sergiy Leschenko blog // <http://blogs.pravda.com.ua/authors/leschenko/561ff0acc4633/>

[xiii] From the letter of General Prosecutors Office №17/1/5-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, signed former deputy to Prosecutor General O.Baganets // first published in MP Sergiy Leschenko blog
// <http://blogs.pravda.com.ua/authors/leschenko/5549e581cb3df/>

[xiv] London Criminal Court Judgment in the Case NoRSTO72014

[xv] From the letter of General Prosecutors Office №17/1/5-32844-14 from March, 12 2015 addressed to MP Sergiy Leschenko, signed former deputy to Prosecutor General O.Baganets // first published in MP Sergiy Leschenko blog
// <http://blogs.pravda.com.ua/authors/leschenko/5549e581cb3df/>

[xvi] From the letter of General Prosecutors Office №07/2-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, Ukrainian MP, signed by the deputy to the Prosecutor General Y.Stolyarchuk // https://drive.google.com/file/d/0B7_tuaxGF0VvX1ZVUVFEVUZyamc/view

[xvii] From the letter of General Prosecutors Office №07/2-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, Ukrainian MP, signed by the deputy to the Prosecutor General Y.Stolyarchuk // https://drive.google.com/file/d/0B7_tuaxGF0VvX1ZVUVFEVUZyamc/view

[xviii] Judgment from the criminal case №4201400000000805 from Nov, 11, 2016 // <http://www.reyestr.court.gov.ua/Review/62761052>

[xix] From the letter of General Prosecutors Office №07/2-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, Ukrainian MP, signed by the deputy to the Prosecutor General Y.Stolyarchuk // https://drive.google.com/file/d/0B7_tuaxGF0VvX1ZVUVFEVUZyamc/view

[xx] Para 50-51 from the London Criminal Court Judgment in the Case NoRSTO72014

[xxi] Para 6 from the the London Criminal Court Judgment in the Case NoRSTO72014

[xxii] From the letter of General Prosecutors Office №07/2-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, Ukrainian MP, signed by the deputy to the Prosecutor General Y.Stolyarchuk // https://drive.google.com/file/d/0B7_tuaxGF0VvX1ZVUVFEVUZyamc/view

[xxiii] From the letter of General Prosecutors Office №07/2-33039-14 from Dec 29, 2016 addressed to Viktor Chumak, Ukrainian MP, signed by the deputy to the Prosecutor General Y.Stolyarchuk // https://drive.google.com/file/d/0B7_tuaxGF0VvX1ZVUVFEVUZyamc/view

[xxiv] Judgment from the criminal case №42014000000000805 // <http://reyestr.court.gov.ua/Review/55416526>

[xxv] Information available via the search results judgments in criminal investigation No42014000000000375