

5. Anastasiya Nanayeva

“noitpurroC in Ukraine? Tymoshenko Case”

Participants (positions identified as of the moment of action)

Yulia Tymoshenko—Ukraine's Deputy Prime Minister, responsible for the energy sector, member of *Batkivschyna* [Fatherland] party (since 1998). In 1995-97 Yulia Tymoshenko was General Director of Unified Energy Systems corporation.

Oleksandr Tymoshenko—Yulia Tymoshenko's husband, board member of Unified Energy Systems

Valery Falkovych—First Deputy Director General of Unified Systems

Viktor Yushenko—*Ukraine's Prime Minister, ex-President of the National Bank of Ukraine, non-faction member*

Leonid Kuchma—President of Ukraine (reelected for the second term in November 2000), non-faction member

Mykhailo Potebenko—Ukrainian Prosecutor General

Mykola Obykhod—*Ukrainian Deputy Prosecutor General*

Viktor Medvedchuk—*Parliament's Deputy Speaker*

Hryhory Surkis—best known as honorary president of Dynamo Kyiv soccer club, has extensive business interests and controls privatized stakes in several of Ukraine's 27 oblenergos

Sviatoslav Pyskun—head of the State Tax Administration's investigative department

Mykola Melnychenko—*former presidential guard*

Oleksandr Turchynov—*Batkivschyna party head*

Pavlo Lazarenko—one of Ukraine's ex-Prime Ministers, who fled Ukraine, charged with money laundering after the end of his office, now held in a U.S. jail by the American Justice Department [Ukraine's biggest corruption scandal]

Place and time of action: Ukraine, August 18, 2000—present.

Clan wars in Ukraine: who is not in, is out.

The political practice shows that the more corrupted a country, the more obscured a government's actions are and the harder it is to pinpoint corruption. Trying to glimpse beyond the curtain of political smog, I decided to examine **one of the biggest corruption scandals in Ukraine**—that involving Deputy Prime Minister Yulia Tymoshenko. Tymoshenko was the highest-ranking acting official to face such probes in Ukraine since independence. Her case shows explicitly that corruption in Ukraine has mutated into a grotesque “noitpurroC,” or neo-corruption, if you wish to call it—a situation where majority of officials in a state are so corrupted that when a political figure stands out or goes against the “pack,” the pack uses every opportunity, including the irritant's faults, to discredit and persecute him/her. In a nutshell, my essay will be on the power struggle within corrupted political circles of Ukraine. All the events and facts reflected in this paper, including claims of the opposition, are fully based on a detailed analysis of publications on the subject of the most trustworthy and independent Ukrainian media dating as far back as December 1999, and up to the latest time.

Yulia Tymoshenko case.

President Leonid Kuchma appointed Viktor Yushenko as Prime Minister in December 1999 at least in part because of the pressure from the West to install a reform-minded government. The road to reform has proven a bumpy one for Ukraine's former National Bank chief, but it has been at least as bumpy for one of his Deputy Ministers, Yulia Tymoshenko.

When Ms Tymoshenko was handed the newly created post of Deputy Prime Minister, she inherited the assignment of leading reform efforts in Ukraine's deeply troubled fuel and energy sector. Her greatest challenge was to find a way to get the country's network of private and state-owned energy distributors, or oblenergos, to pay the state's large electricity generators in hard cash.

Immediately upon assuming office, Tymoshenko began to enforce rules that required greater cash payment discipline. Predictably, oblenergo managers, who had been using the old system to amass huge personal fortunes through questionable non-cash payment schemes, immediately began crying loudly for her head. The more Tymoshenko tried to solve the deep-rooted problems, the more trouble she found herself in with Ukraine's power elite.

On October 10, 2000 Tymoshenko came before the Rada [Ukrainian Parliament] to present the Cabinet of Ministers' report on preparations for the winter heating season. It was clear that some substantial improvements have occurred in the energy sector since the beginning of 2000 and that Tymoshenko deserved considerable credit for them. For example, the level of cash payments to the state budget from electricity and heat consumers had grown substantially. Over those first nine months of the year [2000], slightly more than 50 percent of the electricity supplied by the state generators was paid in cash, with cash payments reaching their highest levels in August and September 2000—almost 70 percent. Even though that was not nearly as high as it should have been, it was a massive improvement over 1999, when that average was only 19.1 percent for the first nine months.

Not only have cash inflows increased, the excess money coming into the budget seemed to have been put to good use. Over Hr107 million [Hryvnia—national currency, appr. US\$1 = Hr5.3] has gone to pay wage arrears in the nuclear energy industry; Hr70 million has gone to pay back wages to employees of state-owned oblenergos, and more than Hr600 has gone to pay wages in the coal industry. Tymoshenko also claimed that Ukraine's natural gas debt to Turkmenistan had been reduced by more than 50 percent, and that the debt to Itera, a nebulous Russian gas supply company, has been slashed by more than 40 percent.

Tymoshenko's reforms have been praised by Western analysts, but that did not prevent certain Rada [Parliament] deputies from grilling her on October 10, portraying the situation in Ukraine's energy sector as being dark as a Ukrainian coal mine. Leonid Kuchma himself repeatedly took the side of Tymoshenko's and Yushenko's enemies in public. In one of his broadcasts, Kuchma said: "No one's got it in for the government ... but this team does have people in it whom I would have swept out of the government with a broom—I say that openly."

Related to these words or not, even prior to Tymoshenko's October speech in the Parliament, on **August 18, 2000**, her husband, Oleksandr Tymoshenko, was arrested and arraigned on charges of embezzling UD\$800,000 in public funds through the export of rolled metal to Asian countries during the 1990s. Oleksandr Tymoshenko was a board member of Unified Energy Systems (UES) and was arrested along with Valery Falkovych, the First Deputy Director General of the corporation [UES]. Valery Falkovych, in addition to the previously mentioned charges, was also charged with forging documents and smuggling Russian gas worth Hr3 billion in 1996 and 1997 under the aegis of UES. A criminal case against the two was filed based on those charges, news wires reported.

As was reported by UNIAN agency, Yulia Tymoshenko reacted by saying, "I have no doubt that the case was fabricated, this is a political fight against me, and my husband became the hostage of this situation." Tymoshenko also said her husband told her she should not give up her position in the government. She added that she would fight for her husband, but that "does not mean that I will collude with corrupt clans and corrupt agencies, which are proposing that I should resign."

Unfortunately, the problems of Yulia Tymoshenko did not end there. According to UNIAN news agency's source in the Prosecutor-General's office of the *Russian Federation*, representatives from Ukraine have commissioned Russian law enforcement agencies "to compromise" Yulia Tymoshenko herself. The compromise, the report said, should have consisted in associating Yulia Tymoshenko with debts owed by the Unified Energy Systems with the Russian Defense Ministry for gas, supplied in 1997, when Tymoshenko headed UES. UNIAN's source declined to name the surnames or positions of the "contractors." At the same time, the source said that such a "contract" is explained by the "convergence of interests of Ukrainian oligarchic groups and of Russian business circles, which are being supported by [Russia's] federal authorities and striving to become firmly established on the Ukrainian energy market."

November 21, 2000, Ukraine's General Prosecutor, Potebenko, thrusting himself into the middle of Ukraine's ongoing government war, told journalists that his office was going to launch a criminal case against Deputy Prime Minister Yulia Tymoshenko. Potebenko said that, based on the results of Russian law enforcement agencies' search of flats of several Russian Defense Ministry employees, there has been allocated "really something," that could provide grounds for accusing Yulia Tymoshenko of giving bribes to officials in Russia's Defense Ministry, when she was General Director of Unified Energy Systems in 1996-97.

Deputy Prime Minister Tymoshenko said that she has provided the Prosecutor General's office with all necessary testimony and she, as no one else, was interested in establishing the truth regarding the activity of the Unified Energy Systems corporation, Ukrainian Prime Minister Viktor Yuschenko's Press Secretary Natalia Zarudna said on **November 23**, according to Novy TV channel.

In a highly unusual development, Ukraine's Deputy Prime Minister Yulia Tymoshenko was summoned on **December 25, 2000** by the *Russian* Prosecutor General's office for questioning in a major Russian military fraud investigation, LentaRu reported. The case was extremely unusual and outside normal protocol, particularly since President Kuchma was in Moscow at the time of the announcement. Kuchma was indeed in Moscow for wide-ranging talks, primarily related to energy matters, with his Russian counterpart, Vladimir Putin. The presumption is that the action would not have been taken without at least tacit approval of Kuchma and may represent a further escalation of Kuchma's efforts to force Tymoshenko from the government. The summons is believed to center on the alleged involvement of the Unified Energy Systems in complicated transactions including Ukrainian military construction supplies, Russian and Ukrainian companies, the finance department of the Russian Defense Ministry and the bribing of Defense Ministry officials.

December 26, Yulia Tymoshenko said in a statement that the intention of the Russian Prosecutor Generals' office to question her in connection with bribery chargers against Russian officials was a "gross provocation," Interfax reported. In her statement, Tymoshenko said that "passing money to high-ranking Russian military officials was mainly the work of Ukrainian power structures and corrupt clans, which now initiated the present action to involve her in the Russian case, in response to the Ukrainian government's reforms in the fuel and energy sector. As regards to the facts, which concern me, mentioned in the so-called "Defense Ministry case," I officially declare that this is a complete nonsense."

On **January 5, 2001**, prior to Tymoshenko's questioning by the Russian law enforcement officials, Ukraine's Deputy Prosecutor General Mykola Obykhod said that his office had launched two criminal cases against Deputy Prime Minister Yulia Tymoshenko. Tymoshenko has been charged under Article 80 of the Criminal Code for contraband [smuggling Russian gas] and Article 172 for forgery of documents. According to prosecutors, Tymoshenko supposedly engaged in illegal exports of Russian natural gas and presented gas, imported from Russia, as having been bought through a British company, using the excuse to

siphon money abroad. Tymoshenko was suspected in siphoning abroad at least US\$1.8 billion and evading taxes. Most of the alleged crimes were committed in 1996-97, when Tymoshenko headed the key energy supplier, Unified Energy Systems.

Deputy Prime Minister Yulia Tymoshenko went on the offensive **January 10, 2001**, accusing the leaders of Ukraine's presidential clan of orchestrating a criminal case against her. As reported by Ukrainsky Novyny, Tymoshenko said that the Prosecutor General's office has been pressured to begin a criminal case against her by Parliament's Speaker Viktor Medvedchuk. Tymoshenko noted that Medvedchuk and fellow Social Democratic Party colleague Hryhory Surkis control energy supply companies that suffered large losses because of the government's energy reforms, which she initiated as head of the energy sector. [Surkis, for example, has extensive business interests and controls privatized stakes in several of Ukraine's 27 oblenergos.] Her claim was supported January 9 by former presidential guard Mykola Melnychenko, who said in a live interview on Radio Free Europe's Ukrainian Service: "The case against Tymoshenko was fabricated in order to destroy Yuschenko. I have proof of this on tape, how the whole affair was worked out."

On **January 16**, Deputy Prime Minister said that she filed a suit against Prosecutor General Mykhailo Potebenko on charges of breaking the laws and fulfilling orders to destroy people. Tymoshenko also said that the prosecution violated her rights by not allowing her to independently choose her lawyer.

President Leonid Kuchma **fired** Deputy Prime Minister Yulia Tymoshenko on Friday, **January 19**, *days after* she was charged in one of the country's biggest corruption scandals. Kuchma signed the dismissal decree *during his visit to Germany*. Kuchma said he took the measure because Tymoshenko's position in government would interfere with a criminal case brought against her and because of what Kuchma said was Tymoshenko's poor performance in reforming Ukraine's energy sector, Liga Online reported. Prime Minister Viktor Yuschenko did not take part in Kuchma's decision and was only informed about her dismissal later. Tymoshenko, in her turn, said on Monday, **January 22**, that she hoped to form a large anti-presidential political block to fight corruption in the government. "I should first of all say that the president blatantly violated the constitution when he took such a decision independently, without a request from the Prime Minister," Tymoshenko said. "Now the kingpins of the shadow business can take their markers and mark January 19 on their calendars as Oligarch Liberation Day," she added. Ironically, on day of her dismissal, the Cabinet of Ministers approved Tymoshenko's coal sector reforms.

Following this, there came another major bumper. Sviatoslav Pyskun, head of the State Tax Administration's investigative department, told journalists on **February 5** that the STA has determined that a major energy supplier, Unified Energy Systems, transferred an estimated UD\$1.21 billion, meant to pay for Russian gas, into a foreign bank using Slaviansky Bank account during the 1996-97 period when Tymoshenko headed the company. In a press release, the STA said that the company's Slaviansky account had a correspondent multi-currency account in Latvia's Aizkraukles Bank, which funneled the funds to the First Trading Bank on the Pacific island of Nauru. Calling the accusations a new provocation by the criminal world to shut her up and caution her off against joining stiff opposition forces, Tymoshenko said, "I am ready for everything and I will fight." **February 12** the former Deputy Prime Minister filed a libel suit against the State Tax Administration, claiming, "The leadership of the STA has constantly provoked me by making absurd, senseless and groundless accusations."

On **13 of February** 2001, Yulia Tymoshenko was **arrested** during questioning at the Prosecutor's General's office. Deputy Prosecutor General Mykola Obykhod said investigators have found out that Tymoshenko allegedly gave about UD\$79 million in bribes to her one-time close ally, former Premier Pavlo Lazarenko. Obykhod said that in 1996 Tymoshenko

transferred US\$4.6 million from her company, Somolli Enterprises in Cyprus, to the accounts of Vilmer company, supervised by Lazarenko's adviser Petro Kyrychenko in Switzerland. Some time prior to the arrest, a group of opposition lawmakers, politicians and public figures from a wide spectrum of political parties, including Tymoshenko, did manage to join forces in the so-called National Salvation Forum. Many Forum leaders said Tymoshenko's arrest was in fact caused by her active role in the group.

The Batkivschyna Party said in a statement on **February 14** that their arrested leader, Yulia Tymoshenko, was being held in Lukianiv prison where conditions for inmates are said to be worst in Kyiv, UNIAN reported. Batkivschyna Party head and close Tymoshenko ally Oleksandr Turchynov said that according to his sources, President Leonid Kuchma personally ordered that law enforcement and prison institution officials ensure that Tymoshenko be made to endure the worst conditions possible in jail.

February 21 the prosecutors launched another criminal case against Yulia Tymoshenko. Deputy Prosecutor General Mykola Obykhod said the new case pertained to metal contracts that allowed UES to hide US\$181.53 million abroad in 1996-99, and to steal US\$2.6 million in VAT returns. "Even while serving in parliament since 1997, Tymoshenko 'de-facto' managed the corporation's activities and organized a criminal group from among its employees and workers of other commercial structures," Obykhod said. February 27, 71 parliamentary deputies signed the official plea to the Prosecutor-General's Office to release Tymoshenko under their guarantee. The Prosecutor-General's Office has not reacted to it, and, furthermore, has rejected a request from a group of parliamentarians to visit Ms Tymoshenko in jail. Prosecutor General Mykhailo Potebenko confirmed March 2 that Oleksandr Tymoshenko, husband of the embattled former Deputy Prime Minister, was transferred to a Zhytomyr oblast jail, while Falkovych was transferred to one in Chernihiv oblast. Potebenko said that the reason for the transfer was to prevent communication between Oleksandr Tymoshenko, Falkovych and Yulia Tymoshenko, all of whom have been arrested on related corruption charges and were being held in the same prison.

March 14 jailed Yulia Tymoshenko in her letter to the editor of the Financial Times accused President Leonid Kuchma of consciously building a totalitarian system in Ukraine. "President Kuchma has amassed absolute control over the court system and all law enforcement agencies and I am being held in prison by Mr. Kuchma's regime as a result of fabricated accusations that are not provable in any fair court," Tymoshenko wrote. Tymoshenko also said "Kuchma has blocked all of the reforms and anti-corruption efforts that the Ukrainian government has attempted in the energy sector." Tymoshenko noted that "the President routinely ignored requests from her office to investigate and prosecute individuals involved in stealing large amounts of money in the coal industry, and has been actively engaged in covering up crimes of those responsible, as they are members of his political and economic inner circle. The letter was signed "Prisoner of Conscience."

In a blow to President Leonid Kuchma, a Kyiv district court ordered **March 27** the release of the former Deputy Prime Minister and opposition leader Yulia Tymoshenko, one-and-a-half months after her being locked up on charges of financial improprieties. The court acted after Tymoshenko's attorneys cited her what they said was her poor health and argued that prosecutors erred in ordering her arrested. "Tymoshenko is an outstanding political figure in Ukraine," said her lawyer and party colleague Oleksandr Turchynov. "The only charges against her are political ones." Speaking at the court, Turchynov argued that prosecutors acted illegally in jailing her until trial since they failed to show "that she was socially dangerous, represented a threat to the state and prevented or exerted influence and pressure on the investigation." Postponing the final decision five times throughout the day, the judge announced that the prosecutors could not justify the arrest and that Tymoshenko needed medical treatment outside prison bars. Tymoshenko was hospitalized with digestive problems

and in weak condition, also suffering from severe headaches. Meanwhile, opposition and Socialist Party leader Oleksandr Moroz said that the authorities' decision to release Tymoshenko was prompted not by her lawyer's appeals but by the visit of the Parliamentary Assembly of the Council of Europe (PACE) officials to Kyiv. A delegation from the Council's Parliamentary Assembly was to meet with Tymoshenko in several days.

With former Ukrainian Deputy Prime Minister having been free for five months, on **August 8, 2001**, Russian prosecutors announced that they have opened a criminal investigation on Yulia Tymoshenko. According to Russian state television NTV, Russian police have turned over to Ukrainian prosecutors information substantiating allegations that Tymoshenko and her husband, Oleksandr, could have violated customs laws when they failed to declare US\$100,000 in cash on a flight from Moscow's Domodedovo Airport to Dnipropetrovsk in 1995. Responding to the fresh charges at a hastily arranged press conference in Kyiv August 8, Tymoshenko called the allegations an attempt to weaken Ukraine's political opposition in the run up to parliamentary elections scheduled for March. "I'm sure Kuchma will return the favor by ceding Ukrainian political and economic interests," Interfax-Ukraine quoted Tymoshenko as saying. "The fabrication of the case against Tymoshenko can be viewed as a clear signal that Russia has begun living up to its part of the bargain, under which Moscow will receive *carte blanche* over Ukraine's economy while Kuchma attacks an opposition movement led by Tymoshenko," read a press release issued on August 8 by Tymoshenko's *Batkivschyna* party.

August 9, Oleksandr Tymoshenko and Valery Falkovych, former managers of UES, were freed by Kyiv court from jail, after almost a year of being imprisoned, based on the lack of proof of their wrongdoing. However, the General Prosecutor's office disagrees with this decision and is planning to appeal it.

As all corruption cases, this one is also complicated. It leaves dozens of questions unanswered. I am not empowered to tell you *whether Yulia Tymoshenko, and with her Oleksandr Tymoshenko and Valery Falkovych, was wrongfully accused or not*, but one thing remains clear: she went against the general current of political climate in Ukraine. She was pushing for change and became a peck in the eye for many. And as any other system would, the Ukrainian political elite responded by taking every opportunity to silence and get rid of the irritant—Yulia Tymoshenko. An old proverb says: "If a nail sticks out, it is needed to be driven in." Seems like the battle continues... .

Sources of information:

The publications analyzed include: Kyiv Post (newspaper), Eastern Economist (magazine), Zerkalo Nedeli (newspaper), The Ukrainian (magazine), The Ukrainian Observer (magazine), Investitsionnaya Gazeta (newspaper), Companion (magazine), Den' (newspaper).