The Moscow Times
30 YEARS
INDEPENDENT NEWS FROM RUSSIA

Flaws Discovered in Ukraine's Probe of Maidan Massacre

By The Moscow Times

October 10, 2014



A protester sits in front of burning barricades during clashes with pro-government forces at Independence Square in Kiev, August 7, 2014.

KIEV — For millions of Ukrainians, it was a crime against humanity. In February, more than 100 protesters were gunned down in the Maidan uprising that toppled the president, Viktor Yanukovych. The victims are now known as "the Heavenly Hundred."

In April, prosecutors arrested three suspects, members of an elite unit within the "Berkut" riot police. Senior among them was Dmytro Sadovnyk, 38, a decorated commander, who was accused of ordering his men to fire on the crowds on the morning of Feb. 20. The three stand accused of massacring 39 unarmed protesters.

On Sept. 19, the case took a turn when a judge released Sadovnyk into house arrest — and, two weeks later, he went missing.

Maidan activists were outraged, convinced that a corrupt system had let a killer escape. The judge was placed under investigation. The prosecutor said in a statement: "D. Sadovnyk, suspected of committing an extremely grievous crime, aiming to avoid punishment, disappeared from his place of permanent residence."

But in a country where justice often isn't blind, there's another possibility: Sadovnyk was being framed, and saw flight as his best option. In court last month, he called the case against him "a political lynching." In the days before he vanished, his wife and his lawyer say, Sadovnyk and his family received death threats.

An examination of Ukraine's probes into the Maidan shootings — based on interviews with prosecutors, defense attorneys, protesters, police officers and legal experts — has uncovered serious flaws in the case against Sadovnyk and the other two Berkut officers.

Among the evidence presented against Sadovnyk was a photograph. Prosecutors say it shows him near Kiev's Maidan, also known as Independence Square, on Feb. 20, wearing a mask and holding a rifle with two hands, his fingers clearly visible.

The problem: Sadovnyk doesn't have two hands. His right hand, his wife said, was blown off by a grenade in a training accident six years ago. As prosecutors introduced the image at a hearing in April, said Yulia Sadovnyk, her husband removed a glove and displayed his stump to the courtroom.

"He can't really shoot," said Serhiy Vilkov, Sadovnyk's lawyer. "To blame him for the crime is a political game."

The probes into the killings have been hindered by missing evidence. Many guns allegedly used to shoot protesters have vanished; many of the bullets fired were taken home as souvenirs. Barricades, bullet-pierced trees and other items of forensic evidence were removed, lawyers say.

A former Berkut commander said Berkut officers destroyed documentary evidence that potentially could identify fellow officers. They did so, he said, because they feared the Berkut's headquarters would be attacked by a mob of revenge-seeking protesters after Yanukovych fled to Russia.

The former president isn't the only key figure missing. In an interview before Sadovnyk vanished, Ukraine's general prosecutor, Vitaly Yarema, said investigators had identified 17 Berkut officers as alleged participants in the protester shootings, based on surveillance camera videos and mobile-phone location data. Of the 17, he said, 14 had fled to Russia or Crimea, including the Berkut's top commander in Kiev. Sadovnyk and his two co-defendants were the only identified suspects who had remained behind.

Milestone

Independence Square was the rallying point in Kiev where the anti-Yanukovych revolution largely unfolded between November and February. The killings there quickly were recognized as a milestone in modern Ukrainian history, part of a chain of events that set off a separatist conflict and Russian incursions that have shaken the country to its core.

Videos and photographs appear to show how Berkut officers shot at protesters and beat them with sticks. In one video, the Berkut are seen making a man stand naked in the snow.

The public is demanding answers and justice. But the investigations are testing Ukraine's ability to rise above the kinds of failings that have hobbled the country ever since its independence from the Soviet Union in 1991.

In contrast to, say, Poland, Ukraine has never gelled into a robust state. Kiev has had two revolutions since independence. A host of endemic problems — political corruption, racketeering, a divide between speakers of Ukrainian and Russian — have left it feeble and fractious. Another of the state's chief failings, outside observers say, is a broken justice system.

Under Yanukovych and his rivals before him, courts and cops were political instruments. Yulia Tymoshenko, runner-up to Yanukovych in the 2010 presidential election, later was jailed in a case widely criticized as political.

In its 2013 report on human rights, the U.S. State Department cited the Tymoshenko conviction in observing that Ukraine's courts "remained vulnerable to political pressure and corruption, were inefficient, and lacked public confidence. In certain cases the outcome of trials appeared to be predetermined."

The post-Yanukovych government acknowledged as much this July, in a report it prepared with the International Monetary Fund. "The tax administration, the police, the Prosecutor General's Office, the State Enforcement Service, and the judiciary were noted as having traditionally been viewed as among the most corrupt public institutions," the report found.

The past shows signs of repeating itself.

The two prosecutors and a government minister who have led the Maidan shooting probes all played roles in supporting the uprising. One of these officials said the investigators gathering the evidence are completely independent.

Another gap in the prosecution: To date, no one has been apprehended in the shooting of policemen. According to Ukraine's Ministry of Interior Affairs, between Feb. 18 and 20, 189 police officers suffered gunshot wounds. Thirteen died.

In addition, the former acting general prosecutor who oversaw the arrests of the three Berkut officers declared on television that they "have already been shown to be guilty." That statement, said legal experts, could prejudice the cases. Ukraine is a party to the European Convention on Human Rights, which states that criminal defendants are presumed innocent until proven guilty.

"A public statement by a prosecutor that directly challenges that presumption is a denial of due process," said Richard Harvey, a British barrister who specializes in international criminal law.

Even some of the bereaved families question the fairness of the proceedings. Serhiy Bondarchuk, a physics teacher, died of a gunshot wound to the back on the morning of Feb. 20. His son, Volodymyr Bondarchuk, said the killing is one of the 39 in which Sadovnyk

and his two colleagues are suspected. Volodymyr said that based on his own inquiries, he doubts the three were responsible for his father's death.

"They are trying to close the case because their bosses and the community just want to have someone to punish," he said. "The investigation does not have enough evidence to prove the guilt of these three people."

Volodymyr Bondarchuk recently helped organize an association of about 70 families of dead protesters. "The main aim for us," he said, "is an objective and accurate investigation."

Golden Eagles

Feb. 20 was the bloodiest day of the Maidan uprising. Scores of protesters and police officers were shot and killed. A day later, opposition leaders signed a European Union-mediated peace pact.

Public pressure mounted to prosecute the perpetrators. Within a week, Yanukovych, by then a fugitive, was indicted for the mass murder of protesters. An interim government disbanded the Berkut, a force of several thousand whose name means "golden eagle."

On April 3, Ukrainian authorities announced the arrests of several members of an elite special unit within the Berkut. One was Sadovnyk, the unit's commander. A father of three, he first joined the Berkut in 1996 after serving in the Ukrainian army. He later won numerous commendations for his police service.

Also detained were two younger officers: Serhiy Zinchenko, 23, and Pavel Abroskin, 24.

An internal prosecution document, seen by reporters, sketches out investigators' version of events. It is a "Notice of Suspicion" for Zinchenko, dated April 3.

The document alleges that on Feb. 18, the Berkut's top commander, Serhiy Kusiuk, gave an oral order to Sadovnyk to deliver automatic rifles to his unit. Kusiuk is among the Berkut officers who fled to Russia, prosecutors say. He couldn't be reached for comment.

On the morning of Feb. 20, several members of Sadovnyk's unit were shot. At around 9 a.m., the document alleges, Sadovnyk ordered his men to fire in the direction of unarmed protesters walking up Instytutska Street in downtown Kiev. The shooting lasted nearly two hours, and more than nine protesters were killed, the document states.

Sadovnyk's order to shoot was an abuse of power, "given that there was no immediate threat to the lives of the police officers," the document alleges.

Vilkov, Sadovnyk's lawyer, disputes that account. Although the document indicates Sadovnyk was at the scene, Vilkov said his client was not on Instytutska Street when the protesters were killed the morning of Feb. 20. Vilkov declined to discuss Sadovnyk's whereabouts.

In a telephone interview on Sept. 30, Sadovnyk said he was at a meeting on the morning of Feb. 20 at Kiev police headquarters. It began sometime between 8 a.m. and 8:30 a.m., he said. The purpose, he said, was to deal with reports that many armed protesters would be arriving in Kiev after a call by protest leaders to mobilize.

Sadovnyk said about seven police officials and officers were present, and he named three of them, but they couldn't be reached for comment.

At the meeting, Sadovnyk said, the attendees heard gunshots and screams over police radios. The radios carried reports of the death of a Berkut officer and of other police wounded on Instytutska Street.

Sadovnyk said at that point, he left and drove to the scene, taking about 15 minutes to get there. He said he does not remember what time he arrived, but that investigators could figure it out by tracking his mobile phone. He said he brought a gun and protective equipment.

When he arrived, he said, he found a nearly empty scene, with police officers running and the sound of ricocheting bullets. He said he neither received nor gave any order for his unit's members to shoot at protesters, nor did he fire at anyone himself.

"I deny killing," he said.

Vadim Ostanin, an attorney for the Berkut's Kiev branch, gave a similar account. He said there is a video showing that Sadovnyk attended the meeting at police headquarters. Ostanin said that when Sadovnyk arrived at the scene of the shooting, his unit's men already were retreating.

"Guilty"

The general prosecutor's office declined to discuss the defense's account. In a statement, the office said it has plenty of evidence against Sadovnyk. This includes videos of a protester being shot by a gunman. The office believes the gunman is Sadovnyk, based on the "special way" the shooter is holding the weapon. In a previous statement, the office said: "The question of guilt or, conversely, innocence of mentioned persons will be resolved by the court."

Oleh Makhnitsky was Ukraine's acting general prosecutor until June. In an interview, he was asked about the purported photograph of a two-handed Sadovnyk, which was cited at a hearing in April.

The purpose of that hearing, Makhnitsky said, was not to judge the reliability of the evidence but to determine whether Sadovnyk was a flight risk. He said the evidence against Sadovnyk would be presented at a future trial.

Makhnitsky, now an adviser to President Petro Poroshenko, said he was a leader of a lawyers' group that provided legal assistance to anti-Yanukovych protesters during the Maidan demonstrations. He said politics played no role in the prosecution of the three Berkut officers.

"The investigators are in a separate unit that can't even be influenced by the prosecutor," he said.

On May 30, Makhnitsky gave an interview on local television about the arrests of the three officers. The suspects, he said, "have already been shown to be guilty."

Asked about those comments, Makhnitsky said he meant that "enough evidence was gathered

to prove they are guilty." A court ultimately will decide, he said.

The extent of the prosecution's evidence against the three officers remains unclear. Court filings in the cases are not public.

Attorneys for officers Zinchenko and Abroskin said that as far as they knew, much of the evidence against their clients consists of videos that prosecutors allege show the officers holding guns. The attorneys say the men in the videos — wearing masks and helmets — are not their clients.

In one video, "only the eyes and nose are seen, and that guy isn't shooting; he's just turning around with a gun and looking around," said Stefan Reshko, an attorney for Abroskin.

Oleksandr Poznyak, who represents Zinchenko, said the evidence against his client includes a video of a masked man holding a gun. The attorney showed the video to reporters. The masked gunman, he said, is taller and has bigger hands than Zinchenko, and is holding the gun in his left hand. While Zinchenko writes with his left hand, the lawyer said he has photographs showing that his client shoots with his right hand. Reporters were not able to view those pictures.

Defense attorneys also plan to argue that the Berkut officers were entitled to fire in self-defense: They were in danger, as demonstrated by the fact that their colleagues were shot. Prosecutors argue that the 39 protesters the three are accused of killing on Feb. 20 were all unarmed.

The prosecutors "represent the whole picture as a peaceful protest," Sadovnyk told a judge at a hearing on Sept. 5. But, he added, "On the 20th, early in the morning, as a result of the peaceful protest, nearly 17 representatives of law enforcement were killed."

Grappling Hook and Steel Claw

To bolster Sadovnyk's point, several ex-Berkut officers who still serve on Kiev's police force agreed to meet a reporter and photographer. In a small room at their old headquarters, they produced a selection of what they said were weapons seized from demonstrators.

The items included a grappling hook attached to a steel bar, wooden clubs affixed to chains, and a steel claw made of four welded nails. The ex-officers showed a burnt police shield with two bullet holes that they said had been struck by a Molotov cocktail.

Alongside the weaponry were framed photos of two Berkut officers who they said were killed at the demonstrations.

"If these officials were fair, they would catch not only policemen, but also the activists from the other side," said one ex-Berkut member.

On Sept. 5, a tense crowd watched as a judge heard arguments over whether Sadovnyk should be released into house arrest. The defendant observed from inside a metal cage.

The prosecutor, Oleksii Donskyi, called Sadovnyk's claim that he was absent during the shootings "a complete lie." When the judge retired to deliberate in chambers,

an exasperated-looking Yuliya Sadovnyk marched up to where the prosecutor sat and told him: "I'm waiting for your case to collapse." Donskyi declined to comment.

The judge ordered that Sadovnyk be kept behind bars. Two weeks later, a different judge gave him house arrest. The prosecution appealed. Last Friday, Sadovnyk was called to a hearing to determine whether he should be sent back to jail.

That's when he vanished. Yuliya Sadovnyk said he left their apartment at 7 a.m. last Friday, saying he felt ill. She hasn't heard from him since, she said.

In the days before the hearing, attorney Vilkov says, the Sadovnyks, their three children and the lawyer himself received death threats. Yuliya Sadovnyk read a sample of texts she received.

"Hey you, Berkut slut," reads one. "Horrible death is waiting for you and your spawn. Glory to Ukraine!"

Abroskin and Zinchenko remain in jail. No trial date has been set. All three men face life imprisonment.

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