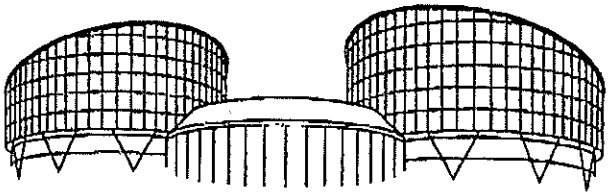

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 5829/04
by Mikhail Borisovich KHODORKOVSKIY
against Russia

The European Court of Human Rights (First Section), sitting on 7 May 2009 as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 9 February 2004,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Mikhail Borisovich Khodorkovskiy, is a Russian national who was born in 1963. He is currently detained in a penal colony in Krasnokamensk, Chita Region. He is represented before the Court by

Ms K. M. Moskalenko, a lawyer practising in Moscow, Mr Wolfgang Peukert, a lawyer practising in Strasbourg, Mr Nicholas Blake and Mr Jonathan Glasson, lawyers practising in London. The Russian Government ("the Government") were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights

## A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

### *1. The background to the criminal prosecution*

The applicant was a board member and the major shareholder of Yukos, a large oil company which was liquidated in 2006. He also controlled several other mining, industrial and financial companies affiliated with Yukos. In 2002-2003 Yukos was pursuing a number of large-scale business projects. Thus, Yukos was engaged in merger talks with Sibneft, another big Russian oil company, and with the US-based Exxon Mobil company. Yukos was also planning to build a pipeline to the Arctic Ocean in order to export natural gas to the western part of Europe. Lastly, Yukos and the State company Rosneft were involved in a public struggle for control of certain oilfields.

At the same time the applicant became involved in politics. In the beginning of 2003 he announced that he would allocate significant funds to support the opposition parties Yabloko and SPS. He also made certain public declarations criticizing alleged anti-democratic trends in Russian internal policy. In order to promote certain values in Russian society the applicant funded a non-profit NGO, "Open Russia Foundation".

The applicant asserts that those activities were perceived by the leadership of the country as a breach of loyalty and a threat to national economic security. As a counter-measure the authorities undertook a massive attack on the applicant and his company, colleagues and friends. Thus, some old criminal cases in respect of the companies' business activities were revived, in particular the investigation into the acquisition of a 20% shareholding in Apatit, a large mining enterprise belonging to the Yukos group and privatised in the 1990s. In December 2002 the then President Putin issued Directive No. Pr-2178 requiring reports to be obtained in relation to whether there had been "violations of the existing legislation committed during the sale of shares in the OAO Apatit" and whether the State had suffered any loss as a consequence of the friendly settlement that had been approved by the Moscow Arbitration Court in 2002. A wide ranging investigation then took place involving the Prime Minister, the General Prosecutor, the Ministry of Finance, the Ministry of

Natural Resources, the Ministry of Industry and Science, and the Ministry of Taxes. In April 2003 the General Prosecutor of the Russian Federation, wrote to the President informing him that the General Prosecutor's Office (GPO) had concluded that there were no grounds for it to take action. On 29 April 2003 the Prime Minister wrote to the President informing him that the law-enforcement agencies had stated that they would not commence a criminal prosecution as there was no *corpus delicti* in relation to the circumstances surrounding the acquisition of the 20% block of shares in Apatit. Nonetheless, a criminal case regarding Apatit was reopened in June 2003; the situation with the acquisition of the Apatit shares later formed one of the main charges against the applicant.

On 19 June 2003 a Yukos security official, Mr Pichugin, was arrested and charged with murder. On 2 July 2003 Mr Lebedev, one of the top managers of the company and the applicant's personal friend, was arrested in connection with the Apatit case. The applicant was summoned to the General Prosecutor's Office and interviewed as a witness. The prosecution carried out several searches of the premises of Yukos and the offices of the applicant's lawyer, Mr Drel, and also searched the headquarters of the political party Yabloko. In October 2003 Mr Shakhnovskiy, another major Yukos shareholder, was charged with tax evasion. As a result of this several leading executives of Yukos and affiliated companies left Russia. Some of them have settled in the United Kingdom. The prosecution authorities sought their extradition to Russia, but the British courts refused on the grounds that their prosecution was politically motivated and since they would not receive a fair trial in Russia. The applicant produced copies of the decisions of the British courts to this end. At the same time senior officials of the General Prosecutor's Office publicly declared that charges might be brought against other top managers of Yukos and affiliated companies.

The applicant did not leave the country and continued his activities, including business trips in Russia and abroad.

*2. The applicant's apprehension*

On 23 October 2003, whilst the applicant was away from Moscow on a business trip in eastern Russia, an investigator summoned him to appear in Moscow as a witness on 24 October 2003 at noon. The summons was delivered to the applicant's office on 23 October at 3 p.m., and the applicant's staff told the investigator that the applicant was away until 28 October 2003. Yukos staff also sent to the General Prosecutor's Office a telegram explaining the reasons for the applicant's absence from Moscow.

The applicant having missed the appointment, on 24 October 2003 the investigator ordered his enforced attendance for questioning. In the early morning on 25 October 2003 armed law-enforcement officers approached the applicant's aeroplane on an airstrip in Novosibirsk. The applicant

submits that, without explaining the reasons, the officers apprehended him, and flew him to Moscow.

The applicant's lawyer complained about the enforced attendance order to the Basmanniy District Court of Moscow. He asserted that the applicant had had a good reason for missing the interview: as a witness he had been free to travel, he had been out of town on a business trip, and he had not personally received the summons. On 27 January 2004 the court rejected the complaint. The court stated that it had been impossible to hand the summons of 23 October 2003 in the applicant's own hands, so the applicant had been notified about the questioning through the head-quarters of Yukos. The court concluded that the decision of 24 October 2003 to bring the applicant to Moscow for questioning had been issued in compliance with the Code of Criminal Procedure and the Constitution.

*3. First detention order*

Once in Moscow, at 11 a.m. on 25 October 2003, the applicant was brought before the investigator. The investigator explained to the applicant why he had been apprehended and interviewed him as a witness in connection with the personal income tax payments of the applicant related to 1998-2000. Thereafter the applicant was informed that he was charged in connection with a number of crimes, namely the fraudulent acquisition of the Apatit shares in 1998, misappropriation of the proceeds of Apatit, misappropriation of the assets of Yukos, corporate tax evasion and personal tax evasion schemes allegedly applied by Yukos and the applicant personally in 1999-2000. The applicant was interviewed as a defendant in that case but refused to testify since one of his lawyers was absent. Following the interrogation, at 3 p.m. on 25 October 2003, the investigator requested the Basmanniy Court to detain the applicant pending investigation. The request was nine pages long and, according to the applicant, had been prepared beforehand.

The court heard this request at 4.35 p.m. The applicant was assisted by one of his lawyers, Mr Drel. The prosecution requested the proceedings to be held in camera, referring to the materials of the case file which should not be disclosed. The defence requested a public hearing, but the court, on an application by the prosecutor, decided to hold the hearing in camera, referring to a need to guarantee the defendant's rights. The court heard the public prosecutor, the applicant and the applicant's counsel and examined certain documents from the case file produced by the prosecution. The defence submitted that the applicant had attended promptly for questioning when he had first been requested to do so, in July 2003, and that he had been unable to attend the second questioning for legitimate reasons, as he had had no personal knowledge of the summons. The defence pleaded in favour of the applicant's release on bail.

At the end of the hearing, which lasted about five hours, the court issued a detention order, referring to Article 108 of the Code of Criminal Proceedings (see the "Relevant domestic law" part below). The court summarised the charges against the applicant, the arguments put forward by the parties and the procedural history of the case. The main reasons for the detention were as follows:

> "[The applicant] is accused of serious crimes punishable by over two years' imprisonment, committed in concert with others and over a long time. The circumstances of the crimes, [the applicant's] personality, and his position as head of Yukos suggest that, if he remained at large, the applicant may influence witnesses and other participants in the trial, hide or destroy evidence ..., or commit further crimes.
>
> [The applicant's] accomplices have fled from the prosecution. [The applicant] might also flee because he has a travel passport and money in foreign banks.

The court referred to the applicant's family situation, his residence in Moscow and health conditions and found that there was no reason for choosing a milder measure of restraint. As to the applicant's assertion that the prosecution had produced no evidence of his implication in the impugned crimes, the court noted as follows:

> "This argument ... shall not be examined on the merits, since the criminal case is still at the stage of the pre-trial investigation, and the court cannot express its opinion as to the guilt [of the applicant], proof of his guilt or the correctness of the legal qualification of Mr Khodorkovskiy's acts".

The court order did not establish the duration of the applicant's pre-trial detention.

On 3 November 2003 the applicant resigned from the position of the Chief Executive of Yukos.

On 5 November the applicant's lawyer handed the applicant's foreign travel passports over to the prosecution.

On 6 November 2003 the applicant's lawyers appealed against the detention order. They asserted, among other things, that the reasons for the detention were insufficient, that the hearing in camera had been unlawful and that the applicant had not committed any criminal offences. On 11 November 2003 the Moscow City Court upheld the detention order. The hearing took place in camera, without the applicant but in the presence of his lawyers. The city court enlarged on the district court's reasons:

> "[The applicant] owns a large stake in Group Menatep Ltd., a company registered in Gibraltar ..., has financial influence, [and] enjoys prestige with public bodies and companies. Employees of companies controlled by [the applicant] depend on him financially and otherwise...."

The city court also found that the materials of the case file contained sufficient evidence to suspect the applicant of having committed the impugned offences. It established, further, that the domestic law allowed the detention hearing to be held in camera, in order to keep the materials of the

pre-trial investigation secret and protect the interests of the defendant. The City Court did not fix the duration of the period of detention either.

*4. Second detention order*

On 10 November 2003 the applicant was charged with a number of additional crimes, including abuse of trust, misappropriation of property, tax evasion, large-scale fraud and forgery of official documents.

On 11 November 2003 Ms A., one of the applicant's lawyers, visited him in prison. As she was leaving, guards searched her and seized a handwritten note with ideas about the case she had prepared overnight and a typed draft of the legal position in Mr Lebedev's case.

According to the Government, Ms A. had received a note from the applicant entitled "Written directions to the defence". These "directions" contained the following instructions (it appears that the Government quoted from this note): "to ensure that Mr Lebedev gives negative or vague answers about the participation in the RTT, to speak to the witnesses about their testimony of 6 November 2003, to check the testimonies of the defence witnesses to ensure that they do not contain any indication as to intent". It also contained directions as to investment activities and tax payments. The prison officials also seized from Ms A. a 16-page typewritten memo entitled "Preliminary criminal-law analysis of the charges in the case of Mr Lebedev P.P.".

The Government produced a report dated 11 November 2003 by a prison officer who had participated in the search. According to the report, the search had been ordered by inspector B. In the report inspector B. indicated that he had ordered the search because he had sufficient grounds to believe that Ms A. was carrying prohibited goods. The Government also produced a report by inspector F., who informed his superiors that he saw that the applicant and Ms A. during their meeting "exchanged a notebook with some notes, and also made notes in it".

According to the applicant, the handwritten note was drafted by Ms A. It stated as follows:

> "- Kodirov [the applicant's cell-mate]: expects a second visit by the lawyer Solovyev[1];
>
> - to work on the question of sanctions concerning violation of rules on keeping in custody SIZO (active <-> passive forms of behaviour (ex. hunger strike);
>
> - to work on the question of receiving money for consultancy fees on the purchase of shares by various companies involved in investment activities;
>
> - expert analysis of signatures, to work on this question because the documents submitted are not the originals but photocopies (expert analysis of photocopies of signatures of M.B.);

[1] The applicant promised to help Mr Kodirov with finding a lawyer

- to work through questions with witnesses Dondonov, Vostrukhov, Shaposhnikov (questioning on 06.11.03 - according to circumstances);

- concerning participation in RTT Lebedev must give negative (indecisive) answer;

- prerogatives of executives of Rosprom and Menatep - to show the scope of their prerogatives, how promotions are made;

- check witnesses of the defence (former managers and administration of Rosprom, Menatep position about 100, the essence of testimonies

1) absence of intention;

2) absence of instructions, advise on methods of investment and tax activity;

It is necessary to work on testimonies of witnesses Fedorov, Shaposhnikov, Michael Submer, tax people;

Other - to conduct, by Western audit and law firms, audit of personal fortune, in the following context 'I have right to receive income in accordance with decision of meeting of shareholders ' counsel. ... in the case ...".

On 25 November 2003 the applicant's lawyers were informed that the pre-trial investigation had finished. The defence was given access to the materials of the investigation file for examination and preparation for the trial.

On 28 November 2003 the defence made an application to the General Prosecutor for the measure of restraint to be changed, arguing that as the pre-trial investigation had finished and all the witnesses had been questioned there was no longer even a theoretical possibility that the applicant might interfere with the proceedings. They also argued that there was no reason to believe that the applicant would resume his alleged criminal activities or that he would flee the jurisdiction. Sureties and bail were also offered. On 3 December 2003 the prosecution dismissed the application for release.

On 17 December 2003 the prosecution requested the Basmanniy Court to extend the applicant's detention until 30 March 2004. The prosecution asserted, among other things, that the note seized from Ms A had, in fact, been written by the applicant, and that in that note the applicant had instructed his accomplices at large to intimidate prosecution witnesses. The prosecution's application for an extension was lengthy and carefully reasoned; it ran to over three hundred pages.

In the evening of Friday 19 December 2003 the applicant's lawyers learned that the court would hear the request at 10 a.m. on Monday, 22 December 2003. The lawyers did not receive a copy of the request before the hearing.

The hearing began on 22 December 2003, at 3.05 p.m. The defence sought an adjournment of the hearing to 24 December, but the court instead allowed the lawyers a two-hour break to prepare their pleadings. During those two hours the lawyers stayed in the courtroom and took instructions from the encaged applicant in the presence of guards and court staff.

The court decided to hold the hearing in camera. The applicant's lawyers objected, referring, in particular, to the fact that the General Prosecutor had previously publicly stated that there was nothing in the applicant's case that would lead to the necessity for any hearings in camera. The court refused the applicant's request that the hearing be in public, without giving any reasons.

In the course of the hearing the defence produced documents in support of their view that the applicant was no longer a board member of Yukos, that he had no shares in Yukos or other companies which, according to the prosecution, had been involved in the impugned scam operations, and that before his arrest he had permanently resided in the Moscow Region. On that basis, the defence asserted that the applicant would not abscond. However, the court refused to examine the documents provided by the defence.

In the evening of 22 December 2003 the hearing was adjourned. It was resumed on 23 December 2003. On that day the defence obtained a copy of the prosecution's request for an extension of the detention. At the same time the prosecution filed with the court new pieces of evidence, including the note seized from Ms A. The court admitted Ms A's note in evidence. The defence sought an adjournment for a day to examine those documents. They also contested their admissibility, claiming that the documents had been obtained in breach of the privilege pertaining to lawyer-client communications. They claimed, further, that they had not enough information about the origin of this document. However, the court ruled that a one-hour adjournment would suffice.

The next day the applicant's representative, Ms Moskalenko, requested the court to adjourn the hearing for one day in order to allow the defence to study new materials submitted by the prosecution. The court ordered a one-and-a-half hour break but refused to adjourn the hearing to the next day.

On 23 December 2003 the court extended the detention until 25 March 2004 essentially for the same reasons it had relied on before. It referred to the fact that the applicant's presumed accomplices had fled from trial, that the applicant controlled business structures which were implicated in the alleged crimes and that he could therefore use them to continue his criminal activities or influence witnesses who worked in those structures. The court noted that the applicant had a foreign passport and personally owned shares in a foreign company and through a trust company. In addition, the court stated that the applicant had tried to intimidate witnesses. It did not refer directly to Ms A's note in its analysis, although it mentioned it when summarising the submissions by the prosecution. The court also had regard to the necessity of carrying out further investigative actions. It concluded that, if released, the applicant might flee from justice, influence witnesses and continue his activities.

On 30 December 2003 the applicant's lawyers appealed against this decision. The appeal was received by the Moscow City Court from the first-

instance court on 14 January 2004. On 15 January 2004 the Moscow City Court upheld it. The hearing in the Moscow City Court took place in public in the presence of the applicant's lawyers. The applicant was absent from that hearing.

*5. Third detention order*

On an unspecified date the prosecution requested the Basmanniy Court to extend the applicant's detention again because the applicant needed more time to study the prosecution files. In support of his request the prosecutor mentioned in his submissions the "seizure from one of the defendants of the written notes containing the instruction of Khodorkovskiy to put pressure on the witnesses for the prosecution".

On 19 March 2004 the court held a hearing. The defence lawyers complained that they had been unable to see the applicant in private to take instructions as the applicant had only been informed that day of the hearing and had had insufficient time to review the new case materials submitted by the prosecutor. They themselves had only been informed of the hearing the day before. They asked for an adjournment of three days. They also produced to the court an expert handwriting analysis report showing that the document seized from Ms A had been written by her and not by the applicant. The defence claimed, further, that the applicant would not abscond. In support of that claim, the defence referred to one of the co-accused, Mr K., who had signed a written undertaking not to leave his city of residence and had not absconded. The defence indicated that the applicant's passports had been handed over to the prosecution and that his family were once again offering to put up bail for him. In the opinion of the defence it was absurd to suggest that the applicant would continue with criminal activity, since he was not charged with crimes of violence but with economic crimes: it would be impossible for him to commit such crimes if bailed on condition of house arrest. The prosecution objected to the applicant being granted bail on the condition of house arrest.

After having examined the materials of the case file and having heard the parties, the court extended the detention until 25 May 2004 essentially for the same reasons as before. In support of its conclusions, the court referred to the fact that some of the applicant's co-defendants had fled from Russia, that the applicant had several foreign passports, that he owned a considerable amount of shares in a foreign company, and that he had tried to put pressure on the witnesses of the prosecution. The court also referred to the fact that some of the witnesses were dependent on the applicant. In the detention order the court did not, however, refer to the risk that, if released, the applicant would engage in criminal activities.

The Government maintained that the applicant's appeals against the detention order of 19 March 2004 were received by the District Court on 25 March (appeal by Mr Padva) and 2 April 2004 (appeal by

Ms Moskalenko). On 27 April 2004 the materials of the case were forwarded by the District Court to the Moscow City Court. The parties were informed of the date and venue of the appeal court hearing. On 12 May the Moscow City Court upheld the decision of 19 March 2004.

*6. Detention pending trial*

On 14 May 2004 the prosecution submitted the case to the Meshchanskiy District Court for trial.

On 20 May 2004 the Meschanskiy District Court decided to hold a preliminary hearing on 28 May and ordered that the applicant should stay in prison. The decision was taken in camera and without the attendance of either the applicant or his lawyers or the prosecution. No reasons for the continued detention of the applicant were given and the period of detention was not specified.

On 26 May 2004 one of the applicant's lawyers, Ms Moskalenko, lodged an appeal against the decision of 20 May 2004. After having obtained a reply from the prosecution, the Meschanskiy District Court forwarded the appeal to the Moscow City Court. The applicant's appeal against the decision of 20 May 2004 was dismissed by the Moscow City Court on 21 June 2004. It appears that neither the applicant nor his lawyers were present at the hearing of 21 June 2004. According to the Government, the summons was sent to six lawyers representing the applicant; however, the summons was not sent to Ms Moskalenko, as her power of attorney did not entitle her to represent the applicant before the appeal court. The Government did not produce copies of the summons. The Moscow City Court found that the decision of 20 May 2004 had been taken by a competent court in compliance with the relevant legislation. It did not specify the reasons for extending the applicant's detention.

Preliminary hearings in the trial court took place on 28 May and 8 June 2004. On the latter date the court decided to open the trial on 16 June 2004 and to join the cases of the applicant and Mr Lebedev. It also ordered that the applicant should stay in prison pending trial. No reason for that decision was given and the court did not specify the period of detention. Ms Moskalenko appealed against that decision, but on 29 July 2004 it was upheld by the Moscow City Court. The City Court found that, taking into consideration the materials of the case-file, the first instance court had not found any grounds to lift of modify the measure of restraint. According to the applicant Ms Moskalenko was unable to participate in the hearing on medical grounds. However, Ms Lvova, Ms Liptser and Mr Rivkin (lawyers representing Mr Lebedev) were present at that hearing.

On 16 June 2004, when the trial started, the applicant's lawyer requested the court to release the applicant because he was detained unlawfully. The court refused to examine that request because only an appeal court could examine the lawfulness of detention imposed earlier. Ms Moskalenko

appealed against that ruling, but on 29 July 2004 the Moscow City Court upheld both the above decision and the earlier decision of the same court of 8 June 2004 (cf. above).

On an unspecified date the prosecution requested the court to extend the applicant's detention because the trial was continuing.

On 1 November 2004 the Meshchanskiy District Court, in a public hearing and in the presence of the applicant and his lawyers, extended the applicant's detention until 14 February 2005 essentially for the same reasons that the Basmanniy Court had given earlier (see above). The court mentioned that there was a risk that the would try to put pressure on witnesses. On 9 November 2004 the applicant appealed against the extension order. The appeal was rejected by the Moscow City Court on 1 December 2004.

On 28 January 2005 the Meshchanskiy District Court extended the applicant's detention until 14 May 2005, repeating the reasons given in the earlier decisions in that regard. In the detention order the court also held that the applicant had tried to influence witnesses in the case. The applicant's appeal against that decision was rejected by the Moscow City Court on 17 February 2005.

On 24 March 2005 the court extended the applicant's pre-trial detention until 14 July 2005. The appeal by the applicant against this decision was also unsuccessful as the Moscow City Court rejected it on 21 April 2005.

On 31 May 2005 the applicant was found guilty of the charges brought against him and sentenced to nine years' imprisonment. On 22 September 2005 the Moscow City Court upheld the judgment in the main, excluded several charges and reduced the sentence to eight years. Some time afterwards the applicant was transferred to a correctional colony in the Chita Region, where he is currently serving his sentence.

*7. Conditions in the remand centres nos. 99/1 and 77/1*

From 25 October 2003 until 8 August 2005 the applicant was detained at remand centre no. 99/1 in Moscow. Thereafter he was detained at remand centre 77/1, known as "Matrosskaya Tishina". In October 2005 the applicant was sent to serve his sentence at penal colony FGU IK-10 in the town of Krasnokamensk, Chita Region.

The applicant indicated that from 27 October 2003 to 18 June 2005 he had been held in cells 501, 503 and 506. In those cells the partition dividing the toilet from the rest of the cell was no more than 85 cm high. The applicant insisted that the partition was not high enough to ensure his privacy when using the toilet. He insisted that the toilet had not been separated or soundproofed and allowed inmates to see and hear everything happening in the toilet. The smell from the toilet pervaded the cell. The applicant had to eat his meals in the cell in such conditions. The prison authorities did not supply curtains to separate the toilet from the rest of the

cell. He noted that no such curtain (or curtain mark) was visible in the photographs of cells 501, 503 and 506 provided by the Government. It was only on 18 June 2005, after the end of the trial and the applicant's conviction, that he was transferred to the refurbished cell no. 610 where the partition was 175 cm high.

According to the applicant, his cell in remand centre no. 99/1 housed four or five persons. Thus, each detainee had at the most four metres of space in the cell, which contained beds, a worktable that also served as a dining table and the toilet bowl and washbasin. The applicant had been incarcerated in such a cell for 23 hours a day for almost two years. At remand centre 77/1 the applicant shared a cell with about fifteen people.

In summer the unventilated cells of the remand centres became too hot – over 30 degrees – and in winter too cold – about 18 degrees. The effect of the lack of ventilation was particularly acute on the applicant because he was a non-smoker and was constantly forced to inhale tobacco smoke. On many days the applicant was unable to have his one-hour walk as he had to attend court. Moreover the walking areas were totally enclosed roofed yards at the top of the remand centre. The applicant therefore never had any access to fresh air on these walks. The dimensions of some of the walking areas were very small: between twelve and sixteen square metres. Additionally, the applicant was only permitted weekly washing facilities.

The applicant further submitted that the Government authorities had consistently denied independent observers the opportunity to inspect the conditions of his detention. Thus, the Government authorities had refused to allow the PACE Special Rapporteur permission to visit the applicant; the head of the remand centre had refused a Russian member of Parliament access to visit the applicant and inspect the conditions of his detention. Further, the applicant was denied access to his doctors in connection with his gastric problems.

On 9 November 2004 and 7 February 2005, in his appeals to the Moscow City Court against the decisions of 1 November 2004 and 28 January 2005 extending his detention pending trial, the applicant described poor conditions in which he was detained. He claimed that such conditions amounted to a breach of Article 3 of the Convention. On 1 December 2004 and 17 February 2005 the Moscow City Court dismissed the applicant's complaints. Those decisions did not contain any analysis of the applicant's allegations about conditions of his detention. The applicant also described the conditions of his detention in his cassation appeal against the judgment of the Meschanskiy District Court of 31 May 2005.

According to the Government, the cells in remand centre no. 99/1 were not overcrowded. In remand centre no. 99/1 the applicant had an individual sleeping place and 4.4-5.9 square metres of personal space in each cell where he had been detained. They produced a report indicating the surface area and number of sleeping places in each cell in which the applicant was

detained. According to the information provided by the Government, an average cell measured approximately 3 metres by 5 metres.

Each cell had windows, electric lighting, hot and cold water, a lavatory and a toilet pan. Although the electric light was on during the night, it was of a lesser intensity than the daytime lighting. The toilet pan was separated from the rest of the cell by a partition measuring 175 cm (cell no. 610) and 85 cm (cells nos. 501, 503, 506), so that the person using the toilet pan was not seen by his cellmates or from the spyhole in the door. The Government submitted photos of the cells in which the applicant had been detained and of the toilet cubicles. All the cells were equipped with a TV-set, a fridge, an electric kettle and a ventilator, in addition to the standard furniture (bunk beds, stools, table, food locker, coat-hanger, garbage bin, and washing bowls). The cells were properly heated, and ventilated through open windows. The applicant was given bed linen and cutlery and was allowed to have his own bed linen. The applicant could have a one-hour daily walk in one of the ten courtyards equipped with a metal shelter and benches. When he had arrived at the remand prison late after the court hearings, he had been unable to take exercise. According to the information provided by the Government, remand centre no. 99/1 had ten walking yards (the smallest measured 15.9 square metres, the largest 36.6 square metres; the average area was about 29 square metres). Each walking yard was equipped with a roof and benches. The Government also produced several reports showing the number of people from each cell who could have a walk outside; these reports concerned about two dozen cells and were dated 18-19 November 2003, 28-29 April, and 30-31 July, 28-29 September 2004 and 6-7 August 2005. The Government also produced documents on the quality and quantity of food distributed to detainees. They submitted, further, a copy of the applicant's medical history showing that the applicant, while in detention, had not had major health problems, although there had been some medical incidents and the applicant had on many occasions been examined by doctors.

The applicant could also take a shower once a week, and, for additional payment, take a shower more often, go to a sports room, wash his underwear and bed linen, and receive other extra services. Three times a day he was given hot food of an appropriate standard. On court days the applicant received dry food or, alternatively, was allowed to take food sent to him by his relatives.

In support of their submissions the Government also submitted reports from prison officials, dated 2006, which certified the above information on the sanitary conditions in the cells where the applicant had been detained. The Government also submitted a copy of the applicant's personal cash account, which showed that he had been receiving money from his relatives and was able to spend it on, among other things, food, extra visits to the shower room or the sports room or renting additional equipment.

*8. Conditions in the courtroom*

During the trial the applicant sat on a wooden bench in a small cage in the courtroom. He had to instruct his lawyers through the bars. Whenever the applicant left the cage, he was handcuffed to guards. According to the applicant, on court days he received little food, no exercise, and no fresh air. The Government submitted that on court days the applicant had been unable to have a walk because he had been arriving to the remand centre late, when all walking yards had been closed. The applicant was always provided with hot food, and, depending on the time of his departure from the remand centre, with travel ration.

*9. Application to the European Court of Human Rights*

On an unspecified date in 2004 Ms Moskalenko, one of the applicant's lawyers, visited the applicant in prison. According to her, she tried to pass to the applicant the documents she had received from the European Court: a blank application form, an information notice and a covering letter. The prison administration seized the documents and never passed them to the applicant.

The Government produced a report from the prison administration, dated 8 July 2006. According to that report, any documents which a lawyer wants to pass to his detained client should pass through the administration of the remand prison. Any other way of passing documents to the detainee is illegal. However, they denied that they had ever seized from Ms Moskalenko, or from the applicant himself, any documents sent to him by the European Court.

*10. Reaction of international organisations, NGOs and political figures*

The applicant's case attracted considerable public attention in Russia and abroad. In the course of the trial and afterwards many prominent public figures and influential organisations expressed their doubts as to the fairness of the criminal proceedings against the applicant and his colleagues. The applicant submitted documents to that effect.

Thus, according to the applicant, his allegations were endorsed by the comments of leading Russian politicians and foreign governments; the findings of the Special Rapporteur of the Parliamentary Assembly of the Council of Europe; the Parliamentary Assembly, which concluded that the circumstances of the applicant's case went "beyond the mere pursuit of criminal justice, and include elements such as the weakening of an outspoken political opponent, the intimidation of other wealthy individuals and the regaining of control of strategic economic assets" (Resolution 1418 (2005), adopted on 25 January 2005); the judgment of the London Extradition Court in the case of *Chernysheva and Maruev v Russian*

*Federation*, in which the judge concluded that "it is more likely than not that the prosecution of Mr Khodorkovskiy is politically motivated" and that "President Putin had directed that ... Mr Khodorkovskiy should be prosecuted"; the granting on 6 April 2005 by the United Kingdom authorities of political asylum to other individuals closely linked to the applicant who had also been granted refugee status. The applicant also referred to the decisions of Nicosia District Court (Cyprus) of 10 April 2008 in an extradition case concerning former Yukos managers, and to some other European jurisdictions. The applicant considered that in those proceedings the courts had established that the prosecution of the applicant and his colleagues was politically motivated.

## B. Relevant domestic law

### *1. Rules on pre-trial detention*

Section 16 of the Pre-trial Detention Act of 15 July 1995 (no. 103-FZ) provides:

> "The Ministry of Justice, the Ministry of the Interior, the Federal Security Service or the Ministry of Defence shall adopt, upon approval of the Prosecutor General, the Internal Rules for Remand Centres, for the purpose of ensuring order in remand centres. The Internal Rules establish the procedure for: ....
>
> (15) organising meetings between suspects and defendants and the persons listed in section 18 of the present Act..."

Section 18 of the Act provides that detained suspects may be visited by their legal representative in privacy. Visits are not limited in frequency or duration. Under section 20, correspondence by detainees is to be conveyed through the administration of the remand prison and is subject to censorship. Censorship is carried out by the administration of the remand prison and, if necessary, by the official or authority in charge of the criminal case.

Section 21 of the Act stipulates that detainees can address their proposals, petitions or complaints to State bodies, bodies of local self-government or public associations through the administration of the remand prison. Complaints addressed to the prosecutor's office or to the courts or other State bodies which oversee the remand prisons are not subject to censorship. This section further stipulates the modalities for dispatching various letters.

Section 22 of the Act provides that detainees must be given free food sufficient to maintain them in good health according to the standards established by the Government of the Russian Federation. Section 23 provides that detainees must be kept in conditions which satisfy sanitary and hygienic requirements. They must be provided with an individual sleeping

place and given bedding, tableware and toiletries. Each inmate must have no less than four square metres of personal space in his or her cell.

Section 34 of the Act provides:

"... If there are sufficient grounds for suspecting a person of attempting to bring prohibited items, substances or foodstuffs in or out, the employees of the places of detention shall be entitled to examine their personal effects and clothes both at the entrance to and exit from the place of detention, examine incoming and outgoing transport vehicles and withdraw items, substances or foodstuffs which suspects and accused persons are forbidden to keep or use. The personal effects and clothes of persons who are in charge of the criminal cases initiated in respect of suspects and accused persons and have the right to exercise control and supervision of the places of detention shall not be subject to examination.

Operational and search activities shall be conducted in accordance with the procedure established by law in places of detention, for the purpose of revealing, preventing ... crimes there."

*2. Measures of restraint*

The Code of Criminal Procedure of 2001 provides:

**Article 108. Pre-trial detention**

"1. Pre-trial detention shall be applied as a measure of restraint by a court only where it is impossible to apply a different, less severe precautionary measure ...

3. When the need arises to apply detention as a measure of restraint ... the investigating officer shall apply to the court accordingly...

4. [The request] shall be examined by a single judge of a district court ... with the participation of the suspect or the accused, the public prosecutor and defence counsel, if one has been appointed to act in the proceedings. [The request shall be examined] at the place of the preliminary investigation, or of the detention, within eight hours of receipt of the [request] by the court.... The non-justified absence of parties who were notified about the time of the hearing in good time shall not prevent [the court] from considering the request [for detention], other than in cases of absence of the accused person. ...

7. Having examined the request [for detention], the judge shall take one of the following decisions:

1) apply pre-trial detention as a measure of restraint in respect of the accused;

2) dismiss the request [for detention];

3) adjourn the examination of the request for up to 72 hours so that the requesting party can produce additional evidence in support of the request. ...

9. Repeated requests to extend detention of the same person in the same criminal case after the judge has given a decision refusing to apply this measure of restraint shall be possible only if new circumstances arise which constitute grounds for taking the person into custody."

**Article 109. Time-limits for pre-trial detention**

"1. A period of detention during the investigation of criminal offence shall not last longer than two months.

2. If it is impossible to complete the preliminary investigation within two months and there are no grounds for modifying or lifting the preventive measure, this time-limit may be extended by up to six months by a judge of a district or military garrison court of the relevant level in accordance with the procedure provided for in Article 108 of the present Code. This period may be further extended up to 12 months in respect of persons accused of committing grave or particularly grave criminal offences only in cases of special complexity of the criminal case, and provided that there are grounds for application of this preventive measure, by a judge of the same court upon an application by the investigator filed with the consent of a prosecutor or of a subject of the Russian Federation or a military prosecutor of equal status.

3. The period of detention may be extended beyond 12 months and up to 18 months only in exceptional cases and in respect of persons accused of committing grave or particularly grave criminal offences by [a judge] on an application by an investigator filed with the consent of the Prosecutor General of the Russian Federation or his deputy.

4. Further extension of the time-limit shall not be allowed. ..."

**Article 110. Lifting or modifying a preventive measure**

"1. A preventive measure shall be lifted when it ceases to be necessary or replaced by a stricter or a more lenient one if the grounds for application of a preventive measure ... change.

2. A preventive measure shall be lifted or modified by an order of the person carrying out the inquiry, the investigator, the prosecutor or the judge or by a court decision.

3. A preventive measure applied at the pre-trial stage by the prosecutor or the investigator or the person carrying out the inquiry, upon his written instructions, may be lifted or modified only with the prosecutor's approval."

**Article 113: Enforced attendance**

1. If a witness fails, without reasonable excuse, to attend court when summoned ... he or she may be brought forcibly.

2. Enforced attendance ... shall consist of the person being brought by force before the inquirer, the investigator or the public prosecutor, or the court.

3. If there are reasons preventing their appearance in response to the summons at the designated time, the persons mentioned in paragraph 1 of this Article shall immediately notify the authority by which they have been summoned accordingly.

4. A person who is going to be forcibly brought before the relevant authority shall be notified accordingly by an order of the person carrying out the inquiry, the investigator, the public prosecutor or the judge, or a ruling of the court and this notification shall be confirmed by his signature on the order or ruling.

5. Enforced attendance cannot be carried out at night time, except in circumstances when the matter cannot wait.

6. Underage persons who have not reached fourteen years of age, pregnant women and sick persons who cannot leave their place of residence on account of poor health, which shall be certified by a doctor, shall not be forced to attend. ..."

**Article 123. Right of appeal**

"Actions (omissions) and decisions of the agency conducting the inquiry, the person conducting the inquiry, the investigator, the prosecutor or the court may be appealed against in accordance with the procedure set forth in the present Code by participants in the criminal proceedings or other persons to the extent that the procedural actions carried out and procedural decisions taken affect their interests."

**Article 188: Procedure for issuing a summons for questioning**

"... 3. A person who is summoned for questioning shall attend at the appointed time or notify the investigator in advance of any reason preventing him from attending. If he fails to appear without any valid reasons a person summoned for questioning may be brought forcibly ..."

**Article 227. Judges' powers in respect of a criminal case submitted for trial**

"1. When a criminal case is submitted [to the court], the judge shall decide either

(i) to forward the case to an [appropriate] jurisdiction; or

(ii) to hold a preliminary hearing; or

(iii) to hold a hearing.

2. The judge's decision shall take the form of an order ...

3. The decision shall be taken within 30 days of submission of the case to the court. If the accused is detained, the judge shall take the decision within 14 days of submission of the case to the court..."

**Article 228. Points to be ascertained in connection with a criminal case submitted for trial**

"Where a criminal case is submitted for trial, the judge must ascertain the following points in respect of each accused:

(i) whether the court has jurisdiction to deal with the case;

(ii) whether copies of the indictment have been served;

(iii) whether the measure of restraint should be lifted or modified;

(iv) whether any applications filed should be granted ..."

**Article 231. Setting the case down for trial**

"1. When there are no grounds to take one of the decisions described in sub-paragraphs (i) or (ii) of the first paragraph of Article 227, the judge shall set the case down for trial ... In the order ... the judge shall decide on the following matters: ...

(vi) the measure of restraint, except for cases where pre-trial detention or house arrest are applied..."

**Article 255. Measures of restraint during trial**

"1. During the trial the court may order, modify, or lift a precautionary measure in respect of the accused,

2. If the defendant has been detained before the trial, his detention may not exceed six months from the time the court receives the case for trial to the time when the court delivers the sentence, subject to the exceptions set forth in § 3 of this Article.

3. The court ... may extend the accused's detention during trial. It is possible to extend detention only in respect of a defendant charged with a serious crime or an especially serious crime, and each time for a period of up to 3 months..."

**Article 376. Setting the case down for the appeal hearing**

"1. Having received the criminal case with the notice of appeal ... the judge shall fix the date, time and venue of the [appeal] hearing.

2. The parties shall be notified of the date, time and venue [of the appeal hearing] no later than fourteen days beforehand. The court shall decide whether the convicted detainee should be summoned to the hearing.

3. A convicted detainee who has expressed a wish to be present [at the appeal hearing] shall have the right to be present personally or to submit his arguments by video link. The court shall decide in what form the participation of the convicted person in the hearing is to be secured...."

**Article 241. Publicity of the trial**

1. Trials of criminal cases in all courts shall be public, with the exception of the cases indicated in the present Article.

2. Judicial proceedings in camera are admissible on the basis of a determination or a ruling of the court in the event that:

i) proceedings in the criminal case in open court may lead to disclosure of a State or any other secret protected by the federal law;

ii) the criminal cases being tried relates to a crime committed by a person who has not reached sixteen years of age;

iii) the trial of criminal cases involving a crime against sexual inviolability or individual sexual freedom or another crime may lead to disclosure of information about the intimate aspects of the life of the participants in the criminal proceedings or of humiliating information,

iv) this is required in the interest of guaranteeing the safety of those taking part in the trial proceedings and that of their immediate family, relatives or persons close to them;

Where a court decides to hold a hearing in camera, it shall indicate the specific circumstances in support of that decision in its ruling on this point. ..."

On 22 March 2005 the Constitutional Court of the Russian Federation adopted Ruling no. 4-P. In particular, the Constitutional Court held:

"Since deprivation of liberty ... is permissible only pursuant to a court decision, taken at a hearing ... on condition that the detainee has been provided with an opportunity to submit his arguments to the court, the prohibition on issuing a detention order ... without a hearing shall apply to all court decisions, whether they concern the initial imposition of this measure of restraint or its confirmation."

On 22 January 2004 the Constitutional Court delivered decision no. 66-O on a complaint about the Supreme Court's refusal to permit a detainee to attend the appeal hearings on the issue of detention. It held:

> "Article 376 of the Code of Criminal Procedure, which regulates the presence of a defendant remanded in custody before the appeal court ... cannot be interpreted as depriving the defendant held in custody... of the right to express his opinion to the appeal court, by way of his personal attendance at the hearing or by other lawful means, on matters relating to the examination of his complaint about a judicial decision affecting his constitutional rights and freedoms..."

*3. Duties and privileges of the advocate*

Section 6 of the Federal Law on Advocates of 31 May 2002 (no. 63-FZ) provides that the advocate (member of a Bar) has a right to meet his detained client without restriction and in conditions guaranteeing privacy. It further provides that the advocate cannot accept any orders from his client if they are *prima facie* illegal.

Section 8 of Law no. 63-FZ provides:

1. Professional secrecy of the advocate comprises any information received by the advocate in connection with rendering legal assistance to his client.

2. The advocate cannot be summoned and questioned in connection with events which became known to him when he was asked to render legal assistance or rendered it to his client.

3. Operational and search activities and investigative measures in respect of the advocate (including searches of the advocate's office) must be authorised by a court decision.

Information, objects and documents obtained as a result of operational and search activities or investigative activities ... can be used by the prosecution as evidence only if they do not belong to the personal files of the lawyer (*proizvodstvo advokata*) in the cases of his clients. This privilege does not cover implements of crime or objects excluded from civil circulation or in respect of which circulation is restricted.

## COMPLAINTS

1. The applicant complained under Article 3 of the Convention that the conditions of his detention were inhuman and degrading.

2. Under the same Convention provision the applicant also complained about the conditions in the court room.

3. Under the same provision the applicant complained that his prosecution was humiliating because of its political motivation.

4. The applicant complained under Article 5 § 1 (b) of the Convention that his apprehension in Novosibirsk had been unlawful in letter and in

spirit. First, it breached the Code of Criminal Procedure because the applicant had good reason to miss the interview, and the apprehension had happened at night. Second, the apprehension was meant to intimidate him, as could be seen from the inappropriate and theatrical nature of it.

5. The applicant complained under Article 5 § 2 of the Convention that he had not been informed promptly of the reasons for his apprehension in Novosibirsk.

6. The applicant complained under Article 5 § 1 (c) of the Convention that his pre-trial detention had been "unlawful" on account of various irregularities in the detention proceedings. In particular, the initial detention order of 25 October 2003 had been imposed in camera and the appeal against it had also been heard in camera. The detention order of 20 May 2004 had been issued without the applicant or his lawyers being present. The detention orders of 20 May and 8 June 2004 had not been supported by any reasons. The courts had failed to consider alternative measures of restraint and fix the term of the detention. In the applicant's submission, this was incompatible with the provisions of the Code of Criminal Procedure and the rulings of the Constitutional Court of the Russian Federation.

7. The applicant complained under 5 § 3 of the Convention that he had been detained for an unreasonable period of time, in particular since the Basmanniy and Meshchanskiy Courts provided no good reason to detain him.

8. The applicant complained under Article 5 §§ 3 and 4 of the Convention that the hearings in which the domestic courts ordered or extended his detention had offered no procedural guarantees. In particular, he claimed as follows:

(a) On 25 October 2003 the Basmanniy Court and on 11 November 2003 the Moscow City Court had heard the case in camera. The courts had ignored his arguments, and there had been no equality between the prosecution and the defence because the applicant's lawyer had had no time to prepare the defence, whereas the prosecution had had enough time to prepare a long written pleading.

(b) The extension of his detention on 23 December 2003 had been based on inadmissible evidence (Ms A.'s note) and his lawyers had had no time or facilities to prepare for the hearing. The very short adjournment had not allowed him to consult his lawyers in private; nor had it allowed sufficient time for his lawyers to review the prosecution material.

(c) On 20 May 2004 the Meshchanskiy court had failed to hold a hearing.

(d) The hearings of 8 and 16 June 2004 and subsequent extensions of detention pending trial had offered no procedural guarantees either. The decision of 16 June 2004 had prevented him from arguing why he should have been released on bail.

(e) The domestic courts had failed to address his arguments and examine the possibility of releasing him on bail.

(f) It had taken the Moscow City Court too long to hear his appeals against the original detention order (of 25 October 2003) and its two extensions (of 23 December 2003 and 19 March 2004).

9. The applicant complained under Article 18 of the Convention that his arrest, detention, and prosecution were politically motivated.

10. The applicant complained under Article 34 of the Convention that the prison administration had prevented him from preparing his application to the Court.

# THE LAW

## 1. COMPLAINTS UNDER ARTICLE 3 OF THE CONVENTION

1. The applicant complained about the conditions in the remand centres no. 99/1 and 77/1 in Moscow where he had been detained from 25 October 2003 until October 2005. He referred to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government claimed, in their observations, that the applicant had been detained in appropriate conditions (see their account of conditions of detention in the "Facts" part above). They also claimed that the applicant had not lodged any complaint with the bodies mentioned in section 21 the 1995 Pre-Trial Detention Act.

The applicant submitted that the toilet facilities, cramped accommodation and lack of ventilation in his cell were such as to be described as degrading. He referred in this respect to *Popov* v Russia, no. 26853/04, 13 July 2006, and *Peers v. Greece*, application no. 28524/95, §§ 70-72, ECHR 2001-III. The Government's account was based on an inspection made in 2006, after the refurbishment of the cells.

The applicant further claimed that he had exhausted domestic remedies by lodging the complaints of 9 November 2004 and 7 February 2005 with the Moscow City Court. The applicant also described the conditions of his detention in similar terms in his cassation appeal against the judgment of the Meschanskiy District Court.

The Court notes the Government's reference to section 21 of the 1995 Pre-Trial Detention Act and considers that the Government raises an objection of non-exhaustion. The Court reiterates in this respect that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of

providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

The Court recalls that in other relevant cases regarding the conditions of detention it has found that the Russian Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see, for example, *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, and *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). The Court also reiterates its finding made in the context of a complaint under Article 13 of the Convention that in Russia there have been no domestic remedies whereby an applicant could effectively complain about the conditions of his or her detention (see *Benediktov v. Russia*, no. 106/02, § 30, 10 May 2007).

The Court, however, does not lose sight of the fact that in those cases against Russia the focal point for the Court's analysis and ensuing conclusion that no effective remedy was available was linked to the applicants' allegations of overcrowding beyond the design capacity and of a shortage of sleeping places. The Court considers that the circumstances of the present case differ in that, despite certain space constraints, the applicant does not appear to have been without an individual sleeping place. Thus, the Court considers it necessary to examine whether in the particular circumstances the legal avenue relied on by the Government should be regarded as an effective remedy for the purpose of Article 35 § 1 of the Convention.

The Court notes that the applicant lodged a complaint with the court in charge of his case complaining about the conditions of his detention and referring expressly to Article 3 of the Convention. However, this remedy did not redress the situation in any way. Actually, from the facts of the case it appears that the domestic courts did not address the issue at all. Moreover, the Government did not explain how the other remedies mentioned in section 21 of the 1995 Pre-Trial Detention Act, to which they referred, such as "proposals, petitions and complaints to State bodies, bodies of local self-government or public associations" could have prevented the alleged violation or its continuation or provided the applicant with adequate redress (see *Popov v. Russia*, no. 26853/04, § 205, 13 July 2006). The Court does not consider that the provision at issue established any specific legal avenue

to be exhausted. It rather established that "proposals, petitions and complaints" should be submitted through the prison administration and not otherwise. In such circumstances the Court concludes that the applicant made a sufficient effort to bring his grievances to the attention of the authorities, whereas the Government did not demonstrate that there existed other remedies which were effective and which the applicant had failed to use.

For the above reasons, the Court finds that the complaint cannot be rejected for non-exhaustion of domestic remedies. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Under the same Convention provision, the applicant complained about the conditions in the courtroom, namely, the fact that during the trial he was placed in a metal cage and handcuffed while being conveyed to and from the courtrooms.

In their observations the Government claimed that this measure had been applied to the applicant because he had been detained pending trial, in order to prevent him escaping and protect other participants in the trial. They further explained that at the hearing before the Moscow City Court the applicant had been placed in a bullet-proof glass cubicle and not a cage.

The applicant maintained, in reply, that this measure had been unnecessary and was contrary to Article 3 of the Convention. He was accused of economic crimes. He was not accused of any crime of violence. The suggestion that the participants in the criminal case had been at risk from the applicant had never been previously advanced by the Government authorities. It was entirely without evidential support and was manifestly absurd. There had been no real risk of the applicant absconding from court, where he had been under the supervision of guards just outside the cage and numerous armed guards in the vicinity of the courthouse. No evidence that an escape attempt was feared had ever been placed before the domestic court; nor had it been placed before this Court. That treatment was regarded by the Russian and international press as deliberately humiliating. The applicant submitted that the effect of being tried in a cage had publicly humiliated him before the world at large and that the underlying objective of his prosecution had been to degrade him.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within

the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant complained further that the alleged political motivation behind his detention was humiliating and thus contrary to Article 3 cited above. The Court accepts that the investigation and imprisonment must have affected him. This is an understandable and common reaction of a person imprisoned on criminal charges. This person may feel humiliation, fear, anguish and inferiority. But these feelings alone do not amount to a violation of Article 3 (see *Gusinskiy v. Russia* (dec.), no. 70276/01, 7 March 2002). Having regard to the applicant's age, his professional status, his life experience and other relevant factors, the Court concludes that the applicant's detention as such, irrespective of whether or not it was politically motivated or pursued other improper goals, was not treatment contrary to Article 3 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## 2. COMPLAINTS UNDER ARTICLE 5 OF THE CONVENTION

4. Under Article 5 of the Convention the applicant complained that his apprehension in Novosibirsk on 25 October 2003 was contrary to Article 5 § 1 (b) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

The Government indicated in their observations that the applicant had been summoned to the General Prosecutor's office on 24 October 2003. They maintained that on several occasions the applicant had failed to appear before the investigator without good reason. As a result, the investigator had decided that the applicant should be brought to him for questioning by 5 p.m. However, at that time the applicant had not been at his usual place of residence.

The Government further argued that the applicant had not been "arrested" but merely "conveyed" before the investigator, or "subjected to attachment", or enforced attendance (*privod*), since Russian law did not provide for the "arrest" (*arest*) of witnesses. The Government concluded that this measure fell outside the scope of Article 5 of the Convention. The Government denied that the applicant had been brought to Moscow by FSB officers.

The Government also noted that on 27 January 2004 the Basmanniy District Court had confirmed the lawfulness of the decision of the investigator to subject the applicant to attachment.

The applicant alleged that it was obvious that being seized at gunpoint at an airport and forcibly taken back to Moscow amounted to a deprivation of liberty . If this deprivation was not for a purpose recognised by Article 5 § 1 then it necessarily followed that there had been an infringement of that Article.

The applicant insisted that the applicant had been arrested by FSB officers. The Government's assertion that the FSB had not played a part in arresting the applicant had been contradicted by the ruling of investigator B., which had been sent to the Deputy Director of the FSB, Mr Z., for enforcement. Moreover, at the hearing on 25 October 2003 Mr L., the State prosecutor, had explicitly stated that the ruling had been enforced by FSB officers.

Further, it was incorrect to assert that the applicant had been "repeatedly" summoned and had failed to attend for questioning. He had been summoned once on 24 July 2003 (when he had attended as requested and answered questions). Thereafter he had consistently stated that he would not leave Russia and that he was prepared to answer the GPO's questions. After being questioned in July 2003, the next time that he was summoned for questioning had been on Friday 24 October 2003. However, the applicant had left Moscow on Tuesday 21 October 2003 on a highly publicized tour to the Russian regions. On the day the applicant was summoned he had been in a meeting with the Governor of Nizhny Novgorod Region and representatives of President Putin's administration. Staff at the applicant's offices had noted on the summons for questioning issued on 24 October 2003 that the applicant would not be back in Moscow until Tuesday 28 October 2003. A fax to the same effect had also been sent by his office to the investigator. By supplying that information, the applicant had clearly established legitimate reasons for being unable to appear on the dates requested. In the applicant's view, it was apparent that summoning someone to appear in Moscow at short notice when it was known that he was attending a governmental meeting elsewhere in the country was absurd and not a bona fide attempt to obtain assistance from a witness. A person who was not subject to an order requiring him to remain at his home address was perfectly entitled to travel elsewhere in his country on business. In fact the applicant had not needed any reason to be absent from his address either as a matter of domestic or Convention law.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within

the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. The applicant complained that he had not been informed of the reasons for his apprehension in Novosibirsk on 25 October 2003. He referred to Article 5 § 2 of the Convention, which reads as follows:

> "...2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Court notes that, apart from the applicant's own allegation, the materials of the case file contain no evidence in support of this complaint. Even assuming that the applicant was not informed of the reasons for his apprehension immediately, he could have ascertained the reasons from the context of the questioning, which took place only few hours thereafter. The interval between the applicant's apprehension and notification of the reasons for it did not exceed the time necessary for bringing the applicant from Novosibirsk to Moscow. Therefore, it was so short that it could not in any way affect the applicant's right to challenge the lawfulness of his apprehension, which is the main purpose of the guarantee enshrined in Article 5 § 2 (see *Kokavecz v. Hungary*, dec., no. 27312/95, 20 April 1999). The Court considers that in such circumstances this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

6. The applicant further complained that his pre-trial detention had not been imposed or extended by the courts in accordance with a procedure, prescribed by law, as required by Article 5 § 1 (c) of the Convention. This provision reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ... (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"

The Government maintained that the domestic courts had not breached the domestic law when ordering the applicant's pre-trial detention or extending it. As regards the decision of 20 May 2004, the Government indicated that, under the Code of Criminal Procedure, after having received the case from the prosecution, the court had to decide on the measure of restraint to be applied to the accused person during the trial. The Code did not stipulate that the accused or his lawyer had to be present at this stage of the proceedings. On 20 May 2004 the court had decided to extend the applicant's detention. That decision had been based on the information available from the case file. In addition, the applicant and his defence lawyers had not asked the court to modify or lift the measure of restraint.

The Government insisted that the court had not applied the measure of restraint or extended it, but had merely decided that it should remain the same.

The Government indicated that on 8 June 2004, as a result of the preliminary hearing, the court had made several orders. Among other things, the court decided that there were no grounds to modify the measure of restraint applied to the applicant. Again, this was not a formal extension of the applicant's detention but a mere confirmation of the decision taken earlier. At the hearing of 8 June 2004 the defence did not make an application for release.

The applicant maintained that the first detention order (that of 25 October 2003) had been contrary to domestic law in a number of respects. It had been made following a hearing that, for no valid reason, had been conducted in camera. The detention order had not specified the period of detention or explained why it was impossible to impose a less severe measure of restraint. Further, the appeal against the detention order had also been unlawfully heard in camera.

The second detention order of 23 December 2003 had been deficient in that it had been made following a closed hearing and the judgment had not stated why it was impossible for a less severe measure of restraint to be imposed.

The applicant maintained that the detention order of 20 May 2004 had been imposed on the initiative of the court and was therefore contrary to the law. The court's jurisdiction to order detention arose only when an appropriate request had been made by the investigating officer or prosecutor. Furthermore, contrary to rulings of the Constitutional Court of Russia, the authorities had not secured the applicant's presence at the hearing of 20 May 2004. The order had not contained any reasons for his detention. The detention order of 8 June 2004 had not contained any reasons either.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

7. The applicant complained that his detention was not justified and had thus exceeded the "reasonable time" requirement of Article 5 § 3 of the Convention. This provision reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

In their observations the Government submitted that the applicant's pre-trial detention ordered by the judge on 25 October 2003 had been warranted

by his status as head of Yukos. In that capacity he was able to influence witnesses and other participants in the proceedings, destroy or conceal evidence, and thus hinder the normal course of the trial or continue his criminal activities. In the following detention orders the courts relied on various reasons which warranted the applicant's detention and supported them with relevant facts. The Government indicated when the applicant's detention pending investigation and trial had been extended and on what grounds. In total it had lasted one year, six months and twenty-one days. Having regard to the amount of materials in the case (434 volumes) the applicant's detention had not exceeded the "reasonable time" requirement of Article 5 § 3 of the Convention.

The applicant submitted that from the first detention order, made on 25 October 2003, the reasons put forward for refusing him bail did not meet the "relevant and sufficient" threshold of Article 5 § 3. In particular, the detention orders did not address the applicant's following submissions: that there was no evidence that he had any reason to abscond; that he had not absconded when his colleagues were arrested and detained and his offices searched; that he had publicly declared that he would face the prosecution and answer questions rather than be forced into exile; that the State had failed to meet the requirement under both domestic and Convention law that it was impossible for the alleged threats posed by the applicant to be met by other less severe measures of restraint such as bail or house arrest.

The continued detention of the applicant, after the preliminary investigation had closed on 25 November 2003 (when the alleged risk of the applicant interfering with witnesses had necessarily abated), was also contrary to Article 5 § 3.

As to the second detention order (of 23 December 2003), there was no indication that the court had met its statutory obligation to review the necessity for incarceration now that the pre-trial period of investigation had been concluded. It had also failed to address the defence's strong arguments that bail would be appropriate. The applicant's co-accused, Mr Kraynov, had signed a written undertaking not to leave his city of residence and had not absconded and the applicant considered that he should not have been treated differently. The applicant had offered to abide by strict conditions of house arrest, yet the court had failed to consider such a possibility at all in its judgment.

As to the detention orders of 20 May and 8 June 2004, the applicant noted that they did not contain any reasons at all and were thus contrary to Article 5 § 3 of the Convention.

On 1 November 2004 the Meschanskiy District Court ordered that the applicant should be detained for a further three months. In its ruling the court appeared to place very considerable reliance upon the earlier decisions to refuse bail, despite its continuing duty to review the appropriateness of

pre-trial incarceration. There was once again a formulaic recital of matters which the court was said to have considered. Once again there was no reasoned analysis of why it was impossible to apply a less severe measure of restraint. In particular, there was no consideration of the fact that the danger of absconding necessarily receded as the period of detention was extended, of the fact that the trial was under way, having started on 16 June 2004, and that as the period of incarceration had been extended it was not sufficient to rely on a reasonable suspicion that the offences had been committed. In the next decision the Meschanskiy Court had ordered that the applicant should be incarcerated for a further three months, reciting stereotypical reasoning that failed to address the applicant's arguments that the prosecutor had failed to establish that it was impossible to impose a less severe measure of restraint.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

8. The applicant complained that the detention hearings did not offer the minimum procedural guarantees implicitly contained in Article 5 §§ 3 and 4 of the Convention, the latter provision reading as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Government appeared to submit that, since the applicant's detention had been ordered and extended in accordance with the domestic law (see the Government's comments under Article 5 § 1 of the Convention, above), it had been in compliance with the procedural requirements of Article 5 §§ 3 and 4 of the Convention as well.

In addition, the Government maintained that the defence had had sufficient time to read the case file and prepare for the detention hearing of 22 December 2003. They had learned of the hearing on 19 December 2003; in addition, they had had two hours during the hearing of 22 December 2003 to read the materials of the case file and speak to the applicant. As could be seen from the record of the hearing, the applicant's lawyers had been perfectly aware of all of the documents produced by the prosecution. On the second day of the hearing, on 23 December 2003, the defence had been given an extra one and a half hours to allow them to read additional documents produced by the prosecution.

The Government further maintained that the applicant had not complained to the court that he did not have enough time to meet with his lawyers. Indeed, one of his lawyers had complained in the appeal brief that the applicant was unable to meet the lawyers in the remand prison where he

was detained. However, he had received such an opportunity in the courtroom.

The Government confirmed that the documents seized from Ms A. in the remand prison after the meeting with the lawyer had been added to the case file and referred to by the court as proof of the applicant's intention to put pressure on witnesses. However, Ms A. had breached the law and was not therefore covered by the lawyer-client privilege. In the Government's words, the applicant's "written directives" had been *de facto* aimed at distorting testimonies and other evidence, which could not be regarded as a part of the defence's normal function.

The Government indicated that, under the Code of Criminal Procedure, after having received the case from the prosecution, the court should decide on the measure of restraint to be applied to the accused person during the trial. The Code did not stipulate that the accused or his lawyer should be present at this stage of the proceedings. On 20 May 2004 the court had decided to extend the applicant's detention. That decision had been based on information available from the case file. In addition, neither the applicant nor his defence lawyers had asked the court to modify or lift the measure of restraint. The Government insisted that the court had not applied the measure of restraint or extended it, but merely decided that it should remain the same.

The Government indicated that on 8 June 2004, as a result of the preliminary hearing, the court had made several orders. Among other things, the court had decided that there were no grounds to alter the measure of restraint applied to the applicant. This was not a formal extension of the applicant's detention, but a mere confirmation of the decision taken earlier. In addition, the applicant could always have lodged a complaint about that decision.

As regards the appeal hearing of 21 June 2004, the Government indicated that the summons had been sent to the applicant's lawyers. However, they had failed to appear. The Government also noted that the applicant had not empowered Ms Moskalenko to represent him before the appeal court. The applicant himself had not requested to be personally present before the appeal court or for the hearing to be adjourned.

The examination of the applicant's appeal against the detention order of 8 June 2004 had been scheduled for 19 July 2004; however, the Moscow City Court needed to obtain certain documents about the applicant's state of health from the lower courts. As a result, the hearing had been adjourned to 29 July 2004. On 29 July 2004 the decision of 8 June 2004 was upheld. On that date the Moscow City Court also upheld the decision of the District Court of 16 June 2004 on the applicant's application for release. The applicant had not requested the Moscow City Court to secure his personal presence at the hearing of 29 July 2004. His defence lawyers had been informed about the hearing by telephone, but had failed to appear. The

Government argued that the applicant had not authorised Ms Moskalenko to represent him before the second-instance court.

The Government submitted that there had been no unjustified delays in the examination of the applicant's appeals against the detention orders, given that his appeals had always been sent to the prosecution for comments. The applicant's appeals against the detention orders extending his detention pending trial had always been considered within less than one month of their receipt by the court, that is, within the time-limits stipulated in the domestic legislation. In four instances the appeals had been examined within ten to twenty days of their receipt by the appeal court; in two instances these delays had been longer, but that had been justified in the circumstances.

The applicant maintained his complaints that the detention hearings in this case had not complied with the minimum procedural requirements. More specifically, as regards the second detention order, the GPO's request to extend the term of detention had been filed with the court (though not served on the applicant's lawyers) on Tuesday, 16 December 2003; the applicant's lawyers had been told at the close of business on Friday, 19 December 2003, that there would be a hearing on Monday, 22 December 2003. The GPO request had run to over three hundred pages. The applicant's lawyers had not received a copy of the request until the second day of the bail hearing, that is, 23 December 2003.

The District Court had initially indicated that it wished to move the proceedings to the remand prison. The court had refused to hear the request in public. The court had refused the applicant's requests for a relatively short adjournment until 24 December 2003. Mr Padva, for the applicant, had explained that he had been unable to meet with his client and had not been given sufficient opportunity to review the prosecutor's request. Ms Moskalenko, also for the applicant, had explained that the necessity for an adjournment was even greater for her as she had only been retained that day. The applicant had himself addressed the court and asked for an adjournment so that he could consult with his lawyers and review the prosecution materials. The judge had refused to adjourn the hearing to 24 December 2003 and had granted only a two-hour adjournment. No reasoning had been given at all for that decision. The very short adjournment had not allowed the applicant to consult his lawyers in private; nor had it allowed sufficient time for his lawyers to review the prosecution material.

The applicant, contrary to the principle of equality of arms, had been unable to prepare written submissions in response to the very detailed and lengthy prosecution petition and documents. Thus, Ms Moskalenko's written submissions to the court had remained incomplete.

The applicant further noted that the Government had not challenged his claim that during the adjournment he had had to speak to his lawyers in the

presence of guards and the district court personnel. These difficulties had been compounded by the fact that the applicant was incarcerated in an iron cage.

As to the admission of Ms A's note, the Government claimed that the note indicated that she was to carry out actions which were intended to falsify evidence. However, the applicant, referring to the text of the note, considered that that interpretation was arbitrary. The note recorded the steps that would reasonably be expected to be undertaken by a lawyer in preparing the case and identifying the issues on which she had to work in the performance of her professional obligations.

The applicant alleged that the search of Ms A had been unlawful and a blatant violation of the lawyer-client privilege. The record of the search of Ms A. indicated that the search had been conducted under section 34 of the Pre-trial Detention Act. In accordance with that Article, a search could only be conducted if there were sufficient grounds for suspecting individuals of attempting to smuggle in prohibited items, substances or food. It was claimed in the report following Ms A's search that the duty officer had seen "the lawyer and the defendant repeatedly passing to each other notepads with some notes, making notes therein from time to time". There had thus been no legal grounds for conducting the search of Ms A because there had been no indication in the report that the officer had witnessed any attempt to pass any prohibited items, substances or food.

At the hearing the prosecutor had alleged that the note had been written by the applicant. Thus, at the hearing on 22 December 2003 the prosecutor had argued: "new information has been obtained that Mr Khodorkovskiy passed a note via the lawyer Ms A in which he instructs those of his accomplices at liberty to influence witnesses who have made incriminating statements against him". However, the handwritten note had not been written by the applicant, contrary to the assertions of the prosecutor, as had been conclusively proved by the independent evidence from three handwriting experts.

As to the hearing on 20 May 2004, the applicant submitted that it had not complied with domestic law and that the absence of his lawyers had inevitably meant that the proceedings were not adversarial. The applicant considered that Article 5 § 4 was applicable to the hearing on 20 May 2004, contrary to what the Government seemed to be suggesting. As to the appeal hearings on 21 June and 29 July, the applicant submitted that his lawyer's absence from them necessarily led to the conclusion that they were incompatible with the requirement of adversarial proceedings.

Moreover, he submitted that he had wished to be represented at the hearings by his lawyer. The Ruling of the Constitutional Court of Russia of 22 March 2005 held that the presence of a detainee at a hearing concerning his detention was required in all circumstances, irrespective of whether the court was imposing or extending the detention or confirming its lawfulness.

On 21 June 2004 (the hearing of the appeal against the 20 May 2004 detention order), the applicant's lawyer, Ms Moskalenko, had been absent from the appeal hearing as she had been working in Strasbourg for two days. The court had been notified of that fact, but had nonetheless decided to proceed in her absence. The Government had submitted the notification from Ms Moskalenko's office informing the Court that Ms Moskalenko was in Strasbourg. The purported endorsement on the certificate to the effect that Ms Moskalenko did not have a lawyer-client agreement was incorrect. Further, the identity of the signatory to the endorsement was unclear and the identity had not been provided by the Government. The court had proceeded to hear the appeal filed by Ms Moskalenko in her absence and in the absence of the applicant but in the presence of the prosecutor, who had advanced oral arguments. In such circumstances, the applicant submitted that the hearing had been incompatible with the requirement of adversarial proceedings and equality of arms.

On 19 July 2004 Ms Moskalenko had attended the Moscow City Court and provided proof of her authority to act. The Moscow City Court had adjourned the hearing of Ms Moskalenko's appeal against the detention order of 8 June 2004. The hearing had resumed on 29 July 2004 but had been heard in the absence of both the applicant and his lawyer, Ms Moskalenko, notwithstanding the fact that the court had been notified that Ms Moskalenko had been taken into hospital. The Moscow City Court had heard oral argument from the prosecutor. Accordingly, the applicant submitted that the hearing had been manifestly incompatible with the requirement of adversarial proceedings and equality of arms.

The applicant further maintained that the detention orders of 20 May and 8 June 2004 had not contained any reasoning. For the applicant, it was axiomatic that for there to be an effective appeal the accused had to know the reasons for the decision at first instance.

As to the court's decision of 16 June 2004, the applicant made the following submissions. The Meschanskiy District Court had dismissed the applicant's application for release, stating that it had no jurisdiction under Article 255 of the CCrP to alter the decision of the Basmanny District Court that the applicant should be detained. However, Article 255 of the CCrP expressly permitted the trial court to select or modify the measure of restraint. Further, the Constitutional Court had made clear in its Decree of 22 March 2005 that the domestic courts had a continuing duty, throughout the pre-trial period, to determine the appropriate measure of restraint. Even if, contrary to the express provisions of the CCrP and the guidance of the Constitutional Court, there was a jurisdictional bar, such a limitation would be contrary to Article 5 § 1 (see *Jecius v Lithuania*, no. 34578/97, 31 July 2000, § 60-63). The applicant maintained his argument that the decision of 16 June 2004 was contrary to Article 5 § 3 and Article 5 § 4.

The applicant further argued that, contrary to the requirement of the domestic law, there had been a significant delay in the appeal hearings concerning the first, second and third detention orders. According to the applicant, consideration of the defence's appeals against the first three detention orders had lasted 17, 23 and 54 days respectively.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

## 3. COMPLAINT UNDER ARTICLE 18 OF THE CONVENTION

9. The applicant complained under Article 18 of the Convention that his arrest, detention, and prosecution were politically motivated. Article 18 of the Convention reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

The Government submitted that the applicant's allegations that his criminal prosecution had been politically motivated were not supported by the materials of the case. The Government referred to the judgment delivered in the applicant's case as proof that the charges against him were serious and genuine.

The applicant maintained his allegation that his criminal prosecution was politically motivated. He referred to the comments of leading Russian politicians and foreign government officials, international organisations, British, Cypriot and Swiss courts to the effect that the prosecution of the applicant was politically motivated.

The applicant submitted that the above materials were powerful evidence of ulterior purposes contrary to Article 18. He had at the very least adduced "prima facie evidence pointing towards the violation of that provision" (*Oates v. Poland* (dec.), no. 35036/97, 11 May 2000) which the Government had entirely failed to address.

The Government had referred the Court to the fact that the applicant had been convicted by the Meschanskiy Court in such a way as to suggest that this act of itself negated the applicant's arguments in relation to Article 18. However, in the applicant's view, that was entirely misconceived. The fact that he had been convicted in no way precluded improper motives in bringing the charges. Further, as a matter of Convention law, it was immaterial whether there was evidence justifying the bringing of the prosecution, if, as a matter of fact, it was brought for "other purposes" (see

*Gusinskiy v Russia*, no. 70726/01, 19 May 2004). The fact that he had received a long sentence indeed supported the inference of political motivation. The *travaux préparatoires* for Article 18 indicated that the drafters of this provision were concerned to ensure that an individual was thereby protected from the imposition of restrictions arising from a desire of the State to protect itself according "to the political tendency which it represents" and the desire of the State to act "against an opposition which it considers dangerous". The applicant maintained his case that his arrest and consequent detention on 25 October, just a few weeks before the Duma elections on 7 December 2003 and shortly before the completion of the Sibneft/Yukos merger, had been orchestrated to take action against an opposition which it considered "dangerous", contrary to Article 18.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

## 4. COMPLAINT UNDER ARTICLE 34 OF THE CONVENTION

10. The applicant complained under Article 34 of the Convention that the prison administration had prevented him from preparing his application to the Court. This provision, in so far as relevant, reads as follows:

> "The Court may receive applications from any person .... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Court reiterates that the right of individual petition under this Article will function only if applicants can interact with the Court freely, without pressure from the authorities (see *Akdivar and Others v. Turkey*, no. 21893/93, § 105, ECHR 1996-IV). However, in the present case, apart from the applicant's own allegation, there is no evidence in support of this complaint. The Court has received the applicant's application in two versions: an introductory and an expanded one. The application was prepared by an international team of lawyers who seem to know much about the applicant's situation. There is no evidence that the applicant was unable to instruct his lawyers in connection with the proceedings before this Court, at least as regards the present application. In the light of all the materials in its possession, the Court notes that they do not disclose any appearance of a breach of Article 34 of the Convention.

For these reasons, the Court

*Declares* unanimously admissible, without prejudging the merits, the applicant's complaint under Article 3 of the Convention concerning conditions in the remand prisons where he was detained;

*Declares* by a majority admissible, without prejudging the merits, the applicant's complaint under Article 3 of the Convention concerning conditions in the courtroom were his trial took place;

*Declares* unanimously admissible, without prejudging the merits, the applicant's complaint under Article 5 § 1 of the Convention concerning his arrest in Novosibirsk on 25 October 2003;

*Declares* unanimously admissible, without prejudging the merits, the applicant's complaints under Article 5 § 1 of the Convention concerning the alleged unlawfulness of the detention order of 25 October 2003 and the subsequent court decisions extending his detention pending investigation and trial;

*Declares* unanimously admissible, without prejudging the merits, the applicant's complaint under Article 5 § 3 of the Convention concerning lack of relevant and sufficient reasons for his continued detention pending investigation and trial;

*Declares* unanimously admissible, without prejudging the merits, the applicant's complaints under Article 5 §§ 3 and 4 of the Convention that the hearings in which his detention was imposed and extended did not offer minimum procedural guarantees and that his appeals against the first three detention orders were heard with undue delays;

*Declares* by a majority admissible, without prejudging the merits, the applicant's complaint under Article 18 of the Convention that his criminal prosecution was politically motivated;

*Declares* unanimously inadmissible the remainder of the application;

*Decides* unanimously to discontinue the examination of the applicant's complaint under Article 34 of the Convention about the alleged interference with his correspondence with the Court.

Søren Nielsen
Registrar

Christos Rozakis
President